



Report Reference Number: 2019/1008/COU

To: Planning Committee
Date: 27 January 2020
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Lead Officer: Ruth Hardingham (Planning Development Manager)

APPLICATION NUMBER:	2019/1008/COU	PARISH:	Cawood Parish Council
APPLICANT:	Mr Richard Mawson	VALID DATE: EXPIRY DATE:	22nd June 2020 17th August 2020
PROPOSAL:	Change of use of barn to children's day care facility and associated works (retrospective)		
LOCATION:	The Barn 70 Sherburn Street Cawood Selby North Yorkshire YO8 3SS		
RECOMMENDATION:	REFUSE		

This application has been brought before Planning Committee as directed by the Head of Planning due to the sensitive consideration of the level of objection.

1. INTRODUCTION AND BACKGROUND

Site and Context

1.1 The application site is located within the defined development limits of Cawood, which is a Designated Service Village as identified within the Core Strategy. The outbuilding in question lies to the north west and within the rear garden of No.70 Sherburn Street. The area is essentially residential in character, with the rear garden of No.68 to the north and the dwelling known as West Gates and Wolsey House to the south. The barn is part 1.5 and part single storey and positioned in the north western corner of the site with its gable fronting the highway, Chestnut Road. Chestnut Road provides the rear access to garages of the dwellings that front Sherburn Street and is relatively narrow.

1.2 Cawood is a historic village situated on the west bank of the River Ouse and is one of the oldest settlements within the Selby District.

1.3 The application site is also located within the Cawood Conservation Area and within Flood Zone 3.

The Proposal

1.4 The proposals whilst described as a 'barn' is more a former domestic outbuilding that is seeking permission to change its use to a children's day care facility. The proposal also includes the blocking up of the window on the western elevation.

1.5 It is noted that the outbuilding in question was previously used ancillary to the main house. However, the application form indicates the use as a day care facility first occurred in 2013 and as such the application is retrospective. It is however unclear if this was to the same intensity as the use proposed.

1.6 A Planning Statement has been submitted with the application, which includes some of the following details:

- Work hours 07.00 until 18.00 Monday to Friday and closed on Saturdays, Sundays and Bank Holidays.
- It is noted that the applicant has not stipulated the exact number of children being cared for on site. However, the Ofsted regulations referenced in the supporting statement provided stipulate that the building could accommodate a maximum of 21 children.
- The nursery employs a maximum of 7 part time staff.
- No on-site parking available but some offsite parking is available.

1.7 Whilst the red line application site includes the whole land owned by the applicant, the actual day care facility is only concentrated in the lower/end part of the garden. This is defined by a fence and a change in surface i.e. artificial grass.

Relevant Planning History

1.8 The following historical application is considered to be relevant to the determination of this application.

- CO/1985/0683, Proposed conversion of outhouse into double garage, Decision: PER, Decision Date: 13-JUN-85

2. CONSULTATION AND PUBLICITY

2.1. **Parish Council** – Cawood Parish Council have raised no objections to the retrospective proposals in principle. However, have commented that there are issues which should be addressed. Most notably, concerns relating to access and parking. Cawood Parish Council understand the actual nursery is not 70 Sherburn Street, but the barn at the end of the garden. This is primarily accessed along the Back Lane which is narrow and congested. Furthermore, Cawood Parish Council note that, given the nature of a nursery, young children enjoy integrated play which gives them free flow indoors and out, so would hope any issues with noise would be addressed in relation to neighbours' amenity.

2.2. **NYCC Highways** – NYCC Highways have objected to the proposed development due to the absence of adequate on-site parking spaces. This would be likely to result in vehicles being parked outside the site on the County Highway to the detriment of the free flow of traffic and road safety.

It is noted that discussions took place with the applicant in respect of the objection to allow the applicant the opportunity to address the concerns raised. The applicant subsequently submitted plans showing additional parking on private land outside the application site. However, the additional parking shown is not within the control of the applicant and thus did not overcome the initial concerns.

2.3. **Yorkshire Water** – No response received.

2.4. **Selby Area Internal Drainage Board** - The IDB have raised no objections subject to a number of standard informatives.

2.5. **Environmental Health** – Environmental Health have raised concerns regarding the nature of the proposals being a nursery, which typically gives rise to noise from road traffic and children playing. Road traffic noise is for the most part limited to drop off and pick-up times in the morning and early afternoon - these periods are relatively short-lived and typically do not take place at the weekend. With regards to children playing, it is not clear on the plans where the play area is sited.

Therefore, the Environmental Health Officer has recommended that detail is sought given the residential receptors at either side. It would be recommended that the perimeter of the play area is treated with acoustic screening to reduce the noise so far as is reasonably practicable for a nursery, which would be 1.5m in height, can be of wooden fence or brick wall construction, should be of close boarded construction, be free from holes, sealed at the base and have a minimum mass of 10kg/m².

2.6. **Historic England** – Historic England have advised that they have no comments to make on this application.

2.7. **Public Rights of Way Officer** – No response received.

2.8. **Contaminated Land Consultant** – No response received.

2.9. **The Environment Agency (Liaison Officer)** – The Environment Agency have raised no objections to the proposals subject to the applicant agreeing a suitable warning and evacuation plan with the LPA's Emergency Planning Team.

2.10. **Neighbour Summary** – All immediate neighbours were informed by letter and a site notice was erected. Resulting in 3 letters of support and 6 letters of objection. In summary the letters of support state:

- The nursery supports the Cawood community through caring for children and involving them in various projects.
- The staff are very professional, competent and help neighbours buy taking parcels.
- Parking issues are minor and can be solved.
- The nursery has become part of the local scene.
- The nursery provides training and employment for local young people.

- Parking issues have been overcome following neighbours making their surplus parking available to the applicants.
- Increased traffic is little to do with the nursery who have excellent communication in regard to access and parking.
- The barn and outside area is very well maintained with minimal disturbance to the area.
- No noise issues, only ever happy play of a normal level for a small group of children.
- Letters also state, "Please give Ellytotts and the parents of the children who have entrusted her with their care - and who would find her irreplaceable an opportunity to work together to come up with alternative methods to drop off and pick up."

2.11 It is noted that a number of the letters of support are not from immediate neighbours but from members of the public who use the nursery and are located across the village of Cawood and further afield such as Bubwith, which is located outside of the Selby district. In summary the letters of objection raise concerns for:

- Impacts on the Conservation Area.
- Retrospective application and works.
- Traffic and highway safety.
- Impacts on residential amenity including noise.
- Neighbouring residents' driveways are blocked daily due to parking issues with the nursery.
- Concerns that the plans submitted are incorrect and that the hours of opening applied for contradict the opening hours as shown on the nursery's website.
- Lack of engagement from the applicant with neighbours.
- The property is an eye saw resulting in the devaluation of surrounding properties.
- Concerns that the access to the nursery is also unsafe for children accessing the property as the gates open straight on to the road.

3. SITE CONSTRAINTS

Constraints

3.1 The application site is located within the defined development limits of Cawood, which is a Designated Service Village as identified in the Core Strategy and is located within Flood Zone 3.

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 -
- 4.6 *“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

- 4.7 The relevant Core Strategy Policies are:
- SP1 – Presumption in Favour of Sustainable Development
 - SP2 – Spatial Development Strategy
 - SP13 – Scale and Distribution of Economic Growth
 - SP15 – Sustainable Development and Climate Change
 - SP18 – Protecting and Enhancing the Environment
 - SP19 – Design Quality

Selby District Local Plan

- 4.8 The relevant Selby District Local Plan Policies are:
- ENV1 – Control of Development
 - ENV25 – Control of Development in Conservation Areas
 - EMP2 – Location of Economic Development
 - EMP6 – Employment Development within Development Limits and Established Employment Areas
 - T1 – Development in Relation to the Highway Network
 - CS3 – Children’s Nurseries

5 APPRAISAL

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

- The Principle of the Development
- Impact on the Character and Appearance of the Area and surrounding Heritage Assets
- Impact on Residential Amenity
- Highway Issues
- Flood Risk, Drainage and Climate Change

The Principle of the Development

5.2 The proposal is for the change of use of a barn to children's day care facility and associated works. The following policies are considered to be relevant.

5.3 Policy SP1 of the Core Strategy outlines that *"when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework"* and sets out how this will be undertaken. Policy SP1 is therefore consistent with the guidance in Paragraph 11 of the NPPF.

5.4 Policy SP13 of the Core Strategy states that in rural areas, sustainable development which brings about sustainable economic growth through local employment opportunities or expansion of businesses and enterprise will be supported, including (amongst other things) the re-use of existing building and infrastructure and the development of well-designed new buildings. In all cases development should be sustainable and be appropriate in scale and type to its location, not harm the character of the area, and seek a good standard of amenity.

5.5 EMP6 of the Selby Local Plan relates to Employment Development within Development Limits and Established Employment Areas and states that proposals within defined development limits will be permitted for new business development, including the change of use of land or premises subject to the following criteria:

EMP6 (A)

- 1) *There is no significant adverse effect on existing businesses;*
- 2) *The proposal would not create conditions prejudicial to highway safety or which would have a significant adverse effect on local amenity; and*
- 3) *The proposal would achieve a standard of design, materials and landscaping appropriate to the locality and would not have a significant adverse effect on the appearance or character of the surrounding area.*

EMP6 (B)

- 1) *The nature and scale of the proposal is appropriate to the locality;*
- 2) *The proposals would not prejudice the future comprehensive development of land; and*
- 3) *The proposal would not harm acknowledged nature conservation interests or result in the loss of open space of recreation or amenity value or which is intrinsically important to the character of the area.*

5.6 Policy CS3 of the Selby Local Plan states that proposals for the development of or change of use to a children's nursery will be permitted subject to a number of criteria, this includes:

- 1) *The proposal would be situated within the defined development limits or within existing school or college sites;*
- 2) *The proposal would not create conditions prejudicial to highway safety or which would have a significant adverse effect on local amenity;*
- 3) *Adequate car parking, and an area for the setting down and collection of pupils off the highway is available, or the proposal is not situated close to a busy road junction or where peak hour loading restrictions are in operation; and*
- 4) *Adequate outdoor space for children's play is provided.*

- 5.7 The application site is located within the defined development limits of Cawood. There is nothing within the NPPF to identify this type of development as being unsustainable or preclude in principle development of this type in this location.
- 5.8 The proposals are considered acceptable in principle and in respect of Local Plan Policy EMP6 (1), (2) and CS3. Where the proposed scheme may be acceptable in principle it would be required to meet the policy, tests set out in in Local Plan Policy EMP6 and CS3.
- 5.9 The impact on acknowledged interests against the above policy tests is considered in the following parts of the report, including the issue of scale.

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

- 5.10 The application site is located within the Cawood Conservation Area. Planning (Listed Building and Conservation Areas) Act 1990, Section 72 (1) states that with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the area.
- 5.11 Relevant policies within the NPPF, which relate to development within a Conservation Area include paragraphs 189, 190, 191, 192, 193 and 194. Relevant policies within the NPPF, which relate to general design principles, include paragraphs 53, 124, 127, 128, 130 and 131.
- 5.12 The application site is located within a residential area and the barn is located to the rear of the host property 70 Sherburn Street and is adjacent the highway to the rear Chestnut Road. Therefore, the proposed use has the potential to impact on the character of the area through increased activity on site, generated by vehicle movements and noise from children inside and outside of the property.
- 5.13 The Supporting Statement details that some refurbishment works took place in 2012. This includes the installation of a staircase, installations of two toilets, connection to the mains sewers, and replacement of the floor. Officers also note from a review of the site history and a site visit that a number of openings have also been replaced. However, given the nature of the works being repairs and renewals this would not have required planning permission and therefore does not form part of this assessment.

- 5.14 Comments have been sought from the Conservation Officer who has raised concerns regarding the replacement openings and fascia boards. However, following further discussions and clarification, the Conservation Officer noted that these changes did not require planning permission and therefore raises no objections to the proposed development.
- 5.15 There have been limited external changes to the building to facilitate the use, with the exception of the creation of the outdoor play area, which from a site visit includes a variety of paraphernalia associated with day care use and artificial grass surfacing. This is partially visible from Chestnut Road, due to the open nature of the timber field gate access and low wall that encloses the property. The vivid colours of the artificial grass and play equipment also draws attention to the use, which differs somewhat from the residential uses and character that surrounds it.
- 5.16 Officers note that, no onsite parking can be provided resulting in on street parking by parents dropping off and collecting their children. Having carried out a site visit it is evident that Chestnut Road which is used to access the nursery, is narrow with several vehicles often parked along the highway. This parking of vehicles associated with the use, is considered to have some negative impacts on the character and appearance of the area. However, it would be for the Local Highway Authority to determine the details of this, which is highlighted in the 'Impacts on Highway Safety' section of the report.
- 5.17 Overall, Officers consider that as a result of the type and intensity of the use, this would cause some limit harm to the Cawood Conservation Area. However, this harm would be outweighed by the public benefits associated with the proposed development including but not limited to the creation of 7 part time jobs and the overall contribution to the rural economy.
- 5.18 Having considered the scheme as a whole, the use and associated works, on balance would be acceptable to its surroundings and would not have a detrimental impact on the character and appearance of the area. The proposal therefore complies with Policy ENV1, ENV25, EMP6 A(3), B(1) and (3) of the Selby District Local Plan, Policies SP13 (D), SP18 and SP19 of the Core Strategy and the NPPF.

Impact on Residential Amenity

- 5.19 Relevant policies in respect of the effect upon the amenity of adjoining occupiers include Policy ENV1 (1) of the Selby District Local Plan. Significant weight should be attached to this Policy as it is broadly consistent with the aims of the NPPF to ensure that a good standard of amenity is achieved.
- 5.20 The site is surrounded on all sides by existing residential development. Therefore, the key consideration in respect of residential amenity is the potential of the proposal to create noise and disturbance to neighbouring dwellings through early morning and late evening drop off and picks, children playing outside and any overlooking that might occur.
- 5.21 The existing building located to the rear of 70 Sherburn Street located within a residential area. The day care facility is accessed via Chestnut Road and benefits from a small outdoor area to the south, which has been separated from the rear garden of the host property, 70 Sherburn Street.

- 5.22 Given the limited external changes to the building it is not considered that the proposals would have any additional adverse impacts in respect of overlooking or overshadowing on the occupants of the neighboring properties.
- 5.23 In considering any impacts in respect of noise, it is noted that the applicant has advised that working hours for the childminders business are 07.00 – 18.00 Monday to Friday and not at all on Saturdays, Sundays or Bank Holidays. It is also noted that the planning statement details that the number of children on site is regulated by Ofsted and calculated via the available floor space of the dwelling and number of employees.
- 5.24 In summary, childminders may care for a maximum of 21 young children and the application form advises that there are a maximum of 7 part time employees. It is noted that the drop offs, and collections associated with a maximum of 28 people each morning and evening is considered to cause some nuisance. Whilst the building is well away from the dwellings on Sherburn Street, the proposals have the potential to disrupt residents at 7a, and in the evening particularly those immediately adjacent and those along Chestnut Road.
- 5.25 The Environmental Health Officer has raised concerns that, the information submitted is not clear on the plans where the play area is sited and would recommend that further details is sought given the residential receptors either side. The EHO has also advised that the perimeter of the play area should be treated with acoustic screening to reduce noise.
- 5.26 From a review of all relevant information, it is considered that there is adequate open space for the children to play outdoors and is regulated separately by Ofsted.
- 5.27 Overall, there are fundamental concerns relating to the intensity of the use and cumulative impact of the drop off and collections, number of children and employees, outdoor activities and lack of acoustic fencing. Therefore, the proposals on a whole are considered to have significant adverse impacts on the residential amenity of the occupiers of neighboring properties.
- 5.28 Therefore, it is considered that the proposals would have significant adverse effect upon adjoining residents in contrary with Policy ENV1, ENV2, EMP6 B(1) and CS3 (4) of the Selby District Local Plan.

Impact on Highway Safety

- 5.29 Relevant policies in respect to highway safety include Policies ENV1, T1 and T2 of the Selby District Local Plan and requirement (c) set out in Policy SP19 of the Core Strategy. These policies should be afforded substantial weight as they are broadly consistent with the aims of the NPPF.
- 5.30 The proposals are for the retrospective change of use of barn to children's day care facility and associated works. The site consists of a building and play area with no onsite parking. Access for pick up and drop offs, is from Chestnut Road.
- 5.31 Officers also note that a number of the objections received relate to highway safety issues and parking along Chestnut Road. This includes people parking across residents' driveways.

- 5.32 NYCC Highways commented on the proposed development and have raised objections to the proposed development, due to the absence of adequate on-site parking spaces. The proposed development would be likely to result in vehicles being parked outside the site on the highway to the detriment of the free flow of traffic and road safety. The numbers of children and staff levels also compound this problem.
- 5.33 The Highway Officer also makes reference to undertaking a site visit and notes struggling to find somewhere to park along Chestnut Road without blocking another resident's access or compromising. It was only possible for the officer to park once a parent had dropped off their child and the officer could then move into this location. The officer witnessed the refuse vehicle trying to navigate the parked cars. The Highways Officer's observations corroborates concerns raised in the neighbour objection letters received relating to highway safety concerns.
- 5.34 In the interests of trying to find a workable solution, Officers have discussed the highway objection with the applicant, who subsequently provided a plans showing parking spaces provided within other neighbouring properties along Chestnut Road, specifically, 42 Chestnut Road and 58 Sherburn Street. Furthermore, NYCC's parking standards require 1 car parking space/2 staff and 1 space/6 children should be made available, therefore the proposals are deficient by approx. 6-7 spaces for a business of this size.
- 5.35 Having reconsulted the Highway Authority with the suggestion of revised off-site parking, this is not considered to be an acceptable solution, as these spaces are not within the control of the applicant, not within the red line application site and cannot be suitably controlled or retained for the lifetime of this permission. The parking cannot be relied upon therefore, the Local Highway Authority maintain their original objection, which cannot be resolved or mitigated.
- 5.36 Overall, the proposals are considered to be unacceptable in terms of highway safety and therefore does not comply with Policy EMP6 A(2) and CS3 (2) and (3) of the Selby District Local Plan and would be unacceptable in respect of Local Plan Policy SP19 of the Core Strategy and policies contained within the NPPF.

Flood Risk and Drainage

- 5.37 Relevant policies in respect to flood risk include Policies SP15, SP19 of the Core Strategy, and paragraphs 149,150,155,156, 157, 158, 163 of the NPPF.
- 5.38 Firstly, addressing the issues of flood risk, the application site is within Flood Zone 3, which has a high probability of flooding. The application involves a 'change of use' of a residential outbuilding to a nursery, both of which are 'more vulnerable' uses within Table 2 of the NPPG flooding guidance. Therefore, no sequential test or exceptions test would not be required.
- 5.39 Having consulted the Environment Agency, the EA have raised no objections to the proposals subject to the applicant agreeing a suitable warning and evacuation plan with the LPA's Emergency Planning Team. In considering the EA's comments no warning and evacuation plan has been provided, however this could have been supplied or dealt with by condition, should support be offered to the scheme.
- 5.40 In terms of drainage, the surface water from the existing building is already suitably drained and this permission does not increase this run off, thus does not need further control. Yorkshire Water and the IDB have been consulted on the proposals and

raised no objections. Likewise, the building is already connected to the mains sewer for foul water.

- 5.41 On the basis of the above the proposals are considered to be acceptable in terms of flood risk and therefore accord with Policies SP15, SP16, SP19 of the Core Strategy, and paragraph 163 of the NPPF.

5. CONCLUSION

- 6.1 Having had regard to the development plan, all other relevant local and national policy, consultation responses and all other material planning considerations, it is considered that the proposed development would not have a detrimental effect on the character and appearance of the area, or the Cawood Conservation Area. The proposal is also acceptable in respect of flood risk and drainage.
- 6.2 However, the proposals would have a detrimental effect on, the residential amenity of the occupants of neighbouring properties and highway safety.
- 6.3 The application is therefore considered to be in contrary to Policies ENV1, ENV2 T1, EMP6 A(2) and B(1) and CS3 (2) and (3) of the Selby District Local Plan, Policies SP1, SP2, SP15 and SP19 of the Core Strategy and the advice contained within the NPPF.

7. RECOMMENDATION

- 7.1 This application is recommended to be REFUSED for the following reasons:
1. The combined impact of noise, general disturbance and traffic generation from the nursery results in an unacceptable form of development, which creates significant harm to the living conditions of neighbouring occupiers. This cumulative harm is given significant weight and would outweigh any benefits of the proposed development. This development is therefore contrary to Policies, ENV1(1) and ENV2(A) of Selby District Local Plan, Policies SP13(D), SP19(K), the PPG for Noise, the Noise policy statement for England and paragraphs, 170(e), 180(a) the NPPF.
 2. The proposed development is unacceptable in terms of highway safety due to the absence of adequate on-site parking spaces. The proposed development would be likely to result in vehicles being parked outside the site on the County Highway to the detriment of the free flow of traffic and road safety. The proposed scheme therefore fails to accord with Policies ENV1, T1, T2, EMP6 A(2) and CS3 (2) and (3) of the Selby District Local Plan and would be unacceptable in respect of Local Plan Policy SP19 of the Core Strategy and the advice contained within Paragraphs 108 and 109 of the NPPF.

8. Legal Issues

8.1 Planning Acts

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

8.2 Human Rights Act 1998

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

8.3 Equality Act 2010

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

9. Financial Issues

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

10. Background Documents

Planning Application file reference 2019/1008/COU and associated documents.

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Appendices:

None.