

**Report Reference Number: 2020/0549/S73**

**To: Planning Committee**  
**Date: 11 November 2020**  
**Author: Gareth Stent (Principal Planning Officer)**  
**Lead Officer: Ruth Hardingham (Planning Development Manager)**

APPLICATION NUMBER:	2020/0549/S73	PARISH:	Sherburn In Elmet Parish Council
APPLICANT:	Mr M Bradley	VALID DATE: EXPIRY DATE:	2nd June 2020 28th July 2020
PROPOSAL:	Section 73 application to vary condition 02 (opening hours) of approval 2019/0663/FUL Conversion of former glass house including recladding to provide extension to tea room extending covers to 66 in total, retention of terrace and its use as outdoor seating area/plant sales area, extension to existing car park to provide overflow and formation of children's play area granted on 16 April 2020		
LOCATION:	Fields Garden Centre Tadcaster Road Sherburn In Elmet Leeds North Yorkshire LS25 6EJ		
RECOMMENDATION:	APPROVE		

This application has been brought before Planning Committee due to the significant number of representations both in support and opposition to the application, which raise material planning considerations and that officers would otherwise determine the application contrary to some of these representations.

## 1. INTRODUCTION AND BACKGROUND

### Site and Context

- 1.1 The application site lies to the north of the main settlement of Sherburn and to the west of the main Tadcaster Road/Finkle Hill. The site is known as Fields Garden

Centre, which has had some recent investment following a planning permission granted in 2017 and relies on plant sales, gardening related products and the increasingly popular cafe/tearoom known as Fields Kitchen. The tearoom was recently extended into a former glass house via a retrospective permission 2019/0663/FUL, which increased the number of covers from 44 to 66. The proposal to extend the tearoom in question was considered by the CEO at an Urgency Session on the 8th April 2020. The opening hours were originally intended to be varied within that application but were later removed from the proposal and the hours remained restricted to those granted in 2017 under (2017/0506/FUL) i.e. 08:30 to 17:00 Mon-Sat and 09:00 to 17:00 Sundays and Bank Holidays.

- 1.2 To the north are agricultural fields, to the south is a commercial premise (landscape contractor) and opposite the site access are a group of 5 residential dwellings on Ellerfield Lane and a tennis club. Further to the south of the site is the main residential part of the Sherburn settlement.
- 1.3 The application site itself consists of a series of single storey buildings, glass houses, extended 66 cover tea room/café with terrace, outside children's play area, shop, storage buildings, outside storage of plants with car parking to the site frontage. The buildings predominantly sit towards the southern part of the site, with the nursery grounds extending to the north. The entrance to the site is wide and the frontage is landscaped.
- 1.4 A dwelling known as 'The White Cottage' sits on the southern side of the entrance and occupies a roadside position. This dwelling was originally part of the nursery and is still owned by the applicant, however, is now occupied independently following the creation of a new access under application 2018/0146/FUL.
- 1.5 The 2019 application arose as a result of an enforcement enquiry as various works were undertaken to the buildings to create an extension to the tearoom. The tea room was also holding events (small number of weddings and parties in summer/autumn 2019) outside of the 2017 planning permission use restriction (i.e. operating beyond 5pm) and other development occurred including the formation of a terrace, increased parking area and formation of a children's play area. The extended tearoom, parking terrace and play area are all now lawful by virtue of application 2019/0663/FUL being granted. This current application therefore revisits the issue of opening hours, albeit on a reduced basis from the original 2019 submission.

### **The Proposal**

- 1.6 The proposal is a Section 73 application to vary condition 02 (opening hours) of approval 2019/0663/FUL, which approved the conversion of former glass house including recladding to provide an extension to tea room extending covers to 66 in total, retention of terrace and its use as outdoor seating area/plant sales area, extension to existing car park to provide overflow and formation of children's play area granted on 16 April 2020.
- 1.7 The opening hours on the original garden centre were uncontrolled, however in 2017 the tearoom introduced more of a retail and tea room element to the site and the opening hours were restricted to:
  - 08:30 to 17:00 Mon-Sat and 09:00 to 17:00 Sundays and Bank Holidays.

1.8 The 2019 application planned on extending these hours until: Monday to Thursday 0830-2100, Friday and Saturday 08.30 to 23.30 hours and Sunday and Bank holidays from 08.30 to 20.00 hours, however this was later omitted from the proposal.

1.9 This current Section 73 seeks to vary the opening hours to:

#### Proposed Hours

Monday	08:00 – 18:00
Tuesday	08:00 – 18:00
Wednesday	08:00 – 18:00
Thursday	08:00 – 21:00
Friday	08:00 – 21:00
Saturday	08:00 – 21:00
Sunday	09:00 – 17:00

#### **Relevant Planning History**

1.10 The following historical applications are considered to be relevant to the determination of this application. The first list relates to the garden centre and the second bespoke to White Cottage.

#### Garden Centre

- CO/1981/25551- Erection of Implement Store, White Cottage Nurseries, Approved 13-MAY-81.
- 2017/1222/FUL - Proposed widening of part of existing internal access road, Fields Garden Centre- Approved 18-DEC-17.
- 2017/0506/FUL - Erection of extensions to existing glass houses, change of use of one retail building to tearoom ancillary to the garden centre use, formation of a car park and erection of covered plant canopy, Approved: 22-SEP-17. (Delegated).
- 2017/1187/DOC - Discharge of condition 05 (landscaping and planting) of approval 2017/0506/FUL) - Approved 11-DEC-17
- 2019/0663/FUL - Conversion of former glass house including recladding to provide extension to tea room extending covers to 66 in total, retention of terrace and its use as outdoor seating area/plant sales area, extension to existing car park to provide overflow and formation of children's play area. Approved 16.4.2020.
- 2020/0536/FULM - Erection of canopies between the shop and the tea room to form a covered display area; application of cladding to the greenhouse to the south of the shop and change of use of café to that of a mixed use comprising shop and café to allow the use of part of the floor area for retail of goods in a farm shop. Pending consideration.

## 2. CONSULTATION AND PUBLICITY

2.1 NYCC Highways – No objection.

2.2 Yorkshire Water – No response received.

2.3 Selby Area Internal Drainage Board – No response received.

2.4 Environmental Health - The applicant seeks to extend current operating hours incorporating evenings throughout Thursday to Saturday to allow for use by local community groups. In the absence of further detail in this regard, in particular the associated noise sources, I would recommend that noise from fixed plant and amplified music is controlled to the extent that existing residential amenity is protected in accordance with the following conditions:

1. In relation to noise from amplified music, LAeq (EN) shall not exceed LA90 (WEN) by more than 5dB, and the L10 (EN) shall not exceed L90 (WEN) by more than 5dB in any 1/3 octave band between 40 and 160Hz. NB entertainment noise level (EN) and representative background noise level without the entertainment noise (WEN), both representative of 1m from the façade of the noise-sensitive premises.
2. The cumulative level of sound from all plant and equipment associated with the proposed development, when determined externally under free-field conditions, shall not exceed the representative background sound level at nearby sensitive receptors. All noise measurement/predictions and assessments made to determine compliance shall be made in accordance with British Standard 4142: 2014: Methods for rating and assessing industrial and commercial sound, and/or its subsequent amendments.

2.5 Designing Out Crime Officer – No objections but noted the premises have a license to open later than being applied for i.e.

Permitted under Premises Licence Mon to Sun 0900 – 2300.

I would request that the applicant be made aware that in respect of planning, that the earlier closing time applied for in this application, if granted, would need to be adhered to, to prevent a breach of planning permission.

2.6 Parish Council - No comment.

### **Neighbour and 3rd Party representations**

2.7 The proposal was publicised by a site notice and direct neighbour notification of residents.

2.8 A total of 11 objections were received from residents directly opposite the site and some from residents of Sherburn and outlying villages. Grounds of objection are;

- This is yet a further application to change the hours which was withdrawn from previous submissions. This should be a fresh application not a variation of hours. Residents do not believe these changes to hours to benefit the garden centre but by stealth for private functions. It is also a staged approach to undertake private functions carrying out the owner's original business plan.

- The change in opening hours will detrimentally affect our residential amenity as residents living opposite the site. Our principal living areas are directly opposite the garden centre and consequently would be negatively impacted by extended trading hours. Residents do not wish for disruption from Thursday through the weekends during evenings.
- No other garden centre with tearoom facilities in the area operates outside normal trading hours. The current opening times, which allow for a 59-hour operating week, by any argument is enough hours to be able to serve the horticultural community.
- Clearly tea rooms fulfil a particular purpose and to go beyond normal trading hours suggests that the owner is moving incrementally towards a significant change in the nature of the business.
- The applicant previously showed a total disregard for planning regulations and impact on local residents by moving directly from garden centre to an evening events venue with late finishes, loud music, disco lights and the accompanying noise of car doors and headlights in our windows.
- We have whole heartedly supported the Garden Centre for the last 17 years we have lived here and when Fields first opened appreciated the benefit of the Tea Room for customers. However, the Tea Room - Restaurant has been extended significantly, is now a main focus of the business and has been used as a venue/ evening events which is not appropriate and seriously affects residential amenity.
- Residents have already experienced disruption with late night events through increased traffic, noise, loud music. Serving may stop at 9pm but customers will inevitably leave afterwards. Realistically this would mean disruption to us in front of our home for up to potentially 10pm at night, in fact - once all customers and staff have left from a meal or event. These suggested new opening hours are clearly not for the benefit selling plants.
- The site lies within green belt and is a garden centre with a tearoom. There are plenty of other pubs, restaurants and community centres to service residents of Sherburn during evenings.
- Residents deserve peace and quiet and have to live here and want to enjoy our gardens like all the other residents in peace. Finally, as we are in a rural part of the village, we are only a handful of residents. There will be therefore only a handful of objections - and clearly the Garden Centre can ask every customer to support them, but the number of supporters is simply not the point.
- Music and noise will escalate between different events which will make it difficult to qualify, quantify and enforce with any tangible action. This cannot be left to enforcement officers as this would just result in an ongoing debate monitoring noise levels, whilst the business continues regardless.
- The current hours were imposed to protect the residential amenity of the locality & to comply with SP19 of Selby Core Strategy & Policy ENV2 of the Local Plan.

- The Green Belt status of the car park would also be further encroached as cars would be parked there for longer periods. Whilst the car park extension was permitted, this was on the basis that there was a degree of openness when the property closed, and vehicles not parked there. The car park being used during the proposed time would be of a permanent nature which is contrary to Green Belt Policy.
- The extended hours will cause destruction of the peace of our countryside.
- The most important point to consider is that this is a garden centre with ancillary tearoom and not a property holding functions or events. This issue is one of residential amenity and should not be confused by public support from those who do not live opposite the site.

2.9 A total of 40 letters of support were received from local residents, residents of outlying villages that have used the premises local businesses, Scout leaders, etc. The support is as follows:

- I think it would be amazing for the community to have somewhere like this open for longer hours. There isn't anywhere else around here like this so I think the public would really appreciate it.
- Fields Garden Centre has tried to be involved in the community, it's a great thing for the village, it's unique as there isn't anything like them around here and I fully support them being able to open into the evening so they can keep expanding and keep supporting their staff.
- Opening later in the evenings will benefit the community and give the garden centre more opportunities and be a great place to go in an evening.
- Fields Garden Centre & kitchen is the only family friendly & accessible cafe in Sherburn. Since it opened it has been a great addition to Sherburn and the surrounding area. I frequent Fields on average 3 times a week with different mum groups. It is great that the mums from other towns and villages can drive as there is so much parking, but also that it is walkable from most of the housing estates in Sherburn. We love the staff who are always so friendly & welcoming & always come over for a chat with us.
- During lockdown, my husband & I have bought trees plants from the garden centre and it would be good if we could go after my husband has finished work for the day rather than on a busy weekend day. In my opinion, the extended opening hours would make it much better.
- Fields Garden Centre is very accommodating family run business with friendly staff and high-quality food. The premises are creating economic growth, local jobs.
- The extended opening hours would make it much better for working families to go after work and look around the plants or go to gardening workshops to learn more.
- Fields Café provides us with a meeting place and several groups use it as it is only a short walk or cycle ride from the centre of the village. The café has

access facilities so everyone can use the facilities. There is also a children's play area allowing young mums and families to meet up too.

- wished it would stay open later so we could go for tea. Beneficial for those working long or late shifts.
- The Fields Kitchen is an excellent place for a young family for a meal. There is ample parking in a safe and secure area, with easy access to clean and well sized baby changing facilities. The food is outstanding, and the play area and space they offer for young children, both indoors and outdoors, is a huge advantage.
- The space is vital for the community and is used by local business for meeting spaces, local scout groups: there is nowhere that offers the same good quality food and safe, welcoming space for mothers and babies/small children.

### **3 SITE CONSTRAINTS**

#### **Constraints**

- 3.1 The site lies within the Green Belt and a Locally Important Landscape Area.

### **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
- SP3 - Green Belt
- SP13 - Scale and Distribution of Economic Growth

### **Selby District Local Plan**

4.7 **The relevant Selby District Local Plan Policies are:**

- ENV1 - Control of Development
- S3 - Local Shops

## **5 APPRAISAL**

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

- The nature of the application i.e. Section 73.
- Impact on the character of the locality and Green Belt
- Impact on Residential Amenity

### Section 73

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.”*

5.2 Despite concern from local residents over the method of dealing with this matter via a Section 73 as opposed to a full application, Officers consider that the nature of the use remains the same and therefore it is appropriate to deal with via Section 73. The extension of the proposed hours will not result in a material change of use.



- 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 of Condition 2 (opening hours) of planning permission reference 2019/0663/FUL, would be contrary to the provisions within the development plan or whether there are reasonable grounds for refusal if these conditions were retained in their present form. This means that only the extended opening hours are considered and the implications that arise from these.
- 5.4 As explained in the introduction, the opening hours were originally restricted in the 2017 approval (2017/0506/FUL) that granted a small tearoom that was to be used ancillary to the garden centre. The hours were considered 'normal' trading hours in that they were 8.30am-5pm Monday to Saturday and 9-5pm Sundays. The tearoom would close when the garden centre closed. This ensured the café was not a destination in its own right and remained ancillary to the garden centre. This current proposal does to some degree depart from that, being open for retail into the early evening, and its therefore necessary to assess the implications that arise from this.
- 5.5 The applicants explained in the 2019 application, how the popularity of the café increased and was becoming a valued community asset where local groups took advantage of the relaxed environment. The owner facilitated this increase in business by undertaking an extension into the adjacent greenhouse together with some operational development works to create an extension to the café. The premises operated unlawfully for a short period in which some late-night events were catered for until this ceased as a result of enforcement investigations. These complaints have not reoccurred, and it is believed that the owner is complying with the current 5pm opening times.
- 5.6 Application 2019/0663/FUL as originally submitted was proposed to extend the opening hours until 23:00 for some nights of the week, however this was considered excessive and wasn't supported by the Council's Environmental Health team. Therefore, the opening hours element was withdrawn from that proposal. The 2019/0663/FUL application was approved for the extension to the tearoom (66 covers), car park, terrace and play area and the 2017 opening hours conditions were re-imposed.
- 5.7 It was the applicant's intention to review the opening hours and deal with these separately via this submission. This is commented on being a staged approach within the representations, however this is possible within the planning system. The table below shows the proposed hours, versus the approved hours for comparison purposes.

Proposed Hours v's existing comparison.

Day	Approved	Hrs	Proposed	Hrs	Difference per day hrs
Monday	8.30 – 17:00	8.5	08:00 – 18:00	10	1.5
Tuesday	8.30 – 17:00	8.5	08:00 – 18:00	10	1.5
Wednesday	8.30 – 17:00	8.5	08:00 – 18:00	10	1.5
Thursday	8.30 – 17:00	8.5	08:00 – 21:00	13	4.5
Friday	8.30 – 17:00	8.5	08:00 – 21:00	13	4.5
Saturday	8.30 – 17:00	8.5	08:00 – 21:00	13	4.5
Sunday	9:00 – 17:00	8	09:00 – 17:00	8	0

	Total	59	Total	77	18
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- 5.8 The table above demonstrates that the slightly earlier opening at 8am in a morning represents a 3-hour difference in a morning per week, which will be a marginal increase in the hours. The Sunday hours will remain the same, therefore no new impact. The largest increase in hours is after 5pm towards the latter end of the week i.e. Thursday - Saturday. If approved the premises will be open an additional 15 hours after 5 pm up until 9pm, 3 days per week. It is this element of the proposal where the impact is most relevant to consider.
- 5.9 The tearoom was granted as an ancillary element to the garden centre and its popularity has clearly grown, which was facilitated by the extension into the adjoining greenhouse and increase in covers. It's clear from the representations in support of the scheme that the premises are well used and likely to still function with the mainstay of footfall being horticultural related, however an increasing popularity for visitors which solely use the shop and café as a meeting point and food venue. This means the café has in part become a destination in its own right for some customers. This element of the business will benefit the most from the proposed hours as it will cater for evening dining.
- 5.10 This is not uncommon across the UK where gardens centres have diversified their offer to remain in business. Customers increasingly tend to visit garden centres when they have an interest in gardening or to take advantage of the retail and café culture type services they offer. The success of Fields Garden centre in recent years has been stimulated by the café and retail offer and there is clear support from people who use the facility for it to open longer hours.
- 5.11 Through normal trading hours the café will remain an integral element of the business and the question has been raised over at what point does the café become the predominant use over the garden centre. For every hour that the café is open when a garden centre would ordinarily be closed, this strengthens the view that the café in these periods becomes the dominant use. The additional 30 minutes earlier opening is not considered to impact on this; however, the later evening openings does. The late evening openings is to facilitate local groups and clubs using the premises as a meeting point, and to enable the café to provide food later in the week when people tend to use such facilities more often. The applicant also explained that this is also to cater for specific winter events like craft evenings, where normal working hours may need extending. This is noted; however, events will not be the mainstay of the business and people are unlikely to be shopping for plants in winter months particularly after 5pm. Nevertheless the café will remain open throughout the day and the additional hours in an evening do not dominate the use of the site as a whole, which is still primarily a garden centre with cafe that is open 7 days per week.
- 5.12 Therefore the proposed 9pm closure for 3 nights per week will change the nature of the garden centre within that time period for the 12 hours per week. It is therefore necessary to assess the impact of the proposed 9pm closure.

#### Impact on the character of the locality and Green Belt

- 5.13 The application site is located within the Green Belt as such, national guidance contained within the NPPF paragraphs 143 - 146 and Policies SP2 A (d) and SP3 of the Core Strategy are relevant. It is however important to reiterate that the proposal is not considering a new development, rather the extension to an existing use.

Therefore, the appropriateness in Green Belt considerations remains the same, however the premises will be used more intensively, which can be assessed in terms of the impact on the Green Belt.

- 5.14 Whilst the proposals involve no physical extensions to the premises, the extension of hours will inevitably increase the intensity of the use after 5pm. This means more customers coming and going over an extended period, more cars being parked at the premises for longer periods and the property being illuminated at night in winter months for longer periods. This will result in some impact on the Green Belt particular in terms of openness, in the period between 5pm and 9pm, 3 days a week.
- 5.15 One of the fundamental aims of the Green Belt is to prevent urban sprawl and keeping land permanently open. In terms of the car park, this element is approved and currently in use and therefore whilst cars will be parked on the site for longer, it is unlikely that the car park would be continually full after 5pm – 9pm. The site is set back from the road, has some screening in summer months and in winter months the cars wouldn't be overly visible as they would be parked under the cover of darkness.
- 5.16 In terms of the increase vehicle traffic and associated comings and goings and illumination of the premises, again this is a commercial site within the Green Belt. The opening hours of the wider site is unrestricted and therefore to some degree people could still visit the site after 5pm but not use the café.
- 5.17 Therefore, whilst the extension of the hours does have some impact on openness, it is not to a degree that would warrant a refusal in its own right given its already a commercial use within the Green Belt. Any harm over and above what is already permitted would be limited to a 12-hour period (Thursday-Sat 5pm - 9pm). The extension in the hours is therefore regarded as being compliant with the Section 13 of the NPPF and Policy SP3 of the Core Strategy.

#### Impact on Residential Amenity

- 5.18 One of the Core Principles of the NPPF is to always seek to ensure a good standard of amenity for all existing and future occupants of land and buildings is achieved. Policies ENV1 1) and S3(A) (6) of the Local Plan requires proposals not to have a significant adverse effect on residential amenity.
- 5.19 The issue of residential amenity is perhaps the main issue to assess, as this has generated the most concern within the representations from the residential properties opposite the site. The representations state that the amount of support for the proposal should not be confused by the impact the extension of hours will have on neighbouring dwellings. Officers note this and it was anticipated that support would be forthcoming, as it was in the 2019 submission as lots of people use the facility and wish to see it open for longer periods. It must be noted that the premises will continue to provide for the community and bring about all the benefits listed in the letters of support through daytime trading. The issue is therefore 'will the extended hours cause sufficient harm to warrant refusal of the application' taking into account the hours proposed, distance from residential properties and other factors.
- 5.20 In terms of the distances involved, the actual distance between the buildings and frontages of the residential dwellings is over 100m. This is separated by a busy

main road running out of the settlement. The distance is narrowed to 58m from the front of the car park to the frontages of the dwellings and 30 from the car park to the edge of the curtilage which faces the roadside. The main use, however, will be contained within the building except for perhaps summer evenings where the terrace and children's play area is used. This may cause some disturbance, however the proposed 9pm closure is less imposing and harmful to amenity than the previously applied for 11pm closing, which caused noise and disturbance to adjacent landowners. 9pm closing is a reasonable closing time and will not disturb sleep and is limited to 3 days per week.

- 5.21 The proposed hours will also increase the ability of the premises to hold evening events like craft fairs and host local community groups, however they are less likely to be at the scale and type that previously generated the concerns i.e. weddings and birthday parties late into the evening. It's likely the café will just remain open to members of the public up until 9pm, with the occasional function being held. Maintaining the 5pm closure would ultimately prevent this occurring; however, officers do not feel the impact of the proposed hours would be for the large part noticeable for the majority of evenings.
- 5.22 The environmental health officer raised no objection to the increased hours based on an assessment of the living conditions of neighbouring occupiers. Two conditions were suggested the first relating to the control of amplified music so it doesn't reach a certain decibel i.e. (LA90 (WEN) by more than 5dB, and the L10 (EN) shall not exceed L90 (WEN) by more than 5dB in any 1/3 octave band between 40 and 160Hz). The second relating to the cumulative level of sound from all plant and equipment associated with the proposed development.
- 5.23 Therefore whilst the representations do raise valid concerns, officers do not consider the hours proposed would warrant refusal of the planning application. The proposal would accord with Policies ENV1 and S3A of Selby District Local Plan and Policies SP13 of Selby Core Strategy.

### Conditions

- 5.24 Given that the approval of a Section 73 application forms a new permission, it is necessary to assess the conditions previously imposed on the 2019 consent. Condition 1 concerns the list of approved plans and is reiterated. Condition 2 concerns the new opening hours and will be amended to reflect the matters discussed in this report. It is important to note that the red line was for the whole site and the condition only controlled the tearoom and not the shop or wider premises. Therefore, the condition is amended to control the opening of the entire premises in order that the site is open as a whole and controlled throughout the different uses on the site. Condition 3 restricts the numbers of covers to 66 and is reiterated. Condition 4 requires the erection of a fence to the overflow car park which has now been completed. This is reworded to ensure it is retained for the lifetime of the development. Condition 5 that regulates the areas in which parking can occur is once again reiterated. Finally, the 2 additional conditions requested by the environmental health officer are included as 6 & 7.

## **6 CONCLUSION**

- 6.1 The proposed extension to the opening hours will not involve a material change in the use of the premises and is capable of being determined under Section 73. The extension of hours will cause some limited harm to the character and openness of

the Green Belt, given the use will be prolonged for part of the week into the evening. This will be through cars using the car park, the illumination of the premises at night and more comings and goings to the site. Whilst causing some harm, this is not regarded as having a significant impact on the openness of the Green Belt given it is already a commercial premises and the additional 12 hours in an evening doesn't warrant refusal of the application. The extra 30mins in a morning has no material impact.

- 6.2 The proposal will also cause additional vehicle and customers movements to the site, which have the ability along with the evening use, to cause nuisance to the living conditions of nearby residents. However due to a combination of the distances from neighbouring dwellings, the presence of the main road and the scaled back hours from those previously considered, on balance support is offered to the extension in the operating hours.
- 6.3 The proposal will enhance the range of evening local facilities and will help maintain the viability of the business. The proposal is therefore in accordance with policies SP1, SP2, SP3, SP13, of the Core Strategy and Local Plan Policies ENV 1 and S3.

## **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:

Proposed Floor Plans - D- 201 A  
Proposed Block Plan - D-101 H  
Proposed Elevations - D - 401B  
Elevations swing/playhouse D-402

Reason:  
For the avoidance of doubt.

02. The premises which includes the tea room, shop and plant sales area shall not be open for customers except between the hours of:

Monday, Tuesday Wednesday	08:00 – 18:00
Thursday, Friday, Saturday	08:00 – 21:00
Sunday and Bank and Public Holidays.	09:00 – 17:00

Reason:  
To protect the residential amenity of the locality and in order to comply with Policy SP19 of Selby Core Strategy and Policy ENV2 of Selby District Local Plan.

03. The tea room hereby permitted shall not operate in excess of 66 covers at any one time.

Reason:  
In the interests of residential amenity in accordance with Policy ENV1 of Selby District Local Plan.

04. The fence erected following the requirement of Condition 4 of 2019/0663/FUL as shown on the approved block plan D-101H, shall be retained for the lifetime of the development.

Reason:

In order to prevent cars from dispersing into the paddock area, which is considered harmful to the openness of the Green Belt and character of the wider area in accordance with Policy ENV1 of Selby District Local Plan and SP 3 of the Core Strategy.

05. No parking of vehicles should occur on the land outside the designated parking area as shown on block plan D-101H.

Reason:

In order to prevent cars from dispersing into the paddock area, which is considered harmful to the openness of the Green Belt and character of the wider area in accordance with Policy ENV1 of Selby District Local Plan and SP 3 of the Core Strategy.

06. In relation to noise from amplified music, LAeq (EN) shall not exceed LA90 (WEN) by more than 5dB, and the L10 (EN) shall not exceed L90 (WEN) by more than 5dB in any 1/3 octave band between 40 and 160Hz. NB entertainment noise level (EN) and representative background noise level without the entertainment noise (WEN), both representative of 1m from the façade of the noise-sensitive premises

Reason:

In the interests of residential amenity in accordance with Policy ENV1 of Selby District Local Plan.

07. The cumulative level of sound from all plant and equipment associated with the proposed development, when determined externally under free-field conditions, shall not exceed the representative background sound level at nearby sensitive receptors. All noise measurement/predictions and assessments made to determine compliance shall be made in accordance with British Standard 4142: 2014: Methods for rating and assessing industrial and commercial sound, and/or its subsequent amendments.

Reason:

In the interests of residential amenity in accordance with Policy ENV1 of Selby District Local Plan.

## **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 2020/0549/S73 and associated documents.**

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**Appendices:** None