



Meeting: **CEO URGENT DECISION SESSION - PLANNING**  
Date: **WEDNESDAY, 29 APRIL 2020**  
Time: **9.00 AM**  
Venue: **CHIEF EXECUTIVE'S OFFICE**

## Applications List

1. **Planning Applications Received (Pages 3 - 4)**
  - 1.1. **2017/1381/FULM - Land At Viner Station, Roe Lane, Birkin, Knottingley (Pages 5 - 32)**
  - 1.2. **2019/0030/COU: Milford Caravan Park, Great North Road, South Milford (Pages 33 - 54)**
  - 1.3. **2019/0941/FULM: Selby District Council - Old Civic Centre, Portholme Road, Selby (Pages 55 - 106)**

*Janet Waggott*

**Janet Waggott, Chief Executive**

Enquiries relating to this reports pack, please contact Victoria Foreman on [vforeman@selby.gov.uk](mailto:vforeman@selby.gov.uk) or 01757 292046.

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## **CEO Urgent Decision Session - Planning**

Planning Committees are cancelled due to the Covid19 Outbreak.

In order to continue to determine planning applications that would otherwise have been determined by the Planning Committee, the Chief Executive Officer (CEO), (or other such officer nominated in writing by her) will determine the applications using delegated urgency power, at a "CEO Urgent Decision Session – Planning". It is proposed that these be held weekly in order to continue to process applications in a timely manner.

The Planning Officer will prepare a written Officer Report (OR), that will be considered by the CEO. The list of applications to be considered at the weekly CEO Session will be published online beforehand.

The CEO will consult with the Chair and Vice of Planning Committee and have regard to their comments when taking the decision. The whole Committee will also have the opportunity to comment on the planning applications.

In the absence of a Committee meeting, it follows there is no right to speak available to the public. In order to maintain the planning process at this time, those wishing to comment on an application should submit their written representations within the statutory time limit applicable to the application in question. Information on planning applications will be available as usual on Public Access.

The CEO will be advised by the Planning Officer at the weekly CEO Urgent Decision Session – Planning of any new issues arising since the publication of the OR. If there are new material planning considerations raised, then the CEO will be advised to defer until the next CEO Urgent Decision Session – Planning, to enable an updated OR to be published if necessary.

Decisions made by the CEO will be published as delegated decisions online (in place of a Planning Committee Minute). The Notice of Decision will be issued in the usual way and published on Public Access.

### **Contact**

Vicky Foreman – Democratic Services Officer

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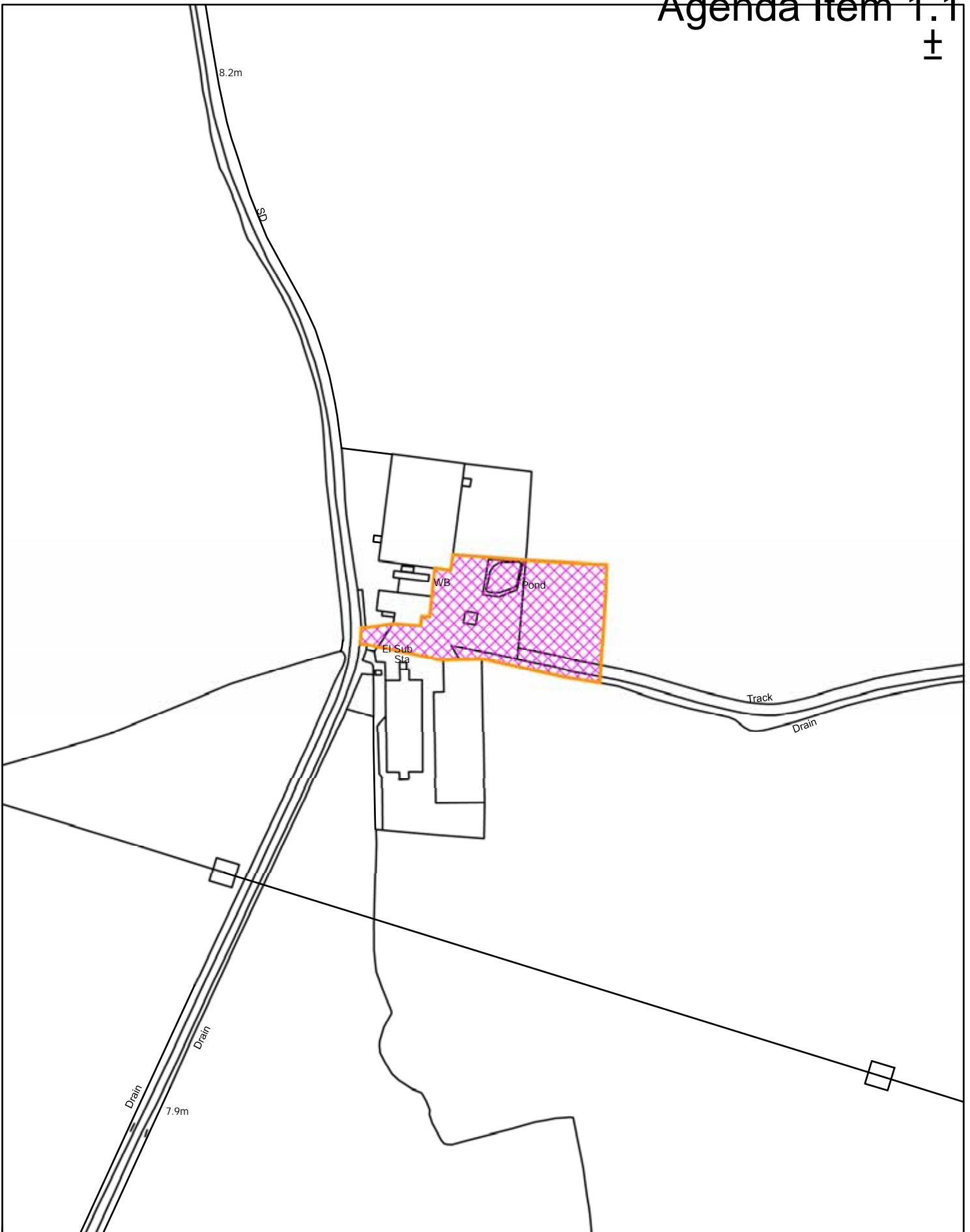
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**Items for CEO Urgent Decision Session – Planning**

29 April 2020

<b>Item No.</b>	<b>Ref</b>	<b>Site Address</b>	<b>Description</b>	<b>Officer</b>	<b>Ward</b>	<b>Pages</b>
1.1	2017/1381/FULM	Land At Viner Station Roe Lane Birkin Knottingley	Proposed erection of a new grain store including a chemical store and roof mounted solar PV	FIEL	Monk Fryston	5 - 32
1.2	2019/0030/COU	Milford Caravan Park Great North Road South Milford	Change of use of land to 12 gypsy/traveller pitches and associated works including 12 mobile homes, 12 touring caravans and 12 dayrooms	GABE	South Milford	33 - 54
1.3	2019/0941/FULM	Selby District Council - Old Civic Centre Portholme Road Selby	Proposed redevelopment of site to provide 154 residential units (Use Class C3), construction of new vehicular access onto Portholme Road and laying out of open space	RELE	Selby East	55 - 106

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### APPLICATION SITE

Land at Viner Station, Roe Lane, Birkin  
2017/1381/FULM

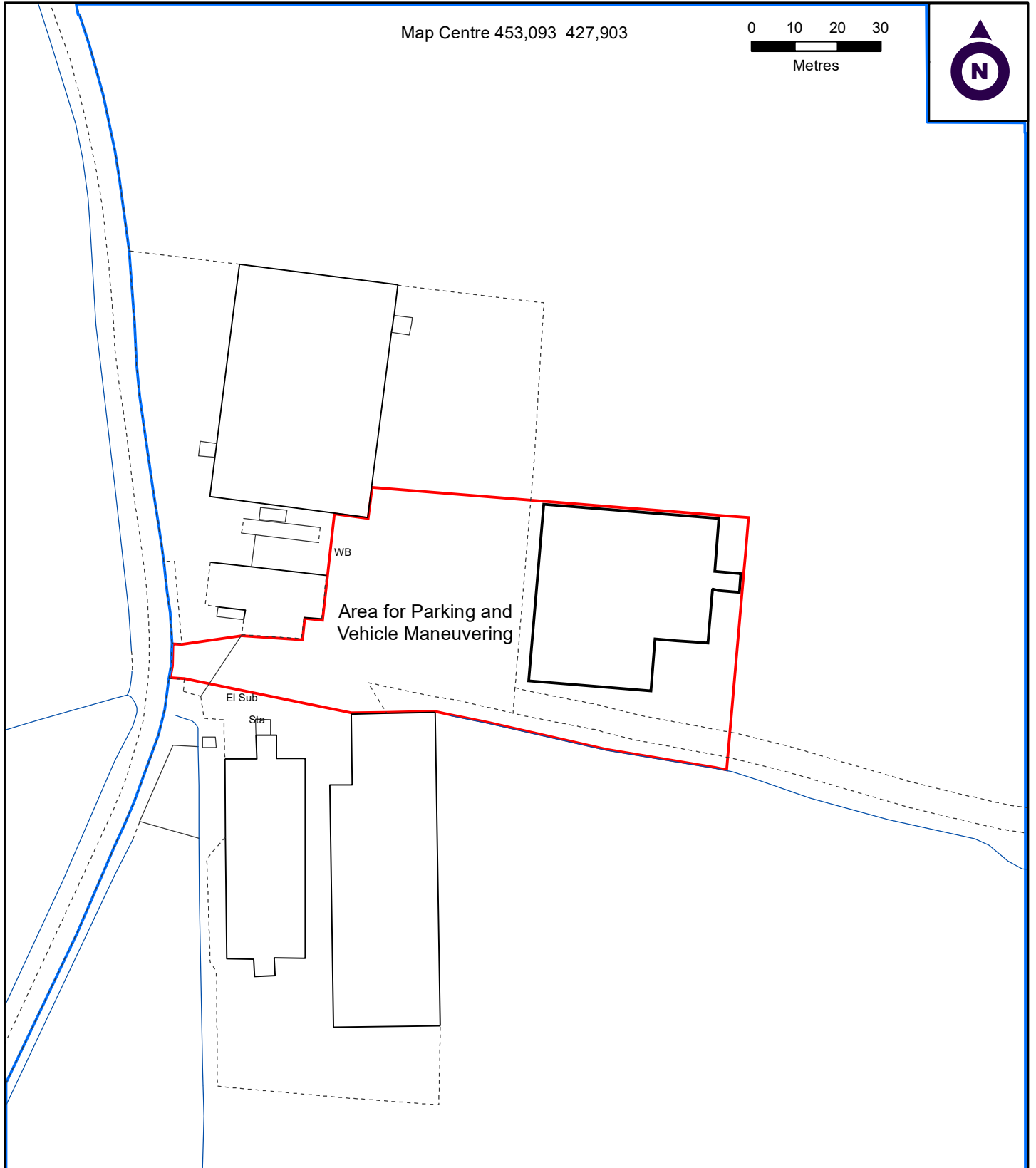
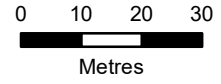
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Map Centre 453,093 427,903



# Carter Jonas

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Client: **J E Harley Limited**

Project: **Proposed New Grain Store and Chemical Store**

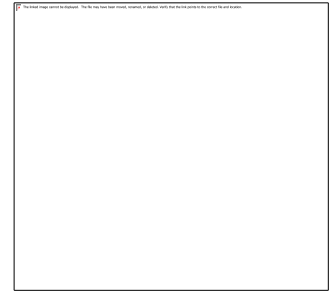
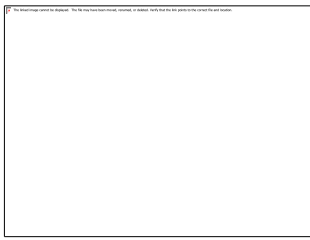
Title: **Site Plan**

Scale: 1:1250 @A4 Date: 04 November 2019

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**Report Reference Number:** 2017/1381/FULM (8/51/64/PA)

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**To:** CEO Urgency Decisions Session- Planning  
**Date:** 29 April 2020  
**Author:** Fiona Ellwood (Principal Planning Officer)  
**Lead Officer:** Ruth Hardingham (Planning Development Manager)

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<b>APPLICATION NUMBER:</b>	2017/1381/FULM	<b>PARISH:</b>	Birkin Parish Council
<b>APPLICANT:</b>	JE Hartley Ltd	<b>VALID DATE:</b> <b>EXPIRY DATE:</b>	10th January 2018 11th April 2018
<b>PROPOSAL:</b>	Proposed erection of a new grain store including a chemical store and roof mounted solar PV		
<b>LOCATION:</b>	Land At Viner Station Roe Lane Birkin Knottingley West Yorkshire		
<b>RECOMMENDATION:</b>	APPROVE SUBJECT TO CONDITIONS		

*NB: Location Plan attached with existing buildings numbered for identification purposes.*

This application which was reported to the Planning Committee meeting of 6<sup>th</sup> June 2018 and was deferred for the following reasons which are set out in the minutes to that meeting:

*“Members felt that they required more information on the application including on the unauthorised uses of some of the buildings before they could take a decision. Some members expressed a preference for a site visit; however, it was agreed that a decision on such a visit would be taken at a later date.”*

Following this, a retrospective application, under reference 2018/0681/FULM for the Change of Use of the buildings and land from agricultural use to industrial B2 use (which included 5 Biomass Boilers for the drying and heating of woodchip) was reported to Planning Committee in December 2018 and subsequently refused permission on 6 February 2019. An appeal has been lodged against the refusal and will be the subject of a Hearing later this summer. See Relevant Planning History section of this report for the refusal reasons.

This application relates solely to the new agricultural grain store. In view of the time period that has passed, the report is re-written, updated and addresses the queries which arose at Committee. An appraisal has been obtained by an Independent Agricultural Consultant on behalf of the Council which justifies the need for the grain store independent of the other buildings on the site. Further information has been provided on the following:

- Blue line ownership for the entire holding.
- Further details of the farm business;
- Greater justification for the agricultural need for the building and why the existing buildings are to be discounted; and
- Advice by an Agricultural Consultant on behalf of the Council.

## **1. INTRODUCTION AND BACKGROUND**

### **Site and Context**

- 1.1 The site is located to the east of Roe Lane approximately 0.64 north of Birkin and 1.44 miles south east of Hillam. Viner Station is a farm site comprising a series of varying sized substantial steel framed agricultural type sheds of mainly grey corrugate sheet walls and roof on concrete hard-standing. There are also smaller ancillary brick stores and an open sided steel frame barn.
- 1.2 Historically the buildings were granted permission in the 1970's for agricultural grain storage and potato storage. The buildings and the surrounding land are owned by J E Hartley Ltd. The farm is managed by the applicant who is J E Hartley's grandson. The farm operates an arable rotation of wheat, oilseed rape, barley, potatoes and peas. The farm business is 1,100 hectares of owned land mainly at East Haddlesly, Hillam/Birkin, Hambleton, Towton and Headley Hall. Additionally there is a further 200 hectares at Tadcaster farmed in a partnership agreement with Velcourt.
- 1.3 There are four main buildings at Viner Station. These comprise:
  - Building 1 - (north) comprises four sections. The north section comprises 2 former grain stores with below ground drying. These are let to the biomass green energy company and are used for the drying and storage of woodchip and to house biomass boilers (see relevant history section of the report). The southern section remains agricultural and has 2 below ground drying units with a total grain storage capacity of 1800 tonnes;
  - Building 2 - (south west side). This is a concrete floor grain store with above ground drying system. It has the capacity for 1000 tonnes of grain;
  - Building 3 - (central) Partly open sided. Used for temporary store (5 days only) of wet grain at harvest and throughout the year as a general purpose storage building; and
  - Building 4 - (South east side). Has a concrete floor and is used as a potato and fertiliser store.

## The Proposal

- 1.5 The proposal is the erection of a new grain store including a chemical store and roof mounted solar PV. The site layout plan identifies that the building would be located to the east of the existing buildings at Viner Station. The total footprint would be 1,656 square metres. It would be 30 metres wide, 42 metres long and 8.2 metres tall (to the eaves). It would hold an estimated 2,500 to 3,000 metric tonnes of grain. The building will also include a new lean-to chemical store on the southern elevation which will be 12 metres wide, 30 metres long and 5.8 metres tall (to eaves). As part of the proposals the existing chemical store on site would be demolished. Heating and drying of grain would be independent of the Biomass Boilers at the site. There would also be a small 6 metre by 6 metre fan house on the eastern elevation.
- 1.6 The building would be constructed of a similar design to the existing grain stores on site. It would be a steel portal framed construction with plastisol coated box profile galvanised steel sheet side wall cladding, natural grey concrete gain walling panels, a natural grey reinforced corrugated fibre cement roof and uPVC eaves guttering. It would include solar PV on its south facing roof and a rainwater harvesting system.

## Relevant Planning History

- 1.7 The following historical applications are considered to be relevant to the determination of this application;
- 1.8 A retrospective application, under reference 2018/0681/FULM for the Change of Use of the buildings and land from agricultural use to industrial B2 use (which included 5 Biomass Boilers for the drying and heating of woodchip) was reported to Planning Committee in December 2018 and subsequently refused permission on 6 February 2019 for the reasons set out below. An appeal has been lodged against the refusal.
01. *Having regard to the development plan, all other relevant local and national policy, consultation responses and all other material planning considerations, the proposal will significantly intensify the use of the site and introduce inappropriate industrial development to the open countryside. In addition the lorry movements created by this proposal are considered to be unsustainable for this open countryside location and would affect the character of this open countryside location through the intensification of the use. It is therefore considered to be contrary to policy SP13 of the Core Strategy, saved Policy EMP8 of the Local Plan and paragraphs 83 and 84 of the NPPF.*
02. *The roads leading to the application site by reason of their poor alignments/insufficient widths/poor condition and lack of footways are considered unsuitable for the traffic which would be likely to be generated by this proposal and would interfere with the free flow of traffic with consequent danger to highway users by virtue of its proximity to the public highway network. It is considered that the proposals would result in a significant detrimental impact on the existing highway network and highways safety and would therefore not accord with Policies EMP8 (6), ENV1 (2), T1 and T2 of the Selby District Local Plan, Core Strategy Policy SP19 and the NPPF.*

03. *The applicant has failed to provide sufficient information in regards to drainage and the Council therefore cannot be satisfied that the proposals are acceptable in terms of flood risk and drainage. Therefore the proposals fail to accord with Policies SP15, SP16, SP19 of the Core Strategy, and the advice contained within the NPPF.*

2018/0290/CPP - Lawful development Certificate for replacing fossil heaters with 4 Biomass Boilers. Withdrawn 18 May 2018.

CO/1976/21480 - Weighbridge and Office - Approved

CO/1975/21479 - Agricultural Store - Approved

CO/1975/21478 – Re-siting of Grain Store - Approved

CO/1975/21460 - New Grain Store - Approved

## **2. CONSULTATION AND PUBLICITY**

### **Consultation**

#### 2.1 North Yorkshire Bat Group

No response received.

#### 2.2 County Ecologist

Satisfied that the outcome of the Preliminary Ecological Appraisal is sufficient to determine the application in relation to ecological matters. It is agreed that the site is of low ecological value in terms of habitats and species which are legally protected or of principal importance.

Re-consultation - The further information submitted does not change the position in relation to ecology.

#### 2,3 Natural England

No comments to make on the original or additional information.

#### 2,4 Environmental Health

No objections to the granting of this application. Re-consultation - no further comments to make.

#### 2.5 NYCC Highways

No objections.

#### 2.6 Selby Area Internal Drainage Board

The application will increase the impermeable area to the site and the applicant will therefore need to ensure that any existing or proposed surface water system(s)

have the capacity to accommodate any increase in surface water discharge from the site.

Comments/recommendations:

- If the surface water disposed via a soakaway system, advise that the ground conditions in this area may not be suitable for soakaway drainage. It is therefore essential that percolation tests needed to establish if the ground conditions are suitable for soakaway drainage throughout the year.
- If surface water is to a mains sewer system no objection, providing that the Water Authority are satisfied that the existing system will accept this additional flow.
- If the surface water is to be discharged to any watercourse within the Drainage District, Consent from the IDB would be required in addition to Planning Permission and would be restricted to 1.4 litres per second per hectare or greenfield runoff. No obstructions within 7 metres of the edge of a watercourse are permitted without Consent from the IDB.

If consent is required as described above then a condition is necessary that any surface water discharge into any watercourses in, on, under or near the site requires consent from the Drainage Board.

Regarding the additional information, we have no further comments to make.

## 2.7 NYCC Flood Risk Management

Further response following submission of FRA as requested.

No objection subject to conditions requiring adherence with the recommendations of the FRA. Chemical Store in particular needs to adhere to proposed finished floor levels

Detailed Drainage scheme A sustainable drainage system is recommended to mitigate the risk of site generated surface water runoff, and investigations should be undertaken as to the infiltration rate and groundwater levels prior to informing a detailed drainage design.

Soakaway testing must be conducted to BRE 365 standard. Should ground conditions not prove suitable attenuation will need to be provided and discharge off site limited to the greenfield rate to be agreed with the local drainage board. The consent of the board will be required for discharge rates and any outfall that is proposed as part of the detailed design.

Conditions recommended.

## 2.8 Parish Council - Hillam

- Concerns regarding reports of increased haulage traffic
- Concerns regarding other business activity on the site that has led to the new building being needed i.e. current farm buildings being leased out to a different company for another purpose - should a change of use be applied for?

## 2.9 Parish Council - Birkin

- Proposal is a cover up for larger premises for more Bio Mass Boilers on an industrial scale. (Location plan title is misleading)
- Grain store and vinery buildings rented out and already in use by Bio Mass Company
- Pea production not mentioned in the predicted tonnage
- New grain store unjustified due to existing grain stores being used for other purposes.
- HGV's and other heavy traffic associated with the use causing problems for local traffic and damage to roads and verges.
- Increased traffic associated with the grain store and the Bio Mass company is harmful to road safety and amenity and local roads are unsuitable
- If permission is granted conditions should be placed restricting HGV movements

## 2.10 **Representation**

2.11 The application has been statutorily advertised by site and press notice. No neighbours adjoin the site but the nearest, Roe Lane Nursery has been notified by letter. Letter of objection from 20 individuals have been received with comments made summarized below:

- Not appropriate development in the Green Belt.
- Planning Statement refers to agricultural unit that covers 1300 ha. No blue line plan to indicate where this land is in relation to the site. The National Validation requirements stipulate that a Location Plan should indicate, edged blue, the land owned. The application is invalid. Should show the whole 1300 ha claimed to comprise the agricultural holding and would establish the planning unit.
- The agricultural holding comprises more than one planning unit. The Planning Statement refers to an additional 200 acres being farmed by Velcourt. Other elements of the applicants 1100 ha. may also be within different planning units.
- The importance of ascertaining the planning unit relates to the decisions in Warnock v SoS for the Environment & Dover DC (JPL 590 Sept 1980) and Fuller v SoS for the Environment & Dover DC (JPL 854 Dec 1987) which addresses the issue of agricultural activities falling into business use classes where they serve more than on planning unit (as distinct from an agricultural holding).
- The former Grain Store appears to be of similar size to the new store. This undermines the need for a new building. Need for building not demonstrated. Huge storage increase for a small increase in land.
- Need for the additional grain storage is driven by letting half the existing storage space to a different business (Biomass boilers which has nothing to do with the agricultural business) and is not driven by increased productivity.
- It is not clear, whether grain will be stored or dried in the former Grain Store and also whether heat from the biomass boilers now installed in the former Grain Store will provide heat for the new store.
- The use within the existing Grain Drying Store appears to be of much greater capacity than the heating equipment that it replaced.
- J E Hartley have other buildings nearby at Birkin which are suitable. The existing farming enterprise appears to have either leased its holdings to a farm management company or employed them to run the farm.



- Hard surfaces have been created and timber appears to be being stored. There may be storage of biomass wood chip within the former Grain Store. There is use of the land and building(s) for open storage and processing. This appears to be a commercial production plant for biomass wood chip which would be a business use, both unauthorised and inappropriate. Evidence of felled trees and wooden pallets being brought to site, stored and chipped. If used timber is being processed it would constitute a waste recycling activity and require licensing.
- The site is immediately adjacent to Green belt and is prominent in views to and from the Green Belt.
- A pond has been filled in recently which would prevent a survey for newts.
- It is not evident where access to the building is and how this relates to existing hard surfacing. Further hard surfacing will be required. This would need to be addressed by the flood risk assessment and that should also explain whether the former pond provided any function in the existing surface water disposal arrangements.
- Ecology survey not credible as it lacks mention of species evident in the locality.
- Roads not suitable, single track, no pavements, small bridges, flooded roads (narrow, damage to verges) for additional Heavy traffic & HGV's-danger to pedestrians, cyclists, horse riders and other road users.
- Work at Viner station is already audible from nearby Birkin village. Further expansion would impact negatively in terms of noise and disturbance.
- Traffic is 24/7 and harmful to local amenity.
- Flood zone 2 – query if alternatives been considered?
- Increased pollution.
- Industrialisation and harm to the countryside.
- Concerns over future industrial use of the new building.
- Should be at Kellingley using rail facilities.
- Houses being damaged by the shudder of HGV's on small roads.
- Drainage not addressed.
- FRA does not take account of new impermeable concrete hardstanding.
- No details provided of the internal structure of the building, entrances etc.
- New concrete hardstanding and bund have been constructed but are not within the red line area identified on the plans.
- Processing/storage of crops from another farm means the process is industrial rather than agricultural.

### **3 SITE CONSTRAINTS**

#### **Constraints**

- 3.1 The site lies in open countryside but is **not** in the Green Belt, The land to the west of Roe Lane falls within the Green Belt, whereas Viner Station is on the east side of Roe Lane. The whole site is within Flood Zone 2 and therefore has medium risk of flooding. There are no statutory national or local landscape or wildlife designations covering the site and there is no Conservation Area or nearby listed buildings that are affected.

### **4 POLICY CONSIDERATIONS**

- 4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states "if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with

the plan unless material considerations indicate otherwise". This is recognised in paragraph 11 of the NPPF, with paragraph 12 stating that the framework does not change the statutory status of the development plan as the starting point for decision making.

- 4.2 The development plan for the Selby District comprises the Selby District Core Strategy Local Plan (adopted 22nd October 2013) and those policies in the Selby District Local Plan (adopted on 8 February 2005) which were saved by the direction of the Secretary of State and which have not been superseded by the Core Strategy.
- 4.3 On 17 September 2019 the Council agreed to prepare a new Local Plan. The timetable set out in the updated Local Development Scheme envisages adoption of a new Local Plan in 2023. Consultation on issues and options would take place early in 2020. There are therefore no emerging policies at this stage so no weight can be attached to emerging local plan policies.
- 4.4 The National Planning Policy Framework (February 2019) (NPPF) replaced the July 2018 NPPF, first published in March 2012. The NPPF does not change the status of an up to date development plan and where a planning application conflicts with such a plan, permission should not usually be granted unless material considerations indicate otherwise (paragraph 12). This application has been considered against the 2019 NPPF.
- 4.5 Annex 1 of the National Planning Policy Framework (NPPF) outlines the implementation of the Framework -

*"213...existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)."*

### **Selby District Core Strategy Local Plan (CS)**

- 4.6 The relevant Core Strategy Policies are:

SP1 - Presumption in Favour of Sustainable Development  
SP2 - Spatial Development Strategy  
SP13 - Scale and Distribution of Economic Growth  
SP15 - Sustainable Development and Climate Change  
SP18 - Protecting and Enhancing the Environment  
SP19 - Design Quality

### **Selby District Local Plan (LP)**

- 4.7 The relevant Selby District Local Plan Policies are:

ENV1 - Control of Development  
EMP9 – Expansion of existing employment uses in the countryside.  
EMP13 - Control of Agricultural Development  
T1 - Development in Relation to Highway  
T2 - Access to Roads

## 5 APPRAISAL

5.1 The main issues to be taken into account when assessing this application are:

- Principle of the development in the open countryside
- Impact on the character and form of the open countryside
- Impact on residential amenity
- Highway Safety
- Biodiversity and Ecology
- Flood Risk and Drainage
- Other Matters

### **Principle of the development in the open countryside**

5.2 Policy EMP13 1) of the Selby District Local Plan (LP) allows agricultural development provided that the proposal is necessary for agricultural purposes. Other criteria of this policy in relation to design, highways, and impact on the character of the area are considered under subsequent sections of this report. In order to determine whether the proposal is acceptable in principle and whether it complies with this policy it is necessary to consider firstly if the proposal is agricultural development and if so whether the building is necessary for agricultural purposes.

5.3 The information from the applicants states that the farm business, originally JE Hartley, diversified in the 1970's into arable crops and peas. The Viner Station was established for podding the peas by machine but has for many years been used for agricultural grain storage and a potato store. The farm has a standard crop rotation of 1,100 hectares with wheat as the main combinable crop. The agricultural business includes several parcels of land which are geographically dispersed. A plan providing details of the land owned and its locations has been provided. Historically grain from all these parcels of land (with the exception of the recently added Velcourt land at Headley Hall) has been stored at Viner Station.

5.4 The applicant provides information indicating that, following a review, the farm business expanded into a partnership with Velcourt which brought a further 200 hectares to the agricultural business as well as spreading of labour and machinery. The plan has been to expand the production of wheat, barley and oil seed rape within the existing and additional land. This will require drying and storage for approximately 6,000 metric tonnes. Currently the farm (at the Viner Station unit) has 1,800 tonnes of storage available in a purpose built grain store and a further 1,000 in a four bay store with no underground ducting.

5.5 The applicant states that the need for more grain storage for this business arises due to both an increase grain production across the acreage and the intention to store it for much longer. Traditionally in farming the grain was stored for only a short period after harvest time then sold. The construction of proposed building will provide expanded and improved modern facilities which would be used to store grain from harvest time for a longer period until the following May. At least half of the grain would be sold on a 'cash and carry' basis. As a result the farm needs increased storage for a further 2500 to 3000 metric tonnes.

5.6 In addition to the proposed grain store, the proposal also includes for a new chemical lean-to store (attached to the grain store) to replace the existing chemical lean-to store at the Viner Station. Integrated Farm Management and Integrated Pest Management are stated by the applicants to be key drivers in decision making regarding the use of natural resources and pesticides. The construction of a new dedicated chemical lean-to, storage and filling area at the Viner station is stated to bring a multitude of benefits to the business, site and local environment. The new build will not only take advantage of some of the latest forms of technology regarding the handling of sprayer tank washings and waste pesticide handling methods, but will also aim to reduce surface run-off into nearby streams and rivers by including rain water harvesting equipment as an integral part of the design.

Key Benefits of the new chemical store are stated to be:

- Fully insulated to ensure high value pesticides are properly stored and protected from external varying climatic conditions and tampering from trespassers.
- Indoor adjoining storage / filling areas to promote staff well-being and improved health and safety by employing the use of trollies and pallet trucks to transport chemical containers between sites, reducing manual handling of containers and worker fatigue.
- Any spillages will be fully contained within the storage area, draining into a central gulley and pumped directly into the bio-bed filtering system.
- To promote an open and tidy working area, allowing suppliers and forklifts to efficiently and safely unload and deliver pesticides.

5.7 The grain store is stated to be for the purposes of storing grain produced by the agricultural business. It is not intended to be used for further biomass boilers and energy production which was a concern of objectors. Moreover, the applicants have confirmed it is not intended to be used to store grain from other agricultural businesses.

5.8 Objectors refer to the importance of ascertaining the planning unit and refer to the decisions in *Warnock v SoS for the Environment & Dover DC* ([1980] J.P.L. 690) and *Fuller v SoS for the Environment* ((1988) 56 P. & C.R. 84) which address the issue of agricultural activities falling into business use classes where they serve more than one planning unit (as distinct from an agricultural holding). An objector considers that this building would serve at least 5 planning units and therefore the use must be industrial not agricultural. The *Warnock* case relates to the holding and storage and onward transport of livestock held commercial lairage found not to be agricultural use.

5.9 In the *Fuller* case, it was concluded that there is no reason why the 'agricultural unit' should define the 'planning unit' where the unit is broken up geographically. The Court held that the planning unit remains a question of fact and judgement for the decision-maker and the planning unit is not necessarily the same as the agricultural unit. On the basis of this judgment the objector concludes this agricultural unit comprises several planning units. There have been a number of cases where the courts have considered a decision-maker's approach to whether separate parcels of agricultural land form the same or different planning units. The consistent finding is that the issue is one of fact and degree for the Council/Inspector. An important case on planning units is *Burdle v SoS for environment 1972*. This recognises that the

planning unit is normally regarded as the unit of occupation unless some smaller area, both physically and functionally separate, can be defined.

- 5.10 The degree of separation is an important consideration in determining the planning unit. The plans provided by the applicant show the geographical spread of multiple parcels of land. A planning unit is normally regarded as the unit of occupation and implies a mainly single contiguous area. An agricultural holding can comprise widely scattered number of farms and cover a very large area for large farming businesses. As such it is considered that this agricultural unit of J E Harley is clearly extensive and comprises several geographically dispersed parcels of land. These are as follows;
1. Land at Headley Hall –contains no farm buildings
  2. Towton- contains buildings -(none suitable for grain storage)
  3. Monk Fryston (Siddle farm)- contains no farm buildings
  4. Hillam/Birkin -including Viner station (buildings described above) and Birkin House Farm (farm buildings but unsuitable for grain storage)
  5. East Haddersley- contains no farm buildings
- 5.11 The above parcels of land are physically separated and geographically widely dispersed. The majority of farm buildings for the agricultural business are located at Viner Station. These buildings function for the agricultural unit as a whole and the crop production from the various parcels of land is all produced and stored for the one agricultural unit. The use taking place across all the parcels of land is primarily agricultural. Although functionally linked, the parcels of land (described in 1-5 above) are all considered to be separate planning units. The group of buildings and surrounding land at Viner Station is considered to constitute one planning unit.
- 5.12 An objector considers this proposal to unacceptable on the basis that it is a commercial use. However, commercial grain stores usually exist to serve several agricultural businesses and are owned and operated independent of farms with the space being rented out on a commercial basis to any farmer requiring additional grain storage. The grain stores at Viner Station are not operated on this basis. The new store is intended to serve only this one agricultural business (J E Hartley) albeit from several separate planning units. Only the grain produced by this agricultural business as a whole will be stored in the new building. It is not intended to be let commercially to store grain from other agricultural businesses or to be used for any reciprocal arrangements with other farms outside the agricultural business. Therefore even though the existing grain stores and the proposed new grain store would serve multiple planning units, the use is still considered to be agricultural not commercial. As such the grain store is essentially intended for rural farming purposes and is not intended to serve other farm businesses or for warehousing for other products or other commercial uses. A planning condition could be imposed to limit the use of the building to grain storage only.
- 5.13 Although there are secondary activities within the unit, namely the Biomass business, planning permission for this has not been granted. It is important therefore to note that at the present time the current lawful use of all the land and buildings at Viner Station is considered to be solely agricultural. Should the Biomass Business be granted permission on appeal then Viner Station site would become a mixed commercial and agricultural use site.

- 5.14 It is therefore concluded that even though there are multiple planning units, these are part of just one agricultural business. This is common and typical of most large farming businesses today. The proposed development is considered to be agricultural in use and therefore in accordance with EMP13 (1) it is can be permitted provided it is necessary for agricultural purposes.
- 5.15 Turning to the question of whether the scale and size of this proposed large new building is necessary for grain storage for this agricultural holding, it may not be appropriate to grant permission if capacity still exists within the existing range of buildings at Viner station. Given that a large portion of the buildings are currently occupied by an unauthorised change of use, this scheme could only be supported if the new grain store is justified over and above the capacity of the existing buildings which have been taken up by the Biomass Boilers which are not associated with the agricultural use of the site.
- 5.16 There are 5 Biomass boilers. One of which is providing heating to the existing grain store. Four boilers are operating separately to the farming business by Woodyfuel Ltd and are being used to create woodchip fuel for the Biomass boiler business off site.
- 5.17 Advice has been sought by Selby District Council from an independent Agricultural Consultant on firstly whether the size of the proposed grain store is justified on the basis of the crop production of the Agricultural unit and secondly on whether, if the unauthorised biomass green energy production business were to cease and the buildings were again available for grain storage, whether the size and scale of the new storage building would still be justified.
- 5.18 The Agricultural Consultant concluded that the central section of Building 1 should not be included in the grain storage calculation but reserved for storage of fertiliser, seed corn and machinery. The fact that these had been stored at various times in Building 3 (partly open sided) but had been water damaged in heavy rains was also highlighted. The appraisal concludes that:
- With the central section of Building 1 excluded from the calculations, then, with the new building erected there would be a grain storage capacity of 8,905 cubic metres and the storage requirement would be 8,679 cubic metres. The capacity assumes every section of every store is full to capacity. With 7 different crop types, it's unrealistic to assume all the storage areas would be filled to capacity and therefore it can be concluded that the grain storage provided by the existing and the proposed building would be appropriate to the farming enterprise concerned.
  - It makes complete sense to continue to rent out the potato store to a local farmer. This is the most appropriate and lucrative use of Building 4.
  - The chemical store proposed is appropriate for purpose as there is no modern storage for the farm sprayer or chemicals.
  - If the business is to invest in a new grain store which the Agricultural Consultant concluded to be justified, then it would be appropriate for it to satisfy the requirements without the central section of Building 1.
  - The proposed grain store and chemical store is completely appropriate development for a farming business of this size and type, even with the assumption that the boilers and woodchip business are completely removed from the site.

- 5.19 On the basis of the above appraisal the size and scale of the proposed new building is considered to necessary for the purposes of this agricultural business even with the assumption that the biomass boilers are removed together with the woodchip drying business. As such the proposed development is considered to necessary for this agricultural business.
- 5.20 It is therefore concluded that the proposed development is agricultural development which is necessary for the agricultural unit and therefore it complies with Policy EMP 13(1) of the LP.
- 5.21 In addition to Policy EMP13 of the LP, Policies SP1, SP2 and SP13 of the Core Strategy and EMP9 of the LP are of some relevance. Policy SP1 of the CS Policy sets out the positive approach when considering development proposals that reflects the presumption in favour of sustainable development contained in the NPPF. SP2 of the CS sets out the locational strategy for the district and limits development in the open countryside to the replacement or extension of existing buildings, the re-use of buildings preferably for employment purposes, and well-designed new buildings of an appropriate scale, which would contribute to towards and improve the local economy and where it will enhance or maintain the vitality of rural communities, in accordance with Policy SP13; or meet rural affordable housing need, or other special circumstances. EMP9 sets out that proposals for the expansion and/or redevelopment of existing industrial and business uses outside development limits will be permitted provided it meets a number of criteria in relation to the impacts of the development (highways, character and appearance of the area, design) which are discussed in the following sections of this report.
- 5.22 Policy SP13 of the CS aims to give support to developing and revitalising the local economy. In relation to the rural economy, SP13 seeks to support sustainable development which brings sustainable economic growth through local employment opportunities or expansion of businesses and enterprise including, well-designed new buildings and the diversification of agriculture and other land based rural businesses. This is consistent with the advice in paragraph 83 of the NPPF which supports this approach. This states that:
- Planning policies and decisions should enable:
- a) the sustainable growth and expansion of all types of business in rural areas, through conversion of existing buildings and well-designed new buildings;
  - b) the development and diversification of agricultural and other land-based rural businesses.
- Policy SP13 of the CS requires that in all cases the development is sustainable and is appropriate in scale and type to its location and does not harm the character of the area and seeks a good standard of amenity.
- 5.23 In view of the above conclusions that the proposal is an agricultural use, then the application should be judged against Policies EMP13 of the Local Plan. However, even if the view of the objector were to be taken that the buildings at Viner Station are a mixed use of commercial and agricultural due to the multiple planning units, then it is clear that this is an established rural business which requires a rural location. EMP9 sets out that proposals for the expansion and/or redevelopment of existing industrial and business uses outside development limits will be permitted provided it meets a number of criteria in relation to the impacts of the development

(highways, character and appearance of the area, design) which are discussed in the following sections of this report. Paragraph 84 of the NPPF also states that “planning decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport)”.

- 5.24 Historically, the farm business at Viner Station has for many years served as an agricultural grain storage facility for the various parcels of land which make up this agricultural business. As such a proportion of grain stored here comes from the Viner Station planning unit itself and a larger proportion already come from the remainder of the agricultural business (the other planning units). There are three key changes which have resulted in the need for the additional grain store. Firstly, grain production is to be increased across the entire holding and secondly a further 200 hectares of land (in crop production) have been added to the size of the holding. Thirdly it is intended to store the grain for longer. For these reasons there is a need for an increase in the capacity grain storage at Viner Station.
- 5.25 The proportion of the total amount of grain arriving for storage from outside of the Viner Station Planning unit will increase due to the additional 200 hectares added to the agricultural business. However, some of the increase is also be due to increased grain production across the whole holding including at the Viner station unit. As such, the introduction of a further grain store at the Viner Station site to serve the entire agricultural holding would not materially change the existing use of the Viner Station site itself but would be an expansion of its existing facilities which already store grain for the entire holding. Although exact figures of the amounts of grain coming from the various parcels have not been provided, the overall change is not considered to result in a material change of use at Viner Station given its historic use serving the entire holding.
- 5.26 Objectors refer to the use being ‘inappropriate’ development for this location and mention that it is Green Belt. They argue that the proposal is a mixed commercial and agricultural use would not fall within the exceptions set out in paragraph 145 of the NPPF. However, the site is not within the Green Belt. The erection of new buildings in this open countryside location that is not Green Belt is not subject to the same higher tests. Moreover, it is officers opinion that the use is agricultural not commercial which would be appropriate in the Green Belt.
- 5.27 The proposed scheme is considered to contribute towards and improve the local economy and allows for continuation, expansion and improvement of an existing established agricultural business. The continued central storage of grain for the farm business makes sense rather than transporting it all further afield to an industrial site. The proposed scheme is considered to be appropriate development in this countryside location and is agricultural development.
- 5.28 Overall it is concluded that the proposed development complies with Policies EMP13 of the LP. Subject to the consideration of the criteria below, the proposal also complies with Policies SP1, SP2 and SP13 of the CS and with EMP9 of the LP. These policies even though they were adopted before the publication of the



framework are still consistent with the advice within paragraphs 83 & 84 of the NPPF and can therefore be afforded considerable weight.

### **Impact on the character and form of the open countryside**

- 5.29 The LP aims to support the modernisation and expansion of the agricultural industry subject to ensuring it does not threaten the character of the landscape amongst other things. EMP13(2), (4) and (5) as well as EMP9 and SP13D seek to achieve this aim.
- 5.30 The proposed grain store would be located within the field adjacent to the existing farmyard.
- 5.31 The proposed building would be constructed of a similar design to the existing grain stores on site. It would be a steel portal framed construction with plastisol coated box profile galvanised steel sheet side wall cladding, natural grey concrete gain walling panels, a natural grey reinforced corrugated fibre cement roof and uPVC eaves guttering. It would include solar PV to its southern facing roof and a rainwater harvesting system.
- 5.32 The design of the proposed building is commensurate to its stated intended use as an agricultural building. The proposal due to its design, size, height and siting is considered to be in keeping with the character and form of the other agricultural buildings on the site. Moreover, it would be located adjacent to and would be seen against the backdrop of the existing buildings at the Viner Station and would therefore be in keeping with its surroundings. It is therefore considered that the proposed development would not have an adverse impact upon the visual amenity of the open countryside. However, given the scale of the new building on the edge of the farmstead it is considered that it would benefit from a landscaping scheme around the north, east and southern sides which would in the longer term provide screening, soften its impact and contribute to biodiversity. Policy EMP13 criterion 5 requires agricultural development to be adequately screened and landscaped. A condition can be imposed requiring full details to be submitted and agreed should consent be granted. The applicants have agreed to this approach.
- 5.33 The development will also include solar panels covering almost the entire southern side of the roof slope. Given the utilitarian design of the building and its materials it is not considered that the solar panels will harm the character and appearance of the building or the area. Moreover, they will contribute to a more sustainable form of development in this location.
- 5.34 Objectors have raised concerns that an embankment and hardstanding created without planning permission. These are within the blue line area of this application but form part of the refused scheme to change the use of buildings to a biomass energy production business. These will be a matter for consideration on the refused scheme currently at Appeal.
- 5.35 The proposal is therefore considered to be acceptable with respect to the impact on the character of the area and the visual amenity of the open countryside. The proposed scheme, subject to the attached landscaping condition to secure compliance with EMP 13(5), therefore accords with Policies ENV1 and EMP13 of the Selby District Plan, Policy SP19 of the Core Strategy and the advice contained within the NPPF.

## Impact on residential amenity

- 5.36 The concerns of local residents about noise associated with the use are noted. However, the majority of objections and concerns related to the Biomass wood-chipping use. Due to the combination of the orientation of the site, the size, scale and siting of the proposed scheme and distance away from the neighbouring properties, the proposal is considered not to cause any significant adverse effects on the amenity of the adjacent residents. The Council's Environmental Health Officer has raised no objections to the proposal and it is considered that there are no compelling reasons to depart from the guidance of the Council's specialist officer. The proposed scheme therefore accords with Policies ENV1 and EMP13 of the Selby District Local Plan, Policy SP19 of the Core Strategy.

## Highway Safety

- 5.37 Policy EMP13 criterion (3) requires that proposals should not create conditions prejudicial to highway safety. Similarly Policy EMP9 Criterion (1) has the same requirement. The NPPF at paragraph 109 sets out that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. The proposed scheme would utilise the existing access and access tracks surrounding the farm complex. The submitted Design and Access Statement states that, the associated traffic in harvest year 2018 in the form of articulated lorries accessing via Roe Lane for the out loading of harvested primary produce as 'harvest moved' with the current storage capacity of 2800 mt would result in a total of 148.3 outloads conducted between the period of mid-July to mid-September.
- 5.38 The Design and Access Statement then goes on to advise of the potential reduction in outloads for harvest 2018 that a new grain store facility at the Viner station could provide in that the proposed grain store facility has the potential to reduce the number of outloads during the period of July 15th – Sept 15th (approximately) by 91.4 outloads. Storing grain for a longer period on site will result in the grain movements from the site being spread across the year. It is advised that this would significantly reduce on farm traffic improving health and safety amongst workers. The applicant considers that it would also help to reduce traffic and congestion levels on key surrounding link roads, allowing the workload of out-loading to be spread throughout the remaining and following year. Taking account of the above, the applicant considers that vehicle movements associated with the proposal would have a limited effect on residential areas or nearby roads.
- 5.39 Objections have been made in regard to the increased traffic generation from HGV's and farm vehicles and the adverse impact on road safety conditions locally for pedestrians, cyclists, horse riders and vehicles. The deterioration caused to roads and verges has also been a source of concern. However, the majority of these concerns relate mainly to traffic that has been generated by the Biomass boilers.
- 5.40 The Highway Authority have been re-consulted recently in relation to this application solely for the grain store. They comment that *"From the information available on this application, I note that the potential grain store would instead of creating potentially 15 HGV movements a week over approximately 10 weeks, the proposal would spread the HGV movements over the year. Therefore, resulting in*

*approximately 3 HGV movements a week. With this in mind I would stand by the previous recommendation of no objections*". In summary, the Highway Authority raises no objections on highway grounds to this proposal.

- 5.41 It is considered reasonable to rely on the advice of the specialist consultee in relation to technical highways issues and it is therefore considered that this proposal would not result in a significant detrimental impact on the existing highway network and would accord with Policies ENV1 (2), EMP9 (1), EMP13 (3), T1 and T2 of the Selby District Local Plan, Core Strategy Policy SP19 and the NPPF.

### **Biodiversity and Ecology**

- 5.42 Policy EMP 13 (6) of the Local Plan requires that agricultural development does not harm nature conservation interests. Policy SP13 of the Core Strategy supports developing the local economy but in all cases development should be sustainable and be appropriate in scale and type to its location, not harm the character of the area, and seek a good standard of amenity. A Preliminary Ecological Appraisal has been submitted in support of the application which advises that based on the nature of the proposed development; the distance between the site and protected sites and the nature of the protected sites, that the proposed development is not predicted to result in any significant effects on protected sites. No Habitats of Principal Importance are present at the site. None of the habitats at the site are assessed as being of value at greater than the site level. In addition to this the submitted report advises that based on the habitats present and the site location, the site is not considered likely to support a notable breeding bird assemblage although Species of Principal Importance such as skylark could potentially breed on the site in small numbers.
- 5.43 The submitted report states that no waterbodies potentially suitable for breeding great crested newts have been identified within 500 metres of the site. It is therefore considered very unlikely that great crested newts would occur at the site and no further surveys or mitigation measures for bats are considered necessary. In addition to this it states that no evidence of badger or other notable fauna was observed at the site. Brown hare, a Species of Principal Importance in England, could potentially occur within the site on an occasional transitory basis. No further surveys or mitigation measures for other fauna are considered necessary.
- 5.44 Objectors have raised concerns that a pond has been filled at the site. A preliminary Ecology appraisal was submitted with the application in March 2018. This stated that *"No waterbodies potentially suitable for breeding great crested newts were identified within 500 metres of the site. It is therefore considered very unlikely that great crested newts will occur at the site. A pond is shown on the Ordnance Survey 1:1250 map of the site; however, at the time of the survey this area comprised bare ground"*. The applicants confirmed that there was an open hole of water on the site devoid of life that was filled in for health and safety reasons.
- 5.45 The County Ecologist has been consulted on the application and is satisfied that the outcome of the PEA is sufficient to determine the application in relation to ecological matters. The County Ecologist confirms that they agree with the findings of the PEA - notably, that the site is of low ecological value in terms of habitats and species which are legally protected or of principal importance.

- 5.46 Paragraph 170 of the NPPF advises that planning decisions should contribute to and enhance the local environment through a number of means. Paragraph 175 d) of the NPPF advises that opportunities to encourage biodiversity improvements in and around developments should be encouraged especially where this can secure measurable net gains for biodiversity. The applicant has been asked to provide a landscaping scheme which could soften and in time screen the proposed large-scale building. This could also encourage local wildlife and contribute positively to biodiversity and ecologically enhance the area. Such a scheme could be secured by means of a planning condition requiring full details of the size, position and species to be planted.
- 5.47 As such it is considered that the proposed development would not harm any acknowledged nature conservation interests or protected species and the proposed scheme therefore accord Policies EMP9 (4), EMP13(6) & (7) and ENV1(5) of the Selby District Local Plan and Policy SP18 of the Core Strategy and the NPPF

### **Flood Risk and Drainage**

- 5.48 Paragraphs 5.37 – 5.41 of the Planning Statement provide details in relation to the site's location within a flood risk area and the implications for the proposal. The proposed development is classified as Less Vulnerable development in accordance with Table 2 of the Flood Risk and Coastal Change Planning Practice Guidance (PPG). The site is part of an existing agricultural holding and the proposal is for a building linked to this use. The nearest tidal river is the River Aire which is 1.47km south of the site. Between the site and the River Aire is Birkin village which benefits from flood defences. Therefore the risk of the site and the access becoming flooded before being able to leave the site is very minimal.
- 5.49 The application site is located within Flood Zone 2 and a Flood Risk Assessment (FRA) has been submitted. Paragraph 158 of the NPPF states "The aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding". The strategic approach should be used in areas known to be at risk now or in the future from any form of flooding.
- 5.50 A sequential assessment has been submitted which has narrowed down the area of search to the agricultural holding of the farm within the immediate area of the application site. The submitted sequential test undertaken by the applicant's agent provides for a justification not to locate the grain store in relation to parcels of land which are located in flood zone 1, to support the proposed grain store which is located in flood zone 2.
- 5.51 The submitted sequential test acknowledges that the farm business has an overall cropping area of 1,300 hectares. This cropping area is located across the Selby District within Birkin, Haddlesey, Temple Hirst, Siddle, Towton and Hillam which includes owned, rented and contracted farmed land. The justification for narrowing to the area of search for the Sequential Test states that that Viner Station is centrally located within the landholding. It is also the location for the other existing grain stores used by the farming business. There are only two farmsteads within the landholding, Viner Station and Birkin House Farm. The rest of the land farmed by the business is remote and does not have a suitable grid connection for electricity.

- 5.52 It is noted that the applicant owns which is at less risk of flooding. It is also noted that a large amount of the applicants land is within Flood Zone 3. Planning Practice Guidance on applying the sequential test states that “a pragmatic approach should be take on the availability of alternatives”. In this case it would not be practical to position this grain store on remote land, away from an electricity supply or separate to the existing grain stores. Moreover, this could result in increased vehicle movements and a greater impact on the character and appearance of the rural areas by constructing a new building away from existing farm buildings. As such it is considered that there are pragmatic reasons to justify the location and officers agree with the conclusions of the submitted sequential test as there is nowhere else practically available within a lower flood risk zone.
- 5.53 Where it is not possible for development to be located in zones with a lower risk of flooding the exception test may have to be applied. The need for the exception test will depend on the potential vulnerability of the site and of the development proposed, in line with the Flood Risk Vulnerability Classification set out in national planning guidance. Land and buildings used for agriculture are within the ‘less vulnerable’ classification and therefore it is considered that the exception test does not need to be applied and the development is appropriate in flood risk zone 2.
- 5.54 Objectors have raised concerns regarding that the pond would attenuate run off and this should also be taken into account when assessing run off from the site. The submitted FRA makes recommendations regarding finished floor levels and for infiltration rates to be testes and a sustainable drainage design to be submitted for approval. Conditions can be imposed requiring these and are attached in the recommendation.
- 5.55 The Local Lead Flood Authority have advised that they have no objections to the proposed development should it proceed in line with the recommendations of the submitted flood risk assessment and recommended conditions. These are set out in the recommendation. The proposed scheme is therefore in accordance with the advice contained within the NPPF in relation to prevention of flood risk.
- 5.56 Yorkshire Water have been consulted on the application; however, no response has been received. Selby Area Internal Drainage Board has also been consulted on the application and have raised no objections subject to the imposition of a surface water drainage condition.
- 5.57 On the basis of the above the proposed scheme subject to the proposed conditions which would ensure finished floor levels would make the development safe and for the drainage and infiltration rate details to be agreed to ensure flood risk is not increased elsewhere, it is considered the proposed development would be acceptable in terms of flood risk and drainage and therefore accords with Policies SP15, SP16, SP19 of the Core Strategy, and the advice contained within the NPPF.

### **Other Matters**

- 5.58 One objector raised an issue in relation to the blue line plan received and validation requirements. The relevant validation requirements are that the application site should be edged clearly with a red line. It should include all land necessary to carry out the proposed development – for example, land required for access to the site from a public highway, visibility splays, landscaping, car parking and open areas around buildings. A blue line should be drawn around any other land owned by the applicant, close to or adjoining the application site. As such, even though not all the

land owned was identified in the application details, the applicant met the standard requirements identifying the land owned immediately around the application site.

- 5.59 A request for further information can be made under section 62(3) TCPA 1990 if meets the tests in section 62(4A). In this case, further details of the extent of land owned was requested by the Council (and provided) in order to assist with establishing what is the planning unit and to assess whether the development is agricultural or commercial. Officers consider that sufficient information was received from the applicant in order to fully assess the application.

## 6 CONCLUSION

- 6.1 Having had regard to the development plan, all other relevant local and national policy, consultation responses and all other material planning considerations, the proposed development would be acceptable in principle in this location taking into account the presumption in favour of sustainable development, flood risk, reducing carbon emissions and the effect of climate, the impact on economic development, impact on the character and form of the open countryside, impact on residential amenity, highway safety and biodiversity. The application is therefore considered not to be in accordance with Policy T1, T2, ENV1 and EMP13 of the Selby District Local Plan, Policies SP1, SP2, SP15, SP18 and SP19 of the Core Strategy and the advice contained within the NPPF.

## 7 RECOMMENDATION

- 7.1 This application is recommended to be **GRANTED** subject to the following conditions:

1. The development hereby granted permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To ensure compliance with Section 91 of the Town and Country Planning Act 1990 as amended. standard 3 years

2. The development hereby permitted shall be carried out in accordance with the following approved and dated plans and documents:

(To be inserted into the Decision Notice)

Reason: For the avoidance of doubt.

3. The materials to be used in the construction of the external surfaces of the building hereby permitted shall be those stated below:

- Concrete wall panels - Marley Eternit Profile 6 panels in Natural Grey (standard finish)
- Composite wall sheets - Plastisol sheets, Olive Green (RAL 6003)
- Composite roof sheets - Plastisol sheets, Goosewing Grey (BS10A05)
- Emmerson Doors Limited single skin non-insulated electrically operated chieftain type steel roller shutter doors. Galvanised shutter curtain with primed steelwork (red oxide, black and grey).

Reason: In the interests of visual amenity and in order to comply with Policy ENV1 of the Selby District Local Plan

4. No development shall commence above slab level until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall provide a belt of planting around the north, east and southern sides of the grain store hereby approved and shall provide a planting scheme which will enhance biodiversity. The details shall include:

5.
  - Details of the species, location, planting density and stock size on planting of all trees and shrub planting.
  - Details of how the above can secure measurable net gains for biodiversity.
  - Details of the measures for the management and maintenance of the approved landscaping.

The approved details shall be implemented fully and comply with condition 5 and 6 below.

Reason: In the interests of visual amenity and to enhance the biodiversity of the site and in order to comply with Plan Policy ENV1.

6. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the first bringing into use of the buildings or the substantial completion of the development, whichever is the sooner.

Reason: In the interests of amenity and in order to comply with Plan Policy ENV1.

7. If, within a period of five years from the date of planting, any tree (or any tree planted in replacement for it) is removed, uprooted, destroyed or dies or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same size and species as that originally planted shall be planted at the same place within the first planting season following the removal, uprooting, destruction or death of the original tree within 2 months of being requested to do so by the local planning authority.

Reason: In the interests of amenity and in order to comply with Plan Policy ENV1.

8. No development approved by this permission shall be commenced until the Local Planning Authority has approved a scheme for the provision of surface water drainage works. Any such scheme shall be implemented to the reasonable satisfaction of the Local Planning Authority before the development is brought into use. The following criteria should be considered:

- If the surface water disposed via a soakaway system, advise that the ground conditions in this area may not be suitable for soakaway drainage. It is therefore essential that percolation tests needed to establish if the ground conditions are suitable for soakaway drainage throughout the year.

- If surface water is to a mains sewer system no objection, providing that the Water Authority are satisfied that the existing system will accept this additional flow.
- If the surface water is to be discharged to any watercourse within the Drainage District, Consent from the IDB would be required in addition to Planning Permission and would be restricted to 1.4 litres per second per hectare or greenfield runoff. No obstructions within 7 metres of the edge of a watercourse are permitted without Consent from the IDB.

Reason: To ensure the development is provided with satisfactory means of drainage and to reduce the risk of flooding.

9. The development shall be carried out with strict adherence to the recommendations of JOC Consultants Ltd "Development at Viner Station, Birkin, Selby - Flood Risk Assessment" dated 9th April 2018. In addition the finished floor levels for the chemical store will be 300mm above the level of the part of the site which appears to be above the 0.1% AEP flood level, i.e. 8.30m AOD.

Reason: In the interests of flood risk mitigation and pollution prevention.

10. The development shall not commence until details of finished floor levels of the development hereby approved have been submitted and approved in writing by the Local Planning Authority. Finished Floor Levels should be set above the 1 in 1000 year plus climate change defended flood level with an additional 300mm freeboard above the flood level. The development shall be carried out in accordance with the approved scheme satisfying this condition.

Reason: In the interest of amenity of the occupiers of the adjoining properties and flood risk mitigation

11. Before the development commences details shall be submitted for the written approval of the local planning authority to provide for the following. Soakaway Testing Percolation testing to determine soil infiltration rate are to be carried out in accordance with BRE 365 Soakaway Design (2003) and CIRIA Report 156 Infiltration drainage - manual of good practice (1996). Method of test must be relevant to proposed SuDS. Testing must be carried out at or as near as possible to the proposed soakaway location (No greater than 25m from proposed soakaway for uniform subsoil conditions. For non-uniform subsoil conditions testing must be carried out at the location of the soakaway). Testing must be carried out at the appropriate depth for proposed SuDS (e.g. invert level, base level of soakaway etc.) relative to existing ground levels. Three percolation tests are to be performed at each trial pit location to determine the infiltration rate, where possible. Where slower infiltration rates are experienced, testing must be carried out over a minimum period of 24 hours (longer if 25% effective depth is not reached). 25% effective depth must be reached. Extrapolated test data will not be accepted.

Reason: to ensure viability of infiltration and to inform the detailed drainage design

12. Storage Requirements and Maintenance - Greenfield Site Development shall not commence until a scheme restricting the rate of development flow runoff from the site has been submitted to and approved in writing by the Local Planning



Authority. The flowrate from the site shall be restricted to a maximum flowrate of 1.4 litres per second for up to the 1 in 100 year event. An allowance shall be included for climate change effects. Storage shall be provided to accommodate the minimum 1 in 100 year plus climate change critical storm event. The scheme shall include a detailed maintenance and management regime for the storage facility. No part of the development shall be brought into use until the development flow restriction works comprising the approved scheme has been completed. The approved maintenance and management scheme shall be implemented throughout the lifetime of the development.

Reason: To mitigate additional flood impact from the development proposals and ensure that flood risk is not increased elsewhere.

13. No development shall commence on the drainage for the site until a scheme for the drainage of surface water has been submitted to and approved in writing by the Local Planning Authority. The development hereby approved shall be undertaken as approved in accordance with the timescales indicated within the approved scheme.

Reason: To ensure viability of infiltration and to inform the detailed drainage design having regard to Part 10 of the NPPF.

## INFORMATIVES

A suitably worded informative which ensures that removal of any features with potential to support nesting birds is undertaken outside of the bird breeding season, generally taken to be 1st March to 31st August inclusive. This is to ensure compliance with the Wildlife and Countryside Act 1981 (as amended). If any works need to take place during this time then the habitats must first be checked by a suitably qualified ecologist and if birds are found to be nesting then works will have to be delayed until chicks have fledged.

## **8 Legal Issues**

### **8.1 Planning Acts**

This application has been determined in accordance with the relevant planning acts.

### **8.2 Human Rights Act 1998**

It is considered that a decision made in accordance with this recommendation would not result in any breach of convention rights.

### **8.3 Equality Act 2010**

This application has been determined with regard to the Council's duties and obligations under the Equality Act 2010. However it is considered that the recommendation made in this report is proportionate taking into account the conflicting matters of the public and private interest so that there is no violation of those rights.

## **9 Financial Issues**

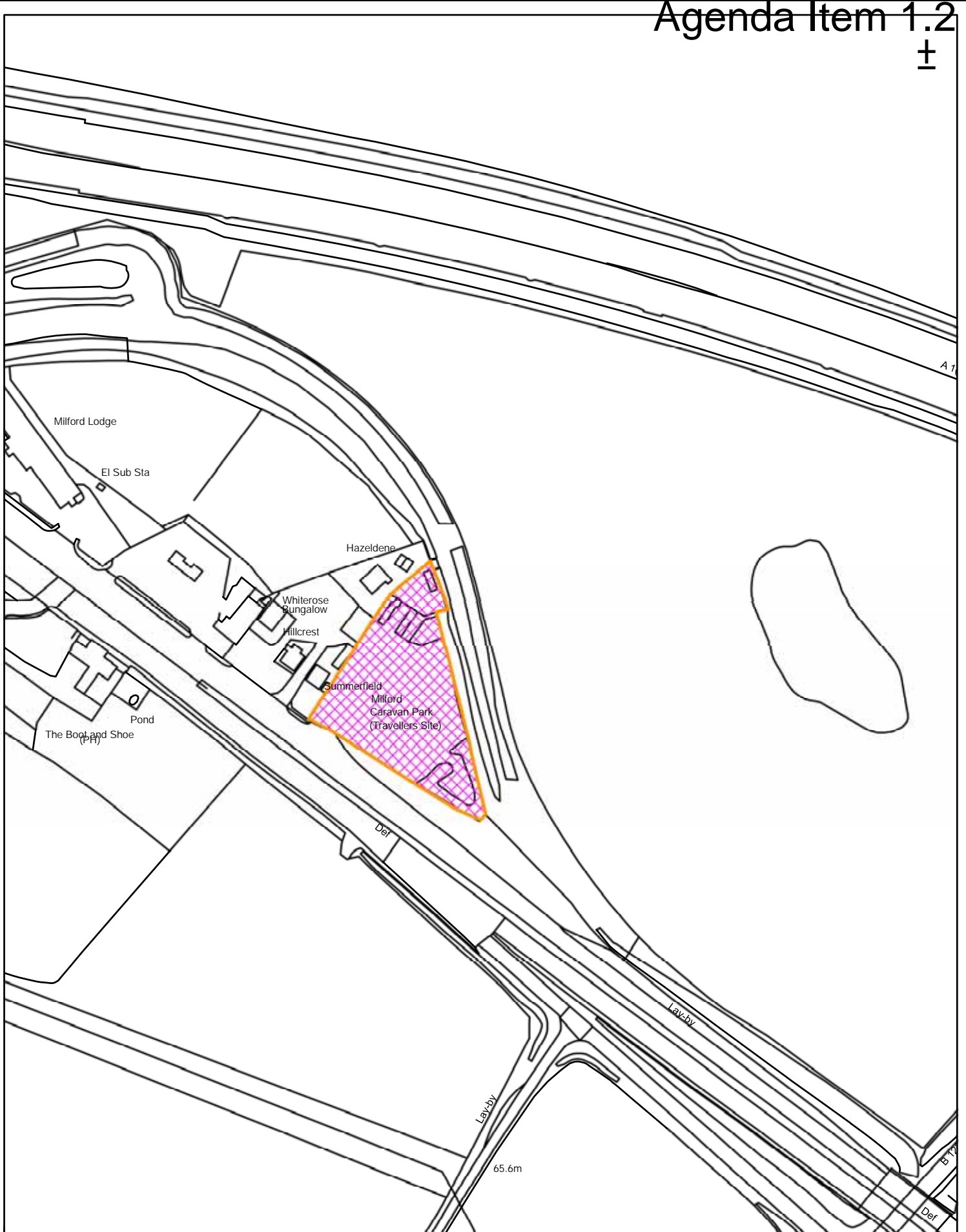
Financial issues are not material to the determination of this application.

## **10 Background Documents**

Planning Application file reference 2017/1381/FULM and associated documents.

**Contact Officer:** Fiona Ellwood, Principal Planning Officer  
[fellwood@selby.gov.uk](mailto:fellwood@selby.gov.uk)

**Appendices:** None



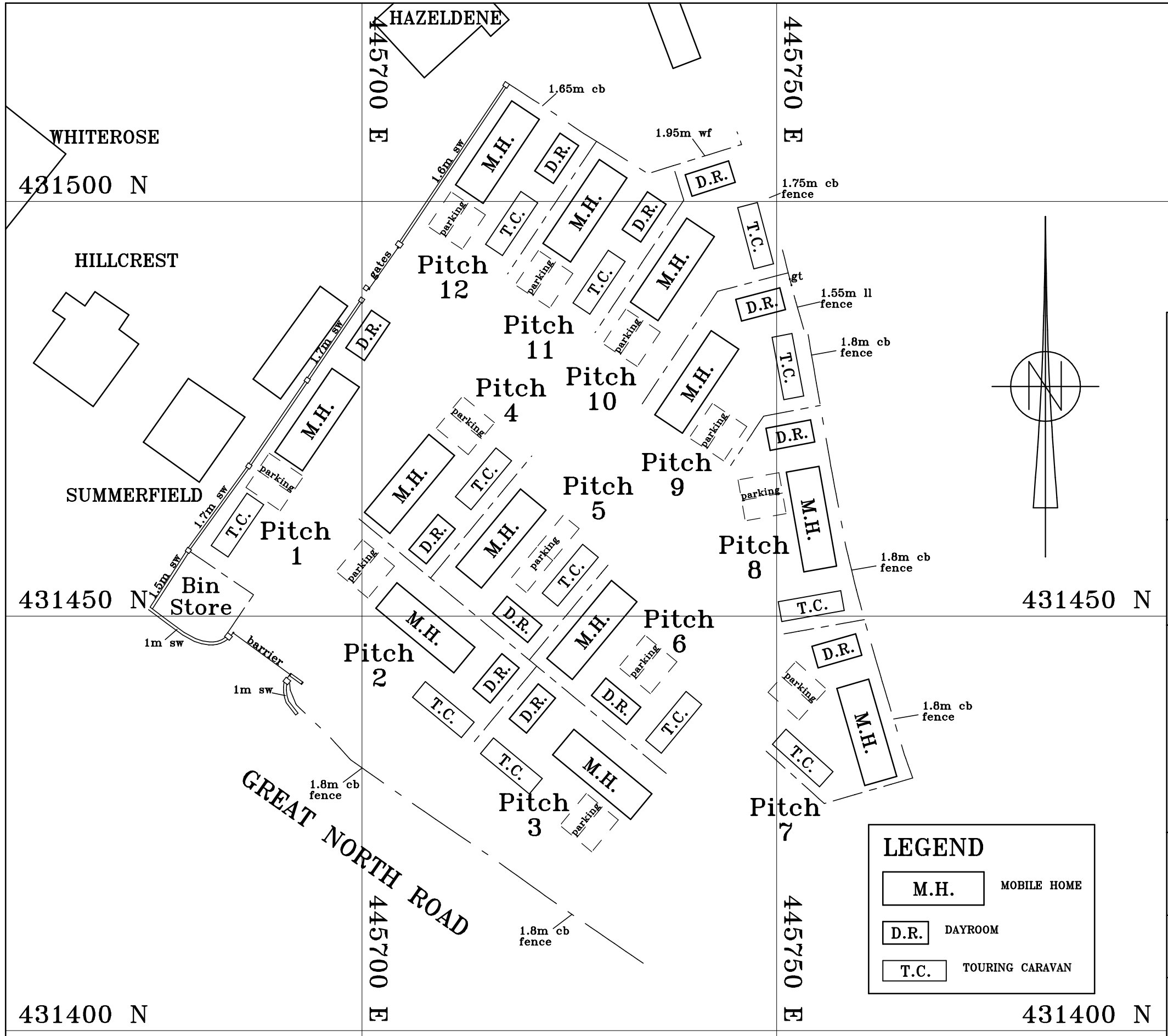
### APPLICATION SITE

Milford Caravan Park, Great North Road, South Milford  
2019/0030/COU

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431500 N

**NOTE:**  
GRID AND LEVELS TO ORDNANCE SURVEY.



The Long Barn  
Mitre Farm  
Corse Lawn  
Gloucestershire  
GL19 4NG

Tel. 01684 217217  
Mob. 07831 861822

[www.ruxtonsurveys.co.uk](http://www.ruxtonsurveys.co.uk)  
[enquiries@ruxtonsurveys.com](mailto:enquiries@ruxtonsurveys.com)

LOCATION:  
**LAND ADJACENT TO  
SUMMERFIELD  
GREAT NORTH ROAD  
PECKFIELD  
SOUTH MILFORD**

CLIENT:  
**MR J TAYLOR**

DRAWING TITLE:  
**PROPOSED SITE LAYOUT**

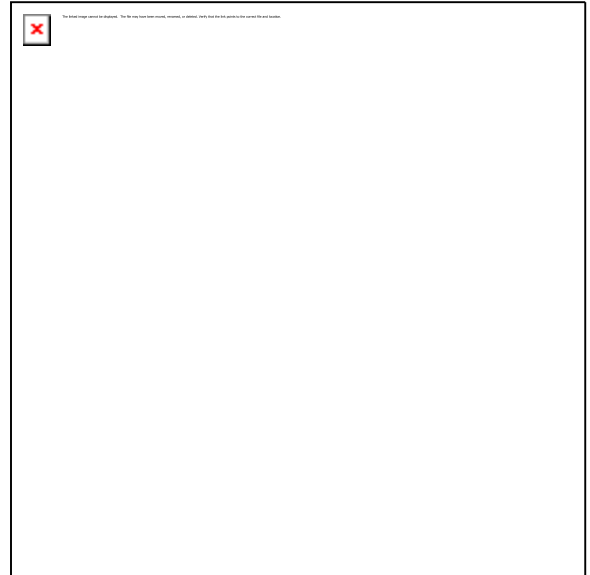
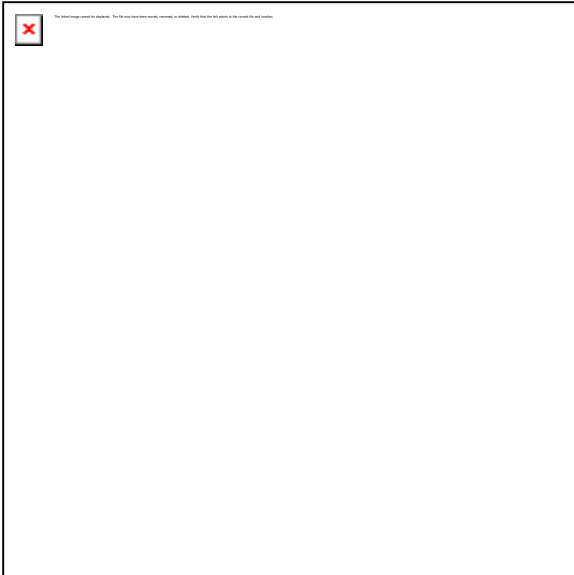
SCALE: 1 to 500	DATE: DECEMBER 2018	SHEET SIZE: A3
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DRAWING NUMBER: <b>18203/02</b>	DRAWN BY: <b>N.R.</b>
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**LEGEND**

M.H.	MOBILE HOME
D.R.	DAYROOM
T.C.	TOURING CARAVAN

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**Report Reference Number:** 2019/0030/COU

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**To:** CEO Urgent Decision Session - Planning  
**Date:** 29 April 2020  
**Author:** Gary Bell (Principal Planning Officer)  
**Lead Officer:** Ruth Hardingham (Planning Development Manager)

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APPLICATION NUMBER:	2019/0030/COU	PARISH:	Huddleston With Newthorpe South Milford
APPLICANT:	Mr J Taylor Snr	VALID DATE: EXPIRY DATE:	15th February 2019 8 <sup>th</sup> May 2020
PROPOSAL:	Change of use of land to 12 gypsy / traveller pitches and associated works including 12 mobile homes, 12 touring caravans and 12 dayrooms		
LOCATION:	Milford Caravan Park Great North Road South Milford Leeds		
RECOMMENDATION:	GRANT		

This application has been brought before the Chief Executive Officer at the Urgent Decision Session - Planning as the proposal is contrary to the requirements of the Development Plan. However, officers consider that there are material considerations which would support the recommendation for approval.

## 1. INTRODUCTION AND BACKGROUND

## **Site and Context**

- 1.1 The site is close to the administrative boundary with Leeds City Council and is about 1.5 km from the villages of Micklefield and Ledsham (both in the Leeds) and approximately 3 km from both South Milford and Sherburn-in-Elmet to the east. The land comprises an area of hard standing previously associated with Hillcrest Café, a former transport café that has been unused for some time. The hard standing was used for the parking and circulation of vehicles many of which were heavy goods vehicles. The site amounts to 0.5 hectares and is bounded by mature hedgerows to three sides inside which for the majority of their length is 1.8 metre high concrete post and timber panel fencing. The remaining boundary to the north-west is formed by a stone wall beyond which are 4 bungalows owned by the applicant and occupied by family members.
- 1.2 The site lies immediately north of, and is accessed from, a dual-carriageway section of the A63 and further to the north beyond an embankment lies the A1(M). There are no physical features of note within the main body of the site which is roughly surfaced as a result of the former use and on which are now found a number of mobile homes and touring caravans, hence the application is retrospective. The site lies within the adopted Green Belt and is classified as being within Flood Zone 1.

## **The Proposal**

- 1.3 The application seeks planning permission for 12 Gypsy/Traveller pitches with each pitch comprising a mobile home together with space for a touring caravan and parking. Each pitch will also include a utility building, measuring 5.48 by 2.7 metres and providing separate male and female shower and WC facilities.
- 1.4 The Planning Statement accompanying the application anticipates that any permission granted will include a condition restricting occupation of the mobile homes to persons falling within the meaning of gypsies and travellers as set out in national policy. The Statement also asserts that the proposed mobile homes must meet the legal definition of a caravan as set out in Section 29 of Caravan Sites and Control of Development Act 1960 and, by their nature, are interchangeable structures such that size or appearance may differ.
- 1.5 The application is accompanied by the following documents:
  - Application form, Certificate A and Agricultural Holdings Certificate
  - Planning Statement (together with an Additional Submissions document)
  - Drawing No: JTaylor 19 –SLP, Site Location Plan
  - Drawing No: 18203/01 Site Survey
  - Drawing No: 18203/02 Proposed Site Layout
  - Drawing No: 18203/03 Proposed Utility Building
  - Various appeal decisions relating to gypsy and traveller development

As noted above, the application is retrospective as the use of the land as a Gypsy/Traveller site is already occurring. National planning practice guidance states that retrospective applications must be considered in the normal way.

## **Relevant Planning History**



- 1.6 The following historical applications are considered to be relevant to the determination of this application.
- 1.7 An application (reference: 8/59/15) for the construction of a vehicle parking area on land to the south east of Hillcrest Cafe was approved on 8 March 1982.
- 1.8 An application (reference: 2010/0324/COU) for change of use of land from truck stop to use as a residential caravan site for Gypsies and Travellers was refused on 8 July 2011. An Enforcement Notice (reference: 2011/0876/EAP) alleging the unauthorised change of use of the land to a Gypsy caravan site was subsequently issued. Appeals against both the refusal of planning permission and the Enforcement Notice were considered at a public inquiry in early 2012. The appeals were recovered by the Secretary of State for his own determination and resulted in the Enforcement Notice being upheld but planning permission being granted for a temporary period until 31 December 2014 for the use of the land as a residential caravan site for gypsies and travellers.

## **2. CONSULTATION AND PUBLICITY**

### **Consultation**

- 2.1 **Huddlestone with Newthorpe Parish Council** – no comments received.
- 2.2 **NYCC Highways** – have confirmed that the road accessing the site is not a North Yorkshire Highway Maintainable at Public Expense so the consultation letter should be redirected to Leeds City Council.
- 2.3 **Leeds City Council Highways** – have raised no objection to the proposed development. Comments have been provided as follows which are for information only and do not alter the formal response; the site location is inappropriate for typical residential use due to accessibility issues. The pedestrian environment is poor, there are limited local services, primary and secondary education and access to town centre services etc.
- 2.4 **Yorkshire Water** – no comments received albeit it has previously been confirmed that there is no public sewer network in the area.
- 2.5 **Selby Area IDB** – no comments received albeit the site lies close to but outside of the area covered by the Board.
- 2.6 **SDC Environmental Health** – has no objection.
- 2.7 **SDC Planning Policy** – comments that traveller sites in the Green Belt are considered to be inappropriate development which is, by definition, harmful. Added to this is actual harm caused to the openness of the Green Belt. However, the site is previously developed and it was agreed by the parties at the earlier appeal that the existence of gypsy pitches on the site does not compromise the 5 purposes of including land in the Green Belt, a conclusion that was also reached by the Inspector and the Secretary of State in considering the previous appeals. This is considered to be a significant material consideration when assessing the proposal.

It is suggested that the following additional factors could weigh in favour of the proposal: the immediate shortfall in pitches, along with the displacement of existing households from the site which will generate a greater need for pitches in the district; the benefits that a settled base would give the current occupants; the fact that the site does not contribute positively to the landscape quality of the wider surrounding area; and the relative sustainability of the site.

Appropriate weight should be accorded to such factors to assess whether, taken individually or collectively, these are of sufficient weight to 'clearly' outweigh the harm by reason of inappropriateness to the Green Belt and harm caused to the openness of the Green Belt.

Given the absence of any alternative available Gypsy/Traveller pitches in the district and on balance from a policy perspective, the proposal is considered to be acceptable.

### **Representation**

2.9 All immediate neighbours were informed by neighbour notification letter; a site notice was erected and an advert place in the local press. A letter has been received from Ledsham Parish Council objecting to the application on the following grounds:

- Increased traffic in to and out of the site poses an increased risk to vehicles driving along the Great North Road outside the site. In addition, quad bikes driving along the wrong side of the road into the site have been observed.
- Planning permission has been refused previously and there are no reasons to give permission now.

### **3. SITE CONSTRAINTS**

3.1 The site is not allocated in the Local Plan, is located outside the defined development limits of nearby settlements and is therefore defined as open countryside. Whilst in the immediate vicinity there are a number of buildings which front the A63, the site falls within the Green Belt. The application has consequently been advertised as a Departure from the Development Plan. There are no protected trees on the site but it is situated within an area designated as a Locally Important Landscape Area (LILA). There are no Conservation Area designations or heritage assets (including listed buildings) that are affected. The site is situated within Flood Zone 1.

### **4. POLICY CONSIDERATIONS**

4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that "if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise". This is recognised in paragraph 11 of the National Planning Policy Framework (NPPF), with paragraph 12 stating that the framework does not change the statutory status of the development plan as the starting point for decision making.

- 4.2 The development plan for the Selby District comprises the Selby District Core Strategy Local Plan (adopted 22nd October 2013) and those policies in the Selby District Local Plan (adopted on 8 February 2005) which were saved by the direction of the Secretary of State and which have not been superseded by the Core Strategy.
- 4.3 On 17 September 2019 the Council agreed to prepare a new Local Plan. The timetable set out in the updated Local Development Scheme envisages adoption of a new Local Plan in 2023 and consultation on issues and options took place earlier this year. There are therefore no emerging policies at this stage so no weight can be attached to emerging local plan policies.
- 4.4 The NPPF (February 2019) replaced the July 2018 NPPF, first published in March 2012. The NPPF does not change the status of an up to date development plan and where a planning application conflicts with such a plan, permission should not usually be granted unless material considerations indicate otherwise (paragraph 12). This application has been considered against the 2019 NPPF.
- 4.5 Annex 1 of the National Planning Policy Framework (NPPF) outlines the implementation of the Framework -

*“213...existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).”*

### **Selby District Core Strategy Local Plan (CS)**

- 4.6 The relevant Core Strategy Policies are:
- SP1 - Presumption in Favour of Sustainable Development
  - SP2 - Spatial Development Strategy
  - SP3 - Green Belt
  - SP11 - Travellers
  - SP18 - Protecting and Enhancing the Environment
  - SP19 - Design Quality

### **Selby District Local Plan (SDLP)**

- 4.7 The relevant Selby District Local Plan Policies are:
- ENV1 - Control of Development
  - ENV2 - Environmental Pollution and Contaminated Land
  - ENV15 - Locally Important Landscape Areas
  - T1 - Development in Relation to the Highway Network
  - T2 - Access to Roads

### **Other Policies/Guidance**

- 4.8 The following is considered relevant:

- Planning policy for traveller sites (DCLG, August 2015)

## 5. APPRAISAL

5.1 The main issues to be taken into account when assessing this application are:

- The Principle of Development
- Impact on the Openness of the Green Belt
- Impact on the Visual Amenity of the Green Belt and the Character and Appearance of the Surrounding Area
- Impact on Residential Amenity
- Impact on Highway Safety
- Determining whether Very Special Circumstances exist

### **The Principle of Development**

5.2 Paragraph 2 of the NPPF confirms the legal position that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise. Paragraph 12 re-emphasises that an up-to-date development plan is the starting point for decision-making, adding that development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should not usually be granted, unless other material considerations indicate otherwise.

5.3 CS Policy SP1 outlines that "when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework" and sets out how this will be undertaken. CS Policy SP2 of the Core Strategy sets out the spatial development strategy for the District and provides that the majority of new development will be directed to the towns and more sustainable villages. The application site lies within the Green Belt. Part A.(d) of Policy SP2 states that development in the Green Belt must conform to CS Policy SP3 and national Green Belt policies.

5.4 Policy SP3 B states "In accordance with the NPPF, within the defined Green Belt, planning permission will not be granted for inappropriate development unless the applicant has demonstrated that very special circumstances exist to justify why permission should be granted."

5.5 The NPPF states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 144 goes on to state that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. Paragraph 145 states that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this include the partial or complete redevelopment of previously developed land whether redundant or in continuing use which would not have a greater impact on the openness of the Green Belt than the existing development.

5.6 CS Policy SP11 provides guidance with regards to traveller sites and states:

“A. In order to provide a lawful settled base to negate unauthorised encampments elsewhere, the Council will establish at least a 5-year supply of deliverable sites and broad locations for growth to accommodate additional Traveller sites/pitches/plots required through a Site Allocations Local Plan, in line with the findings of up to date assessment of other robust evidence.

B. Rural Exception Sites that provide Traveller accommodation in perpetuity will be considered in accordance with Policy SP10. Such sites will be for residential use only.

C. Other applications for Traveller development will be determined in accordance with national policy.”

- 5.7 The Government’s Planning policy for traveller sites (PPTS) was updated in 2015. The main change in policy is that the definition of what constitutes a gypsy/traveller for planning purposes now excludes those people that have ceased to travel permanently, i.e. a gypsy/traveller now only comprises those that are nomadic. The PPTS definition of gypsy and traveller is as follows;

“Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family’s or dependants’ educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.”

Local Planning Authorities must identify a supply of sites in the Local Plan to accommodate pitches for those meeting this definition and it is their needs that require consideration when setting out the 5-year supply of pitches. However, it should be noted that those that don’t meet the definition are still likely to culturally identify as gypsies/travellers and will still have accommodation needs.

- 5.8 Policy H of PPTS sets out how planning applications for gypsy and traveller sites should be determined. The policy reiterates that applications should be assessed and determined in accordance with the presumption in favour of sustainable development and that planning law requires that applications must be determined in accordance with the development plan unless material considerations indicate otherwise.

- 5.9 Paragraph 24 of PPTS states that local planning authorities should consider the following amongst other relevant matters when considering applications:

- a) The existing level of local provision and need for sites
- b) The availability (or lack) of alternative accommodation for the applicants
- c) Other personal circumstances of the applicant
- d) That the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites
- e) That they should determine applications for sites from any travellers and not just those with local connections

- 5.10 Paragraph 25 states that local planning authorities should very strictly limit new gypsy and traveller site development in the open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and

do not dominate, the nearest settled community and avoid placing an undue pressure on local infrastructure.

- 5.11 PPTS confirms that if a local planning authority cannot demonstrate an up to date 5-year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the temporary grant of planning permission. It also notes that there is no presumption that a temporary grant of permission should be granted permanently.
- 5.12 As the section above indicates, in determining planning applications for pitches that are not allocated in the Local Plan, it is important to consider the existing level of local provision and need for sites and the availability (or lack) of alternative accommodation for the applicant, including whether the Council are able to demonstrate a 5-year supply of deliverable pitches. Consultants ORS were commissioned to provide an updated Gypsy and Traveller Accommodation Assessment (GTAA) in 2018 that will form part of the evidence base for the forthcoming Local Plan. The level of need identified in the GTAA is 5 pitches up until 2027, all of which falls within the first five years. Beyond that, to 2033, this figure increases to 8 pitches. This need is generated from existing unauthorised pitches in the district, along with concealed households, teenage children that are likely to require their own pitch within the next 5 years and any temporary consents which are due to expire within 5 years.
- 5.13 It is important to note that this need is generated only from those households that meet the Government's definition and does not include those households which exist in the District where the occupants either don't meet the definition or their status is unknown (i.e. they were unavailable or refused to answer interview questions to determine their status). ORS identified the need generated by households whose status is unknown as 7 pitches over the first five years (a total of 10 in the period to 2033) and by those who do not meet the Government's definition as 15 pitches over the first five years (an overall figure of 25 pitches to 2033). The survey work undertaken by ORS identified a total of 8 pitches at the current application site in March 2018. Three of these households were identified as not meeting the government's definition of gypsy/traveller and the status of the remaining 5 households was marked as unknown. The applicant's agent has both challenged elements of the methodology used in producing the Council's GTAA and presented evidence to suggest that the current occupancy of the South Milford site is higher than when the initial survey work was undertaken. Evidence has also been provided to show that the current occupants of the site also meet the relevant definition contained in PPTS. As a result of this additional information, and further discussion with ORS, it is accepted that the need for pitches has increased since the original survey work was undertaken (which can of course provide only a 'snapshot' at a point in time). Notwithstanding the fact that an evidence-based assessment of the need for gypsy and traveller pitches will form part of the on-going development plan process, Officers currently consider an appropriate figure of need to be 21 much of which is required immediately. It should be noted that, as the Council is currently working on a new Local Plan, and there are no allocations for additional pitches within the Selby District Local Plan (2005), the Council is unable to demonstrate a 5-year supply of deliverable pitches.
- 5.14 Policy E of PPTS provides guidance specific to traveller sites in the Green Belt. It confirms that traveller sites in the Green Belt are inappropriate development and inappropriate development is harmful to the Green Belt and should not be

approved, except in very special circumstances. Subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.

- 5.15 Given the above, it is clear that the proposal constitutes inappropriate development in the Green Belt which is, by definition, harmful and such harm carries substantial weight. Other material considerations are as discussed below.

### **Impact on the Openness of the Green Belt**

- 5.16 The site's status as previously developed land (PDL) was established as part of the earlier appeal decision (appeal ref. APP/N2739/A/11/2158757, application no. 2010/0324/COU) which granted temporary consent for the change of use of the site from a truck stop to a residential caravan site for gypsies and travellers. One of the purposes of including land in the Green Belt is to safeguard the countryside from encroachment. The area to which the current application relates is no greater than the area which could accommodate vehicle parking and so the proposal could not be said to encroach further into the countryside than the fall-back position. All parties at the appeal were also in agreement that the proposal for gypsy and traveller pitches would not affect any one of the remaining four purposes of including land in the Green Belt, a view with which the Inspector concurred. Given that the application site is the same as the appeal site, and there have been no physical changes to the site that would take it out of the definition of PDL in the 2019 NPPF, there is no basis for coming to a different view on this issue. In addition, the use of the application site for vehicle parking is the lawful fall-back position against which the actual harm to openness arising from the proposal should be assessed.
- 5.17 The Inspector concluded that the 10 caravans under consideration at the appeal would have "an urbanising impact and cause a reduction in openness" resulting in a modest level of harm and that 21 caravans (also the subject of the appeal) would result in a significant level of harm. The current proposal is for 24 caravans, together with 12 day rooms, and it is concluded that a similarly significant level of harm to openness would result. Whilst paragraph 145 of the NPPF allows for the redevelopment of previously developed land if it would not have a greater impact on the openness of the Green Belt than the existing use (whether redundant or in continuing use), it is still the case that the proposal will have a greater impact on openness and on this basis remains to be considered as inappropriate development in the Green Belt with an additional element of significant harm due to the impact on openness.

### **Impact on the Visual Amenity of the Green Belt and Character and Appearance of the Surrounding Area**

- 5.18 The site is located within a defined LILA. SDLP Policy ENV15 states that, within LILAs, particular attention should be paid to the design, layout and landscaping of development in order to minimise its impact on the traditional character of buildings and landscape in the area. SDLP Policy ENV1 and CS policies SP18 and SP19 similarly require the impact on local character to be taken into account. PPTS, at paragraph 25, provides that local planning authorities should strictly limit new gypsy and traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. It does however go

on to say that, when considering applications, weight should be given to the effective use of previously developed land.

- 5.19 The site lies within the West Selby Limestone Ridge Character Area as defined in the 2019 Selby Landscape Character Assessment. The area is characterised as an undulating and rolling landscape with large areas of woodland which, together, has the effect of limiting visibility and providing a greater sense of enclosure than elsewhere in the District. This also results in the area having a lower sensitivity to change as new features may be screened by intervening topography.
- 5.20 As recognised by the previous appeal Inspector, although located in the LILA, the site and the area in the immediate vicinity is not reflective of and does not contribute positively to the landscape quality of the wider area as it remains relatively commercial in appearance with a number of disused buildings and considerable areas of hardstanding. It is important to note that whilst the existing development within and near the site has already changed the character of the countryside in this vicinity, the quality of the landscape is not relevant to the continued protection of Green Belt land.
- 5.21 The existing hedges forming the site boundaries offer some screening of the caravans present on the site and of the existing hardstanding. The site is currently unattractive and not visible over any great distance along the Great North Road. Notwithstanding this, given that caravans can appear relatively stark in appearance and that there is a limited opportunity to provide for additional landscaping within the proposed layout, the development would have an urbanising impact that would be difficult to satisfactorily assimilate to a point where a positive impact on the immediate area could be said to result. However, the proposed change of use would not result in any significant harm to the immediate area by reason of the neighbouring commercial uses and the limited views of the site which are primarily gained from passing vehicles on the adjacent A63 dual carriageway. As such, it is considered that there is no conflict with those relevant Development Plan policies listed above.

### **Impact on Residential Amenity**

- 5.22 Policy concerned with impacts on residential amenity and securing a good standard of residential amenity are provided by SDLP policies ENV1 (1) and ENV2 and Paragraph 127 of the NPPF. There are 4 bungalows on the adjacent site which are owned and occupied by the applicant and other members of his family. Even if they were not in the ownership and control of the applicant, the relationship between caravans on the application site and the bungalows is such that the residential amenity of the occupiers of the dwellings would not be harmed. The submitted layout plan shows a 1.6m high stone wall separating the site from the land associated with the bungalows and the orientation and design of both the proposed mobile homes and the existing bungalows protects amenity of both sets of occupiers.
- 5.23 Separate accesses serve the application site and the neighbouring bungalows although there is a gated route between the two which is not considered to result in any detrimental impact on residential amenity. It would, however, be appropriate to condition the number of pitches and caravans along with the size of commercial vehicles associated with the site. A condition should also be attached preventing



commercial uses within the site (a previous pallet storage business at the south-eastern end of the site has now ceased to operate).

- 5.24 Having taken the matters discussed above into account, it is considered that the proposal would not result in any significant harm to the residential amenities of either existing or future occupants in accordance with relevant Local Plan policies.

### **Impact on Highway Safety**

- 5.25 SDLP Policy T1 requires new development to be well related to the existing highway network and Policy T2 states that development resulting in the intensification of the use of an existing access will be supported provided there would be no detriment to highway safety. Notwithstanding the concerns raised by Ledsham Parish Council in relation to traffic safety, the site access/egress is formed by a slipway from/to the Great North Road (A63) which despite being a dual carriageway now carries considerably reduced levels of traffic as a result of the re-alignment of the A1. Visibility when moving between the site and the adjacent highway is good. No objections have been raised by Leeds City Council as local highway authority and it is considered that the proposal is acceptable and in accordance with SDLP policies T1 and T2.

### **Determining whether Very Special Circumstances exist**

- 5.26 It is clear, and the applicant agrees, that the proposal is harmful by reason of it constituting inappropriate development in the Green Belt added to which is the harm to openness. It is appropriate therefore to consider whether the identified harm to the Green Belt is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development. The applicant has asserted that the following factors, when taken together, amount to very special circumstances:

- The sustainability of the site
- The site's status as previously developed land
- The unmet need for gypsy and traveller sites
- The Council's lack of a 5-year supply of gypsy and traveller sites
- The failure of planning policy and difficulties in providing sites
- The lack of alternative sites and the likelihood of sites being provided for in the Green Belt.

### 5.27 Sustainable location

PPTS sets out criteria that should ensure gypsy and traveller sites are sustainable which include; promoting peaceful and integrated co-existence between the site and the local community; promoting access to health and education services; providing a settled base thereby reducing long-distance travelling and unauthorised encampment; consideration of environmental quality and flood risk; and avoiding placing undue pressure on local infrastructure. Given the location and nature of the site and its reasonable proximity to nearby villages, the site is considered to meet the identified criteria. Other sites not in the Green Belt would, however, be equally capable of meeting the same criteria and it is not considered that this factor amounts to very special circumstances such as to justify support for the site.

#### 5.28 Previously developed land

It is acknowledged that the site represents previously developed land, given that the previous appeal established that the lawful use of the site was for vehicle parking, and that PPTS encourages the effective use of brownfield or untidy land. Again, however, such land is available outside of the Green Belt and this factor is not considered to amount to very special circumstances.

#### 5.29 Need for gypsy and traveller sites

The applicant has referred to the Council's 2016 Gypsy and Traveller Accommodation Assessment as identifying a minimum need for 19 pitches between 2016 and 2037 although this figure included those where it was unknown as to whether or not the households involved met the planning definition for gypsies and travellers. However, as set out in 5.12 above, the Council has an updated GTAA which identifies that a need does exist for those households meeting the planning definition and this could increase should the status of those currently unknown households be clarified. Whilst the level of need is a matter for the development plan process, there is a clear and identifiable need for pitches to be provided in the District. This shortfall of pitches is a consideration that is capable of amounting to very special circumstances and carries considerable weight.

#### 5.30 Lack of a 5-year supply of sites

As with general housing need, the Council is required to identify a supply of specific deliverable sites sufficient to provide 5 years' worth of gypsy and traveller sites against locally set targets. To be considered deliverable, sites should be available now and be both suitable and achievable with a realistic prospect of development being delivered within 5 years. The Council has set out in the Core Strategy that it will establish a 5-year supply of sites through its Sites Allocation Local Plan. Whilst it is now the intention to address the supply issue through a new Local Plan, it remains the case that the Council is unable to demonstrate a 5-year supply of pitches. Whilst PPTS makes clear that such a lack of a 5-year supply is a significant material consideration when considering applications for temporary permission, land in Green Belt is one of a number of listed exceptions. PPTS states that unmet need (demonstrated here by a lack of a 5-year supply) is unlikely, alone, to outweigh harm to the Green Belt so as to establish very special circumstances. However, this is a factor which together with others can be considered to weigh in favour of the development at least in terms of a temporary permission.

#### 5.31 Failure of planning policy and difficulties in providing sites

The Council has, to date, failed to identify sites for gypsies and travellers based on any quantitative assessment of need and this has led to under provision of sites in the district. Preparation of a new Local Plan is ongoing and will be seeking to identify suitable sites through the process. Previous appeal Inspectors have recognised that the Council has made "concerted efforts" and has acted with "good intentions" but it remains the case that there has been little progress in identifying sites for gypsies and travellers. The applicants argue that this historic lack of

progress suggests it would be unreasonable to assume that there is a likely prospect of alternative sites coming forward in the next 5 years to the point where significant weight can be attributed to this in terms of very special circumstances.

5.32 The Council, however, remains committed to delivering site allocations through the Development Plan process. The latest position is set out in the update on the new Local Plan webpage which states “The preparation of a new Local Plan will help to ensure that the Council has a development plan for the whole district, in line with current national planning guidance which properly reflects its Economic Strategy and Corporate Priorities.” It is not difficulties with gypsy and traveller sites that have inhibited progress on the Local Plan and it remains likely that meaningful progress will be made towards identifying suitable sites in an appropriate timescale. Notwithstanding this, it is considered reasonable that significant weight can be attached to these failures of policy to address need, again in terms of a temporary permission.

### 5.33 Lack of alternative sites

There are two publicly owned sites in Selby District (at Burn and Carlton), both of which are at capacity and subject to waiting lists for pitches. The applicant has argued that there is a lack of alternative sites across the District and has highlighted the refusal of permission in 2013 for an extension to the public site at Burn and the subsequent approvals granted by appeal Inspectors which in some cases have been on Green Belt land. It is consequently suggested that it is reasonable to assume that there is a significant likelihood that some future provision for gypsy and traveller sites will be in the Green Belt. The current occupiers of the site, including a number of children, are in need of a settled base which would provide them with access to healthcare, education, welfare and employment infrastructure. Whilst these are benefits that any settled base would provide, in the absence of suitable alternative sites, the personal accommodation needs of the site occupiers for a settled base is a consideration that can amount to very special circumstances and be afforded significant weight particularly when considering the best interests of the children.

## 6. CONCLUSION

6.1 Whilst the site is previously developed land, and the existence of gypsy and traveller pitches on the site does not compromise the 5 purposes of including land in the Green Belt, the proposal constitutes inappropriate development in the Green Belt, a point that is accepted by the applicant. Such development should only be permitted where there are very special circumstances and such circumstances can only arise where the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations.

6.2 Weighing against the development is the harm caused to the Green Belt by reason of inappropriateness which must carry substantial weight. Added to this is the actual harm caused to openness, considered to be significant. Weighing in favour of the development is the immediate need for additional pitches in the District that is unlikely to be met in the near future pending progress being made on the new Local Plan, a matter to be afforded considerable weight. The personal accommodation needs of the occupiers of the site are material and should be afforded significant weight in the absence of any alternative sites that are available to them. There has

been a failure, on the part of the Council, to make provision for sites in the past which, despite the intention to address the matter through the development plan process, can also be considered to carry significant weight.

- 6.3 Overall, it is not considered that the identified harm is clearly outweighed by the other considerations advanced by the applicant such that very special circumstances exist to justify the grant of permanent permission. Whilst it is recognised that a refusal of permission would require those currently residing on the site to vacate the land and seek an alternative base, the harm to the Green Belt is substantial and refusal of permission would be a proportionate response.
- 6.4 The advice contained in National Planning Practice Guidance (NPPG) sets out when a temporary permission might be appropriate including where it is expected that the planning circumstances will change in a particular way at the end of a certain period of time. As outlined above at 5.30, the Council anticipates progress being made on the new Local Plan such that appropriate sites for gypsies and travellers will be identified and allocated within a realistic timescale. Whilst NPPG does suggest that granting a second temporary permission will be rare, the circumstances in this particular case (and especially the relative lack of progress in identifying sites through the Local Plan process) are such that it is considered reasonable to consider granting another temporary permission.
- 6.5 The proposed day rooms are clearly buildings as opposed to the mobile homes and touring caravans that will occupy the site which are moveable structures that meet the legal definition of a caravan as set out in the relevant Act. Whilst requiring the demolition of a building after a stated period of time is unusual, and may be considered to be unreasonable in different circumstances, the applicant accepts that there is no guarantee that a temporary permission will be granted permanently but has indicated a strong desire to provide the day rooms. Such provision is culturally important to the gypsy and traveller community and the applicant feels it important to offer day rooms on what is effectively a privately rented site (both public sites within the Selby district provide such day rooms). The day rooms offer separate male and female sanitation facilities discrete from the main living quarters without which there would need to be communal facility buildings provided.
- 6.6 Notwithstanding that the continuing harm to Green Belt is substantial, it is considered that such harm can be outweighed by other material considerations in the context of a temporary period of 5 years. As such, very special circumstances are established, and a temporary planning permission is recommended.
- 6.7 In recommending that this application is approved, the Chief Executive Officer is requested to recognise that the application is not in accordance with the Development Plan but that the nature and extent of the material considerations amount to very special circumstances which outweigh the conflict with the Development Plan such that temporary planning permission should be granted. With regard to applications for inappropriate development in the Green Belt which has a significant impact on openness, The Town and Country Planning (Consultation) (England) Direction 2009 requires local planning authorities to consult the Secretary of State should it not propose to refuse the application.

## **7. RECOMMENDATION**

- a) That the Chief Executive Officer is minded to APPROVE this application subject to the attached schedule of conditions.
- b) That authority is confirmed to Officers to refer the application to the Secretary of State under The Town and Country Planning (Consultation) (England) Direction 2009 with the Chief Executive Officer's resolution to support it.
- c) That in the event that the application is not called in by the Secretary of State, authority is delegated to the Planning Development Manager to approve this application subject to the imposition of the attached schedule of conditions. That delegation to include the alteration, addition or removal of conditions from that schedule if amendment becomes necessary as a result of continuing negotiations and advice and provided such condition(s) meet the six tests for the imposition of conditions and satisfactorily reflect the wishes of the Chief Executive Officer.
- d) That in the event that the application is called in for the Secretary of State's own determination, a further report will come to the Chief Executive Officer.

01. The use hereby permitted is granted for a temporary period only and, at the end of 5 years beginning with the date of this permission, the use shall cease and all caravans, buildings, structures, materials or equipment brought onto the site or erected on the land in connection with the use shall be removed. Thereafter the land shall be restored to its former condition within two months of the expiration of this permission in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority.

Reason: To ensure compliance with Section 91 of the Town and Country Planning Act 1990 as amended.

02. The development hereby permitted shall be carried out in accordance with the following approved plans:

- Site Location Plan – JTaylor 19-SLP
- Proposed Site Layout – 18203/02
- Proposed Utility Building – 18203/03

Reason: For the avoidance of doubt.

03. The site shall not be occupied by any persons other than gypsies and travellers, as defined in Annex 1: Glossary of Planning policy for traveller sites 2015 (or its equivalent in replacement national policy).

Reason: This condition is necessary in order to ensure that the site meet the needs of the travelling community

04. No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.

Reason: In the interests of the residential amenity of the site occupiers and those of neighbouring properties.

05. No commercial activities shall take place on the land, including the storage of materials.

Reason: In the interests of the residential amenity of the site occupiers and those of neighbouring properties.

06. There shall be no more than 12 pitches on the site and on each of the 12 pitches hereby approved no more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, shall be stationed on the site at any time. of which only 1 shall be a static caravan.

Reason: In the interests of the character and appearance of the area and the visual amenities of the Green Belt.

07. No generators shall be permitted to be operated on the land.

Reason: In the interests of the residential amenity of the site occupiers and those of neighbouring properties.

08. Within 3 months of the date of this permission, there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include; planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants noting species, plant supply sizes and proposed numbers/densities; an implementation programme. Thereafter, the scheme shall be implemented in accordance with the approved details.

Reason: In the interests of the character and appearance of the area and the visual amenities of the Green Belt.

09. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that order with or without modifications), no sheds, or other buildings or structures, walls, fences or other means of enclosure other than those shown on the approved plans shall be erected on the site unless details of their size, materials and location have previously been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Reason: In the interests of the character and appearance of the area and the visual amenities of the Green Belt.

## **8. Legal Issues**

### **8.1 Planning Acts**

This application has been determined in accordance with the relevant planning acts.

### **8.2 Human Rights Act 1998**

It is considered that although a decision made in accordance with this recommendation results in an interference with the private and family lives of those currently residing on the site, and that Article 8 of the European Convention on

Human Rights is engaged, the recommendation made in this report is proportionate, taking into account the conflicting matters of public and private interest so that there is no violation of those rights.

### 8.3 Equality Act 2010

In deciding whether to grant planning permission for this proposed development the Council must pay due regard to its Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010. In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and those who do not;
- foster good relations between people who share a protected characteristic and those who do not. The protected characteristics include race.

In formulating this recommendation officers have paid due regard to the PSED and in particular the need to foster good relationships between the applicants and those who do not share their protected characteristic as Gypsies and Travellers

## 9. **Financial Issues**

9.1 Financial issues are not material to the determination of this application.

## 10. **Background Documents**

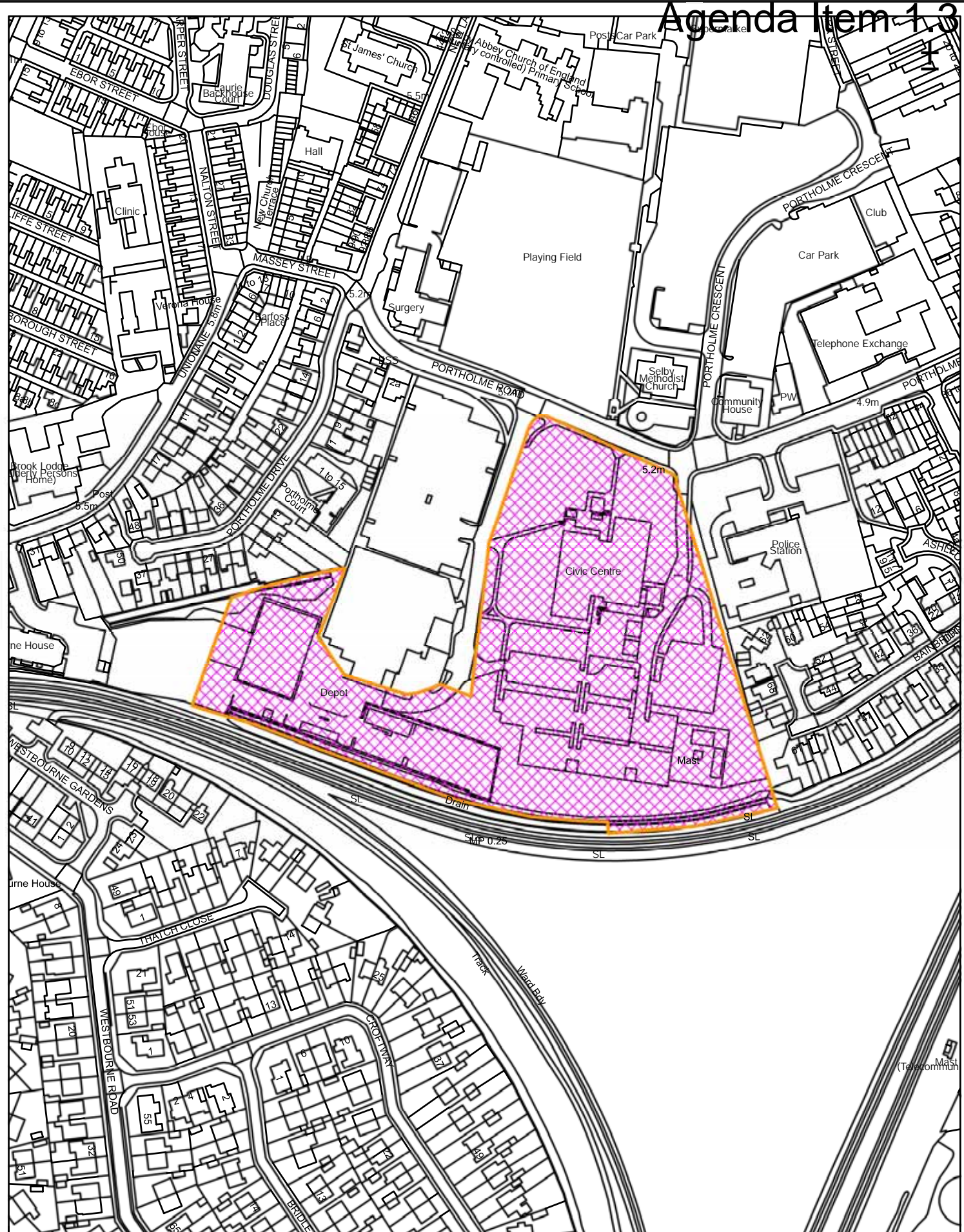
Planning Application file reference 2019/0030/COU and associated documents.

**Contact Officer:** Gary Bell, Principal Planning Officer  
[gbell@selby.gov.uk](mailto:gbell@selby.gov.uk)

**Appendices:** None

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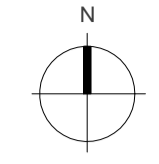
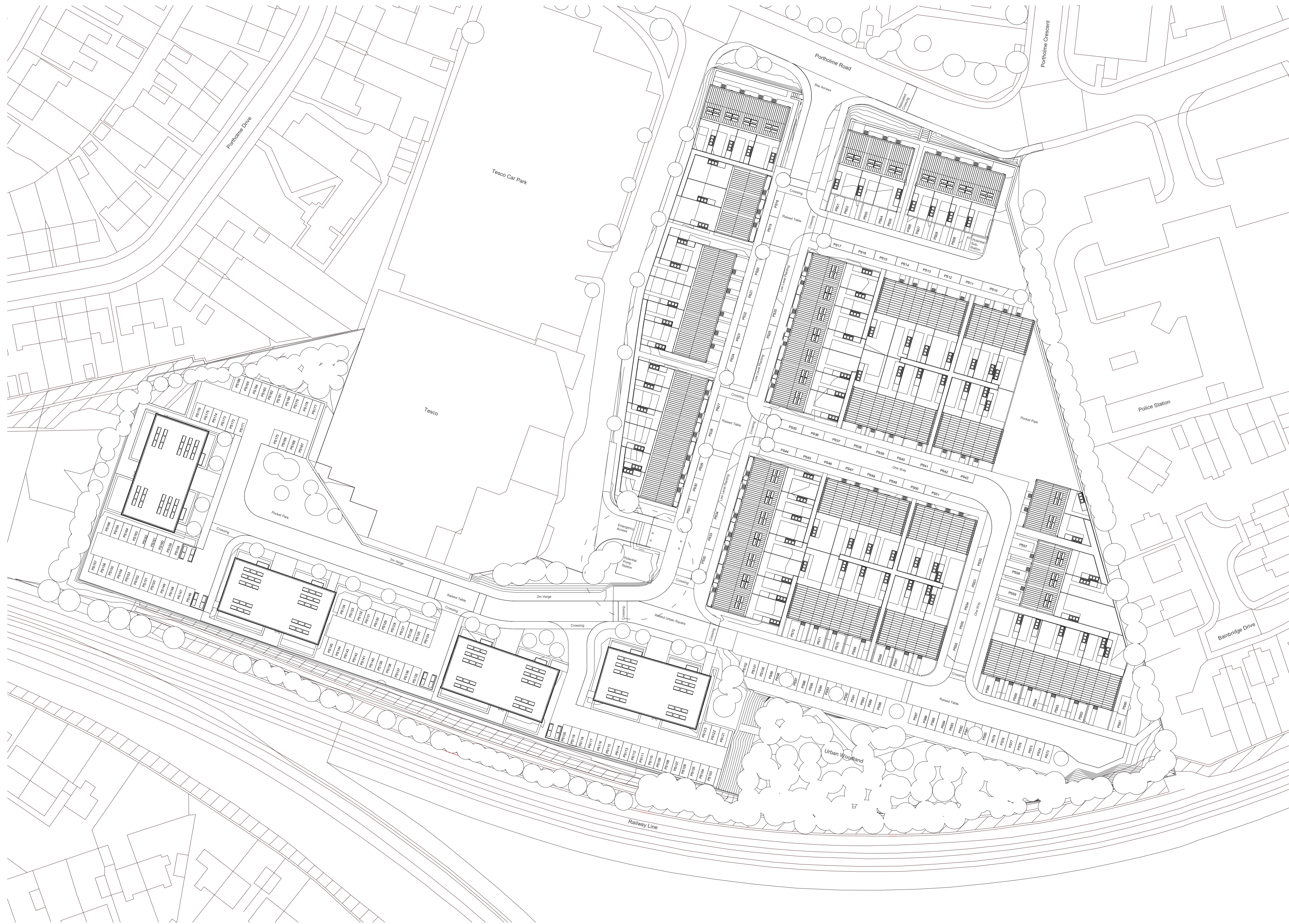
### APPLICATION SITE

Old Civic Centre, Portholme Road, Selby  
2019/0941/FULM

1:2,500



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**AMENDED  
DRAWING**

Mix	
1 Bed Apartment	16
2 Bed Apartment	60
2 Bed House	38
3 Bed House	40
Total	154

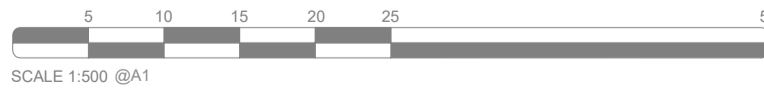
Parking	
Total	186 spaces

**NOTE:**  
Please Refer to:  
Design & Access Statement - For vision, design approach and detailed design.  
0008 4023 LGMH - For house type plan  
0008 1110 LGMH - For typical apartment block plan  
0008 1120 LGMH - For typical house block plan

Tree location is indicative. Please refer to arboriculture survey and landscape masterplan for more information.

Photovoltaic panels are indicative.

REV	DATE	CURRENT REVISION
16	24/07/2019	For information
17	05/08/2019	
18	06/08/2019	
19	14/08/2019	
20	21/08/2019	
21	22/08/2019	
22	27/08/2019	
23	28/08/2019	
24	18/09/2019	
25	12/11/2019	
26	12/12/2019	



Drawing not to be scaled.  
All dimensions to be verified on site before commencing work.  
Any discrepancies to be reported to designers.  
To be read in conjunction with relevant information.  
All building works is to comply with the current Building Regulations and British Standards.  
Drawings provided for information only and should not be used for construction.

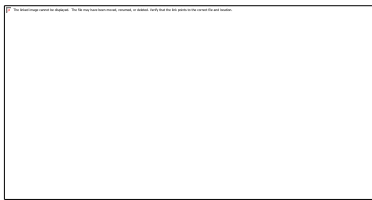
To inform site development layout for the purposes of planning only and it should not be used for construction.



PROJECT 0008  
SHEET No. 4020  
ORIGINATOR LGMH  
SHEET NAME Proposed Site Plan  
AUTHOR MB CHECKER JM  
CURRENT REVISION 26

0008\_LGMH\_05\_ZZ\_DR\_A\_4020  
DATE CREATED 13/10/2019 10:08:05  
STATUS 26 - FOR APPROVAL

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**Report Reference Number 2019/0941/FULM**

**To: CEO Urgent Decision Session**  
**Date: 29 April 2020**  
**Author: Rebecca Leggott (Senior Planning Officer)**  
**Lead Officer: Ruth Hardingham (Planning Development Manager)**

APPLICATION NUMBER:	2019/0941/FULM	PARISH:	Selby Town Council
APPLICANT:	Legal & General Modular Homes	VALID DATE: EXPIRY DATE:	27th September 2019 27th December 2019
PROPOSAL:	Proposed redevelopment of site to provide 154 residential units (Use Class C3), construction of new vehicular access onto Portholme Road and laying out of open space		
LOCATION:	Selby District Council - Old Civic Centre Portholme Road Selby YO8 4SB		
RECOMMENDATION:	Approve subject to the completion of a Section 106 Agreement		

This application has been brought back to CEO Urgent Decision Session after being deferred on the 8<sup>th</sup> April 2020, on the basis of the officer seeking further information on, urban design; open spaces; highways; S106; and biodiversity; and affordable housing.

It should be noted that this application has been presented to the CEO Urgent Decision Session as Selby District Council is a landowner for part of the site.

## 1. INTRODUCTION AND BACKGROUND

- 1.1. The application site is located within the defined development limits of Selby, which is a Principle Town as defined within the Core Strategy. The application site is located within an urban setting on brownfield land with Selby town centre to the north, residential dwellings to the east, the railway to the south and residential dwellings to the west. Further to this, the application site is located within Flood Zone 2, as confirmed by the Environment Agency.
- 1.2. The application site contains the former Civic Centre building, with a large area of car parking located to the south. The former Selby District Council Depot building is located to the rear of the Tesco superstore, in the south west corner of the site. To

the east of the site, is a former North Yorkshire Police building, which is now vacant. Residential development is located to the east and west, with the site boarded by the railway line to the south. It is also noted that the site at present remains vacant.

- 1.3. There are no statutory national or local landscape or wildlife designations covering the application site. Though it is noted that the application site would be within proximity to the Selby Town Conservation Area and the Selby Town Archaeological Consultation Zone. In addition, the application site is located within the setting of the Grade I Listed Building, Church of St Mary and St Germain (Selby Abbey).
- 1.4. In landscape character terms the surrounding area is of an urban context. Though it is noted that there are a number of trees on site and a wet woodland to the South.

### **The Proposal**

- 1.5. The development for which permission is being sought is a residential development of 154 dwellings providing the, construction of new vehicular access onto Portholme Road and laying out of open space.
- 1.6. All existing buildings on site are to be demolished under planning application reference, 2019/1100/DEM for the prior notification for proposed demolition of old Civic Centre, depot and associated outbuildings. It is noted that the demolition works have commenced.
- 1.7. Since this application was presented at the CEO Urgent Decision Session on 8<sup>th</sup> April 2020 the following additional information has been received:
  - Updated comments from the Housing Strategy Officer received, 9<sup>th</sup> April 2020.
  - Updated comments from the Urban Design Officer received, 15<sup>th</sup> April 2020
  - Comments from the planning agent addressing all issues raised at the decision-making session received, 16<sup>th</sup> April 2020.
  - Correspondence from the planning agent confirming the updated position on affordable housing received, 16<sup>th</sup> April 2020.
  - Updated comments from the Housing Strategy Officer received, 16<sup>th</sup> April 2020.
  - Further comments from the planning agent relating to ecology received, 22<sup>nd</sup> April 2020.
  - Additional comments from NYCC Ecology received, 23<sup>rd</sup> April 2020.

### **Relevant Planning History**

- 1.9. The following historical applications are relevant to the determination of this application.
  - 2019/1100/DEM, Prior notification for proposed demolition of old Civic Centre, depot and associated outbuildings, at Selby District Council, Civic Centre, Portholme Road, Selby, YO8 4BS, Decision: PER Decision Date: 15-NOV-19
  - 2019/0838/SCN, EIA Screening opinion request for demolition of two buildings and construction of a residential development of up to 165 modular

homes, at Selby District Council, Civic Centre, Portholme Road, Selby, YO8 4BS, Decision: PER Decision Date: 08-NOV-19

- 2018/1126/FUL, Retrospective planning permission for 2 portacabins on the site next to Tesco Selby Superstore at, Tesco Supermarket, Portholme Road, Selby, YO8 4QQ, Decision: PER, Decision Date: 11-JUN-19
- 2013/0291/FUL, Extension of time application of approval 2009/0724/FUL for the erection of replacement store with associated car parking, landscaping and ancillary works following demolition of council depot and existing store at, Tesco Supermarket, Portholme Road, Selby, YO8 4QQ, Decision: PER, Decision Date: 19-DEC-13
- 2012/0276/DPC, Discharge of condition 12 (tanks and pipe works) of approval 2011/0243/FUL (8/19/107BD/PA) for a replacement store with petrol filling station and associated works including demolition works at, Tesco Supermarket, Portholme Road, Selby, YO8 4QQ, Decision: COND, Decision Date: 18-MAY-12
- 2012/0604/COU, Change of use of former Civic Centre car park to public pay and display car park at, Selby District Council - Old Civic Centre, Portholme Road, Selby, YO8 4SB, Decision: PER, Decision Date: 23-AUG-12
- 2011/0243/FUL, Planning permission for replacement store with associated petrol filling station, access works, landscaping, car parking and servicing including demolition of existing store, Civic Centre and council depot at, Tesco Supermarket, Portholme Road, Selby, YO8 4QQ, Decision: PER, Decision Date: 04-OCT-11
- 2007/1223/FUL, Renewal of previous approval 8/19/107AS/PA, for provision of temporary offices, toilets and staff mess room at Selby District Council Stores, Portholme Road, Selby, North Yorkshire, YO8 4QH, Decision: PER, Decision Date: 18-APR-08
- CO/2004/1019, Proposed renewal of previous approval 8/19/107AN/PA dated 25/07/2004 for the provision of temporary offices, toilets and staff messroom at, Selby District Council Store, Portholme Road, Selby, North Yorkshire, Decision: PER, Decision Date: 05-NOV-04
- CO/2001/1105, Proposed steel container to be used as a store on land at, Selby District Council Store, Portholme Road, Selby, North Yorkshire, Decision: PER, Decision Date: 20-FEB-02
- CO/2001/0635, Proposed renewal of planning permission 8/19/107AF/PA dated 1st October 1998 for the provision of temporary offices, toilets and staff messroom at, Selby District Council Store, Portholme Road, Selby, North Yorkshire, Decision: PER, Decision Date: 30-JUL-01
- CO/2000/0579, Installation of 2x300mm microwave antenna and 4x pole antenna on existing radio mast on, Radio Mast Rear of Council Offices, Portholme Road, Selby, North Yorkshire, YO8 4QH, Decision: PER, Decision Date: 10-AUG-00

- CO/1999/602, Retrospective application for retention of 7 lighting columns (being 2 pairs of floodlights on 10m high columns) within car park at, Civic Centre, Portholme Road, Selby, North Yorkshire, YO8 4SB, Decision: PER, Decision Date: 27-SEP-99
- CO/1998/0662, Proposed renewal of planning permission 8/19/107ad/pa dated 3 July 1995 for the provision of temporary offices, toilets and staff messroom at, Selby District Council Store, Portholme Road, Selby, North Yorkshire, Decision: PER, CASA Decision Date: 01-OCT-98
- CO/1995/0410, Proposed renewal of Planning Permission 8/19/107AB/PA dated 25th August 1992 for the provision of temporary office, toilets and staff messroom at, Selby District Council Store, Portholme Road, Selby, North Yorkshire, Decision: PER, Decision Date: 03-JUL-95
- CO/1992/0455, Proposed erection of temporary office, toilets and staff messroom in accordance with Minute 169 of the Policy and Finance Committee dated 9 June 1992 at, Selby District Council Store, Portholme Road, Selby, North Yorkshire, Decision: PER, Date: 25-AUG-92
- CO/1989/0576, Proposed erection of a single storey building and erection of sixteen aerials on existing tower at Civic Centre, Portholme Road, Selby, North Yorkshire, YO8 4SB, Decision: PER, Decision Date: 19-JAN-90
- CO/1989/0575, Proposed display of non- illuminated sign board at Selby District Council Stores, Portholme Road, Selby, North Yorkshire, YO8 4QH, Decision: PER, Decision Date: 06-APR-89
- CO/1987/0448, Erection of a chemical store, for the storage of Ministry of Agriculture approved herbicides and insecticides in accordance with Regulation Four at Selby District Council Store, Portholme Road, Selby, North Yorkshire, Decision: PER, Decision Date: 27-JAN-88
- CO/1987/0013, Proposed erection of Police radio mast and equipment building, to replace existing Selby District Council mast on land adjacent to, Civic Centre, Portholme Road, Selby, North Yorkshire, YO8 4SB, Decision: PER, Decision Date: 22-JUL-87
- CO/1986/0492, Proposed change of house types on Plots 25-34 and 36-48 at, Brayton Ash, Portholme Road, Selby, Decision: PER, Decision Date: 23-MAY-86
- CO/1985/0356, Erection of prefabricated building on prepared base for storage purposes at Civic Centre, Portholme Road, Selby, North Yorkshire, YO8 4SB, Decision: PER, Decision Date: 01-APR-85
- CO/1980/06122, Display of A Non-Illuminated Sign on East Elevation at New Depot Portholme Road, Selby, Decision: PER, Decision Date: 09-APR-80
- CO/1979/06113, Construction of A Temporary Access Road, Portholme Road, Selby, Decision: PER, Decision Date: 18-APR-79



- CO/1979/06111, Council Depot to Include Stores Offices Working Compound & Petrol Etc at, Portholme Road, Selby, Decision: PER, Decision Date: 07-MAR-79
- CO/1979/06112, Erection of A Temporary Building for Garaging of Council Vehicles & Storage at, Portholme Road, Selby, Decision: PER, Decision Date: 04-APR-79
- CO/1979/06114, Erection of A Temporary Site Notice Board, at New Depot Portholme Road, Selby, Decision: PER, Decision Date: 13-JUN-79
- CO/1979/06117, Temporary Staff Accommodation at, New Depot Site Portholme Road, Selby, Decision: PER, Decision Date: 10-OCT-79
- CO/1978/08134, Change of use of disused railway sidings and marshalling yard to temporary car and lorry park at Portholme Road at Street Record, Bainbridge Drive, Selby, Decision: PER, Date: 07-JUN-78
- CO/1977/06092, Erection of A 120ft Single Tubular Mast at Selby D C Headquarters Portholme Road, Selby, Decision: PER, Decision Date: 05-JAN-77
- CO/1975/06070, Erection of Headquarters Building & Associated Facilities & Caretakers House at, Portholme Road, Selby, Decision: PER, Decision Date: 30-JUL-75
- New Depot Portholme Road, Selby, Decision: PER, Decision Date: 13-JUN-79

## 2. CONSULTATION AND PUBLICITY

- 2.1. **North Yorkshire Fire & Rescue Service** – Have raised no objections to the proposed development and have stated that they will comment on the application further when the building control body submit a statutory Building Regulations consultation. However, have commented that, is it noted that the Typical Upper Floor Plan shows bedrooms as inner rooms which would not comply with building regulations if this floor plan is used.
- 2.2 **NYCC Flood Risk Management** – No objections following the submission a proposed drainage network plan and surface water micro drainage details. The information submitted is sufficient to demonstrate that there is a viable scheme for draining the site in accordance with National and Local Planning Policy. Conditions requiring a detailed drainage scheme and a maintenance regime are suggested.
- 2.2. **Urban Design Officer** – The UD Officer provided comments dated 6<sup>th</sup> November 2019 which state “*The first impression is initially positive, with architectural forms and landscape plans that display an evident sense of style and design quality.*” However, the comments provided go on to raise issues with: Layout; Scale of Flats; Landscape & Trees; Minimal Outdoor Amenity Space; Setting of Flats; Relationships to Adjoining Sites; and Security.

Amendments to the scheme and further information has subsequently been provided including, but not limited to:

- changes to the internal road network and parking,
- changes to be a privately maintained road network removing a number of design restrictions such as, street trees and materials.
- Additional comments from the planning agent regarding design in terms of secure by design and also conditions.

The UD Officer has provided updated comments on, 15<sup>th</sup> April 2020. In summary, these state that, the changes to the scheme such as confirmation that street trees can be provided is a significant improvement, provided that tree pits are specified which allow trees to grow to the heights illustrated in the applicant's street scene renderings. The UD Officer has also advised that further improvements could be made throughout the site by this additional planting.

In addition, the UD Officer goes on to state that, *"The overall character of the proposed architecture remains positive, and a welcome change from standard volume house builder products. The positive aspects of this scheme are comparable to exemplar developments from elsewhere, with the potential to offer a benchmark in design quality for new development in Selby, particularly with regards to attention to detail and materials, as well as diversifying the local housing offer."*

Whilst it is noted that, improvements have been made some of the concerns raised in the comments provided in October still remain. *"...mainly back gardens facing onto the Tesco car park, blocks of flats located in cul-de-sac car parks with a lack of outdoor amenity space, and a retained area of woodland that holds potential for antisocial behaviour if not properly detailed and maintained."* However, the updated comments suggest solutions to the issues as follows:

- The rear gardens along the western boundary of the site having rear boundaries constructed of good quality brick and defensible planting.
- The issue of limited amenity space to the flats could be addressed by providing basement parking to allow for more green space around the blocks.
- The intended use of the woodland should be a baseline and conditions around landscaping and open space should be used to improve this space.

Officers note that the above suggestions in respect of, boundary treatments, landscaping and details of open space can be secured via condition. Furthermore, the management of the open spaces on site such as the woodland could be secured by condition as suggested and also a Section 106 Agreement.

- 2.3. **Landscape Consultant** – The Landscape Architect provided comments on the 31<sup>st</sup> October 2019. In summary the landscape architect 'objects' to the proposed development, as the proposals do not sufficiently demonstrate that landscape and visual effects are within acceptable limits and with a suitably designed layout and landscape masterplan. The Landscape Architect has stated that further information and amendments to the scheme could be provided to overcome the objection. In summary the suggested amendments include, a reduced density of housing on site, increased green open space, retention the existing trees along the frontage of the site adjacent Portholme Road, submission of a landscape masterplan and strategy to evidence the proposals and a long terms maintenance and management plan for all landscaping on site.

- 2.4. **Housing Strategy Officer** - The Housing Strategy Officer has raised no objections to the proposals in principle. However, has raised concerns in respect of affordable housing. In summary, the tenure of all 47 of the proposed affordable units on site is intended to be Shared Ownership and a mix of 1, 2 and 3 bed houses and apartments. The Housing Strategy Officer has stated that, this would not conform to current policy which expects a tenure split of 30 - 50% intermediate tenure (which does include shared ownership) and 50 - 70% social/affordable rent. The Housing Strategy Officer has requested that information is provided as to why Affordable Rented units were not considered as part of the Affordable Housing mix. In addition, an affordable housing plan should be submitted to ensure that all affordable housing units adhere to National Space standard, are not grouped or clustered together and are built to the same high standard of design and amenity as market housing.

Furthermore, the Housing Strategy Officer has advised that the developer should make early contact with a partner RP for the affordable homes in order to confirm that the number, size and type of units are acceptable to them; please refer to Selby DC'S Affordable Housing SPD for a list of all our RP partners. It is crucial that a S106 Agreement is entered into at the earliest opportunity and an affordable housing plan is submitted.

Further advice was sought from Housing Strategy following concerns raised at the initial CEO Decision Session on the 8<sup>th</sup> April 2020. Additional comments were provided from the Housing Strategy Officer on the 9<sup>th</sup> April 2020. In summary, these raise the same concerns as the original comment provided with the addition of more up to date information demonstrating an increased need for affordable rent units.

Following receipt of these comments and discussions with the applicant and agent amendments have been made to reflect the appropriate tenure split. The Housing Strategy Officer has provided further comments on the, 15th April 2020. In summary, the Housing Strategy Officer can confirm they support the changes made to proposals. *“The new proposal for 50% affordable rented and 50% s/o split between the 18 no. units will be more favourable than solely S/O and go some way to meeting the evidenced social rented housing need in the Selby East parish. This also meets existing policy tenure split of 30-50% shared ownership and 50-70% affordable rent.”*

- 2.5. **Environmental Health** - The Environmental Health Officer provided a response on the 18<sup>th</sup> October 2019. In summary the EHO states the following additional information should be provided and has suggested a number of conditions: (1) Emission mitigation statement, (2) Written scheme for protecting the proposed noise sensitive development from noise and (3) a Construction management plan.
- 2.6. **Designing Out Crime Officer** – The Designing Out Crime Officer has raised no objections to the proposed development following additional information being provided. Including, details of gated areas throughout the site to clarify initial concerns raised in respect of the design of the proposed development.
- 2.7. **Selby Area Internal Drainage Board** – The IDB have raised no objections to the proposed development subject to the standard conditions and informatives as follows: (1) Soakaways, (2) Mains sewers, (3) Discharge into an IDB water course, (4) no obstruction within 7 metres of an IDB water course and (5) works adjacent to a main river.

- 2.8. **SuDS and Development Control Officer** – No response received within the statutory time period.
- 2.9. **Conservation Officer** – The Conservation Officer provided comments verbally in that there are no objections to the proposed development.
- 2.10. **Natural England** - Natural England has no comments to make on this application.
- 2.11. **North Yorkshire Bat Group** – No response received within the statutory time period.
- 2.12. **Yorkshire Wildlife Trust** - The Yorkshire Wildlife Trust have raised an objection in respect of the proposed works to the natural woodland to the south of the site. However, the Trust asks if this area of woodland could be retained and incorporated into the site, to act as a natural visible and audible buffer zone between the new development and the train tracks, and to maintain a wildlife corridor. It would appear to be difficult for the developer to comply with any obligation to support the National Planning Policy Framework re sustainable development and providing an over-all net gain for the site without this measure being implemented. This is despite the suggested mitigation to the loss of these ancient tress with re-planting of new saplings at a ratio of 3 to 1, due to the time lapse before these trees would become established.
- 2.13. **County Ecologist** – NYCC Ecology have raised concerns for the proposed development. Comments were provided on the 4<sup>th</sup> October 2019. In summary these state that further information should be provided by way of an Ecological Impact Assessment. The Ecologist has also made clear that this report should address biodiversity net gain as the originally submitted Preliminary Ecology Assessment does not sufficiently address the issues.

A Bat Activity Report was submitted by the applicant on the 11<sup>th</sup> October. NYCC Ecology provided comments on this document on the, 14<sup>th</sup> October that raised concerns that insufficient details were provided regarding the mitigation of the impacts of the proposals on bats.

Additional information was provided on the 12<sup>th</sup> November by way of an Ecology Report which includes a Biodiversity Metric. Updated comments were provided from NYCC Ecology on the 18<sup>th</sup> November. In summary these comments, raise concerns for the Biodiversity Metric provided which demonstrates a 4.7% net gain. The concerns being that this is well below the 10% biodiversity net gain recommended by DEFRA and would be subject to “wear and tear”. Queries were also raised in respect of the how the Biodiversity Metric has been applied and the low ratings given to existing biodiversity and high ratings given to proposed biodiversity.

Aside from the above the Ecologist has also advised that, *“Should SDC be minded to approve this application, we support the recommendation to produce a Construction Management Plan... and a Landscape and Ecology Management Plan. We would expect these plans to incorporate and develop the commitments set out in section 5... of the ecology report.”*

Following amendments to the scheme including changes to the road layout and additional parking an updated biodiversity metric was submitted which

demonstrates a -0.42 biodiversity net loss. NYCC Ecology have provided comments on this, raising concerns that the applicant has failed to demonstrate that the proposed development would achieve biodiversity net gain. The Ecologist has also suggested that the habitats on site could be compensated for through off-site compensation.

Further advice negotiations took place with the applicants following concerns raised at the initial CEO Decision Session on the 8<sup>th</sup> April 2020. The applicant has agreed to ensure that there would be no net loss of biodiversity on site and has agreed to secure this via an appropriately worded condition. Further advice was sought from NYCC Ecology who in summary have raised no objections to a condition of this kind. Though any additional information provided at discharge of condition stage would need to be considered carefully. It is also noted that, the ecologist has also referred officers to their previous comments in that the site should provide 10% biodiversity net gain.

- 2.14. **Vale of York CCG** – No response received within the statutory time period.
- 2.15. **Public Rights of Way Officer** - No response received within the statutory time period.
- 2.16. **Education Directorate North Yorkshire County Council** – The Education Directorate have raised no objections to the principle of the development. However, have requested that contributions be made in respect of education in the area to the impacts on school places the proposed development will have.
- 2.17. **HER Officer** - The Principle Archaeologist has raised no objections to the proposed development.
- 2.18. **Development Policy** – The Principle Planning Policy Officer has raised no objections to the proposed development.
- 2.19. **Network Rail** – Network Rail have raised objections to the proposed development. In summary Network Rail have concerns over the drainage scheme on the grounds of the impact to operational railway safety.

Network Rail have provided their standard drainage requirements. These are as follows:

- Water must not pond on or near the railway land
- No soakaways should be created within 20 m of the Network Rail Boundary or lease area
- New drains should not impact on the stability of any Network Rail equipment, structure, cutting, or embankment.
- No water retention ponds/ tanks, SuDS or flow control systems within 20m of the Network Rail boundary where they are proposed to be below existing track level.
- Full overland flow conditions should be submitted to Network Rail for approval prior not any onsite works.
- If Network Rail assets (i.e. culvert, pipe or drain) is intended to be used then all parties must work together to ensure that the structures are fit for purpose.

- No underline drainage asset within 5m of drainage assets, sensitive operational equipment and not within 15m of bridges, culverts, retaining walls, other structures supporting railway live loading.

Other requirements aside from drainage include restrictions on the following:

- Fail safe use of crane and plant,
- Excavations/ Earthworks
- Security of Mutual Boundaries
- Armco Safety Barriers
- Fencing
- Method Statements/fail safe/ possessions
- Demolition
- Vibro- impact Machinery
- Scaffolding
- Encroachment
- Noise/ soundproofing
- Trees/ shrub/ landscaping
- Lighting

Network Rail have advised that “...in particular drainage, boundary fencing, armco barriers, method statements, soundproofing, lighting and landscaping should be subject of conditions the reasons for which can include the safety, operational needs and integrity of the railway. For the other matters we would be pleased if an informative could be attached to the decision notice.”

Officers consider that network rails request for condition and informatives to address the issues raised is acceptable.

- 2.20. **The Environment Agency (Liaison Officer)** – The Environment Agency have raised no objections to the proposed development. Subject to compliance with the EA’s Standing Advice and also the details provided in respect of site levels and the flood resilience strategy, which can be secured by way of condition.
- 2.21. **Waste and Recycling Officer** – The Waste and Recycling Officer has raised no objections to the development in principle. However, has raised concerns for bin stores being located to the rear of properties and the distance to the front of the properties, limited access to bins due to on street parking. Larger bins and bin stores should be provided for the apartment blocks of which the developer will be required to pay for. Further to this, following the submission of amended plans the Waste and Recycling Officer has raised no objections as a result of the road network being privately maintained subject to a legal agreement relating to liability.
- 2.22. **Yorkshire Water** - Yorkshire Water have raised no objections subject to the following conditions being attached to any permission granted: (1) No building or other obstruction including landscape features shall be located over or within 3.5 (three point five) metres either side of the centre line of the public sewer, (2) The site shall be developed with separate systems of drainage for foul and surface water on and off site, (3) Oil, petrol and grit interceptor, (4) Details of surface water drainage works. Furthermore, several informatives have been suggested relating to, altering/ diverting public sewers, surface water run-off from parking, and surface water disposal

- 2.23. **Contaminated Land Consultant** – The Contaminated Land Consultant has raised no objections to the proposed development subject to the following conditions being attached to any permission granted: (1) Investigation of Land Contamination, (2) Submission of a remediation Scheme, (3) Verification of Remedial Works, and (4) Reporting of Unexpected Contamination.
- 2.24. **Selby Town Council** - Selby Town Council objects to this application due to concerns at the loss of a significant number of semi-mature trees and consequential effect on the environment and ecology. Also, the removal of a significant amount of green space. Selby Town Council also has concerns for traffic generation in excess of capacity of local road network.
- 2.25. **North Yorkshire Highways and Transportation North Yorkshire** – The Local Highway Authority have raised objections to the proposed scheme as the proposals represent a significant deviation from the LHA’s Policy and Guidance.

In summary, the concerns relate to the deviation from typical residential provision and traditional design. The LHA parking standards would require 194 designated parking spaces whereas the site provides 186 spaces which includes non-designated on street parking. Further to this, the LHA note that a more traditional layout with off street parking would naturally provide additional on street non designated spaces. Therefore, the LHA conclude that, “Any layout of this nature should therefore incorporate 272 space into the site, to fully respond to the site use and to protect the use of the existing highway.

The LHA consider that sufficient designated off street parking should be provided for the LHA to be satisfied that the development would not generate safety concerns within the site or cause increased demand and safety concerns for parking on the adjacent highway network. Impacts on the use of the highway within the site include:

- The obstruction of cars parked in spaces by delivery and service vehicles
- Difficulties with refuse collection and general moving of waste
- Lighting provision and position of lighting not demonstrated
- No clear routes from households and footpaths to the carriageway

Other issues raised in terms of the layout include:

- The width of the carriageway on the road which was intended to be one-way due to its restricted width. It is recommended that this should permit two-way traffic for the safety of users.
- The turning circle at the south east corner of the site, is of such a small size it restricts vehicle turning movements to an unacceptable degree, as turning requires several movements.
- The positioning of trees in locations which do not meet the NYCC Guidance concerning their distance from and within what is proposed to become Highway.
- The size of attenuation pipes under the highway would require structural approval, that currently would not be forthcoming.

Following further work and discussions with the applicant, agent and NYCC Highways, amendments have been made to the road layout and further to this, the

scheme is now being progressed with the access and roads remaining as unadopted highway.

It is noted that following the recommendation the applicant would therefore seek to retain the private status of the site and maintain through a third-party company. It is acknowledged that this then alters the nature of the site. The LHA therefore no longer has to consider whether the internal layout or parking provision is appropriate. The remaining key issue therefore is the suitability of the parking provision within the site, in terms of its adequacy to allow for demand and not impact on areas of publicly maintainable highway outside of the site. Also to advise the LPA of the level, which the LHA considers would not promote errant driver behaviour and therefore reduce safety within, and in proximity to, the site. The design guidance, however, remains relevant as it is on the basis of this that the parking guidance is offered and it would be good practice for all residential sites to be constructed in a manner suitable to adoption. Even if the intent is that it retains its private status, for the amenity and safety benefits of its residents.

Whilst it is therefore agreed that the site is atypical, the NYCC standard, based on observed parking behaviour in North Yorkshire, with an additional quotient applied to represent the net loss of occasional use on-street parking for visitors and deliveries, based on the net loss of available space due to the positioning of parking bays in the site, nevertheless remains the most reliable and considered indicator of car parking provision required. This guidance, coupled with an understanding of the demographic and employment patterns in Selby District, is the basis for the recommendation of refusal.

Following amendments to the scheme to unadopted highway. Further advice was sought from the LHA in respect of conditions should the application be progressed towards an approval. NYCC have suggested conditions as follows:

- Detailed Plans of Road and Footway Layout
- Construction of Roads and Footways Prior to Occupation of Dwellings
- Discharge of Surface Water
- Permanent Site Construction Access
- Closing of Existing Access
- Visibility Splays
- Pedestrian Visibility Splays
- Approval of Details for Works in the Highway
- Completion of Works in the Highway
- Provision of Approved Access, Turning and Parking Areas
- Parking for Dwellings
- Highway Condition Survey
- Travel Plans
- Construction Phase Management Plan

2.28 **Portholme Church** – Portholme Church welcomes and supports the redevelopment of this site for housing and the demolition of the Old Civic Centre. However, Portholme Church have raised concerns for the following:

- The impact noise and vibration will have on units close to the railway
- Loss of green space
- Increased traffic and impact on the junction of Portholme Road and Portholme Crescent.



- Highway safety in respect of visibility splay and moving the pedestrian crossing further east and the impact of subsequent queuing traffic past the Portholme Road and Portholme Crescent Junction.

Portholme Church have however suggested that other traffic calming measures could be incorporated as part of this development or by NYCC Highways separately.

2.29 **Highway Consultant (Fore Consulting Ltd)**– The Local Planning Authority have sought advice from an independent highway consultancy, Fore Consulting Ltd. The highway consultant has reviewed the proposed scheme in respect of impacts on highway safety on the internal layout of the scheme which is proposed to be unadopted.

Having considered all relevant information supplied through the application and comments made by the LHA. The highway consultant has raised no concerns for the proposed parking arrangements, specifically the number of parking spaces provided on site. Following receipt of additional information by way of an initial road safety audit for the internal layout, though not signed off at this stage. The highway consultants have raised no concerns for the proposals in respect of highway safety. Therefore, the highway consultants have confirmed the acceptability of the scheme on highway grounds subject to conditions relating to:

- Detailed Plans of Road and Footway Layout
- Construction of Roads and Footways Prior to Occupation of Dwellings
- Permanent Site Construction Access
- Closing of Existing Access
- Visibility Splays
- Pedestrian Visibility Splays
- Approval of Details for Works in the Highway
- Completion of Works in the Highway
- Provision of Approved Access, Turning and Parking Areas
- Parking for Dwellings
- Construction Phase Management Plan

2.30 **Neighbour Summary** – All immediate neighbours were informed by letter; a site notice was erected, and an advert placed in the local press. This has resulted in 5 letters of objection and 1 letter of support to date. In summary the letters of objection raise concerns for the following:

- High density of housing on site
- Increased traffic
- Poor air quality
- Lack of parking
- Poor of public transport in Selby
- Lack of open space
- Lack of consideration for climate change due to the felling of trees
- Increased pressure on local infrastructure and public services such as schools and the doctors
- Overlooking, lack of privacy, loss of light
- Light pollution
- Security risks to neighbouring properties to the east

- Insufficient surface water drainage and flood risk
- Lack of access and consideration for the dykes to the south of the site required to reduce flood risk for the existing surrounding properties
- The height, design and siting of the apartment blocks

It is also noted that several comments were made in relation to the proposals causing the devaluation of the existing surrounding properties. However, it should be noted that this is not a material planning consideration.

### **3. SITE CONSTRAINTS**

#### **Constraints**

- 3.1. The application site is located within the defined development limits of Selby, which is a Principle Town as identified within the Core Strategy. Further to this, the site is brownfield land within an urban setting.
- 3.2. There are no statutory national or local landscape or wildlife designations covering the application site. Though it is noted that the application site would be within proximity to the Selby Town Conservation Area and the Selby Town Archaeological Consultation Zone. In addition, the application site is located within the setting of the Grade I Listed, Church of St Mary and St Germain (Selby Abbey).
- 3.3. The site is located within Flood Zone 2 which has a medium probability of flooding. The sites former uses linking to the railway and the old Selby District Council Depot is likely to have given rise to some ground contamination.

### **4. POLICY CONSIDERATIONS**

- 4.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states "if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise". This is recognised in paragraph 11 of the NPPF, with paragraph 12 stating that the framework does not change the statutory status of the development plan as the starting point for decision making.
- 4.2. The development plan for the Selby District comprises the Selby District Core Strategy Local Plan (adopted 22nd October 2013) and those policies in the Selby District Local Plan (adopted on 8 February 2005) which were saved by the direction of the Secretary of State and which have not been superseded by the Core Strategy.
- 4.3. On 17 September 2019 the Council agreed to prepare a new Local Plan. The timetable set out in the updated Local Development Scheme envisages adoption of a new Local Plan in 2023. Consultation on issues and options would take place early in 2020. There are therefore no emerging policies at this stage so no weight can be attached to emerging local plan policies.
- 4.4. The National Planning Policy Framework (February 2019) (NPPF) replaced the July 2018 NPPF, first published in March 2012. The NPPF does not change the status of an up to date development plan and where a planning application conflicts with such a plan, permission should not usually be granted unless material

considerations indicate otherwise (paragraph 12). This application has been considered against the 2019 NPPF.

- 4.5. Annex 1 of the National Planning Policy Framework (NPPF) outlines the implementation of the Framework -

*“213. .... existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).”*

### **Selby District Core Strategy Local Plan (CS)**

- 4.6. The relevant Core Strategy Policies are:

- SP1 - Presumption in Favour of Sustainable Development
- SP2 - Spatial Development Strategy
- SP4 – Management of Residential Development in Settlements
- SP5 - The Scale and Distribution of Housing
- SP8 - Housing Mix
- SP9 - Affordable Housing
- SP15 - Sustainable Development and Climate Change
- SP16 - Improving Resource Efficiency
- SP18 - Protecting and Enhancing the Environment
- SP19 - Design Quality

### **Selby District Local Plan (SDLP)**

- 4.7. The relevant Selby District Local Plan Policies are:

- ENV1 - Control of Development
- ENV2 - Environmental Pollution and Contaminated Land
- ENV25 – Control of Development in Conservation Areas
- H2B – Housing Density
- T1 - Development in Relation to Highway
- T2 - Access to Roads
- RT1 - Protection of Existing Recreational Open Space
- RT2 – Open space requirements

- 4.8. **Other Policies/ Guidance:**

- Affordable Housing Supplementary Planning Document, 2013
- Developer Contributions Supplementary Planning Document March 200

## **5. APPRAISAL**

- 5.1. The main issues to be considered when assessing this application are:

- Principle of Development
- Impact on the Character and Appearance of the Area
- Impact on the Surrounding Heritage Assets

- Impact on Residential Amenity
- Impact on Highway Safety
- Flood Risk, Drainage and Climate Change
- Impact on Nature Conservation and Protected Species
- Land Contamination
- Affordable Housing
- Recreational Open Space
- Education, Health Care, Waste and Recycling
- Other Matters

## **Principle of Development**

- 5.2. The application site is located within the defined development limits of Selby, which is a Principle Town as identified in the Core Strategy and is part located within Flood Zone 1 and part located within Flood Zone 2. The application site is located within proximity to the Selby Town Conservation Area and within the setting of several listed buildings.
- 5.3. Policy SP1 of the Selby District Core Strategy Local Plan (2013) outlines that "when considering development proposals the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework" and sets out how this will be undertaken. Policy SP1 is therefore consistent with the guidance in Paragraph 11 of the NPPF and should be afforded significant weight.
- 5.4. The application site is situated within the defined Development Limits of Selby, which as the Principal Town is the focus for new housing, employment, retail, commercial and leisure facilities. The proposal is therefore in accordance with Policy SP2A (a) of the Core Strategy.
- 5.5. Policy SP4(a) states that "in order to ensure that development on non-allocated sites contributes to sustainable development and the continued evolution of viable communities, the following types of residential development will be acceptable in principle within Development Limits" in different settlement types, adding that in respect of Selby this includes, "Conversions, replacement dwellings, redevelopment of previously developed land and appropriate scale development on greenfield land (including garden land and conversion/ redevelopment of farmsteads)."
- 5.6. NPPF paragraph 118(c) states that decisions should, "give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land."
- 5.7. As the proposal involves the, creation of a new residential development consisting of a mix of apartments and dwelling houses and associated infrastructure within development limits it would comply with Policy SP4 (a) and therefore would be acceptable in principle. However, proposals that are acceptable in principle are still required to meet the policy test set in criteria (c) and (d) of Policy SP4 and all other relevant local and national policy tests.
- 5.8. The impact on acknowledged interests against the above policy tests is considered in the following parts of the report, including the issue of scale.

## **Impact on the Character and Appearance of the Area**

- 5.9. SDLP Policy ENV1 requires the effect of new development on the character of the area and the standard of design in relation to the site and its surroundings to be considered when considering proposals for new development. Similarly, CS Policy SP19 expects new development to have regard to the local character, identity and context of its surroundings. Paragraph 127 of the NPPF states that, planning decisions should ensure that development; is visually attractive as a result of layout and landscaping; sympathetic to local character, while not preventing change, and establish a sense of place.
- 5.10. The application is accompanied by a Design and Access Statement, which assesses the site context and characteristics which then inform the overall principles for the site development. Further to this, a Landscape Appraisal has been submitted, which assess the site context in respect of the urban setting and green infrastructure in and around the site.
- 5.11. It is noted that the proposals would remove most trees on site including those along the frontage of the site. However, it is noted that this is due to the need for site clearance in order to raise site levels to address issues with flood risk and drainage.
- 5.12. Having sought specialist advice from the Landscape Architect at North Yorkshire County Council, it is considered that, the proposal would have the potential to impact on the townscape. It is noted that the application is accompanied by a Landscape Appraisal including a masterplan.
- 5.13. Following discussions, the Landscape Architect has raised objections to the proposed development in respect of the significant visual impacts on the character and appearance of the area, due to the removal of the trees on site and insufficient green infrastructure throughout the site. However, the developer does not require formal consent from the council in order to remove these trees nor are they protected. Furthermore, these trees are required to be removed to allow the site levels to be increased to reduce flood risk. It is considered reasonable to attach a condition requesting a further scheme of landscaping to be submitted, to allow for an acceptable scheme to be agreed.
- 5.14. In terms of design, having sought specialist advice from the Council's Urban Designer, a number of issues were originally raised in respect of layout; scale of flats; landscape & trees; minimal outdoor amenity space; setting of flats; relationships to adjoining sites; and security. However, following a review of updated plans and additional information being provided it is noted that some of these have been addressed, though not all, and officers consider that a number of the issues could be addressed by conditions. These conditions would include, materials, boundary treatments, landscaping and details of the management of open spaces. The management of open spaces can be further secured by the council by way of a S106 Agreement.
- 5.15. Overall, in considering the proposed scheme officers consider that the proposals include innovative designs which promote high levels of sustainability and help raise the standard of design in and around Portholme Road and the area of Selby.

- 5.16. Great weight will be given to proposals of such high design quality subject to the proposals fitting in with the overall form and layout of their surroundings. In addition, the proposals should aim to create high quality buildings and places which improve the character and quality of the area and the way it functions through landscape and urban design.
- 5.17. Subject to aforementioned condition, it is concluded that the design and the effect of the proposal upon the character of the area would be acceptable and in accordance with SDLP Policy ENV1 and CS Policy SP19 and national policy contained in the NPPF.

### **Impact on the Surrounding Heritage Assets**

- 5.18. The application site is located within proximity to the Selby Town Conservation Area. When considering proposals which affect the setting of Conservation Areas regard should be made to Policy ENV1 (1), (4) and (5) and ENV25 of the Selby District Local Plan, and Policies SP18 and SP19 of the Core Strategy.
- 5.19. Significant weight should be attached to the Local Plan Policy ENV1 as it is broadly consistent with the aims of the NPPF. However, less weight should be given to Policy ENV25, as it does not accord with the approach taken within the NPPF in relation to the emphasis on significance and on weighing harm to significance against other considerations, depending on whether there is substantial harm or less than substantial harm.
- 5.20. Relevant policies within the NPPF, which relate to development within a Conservation Area, include, 189, 190, 191, 192, 193, 194 and 196. Paragraph 190 of the NPPF requires that LPA's should identify and assess the significance of any heritage asset that may be affected by a proposal, including by development affecting the setting of a heritage asset. Paragraph 192 of the NPPF advises what the LPA should take into account when determining applications and of particular note to this the LPA's should take into account in any decision the desirability of new development making a positive contribution to local character and local distinctiveness.
- 5.21. Paragraph 193 of the NPPF requires that, "When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance." Further to this Paragraph 194 of the NPPF requires that, "Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification...."
- 5.22. At para 196 the NPPF states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposals.
- 5.23. It is noted that a Heritage Assessment has been submitted. It is noted that this assesses the proposed scheme in respect of the surrounding heritage assets such as the Selby Town Conservation area and other surrounding listed buildings including the Grade I Listed, Church of St Mary and St Germain (Selby Abbey).

- 5.24. Having sought specialist advice from the Council's Conservation Officer, in giving great weight to the surrounding heritage assets and a review of the heritage assessment, it is considered that the proposed scheme would not harm the surrounding heritage assets.
- 5.25. In considering all of the above, the proposed development is acceptable in respect of impacts on the surrounding heritage assets. Therefore, the proposed development would comply with CS19 and SDLP ENV25 and paragraphs 196 of the NPPF.

### **Impact on Residential Amenity**

- 5.26. SDLP Policy ENV1 requires a good standard of layout and design and that the effect of new development upon the amenity of adjoining occupiers to be taken into account. Paragraph 127 of the NPPF similarly seeks to ensure that developments; are attractive and welcoming places to live as a result of layout, building types and landscaping.
- 5.27. The key considerations in respect of residential amenity are considered to be the potential of the proposal to result in overlooking of neighboring properties, overshadowing of neighboring properties would occur from the size, scale and massing of the development proposed.
- 5.28. Having considered the proposed site plan, proposed floor plans and elevations, the proposals are in close proximity to surrounding residential development to the east and west of the site. However, in considering any impacts of overlooking and overshadowing of neighboring properties, given the separation distances and the orientation of the properties. It is not considered that there would be any significant adverse impact on overlooking or overshadowing. It is noted that a number of concerns had been raised by neighbors regarding the apartment blocks to the south east of the site. Having reviewed these carefully, due to the separation distances involved and given the apartment block along the eastern boundary of the site would not have its main orientation facing towards neighboring properties it is not considered that this would pose any significant adverse impacts on residential amenity.
- 5.29. Furthermore, proposed dwellings provide an appropriate level of private amenity space and suitable boundary treatments between existing and proposed dwellings.
- 5.30. In respect of noise and air quality, it is noted that a number of documents have been submitted including: Air Quality Assessment and an initial Noise Assessment.
- 5.31. In consulting Environmental Health they have raised no objections subject to a number of conditions relating to, (1) the submission of an emissions statement, (2) a scheme for protecting the proposed noise sensitive development from noise and (3) a Construction Environmental Management Plan (CEMP). It is noted that following discussions regarding air quality as it is intended that electric vehicle charging will be incorporated on site as confirmed by the applicant and agent this may be used as a mitigation measure within the emissions statement.
- 5.32. Subject to aforementioned conditions, the proposed development is acceptable in respect of the impacts on residential amenity. Therefore, the proposed development would comply with SDLP Policy ENV1 and paragraph 127, 181 of the NPPF.

## Impact on Highway Safety

- 5.33. SDLP Policy T1 requires new development to be well related to the existing highway network and Policy T2 states that development resulting in the intensification of the use of an existing access will be supported provided there would be no detriment to highway safety. The NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 5.34. It is proposed that the existing access to the Civic Centre site will be closed and a new access created where the pelican crossing is currently located. It is noted that an emergency access is located along the western boundary of the site onto the Tesco access road.
- 5.35. It is noted that the Transport Assessment and Travel Plan have been submitted albeit not part of the original suite of documents.
- 5.36. North Yorkshire County Council Highways have been consulted on the proposed development. NYCC Highways have raised objections to the proposed scheme as the proposals would not accord with the Local Highway Authorities Policy and Guidance. However, following further work and discussions with the applicant, agent and NYCC Highways, amendments have been made to the road layout and further to this the scheme is now being progressed as unadopted highway.
- 5.37. Therefore, the most up to date set of comments from NYCC Highways in respect of the amended scheme raise objections in respect of parking issues which subsequently impact on the use of the highway within the site, including *“the obstruction of cars parked in spaces by delivery and service vehicles, for which there is no considered parking quotient, to difficulties with refuse collection and lighting, given there is no clear route from households and footpaths to the carriageway and the positioning of lighting... and moving of waste would be problematic.”* However, it is noted that all other issues are no longer within the remit of the Local Highway Authority, given the layout of the site is not to be adopted and will therefore be privately maintained.
- 5.38. The issues with parking relates to the suitability of the parking provision within the site, in terms of its adequacy to allow for demand and not impact on areas of publicly maintainable highway outside of the site, and also to advise the LPA of the level which the LHA considers would not promote errant driver behavior and therefore reduce safety within, and in proximity to, the site.
- 5.39. Further to this, it is noted that NYCC Highways are content with trips to be associated with the proposed use, following additional information by way of a sensitivity test without the netted off trips. A Road Safety Audit for the main access of the site has been carried out which NYCC Highways have confirmed is acceptable, though it is noted that this has not been signed off at this stage. The Road Safety Audit for the main access of the site would be agreed outside of the planning process via a Section 278 Agreement with the LHA. However, additional provisions to secure this can reasonably be made by attaching an appropriately worded condition and informative advising of the Section 278 Agreement.



- 5.40. Whilst it is noted that, the scheme no longer includes any area of adopted highway maintainable at the public expense and would be maintained by a private maintenance company. NYCC Highways are objecting to the proposed development on the basis of parking and impacts on the road network external to the site. Given the unique nature of the scheme and private internal highway network. Further advice has been sought by the LPA from an independent highway consultant, Fore Consulting Ltd, in order to confirm that the internal layout of the private scheme is acceptable in highway safety terms.
- 5.41. In summary, this advice recommends that further information is provided in respect of highway safety. This includes an initial road safety audit for the internal layout of the scheme and again for the main access of the site on to the public highway. Following discussions with the applicant and agent this additional information has been provided which confirms the acceptability of the scheme in respect of highway safety. Further advice was sought from the independent highway consultants regarding this additional information. In summary, the highway consultant has confirmed that sufficient information has been provided at this stage in order to confirm that the internal layout is acceptable in terms of highway safety.
- 5.42. Therefore, it is considered that the scheme is acceptable in respect of highway safety subject to conditions relating to:
- Detailed Plans of Road and Footway Layout
  - Construction of Roads and Footways Prior to Occupation of Dwellings
  - Permanent Site Construction Access
  - Closing of Existing Access
  - Visibility Splays
  - Pedestrian Visibility Splays
  - Approval of Details for Works in the Highway
  - Completion of Works in the Highway
  - Provision of Approved Access, Turning and Parking Areas
  - Parking for Dwellings
  - Construction Phase Management Plan
- 5.43. It should be noted that the following conditions have not been included in the conditions list:
- Discharge of Surface Water – This is covered by the overall drainage strategy conditions.
  - Highway Condition Survey – This is not considered reasonable or necessary.
  - Travel Plans – A travel plan has been submitted and considered reasonable to condition compliance with this.
- 5.44. Further to the above, officers acknowledge that this scheme aims to create a high-quality development that is not dominated by the road network. By providing a lower level of parking and increased street trees acknowledging reduced car ownership, traffic movements and landscaping as an opportunity to work to mitigate the effects on decreasing pollution and greenhouse gases. This is considered to carry great weight in the planning balance.
- 5.45. Furthermore, it is considered reasonable to secure the maintenance of all aspects of the private highway network via a S106 agreement.

- 5.46. Subject to aforementioned conditions the proposed scheme is considered to be acceptable on balance and in accordance with policies ENV1(2), T1 and T2 of the Local Plan, Policy SP19 of the Core Strategy and Paragraph 39 of the NPPF with respect to the impacts on the highway network.

### **Flood Risk, Drainage and Climate Change**

- 5.47. SDLP Policy ENV1 requires account to be taken of the capacity of local services and infrastructure and CS Policy SP19 seeks to prevent development from contributing to or being put at risk from water pollution.
- 5.48. The Environment Agency flood map for planning shows that the majority of the site is located within Flood Zone 2, with parts within Flood Zone 1, and the site, therefore, has a medium risk of flooding from rivers. The mapping for surface water shows the proposed development is within a very low risk area for surface water flooding with only depressions within the site having a low risk.
- 5.49. Paragraph 155 of the NPPF states that “Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere.”
- 5.50. Paragraph 158 of the NPPF states that “The aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.” For individual planning applications where there has been no sequential testing of the allocations in the development plan, or where the use of the site being proposed is not in accordance with the development plan, the area to apply the Sequential Test across will be defined by local circumstances relating to the catchment area for the type of development proposed.
- 5.51. The Council’s Flood Risk Sequential Test Developer Guidance Note - October 2019 states that, when applying the sequential test, proposals on sites where previously developed land (PDL) accounts for 50% or more of their area should only be compared against other previously developed sites (50%+ of their area) within the development limits of the same settlement. This is because it is not the intention of the Council to use the sequential test to reallocate development from PDL to greenfield sites. The majority of land within the Development Limits for Selby falls within Flood Zone 2 and 3 and the application site represents the only available site for 154 dwellings. As such, the site is considered to pass the sequential test.
- 5.52. The application has been supported by a flood risk assessment which recognises the risk of flooding from river as medium and assesses the site for all other sources of flooding as low or negligible. The document goes on to recommend appropriate mitigation measures which include; finished floor levels to the properties to be raised a minimum of 300mm above the 1 in 100 year flood level; ground floors to comprise solid concrete slabs or beam and block with screed construction, and; incoming electricity supplies to be raised above ground floor level. Further to this, the document goes on to refer to a lower finished floor level of 6.3 metres (AOD).

This lower finished floor level would also be subject to the measures as set out in the Floor Resistance and Resilience Strategy document submitted.

- 5.53. Following consultation with the Environment Agency, it is confirmed that the rear apartments should be set at a finished floor level of no lower than 6.8m AOD due to ground floor sleeping accommodation and the dwellings should be set at a finished floor level of between 6.3 meters and 6.5 meters AOD as they have no ground floor sleeping accommodation. Following discussions with the applicant, agent and EA, it is considered reasonable to attach a compliance condition stating the residential units with ground floor sleeping accommodation should be set no lower than 6.8 meters AOD. Furthermore, those units with no ground floor sleeping accommodation to be set no lower than 6.3 meters AOD and to comply with the measures as set out within the flood resistance and resilience strategy submitted.
- 5.54. Foul water is proposed to be discharged to the public sewer network on the site. Furthermore, Surface water is proposed to be discharged via sustainable urban drainage systems.
- 5.55. It is noted from the consultation responses that, there are a number of comments from Yorkshire Water, Network Rail and the LLFA.
- 5.56. In respect of Yorkshire Water, there are no objections subject to conditions, which are considered reasonable. Furthermore, it is noted that the proposals would involve the diversion of the water course which runs through the site. However, this would be considered by Yorkshire Water separately.
- 5.57. In respect of Network Rail concerns have been raised in respect of surface water outfall towards the railway. A number of conditions and informatives have been advised in order alleviate these concerns. A response has been provided by the planning agent, which provides further drainage details for assurances for Network Rail and agreement to the conditions and informatives has been provided.
- 5.58. In respect of the LLFA the applicant provided a detailed Drainage Network Plan and micro drainage surface water details, which were considered by the LLFA officer who was satisfied that the information provided demonstrates that there is a viable scheme for draining the site in accordance with National and Local Planning Policy. Further detailed drainage design details will be required at the discharge of conditions stage, and therefore two conditions were recommended covering the need for detailed drainage and secondly a suitable maintenance scheme for the proposed SuDS drainage arrangement.
- 5.59. The IDB however have raised no objections subject to a number of standard conditions.
- 5.60. In considering all of the above the proposals are acceptable in respect of drainage and flood risk and therefore accords with policies SP15, SP16, SP19 of the Core Strategy, and paragraphs, 158, 159 and 160 of the NPPF.

### **Impact on Nature Conservation and Protected Species**

- 5.61. SDLP Policy ENV1 states that proposals should not harm acknowledged nature conservation interests and CS Policy SP18 seeks to safeguard the natural environment and increasing biodiversity. These policies are consistent with NPPF

paragraphs 170 and 175, which seek to protect and enhance sites of biodiversity value.

- 5.62. Paragraph 170(d) of the NPPF expresses support for, “minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.” However, it is also noted that paragraph 170(f) of the NPPF is relevant in respect of contaminated land. These expresses support for, “remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.”
- 5.63. Paragraph 175(a) of the NPPF states that, “...if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused...”
- 5.64. Protected species include those protected under the 1981 Wildlife and Countryside Act and the Conservation of Habitats and Species Regulations 2010. The presence of protected species is a material planning consideration.
- 5.65. Whilst the application site is not designated for nature conservation, or in close proximity to a designated site, a Preliminary Ecological Appraisal was submitted with the application.
- 5.66. Comments have been sought from NYCC Ecology and comments have been provided in respect of net gain in terms of biodiversity. The Ecologist has raised concerns that the proposals do not provided at least a 10% biodiversity net gain on site. Further information was also requested and subsequently provided in terms of a more detailed ecological impacts assessment including details of the existing wet woodland on site, grass land, details of site habitat creation, other neutral grass land and an updated landscape plan.
- 5.67. Additional information was provided by way of an Ecology Report which included a biodiversity metric demonstrating a 4.7% net gain. However, following amendments to the scheme including changes to the road layout and additional parking an updated biodiversity metric was submitted which demonstrates a -0.42% biodiversity net loss. NYCC Ecology have provided comments on this raising concerns that the applicant has failed to demonstrate that the proposed development would achieve biodiversity net gain. The Ecologist has also suggested that the habitats on site could be compensated for through off- site compensation.
- 5.68. Following further negotiations with the applicants following concerns raised at the initial CEO Decision Session on the 8th April 2020. The applicant has agreed to ensure that there would be no net loss of biodiversity on site and has agreed to secure this via an appropriately worded condition. Further advice was sought from NYCC Ecology who have raised no objections to a condition of this kind. Though any additional information provided at discharge of condition stage would need to be considered carefully. It is also noted that, the ecologist has also referred officers to their previous comments in that the site should provide 10% biodiversity net gain.
- 5.69. Officers also explored the opportunity for off site contributions for trees however the applicant was unwilling due to impacts on the viability of the scheme and did not consider that this request would meet the relevant tests.

- 5.70. In considering all of the above, it is considered reasonable to secure no net loss of biodiversity on site via condition requiring additional landscape and incorporation of appropriate boundary treatments. Furthermore, officers note the ecologists concerns in that the site does not provide 10% net gain. However, Officers consider that net gain is not mandatory at present. As there is to be no net loss on site with the scope to provide additional landscaping, it is not considered that the proposed development would have a significant adverse impact on ecology and would not warrant refusal of the application.
- 5.71. On balance, it is considered reasonable to attach a condition controlling compliance with the plans and documents provided in respect of ecology and mitigation measures which would ensure the proposed development would be acceptable. As well as, securing no net loss of biodiversity, additional landscaping, boundary treatments, landscape maintenance and management plans.
- 5.72. Subject to aforementioned conditions, the proposed development is acceptable on balance in respect of nature conservation and protected species. Therefore, the proposed scheme is in accordance with SDLP Policy ENV1, CS SP18 and paragraphs 170 and 175 of the NPPF.

### **Land Contamination**

- 5.73. Policy ENV2 states development which would give rise to or would be affected by unacceptable levels of noise nuisance, contamination or other environmental pollution will not be permitted unless satisfactory remedial or preventative measures are incorporated as an integral element in the scheme. Paragraph 178 of the NPPF states that planning decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination.
- 5.74. The application has been accompanied by a Geotechnical and Geo- Environmental Desk Study. In summary this concludes that further site investigation would be required. Furthermore, a number of mitigation measure have been suggested within the report.
- 5.75. The Contaminated Land Consultant has been consulted who has raised no objections to the proposed development subject to a number of standard conditions relating to, (1) Investigation of Land Contamination, (2) Submission of a remediation Scheme, (3) Verification of Remedial Works, and (4) Reporting of Unexpected Contamination.
- 5.76. Subject to aforementioned conditions, the proposed development is acceptable in respect of contaminated land. Therefore, the proposed scheme is in accordance with SDLP Policy ENV2 and paragraphs 170(f), 178 and 180 of the NPPF.

### **Affordable Housing**

- 5.77. Core Strategy Policy SP8 sets out the housing mix policy context for the District. Policy SP8 requires that all proposals for housing must contribute to the creation of mixed communities by ensuring that the types and sizes of dwellings provided reflect the demand and profile of households evidenced from the most recent strategic housing market assessment and robust housing needs surveys whilst having regard to the existing mix of housing in the locality.

- 5.78. Core Strategy Policy SP9 and the accompanying Affordable Housing SPD sets out the affordable housing policy context for the District. Policy SP9 outlines that, that the Council will seek to achieve up to 40% on-site affordable housing provision on all market housing sites at or above the threshold of 10 dwellings (or sites of 0.3ha or more). Commuted sums will not normally be accepted. The actual amount of affordable housing to be provided will be a matter for negotiation at the time the planning application is submitted, having regard to any abnormal costs, economic viability and other requirements associated with the development.
- 5.79. However, paragraph 63 of the NPPF states that “To support the re-use of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount”. The proportionate amount is defined as the gross floorspace of the existing buildings.
- 5.80. The national policy is a clear incentive for brownfield development on sites containing vacant buildings as is the case with the application site and is a significant material consideration when considering the provision of affordable housing and the Council must have regard to the intention of the national policy. The approach effectively applies a ‘credit’ to be applied against the normal affordable housing contribution calculation. Any increase in floorspace over and above that existing will be subject to the normal contribution calculation.
- 5.81. The majority of dwellings proposed by the application are 1 or 2 bedrooms properties (75%), with the overall development mix proposed as follows:
- 1 bed flat = 12 units (8%)
  - 2 bed flat = 64 units (42%)
  - 3 bed house = 38 units (25%)
  - 4 bed house = 40 units (26%)
- 5.82. In considering whether the mix of dwelling sizes is appropriate, consideration has been given to the Council’s latest Strategic Housing Market Assessment (SHMA). The modelling outputs provide an estimate of the proportion of homes of different sizes that are needed and are identified as follows:

Need to different types and sizes of homes (SHMA, 2019):

	<b>Affordable rented</b>	<b>Low cost home ownership</b>	<b>Market housing</b>
1 bed	25-30%	10-15%	0-5%
2 bed	35-40%	40-45%	25-30%
3 bed	25-30%	35-40%	45-50%
4 + bed	5-10%	5-10%	20-25%

- 5.83. When considering the information above against individual development proposals, regard should be had to the nature of the development site and character of the area, and to up-to-date evidence of need as well as the existing mix and turnover of properties at the local level.
- 5.84. The latest Authorities Monitoring Report (2017/18) provides up-to-date data on the size of dwellings delivered since the beginning of the plan period and this

information (below) indicates the supply of dwelling has been skewed towards larger properties (3 and 4+ bedroom dwellings).

Net Housing Completions by Bedroom Number (April 2011 – March 2018) (AMR 2017/2018):

<b>Number of beds</b>	<b>% of total dwellings completed</b>
1 bed	3%
2 bed	20%
3 bed	37%
4+ bed	40%

- 5.85. On this basis, and given the site is located close to Selby Town Centre in a highly sustainable location, it is considered that the proposed mix of dwellings is broadly acceptable and that the site is appropriate for higher density development, such as that proposed. As such the scheme is considered to provide an appropriate type of accommodation in this location and is therefore considered to be in compliance with Core Strategy Policy SP8.
- 5.86. However, having had regard to any abnormal costs, economic viability and other requirements associated with the development, the viability study submitted by the applicant's states that 8 affordable units (5%) can be provided on site. Following commissioning an independent viability report this states that, 21 on- site affordable dwellings can be provided equating to 13.64%. Following negotiations with the applicants the council was able to ascertain agreement to 18 on- site affordable dwellings, equating to 12%.
- 5.87. Further negotiations were carried out following comments and discussions following the CEO emergency decision session on the 8<sup>th</sup> April 2020. Overall, the applicant confirmed on the 16<sup>th</sup> April 2020 that they would provide a tenure split of 50% affordable rent and 50% shared ownership, within the 12% affordable provision. Following re consultation with the Housing Strategy Officer they confirmed that this is tenure split is policy compliant and supports this proposal. Where it is noted that this is significantly lower than 40%, given the site constraints and viability it is considered that this is reasonable. The affordable housing levels, tenure and management details could be further secured by way of a S106 Agreement.
- 5.88. However, it is noted that an appropriate agreement will be secured at the time of granting planning consent to secure the long-term future of affordable housing.

### **Recreational Open Space**

- 5.89. Policy in respect of the provision of recreational open space is provided by SDLP Policy RT2, this requires that proposals for new development comprising 5 or more dwellings will provide recreation open space at a rate of 60 sq. m per dwelling. For schemes of 50 dwellings or more, provision within the site will normally be required.
- 5.90. Furthermore, CS policies SP12 and SP19 together with the Developer Contributions Supplementary Planning Document (SPD). Paragraph 96 of the NPPF states that access to open spaces and opportunities for physical activity are important.

- 5.91. Policy RT2 (b) states that the following options would be available subject to negotiation and the existing level of provision in the locality.
- provide open space within the site;
  - provide open space within the locality;
  - provide open space elsewhere;
  - where it is not practical or not deemed desirable for developers to make provision within the site the district council may accept a financial contribution to enable provision to be made elsewhere.
- 5.92. The submitted layout plan, as revised, incorporates on-site recreational open space as part of the development. The SPD and policy requirement is for 60sqm per dwelling to be provided on site which, in this case, would equate to 9,240sqm or 0.924 hectares. The open space element of the development amounts to 4606sqm or 0.4606 hectares and includes a pocket parks and a wet woodland area with a board walk.
- 5.93. Information regarding the play equipment throughout the site has also been provided within the Design and Access Statement advising that a variety of play equipment will be provided throughout the site in order to provide a range of stimulating and challenging play opportunities. Details of the some of the suggested play equipment have been provided however it is considered to request and review the specific details at discharge of conditions stage.
- 5.94. While it is noted that the proposal does not meet the required provisions for space having carefully considered the viability reports and given the proposed scheme is adjacent to a large open recreational open space. It is considered that the provisions for open space onsite are acceptable.
- 5.95. Officers consider it reasonable to request further details of the open spaces within the site via conditions to include, the laying out of open spaces and play areas, boundary treatments, hard and soft landscaping arrangements and secure the use of the land in question as amenity space. Officers also consider it reasonable to further secure this by including details of the management of open space via a S106 Agreement.
- 5.96. In considering all of the above the scheme is acceptable in respect of recreational open space within the site and therefore the scheme is considered acceptable in respect of SDLP Policy RT2.

### **Other Matters**

- 5.97. CS Policy SP15 states that schemes should aim to improve energy efficiency, minimise energy consumption, incorporate sustainable construction techniques and include new tree and hedge planting. CS Policy SP16 requires residential schemes of 10 dwellings or more to provide a minimum of 10% of energy requirements from renewable, low carbon or decentralised sources. Subject to a planning condition seeking details of the way in which the requirements for 10% of energy to be sourced as set out in Policy16, the development is considered to be in accordance with CS Policies SP15 and SP16.
- 5.98. Whist the adopted Developer Contributions Supplementary Planning Document includes provision for education and health care facilities, these types of infrastructure appear on the Council's published Regulation 123 List which gives



details of infrastructure projects intended to be funded through the Community Infrastructure Levy (CIL) such that contributions are not sought through Section 106 Agreement. In changes to the Community Infrastructure Regulations brought into force in September 2019, Regulation 123 has been omitted but with no further guidance on the status of Regulation 123 lists prior to the introduction of an Infrastructure Funding Statement which the Council will now need to consider through the local plan process.

- 5.99. It is considered that the Council's Regulation 123 List should remain in force and guide decisions as to how CIL is applied and whether S106 contributions meet the legislative tests set out in Regulation 122. It will be difficult to show that a S106 payment meets the Regulation 122 tests if CIL could potentially fund the same piece of infrastructure as currently indicated in the Council's 123 List.
- 5.100. While it is noted that North Yorkshire County Council's Children and Young Peoples' Service has requested contributions of £115,566 given Selby District Council's published updated approach to CIL. Officers would not be able to request this separately through a S106 agreement as it is considered that the CIL contributions would be used for this purpose.
- 5.101. The Community Infrastructure Levy (CIL) has been introduced and this is a material consideration in determining the current application. As the current application is a full planning application, CIL must be applied to it and this means that money would be collected towards education, health care, infrastructure etc at the rate of £10 per sq metre.
- 5.102. On all schemes that would result in 4 or more new residential units, the Council seeks to ensure that, prior to the occupation of any dwelling, storage bins and boxes for waste and recycling are provided. This provision is in line with SDLP Policy ENV1(3) and can be secured through an appropriately worded planning condition.

## **6. CONCLUSION**

- 6.1. Having had regard to the development plan, all other relevant local and national policy, consultation responses and all other material planning considerations, it is considered that the principle of the proposed development is acceptable and the proposed development would not have a detrimental impact on the character and appearance of the area or the surrounding Heritage Assets, the residential amenity of the occupants of neighbouring properties, flood risk, drainage and climate change, nature conservation and protected species, land contamination, affordable housing, recreational open space, education, health care, waste and recycling.
- 6.2. Whilst it is noted that there is an objection from the Local Highway Authority as the scheme will be unadopted and having sought independent highway advice it is considered that the scheme is acceptable in highway safety terms. Furthermore, in applying the planning balance, the benefits of the proposed scheme would outweigh all other issues. Therefore, the proposals are on balance considered acceptable.
- 6.3. The application is therefore considered to be compliant with the NPPF and the following SDC policies:
  - SP1 - Presumption in Favour of Sustainable Development

- SP2 - Spatial Development Strategy
- SP4 – Management of Residential Development in Settlements
- SP5 - The Scale and Distribution of Housing
- SP8 - Housing Mix
- SP9 - Affordable Housing
- SP15 - Sustainable Development and Climate Change
- SP16 - Improving Resource Efficiency
- SP18 - Protecting and Enhancing the Environment
- SP19 - Design Quality
- ENV1 - Control of Development
- ENV2 - Environmental Pollution and Contaminated Land
- ENV25 – Control of Development in Conservation Areas
- H2B – Housing Density
- T1 - Development in Relation to Highway
- T2 - Access to Roads
- RT1 - Protection of Existing Recreational Open Space
- RT2 – Open space requirements

## 7. RECOMMENDATION

7.1. That this application is recommended to be **APPROVED** subject to the prior completion of a Section 106 Agreement relating to affordable housing; maintenance and management of open space; maintenance and management of highways; and highway improvement works and subject to the following conditions and informatives:

01. The development for which permission is hereby granted shall be begun within a period of 3 years from the date of this permission.

Reason:

In order to comply with the provisions of Section 51 of the Planning and Compulsory Purchase Act 2004.

02. The development hereby approved shall be carried out in accordance with the below listed plans and drawings:

- Site Location Plan 0008-LGMH-00-ZZ-DR-A-4000
- Existing Site Plans 0008-LGMH-00-ZZ-DR-A-4001
- Proposed Site Plans 0008-LGMH-00-ZZ-DR-A-4020
- Proposed House Type 01 - Floor Plans 0008-LGMH-00-ZZ-DR-A-1010
- Proposed House Type 02 - Floor Plans 0008-LGMH-00-ZZ-DR-A-1020
- Proposed House Type 03 - Floor Plans 0008-LGMH-00-ZZ-DR-A-1030
- Proposed Apartment Type 01 Typical Floor Plans 0008-LGMH-00-ZZ-DR-A-1090
- Proposed Apartment Type 02 Typical Floor Plans 0008-LGMH-00-ZZ-DR-A-1100
- Proposed Typical Apartment Block Plans 0008-LGMH-00-GF-DR-A-1110
- Proposed Typical House Block Plan 0008-LGMH- 00-ZZ-DR-A-1120
- Proposed House Block 01 - Elevations 0008-LGMH-00-EL-DR-A-2010
- Proposed House Block 02 - Elevations 0008-LGMH-00-EL-DR-A-2020
- Proposed House Block 03 - Elevations 0008-LGMH-00-EL-DR-A-2030
- Proposed House Block 04 - Elevations 0008-LGMH-00-EL-DR-A-2040
- Proposed House Block 05 - Elevations 0008-LGMH-00-EL-DR-A-2050

- Proposed House Block 06 - Elevations 0008-LGMH-00-EL-DR-A-2060
- Proposed House Block 07 - Elevations 0008-LGMH-00-EL-DR-A-2070
- Proposed House Block 08 - Elevations 0008-LGMH-00-EL-DR-A-2080
- Proposed Apartment Block 01 - Elevations 0008-LGMH-00-EL-DR-A-2090
- Proposed Apartment Block 02 - Elevations 0008-LGMH-00-EL-DR-A-2120
- Proposed House Type Legend 0008-LGMH-00-ZZ-DR-A-4023
- Proposed Site Plan - Plot Numbers 0008-LGMH-00-ZZ-DR-A-4028
- Proposed Drainage Network for Planning 267600-00 SW-ARP-ZZ-XX-DR-D-1841 P03

Other plans and documents:

- Bat Report, received 4<sup>th</sup> October 2019
- Transport Assessment, received 15<sup>th</sup> October 2019
- Air Quality Assessment, received 30<sup>th</sup> October 2019
- Viability Report and Covering Letter, received 31<sup>st</sup> October 2019
- Updated Ecology Report, received, 12<sup>th</sup> November 2019
- Letter response to Network Rail comments, received 4<sup>th</sup> December 2019.  
Includes the following documents:
  - Drainage ditch maintenance strategy.
  - Basic Topographical and Underground Utilities Survey Ref. GR/2375 Rev 0.
  - CCTV Drainage and Utilities Survey Ref. 27069 A0-P1; and
  - CCTV Drainage and Utilities Survey Ref. 27069 A0-P2.
- Letter response to drainage comments, received 4<sup>th</sup> December 2019.  
Includes the following documents:
  - Drainage ditch maintenance strategy.
  - Basic Topographical and Underground Utilities Survey Ref. GR/2375 Rev 0.
  - CCTV Drainage and Utilities Survey Ref. 27069 A0-P1; and
  - CCTV Drainage and Utilities Survey Ref. 27069 A0-P2.
- Details in response to LLFA comments, received 6<sup>th</sup> January 2020.  
Includes the following documents:
  - Proposed Drainage Network
  - Flood Flow Routing
  - SW Micro Drainage Results
- Letter response to NYCC Highways and further justifications dated, 10<sup>th</sup> March 2020.
- Updated Travel Plan received, 17<sup>th</sup> March 2020.
- Updated Design and Access Statement dated, 17<sup>th</sup> March 2020
- Updated Flood Risk Assessment dated 17<sup>th</sup> March 2020

Reason:

For the avoidance of doubt.

03. Notwithstanding condition 02. the development hereby approved must be undertaken in accordance with the Design and Access Statement submitted to and approved by the Local Planning Authority dated (17/03/2020).

Reason:

For the avoidance of doubt

04. Prior to the commencement of works above foundation level the details of the landscaping of the site required to be submitted and approved by the local planning authority. This shall include details of:

- a scheme for the laying out as of amenity areas including, open spaces and play areas including play equipment.
- Boundary treatments
- Hard and Soft Landscaping Arrangements
- a scheme for the laying out of open space including play areas and that land shall not thereafter be used for any purpose other than as an amenity area.

Reason:

To ensure that the amenities of adjacent land/buildings and occupiers are retained prior to the commencement of the construction of development.

05. Prior to the commencement of work above foundation level, details of the materials to be used in the construction of the exterior walls and roof(s) of the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority, and only the approved materials shall be utilised.

Reason:

In the interests of visual amenity and in order to comply with Policy ENV1 of Selby District Local Plan.

06. Prior to the commencement of works above foundation level an emission mitigation statement shall be submitted to and approved by the Local Planning Authority. The statement shall include damage cost calculation undertaken in relation to the operation of the site and detail emission mitigation measures proposed for the site. An estimate shall be made of the impact that any proposed mitigation measures will have on emissions (i.e. mitigated mass of pollutant) and the financial costs of the mitigation measure to the developer. The statement shall confirm the timeframe and any phasing of the proposed mitigation, and detail of any 'residual' emissions and damage costs likely to remain after all proposed mitigation measures have been applied. The development shall be carried out in accordance with the approved details.

Reason:

To protect an AQMA from emissions to air in accordance with local and national policy.

07. Prior to the commencement of works above foundation level a written scheme for protecting the proposed noise sensitive development from noise has been submitted to and approved in writing by the Local Planning Authority. The scheme shall ensure that the noise level in the gardens of the proposed properties shall not exceed 50 dB LAeq (16 hour) between 0700 hours and 2300 hours and all works which form part of this scheme shall be completed before any part of the development is occupied. The scheme shall ensure that the building envelope of each plot is constructed to provide sound attenuation against external noise. The internal noise levels achieved should not exceed 35 dB LAeq (16 hour) inside the dwelling between 0700 hours and 2300 hours and 30 dB LAeq (8 hour) and 45 dB LAm<sub>ax</sub> in the bedrooms between 2300 and 0700 hours. This standard of insulation shall be achieved with adequate

ventilation provided. All works which form part of the scheme shall be completed before any part of the development is occupied. The works provided as part of the approved scheme shall be permanently retained and maintained as such except as may be agreed in writing by the Local Planning Authority. The aforementioned written scheme shall demonstrate that the noise levels specified will be achieved.

Reason:

To protect residential amenity from noise impact for future occupants in accordance with local and national policy.

08. Demolition or construction works shall take place only between 7.30 to 17.30 on Monday – Friday and 8.00 to 14.00 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.

Reason:

To ensure that the amenities of adjacent land/buildings and occupiers are retained prior to the commencement of the construction of development.

09. The commencement of the development shall not take place until there has been submitted to, approved in writing by, and deposited with the Local Planning Authority a Construction Environmental Management Plan (CEMP). The Plan shall include details of how noise, dust and other airborne pollutants, vibration, smoke, and odour from construction work will be controlled and mitigated. The construction of the Development shall be completed in accordance with the approved Plan unless any variation has been approved in writing by Local Planning Authority. The plan shall include details of monitoring to be undertaken to demonstrate that the mitigation measures are sufficient and being employed as detailed. The Statement shall include but not be limited to:

- The parking of vehicles of site operatives and visitors.
- Hours of construction working
- loading and unloading of plant and materials.
- storage of plant and materials used in constructing the development.
- the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
- wheel washing facilities.
- measures to control the emission of dust and dirt during construction.
- a scheme for recycling/disposing of waste resulting from demolition and construction works.
- delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

Reason:

To ensure that the amenities of adjacent land/buildings and occupiers are retained prior to the commencement of the construction of development.

10. There shall be no piling for foundations on the site until a schedule of works identifying those plots affected and setting out mitigation measures to protect residents from noise, dust and vibration has been submitted to and approved in

writing by the local planning authority. The proposals shall thereafter be carried out in accordance with the approved scheme.

Reason:

In the interest of protecting residential amenity in accordance with Policies ENV1 and ENV2 of the Local Plan.

11. No development approved by this planning permission shall take place until a remediation strategy that includes the following components to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the local planning authority:
- A site investigation scheme, based on the desk study to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
  - The results of the site investigation and the detailed risk assessment referred to in and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
  - A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (2) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The strategy shall be implemented as approved. Any amendments to the above components or the strategy shall be approved in writing by the Local Planning Authority.

Reason:

To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

12. No occupation of any part of the permitted development shall take place until a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a “long-term monitoring and maintenance plan”) for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.

Reason:

To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

13. In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

Reason:

To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

14. No building or other obstruction including landscape features shall be located over or within 3.5 (three point five) metres either side of the centre line of the public sewer. If the required stand -off distance is to be achieved via diversion or closure of the sewer, the developer shall submit evidence to the Local Planning Authority that the diversion or closure has been agreed with the relevant statutory undertaker and that prior to construction in the affected area, the approved works have been undertaken.

Reason:

In order to allow sufficient access for maintenance and repair work at all times and to prevent the increased risk of flooding; to ensure the future maintenance of the sustainable drainage system, to improve and protect water quality and improve habitat and amenity, in accordance with policy.

15. The site shall be developed with separate systems of drainage for foul and surface water on and off site.

Reason:

In the interest of satisfactory and sustainable drainage, in accordance with policy.

16. Surface water run-off from hardstanding (equal to or greater than 800 square metres) and/or communal car parking area (s) of more than 50 spaces must pass through an oil, petrol and grit interceptor/separator, prior to any discharge to an existing or prospectively adoptable sewer.

Reason:

In order to prevent pollution of the aquatic environment and protect the public sewer network and the interest of satisfactory and sustainable drainage, in accordance with policy.

17. There shall be no piped discharge of surface water from the development prior to the completion of surface water drainage works, details of which will have been submitted to and approved by the Local Planning Authority. If discharge to public sewer is proposed, the information shall include, but not be exclusive to: -

- a) evidence to demonstrate that surface water disposal via infiltration or watercourse are not reasonably practical.
- b) evidence of existing positive drainage to public sewer and the current points of connection; and
- c) the means of restricting the discharge to public sewer to the existing rate less a minimum 30% reduction, based on the existing peak discharge rate during a 1 in 1-year storm event, to allow for climate change.

Reason:

To ensure that no surface water discharges take place until proper provision has been made for its disposal and in the interest of sustainable drainage.

18. No development shall take place until a suitable maintenance of the proposed SuDS drainage scheme arrangement has been demonstrated to the local planning authority. Details with regard to the maintenance and management of the approved scheme to include; drawings showing any surface water assets to be vested with the statutory undertaker/highway authority and subsequently maintained at their expense, and/or any other arrangements to secure the operation of the approved drainage scheme/sustainable urban drainage systems throughout the lifetime of the development.

Reason: To prevent the increased risk of flooding and to ensure the future maintenance of the sustainable drainage system.

19. Development shall not commence until a scheme detailing the detailed drainage design for the surface water drainage has been submitted to and approved in writing by the Local Planning Authority. The scheme to be submitted shall demonstrate that the surface water drainage system(s) are designed in accordance with the standards detailed in North Yorkshire County Council SuDS Design Guidance (or any subsequent update or replacement for that document). The scheme shall detail phasing of the development and phasing of drainage provision, where appropriate. Principles of sustainable urban drainage shall be employed wherever possible. The works shall be implemented in accordance with the approved phasing. No part or phase of the development shall be brought into use until the drainage works approved for that part or phase has been completed. Note that further restrictions on surface water management may be imposed by Yorkshire Water, Local Highways Authority and the Local Planning Authority.

Reason: To ensure the provision of adequate and sustainable means of drainage in the interests of amenity and flood risk.

20. The finished floor levels of the residential units with ground floor sleeping accommodation shall be set no lower than 0.3 metres above Ordnance Datum (AOD) adjacent ground level thus giving a height of 6.8 metres AOD. The finished floor levels of the residential units without ground floor sleeping accommodation shall be set no lower than 6.3 metres AOD and shall incorporate the measures as set out within the Flood Resistance and Resilience Strategy (document number, NPD01-LGMH-XX-XX-RP-Z-0001).

Reason:

In the interests of flood risk and flood risk reduction and in order to comply with the advice contained within the NPPF and NPPG.



21. No development shall commence above slab level until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include:

- a. Indications of all existing trees and hedgerows on the land
- b. Identify those to be retained and set out measures for their protection throughout the course of development
- c. Details of the species, location, planting density and stock size on planting of all trees and shrub planting
- d. Details of the measures for the management and maintenance of the approved landscaping
- e. Details of landscaping and trees to be located within 10 metres of the network rail boundary and in accordance with their guidance.
- f. Updated biodiversity metric calculations to demonstrate the scheme of landscaping achieves no net loss of biodiversity on site.

Reason:

In the interests of visual amenity and railway safety and in order to comply with PolicySP19 of the CS and Policy ENV1 of Selby District Local Plan.

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

Reason:

In the interests of visual amenity and in order to comply with PolicySP19 of the CS and Policy ENV1 of Selby District Local Plan.

23. No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree / root protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: 2012 Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) has been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved and maintained until the scheme is completed.

Reason:

This is a pre commencement condition in order to ensure for the preservation and planting of trees in accordance with s.197 of the Act and in order to comply with saved Policy ENV1 of the Selby District Local Plan.

24. Before the development is first occupied or brought into use a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, shall be

submitted to and approved in writing by the local planning authority. The landscape management plan shall be carried out as approved.

Reason:

To ensure appropriate management and maintenance of all landscaped areas in the interests of visual amenity and in order to comply with Policy SP19 of the CS and Policy ENV1 of Selby District Local Plan.

25. The development hereby permitted must be carried out in accordance with the mitigation measures contained within section (5) of the Ecology Report dated (November 2019).

Reason:

In the interests on nature conservation interest and the protection of protected species and in order to comply with Policy ENV1(5) of the Selby District Local Plan, Policy SP18 of the CS, The Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2017.

26. In the event that protected species are discovered on the application site upon commencement of the approved development, which were not previously identified, it must be reported in writing immediately to the Local Planning Authority. A protected species survey and assessment must be undertaken and where mitigation is necessary, a mitigation scheme must be prepared, which is subject to approval in writing of the Local Planning Authority.

Reason:

In the interests on nature conservation interest and the protection of protected species and in order to comply with Policy ENV1(5) of the Selby District Local Plan, Policy SP18 of the CS, The Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2017.

27. No dwelling shall be occupied until a scheme of detail to reduce the carbon emissions of the predicted energy use of the proposed development by at least 10% shall be submitted to and approved in writing by the Local Planning Authority. This shall include details and a timetable of how this is to be achieved and details of any physical works on site. The approved details shall be implemented in accordance with the approved details and timetable and retained as operational thereafter.

Reason:

In the interest of sustainability, to minimise the development's impact and to accord with Policies SP15 and SP18 of the CS.

28. No development shall take place until details of measures to facilitate the provision of high-speed broadband for the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details prior to occupation of each dwelling.

Reason: In the interests of providing a sustainable form of development and economic growth and in order to ensure compliance with paragraph 112 of the National Planning Policy Framework and Policy SP12 of the adopted CS.

29. No dwelling shall be occupied until a scheme for the installation of a suitable trespass proof fence adjacent to Network Rail's boundary (minimum approx. 1.8m high) has been submitted to and approved by the Local Planning Authority. The scheme shall confirm provision for its future maintenance and renewal and installation method to ensure Network Rail's existing fencing/ wall is not removed or damaged.

Reason:

To ensure railway safety is maintained at all times in accordance with guidance from Network Rail.

30. Where vibro-compaction machinery is to be used in development, details of the use of such machinery and a method statement should be submitted for the approval of the Local Planning Authority in consultation with the railway undertaker prior to the commencement of such works and the works shall only be carried out in accordance with the approved method statement.

Reason:

To ensure railway safety is maintained at all times in accordance with guidance from Network Rail.

31. Prior to the commencement of works above foundation level a scheme of proposed highway lighting within the site shall be submitted to and approved by the Local Planning Authority. Details should include the location and colour of lights. Any proposed lights must not give rise to the potential for confusion with the signalling arrangements on the railway. Thereafter, the development shall be constructed in accordance with the approved scheme of lighting.

Reason:

In the interests of highway safety and railway safety.

32. Prior to the occupation of the dwellings hereby permitted a scheme for the provision of waste and recycling containers shall be submitted and approved in writing by the local planning authority and the agreed scheme thereafter carried out in its entirety. The scheme shall also include provision for bin presentation points to serve those properties accessed by way of a private drive.

Reason:

In accordance with Plan Policy ENV1 and to provide for waste disposal in the interests of the general amenity of the area.

33. Unless otherwise approved in writing by the Local Planning Authority, there shall be no excavation or other groundworks, except for investigative works or the depositing of material on the site, until the following drawings and details have been submitted to and approved in writing by the Local Planning Authority:

(1) Detailed engineering drawings to a scale of not less than 1:500 and based upon an accurate survey showing:

- (a) the proposed highway layout including the highway boundary
- (b) dimensions of any carriageway, cycleway, footway, and verges
- (c) visibility splays
- (d) the proposed buildings and site layout, including levels
- (e) accesses and driveways
- (g) lining and signing

- (h) traffic calming measures
  - (i) all types of surfacing (including tactiles), kerbing and edging.

(2) Longitudinal sections to a scale of not less than 1:500 horizontal and not less than 1:50 vertical along the centre line of each proposed road showing:

- (a) the existing ground level
- (b) the proposed road channel and centre line levels
- (c) full details of surface water drainage proposals.

(3) Full highway construction details including:

- (a) typical highway cross-sections to scale of not less than 1:50 showing a specification for all the types of construction proposed for carriageways, cycleways and footways/footpaths
- (b) when requested cross sections at regular intervals along the proposed roads showing the existing and proposed ground levels
- (c) kerb and edging construction details
- (d) typical drainage construction details.

(4) Details of the method and means of surface water disposal.

(5) Details of all proposed street lighting.

(6) Drawings for the proposed new roads and footways/footpaths giving all relevant dimensions for their setting out including reference dimensions to existing features.

(7) Full working drawings for any structures which affect or form part of the highway network.

(8) A programme for completing the works.

The development shall only be carried out in full compliance with the approved drawings and details unless agreed otherwise in writing by the Local Planning Authority.

Reason:

To secure an appropriate highway constructed to a safe standard in the interests of highway safety and the amenity and convenience of highway users.

34. No dwelling to which this planning permission relates shall be occupied until the carriageway and any footway/footpath from which it gains access is constructed to binber course macadam level and/or block paved and kerbed and connected to the existing highway network with street lighting installed and in operation.

The completion of all road works, including any phasing, shall be in accordance with a programme approved in writing with the Local Planning Authority before the first dwelling of the development is occupied.

Reason:

To ensure safe and appropriate access and egress to the dwellings, in the interests of highway safety and the convenience of prospective residents.

35. There shall be no movement by construction or other vehicles between the highway and the application site (except for the purposes of constructing the

initial site access) until that part of the access extending 30 metres into the site from the carriageway of the existing highway has been made up and surfaced in accordance with the approved details. All works shall accord with the approved details unless otherwise approved in writing by the Local Planning Authority. Any damage during use of the access until the completion of all the permanent works shall be repaired immediately.

Reason:

To ensure a satisfactory means of access to the site from the public highway in the interests of vehicle and pedestrian safety and convenience.

36. No part of the development shall be brought into use until the existing accesses onto Portholme Road and onto the access road to the west of the site has been permanently closed off and the highway and road restored. These works shall be in accordance with details which have been approved in writing by the Local Planning Authority in consultation with the Highway Authority. No new access shall be created without the written approval of the Local Planning Authority in consultation with the Highway Authority. These works shall include, where appropriate, replacing kerbs, footways, cycleways and verges to the proper line and level.

Reason:

In the interests of highway safety.

37. There shall be no access or egress by any vehicles between the highway and the application site (except for the purposes of constructing the initial site access) until splays are provided giving clear visibility in accordance with DMRB, measured along both channel lines of the major road Portholme Road from a point measured 2.4m down the centre line of the access road. The eye height will be 1.05m and the object height shall be 0.6m. Once created, these visibility areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

Reason:

In the interests of road safety.

38. There shall be no access or egress by any vehicles between the highway and the application site (except for the purposes of constructing the initial site access) until visibility splays providing clear visibility of 2 metres x 2 metres measured down each side of the access and the back edge of the footway of the major road have been provided. The eye height will be 1.05 metre and the object height shall be 0.6 metres. Once created, these visibility areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

Reason:

In the interests of road safety to provide drivers of vehicles using the access and other users of the public highway with adequate inter-visibility commensurate with the traffic flows and road conditions.

39. Unless otherwise approved in writing by the Local Planning Authority, there shall be no excavation or other groundworks or the depositing of material on site in connection with the construction of any scheme of off-site highway mitigation or

any structure or apparatus which will lie beneath that scheme must take place, until

(i) The details of the required highway improvement works, listed below, have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority.

(ii) An independent Stage 2 Safety Audit has been carried out in accordance with HD19/03 - Road Safety Audit or any superseding regulations.

(iii) A programme for the completion of the proposed works has been submitted.

The required highway improvements shall include:

- a. Provision of a new junction with Portholme Road
- b. Provision of a controlled pedestrian crossing of Portholme Road

Reason

To ensure that the details are satisfactory in the interests of the safety and convenience of highway users.

40. Unless otherwise approved in writing by the Local Planning Authority in consultation with the Highway Authority, the development shall not be brought into use until the following highway works have been constructed in accordance with the details approved in writing by the Local Planning Authority under condition (36). The required highway improvements shall include:

- a. Provision of a new junction with Portholme Road
- b. Provision of a controlled pedestrian crossing of Portholme Road

Reason

In the interests of the safety and convenience of highway users.

41. No part of the development shall be brought into use until the approved vehicle access, parking, manoeuvring and turning areas approved under condition number (36):

- (i) have been constructed in accordance with the approved submitted drawing
- (ii) are available for use unless otherwise approved in writing by the Local Planning Authority.

Once created these areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

Reason:

To provide for appropriate on-site vehicle facilities in the interests of highway safety and the general amenity of the development.

42. No dwelling shall be occupied until the related parking facilities have been constructed in accordance with the approved drawing. Once created these parking areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

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.

43. No development for any phase of the development shall commence until a Construction Management Plan for that phase has been submitted to and approved in writing by the local planning authority. Construction of the permitted development shall be undertaken in accordance with the approved plan. The Plan shall include, but not be limited, to arrangements for the following in respect of each phase of the works:

- Protection of carriageway and footway users at all times during construction;
- Details of site working hours;
- erection and maintenance of hoardings including security fencing and scaffolding on/over the footway & carriageway and facilities for public viewing where appropriate;
- protection of contractors working adjacent to the highway;
- measures to manage the delivery of materials and plant to the site including routing and timing of deliveries and loading and unloading areas;
- storage of plant and materials used in constructing the development;
- details of wheel washing facilities to ensure that mud and debris is not spread onto the adjacent public highway;
- an undertaking that there shall be no burning of materials on site at any time during construction;
- Removal of materials from site including a scheme for recycling/disposing of waste resulting from demolition and construction works;
- traffic Management Plans for all phases of the works;
- details of external lighting equipment;
- the parking of contractors' site operatives and visitor's vehicles;
- a detailed method statement and programme for the building works,
- details of the responsible person (site manager/office) who can be contacted in the event of a complaint, and;
- a communication plan.

Reason for Condition:

In the interest of public safety and amenity

44. No development above slab level of the dwellings hereby approved shall commence until details of electric vehicle charging points for each dwelling have been submitted to and approved in writing by the Local Planning Authority. Thereafter the approved charging points shall be provided prior to occupation of each dwelling and subsequently retained for that purpose.

Reason:

To encourage the use of low emission vehicles, in turn reducing CO2 emissions and energy consumption levels in accordance with Plan Policy SP15.

## **INFORMATIVES:**

### **INFORMATIVE:**

The Local Planning Authority worked positively and proactively with the applicant to identify various solutions during the application process to ensure that the proposal comprised sustainable development and would improve the economic, social and

environmental conditions of the area and would accord with the development plan. These were incorporated into the scheme and/or have been secured by planning condition. The Local Planning Authority has therefore implemented the requirement in Paragraph 38 of the NPPF.

#### HIGHWAYS:

You are advised that a separate licence will be required from the Highway Authority in order to allow any works in the adopted highway to be carried out. The 'Specification for Housing and Industrial Estate Roads and Private Street Works' published by North Yorkshire County Council, the Highway Authority, is available at the County Council's offices. The local office of the Highway Authority will also be pleased to provide the detailed constructional specification referred to in this condition.

There must be no works in the existing highway until an Agreement under Section 278 of the Highways Act 1980 has been entered into between the Developer and the Highway Authority.

#### ECOLOGY:

Should any Newts and/or protected species be encountered during the removal of any existing hard surface area or the construction of the proposed development advice in terms of mitigation measures should be sought from a qualified Ecologist.

Under Section 1 of the Wildlife and Countryside Act 1981 (as amended), wild birds are protected from being killed, injured or captured, while their nests and eggs are protected from being damaged, destroyed or taken. In addition, certain species such as the Barn Owl are included in Schedule 1 of the Act and are protected against disturbance while nesting and when they have dependent young. Offences against birds listed in Schedule 1 of the Wildlife and Countryside Act are subject to special penalties. An up-to-date list of the species in Schedule 1 is available from Natural England  
<http://www.naturalengland.org.uk/ourwork/regulation/wildlife/species/speciallyprotectedbirds.aspx>.

Further information on wildlife legislation relating to birds can be found at [www.rspb.org.uk/images/WBATL\\_tcm9-132998.pdf](http://www.rspb.org.uk/images/WBATL_tcm9-132998.pdf).

#### CONSENT – GENERAL:

Under the terms of the Land Drainage Act. 1991 and the IDB's Byelaws, the prior written consent of the Board is required for any proposed works or structures in, under, over or within 9 metres of the top of the bank of any watercourse.

#### CONSENT – OUTFALL:

Any new outfall to a watercourse requires the prior written consent of the IDB under the terms of the Land Drainage Act. 1991 and should be constructed to the satisfaction of the IDB.

#### CONSENT – DISCHARGE:

Under the IDB's Byelaws the written consent of the IDB is required prior to any discharge into any watercourse within the IDB's District.

#### DRAINAGE:



As an informative, the proposal includes oversized pipes greater than 900mm in diameter. NYCC does not currently adopt roads with oversized pipes exceeding 900mm in diameter. The applicant should liaise with NYCC Highways at the earliest opportunity should they want the estate roads adopted.

#### COAL:

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848. Further information is also available on the Coal Authority website at: [www.gov.uk/government/organisations/the-coal-authority](http://www.gov.uk/government/organisations/the-coal-authority)

#### NETWORK RAIL- Fail Safe Use of Crane and Plant:

All operations, including the use of cranes or other mechanical plant working adjacent to Network Rail's property, must at all times be carried out in a "fail safe" manner such that in the event of mishandling, collapse or failure, no materials or plant are capable of falling within 3.0m of the nearest rail of the adjacent railway line, or where the railway is electrified, within 3.0m of overhead electrical equipment or supports.

#### NETWORK RAIL - Method Statements/Fail Safe/Possessions:

Method statements may require to be submitted to Network Rail's Asset Protection Project Manager at the below address for approval prior to works commencing on site. This should include an outline of the proposed method of construction, risk assessment in relation to the railway and construction traffic management plan. Where appropriate an asset protection agreement will have to be entered into. Where any works cannot be carried out in a "fail-safe" manner, it will be necessary to restrict those works to periods when the railway is closed to rail traffic i.e. "possession" which must be booked via Network Rail's Asset Protection Project Manager and are subject to a minimum prior notice period for booking of 20 weeks. Generally, if excavations/piling/buildings are to be located within 10m of the railway boundary a method statement should be submitted for NR approval.

#### NETWORK RAIL – Demolition and refurbishment:

Any demolition or refurbishment works must not be carried out on the development site that may endanger the safe operation of the railway, or the stability of the adjoining Network Rail structures. The demolition of buildings or other structures near to the operational railway infrastructure must be carried out in accordance with an agreed method statement. Approval of the method statement must be obtained from Network Rail's Asset Protection Project Manager before the development can commence.

#### NETWORK RAIL – Earth Works and Excavations:

Where development may affect the railway, consultation with the Asset Protection Project Manager should be undertaken. Network Rail will not accept any liability for any settlement, disturbance or damage caused to any development by failure of the railway infrastructure nor for any noise or vibration arising from the normal use and/or maintenance of the operational railway. No right of support is given or can be claimed from Network Rails infrastructure or railway land.

#### NETWORK RAIL- Security of Mutual Boundary:

Security of the railway boundary will need to be maintained at all times. If the works require temporary or permanent alterations to the mutual boundary the applicant must contact Network Rail's Asset Protection Project Manager. Armco Safety

Barriers an Armco or similar barrier should be located in positions where vehicles may be in a position to drive into or roll onto the railway or damage the lineside fencing. Network Rail's existing fencing / wall must not be removed or damaged. Given the considerable number of vehicle movements likely provision should be made at each turning area/roadway/car parking area adjacent to the railway. This is in accord with the new guidance for road/rail vehicle incursion NR/LV/CIV/00012 following on from DfT advice issued in 2003, now updated to include risk of incursion from private land/roadways.

#### NETWORK RAIL- Demolition and refurbishment works:

No development shall take place until details of all demolition, any demolition or refurbishment works must not be carried out on the development site that may endanger the safe operation of the railway, or the stability of the adjoining Network Rail structures. The demolition of buildings or other structures near to the operational railway infrastructure must be carried out in accordance with an agreed method statement. Approval of the method statement must be obtained from Network Rail's Asset Protection Project Manager before the development can commence.

#### NETWORK RAIL – Scaffolding:

Any scaffold which is to be constructed within 10 metres of the railway boundary fence must be erected in such a manner that at no time will any poles over-sail the railway and protective netting around such scaffold must be installed.

#### NETWORK RAIL – Encroachments:

The developer/applicant must ensure that their proposal, both during construction, and after completion of works on site, does not affect the safety, operation or integrity of the operational railway, Network Rail and its infrastructure or undermine or damage or adversely affect any railway land and structures. There must be no physical encroachment of the proposal onto Network Rail land, no over-sailing into Network Rail airspace and no encroachment of foundations onto Network Rail land and soil. There must be no physical encroachment of any foundations onto Network Rail land. Any future maintenance must be conducted solely within the applicant's land ownership. Should the applicant require access to Network Rail land then must seek approval from the Network Rail Asset Protection Team. Any unauthorised access to Network Rail land or airspace is an act of trespass and we would remind the council that this is a criminal offence (s55 British Transport Commission Act 1949). Should the applicant be granted access to Network Rail land then they will be liable for all costs incurred in facilitating the proposal.

#### NETWORK RAIL – Trees and shrubs:

Where trees/shrubs are to be planted adjacent to the railway boundary these shrubs should be positioned at a minimum distance greater than their predicted mature height from the boundary. Certain broad leaf deciduous species should not be planted adjacent to the railway boundary. We would wish to be involved in the approval of any landscaping scheme adjacent to the railway. Where landscaping is proposed as part of an application adjacent to the railway it will be necessary for details of the landscaping to be known and approved to ensure it does not impact upon the railway infrastructure. Any hedge planted adjacent to Network Rail's boundary fencing for screening purposes should be so placed that when fully grown it does not damage the fencing or provide a means of scaling it. No hedge should prevent Network Rail from maintaining its boundary fencing. Lists of trees that are permitted and those that are not permitted are provided below and these should be added to any tree planting conditions:

- a. Acceptable:  
Birch (Betula), Crab Apple (Malus Sylvestris), Field Maple (Acer Campestre), Bird Cherry (Prunus Padus), Wild Pear (Pyrus Communis), Fir Trees – Pines (Pinus), Hawthorne (Cretaegus), Mountain Ash – Whitebeams (Sorbus), False Acacia (Robinia), Willow Shrubs (Shrubby Salix), Thuja Plicatata “Zebrina”
- b. Not Acceptable:  
Acer (Acer pseudoplatanus), Aspen – Poplar (Populus), Small-leaved Lime (Tilia Cordata), Sycamore – Norway Maple (Acer), Horse Chestnut (Aesculus Hippocastanum), Sweet Chestnut (Castanea Sativa), Ash (Fraxinus excelsior), Black poplar (Populus nigra var, betulifolia), Lombardy Poplar (Populus nigra var, italica), Large-leaved lime (Tilia platyphyllos), Common lime (Tilia x europea)

## **8 Legal Issues**

### **8.1 Planning Acts**

This application has been determined in accordance with the relevant planning acts.

### **8.2 Human Rights Act 1998**

It is considered that a decision made in accordance with this recommendation would not result in any breach of convention rights.

### **8.3 Equality Act 2010**

This application has been determined with regard to the Council’s duties and obligations under the Equality Act 2010. However, it is considered that the recommendation made in this report is proportionate taking into account the conflicting matters of the public and private interest so that there is no violation of those rights.

## **9 Financial Issues**

Financial issues are not material to the determination of this application.

## **10 Background Documents**

Planning Application file reference 2019/0941/FULM and associated documents.

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**Appendices:** None

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## Glossary of Planning Terms

### **Community Infrastructure Levy (CIL):**

The Community Infrastructure Levy is a planning charge, introduced by the Planning Act 2008 as a tool for local authorities in England and Wales to help deliver infrastructure to support the development of their area. It came into force on 6 April 2010 through the Community Infrastructure Levy Regulations 2010.

### **Curtilage:**

The curtilage is defined as the area of land attached to a building.

### **Environmental Impact Assessment (EIA):**

Environmental impact assessment is the formal process used to predict the environmental consequences (positive or negative) of a plan, policy, program, or project prior to the decision to move forward with the proposed action. The requirements for, contents of and how a local planning should process an EIA is set out in the Town and Country Planning (Environmental Impact Assessment) Regulations 2011.

### **National Planning Policy Framework (NPPF):**

The National Planning Policy Framework was published on 27 March 2012 and sets out Government planning policies for England and how these are expected to be applied.

### **Permitted Development (PD) Rights**

Permitted development rights allow householders and a wide range of other parties to improve and extend their homes/ businesses and land without the need to seek a specific planning permission where that would be out of proportion with the impact of works carried out. Many garages, conservatories and extensions to dwellings constitute permitted development. This depends on their size and relationship to the boundaries of the property.

### **Previously Developed Land (PDL)**

Previously developed land is that which is or was occupied by a permanent structure (excluding agricultural or forestry buildings), and associated fixed surface infrastructure. The definition covers the curtilage of the development. Previously developed land may occur in both built-up and rural settings.

### **Planning Practice Guidance (PPG)**

The Planning Practice Guidance sets out Government planning guidance on a range of topics. It is available on line and is frequently updated.

### **Recreational Open Space (ROS)**

Open space, which includes all open space of public value, can take many forms, from formal sports pitches to open areas within a development, linear corridors and country parks. It can provide health and recreation benefits to people living and working nearby; have an ecological value and contribute to green infrastructure.

## **Section 106 Agreement**

Planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended), commonly known as s106 agreements, are a mechanism which make a development proposal acceptable in planning terms, that would not otherwise be acceptable. They can be used to secure on-site and off-site affordable housing provision, recreational open space, health, highway improvements and community facilities.

## **Site of Importance for Nature Conservation**

Site of Nature Conservation Interest (SNCI), Site of Importance for Nature Conservation (SINC) and regionally important geological sites (RIGS) are designations used by local authorities in England for sites of substantive local nature conservation and geological value.

## **Site of Special Scientific Interest (SSI)**

Sites of special scientific interest (SSSIs) are protected by law to conserve their wildlife or geology. Natural England can identify and designate land as an SSSI. They are of national importance.

## **Scheduled Ancient Monument (SAM):**

Ancient monuments are structures of special historic interest or significance, and range from earthworks to ruins to buried remains. Many of them are scheduled as nationally important archaeological sites. Applications for Scheduled Monument Consent (SMC) may be required by the Department for Culture, Media and Sport. It is an offence to damage a scheduled monument.

## **Supplementary Planning Document (SPD)**

Supplementary Planning Documents are non-statutory planning documents prepared by the Council in consultation with the local community, for example the Affordable Housing SPD, Developer Contributions SPD.

## **Tree Preservation Order (TPO):**

A Tree Preservation Order is an order made by a local planning authority in England to protect specific trees, groups of trees or woodlands in the interests of amenity. An Order prohibits the cutting down, topping, lopping, uprooting, wilful damage, wilful destruction of trees without the local planning authority's written consent. If consent is given, it can be subject to conditions which have to be followed.

## **Village Design Statements (VDS)**

A VDS is a document that describes the distinctive characteristics of the locality, and provides design guidance to influence future development and improve the physical qualities of the area.