



**Report Reference Number:** 2018/0107/FUL (8/09/19G/PA)

**Agenda Item No:** 6.1

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**To:** Planning Committee  
**Date:** 9 May 2018  
**Author:** Jenny Tyreman (Senior Planning Officer)  
**Lead Officer:** Ruth Hardingham (Planning Development Manager)

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APPLICATION NUMBER:	2018/0107/FUL	PARISH:	Stillingfleet Parish Council
APPLICANT:	Mr Tony Nightingale	VALID DATE: EXPIRY DATE:	5 February 2018 2 April 2018
PROPOSAL:	Retrospective demolition of existing single storey agricultural building and proposed construction of a single bungalow dwelling		
LOCATION:	Ashfield Farm York Road Stillingfleet York YO19 6HW		
RECOMMENDATION:	APPROVE		

This application has been brought before Planning Committee as the application is a departure from the Development Plan, but there are material considerations which would justify approval of the application.

## **1. INTRODUCTION AND BACKGROUND**

### **Site and Context**

- 1.1 The application site is located outside the defined development limits of Stillingfleet, which is a Secondary Village as identified in the Core Strategy, and is therefore located within the open countryside.
- 1.2 The application site formerly comprised 2No. agricultural buildings, which gained approval under a prior notification application (reference: 2016/0684/ATD) to be converted into 2No. residential dwellings. Works to one of the agricultural buildings, subject of this application, has now commenced.
- 1.3 To the south east of the application site is an existing dwelling, The Lodge, and to the north east of the application site is a residential property, Ashfield Farm. To the north west of the application site retrospective planning permission has been

granted for the change of use of the land to pheasant rearing under reference 2016/0767/COU.

### **The Proposal**

- 1.4 The application seeks retrospective planning permission for the demolition of an existing agricultural building and proposed erection of 1No. single dwelling. Although there was a previous consent for conversion of the building to a dwelling under an ATD application, the current application seeks a larger dwelling than that approved. Furthermore as works have commenced they could not be considered under a further ATD application. It is for this reason that the application has been submitted as a full application.

### **Relevant Planning History**

- 1.5 The following historical applications are considered to be relevant to the determination of this application.
- Application reference CO/1976/00049 for the roofing of a fold yard was approved on 04.08.1976.
  - Application reference CO/1989/00205 for the erection of a detached three bedroom dwelling was refused on 09.01.1989.
  - Application reference CO/1989/0297 for the erection of a detached bungalow and double garage was refused on 23.06.1989
  - Application reference CO/1992/0265 for the temporary siting of wooden huts for the rearing of pheasant during the period 1 May to 31 August was approved on 23.07.1992.
  - An agricultural notification reference PN/1993/013 for the erection of an agricultural building was refused on 30.04.1993.
  - An application reference CO/1993/0220 for the erection of an agricultural building for use as a farm machinery store was approved on 19.08.1993.
  - An application reference CO/1994/00207 for the erection of an agricultural storage building was approved on 06.09.1994.
  - An outline application reference CO/1998/0255 for the erection of an agricultural workers bungalow was refused on 25.06.1998.
  - A prior notification application reference 2016/0684/ATD for the change of use of 2No. agricultural buildings to 2No. residential dwellings was approved on 22.08.2016.
  - A retrospective application reference 2016/0767/COU for the change of use of land to pheasant rearing was approved on 28.10.2016.
  - An application reference 2017/1278/DOC for the discharge of conditions 02 (noise), 03, 04, 05, 06 and 07 (site investigation) of approval 2016/0684/ATD Prior notification for the change of use of 2No. agricultural buildings to 2No. residential dwellings was part approved on 01.02.2018.
  - A prior notification application reference 2017/1284/ATD for the change of use of agricultural building to 1 No bungalow was refused on 23.01.2018.

## **2. CONSULTATION AND PUBLICITY**

*(All immediate neighbours were informed by letter, a site notice was erected and statutory consultees notified)*

- 2.1 **Parish Council** – No objections, although there is concern that some strange dwellings may appear in the countryside if consent is given in future to convert dutch barns into houses.
- 2.2 **NYCC Highways** – No objections.
- 2.3 **Environmental Health** – No objections.
- 2.4 **Yorkshire Water** – No response within statutory consultation period.
- 2.5 **The Ouse & Derwent Internal Drainage Board** – No objections, subject to three conditions relating to: 1) drainage works to be agreed prior to commencement of development; 2) evidence of existing surface water discharge; and 3) surface water to adjacent watercourse.
- 2.6 **North Yorkshire Bat Group** – No response within statutory consultation period.
- 2.7 **Natural England** – No response within statutory consultation period.
- 2.8 **Contaminated Land Consultant** – No objections, subject to two conditions relating to: 1) verification of remedial works; and 2) reporting of unexpected contamination.
- 2.9 **Neighbour Comments** – No letters of representation from neighbouring properties have been received.

### **3. SITE CONSTRAINTS AND POLICY CONTEXT**

#### **Constraints**

- 3.1 The application site is located outside the defined development limits of Stillingfleet, which is a Secondary Village as identified in the Core Strategy, and is therefore located within the open countryside.
- 3.2 The application site comprises potentially contaminated land resulting from past uses for agriculture/nurseries.

#### **National Guidance and Policy – National Planning Policy Framework (NPPF), National Planning Practice Guide (NPPG)**

- 3.3 The NPPF introduces, in paragraph 14, a presumption in favour of sustainable development, stating "At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking". National Planning Practice Guidance (NPPG) adds further context to the National Planning Policy Framework ("NPPF") and it is intended that the two documents should be read together.
- 3.4 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. 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.

### **Selby District Core Strategy Local Plan**

3.5 The relevant Core Strategy Policies are:

- SP1 – Presumption in Favour of Sustainable Development
- SP2 – Spatial Development Strategy
- SP5 – The Scale and Distribution of Housing
- SP9 – Affordable Housing
- SP15 – Sustainable Development and Climate Change
- SP18 – Protecting and Enhancing the Environment
- SP19 – Design Quality

### **Selby District Local Plan**

3.6 As the Local Plan was not adopted in accordance with the Planning and Compulsory Purchase Act 2004, applications should be determined in accordance with the guidance in Paragraph 215 of the NPPF which states " In other cases and following this 12-month period, due weight should be given to relevant policies in existing plans 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)".

3.7 The relevant Selby District Local Plan Policies are:

- ENV1 – Control of Development
- ENV2 – Environmental Pollution and Contaminated Land
- T1 – Development in Relation to the Highway Network
- T2 – Access to Roads

### **Other Policies and Guidance**

3.8 Affordable Housing Supplementary Planning Document

## **4. APPRAISAL**

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

- The Principle of the Development
- Design and Impact on the Character and Appearance of the Area
- Impact on Residential Amenity
- Impact on Highway Safety
- Flood Risk and Drainage
- Nature Conservation and Protected Species
- Land Contamination

- Affordable Housing

### **The Principle of the Development**

- 4.2 The application site is located outside the defined development limits of Stillingfleet, which is a Secondary Village as identified in the Core Strategy, and is therefore located within the open countryside.
- 4.3 Policy SP2A(c) of the Core Strategy states that “Development in the countryside (outside Development Limits) will be limited to the replacement or extension of existing buildings, the re-use of buildings preferably for employment purposes, and well-designed new buildings of an appropriate scale, which would contribute towards and improve the local economy and where it will enhance or maintain the vitality of rural communities, in accordance with Policy SP13; or meet rural affordable housing need (which meets the provisions of Policy SP10), or other special circumstances.”
- 4.4 The proposal does not meet Policy SP2A(c) as it is not for rural affordable housing need and there are no special circumstances. The application should therefore be refused unless material considerations indicate otherwise.
- 4.5 One such material consideration is that a prior notification application for the change of use of 2No. agricultural buildings to 2No. residential dwellings at Ashfield Farm, York Road, Stillingfleet was permitted under reference 2016/0684/ATD on 22 August 2016. Under that application, the proposals were considered to meet the relevant criteria under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 and the Local Planning Authority determined that prior approval was not required in respect of 1) transport and highways impacts of the development; 2) noise impacts of the development; 3) contamination risks on the site; 4) flooding risks on the site; 5) whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Class Order; and 6) the design or external appearance of the building; subject to conditions.
- 4.6 The approved works to one of the agricultural buildings under approval reference 2016/0684/ATD, which is also subject of this application, included the conversion of the brick built part of the agricultural building, with the addition of a brick built extension to the north west elevation to be created under the brick/timber boarding built part of the existing agricultural building, which was then to be demolished as part of the proposal.
- 4.7 Following the determination of prior approval application reference 2016/0684/ATD, the applicants decided that they wished to make alterations to the approved scheme with the inclusion of an additional brick built extension to the north west elevation, under the brick/timber boarding built part of the agricultural building. The applicants were advised that they would need to submit a further prior approval application.
- 4.8 A further prior notification application for the change of use of 1No. agricultural building to 1No. residential dwelling at Ashfield Farm, York Road, Stillingfleet was therefore submitted, reference 2017/1284/ATD. However, in assessing that

application, it was noted that works had already commenced on site, on 1 November 2017, prior to the submission of the application. Case law demonstrates that where a commencement has been made the proposals cannot satisfy the requirements of Schedule 2, Part 3, Class Q. The prior notification application was therefore refused and the applicants were advised that they would need to carry out the works in accordance with the previous approval, reference 2016/0684/ATD, or if they wished to make changes to the approved scheme they would need to apply for planning permission, hence the current application.

- 4.9 The current application therefore seeks retrospective planning permission for the demolition of an existing agricultural building and proposed erection of 1No. single dwelling. The dwelling would be as per that applied for under prior approval application 2017/1284/ATD, which was refused on the basis that the works had already commenced.
- 4.10 It is noted that during a site visit, only the walls of the residential dwelling granted permission under prior approval 2016/0684/FUL were in place, including those of the brick built part of the agricultural building and the extension to the north west elevation. The applicants have advised that during the works to the existing brick built part of the agricultural building, the building collapsed as it was not structurally sound, which is contrary to the findings of the structural report submitted within the prior notification application, reference 2016/0684/ATD. As such, the applicants advised that they were required to re-build the walls using the existing bricks, which is the stage they were at during the site visit. Further, the brick/timber built part of the agricultural building had been demolished, as per 2016/0684/ATD.
- 4.11 The applicants have advised that if planning permission were to be refused for the current application, they would continue works under prior approval application, reference 2016/0684/ATD, which represents a fall-back position of significant weight. The only difference between the resultant residential dwelling granted permission under reference 2016/0684/ATD and under the current application is the inclusion of an additional extension to the north west elevation, to mirror the existing one.
- 4.12 Having regard to the fall-back position, which would result in a dwelling of similar size and scale in this location, it is considered that the proposal is acceptable in principle.

#### **Design and Impact on the Character and Appearance of the Area**

- 4.13 The application proposes the erection of a detached bungalow, which would replace an existing brick built agricultural building, with the inclusion of two single storey projections to the north west elevation, which would be constructed of materials to match the existing building. The proposed dwelling would have a similar appearance to the residential dwelling granted approval under reference 2016/0684/ATD, with the additional inclusion of an additional brick built extension to the north west elevation of a similar size and scale to the one already approved under application reference 2016/0684/ATD.
- 4.14 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, Policies SP4 and SP19 of Core Strategy and the advice contained within the NPPF.

### **Impact on Residential Amenity**

- 4.15 To the south east of the application site is an existing dwelling, The Lodge, and to the north east of the application site is a residential property, Ashfield Farm. To the north west of the application site retrospective planning permission has been granted for the change of use of the land to pheasant rearing under reference 2016/0767/COU.
- 4.16 In terms of the impact of the development on the residential amenities of neighbouring properties, given the size, siting and design of the development in relation to neighbouring properties, it is not considered that the proposals would result in any significant adverse effects of oppression, overshadowing or overlooking so as to adversely affect the amenities of the occupiers of any neighbouring properties.
- 4.17 In terms of the residential amenity of the future occupiers of the dwelling, it is noted that under the prior notification approval, reference 2016/0684/ATD, the Environmental Health Officer advised that the change of use of the land to the north west of the application site to pheasant rearing, under reference 2016/0767/COU, would give rise to the potential for a detrimental impact on residential amenity of the future occupiers of the development due to noise. As such, it was considered reasonable and proportionate to attach a condition requiring details of mitigation measures, such as an acoustic fence, to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. It is noted that a discharge of condition application has been submitted in respect of Condition 2 (noise mitigation measures) of approval 2016/0684/ATD, under application reference 2017/1278/DOC. This concluded that the position of the acoustic fencing shown on drawing no. H/CON/09/17/SK19, was acceptable and the details of the acoustic fencing provided with discharge of condition application reference 2017/1278/DOC, including an Acoustic Fencing – Advice on Specification Document received on 17 January 2018 and produced by Sharps Redmore Partnership were acceptable. A condition could be attached to any planning permission granted requiring the development to be carried out in accordance with these details in the interests of the residential amenity of future occupiers.
- 4.18 Subject to the aforementioned condition, 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 the NPPF.

### **Impact on Highway Safety**

- 4.19 The proposed dwelling would benefit from a vehicular access onto York Road and would benefit from on-site car parking to the rear of the dwelling.
- 4.20 NYCC Highways have been consulted on the proposals and have not raised any objections or recommended any conditions. However, it is noted that the previous approval, reference 2016/0684/ATD included a condition requiring no part of the development to be brought into use until the approved vehicle access, parking, manoeuvring and turning areas have been constructed in accordance approved

drawings and maintained clear of any obstruction and retained for their intended purpose at all times in order to provide for appropriate on-site vehicle facilities in the interests of highway safety and the general amenity of the development. It is considered reasonable and necessary to attach such a condition to any planning permission granted in the interests of highway safety and the general amenity of the development.

### **Flood Risk and Drainage**

- 4.21 The application site is located within Flood Zone 1, which has a low probability of flooding.
- 4.22 In terms of drainage, the submitted application form sets out that surface water would be disposed of via an existing watercourse, while foul sewage would be disposed of via septic tank. The Ouse and Derwent Internal Drainage Board, Yorkshire Water and Environmental Health have been consulted on the proposals.
- 4.23 In terms of surface water drainage, the Ouse and Derwent Internal Drainage Board acknowledge the applicants intention to use an existing watercourse for the disposal of the surface water from the development and note that the submitted location plan (drawing no. H/CON/09/17/SK20) shows a proposed connection to an unnamed watercourse some distance to the north east of the site. The Board advise that their preference would always be the use of sustainable methods of surface water disposal, wherever possible retaining the water on site. However, the Board advise that if an existing watercourse is to be used (directly or indirectly) then in order to reduce the risk of flooding, the Board would seek that the applicant demonstrate that there is currently operational and positive drainage on the site and a proven connection to the watercourse. In addition the Board would seek that the applicant demonstrate that they have any necessary consents and permissions for any asset that they intend to use and that the relevant asset has sufficient capacity to handle the proposed discharge. Where a connection to a watercourse is proposed, the Board would want the rate of discharge constrained at the "greenfield" rate (1.4 l/s/ha), plus an allowance for any "brownfield" areas of the site which are currently impermeable (at the rate of 140 l/s/ha) less 30%. With storage calculations to accommodate a 1:30 year storm with no surface flooding, along with no internal flooding of buildings or surface run-off from the site in a 1:100 year storm event. All calculations should include a 20% allowance for climate change. Having regard to the above, the Board recommend three conditions relating to: 1) drainage works to be agreed prior to commencement of development; 2) evidence of existing surface water discharge; and 3) surface water to adjacent watercourse. As development has already commenced, a condition could be worded to require these details to be submitted to and approved by the Local Planning Authority within a specified time period.
- 4.24 In terms of foul sewage, the Ouse and Derwent Internal Drainage Board note that the submitted location plan (drawing no. H/CON/09/17/SK20) advises that discharge from the treatment chamber will go to the adjacent watercourse. The Board advise that if the septic tank is an existing facility they would seek confirmation of the condition, location and effective operation of this facility to ensure that it will provide an effective route for the disposal of the foul water from the site. The Board advise that it would not consent any discharge of untreated foul water from a septic tank arrangement into any watercourse in the Drainage Boards



district. Should some form of package treatment plant be used to process the foul sewage from the site, the Board would wish to make the applicant aware that it does not wish to see flow rates increase in its land drainage systems which can arise from cumulative small flows from multiple small discharges. In addition the disposal of treated sewage effluent is not the intended function of the land drainage network. A condition could be attached to any planning permission requiring details of foul water disposal to be submitted to and approved in writing with the Local Planning Authority within a specified time period. Yorkshire Water and Environmental Health have not raised any objections.

- 4.25 Officers also consider it reasonable and necessary to attach a condition to any planning permission granted requiring the site to be developed with separate systems of drainage for foul and surface water on and off site.

### **Nature Conservation and Protected Species**

- 4.26 Protected species include those protected under the 1981 Wildlife and Countryside Act and the Conservation of Habitats and Species Regulations 2010. The presence of protected species is a material planning consideration.
- 4.27 The application site is not a protected site for nature conservation and is not known to support, or be in close proximity to, any site supporting protected species or any other species or habitat of conservation interest.
- 4.28 Given the above, it is considered that the proposal would not harm any acknowledged nature conservation interests or protected species and is therefore in accordance with Policy ENV1 (5) of the Selby District Local Plan, Policy SP18 of the Core Strategy and the advice contained within the NPPF.

### **Land Contamination**

- 4.29 The application has been supported by a Geoenvironmental Appraisal Report No. C232, dated November 2017 and a Remediation Strategy Report No. C232/2 dated January 2018, both received by the Local Planning Authority on 5 February 2018. These have been assessed by the Councils Contaminated Land Consultant, who has advised that there are no objections, subject to two conditions relating to the verification of remedial works and the reporting of any unexpected contamination.

### **Affordable Housing**

- 4.30 Policy SP9 of the Core Strategy 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. The Policy notes that the target contribution will be equivalent to the provision of up to 10% affordable units. The calculation of the extent of this contribution is set out within the Affordable Housing Supplementary Planning Document which was adopted on 25 February 2014.
- 4.31 However, in the context of the West Berkshire decision it is considered that there is a material consideration of substantial weight which outweighs the policy requirement for the commuted sum. It is therefore considered that having had regard to Policy SP9 and the PPG, on balance, the application is acceptable without a contribution for affordable housing.

## **Legal Issues**

### 4.32 Planning Acts

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

### 4.33 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.

### 4.34 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.

## **Financial Issues**

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

## **5. CONCLUSION**

5.1 The application seeks retrospective planning permission for the demolition of an existing agricultural building and proposed erection of 1No. single dwelling.

5.2 The application is contrary to Policy SP2A(c) of the Core Strategy. However, the applicants have advised that if planning permission were to be refused for the current application, they would continue works under prior approval application, reference 2016/0684/ATD, which represents a fall-back position of significant weight. The only difference between the resultant residential dwelling granted permission under reference 2016/0684/ATD and under the current application is the inclusion of an additional extension to the north west elevation, to mirror the existing one. Having regard to the fall-back position, which would result in a dwelling of similar size and scale in this location, it is considered that the proposal is acceptable in principle.

5.3 The proposed development would not have a detrimental effect on the character and appearance of the area, the residential amenity of the occupants of neighbouring properties, highway safety, flood risk and drainage, nature conservation and protected species, land contamination or affordable housing.

## **6. RECOMMENDATION**

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

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

H/CON/09/17/SK20 – Location Plan  
H/CON/09/17/SK19 – Proposed Site Plan  
001 - Existing Floor Plan  
002 – Existing Elevations  
003 – Existing Elevations  
B/CON/01/18/01 – Proposed Floor Plans and Elevations  
B/CON/01/18/02 – Proposed Sections

Reason:

For the avoidance of doubt.

02. The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those of the existing building in colour and texture.

Reason:

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

03. Prior to the first occupation of the development hereby approved, the acoustic fence shown on drawing no. H/CON/09/17/SK19, shall be implemented in accordance with the details approved under discharge of condition application reference 2017/1278/DOC, including an Acoustic Fencing – Advice on Specification Document received on 17 January 2018 and produced by Sharps Redmore Partnership. Once implemented, the acoustic fence shall be maintained and retained as such for the lifetime of the development.

Reason:

In the interests of the general amenity of the development.

04. No part of the development shall be brought into use until the approved vehicle access, parking, manoeuvring and turning areas have been constructed in accordance with the submitted drawing (Reference: drawing number H/CON/09/17/SK19). Once created these areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

Reason:

To provide for appropriate on-site vehicle facilities in the interests of highway safety and the general amenity of the development.

05. Within three months of the date of this decision, full details of the proposals for the disposal of foul sewage and surface water drainage shall be submitted to and approved in writing by the Local Planning Authority. Only the approved scheme shall be implemented.

Reason:

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

06. The site shall be developed with separate systems of drainage for foul and surface water on and off site.

Reason:

In the interest of satisfactory and sustainable drainage, in order to comply with Policy ENV1 of the Selby District Local Plan.

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

08. In the event that contamination is found at any time when carrying out the approved development that was not previously identified, 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.

**Contact Officer:** Jenny Tyreman, Senior Planning Officer

**Appendices:** None