



Report Reference Number: 2020/1139/S73

To: Planning Committee
Date: 25 November 2020
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Lead Officer: Ruth Hardingham (Planning Development Manager)

APPLICATION NUMBER:	2020/1139/S73	PARISH:	Church Fenton Parish Council
APPLICANT:	Mr Keith Ellis	VALID DATE: EXPIRY DATE:	20th October 2020 15th December 2020
PROPOSAL:	Section 73 application to vary condition 02 (plans) of approval 2018/0391/HPA Proposed erection of a double garage granted on 07.06.2018		
LOCATION:	Old Forge Cottage Main Street Church Fenton Tadcaster North Yorkshire LS24 9RF		
RECOMMENDATION:	MINDED TO GRANT		

This application has been brought before Planning Committee as this application has been made by a District Councillor.

1. INTRODUCTION AND BACKGROUND

Site and Context

1.1 The application site is located outside the defined development limits of Church Fenton, which is a Designated Service Village as identified in the Core Strategy and is therefore located within the open countryside. In addition, the application site is partly located within the Strategic Countryside Gap (SCG) between the east and west sides of Church Fenton.

1.2 The application site is located to the north west of the junction between Main Street

and Busk Lane. The application site comprises of Old Forge Cottage and its large garden which extends to the north. A detached triple garage used to occupy part of the garden to the north of the dwelling, however this has been demolished as consent has been granted for a detached dwelling in this location, which is currently under construction.

- 1.3 The adjacent dwelling has been amended on several occasions with the most recent amendment being 2020/0562/S73, which is the permission that is being implemented. The application site fronts Busk Lane to the east, with residential development to the east and south. To the west of the application site are fields.

The Proposal

- 1.4 This is a Section 73 application to vary condition 02 (plans) of approval 2018/0391/HPA, which granted consent for a replacement double garage issued 07.06.2018. The permitted garage has eaves height of 2.4m, ridge of 4m and was 7m x7m in area.
- 1.5 This proposal makes the garage 2m wider, adding a store to the southern elevation. It has eaves height of 2.4m, ridge of 4m and is 7m x 9m in area. The garage is located in an almost identical position to that previously approved i.e. to the north Old Forge Cottage.
- 1.6 The proposed garage would be accessible via the existing driveway, which leads out onto Busk Lane and will be used solely for domestic purposes in connection with Old Forge Cottage.

Relevant Planning History

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

Previous approval for the Garage

- 2018/0391/HPA, Proposed erection of a double garage, Old Forge Cottage, Main Street, Church Fenton, Tadcaster, North Yorkshire. Approved 7-JUNE-18.

Adjacent single dwelling plot

- 2016/1384/FUL, Proposed erection of 1 No dwelling, Address: Old Forge Cottage, Main Street, Church Fenton, Tadcaster. Approved 09-FEB-17.
- 2019/0793/S73, Section 73 application for proposed erection of 1 No dwelling without complying with condition 15 of approval 2016/1384/FUL granted on 09 February 2017, Address: Old Forge Cottage, Main Street, Church Fenton, Tadcaster. Approved 29-OCT-19.
- 2019/1186/DOC, Discharge of conditions 02 (materials), 04 (landscaping), 06 (construction method statement), 08 (site investigation), 09 (contaminated land) & 10 (contaminated land) of approval 2019/0793/S73 Section 73 application for proposed erection of 1 No dwelling without complying with condition 15 of approval 2016/1384/FUL granted on 09 February 2017,

Address: Old Forge Cottage, Main Street, Church Fenton, Decision: 23-DEC-19.

- 2019/1194/MAN2, Non-material amendment of approval 2019/0793/S73 section 73 application for proposed erection of 1 No dwelling without complying with condition 15 of approval 2016/1384/FUL granted on 09 February 2017, Decision Date: 09-DEC-19.
- 2020/0562/S73 - Section 73 application to vary condition 13 (approved plans) of approval 2019/0793/S73 - Section 73 application for proposed erection of 1 No dwelling without complying with condition 15 of approval 2016/1384/FUL as amended by non-material amendment approval 2019/1194/MAN2. Approved 30.7.2020.

2. CONSULTATION AND PUBLICITY

2.1 **Church Fenton Parish Council** – No response received.

2.2 **NYCC Highways** – No response received.

2.3 The application was advertised by site notice and neighbour notification letters. No letters of representation from neighbouring properties have been received.

3 SITE CONSTRAINTS

Constraints

3.1 The application site is located outside the defined development limits of Church Fenton, which is a Designated Service Village as identified in the Core Strategy and is therefore located within the open countryside. The site is also within a Strategic Countryside Gap, which aims to prevent the coalescence of settlements.

3.2 The application site is located within Flood Zone 2, which has a medium 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
SP15 – Sustainable Development and Climate Change
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
SG1 – Strategic Countryside Gaps

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 the Strategic Countryside Gap
- Impact on Highways
- Impact on Residential Amenity
- Contamination
- Flooding
- Conditions

Principle of 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 This particular section 73 is for the variation of the plans and therefore involves changes to the size and appearance of the garage in question. It is therefore necessary to assess these impacts.
- 5.4 The application site is located outside of the defined development limits of Church Fenton, which is a Designated Service Village as identified in the Core Strategy and is therefore located within the open countryside. The proposal for a garage in this location has already been agreed by 2018/0391/HPA. There is also nothing in the Development Plan or the NPPF to identify this type of development as being unsustainable, or to preclude in principle development of this type in this location. The proposal therefore remains acceptable in principle being a domestic addition to an existing dwelling.

Design and Impact on the Character and Appearance of the Area

- 5.5 The proposed garage would be traditional in design with two frontage garage doors and a rear access door, along with a separate door to the store. The proposed materials to be used in the external construction of the garage would be rendered concrete block walls finished in 'old English white' and a clay pantile roof, which would be appropriate to its context and the finish of the host dwelling.
- 5.6 The garage has a ridge height of 4m and a relatively shallow 23-degree roof pitch, which is relatively shallow and standard for this type of structure. The site is also well screened on the southern and eastern boundaries and the increased massing over and above the 2018 consent is concentrated on the southern elevation of the garage and is a 2m increase in the span of the garage bringing it closer to the host dwelling. Given the site context of the mixed character of the surrounding area it is considered that the size, scale, siting and design of the proposed enlarged garage would respect the character and appearance of the locality.
- 5.7 Having regard to the above, it is considered that the proposal is acceptable and would not have a significant or detrimental impact on the character and appearance of the area. The proposal is therefore considered acceptable in accordance with Policy ENV1 (1) and (4) of the Selby District Local Plan, Policy SP19 of the Core Strategy and the advice contained within the NPPF.

Impact on the Strategic Countryside Gap

- 5.8 The application site is located part within and part outside the Strategic Countryside Gap (SCG) between the east and west sides of Church Fenton. Policy SG1 of the Selby District Local Plan states "Proposals for development affecting Strategic

Countryside Gaps, as defined on the proposals map, will not be permitted where there would be an adverse effect on the open character of the countryside or where the gap between settlements would be compromised”.

- 5.9 The supporting text of Policy SG1 states “Proposals for development in these gaps will only be acceptable where there would be no risk of physical intrusion such as certain types of recreational use, or where the overall open character of the land would be enhanced through the removal of existing structures. In such circumstances, any replacement or ancillary buildings would need to be sensitively sited and landscaped in order to minimise any potential intrusive impact.”
- 5.10 This issue was considered in the 2018 submission and it was considered that the proposal for a double garage would have a limited physical intrusion on the SCG on account of its small scale and its proposed siting adjacent to the dwelling. Furthermore, the proposal would only extend 2 metres into the SCG, which represented 28% of the total proposal. This revised submission only adds a further 2m to the floor plan and it extends south parallel with the SCG boundary. Therefore, in this instance, the proposal for an enlarged double garage located part within and part outside the SCG would not be considered to have a significant adverse impact on the open character of the countryside or compromise the gap between settlements, and as such a reason for refusal could not be sustained.
- 5.11 Having regard to the above, it is considered that while the proposal is not strictly in compliance with Policy SG1 of the Selby District Local Plan, the scale and ancillary nature of the proposal would not significantly diminish the open character of the countryside. As such only limited weight should be attached to the harm to the form, character and function of the SCG that the proposal would result in.

Impact on Highways

- 5.12 At the time of writing the Committee Report NYCC Highways were yet to respond, however no objections were raised, or conditions suggested on the 2018 application. No alterations to the position of the garage or the access are proposed within this submission, therefore it is not envisaged that an adverse response will be forthcoming. As such it is considered that the proposal would not lead to adverse highway conditions in this locality and the proposal is considered to accord with Policies ENV1 (2), T1 and T2 of the Local Plan and Paragraphs 108 -109 of the NPPF.

Impact on Residential Amenity

- 5.13 To the west of the application site are fields. To the north of the application site is a new detached dwelling under construction. The garage largely maintains the same position as it was previously approved in 2018, albeit it has shifted back (west) by approximately 1m. This sits alongside the blank gable of the new dwelling and a single storey projecting garden room. The proposal therefore has no adverse impact in terms of dominance, outlook, over shadowing or overlooking to this adjacent dwelling.
- 5.14 To the south and east of the application site are the highways Main Street and Busk Lane, with dwellings beyond this. Due to the substantial separation distance between the proposed site and any other neighbouring dwellings, the small scale of the proposal, as well as the tree lined boundary treatment along the eastern

boundary; it is not considered that the proposals would result in any significant adverse effects to the amenities of the occupiers of the neighbouring properties.

- 5.15 Having regard to the above, it is considered that the proposals are acceptable in terms of residential amenity in accordance with Policy ENV1 (1) of the Selby District Local Plan and the advice contained within section 12 of the NPPF.

Contamination

- 5.16 The 2018 application identified on the Council's records that the site could potentially be contaminated as a result of the former forge use. The 2018 approval concluded that a condition relating to the potential discovery of contamination during development of the proposal could be imposed to control any unexpected contamination that may arise during construction. This condition is once again carried forward into this new permission.
- 5.17 As such, it is considered that subject to condition the proposal would be acceptable in respect to land contamination and is therefore in accordance with Policy ENV2 of the Local Plan, Policy SP19 of the Core Strategy and the advice contained within the NPPF.

Flooding

- 5.18 The application site's flood risk classification has changed from Zone 1 to Zone 2 from 2018 to the present day. Flood Zone 2 is assessed as having between a 1 in 100 and 1 in 1,000 annual probability of river flooding (1% - 0.1%), or between a 1 in 200 and 1 in 1,000 annual probability of sea flooding (0.5% - 0.1%) in any year.
- 5.19 NPPF paragraph 164 States that "Applications for some minor development and changes of use should not be subject to the sequential or exception tests but should still meet the requirements for site-specific flood risk assessments set out in footnote 50". The NPPG defines minor development and includes minor non-residential extensions (industrial/commercial/leisure, etc. extensions) with a footprint less than 250 square metres. A sequential and exception test is therefore not required in this instance.
- 5.20 Finally given the proposed structure is a detached outbuilding and not occupied as part of the main dwelling, it is not necessary to ensure floor levels are maintained. A Flood Risk Assessment and topographical survey do however show the dwelling has a floor level of 7.94 and the proposed garage will have a floor level of 8.43 as confirmed by the applicant. The proposed scheme is therefore in accordance with the advice contained in within the NPPF and NPPG.

Conditions

- 5.21 In terms of the existing conditions on the 2018 permission the time limit is adjusted to reflect the time left on the 2018 consent i.e. 7.6.2021 as Section 73 applications cannot extend time implementation periods. Condition 2 is reworded to reflect the plans within this submission. Condition 3 'Materials' has been reworded to reflect the materials shown on the approved plans. Condition 4 concerning any unexpected contamination has been carried forward from the 2018 consent.

6 CONCLUSION

- 6.1 The application seeks to vary the list of approved plans to a 2018 consent for a double garage. The main change being the increase in the size of the garage with a 2m extension to the span on the garage and a 1m resisting.
- 6.2 The application is contrary to Policy SG1 of the Selby District Local Plan. The application site is located part within and part outside the Strategic Countryside Gap (SCG) between the east and west sides of Church Fenton and the proposal would result in encroachment by urban form into the SCG. However, in this instance, the proposal for a double garage located part within and part outside the SCG would not be considered to have a significant adverse impact on the open character of the countryside or compromise the gap between settlements.
- 6.3 The proposed development in its enlarged form, would not have a detrimental effect on the character and appearance of the area, on the highway or on the residential amenity of the occupants of neighbouring properties, nor are there any other technical constraints which make the development unacceptable.

7 RECOMMENDATION

This application is recommended to be Granted after the expiry of the publicity period which ends 27.11.2020, subject to no new issues being raised. Authority is delegated to the Planning Development Manager to approve this application subject to the imposition of following conditions:

01. The development for which permission is hereby granted shall be begun before the 7.6.2021.

Reason:

In order to comply with the provisions of Section 51 of the Planning and Compulsory Purchase Act 2004 and adjusted to reflect the original date in which the permission was issued.

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

Drawing No YEW-277-40-30 Rev C - Loc/Lay/Prop Floor/Elev Dated 06/11/20

Reason:

For the avoidance of doubt.

03. The materials to be used in the external construction of the proposal shall be as detailed on the Drawing No YEW-277-40-30 Rev C - Loc/Lay/Prop Floor/Elev Dated 06/11/20 i.e.

Natural clay 'orange' pantiles – Roof
Old English White painted concrete render - Walls
Black cast iron effect - Rainwater goods
Timber effect vertical panels -Garage doors

Reason:

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

04. In the event that unexpected contamination is found at any time when carrying out the approved development, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

Reason:

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

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 2020/1139/S73 and associated documents.

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Appendices: None