



Report Reference Number: 2020/0828/S73

To: Planning Committee
Date: 28 October 2020
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Lead Officer: Ruth Hardingham (Planning Development Manager)

APPLICATION NUMBER:	2020/0828/S73	PARISH:	South Milford Parish Council
APPLICANT:	Mr Ian Lindsay	VALID DATE: EXPIRY DATE:	5th August 2020 30th September 2020
PROPOSAL:	Section 73 application to vary condition 04 (approved plans) of planning permission 2010/0507/FUL for construction of a five-bedroom, three storey detached house		
LOCATION:	Quarry Drop Westfield Lane South Milford Leeds West Yorkshire LS25 5AP		
RECOMMENDATION:	GRANT		

This application has been brought back before Planning Committee following consideration at the 23 September 2020 Planning Committee where Members resolved the following:

“To DEFER consideration of the application in order for Officers to gather further visual information, and that this information be presented to the Committee again at a subsequent meeting.”

Since the 23 September 2020 Planning Committee, the applicant has submitted the following further visual information for consideration by Members:

- Street scene looking north from Westfield Lane (scale 1:250)
- Scaffold comparison drawing to previously granted and proposed dwelling (scale 1:100).

- Comparison drawings of 2020 planning permission (reference: 2020/0016/S73) to current proposed dwelling (scale 1:100) including ground floor plan, first floor plan, second floor plan, north elevation, south elevation, west elevation, east elevation.
- Floor plan and elevation drawings for 2010 planning permission (reference 2010/0507/FUL) (scale 1:100)
- Photomontage 1 – Westfield Lane looking east, showing the proposed dwelling
- Photomontage 2 – Westfield Lane looking west, showing the proposed dwelling
- Photomontage 3 – View from High Street, showing the proposed dwelling
- Photomontage 4 – View outside 57 High Street, proposed dwelling not visible

Furthermore, Members have had the opportunity to visit the site on an individual basis.

1. INTRODUCTION AND BACKGROUND

Site and Context

- 1.1 The application site is located within the defined development limits of South Milford, which is a Designated Service Village as identified in the Core Strategy.
- 1.2 The application site comprises part of a former magnesium limestone quarry. The quarry face is to the south side of the application site adjacent to Westfield Lane, and as such there is an approximate 6.4 metre difference in the ground level between the application site and Westfield Lane.
- 1.3 The application site fronts Westfield Lane to the south and is bound by residential development to the north, south, east and west.

The Proposal

- 1.4 The application has been made under Section 73 of the Town and Country Planning Act 1990 and the proposal seeks to vary Condition 4 (Drawings) of planning permission reference 2010/0507/FUL for the construction of a five bedroom, three storey detached house at Quarry Drop, Westfield Lane, South Milford. The changes proposed under this Section 73 application are: (1) the creation of a raised amenity area between the south elevation and Westfield Lane; (2) the alteration to the footprint of the dwelling at ground, first floor and second floor; (3) alterations to fenestration in all elevations of the building and the eastern and western roof slopes; (4) the addition of more photovoltaics to the roof slopes of the dwelling; (5) the increase in the maximum height of the dwelling by approximately 3.8 metres; (6) the increase in the eaves height of the dwelling by 0.4 metres to the west and 0.8 metres to the east; and (7) the inclusion of materials to be used in the external construction of the dwelling shown on the submitted plans.
- 1.5 It should be noted that a number of these amendments have already been accepted under a previous Section 73 application earlier this year, reference 2020/0016/S73. The main differences between the amendments shown under the current Section 73 application and the previously approved Section 73 application, and therefore the main areas for consideration under this application are: (1) the increase in the

maximum height of the dwelling by a further 3 metres (previously an increase in the maximum height of the dwelling by 0.8 metres was approved); (2) the increase in the eaves height of the dwelling by 0.4 metres to the west and 0.8 metres to the east; and (3) alterations to fenestration and addition of more photovoltaics in the western roof slope, as a result of the changes to the eave and ridge height. These amendments are to facilitate a mezzanine floor.

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: 2010/0507/FUL) for the construction of a five bedroom, three storey detached house was permitted on 02.08.2010.
- 1.8 A part retrospective application (reference: 2016/0850/FUL) for the erection of a detached three storey dwelling and the erection of temporary building for residential use during the construction period was permitted on 15.09.2016.
- 1.9 An application (reference: 2016/1190/FUL) to remove condition 9 (hours of work) of planning permission 2016/0850/FUL Part retrospective application for the erection of a detached three storey dwelling and the erection of temporary building for residential use during the construction period was refused on 02.12.2016. A subsequent appeal (reference: APP/N2739/W/17/3168058) was dismissed on 04.07.2017.
- 1.10 An application (reference: 2017/0757/PPP) for a certificate of lawful development for the proposed continuation of a development to build a 3 storey 5 bedroom house in accordance with 2010/0507/FUL was refused on 09.10.2017. A subsequent appeal (reference: APP/N2739/X/17/3186468) was allowed on 06.07.2018.
- 1.11 A Section 73 application (reference: 2018/0800/FUL) to vary condition 04 (drawings) of planning permission reference 2010/0507/FUL for the construction of a five bedroom, three storey detached house was appealed for non-determination. The appeal (reference: APP/N2739/W/18/3212548) was allowed on 02.05.2019.
- 1.12 A Section 73 application (reference: 2020/0016/FUL) to vary condition 04 (drawings) of planning permission reference 2010/0507/FUL for the construction of a five bedroom, three storey detached house was permitted on 07.05.2020.

2. CONSULTATION AND PUBLICITY

- 2.1 **Parish Council** – The Parish Council consider the plans presented by the applicant are unclear as to what has changed with this variation. The plans have been reviewed carefully and it is estimated that there is an approximate increase in height of 4m. It is unclear how this compares to neighbouring properties and impact on neighbouring properties so we cannot formulate recommendations to SDC.
- 2.2 **NYCC Highways** – No objections, subject to a condition requiring the provision of the approved access, turning and parking areas.
- 2.3 **Environmental Health** – No objections.
- 2.4 **Contaminated Land Consultants** – No objections.

- 2.5 **Yorkshire Water Services Ltd** – No response within statutory consultation period.
- 2.6 **Selby Area Internal Drainage Board** – No response within statutory consultation period.
- 2.7 **Ward Councillor** – No response within statutory consultation period.
- 2.8 **Neighbour Summary** – All immediate neighbours were informed by neighbour notification letter and two site notices were erected (one on Westfield Lane and one on High Street). Twenty-six letters of representation have been received as a result of this advertisement of the application.

Ten of these object to the application (all from residents of South Milford) with concerns raised in respect of:

- (1) the length of time the build has been ongoing and will continue to be ongoing;
- (2) non-compliance with a working hours conditions attached to previous planning permissions at the site and queries/requests regarding whether a working hours condition would be attached to the current application should it be approved;
- (3) queries/requests regarding whether a completion date condition would be attached to the current application;
- (4) queries regarding whether the proposed development falls to be considered under a Section 73 application and whether instead a full application should have been submitted for consideration;
- (5) the submission of a further application for amendments, which follows a number of other applications for amendments;
- (6) the reasoning for the proposed amendment, as the site is located within Flood Zone 1 and has not flooded before;
- (7) limited information provided on the submitted plans to be able to understand the proposals and determine the application;
- (8) the height, size and design of the proposed development, which would be out of keeping with neighbouring properties and would have an adverse impact on the character and appearance of the area;
- (9) the existing wall and fence to the Westfield Lane boundary which causes a highway safety issue;
- (10) loss of amenity to neighbouring residential properties, due to noise, disturbance, overlooking, loss of privacy, overshadowing and loss of sunlight;
- (11) vehicles blocking the highway and vehicle being parked on High Street causing highway safety issues;
- (12) the practicality of using the driveway, which is very steep;
- (13) whether the development meets building regulations; and

(14) the loss of house value of neighbouring properties as a result of the development.

Sixteen of these support the application (fourteen from residents of South Milford, one from a resident of Sherburn in Elmet and one from people of unknown addresses) and make the following points:

- (1) the application have no adverse impact on the residential amenities of the neighbouring properties beyond the original permission;
- (2) the resultant dwelling would have an acceptable design and appearance, in keeping with the local area, which would result in no adverse impact on the character and appearance of the area beyond the original permission;
- (3) the rationale for the amendments (flood risk) is sound; and
- (4) the family are working hard to build the dwelling under difficult circumstances.

3 SITE CONSTRAINTS

Constraints

- 3.1 The application site is located within the defined development limits of South Milford, which is a Designated Service Village as identified in the Core Strategy.
- 3.2 The application site is located within Flood Zone 1, which has a low probability of flooding.

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 took 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
- SP4 – Management of Residential Development in Settlements
- SP5 – The Scale and Distribution of Housing
- 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

4.7 The relevant Selby District Local Plan Policies are:

- ENV1 – Control of Development
- ENV2 – Environmental Pollution and Contaminated Land
- T1 – Development in Relation to the Highway Network

5 APPRAISAL

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

- The Principle of the Development
- Design and Impact on the Character and Appearance of the Area
- Impact on Residential Amenity
- Impact on Highway Safety
- Other Issues

The Principle of the Development

5.2 The Town and Country Planning Act 1990 Section 73 allows for applications to be made to undertake development without complying with conditions attached to such an approval. Paragraph (2) of Section 73 states: *"On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and —*

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application."

- 5.3 As such the only consideration of this application is in relation to the conditions of the approval and the impact the proposed variation would have. Therefore key to the determination of this application is whether a new planning consent for the development with the proposed variation to Condition 4 (Drawings) of planning permission 2010/0507/FUL would be contrary to the provisions within the development plan or whether there are reasonable grounds for refusal if these conditions were not retained in their present form.
- 5.4 The previous planning permission for the construction of a five bedroom, three storey detached house at Quarry Drop, Westfield Lane, South Milford was considered acceptable under planning approval reference 2010/0507/FUL, subject to conditions and according with relevant policies in place at that time.
- 5.5 A recent appeal decision dated 6 July 2018 (appeal reference: APP/N2739/X/17/3186468) has confirmed that planning permission reference 2010/0507/FUL remains extant and the works permitted by it can be lawfully continued. The Inspector therefore issued a certificate of lawfulness in respect of the construction of a three storey, five bedroomed detached dwelling in accordance with drawings listed under Condition 4 of 2010/0507/FUL. As the permission remains extant, an application can be lawfully made under Section 73 of the Town and Country Planning Act 1990, to vary Condition 4 (Drawings).
- 5.6 Since the approval of planning permission reference 2010/0507/FUL the Selby District Core Strategy Local Plan was formally adopted by the Council at the Extraordinary meeting of the Full Council on 22 October 2013. The policies within the Selby District Core Strategy Local Plan (2013) replace a number of Selby District Local Plan (2005) policies. In addition, the revised National Planning Policy Framework (NPPF) was published in July 2018, and subsequently revised again such that the most up-to-date version was published in February 2019. Although the policy context has changed since the decision for planning approval reference 2010/0507/FUL was made, with the adoption of the Selby District Core Strategy Local Plan (2013) and the publication of the NPPF (2019), the policy position remains the same. Had the proposal been assessed against the adopted Selby District Core Strategy Local Plan (2013) and NPPF (2019), the proposal would still have been considered acceptable in principle.
- 5.7 The proposed variation of Condition 4 (Drawings) of planning permission 2010/0507/FUL incorporates the following amendments: (1) the creation of a raised amenity area between the south elevation and Westfield Lane; (2) the alteration to the footprint of the dwelling at ground, first floor and second floor; (3) alterations to fenestration in all elevations of the building and the eastern and western roof slopes; (4) the addition of more photovoltaics to the roof slopes of the dwelling; (5) the increase in the maximum height of the dwelling by approximately 3.8 metres; (6) the increase in the eaves height of the dwelling by 0.4 metres to the west and 0.8

metres to the east; and (7) the inclusion of materials to be used in the external construction of the dwelling shown on the submitted plans.

- 5.8 The impacts arising from these amendments are considered in the following sections of this report. It should be noted, however, that a number of these amendments have already been accepted under a previous Section 73 application earlier this year, reference 2020/0016/S73. The main differences between the amendments shown under the current Section 73 application and the previously approved Section 73 application, and are therefore the main areas for consideration under this application are: (1) the increase in the maximum height of the dwelling by a further 3 metres (previously an increase in the maximum height of the dwelling by 0.8 metres was approved); (2) the increase in the eaves height of the dwelling by 0.4 metres to the west and 0.8 metres to the east; and (3) alterations to fenestration and addition of more photovoltaics in the western roof slope, as a result of the changes to the eave and ridge height. These amendments are to facilitate a mezzanine floor.

Design and Impact on the Character and Appearance of the Area

- 5.9 The original planning permission (reference: 2010/0507/FUL) assessed the proposals in respect of their design and impact on the character and appearance of the area and established that the proposals were acceptable with respect to the layout, scale, appearance and landscaping, subject to a condition relating to the approval of materials.
- 5.10 The proposed amendments would alter the footprint of the dwelling at ground, first floor and second floor level so the north west corner and south west corner would be rounded rather than square. In addition, the curved element projecting out from the northern elevation has been removed at ground, first floor and second floor level and the south east corner of the dwelling has been amended to give a slightly different shape. These amendments have previously been accepted as resulting in an acceptable design for the dwelling, which would not have any adverse impact on the character and appearance of the area, under planning permission reference 2020/016/S73, and this remains the case. Furthermore, the associated alterations to fenestration in all elevations of the building and the eastern and western roof slopes are not considered to have any significant adverse impact on the character and appearance of the area beyond the original permission.
- 5.11 The increase in the maximum height of the dwelling by approximately 3.8 meters and the the increase in the eaves height of the dwelling by 0.4 metres to the west and 0.8 metres to the east are to facilitate a mezzanine floor. There are properties of various styles and designs within the locality and it is considered that the increase in the maximum height of the ridge and the increase in the height of the eaves would result in an acceptable design for the dwelling, which would not have any adverse impact on the character and appearance of the area.
- 5.12 The submitted plans demonstrate the materials to be used in the external construction of the proposed dwelling would be white (limestone) render for the walls with dark grey metal windows and steel fall pipes; and blue/grey slates for the roof with metal verges, fascia and gutters. These materials have previously been accepted as resulting in an acceptable design for the dwelling, which would not have any adverse impact on the character and appearance of the area, under planning permission reference 2020/016/S73, and this remains the case. A condition was attached to the original planning permission requiring details of the

external materials to be submitted to and approved in writing by the Local Planning Authority. This condition would no longer be required, as the amended approved plans condition would secure the materials to be used in the external construction of the dwelling. Additional photovoltaics are shown on the roof slopes of the dwelling, which are considered to be acceptable in respect of the character and appearance of the area.

- 5.13 The creation of a raised amenity area between the south elevation of the dwelling and Westfield Lane would not be a prominent feature within the locality and would be facilitated by the construction of a 1.8 metre high wall with fence atop to the western side, adjacent to the quarry drop. This amendment has previously been accepted as being acceptable having regard to its design and impact on the character and appearance of the area, under planning permission reference 2020/016/S73, and this remains the case.
- 5.14 The proposed amendments taken as a whole, given their nature and design, are not considered to have any significant adverse impact on the character and appearance of the area beyond the original permission and are therefore considered to be acceptable in accordance with Policy ENV1 (1) and (4) of the Selby District Local Plan, Policy SP19 of the Core Strategy Policy SP19 and national policy contained within the NPPF.

Impact on Residential Amenity

- 5.15 The original planning permission (reference: 2010/0507/FUL) assessed the proposals in respect of their impact on the residential amenity of neighboring properties in terms of whether they would result in any adverse impacts in terms of overlooking, overshadowing or oppression and established that the proposals were acceptable with respect to the layout, scale and appearance (including fenestration details).
- 5.16 The alterations to fenestration in all elevations of the building and the eastern and western roof slope, given their position, orientation and separation distance to neighboring residential properties would not result in any significant adverse effects of overlooking or loss of privacy beyond the original permission. The increase in the maximum height of the dwelling and the increase in the height of the eaves, given the nature of the changes and the position, orientation and separation distance of the proposed dwelling to neighboring properties, is not considered to result in any significant adverse effects of overshadowing, loss of sunlight or oppression so as to adversely affect the amenities of the neighboring properties beyond the original permission. Furthermore, the proposed raised amenity area, given its siting and separation distance from neighboring residential properties would not result in any significant adverse effects of overlooking beyond the original permission, as accepted under planning permission reference 2020/0016/S73.
- 5.17 The remainder of the proposed amendments, given their nature and design, are not considered to have any significant adverse impact on the residential amenity of neighbouring properties beyond the original permission. Overall, the proposed amendments are therefore considered to be acceptable in accordance with Policy ENV1 (1) of the Selby District Local Plan and national policy contained within the NPPF.
- 5.18 A number of letters of representation have been received which raise concerns regarding the length of time that the development has been ongoing and noise and

disturbance resulting from construction works impacting on the residential amenity of neighbouring properties. Policy ENV1 (1) and ENV2A of the Selby District Local Plan seek to ensure a good amenity for residential occupiers, which is consistent with national policy contained within the NPPF and the PPG in relation to noise and disturbance.

- 5.19 There are a history of permissions at the site, which have been summarised in the “Planning History” section of this report. Planning permission 2010/0507/FUL did not include any conditions restricting the hours and days that construction works could take place. However, under a subsequent planning permission, reference 2016/0850/FUL, the Local Planning Authority attached a condition restricting construction hours in the interest of the amenities of the adjacent properties and having had regard to Policy ENV1 of the Selby District Local Plan. The applicants sought to remove this condition under application reference 2016/1190/FUL, which was refused by the Local Planning Authority on 02 December 2016 and subsequently dismissed at appeal (reference: APP/N2739/W/17/3168058) on 04 July 2017. The Inspector considered the removal of the condition restricting the hours and days that construction works could take place would harm the living conditions of nearby residents in relation to noise and disturbance in conflict with Policy ENV1 of the Selby District Local Plan. Under the non-determination appeal relating to planning permission reference 2018/0800/FUL to vary condition 04 (drawings) of planning permission reference 2010/0507/FUL, an Inspector concluded that it was reasonable and necessary to attach a condition restricting working hours in the interests of the amenities of the adjacent properties and having had regard to Policy ENV1 of the Selby District Local Plan.
- 5.20 In determining a Section 73 application, the Local Planning Authority can impose additional conditions beyond those proposed in the application, provided that:
- (a) The conditions imposed are ones which could have been imposed on the original grant of permission; and
 - (b) The conditions do not permit amendments which would amount to a “fundamental alteration” of the development proposed by the original application.
- 5.21 The construction of the five bedroom, three storey detached house at Quarry Drop, Westfield Lane, South Milford has been ongoing for 9-10years. Representations from adjacent properties submitted with application references 2018/0850/FUL, 2016/1190/FUL, 2017/0757/CP, 2018/0800/FUL, 2020/0016/S73 and the current application, along with planning enforcement complaints have highlighted potential harm to the occupiers of neighbouring dwellings through noise and disturbance resulting from construction works, although it should be noted that no formal enforcement action has ever been taken as a result of planning enforcement complaints to date. The application site is tightly bound by residential properties, with those fronting High Street located a minimum of 10 metres away from the site boundary; No. 24 Westfield Lane to the east, located a minimum of 7 metres from the site boundary at a higher elevation; and Westmere to the west, located 18 metres from the site boundary and at a higher level. Given the location of the site, surrounded by residential properties to all sides, the evidence of the length of time the development has been ongoing, the representations from neighbouring properties regarding the potential harm to living conditions through noise and disturbance resulting from construction works, and two Planning Inspectorate decisions which set out that the residential amenity of the neighbouring properties must be protected during construction works by way of a condition restricting

construction hours, it is considered reasonable and necessary to attach a condition restricting construction hours to any approval of planning permission under the current Section 73 application.

- 5.22 A condition restricting construction hours would be necessary, would be relevant to planning and relevant to the development permitted in relation to the site context, evidence of complaints about working hours and there is a clear planning purpose to protect amenity in relation to local planning policy. A condition relating to working hours would be enforceable because it would be possible to detect a contravention and remedy any such breach by not working outside the specified hours. Furthermore, the Inspector on appeal reference APP/N2739/W/17/3168058 considered the working hours condition, subject of that appeal, was sufficiently precise so as to have sensible meaning when read as a whole and was not uncertain. A similarly worded condition could be attached to the current application, thus the same would apply in terms of enforceability and preciseness.
- 5.23 Indeed, under appeal reference APP/N2739/W/18/3212548 relating to a similar Section 73 application to amend the approved plans condition of planning permission reference 2010/0507/FUL in 2018, an Inspector concluded that it was reasonable and necessary to attach a condition restricting working hours in the interests of the amenities of the adjacent properties and having had regard to Policy ENV1 of the Selby District Local Plan. Furthermore, such a condition was attached to planning permission reference 2020/0016/S73 earlier this year.
- 5.24 Having regard to the above factors, the Local Planning Authority consider it prudent to attach a condition restricting construction hours to any approval of planning permission in the interests of the amenities of the adjacent properties and having had regard to Policy ENV1 of the Selby District Local Plan. The condition is one which could have been imposed on the original grant of permission; and the condition does not permit amendments which would amount to a “fundamental alteration” of the development proposed by the original application.

Impact on Highway Safety

- 5.25 The original planning permission (reference: 2010/0507/FUL) assessed the proposals in respect of their impact on highway safety and established that the proposals were acceptable with respect to the access and layout, subject to a condition requiring the accesses to the site to be laid out and constructed in accordance with certain requirements detailed within the condition.
- 5.26 The proposed amendments do not alter the access, parking and turning areas within the application site. North Yorkshire County Council Highways have been consulted on the application and have advised that there are no local highway authority objections to the proposals, subject to a condition requiring the provision of the approved access, turning and parking areas. Such a condition has not been attached to any previous planning permissions at the site as it was not considered necessary. Officers consider that situation remains unchanged. The submitted plans, which would be conditioned as part of any planning permission granted, show the provision of an integral garage and sufficient space within the curtilage for the parking of vehicles.
- 5.27 As the access has now been laid out and constructed, it is not necessary to attach a condition to any approval of planning permission relating to the construction of the access, as with the 2010 permission.

- 5.28 Having regard to the above, it is considered that the proposals are acceptable in respect of highway safety in accordance with Policy ENV1 (2) of the Selby District Local Plan, Policy T1 of the Core Strategy and national policy contained within the NPPF.

Other Issues

- 5.29 Concerns have been raised as to whether the proposed development falls to be considered under a Section 73 application and whether instead a full application should have been submitted for consideration. An application can be made under section 73 of the Town and Country Planning Act 1990 to vary or remove conditions associated with a planning permission. One of the uses of a section 73 application is to seek a minor material amendment, where there is a relevant condition that can be varied. In this case the applicant is seeking to amend the approved plans condition of the 2010 permission (which the Planning Inspectorate have deemed is lawful). The Planning Practice Guidance sets out that planning permission cannot be granted under section 73 to extend the time limit within which a development must be started or an application for approval of reserved matters must be made. Further, section 73 cannot be used to change the description of the development. Aside from that, there is no statutory definition of a 'minor material amendment' and it is a matter of planning judgement whether the amendment falls to be considered under section 73 or not. In this case, it is considered that the proposed amendment can be considered under a section 73 application given the scale and nature of the development by comparison to the original application.
- 5.30 Concerns have been raised regarding the length of time the build has been ongoing and whether a completion date condition could be attached to any planning permission granted. Paragraph 55 of the NPPF makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests: (1) necessary; (2) relevant to planning; (3) relevant to the development to be permitted; (4) enforceable; (5) precise; and (6) reasonable in all other respects. These are referred to as 'the 6 tests', and each of them need to be satisfied for each condition which an authority intends to apply. A condition requiring a development to be carried out in its entirety within a specified timeframe would not meet all of 'the 6 tests', as it would not be reasonable or enforceable. This has been confirmed by an Inspector under the appeal relating to planning permission reference 2018/0800/FUL.
- 5.31 Concerns have been raised regarding non-compliance with working hours conditions attached to planning permission references 2016/0850/FUL and 2018/0800/FUL and queries/requests have been raised regarding whether a working hours condition would be attached to the current application should it be approved. Complaints regarding non-compliance with working hours conditions are investigated by the Council's Planning Enforcement Team. As set out earlier in this report a condition relating to the hours of construction works would be attached to any planning permission granted.
- 5.32 Concerns have been raised regarding construction vehicles blocking the road. Such complaints should be directed towards North Yorkshire County Council Highways for further investigation.
- 5.33 Concerns have been raised regarding the boundary treatment along Westfield Lane. The Local Planning Authority consider the lawful boundary treatment along

Westfield Lane is a 1.2 metre high wall (i.e. removing the 0.6 metre high fence atop) and this matter is being investigated by the Council's Planning Enforcement Team. A 1.2 metre high boundary treatment along the Westfield Lane boundary would provide sufficient visibility at the site access to Westfield Lane to satisfy NYCC Highways.

- 5.34 Concerns have been raised as to whether the development meets building regulations. This is a matter for Building Control to consider rather than Planning.
- 5.35 Concerns have been raised that the ongoing development is resulting in the loss of the value of neighbouring properties. This is not a material consideration to be taken into account in the determination of this application.

6 CONCLUSION

- 6.1 The application has been made under Section 73 of the Town and Country Planning Act 1990 and the proposal seeks to vary Condition 4 (drawings) of planning permission reference 2010/0507/FUL for the construction of a five bedroom, three storey detached house at Quarry Drop, Westfield Lane, South Milford. The changes proposed under this Section 73 application are: (1) the creation of a raised amenity area between the south elevation and Westfield Lane; (2) the alteration to the footprint of the dwelling at ground, first floor and second floor; (3) alterations to fenestration in all elevations of the building and the eastern and western roof slopes; (4) the addition of more photovoltaics to the roof slopes of the dwelling; (5) the increase in the maximum height of the dwelling by approximately 3.8 metres; (6) the increase in the eaves height of the dwelling by 0.4 metres to the west and 0.8 metres to the east; and (7) the inclusion of materials to be used in the external construction of the dwelling shown on the submitted plans.
- 6.2 The proposed amendments are not considered to have any significant adverse impact on the character and appearance of the area, the residential amenity of neighbouring properties or highway safety beyond the original permission and are therefore considered to be acceptable in accordance with Policies ENV1 and T1 of the Selby District Local Plan, Policy SP19 of the Core Strategy and national policy contained within the NPPF.
- 6.3 Given the location of the site, surrounded by residential properties to all sides, the evidence of the length of time the development has been ongoing, and the representations from neighbouring properties regarding the potential harm to living conditions through noise and disturbance resulting from construction works, it is considered reasonable and necessary to attach a condition restricting construction hours in the interests of the amenities of the adjacent properties and having regard to Policy ENV1 of the Selby District Local Plan.

7 RECOMMENDATION

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

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

LOC 01 – Location Plan
01 – Site Plan

- 02 – Basement and First Floor Plans
- 03 – Second and Mezzanine Floor Plans
- 04 – Roof Plan
- 05 – East and North Elevations
- 06 – South and West Elevations
- 07 – Section Looking North
- 08 – Section Looking East

Reason:

For the avoidance of doubt.

02. No construction works shall take place on site outside the hours of 8am-6pm Monday to Friday, 9am to 1pm Saturday, or at all on Sundays and Bank Holidays.

Reason:

In interests of the amenities of the adjacent properties and having had regard to Policy ENV1 of the Selby District Local Plan.

INFORMATIVE:

The purpose of Condition 2 is to restrict construction works associated with the development hereby granted outside the stated hours in the interests of the amenities of the adjacent properties and having had regard to Policy ENV1 of the Selby District Local Plan. For the purposes of Condition 2 the phrase 'construction works' means the carrying out of any building, civil engineering or engineering work associated with the construction of the dwelling hereby permitted, which would generate levels of noise audible at the site boundary that would cause a loss of amenity to neighbours. In assessing compliance with Condition 2, the Local Planning Authority would work alongside the Council's Environmental Health Officers, who have a separate duty to deal with statutory nuisances under the Environmental Protection Act 1990. The applicant is advised to keep an up-to-date written log detailing what works associated with the planning permission granted are being undertaken, which can be made available to the Local Planning Authority upon their request, in the event that any alleged breaches of Condition 2 are reported to the Local Planning Authority requiring subsequent investigation.

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 2020/0828/S73 and associated documents.

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Appendices:

Appendix 1 - Officer Report to 23 September 2020 Planning Committee