

Report Reference Number: 2020/1391/FUL

To: Planning Committee
Date: 8 December 2021
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Lead Officer: Ruth Hardingham (Planning Development Manager)

APPLICATION NUMBER:	2020/1391/F UL	PARISH:	North Duffield Parish Council
APPLICANT:	Mr David Simpson	VALID DATE: EXPIRY DATE:	17th December 2020 11th February 2021
PROPOSAL:	Change of use of land from agriculture to domestic curtilage and formation of new field boundary (retrospective)		
LOCATION:	Land Off York Road North Duffield Selby North Yorkshire		
RECOMMENDATION:	GRANT		

This application has been brought before Planning Committee as it is a departure from the Selby District Core Strategy. However, Officers consider that there are material planning considerations therefore Officers are recommending approval of the application.

1. INTRODUCTION AND BACKGROUND

Site and Context

- 1.1 The application site is a strip of agricultural land to the east of 10 properties located along York Road on the northern edge of North Duffield. It is noted that a number of properties have already incorporated parts of the application land area as their private garden areas without planning permission. There is agricultural land to the north and east of the site and residential properties to the west and south of it.
- 1.2 It is noted that there are no detailed plans provided to show the proposed boundary treatments and given that the development has already occurred without planning permission, the boundary treatments as proposed have therefore been identified by the Case Officer during site visit as follows:

- a) eastern boundary treatments of some of the properties, namely 2 York Road, Penny Cottage, Maran Ley and York Road Cottage have not been altered,
- b) retrospectively erected composite panels with arched timber trellis on top and concrete posts and base at Holmewood,
- c) close boarded timber fences of varying height adjoining the field at other properties, namely Corner Cottage and Plum Tree Cottage (1.8m) with Appletree Cottage (1-1.2m),
- d) mature established hedge along the eastern and northern boundaries at Vine Cottage,
- e) low height (approx. 1-1.2 metres) timber picket fence painted dark brown along the eastern boundary with close vertically boarded timber panels to the south at Loro.

The application has therefore been assessed on this basis.

- 1.3 It should be noted that an alternative solution was attempted to be negotiated with the applicants, however they did not wish to amend the scheme and as such, the application is determined on the basis of the information as originally submitted.
- 1.4 Three applications relating to a total of 5 properties to the west of the application site have been submitted for the change of use of agricultural land to domestic curtilage. One of the applications 2019/0639/COU, relating to one property, namely Holmewood, has been heard by the Planning Committee and was refused permission and the decision on other two applications, relating to the other 4 properties, namely Appletree Cottage, 2 York Road and Corner Cottage (2019/1272/COU) and Plum Tree Cottage (2019/1038/COU), have been postponed until this application is determined.

The Proposal

- 1.4 The application is for a change of use of a parcel of agricultural land adjacent to the eastern boundary of the curtilage of dwellings adjoining the field to use as a private garden area.

Relevant Planning History

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

Application Number CO/1982/01859 for the proposed extension to existing bungalow at Holmewood Bungalow, York Road, North Duffield was approved in May 1982.

Application Number CO/1993/0271 for the demolition of existing outbuildings and erection of side extension to bungalow with double and single garage to the rear of Holmewood, York Road, North Duffield was approved in May 1993.

Application Number: CO/2002/0540 for the proposed erection of a block of two stables and a store to the rear of Holmewood, York Road, North Duffield was refused in July 2002.

Application Number CO/2002/1251 for the proposed erection of stables and haystore at Holmewood, York Road, North Duffield was approved in February 2003.

Application Number 2015/1025/OUT - Outline planning application for up to 65 dwellings and a new community football pitch with parking, a changing room/clubhouse to include access (all other matters reserved) on land off York Road was refused in November 2015.

Application Number 2016/0644/OUT - Outline planning application for up to 57 dwellings and a new community football pitch with parking, a changing room/clubhouse to include access (all other matters reserved) at land off York Road was refused in March 2017 and was subsequently refused at appeal on 26 February 2018. This application encompassed the large field and the current application site forms the western strip of this field. The councils reason for refusal included the concerns that it would encroach into the countryside at the northern end of the village and create a harsh urban edge viewed from the north and east. The inspector when considering the appeal also raised concerns that the proposal would create a protrusion of built development beyond the defined development limits of the village and into the open countryside and that the current rural appearance of the site would be lost with resultant urbanisation of this part of the rural landscape.

Application Number 2019/1272/COU for the change of use of agricultural land to garden land to rear of Appletree Cottage, 2 York Road and Corner Cottage (part retrospective) is pending consideration.

Application Number 2019/1038/COU - Retrospective change of use of agricultural land to garden land adjoining the rear at Plum Tree Cottage, York Road, North Duffield is pending consideration.

Application Number 2019/0639/COU - retrospective change of use of land from agricultural to garden for land adjoining the rear of Holmewood, York Road, North Duffield was heard at the Committee meeting in November 2020 and was refused due to the following reasons:

1. The development, which has already occurred, due to the nature, scale, design and location and boundary treatment, is not considered to improve the economic, social and environmental conditions in this area and the change of use of agricultural land to garden land doesn't fall within the exceptions to the forms of development allowed in the open countryside set out in Policy SP2 of the Core Strategy. As such, the proposal is contrary to Policy SP1 and SP2 of the Core Strategy and the NPPF.
2. The development due to its position and the boundary fencing significantly alters the clearly delineated north-eastern boundary to the settlement and results in a visually harmful urban spur projecting into the wider open field adversely altering its open rural character and the character and setting of this part of the edge of the village. The boundary treatments as currently installed are urban in character and are of a harsh obtrusive design which is considered inappropriate for this edge of settlement and rural location. The development therefore is considered to have a suburbanising effect on the natural landscape and would unacceptably alter the character and appearance of the open countryside and the setting of the village it therefore conflicts with the aims of Policy H15 of the Selby District Local Plan, Policies SP1, SP2 & SP19 of the Core Strategy and with the NPPF.

2. CONSULTATION AND PUBLICITY

- 2.1 **Parish Council** – At a meeting of North Duffield Parish Council held on Thursday 7th January 2021, councillors resolved to support the above application.
- 2.2 **NYCC Highways** – There are no local highway authority objections to the proposals.
- 2.3 **Public Consultations** – Site notice was posted on 29 January 2021. There were 11 letters of support received as a result of this advertisement stating following reasons for support:
- a) only affects the immediate houses concerned and makes the gardens a reasonable size with little, if any, effect to the fields.
 - b) there is currently a Hawthorne hedge which has been planted by the Farmer along the boundary. This hedge is rapidly growing and has superseded the fence panels which have been erected by most of the properties with gardens backing onto this boundary line.
 - c) does not affect anyone else in the community and makes the gardens appropriate to the size of housing concerned and has little effect on the field area.
 - d) sympathetic to the environment as will encourage wildlife with hedgerows, trees and plants being planted.
 - a) the land is at the rear of the properties on York Road it is not seen from the roadside.

3 SITE CONSTRAINTS

Constraints

- 3.1 The site is located outside the defined development limits of North Duffield and is therefore defined as open countryside. The site does not contain any protected trees and there are no statutory or local landscape designations.

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. Consultation on preferred options took place in early 2021. There are therefore no emerging policies at this stage so no weight can be attached to emerging local plan policies.

- 4.4 The National Planning Policy Framework (February 2019) (NPPF) replaced the July 2018 NPPF, first published in March 2012. The NPPF does not change the status of an up-to-date development plan and where a planning application conflicts with such a plan, permission should not usually be granted unless material considerations indicate otherwise (paragraph 12). This application has been considered against the 2019 NPPF.
- 4.5 Annex 1 of the National Planning Policy Framework (NPPF) outlines the implementation of the Framework -

“213...existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).”

Selby District Core Strategy Local Plan

- 4.6 The relevant Core Strategy Policies are:

SP1 - Presumption in Favour of Sustainable Development
SP2 - Spatial Development Strategy
SP15 - Sustainable Development and Climate Change
SP19 - Design Quality

Selby District Local Plan

- 4.7 The relevant Selby District Local Plan Policies are:

ENV1 - Control of Development
H15 - Extensions to Curtilages in the Countryside

5 APPRAISAL

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

- 1) The Principle of the Development
- 2) Design and Impact on the Character and Appearance of the Open Countryside
- 3) Impact on residential amenity

The Principle of the Development

- 5.2 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", to secure development that improves the economic, social and environmental conditions in the area, and sets out how this will be undertaken. The development would not provide economic or wider social benefits. Whether the use

of agricultural land for extending urban residential curtilages is sustainable in terms of the environmental impacts is considered in subsequent sections of this report.

- 5.3 Core Strategy Local Plan Policy SP2(c) states that "Development in the countryside (outside Development Limits) will be limited to the replacement or extension of existing buildings, the reuse 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."
- 5.4 The application is seeking consent for the retrospective change of use of land from agricultural to residential garden area, which lies to the rear of 10 existing dwellings located along the York Road at the northern part of North Duffield. In the light of the above policy context, Policy SP2A(c) is silent on changes of use of land and it is therefore considered that the proposal is contrary to Policy SP2A(c) of the Core Strategy. The proposal should therefore be refused unless material circumstances exist that would indicate otherwise. One such material consideration is the National Planning Policy Framework and the saved policies of the Selby District Plan.
- 5.5 Selby Local Plan Policy H15 allows garden extensions in principle subject to not causing a significant adverse effect on the character and appearance of the surrounding countryside and subject to the proposed means of enclosure being appropriate to the adjoining countryside. Those issues are considered in the next section of this report. Although Selby District Local Plan precedes the NPPF, it should be afforded substantial weight as it is consistent with the NPPF, particularly paragraphs 130 and 174. Therefore, taken as a whole Policies SP1 and H15 of the Development Plan do not exclude the extension of curtilages outside development limits provided it would be a sustainable form of development which improves the environmental conditions in the area, and which meets the requirements of Policy H15 in terms of the impact on the surrounding countryside in terms of the means of enclosure.

Design and Impact on the Character and Appearance of the Open Countryside

- 5.6 The row of properties adjacent to the application site on the west are set within the Development Limits of North Duffield as defined by the Selby District Council Local Plan. These all have small sized rear gardens abutting the open agricultural field to the east. The parcel of agricultural land, which is subject to this planning application, is outside the Development Limits and is therefore within the open countryside. The application site and the land to the east form a substantial agricultural field which is an important part of the open rural setting at this northern end of the village. The development is therefore subject to policies H15 and ENV1 of the Selby District Local Plan and Policy SP19 of the Core Strategy.
- 5.7 Policy SP19 requires that "Proposals for all new development will be expected to contribute to enhancing community cohesion by achieving high quality design and have regard to the local character, identity and context of its surroundings including historic townscapes, settlement patterns and the open countryside. Both residential and non-residential development should meet the following key requirements:
- A) Make the best, most efficient use of land without compromising local distinctiveness, character and form;

B) Positively contribute to an area's identity and heritage in terms of scale, density and layout.

- 5.8 Selby District Local Plan Policy ENV1 (1) requires development to take account of the effect upon the character of the area, with ENV1 (4) requiring the standard of layout, design and materials to respect the site and its surroundings. Local Plan Policy ENV1 is broadly consistent with the aims of the NPPF and should therefore be given significant weight.
- 5.9 Policy H15 of the Selby District Local Plan specifies that proposals to extend the curtilage of properties outside defined Development Limits will only be permitted if there is no significant adverse effect on the character and appearance of the surrounding countryside, and the proposed means of enclosure would be appropriate to the adjoining countryside. It also states that any permission granted may be conditional upon the removal of permitted development rights in relation to that part of the curtilage outside Development Limits.
- 5.10 It is noted that a number of dwellings have extended curtilage without planning permission. One of them, namely 2019/0639/COU was refused, the other 2019/1272/COU is a collective application related to four properties and another application related to one property 2019/1038/COU which are still pending consideration. However, in determining this application, no favourable weight should be attributed to the fact that these other unauthorised developments have occurred. Moreover, this application must also be assessed as if it had not occurred already.
- 5.11 There is a clear delineated settlement boundary to this part of North Duffield. The existing established authorised rear garden boundaries of properties on York Road form a consistent clearly defined straight boundary edge between the built development at the northern edge of the village and large open field and wider open countryside to the east running. The development limits for the village follow this defined boundary line with existing gardens being within the development limits and extended gardens being outside development limits.
- 5.12 By the nature of extending the residential curtilage, the proposal causes some loss of the open countryside and the new boundary fencing as erected at some of the properties along the eastern boundary of the site is urban in character causing some harm to the open rural character of the locality. However, the proposal is for small scale garden extensions and the application site is a stretch of land which includes modest areas to the east of all the properties (10 in total) located along this edge of settlement. By applying collectively, the scheme would recreate a clear straight boundary line extending 6 metres beyond the existing edge of settlement. Although not all of the properties have purchased a parcel of land to the rear at this stage or extended their gardens, the new proposed eastern boundary of the site would be clearly defined and effective landscaping and screening reducing harmful impact on the rural setting of the village can be secured via a condition.
- 5.14 Also, it is noted that original rear garden areas of the properties along this settlement boundary are very limited in size with their rear boundary running along or close to the rear elevation of some of the dwellings at this location. The proposed change of use of a strip of agricultural land to garden land would form appropriate amenity space for the properties immediately adjacent to it, would be seen as a discrete domestic space against the backdrop of the row of houses they relate to and would be consistent with an overall pattern of development at this edge of village. Moreover, the amount of land proposed would result in only a modest size

increase to the gardens. The remaining field is of an extensive nature and the loss of this small strip would not compromise its agricultural use for the future.

- 5.15 The current application was submitted by the farmer who is a former owner of most of the strip of land which is subject to this application and this application is seeking permission for the change of use of a full strip of land to the east of the row of dwellings. In terms of hedge planting, it is outlined in the submitted supporting information that a double row of indigenous field hedge has been planted comprising traditional Yorkshire hedgerow whips (Blackthorn, Hawthorn, Dog Rose and Field Maple) along the eastern boundary of the site beyond the retrospectively erected boundary treatments. However, it is noted from a site visit that there are gaps in planting, particularly prominent ones being beyond the rear boundaries of Penny Cottage and Maran Ley. Also, the new hedge would need to provide effective screening for the installed and any new boundary fencing to soften its impact on the countryside and to improve environmental conditions of the area. As such, notwithstanding the submitted information and to ensure the continuity of the hedge planting along this boundary, it is considered reasonable and necessary to add a condition to any consent granted requiring a native double row hedge being planted continuously along the whole of the eastern boundary of the site as shown in green on the Drawing No 0001 in line with the requirements for planting new hedges.
- 5.16 No details have been provided relating to proposed boundary treatments for other properties which have not extended their gardens. Any new or replacement boundary treatments of urban character are considered to add to a suburbanising effect and as such it is considered reasonable and appropriate to add a condition requiring any new or replacement boundary fencing to be less urban in character and more sympathetic to the open countryside location.
- 5.17 There are no objections to the design of the internal fencing of up to 1.8-metre-high between the properties as those would be situated internally subdividing the plots and separating the plots from each other. Once the hedgerow is established along the field boundary, these should not be so visually intrusive provide the hedgerow thrives and is permanently retained.
- 5.18 The development is only acceptable if it can be demonstrated that it would not harm the character and appearance of the area and the surrounding open countryside. As a result of the proposal, in addition to urban fencing as installed, there is likelihood of construction of outbuildings and introduction of domestic paraphernalia which would be widely visible from the open countryside to the east. Although a double hedgerow as partially planted and shown of the submitted drawing is noted, it will take time to establish and to provide an appropriate level of screening. As such, any outbuildings, summerhouses, sheds or other structures, if built within the application site area, would therefore cause an unacceptable level of suburbanising effect on the open countryside. Therefore, it is considered reasonable and necessary to remove permitted development rights to construct outbuildings on the extended part of garden areas via a condition.
- 5.19 Given all of the above, it is therefore concluded that although the boundary fencing as erected at some of the properties along the eastern boundary of the site is urban in character and causes some harm to the open rural character of the locality at present. It is considered that the boundary treatments as installed are on balance acceptable due to the consistent length of linear hedgerow which has been planted

and the new clearly defined boundary which will be created, having taken into account all of the above and subject to aforementioned conditions.

- 5.20 The proposal is therefore on balance considered to not cause significant adverse impact on the character and appearance of the surrounding countryside, and the proposed means of enclosure would be on balance appropriate to the adjoining countryside subject to conditions. It would therefore not be contrary to Policies ENV1 and H15 of the Selby District Local Plan, Policy SP19 of the Core Strategy and the advice contained within the NPPF.

Impact on Residential Amenity

- 5.21 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.
- 5.22 The key considerations in respect of residential amenity are considered to be the potential of the proposal to result in overlooking of neighbouring properties, overshadowing of neighbouring properties and whether oppression would occur from the size, scale and massing of the development proposed.
- 5.23 Comments in support of this proposal made by the public are noted.
- 5.24 The properties to which this proposal relates have very limited private rear garden areas and it is considered that the proposed garden extensions would provide a reasonable private amenity space to those properties.
- 5.25 Given the nature of the proposal to change the use of parcel of agricultural land to residential gardens to the east of a number of properties situated along York Road in North Duffield and the proposed boundary treatments, it is considered that the proposal would not have any significant adverse impact on the amenities of the occupiers of any neighbouring residential properties.
- 5.26 The amenities of the adjacent residents would therefore be preserved in accordance with Policy ENV1 (1) of the Selby District Local Plan.

6 CONCLUSION

- 6.1 The application seeks planning permission for the change of use of land from agricultural to garden for land adjoining the rear of the properties situated to the east of York Road in North Duffield with associated works.
- 6.2 The proposal is on balance considered not to cause a significant adverse impact on the character and appearance of the surrounding countryside, and the proposed means of enclosure would be on balance appropriate to the adjoining countryside subject to conditions. It would therefore not be contrary to Policies ENV1 and H15 of the Selby District Local Plan, Policy SP19 of the Core Strategy and the advice contained within the NPPF.
- 6.3 It is considered that the proposed development would provide a reasonable private amenity space to associated properties and the proposal would not have any significant adverse impact on the amenities of the occupiers of any neighbouring

residential properties. It would therefore be in accordance with Policy ENV1 (1) of the Selby District Local Plan and the NPPF.

7 RECOMMENDATION

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

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

Drawing No. 0001 – Location Plan & Application Site Plan

Reason:

For the avoidance of doubt.

02. Notwithstanding the details provided within the submission, within 3 months (or in the first appropriate hedge planting season) from the date of this decision notice native species hedge shall be planted at the location indicated in green on the Drawing No 0001 (Location Plan & Application Site Plan). The hedgerow shall consist of Blackthorn, Hawthorn, Dog Rose and Field Maple species with no one species making up more than 70% of the total and shall be planted in a staggered double row 40 centimetres (cm) apart with a minimum of 6 plants per metre. Once planted, the growing hedgerow must be kept clear of weeds until they are established. and the established plants shall be regularly maintained as a hedgerow at a height not exceeding 2.5 metres and shall be retained as such for the lifetime of the development hereby approved.

Reason:

In order to provide an effective screening and landscaping to protect the character and appearance of the surrounding open countryside, having had regard to Policies ENV1 and H15 of the Selby District Local Plan.

03. Any plants which, within a period of 5 years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.

Reason:

To ensure the successful establishment and retention of the boundary hedge to secure the landscaped setting of the site.

04. Any new or replacement boundary fencing adjoining the field along the eastern boundary of garden extensions hereby approved shall not exceed the height of 1.8 metres and the colour and specification shall be submitted to and agreed in writing by the Local Planning Authority. Only approved boundary fencing shall be installed and retained for the lifetime of the development.

Reason:

To protect the character and appearance of the surrounding open countryside, having had regard to Policies ENV1 and H15 of the Selby District Local Plan.

05. Notwithstanding the provisions of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order (2015) (or any order revoking or re-enacting that Order) no garages, outbuildings or other

structures shall be erected within the extended garden areas hereby approved without the prior written consent of the Local Planning Authority.

Reason:

In order to safeguard the rights of control of the Local Planning Authority and in order to protect the character and appearance of the surrounding open countryside, having had regard to Policies ENV1 and H15 of the Selby District Local Plan.

8 Legal Issues

8.1 Planning Acts

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

8.2 Human Rights Act 1998

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

8.3 Equality Act 2010

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

9 Financial Issues

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

10 Background Documents

Planning Application file reference 2020/1391/FUL and associated documents.

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Appendices: None