



Report Reference Number 2019/0668/OUT

To: Planning Committee
Date: 10th February 2021
Author: Chris Fairchild
Lead Officer: Ruth Hardingham (Planning Development Manager)

APPLICATION NUMBER:	2019/0668/OUT	PARISH:	Thorganby Parish Council
APPLICANT:	Mr & Mrs Knott & Turner	VALID DATE:	3rd July 2019
		EXPIRY DATE:	28th August 2019
PROPOSAL:	Outline application for a residential development and demolition of steel portal framed former haulage workshop building to include access (all other matters reserved)		
LOCATION:	Pasture Cottage Main Street Thorganby York North Yorkshire YO19 6DB		
RECOMMENDATION:	REFUSE		

1. Introduction and Background

- 1.1 This application has been brought back before Planning Committee as there has been a material change in circumstances since Members resolved to “GRANT - That the application be approved subject to the drafting and determination of the conditions be delegated to the Head of Planning, in consultation with the Chair and Vice-Chair of the Committee” at Planning Committee 9 December 2020.
- 1.2 New Community Infrastructure Levy (CIL) Regulations came into force on the 1st of September 2019 which removed the S106 pooling restrictions and allow local authorities to use both the Levy and S106 planning obligations to fund the same item of infrastructure, (S106 contributions must still directly relate to the development). In addition, the new Regulations removed the provisions relating to the 123 list and introduced a requirement for all local authorities (not just CIL charging ones) to publish an annual Infrastructure Funding Statement (IFS). The Infrastructure Funding Statement replaces the Regulation 123 list.
- 1.3 On 3rd December at Executive, Members resolved to approve the Draft Infrastructure Funding Statement. This was published on the Council’s website on

31st December 2020 and replaced the existing Regulation 123 list. Therefore, from the 31st December 2020 planning applications determined should take into account this position.

1.4 Given the above this application would now be subject to requirements for Recreational Open Space under Policy RT2 of the Local Plan. Policy RT2 of the Local Plan stipulates that for dwellings of more than 4 and including 10 dwellings a commuted payment should be secured for new or upgraded facilities within the locality. This would be secured by way of a legal agreement. However, Officers consider given the overlap of the resolution that Members made to grant permission the application on 9th December and adoption of the IFS on 31st December, it is appropriate in this instance to determine the application subject to the resolution as agreed on 9th December.

1.3 A copy of the officer report presented to Planning Committee on 9th December 2020 is attached in Appendix 1.

2.0 Recommendation:

i. It is recommended that this planning application is Granted subject to conditions detailed below:

01. Applications for the approval of the reserved matters referred to in Condition 02 herein shall be made within a period of three years from the grant of this outline permission and the development to which this permission relates shall be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason:

In order to comply with the provisions of Section 51 of the Planning and Compulsory Purchase Act 2004.

02. Approval of the details of the (a) appearance, (b) landscaping, (c) layout, and (d) scale (hereinafter called 'the reserved matters') shall be obtained from the Local Planning Authority in writing before any development is commenced.

Reason:

This is an outline planning permission and these matters have been reserved for the subsequent approval of the Local Planning Authority, and as required by Section 92 of the Town and Country Planning Act 1990.

03. The development hereby permitted shall be carried out in accordance with the plans, drawings and documents listed below:

- Ref. 3129/06 Site Location Plan
- Ref. 3375/P1/02/01 Rev.B Visibility Splays Amendments at Existing Access

Reason:

For the avoidance of doubt.

04. No dwelling to which this planning permission relates shall be occupied until the carriageway and any footway/footpath from which it gains access is constructed to basecourse macadam level and/or block paved and kerbed and connected to the existing highway network with street lighting installed and in operation.

The completion of all road works, including any phasing, shall be in accordance with a programme approved in writing with the Local Planning Authority in consultation with the Highway Authority before the first dwelling of the development is occupied.

Reason:

In accordance with Selby District Local Plan Policy T1 and T2 and to ensure safe and appropriate access and egress to the dwellings, in the interests of highway safety and the convenience of prospective residents.

05. There shall be no access or egress by any vehicles between the highway and the application site until full details of any measures required to prevent surface water from non-highway areas discharging on to the existing or proposed highway together with a programme for their implementation have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. The works shall be implemented in accordance with the approved details and programme.

Reason:

In accordance with Selby District Local Plan Policy T1 and T2 and in the interests of highway safety.

06. There shall be no excavation or other groundworks, except for investigative works, or the depositing of material on the site until the access(es) to the site have been set out and constructed in accordance with the published Specification of the Highway Authority and the following requirements:
- a. The crossing of the highway verge and/or footway shall be constructed in accordance with the approved details and/or Standard Detail number A1.
 - b. Any gates or barriers shall be erected a minimum distance of 6 metres back from the carriageway of the existing highway and shall not be able to swing over the existing or proposed highway.
 - c. Provision should be made to prevent surface water from the site/plot discharging onto the existing or proposed highway in accordance with the specification of the Local Highway Authority.

All works shall accord with the approved details unless otherwise agreed in writing by the Local Planning Authority.

Reason:

In accordance with Selby District Local Plan Policy T1 and T2 and to ensure a satisfactory means of access to the site from the public highway in the interests of vehicle and pedestrian safety and convenience.

07. There shall be no access or egress by any vehicles between the highway and the application site (except for the purposes of constructing the initial site access) until splays are provided giving clear visibility of 43 metres measured to the northern

centre line and 43 metres to the vehicle track of the southern splay of the major road Main Street from a point measured 2 metres down the centre line of the access road. The eye height will be 1.05 metres and the object height shall be 0.6 metres. Once created, these visibility areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

Reason:

In accordance with Selby District Local Plan Policy T1 and T2 and in the interests of road safety.

08. There shall be no excavation or other groundworks, except for investigative works, or the depositing of material on the site in connection with the construction of the access road or building(s) or other works hereby permitted until full details of the following have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority :
- a. tactile paving
 - b. vehicular, cycle, and pedestrian accesses
 - c. vehicular and cycle parking
 - d. vehicular turning arrangements
 - e. manoeuvring arrangements

Reason:

In accordance with Selby District Local Plan Policy T1 and T2 and to ensure appropriate on-site facilities in the interests of highway safety and the general amenity of the development.

09. No part of the development shall be brought into use until the approved vehicle access, approved under condition number 2 are available for use. Once created these areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

Reason:

In accordance with Selby District Local Plan Policy T1 and T2 and to ensure a satisfactory means of access to the site from the public highway in the interests of vehicle and pedestrian safety and convenience.

10. No part of the development shall be brought into use until the parking, manoeuvring and turning areas to be approved under any future reserved matters consent are available for use. Once created these areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

Reason:

In accordance with Selby District Local Plan Policy T1 and T2 and to provide for appropriate on-site vehicle facilities in the interests of highway safety and the general amenity of the development.

11. There shall be no HCVs brought onto the site until a survey recording the condition of the existing highway has been carried out in a manner approved in writing by the Local Planning Authority in consultation with the Highway Authority.

Reason:

In accordance with Selby District Local Plan Policy T1 and T2 and in the interests of highway safety and the general amenity of the area.

12. There shall be no establishment of a site compound, site clearance, demolition, excavation or depositing of material in connection with the construction on the site until proposals have been submitted to and approved in writing by the Local Planning Authority for the provision of:
 - a. on-site parking capable of accommodating all staff and sub-contractors vehicles clear of the public highway
 - b. on-site materials storage area capable of accommodating all materials required for the operation of the site.

The approved areas shall be kept available for their intended use at all times that construction works are in operation.

Reason:

In accordance with Selby District Local Plan Policy T1 and T2 and to provide for appropriate on-site vehicle parking and storage facilities, in the interests of highway safety and the general amenity of the area.

13. Prior to the occupation of any dwelling, a scheme to mitigate the adverse effects of the development upon surrounding designated environmental sites consisting of at least one of the following mitigation measures shall be submitted to and agreed in writing by the Local Planning Authority:
 - 1) Improvement of facilities at Thorganby recreational grounds;
 - 2) Information to residents in the village regarding the importance of the nearby designated sites taking the form of:
 - a) A staffed information event(s) or stall(s) to raise awareness;
 - b) A high quality leaflet to be delivered in the village and surrounding area.

The scheme shall include: i) the details of the proposed mitigation; ii) the timescales for the proposed mitigation's implementation, and; iii) the method of implementing the mitigation including legal agreement as necessary.

The mitigation shall thereafter be implemented in accordance with the approved details.

Reason:

To ensure appropriate mitigation is in place to avoid an adverse effect on the integrity of Lower Derwent Valley Special Area of Conservation (SAC), Special Protection Area and River Derwent SAC, and damage or destruction of the interest features for which Derwent Ings & River Derwent Site of Special Scientific Interest.

14. A scheme to ensure a net gain in biodiversity shall be submitted to the Local Planning Authority prior to the occupation of any dwelling. The subsequently approved scheme shall be implemented prior to the occupation of any dwelling and retained thereafter.

Reason:

In the interests of biodiversity and to satisfy CS Policy SP15.

15. Priority will be given to the disposal of foul water drainage via a mains sewer. If a mains sewer connection is not possible, foul water shall be treated via a package works or septic tank subject to tertiary treatment of effluent designed to remove phosphate including (for example) reed bed systems, phosphate removal units or a dry soakaway.

The details of foul water drainage shall be submitted to the Local Planning Authority prior to the commencement of development, completed prior to the occupation of any dwelling and retained thereafter.

Reason:

In the interest of public health and maintaining the public water supply and sewerage and the integrity of surrounding designated environmental sites.

16. No construction works in the relevant area(s) of the site shall commence until measures to protect the public water supply and sewerage infrastructure that is laid within /adjacent to the site boundary have been implemented in full accordance with details that have been submitted to and approved by the Local Planning Authority . The details shall include but not be exclusive to the means of ensuring that access to the pipes for the purposes of repair and maintenance by the statutory undertaker shall be retained at all times.

Reason:

In the interest of public health and maintaining the public water supply and sewerage

17. Prior to the commencement of development, the suitability of soakaways, as a means of disposing of surface water should be ascertained in accordance with BRE Digest 365 to the satisfaction of the Local Planning Authority.

If the suitability of soakaways is proven, a scheme for the provision of surface water drainage works, shall be submitted to the Local Planning Authority for written approval. Any such Scheme shall be implemented to the reasonable satisfaction of the Local Planning Authority before the development is brought into use. The following criteria should be considered:

- Any proposal to discharge surface water to a watercourse from the redevelopment of a brownfield site should first establish the extent of any existing discharge to that watercourse.
- Peak run-off from a brownfield site should be attenuated to 70% of any existing discharge rate (existing rate taken as 140lit/sec/ha or the established rate whichever is the lesser for the connected impermeable area).
- Discharge from "greenfield sites" taken as 1.4 lit/sec/ha.
- Storage volume should accommodate a 1:30 yr. event with no surface flooding and no overland discharge off the site in a 1:100yr event.
- A 30% allowance for climate change should be included in all calculations.
- A range of durations should be used to establish the worst-case scenario.

- The suitability of soakaways, as a means of surface water disposal, should be ascertained in accordance with BRE Digest 365 or other approved methodology.

If the suitability is not proven or the location is considered to be detrimental, amended proposals showing how the site is to be drained must be submitted for approval by the Local Planning Authority and thereafter the approved scheme implemented prior to occupation of the development hereby approved.

Reason:

To ensure the development is provided with satisfactory means of drainage and to reduce the risk of flooding.

18. Prior to commencement of development, an investigation and risk assessment (in addition to any assessment provided with the planning application) must be undertaken to assess the nature and extent of any land contamination. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing by the Local Planning Authority. The report of the findings must include:
- a. a survey of the extent, scale and nature of contamination (including ground gases where appropriate);
 - b. an assessment of the potential risk to:
 - human health,
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - adjoining land,
 - groundwaters and surface waters,
 - ecological systems,
 - archaeological sites and ancient monuments;
 - c. an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's Model Procedures for The Management of Land Contamination, CLR 11'.

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 risk to workers, neighbours and other offsite receptors.

19. Prior to commencement of development, a detailed remediation scheme to bring the site to a condition suitable for the intended use (by removing unacceptable risk to human health, buildings and other property and the natural and historic environment) must be prepared and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

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 risk to workers, neighbours and other offside receptors.

20. Prior to first occupation or use, the approved remediation scheme must be carried out in accordance with its terms under verification report that demonstrates the effectiveness of the remediation carried out must be produced and 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.

21. 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 by 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 risk from land contamination to the future uses of the land and neighbouring land are minimised, together with those two 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 offside receptors.

22. No built development is to be constructed within a Flood Zone other than Flood Zone 1 unless a Site Specific Flood Risk Assessment is first submitted and demonstrates to the Local Planning Authority's satisfaction that the site is acceptable from a flood risk perspective. Any measures contained within the Site Specific Flood Risk Assessment necessary to make built development acceptable from a flood risk perspective shall be installed prior to the occupation of the dwellings and retained thereafter.

Reason:

To ensure the site is suitable from a flood risk perspective.

23. The development hereby approved shall be restricted to a maximum of 9 dwellings.

Reason:

To ensure provision of affordable housing in accordance with Core Strategy Policy SP9 and the accompanying Affordable Housing Supplementary Planning Document (SPD) and the NPPF.

INFORMATIVES

01. The Local Planning Authority worked positively and proactively with the applicant to identify various solutions during the application process to ensure that the proposal comprised sustainable development and would improve the economic, social and environmental conditions of the area and would accord with the development plan. These were incorporated into the scheme and/or have been secured by planning condition. The Local Planning Authority has therefore implemented the requirement in Paragraph 38 of the NPPF.
02. You are advised that a separate licence will be required from the Highway Authority in order to allow any works in the adopted highway to be carried out. The 'Specification for Housing and Industrial Estate Roads and Private Street Works' published by North Yorkshire County Council, the Highway Authority, is available at the County Council's offices. The local office of the Highway Authority will also be pleased to provide the detailed constructional specification referred to in this condition.
03. The proposals shall cater for all types of vehicles that will use the site. The parking standards are set out in the North Yorkshire County Council publication 'Transport Issues and Development – A Guide' available at www.northyorks.gov.uk
04. Under the Board's Byelaws the written consent of the Board is required prior to any discharge into any watercourse within the Board's District.

Background Documents

Planning Application file reference 2019/00564/FUL and associated documents.

Contact Officer: Chris Fairchild, Senior Planning Officer

Appendices: Report to Planning Committee 9th February 2020.

Appendix 1

This application has been brought before Planning Committee as there have been more than 10 letters of representation received in support of the application contrary to officers' opinion where they would otherwise have refused the application under delegated powers due to conflict with the development plan.

1 INTRODUCTION AND BACKGROUND

Site and Context

- 1.1 The application site currently consists of a former storage and distribution business including a large yard area consisting of hardstanding with associated storage buildings on the periphery. The site is accessed via a private drive off Main Street shared with Pasture Cottage – a residential dwelling to the east of the site.

The Proposal

- 1.2 Outline planning permission, with all matters reserved except for access, is sought for the demolition of all existing building and redevelopment of the site for residential purposes. The application was originally submitted with access and layout to be considered, however during determination layout has been reserved and the plans showing a layout of 5 no. detached dwellings should be treated as indicative only.
- 1.3 Access remains a detailed matters consideration and the proposal includes amendments to the site's access road, site access off the highway and parking arrangements/curtilage of Pasture Cottage.

Relevant Planning History

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

Ref: CO/1986/0280
Description: Erection of a building for use as a transport garage at,
Address: Pasture Cottage, Main Street, Thorganby,
Decision: Approved 02 July 1986

- 1.5 There are no planning conditions or other controls that prejudice the application.

2 CONSULTATION AND PUBLICITY

Planning Policy

- 2.1 The Council currently have a five year housing land supply. Secondary villages have already met their net residential dwelling target set out in the Core Strategy. Being outside development limits, the proposal is contrary to development plan

policy (Core Strategy Policy SP2A(c)). Consideration of whether the settlement boundary as defined remains relevant is required.

2.2 Following reconsultation no further comments were received.

North Yorkshire County Council Archaeology

2.3 Following consultation, there were no objections from this consultee.

2.4 Following reconsultation no further comments were received.

Ouse & Derwent Internal Drainage Board (IDB)

2.5 In general, where possible, the risk of flooding should be reduced and as far as practicable, surface water arising from a developed site should be managed in a sustainable manner.

2.6 The IDB recommend conditions relating to details of drainage works to be agreed taking account of greenfield and brownfield run-off rate, storage for flood events, and an allowance for climate change. The IDB also seek an informative to be included that highlights the need for written consent of the Board is required prior to any discharge into any watercourse within the Board's District.

2.7 Following reconsultation no further comments were received.

Natural England

2.8 Within the initial consultation, Natural England noted details of foul sewage treatment have not been provided. This has the potential for significant effects on River Derwent Site of Special Scientific Interest and Special Area of Conservation, and a Habitats Regulations Assessment is required to be undertaken. However, if foul water is to be discharged to a main sewer, it would be possible to rule out any likely significant effects.

2.9 Following reconsultation, Natural England repeated their request for details of how foul sewage will be disposed of.

2.10 Following the submission of a Shadow Habitat Regulation Assessment, Natural England were satisfied that subject to all mitigation measures being appropriately secured within a pre-commencement condition that the identified adverse effects arising from foul sewage that could potentially occur as a result of the proposal could be mitigated. However, further information was requested to determine impacts on designated sites arising from urban edge effects and recreational disturbance.

2.11 A revised Shadow Habitat Regulation Assessment was submitted taking account of the additional information required and recommending an information pack be included within the deeds. Natural England were reconsulted and, whilst they did not agree with the proposed mitigations within the Shadow Habitat Regulation Assessment, having recommended their own proposed mitigation measures they advised "*no objection - subject to appropriate mitigation being secured*",

Landscape Architect

- 2.12 The site is visible from a Public Right of Way and is within a part of the village having a rural setting as well as part-inclusion within the Conservation Area. Further information is required to demonstrate that the proposals will protect and enhance local character and setting and that landscape and visual effects are within acceptable limits, including: landscape strategy, tree survey, and clarification of land ownership outside the redline boundary.
- 2.13 Following reconsultation, the Landscape Architect noted that their previous comments still stand and have not been addressed.

Environmental Health

- 2.14 Following consultation, there were no objections from this consultee.
- 2.15 Following reconsultation no further comments were received.

Local Highway Authority

- 2.16 In accordance with the Manual for Streets, a visibility splay of 2.4m by 43m is required. This is achievable but only utilising third party land and a legal agreement will be necessary to secure this.
- 2.17 Comments are made regarding the indicative layout and the need at reserved matter stage for: altered turning areas; increased parking provision; boundary treatment; and road adoption. A series of conditions were recommended.
- 2.18 An informative is also sought advising separate licence will be required from the Highway Authority in order to allow any works in the adopted highway to be carried out.
- 2.19 In November 2019, following reconsultation, the Local Highway Authority made no further comments, repeating their previous comments..
- 2.20 Following the submission of revised highway information demonstrating that the visibility splays have been taken into the application site no objections were raised to the proposed development. The Local Highway Authority repeated the need for parking and turning to be addressed at any reserved matters application. Conditions are recommended requiring:
1. Construction of roads and footways prior to occupation of dwellings;
 2. Measures required to prevent surface water from non-highway areas;
 3. Private Access/Verge Crossings: Construction Requirements;
 4. Closing of existing access prior to occupation of dwellings;
 5. Provision of vehicular visibility splays;
 6. Provision of pedestrian visibility splay;
 7. Details of access, turning and parking;
 8. Provision of approved access, turning, and parking areas;
 9. Removal of permitted development rights for conversion of garage to habitable dwelling;
 10. Highway condition survey; and
 11. Construction method statement.

Yorkshire Water

2.21 Yorkshire Water requested conditions requiring: (1) measures to protect the public water supply and sewerage infrastructure, and; (2) No piped discharge of surface water from the application site until works to provide a satisfactory outfall, other than the existing local public sewerage shall take place. Yorkshire Water also requires that existing water infrastructure within the site must be protected during construction.

2.22 Following reconsultation no further comments were received.

Conservation Officer

2.23 Whilst only the access road is sited within the Conservation Area, the development area for the dwellings is within the setting of the conservation area. The site is visible from the Church of St. Helen, a Grade I Listed Building and within the setting of nearby non-designated heritage assets.

2.24 The indicative development of the site will generate infill which is harmful to the character of the settlement. It is recommended that any redevelopment of the site be reduced so that this harm is avoided.

2.25 Careful design of any buildings will be necessary. Proposals should seek to avoid standard dwelling types and instead seek to achieve buildings that allow for an appreciation of the grain – for example, a new dwelling to read as ancillary outbuildings to Pasture Cottage (this in terms of position, scale and massing). Contemporary design that is locally distinctive could be helpful in this respect.

2.26 Scale will be an important consideration for any new building/s to the rear of Pasture Cottage and the former chapel because of both their modest scale and also that of the other traditional buildings in the vicinity. Space should be given about these building to avoid overbearing development. It is noted that the retention of large frontage garden to Pasture Cottage is beneficial in conserving its setting.

2.27 The development of Ings View Farm, to the south, should not be taken as precedent for similar development elsewhere in the Conservation Area / village as it is backland development that is contrary to the linear grain of the settlement (and harmful to the setting of the former farmstead).

2.28 An outline application is not satisfactory for proposed development affecting a conservation area because the full design (and therefore impact) of the scheme cannot be assessed.

2.29 Following reconsultation, the Conservation Officer noted that their previous comments still stand and have not been addressed.

Publicity

2.30 The application was advertised via site notice, neighbour letters and via a Press notice. Following this, 17 written representations have been received, of which 16 are in support and 1 is neutral. No objections have been made.

2.31 The following points have been raised in support of the proposal:

- The demolition of the storage buildings and replacement with dwellings will improve the character of the village and Conservation Area.
- The village wish to see reduced HGV traffic.
- Reuse of previously developed land is suitable for development and is preferable to development in open countryside/greenfield.
- The use of the site for haulage is unneighbourly and incongruous with the peaceful nature of the village.
- Provision of additional housing will support the vitality and viability of existing services and possibly entice new services into the village.
- Supply of housing in Thorganby outstrips demand and more housing is required.
- The linear character of the Conservation Area has already been diminished by recent development.

2.32 The following points have been raised by those with a neutral stance on the proposal:

- Boundary treatments will need to be provided to maintain amenity for adjoining residents

3 SITE CONSTRAINTS

- 3.1 The site can be considered in two broad parts. The haulage yard of the site (c. 75%) is located outside the development limits of Thorganby – a Secondary Village as defined within the Core Strategy. The other c.25% of the site relates to the access road.
- 3.2 The access road portion of the site lies within the Thorganby Conservation Area, whilst the haulage yard part of the site immediately abuts the Conservation Area to the north and south. There are no statutory listed buildings on or in proximity to the site but the site is visible from the Grade I Listed Church of St. Helen.
- 3.3 Over 125m west of the site lies a large area protected for its environmental quality. This includes: both the Derwent Ings and River Derwent Sites of Special Scientific Interest (SSSIs); the Lower Derwent Valley Special Area of Conservation (SAC); the Lower Derwent Valley Ramsar Site; the Lower Derwent Valley Special protection Area (SPA), and; the Lower Derwent Valley National Nature Reserve.
- 3.4 An insignificantly small area of the site falls with Flood Zone 2, limited to a strip alongside the north of the access road.
- 3.5 The haulage yard portion of the site is noted as an area of potential contamination.

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 National Planning Policy Framework (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 (CS) (adopted 22nd October 2013) and those policies in the Selby District Local Plan (SDLP) (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 In February 2019, the NPPF replaced the previous July 2018 version. 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 NPPF outlines the implementation of the Framework:

“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 (CS)

- 4.6 The relevant CS Policies are:

SP1 Presumption in Favour of Sustainable Development
SP2 Spatial Development Strategy
SP9 Affordable Housing
SP18 Protecting and Enhancing the Environment
SP19 Design Quality

Selby District Local Plan (SDLP)

- 4.7 The relevant SDLP Policies are:

T1 Development in Relation to the Highway network
T2 Access to Roads
ENV1 Control of Development
ENV2 Environmental Pollution and Contaminated Land
ENV25 Control of Development in Conservation Areas

5 APPRAISAL

- 5.1 The key issues relevant to the assessment of this application are considered to be:

1. Principle of Development
2. Access
3. Conservation & Historic Environment
4. Landscape

5. Impact on Nature Conservation
6. Residential Amenity
7. Ground Conditions
8. Flood Risk
9. Affordable Housing

Principle of Development

Context

- 5.2 The site sits partly within the development boundaries, albeit this is limited to the area shown indicatively as an access road. However, the majority of the site: the only realistic location for the siting of houses within the limits of the red line plan, is outside the settlement boundaries and is therefore within the open countryside. In this circumstance the principle of residential development will be assessed on the basis the site is outside of settlement boundaries.
- 5.3 CS Policy SP1 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 CS Policy SP2 is the key policy controlling the location of future development within the District and directs the majority of new development to existing settlements. CS Policy SP2A(c) is the relevant section for development in the open countryside and limits development to the replacement or extension of existing buildings as well as new buildings which contribute to the local economy, enhance or maintain the vitality of rural communities, meet rural affordable housing need, or other special circumstances.
- 5.5 The supporting text for CS Policy SP2, Paragraph 4.31, clarifies that:

"The Council will resist new isolated homes in the countryside unless there are special circumstances such as the essential need for a rural worker to live permanently at or near their place of work in the countryside; or where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or the exceptional quality or innovative nature of the design of the dwelling (tested against the NPPF paragraph 55 and other future local policy or design code)."

Assessment

- 5.6 CS Policy SP2 makes no allowance for reuse of previously developed land and the proposal is not replacing or reusing the existing buildings. Whilst additional residents may contribute to improving the local economy and utilise existing services, it is considered the scale of development that may be acceptable at the site would not provide a material impact on either the local economy, or enhancement or maintenance of the vitality of rural communities. The erection of housing outside the settlement boundaries in this instance is not in accordance with the forms of development listed in CS Policy SP2.

- 5.7 As confirmed within recent appeals, CS Policy SP2 is considered to be in accordance with the NPPF. The Council can demonstrate a five year housing land supply and therefore, in accordance with Paragraph 11 and Footnote 7 of the NPPF, the development plan policies relating to housing are considered to be up-to-date.
- 5.8 Given the up-to-date position, the tilted balance within Paragraph 11d is not triggered, and, as per Paragraph 12 of the NPPF, proposals that conflict with an up-to-date plan should not usually be granted, although Councils may depart from up-to-date plans if material considerations indicate this is the case.
- 5.9 The provision of a limited number of dwellings (indicatively 5 no.) in this location is considered to generate minimal social, economic, and environmental benefits. Therefore, there are no material considerations in this particular case that indicate the development plan should not be followed. Accordingly, in accordance with Paragraphs 11 and 12 of the NPPF and CS Policy SP2 the principle of development is unacceptable.

Access

Context

- 5.10 Access is the only detailed matter being considered as part of this outline application.
- 5.11 The proposal utilises the access/egress from Main Street albeit a slight relocation southwards to achieve a visibility splay of 2.4m by 43m as opposed to the current 2.4m by 23.3m. In order to achieve this, the Pasture Cottage boundary hedge needs to be removed / realigned, and land at Surgery House needs to remain unobstructed as it is currently.
- 5.12 The existing access route into the site is utilised to reach the site for the residential dwellings to the rear, but in order to achieve this the demolition of Pasture Cottage's garage is required along with changes to the curtilage of that property.
- 5.13 SDLP Policy T1 stipulates development will only be permitted where existing roads have adequate capacity and can safely serve the development, unless appropriate off-site highway improvements are undertaken by the developer.
- 5.14 SDLP Policy T2 only allows for a new access or the intensification of the use of an existing access will be permitted provided where (1) there would be no detriment to highway safety; and 2) the access can be created in a location and to a standard acceptable to the highway authority.

Assessment

- 5.15 The Local Highway Authority outline a number of concerns with the indicative scheme in so far as: achieving appropriate manoeuvrability, parking provision, emergency service access, and boundary treatments. However, these matters are liable to change should any subsequent reserved matters, such as layout, be considered. The applicants should note that the indicative scheme is unlikely to be suitable for the reasons highlighted by Highways Officers.

- 5.16 The Local Highway Authority had no concern with the visibility splay as proposed subject to a legal agreement with owners of third party land to ensure that the visibility splay can be maintained at all times. In response, the applicants incorporated sufficient additional land within the red line of the application that ensures the access can be secured via planning conditions.
- 5.17 Following this revision, the Local Highway Authority confirmed that the access is acceptable and recommended planning conditions. Officers consider that the proposals are acceptable from an access perspective and meet the requirements of SDLP policies T1 and T2.

Conservation & Historic Environment

Context

- 5.18 The site sits partly within the Thorganby Conservation Area, however the majority of the site is outside but immediately adjoining the boundary of the Conservation Area. Consideration will need to be given both to the Conservation Area itself *and* its setting. The site is visible from the Church of St. Helen, a Grade I Listed Building and within the setting of nearby non-designated heritage assets.
- 5.19 Relevant development plan policy includes: CS Policy SP18, CS Policy SP19(b), SDLP Policy ENV1(5), and SDLP Policy ENV25. These policies require conservation of historic assets which contribute most to the District's character, and ensure development contributes positively to an area's identity and heritage in terms of scale, density and layout. Development within Conservation Areas should preserve or enhance the character or appearance of the conservation area.
- 5.20 Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ('the Act') imposes a statutory duty upon decision makers to pay special regard to the desirability of preserving listed buildings and their setting, or any features of special architectural or historic interest that they possess. Section 72 of the Act also imposes a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas.
- 5.21 Paragraph 193 of the NPPF requires great weight be given to the asset's conservation. The more important the asset, the greater the weight should be. Any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification (Paragraph 194). Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal (Paragraph 196). Paragraph 197 of the NPPF requires the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application.

Assessment

- 5.22 The Conservation Officer's consultation response highlights a number of concerns with the indicative proposals including layout, scale, design. Fundamentally, the Conservation Officer is not satisfied that an outline application is an appropriate for considering development affecting a Conservation Area because the full impact, and any subsequent harm, cannot be assessed.

- 5.23 This outline application is submitted on the basis that all matters other than access have been considered. Given matters of scale, appearance, layout and landscaping are all reserved, officers consider that it may be possible to achieve *some* form of residential development on the site whilst avoiding/minimising any subsequent harm to the prevailing historic environment. A detailed assessment would be undertaken should any future reserved matters application be submitted.

Landscape

Context

- 5.24 CS Policy SP18 seeks to safeguard and, where possible, enhance the historic and natural environment. SDLP Policy ENV15 gives priority to the conservation and enhancement of the character and quality of the landscape with particular attention to be paid to the design, layout, landscaping of development and the use of materials in order to minimise its impact and to enhance the traditional character of buildings and landscape in the area.
- 5.25 CS Policy SP19 expects development to achieve high quality design and have regard to the local character, identity and context of its surroundings including the open countryside. CS SP19 goes on to set out key requirements (a to l) that development should meet where relevant, these include: (a) making the best, most efficient use of land without compromising local distinctiveness, character and form, and, (b) positively contributing to an area's identity and heritage in terms of scale, density and layout.

Assessment

- 5.26 The Council's Landscape Architect states that the outline application does not provide satisfactory information to make a detailed consideration of the proposals and whether the landscaping proposed would be acceptable.
- 5.27 Whilst information to make a detailed assessment is currently lacking, given that landscaping is a reserved matter alongside scale, appearance, and layout officers believe that in principle it would be possible to achieve *some* form of residential development on the site whilst achieving a suitably landscaped layout and protecting the character of the wider area. In this instance it is therefore acceptable for a detailed assessment to take place should any future reserved matters application be received.

Impact on Nature Conservation

Context

- 5.28 Relevant policies in respect of nature conservation and protected species include CS Policy SP18 of the Core Strategy. CS Policy SP18 seeks to safeguard and, where possible, enhancing the natural environment. This is achieved through effective stewardship by (inter-alia) safeguarding protected sites from inappropriate development, and, ensuring development seeks to produce a net gain in biodiversity.

Assessment

- 5.29 Natural England's initial consultation noted that the application does not provide details of foul sewage disposal and that it is therefore not possible to assess the impact on the protected sites in the vicinity of the site. Notably, Natural England have no environmental concerns beyond drainage.
- 5.30 In response, the Applicants in conjunction with the Council prepared a Shadow Habitat Regulation Assessment which was submitted to Natural England. The appropriate assessment concludes that subject to the proposed measures the proposal will not result in adverse effects on the integrity of any of the identified environmental designations. Natural England were satisfied with this subject to inclusion of all measures within a pre-commencement condition.
- 5.31 Whilst Natural England were satisfied from a drainage perspective they raised additional concerns regarding the impact from this proposal and in-combination arising impacts from: urban edge effects and recreational disturbance, as well as any mitigation to prevent identified impacts. Additionally, Natural England recommended that given the proximity to internationally important environmental designations that the biodiversity enhancements and net gain contained with CS Policy SP18 should be sought.
- 5.32 A revised Shadow Habitat Regulation Assessment was undertaken and Natural England were reconsulted. Upon review, Natural England found that the proposed mitigation with the appropriate assessment was not sufficient: however, Natural England recommended an alternative series of mitigation and concluded that subject to this mitigation the proposals would be acceptable. The applicants have agreed to these proposed mitigations and subject to those being secured via condition or legal agreement as appropriate, Officers are satisfied the proposals will not have an adverse impact upon any environmental designations.

Residential Amenity

Context

- 5.33 The site is located in a primarily residential area, with domestic dwellings and curtilage adjoining the site boundary to the north-east and south. The proposal will create a new access and curtilage for Pasture Cottage.
- 5.34 SDLP Policy ENV1 provides eight broad aspirations that are taken into account when achieving "good quality development". ENV1(1) requires "*the effect upon the character of the area or the amenity of adjoining occupiers*" to be taken into consideration.

Assessment

- 5.35 The proposed use of the site for residential development is appropriate in the residential context of the area and is an improvement on the lawful use of the site for storage and distribution.
- 5.36 Details of the scale, appearance, layout and landscaping of any future development will determine the appropriateness of any future residential development, but given the size of the site, and separation from other dwellings officers consider that an appropriate level of amenity for future residents and existing neighbours is achievable. It should be noted that particular attention would need to be paid to the treatment of Pasture Cottage and the access road.

Ground Conditions

Context

- 5.37 SDLP Policy ENV2A states development that would be affected by unacceptable levels of noise, nuisance, contamination or other environmental pollution will be refused unless satisfactorily remediated or prevented. CS Policy SP19(k) seeks to prevent development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water, light or noise pollution or land instability.

Assessment

- 5.38 The applicants have provided a Phase 1 Geo-Environmental Risk Assessment which concludes there are no matters that preclude redevelopment of the site for residential development subject to the recommendations contained with the report. These recommendations include: (1) intrusive ground investigation; (2) refurbishment and demolition asbestos survey; and (3) all site workers to undertake sufficient risk assessment and utilise appropriate Personal Protection Equipment. Officers consider that subject to inclusion of these recommendations development of the site is appropriate in relation to ground conditions.

Flood Risk

Context

- 5.39 An extremely limited part of the site sits within Flood Zone 2. CS Policy SP15A(d) seeks to ensure that development in areas of flood risk is avoided wherever possible through the application of the sequential test and exception test (if necessary). SDC's Flood Risk Sequential Test Developer Guidance Note (October 2019) is a material consideration when producing or reviewing sequential tests.
- 5.40 The Guidance Note stipulates that where only a small part of the site lies within Flood Zone 2, that area will be used only for soft landscaping/open space, and safe access and egress during flooding can be achieved without having to use an area of flood risk then the Sequential Test will not be required.

Assessment

- 5.41 The area within Flood Zone 2 is limited to a small area of curtilage development to the north of the indicative access road and residents would be able to leave the flood zone safely during a flood event. Whilst an extremely small area of the site falls within FZ2, it is considered in this case that it is reasonable and proportionate not to have required submission of a Flood Risk Assessment. If any consent was to be granted it would be appropriate to attach a planning condition stipulating that no built development is to be constructed in Flood Zone 2 unless a site specific flood risk assessment is submitted.

Affordable Housing

Context

5.42 Core Strategy Policy SP9 and the accompanying Affordable Housing Supplementary Planning Document (SPD) sets out the affordable housing policy context for the District. Policy SP9 outlines that for schemes of less than 10 units or less than 0.3ha a fixed sum will be sought to provide affordable housing within the District.

5.43 However, the NPPF is a material consideration in planning decisions (as set out in paragraph 2 of the NPPF) and states at paragraph 63:

“Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). To support the re-use of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount”.

5.44 For housing, ‘major development’ is defined within the NPPF Glossary as being development of 10 or more homes, or where the site has an area of 0.5 hectares or more.

Assessment

5.45 The application relates to a site which has an area of less than 0.5 hectares. Whilst it is unlikely that more than 10 units may come forward at reserved matters stage, this cannot be ruled out. If planning permission were to be granted, Officers would recommend a condition be placed upon the outline consent limiting the number of dwellings to up to five.

5.46 Having had regard to Policy SP9 of the Core Strategy and material considerations including the Affordable Housing SPD and the NPPF, on balance, the application is acceptable without a contribution for affordable housing at this stage.

6 CONCLUSION

6.1 The application is submitted in outline with all matters reserved except access. An indicative scheme has been submitted that demonstrates the erection of 5 dwellings on the site. The access for the site utilises the existing approach but relocates the point of access southwards to allow the requisite visibility splay to be achieved.

6.2 The site is located partly within the development limits of Thorganby, albeit the majority of the site lies outside these limits and, crucially, this includes the area for the erection of dwellings. The principle of residential development is therefore based on development outside the settlement limits being within the open countryside.

6.3 Development plan policy does not support this type of development within the open countryside and the Council do not consider there to be sufficient material circumstances to warrant a departure from the up-to-date development plan. Consequently, the principle of development is not acceptable and Officers recommend the application be refused on this basis.

6.4 Following revisions to the scheme, a sufficient visibility splay has been demonstrated at the site. The Local Highway Authority have no objections to the proposals and officers are satisfied the proposals are acceptable on this basis.

- 6.5 The Council's Conservation Officer and Landscape Architect, have both raised concerns that the indicative scheme is not appropriate in relation to conservation and the historic environment and landscape, respectively. However, Planning Officers consider that each of these matters can be overcome through detailed design within any subsequent reserved matters stage and that it is possible to achieve some form of residential development at the site.
- 6.6 Officers consider that residential development of the site would achieve a suitable level of amenity for future residents and existing neighbours. Subject to the recommendations contained within the Phase 1 Geo-Environmental Risk Assessment there are no concerns from a ground conditions perspective. Following an appropriate assessment, subject to mitigation the proposals will not have an impact upon the internationally important environmental designations in the area.
- 6.7 In conclusion, the application is recommended for refusal on the basis that the principle of development is not acceptable in the open countryside.

7 RECOMMENDATION

7.1 This application is recommended to be REFUSED for the following reasons:

1. The proposed development would introduce new residential development outside of a settlement boundary that will not materially contribute towards and improve the local economy or enhance/ maintain the vitality of rural communities. The application is therefore contrary to Core Strategy Policy SP2.

In accordance with Paragraph 11 and Footnote 7 of the National Planning Policy Framework, the Council's development plan policy is considered up-to-date and the tilted balance is not engaged. There are no material circumstances that indicate planning permission should be approved as a departure from the up-to-date development plan.

8 LEGAL ISSUES

Planning Acts

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

Human Rights Act 1998

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

Equality Act 2010

8.3 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

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

10 Background Documents

10.1 Planning Application file reference 2019/0668/OUT and associated documents.

Contact Officer: Chris Fairchild

Appendices: None