



**Report Reference Number 2020/0264/FUL**

**To: Planning Committee**  
**Date: 23<sup>rd</sup> September 2020**  
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**Lead Officer: Ruth Hardingham (Planning Development Manager)**

APPLICATION NUMBER:	2020/0264/FUL	PARISH:	Selby Town Council
APPLICANT:	Selby Big Local	VALID DATE:	30th March 2020
		EXPIRY DATE:	25th May 2020
PROPOSAL:	Change of use of land into a community garden		
LOCATION:	St Mark's Square New Lane Selby YO8 4QD		
RECOMMENDATION:	APPROVE		

This application has been brought before the Planning Committee Selby District Council is the landowner.

## 1. INTRODUCTION AND BACKGROUND

### Site and Context

- 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.
- 1.2 The application site is also located within, the Selby Town Conservation Area, Archaeological Consultation Zone and Flood Zone 2. Furthermore, the application site is located within close proximity to the Grade II Listed Building to the east of the site, St James's Church. The application site abuts the boundary of the curtilage of St James's Church, which is also allocated as a local amenity space.

### The Proposal

- 1.3 The proposals are for the change of use of land into a community garden, on an existing parcel of land currently left unmaintained for many years. The community garden would create a new publicly available space, which will provide a community asset and a place where the community can come together and creating benefits such as better overall wellbeing by way of socialising, relaxing and working in an outdoor environment.

## Relevant Planning History

1.4 The following historical applications are considered to be relevant to the determination of this application.

- 2019/0626/TPO, Application to fell 1 No Horse Chestnut tree covered by TPO 13/1986 in the conservation area, St James' Church Standerling Hall, New Lane, Selby, YO8 4QB, Decision: PER, Decision Date: 16-JUL-19
- 2019/1270/TCA, Application for consent to fell 5 no Ash trees (1, 2, 3, 4 & 8), 1 no Cherry tree (5), 1 no Holly tree (9), 3 no Willow tree (10, 11 & 12) to crown thin by 15% to 1 no Ash (6) and to crown lift by 3.2m to 1 no Ash (7) within the conservation area, Address: St James Church, St James Terrace, Selby, YO8 4HL, Decision: PER, Decision Date: 31-JAN-20
- 2010/0398/TCO, Works to Ash tree in conservation area on land to rear of, Address: 54 St Marks Square, New Lane, Selby, YO8 4QD, Decision: PER, Decision Date: 12-MAY-10
- 2013/0997/TCO, Crown lift ash tree on land to the rear of, Address: 54 St Marks Square, New Lane, Selby, YO8 4QD, Decision: PER, Decision Date: 25-OCT-13
- 2015/0647/TCO, Proposed removal of self-seeded willow tree within the conservation area on land between Douglas Street and St James Church, Address: Street Record, Douglas Street, Selby, Decision: PER, Decision Date: 24-JUN-15
- CO/1986/0560, Outline application for the erection of a private dwelling house and garage on 0.064 ha of land at garden south of church at, The Vicarage, St James Terrace, Selby, Decision: PER, Decision Date: 12-MAR-86

## 2. CONSULTATION AND PUBLICITY

2.1. **Selby Civic Society** – The Selby Civic Society supports the proposed development. The Selby Civic Society has commented that the proposals will, improve the provisions for wildlife and biodiversity within the town, utilising land which is currently neglected and overgrown. The Selby Civic Society supports the creation of new publicly accessible green space for the wellbeing of residents and visitors. It will also greatly benefit the local schoolchildren, where outdoor education and access to nature will foster a stronger connection to the local environment.

2.2. **Town Council** – Selby Town Council have raised no objections to the proposed development.

2.3. **Selby Area Internal Drainage Board** – The IDB have raised no objections subject to a number of standard conditions as follows: (1) Soakaways, (2) Mains sewer system, (3) ordinary watercourse, (4) obstructions within 7 meters of a water course and (5) works adjacent to a Main River.

2.4. **Land Use Planning Yorkshire Water Services Ltd** – No response received.

- 2.5. **Environmental Health** – The Environmental Health Officer has raised no objections to the proposed development.
- 2.6. **Conservation Officer** – The Conservation Officer has raised no objections to the proposals in principle given the public benefits associated with the proposed development. However, the Conservation Officer has raised concerns for the proposed close boarded fencing boundary treatments to the north, east and southern boundaries of the site and suggested that alternative methods of fencing should be sought.
- 2.7. **NYCC Ecology** – NYCC Ecology have raised no objections have been raised by subject to a condition regarding works to be undertaken outside of the bird breeding season, March to August. Further comments have been provided stating that should the community garden be surrounded by close boarded timber fencing on three sides and a wall on the other, then the fencing should be designed to allow access for hedgehogs and other small wildlife.
- 2.8. **Neighbour Summary** – The application has been advertised by site notice and neighbour notification letter resulting in no letters of representation being received.

### **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 in the Core Strategy.
- 3.2. The application site is located within the Selby Town Conservation Area and within the setting of a number of listed buildings including, St James Church, (Grade II Listed) and 46- 72 New Lane (Grade II Listed).

### **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**

4.6. The relevant Core Strategy Policies are:

- SP1 – Presumption in Favour of Sustainable Development
- SP2 – Spatial Development Strategy
- SP14 – Town Centres and Local Services
- SP15 – Sustainable Development and Climate Change
- SP18 – Protecting and Enhancing the Environment
- SP19 – Design Quality

### **Selby District Local Plan**

4.7. The relevant Selby District Local Plan Policies are:

- ENV1 – Control of Development
- ENV 22 – Protection of Listed Buildings
- ENV25 – Control of Development in Conservation Areas
- ENV28 – Other Archaeological Remains
- T1 – Development in Relation to the Highway Network
- SEL/13 – Townscape

## **5. APPRAISAL**

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

- The Principle of the Development
- Impact on the Character and Appearance of the Area and surrounding Heritage Assets
- Impact on Residential Amenity
- Archaeology
- Flood Risk and Drainage
- Impact on Highway Safety
- Nature Conservation and Protected Species

### **The Principle of the Development**

5.2. Policy SP1 of the Core Strategy 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", to secure development that improves the economic, social and environmental conditions in the area, and sets out how this will be undertaken.

- 5.3. Policy SP2A(c) of the Core Strategy states that "The majority of new development will be directed to the towns and more sustainable villages depending on their future role as employment, retail and service centres, the level of local housing need, and particular environmental, flood risk and infrastructure constraints" and that "Selby as the Principal Town will be the focus for new housing, employment, retail, commercial, and leisure facilities".
- 5.4. Policy SP14 of the Core Strategy states that the health and wellbeing of town centres, and local shopping facilities and services will be maintained and enhanced by, in Selby Town Centre, "focusing town centre uses on Selby including retail, commercial, leisure, entertainment, food and drink, offices, hotels, indoor sports, recreation, and arts and cultural uses" and by "promoting the continued renaissance of the town centre through environmental improvements, floor space increases, and by diversifying the range of activities present".
- 5.5. The proposals seek to provide a community garden on an existing parcel of land currently left unmaintained for many years. The community garden would create a new publicly available space, which will provide a community asset and a place where the community can come together and creating benefits, such as better overall well-being by way of socialising, relaxing and working in an outdoor environment.
- 5.6. Furthermore, the development would contribute to helping to improve biodiversity given its nature and would therefore contribute to protecting and enhancing the natural environment. Paragraph 175 (d) states that development whose primary objective is to conserve or enhance biodiversity should be supported.
- 5.7. In this context, it is therefore considered that the proposed development would provide enhancement to the wider community and sustainability benefits, which are material planning considerations and would comply with Policies SP1 and SP2 of the Core Strategy and the NPPF.

### **Impact on the Character and Appearance of the Area and surrounding Heritage Assets**

- 5.8. The application site is located within the Selby Town Conservation Area and application site is within close proximity to the Grade II Listed Building St James Church.
- 5.9. The Planning, Listed Buildings and Conservation Act 1990 includes a general duty as respects listed buildings in the exercise of planning functions. In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
- 5.10. Planning (Listed Building and Conservation Areas) Act 1990, Section 66 (1) when considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

- 5.11. Section 72 (1) of the Act states that with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
- 5.12. Relevant policies within the NPPF, which relate to development within a Conservation Area and listed buildings, include paragraphs 189, 190, 191, 192, 193 and 194. Relevant policies within the NPPF, which relate to general design principles, include paragraphs 53, 124, 127, 128, 130 and 131.
- 5.13. The proposals seek to change the use of existing scrub land to create a community garden. The proposals include the erection of a pergola, paving, access to the garden and other works such as flower beds and planting.
- 5.14. Given the nature and scale of the alterations, it is considered that the proposals would preserve the character and appearance of the Conservation Area and would not have any adverse impact on the setting of the surrounding listed buildings. From a site visit, officers consider that the proposed development would improve the setting of the Grade II Listed Building St James Church. Therefore, these improvements along with the likely increased footfall will have a positive impact on the vitality of the area and help protect and maintain the surrounding heritage assets.
- 5.15. The Conservation Officer has raised no objections to the proposals in principle given the public benefits associated with the proposed development. However, concerns were raised for the proposed close boarded fencing boundary treatments to the north, east and southern boundaries of the site and suggested that alternative methods of fencing should be sought. Officers consider that this could be reasonably controlled by condition, which require details of the boundary treatments to be submitted prior to the development being brought into use.
- 5.16. The proposals are therefore in compliance with Policies SP18 and SP19 of the Core Strategy, Policies ENV1 and ENV25 of the Selby District Local Plan and the policies contained within Section 16 of the NPPF.

### **Impact on Residential Amenity**

- 5.17. Relevant policies in respect of the impact of the proposal on residential amenity include Policy ENV1 (1) of the Selby District Local Plan. This is consistent with the aims of the NPPF to ensure that a good standard of amenity is achieved for all existing and future occupants of land and buildings.
- 5.18. The key considerations in respect of residential amenity are the potential of the proposal to result in overlooking of neighbouring properties, overshadowing of neighbouring properties and whether oppression would occur from the size, scale and massing of the development proposed.
- 5.19. The surrounding area consists of mainly residential development and St James Church directly to the east. Due to the combination of the orientation of the site and siting of the proposed scheme and distance away from the neighboring properties, the proposal is considered not to cause any significant adverse effects on the amenities of the adjacent residents. In addition, having consulted with Environmental Health, no objections have been raised in respect of noise, odour or waste.

5.20. The proposal is therefore in accordance with Policies ENV1 (1) and SEL/13 of the Selby District Local Plan.

### **Archaeology**

5.21. The application site is located within the historic medieval settlement of Selby. Given this application is for a change of use with little actual operational development, the overall nature of the development it is unlikely to have any impacts on archaeological remains as no further excavation of below ground building is necessary. This therefore complies with Policy ENV28 of the Selby District Local Plan.

### **Flood Risk and Drainage**

5.22. The application site is located within Flood Zone 2, which has a medium probability of flooding. As the proposals constitute water compatible development, a sequential and exception test is therefore not required in this instance.

5.23. In terms of drainage, the proposals would have no new impacts on the foul and surface water arrangements. Whilst it is noted that the IDB and Yorkshire Water have been consulted. Officers consider that given there are no changes to these arrangements the proposals are acceptable in these respects.

5.24. It is considered that the proposed scheme is considered to be acceptable in terms of flood risk, drainage and climate change and therefore accords with Policies SP15, SP16, SP19 of the Core Strategy, and paragraphs 158, 159 and 160 of the NPPF.

### **Impact on Highway Safety**

5.25. Policy in respect of highway safety is provided by Policies ENV1 (2) and T1 of the Selby District Local Plan, Policy SP19 of the Core Strategy and paragraphs 34, 35 and 39 of the NPPF. The policies of the Local Plan referred to above should be afforded significant weight as they do not conflict with the NPPF.

5.26. It is noted that the proposed scheme would not alter any existing highway arrangements. Comments have been sought from NYCC Highways which state that, there are no objections to the proposed development. Therefore, the proposals are acceptable in terms of highway safety in accordance with Policies ENV1 (2) and T1 of the Local Plan and the policies contained within the NPPF.

### **Nature Conservation and Protected Species**

5.27. Policy in respect to impacts on nature conservation interests and protected species is provided by Policy ENV1 (5) of the Local Plan, Policy SP18 of the Core Strategy and paragraphs 170 to 177 of the NPPF. The presence of a protected species is a material planning consideration as is tree loss and landscaping.

5.28. The site is not a protected site for nature conservation, but currently contains scrubland and protected trees. Having sought comments from NYCC Ecology no objections have been raised, subject to a condition regarding works to be undertaken outside of the bird breeding season, March to August. Further comments have been provided stating that should the community garden be surrounded by close boarded timber fencing on three sides and a wall on the other then the fencing should be designed to allow access for hedgehogs and other small wildlife.

5.29. It is also noted that a tree survey has been provided. However, any works to trees within the Conservation Area would need to gain separate consent via notification of proposed works to trees in a conservation area.

5.30. The above measures are considered to satisfy the nature conservation interests and therefore accord with the requirements of the Habitats Regulations 2010, and ENV1(5) of the Selby District Local Plan, Policy SP18 of the Core Strategy and the NPPF.

## **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 proposed development will be an enhancement to the town, providing a pocket social space that can be enjoyed by the community. The proposed development would not have a detrimental effect on heritage assets, the character and appearance of the area, the residential amenity of the occupants of neighbouring properties, archaeology, flood risk and drainage or highway safety or nature conservation and protected species.

6.2. The application is therefore considered to be in compliance with Policies ENV1, ENV25, ENV28, and T1 of the Selby District Local Plan, Policies SP1, SP2, SP14, SP15, SP18 and SP19 of the Core Strategy, S66 of the Planning (Listed Buildings and Conservation Areas Act) 1990 and the policies contained within the NPPF.

## **7. RECOMMENDATION**

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

1. The development for which permission is hereby granted shall be begun within a period of three 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.

2. The development hereby permitted shall be carried out in accordance with the plans/drawings listed below:

- Community garden boundary in red (Location Plan) – received 6<sup>th</sup> August 2020
- 01-C, St James Allotment Garden (Layout Plan) – received 6<sup>th</sup> August 2020
- 02 03.20, Pergola Detail
- MBHQ 101001, Minibeast HQ

Reason:

For the avoidance of doubt

3. Prior to the development hereby approved being brought into use details of the boundary treatments shall have been submitted to and approved by the Local Planning Authority.

Reason:

In order to protect the character and appearance of the area and surrounding heritage assets.

## **INFORMATIVE(S):**

### 01. TREES:

Given the site is located within the Selby Town Conservation Area any works to trees on site would be required to gain separate permissions for works to trees within the conservation area.

## **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 2020/0264/FUL and associated documents.

**Contact Officer: Rebecca Leggott (Senior Planning Officer)**

## **Appendices:**

- Appendix 1 – 2020/0264/FUL, Site Photo's