

**Report Reference Number:** 2019/0031/FUL

**To:** Planning Committee  
**Date:** 12 January 2022  
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**Lead Officer:** Ruth Hardingham (Planning Development Manager)

APPLICATION NUMBER:	2019/0031/FUL	PARISH:	Bolton Percy Parish Council
APPLICANT:	Mr David Tomlinson	VALID DATE:	6th February 2019
		EXPIRY DATE:	3rd April 2019
PROPOSAL:	Proposed erection of three dwellings		
LOCATION:	Land South of Chapel View Marsh Lane Bolton Percy York		
RECOMMENDATION:	<b>REFUSE</b>		

This application has been brought before Planning Committee as the determination is limited by Part 3 (b) (vi) of the Selby District Constitution, the application is recommended for refusal, but 10 letters of support have been received.

This application was originally on Planning Committee Agenda for the 7 August 2019 but was withdrawn from Committee at the Agents / Applicants request due to them not being able to attend the meeting. Since this time the Applicants / Agent have requested time to consider the report, their case and to make further submissions which were delayed due to COVID impacts.

Additional information was received by Officers on the 1 December 2021, and this is now considered within the report. Further consultations have been undertaken based on the additional information submitted. Responses have been requested by the 15 December 2021 from neighbours, all previous objectors, and the Parish Council. Members will be updated at the committee meeting of any further comments received.

## 1. INTRODUCTION AND BACKGROUND

### Site and Context

- 1.1 The site is at the southern edge of the village. The site currently exists as (approximately) 2,600 sqm plot of land to the west of Marsh Lane. The site currently exists as an undeveloped plot of land part of which at the southern end is utilised by for log storage. The eastern, southern and western edges of the site are bordered by hedgerow and trees.

### **The Proposal**

- 1.2 Full planning permission is sought for 3 dwellings utilising a shared single access to serve all 3 plots from Marsh Lane. There would be one 4-bedroom house and two 3 bedroom 'cottages'. Two would face the Lane whilst the third would be positioned facing into the site with side elevation to the lane. Parking and turning areas would be provided within the site and each dwelling would have gardens to the side and rear.
- 1.3 The site arrangement is stated by the applicant to be reminiscent of the 'loose courtyard plans' of the traditional small farmstead with the proposed building cluster intended to respect the linear development of buildings along Marsh Lane whilst also adopting the irregularity of some open space and some building elements slightly set back from this line to give an overall broken linear form, in keeping with the rural grain of buildings within the Lane.
- 1.4 The materials are intended to reflect the local vernacular chosen with walls of 'York Handmade Old Clamp' brickwork, roof tiles in red clad interlocking pan tiles with red clay half round ridge tiles and the use of Green Oak framing and featherboard for the garaging and porches alongside white painted box sash windows. In addition, the submitted information confirms that the driveways and yard would generally be pea shingle gravel with York Stone patios and pathway detailing.

### **Relevant Planning History**

- 1.3 Application Number: 2017/0411/FUL (Alt Ref: 8/78/122/PA) for the erection of three dwellings at the same site was refused by the Council following Committee consideration in January 2018 for the following reasons:
- 01 The proposal for 3 dwellings is not considered to be appropriate to the size and role of Bolton Percy, a settlement, which is secondary Village in the Core Strategy. There are already extant approvals on smaller sites for a total of 9 dwellings and capacity for further residential development already exists in the village. The expansion of the village beyond the development limits would undermine the spatial integrity of the development plan and the ability of the council to deliver a plan led approach. The proposal does not fall within any of the categories of development set out in Policy SP2 (c) would therefore conflict with the Spatial Development Strategy for the District and the overall aim of the development plan to achieve sustainable patterns of growth.
- 02 The site is outside the development limits of Bolton Percy and the proposed scheme does not fall within any of the acceptable forms of development included in Policy SP2 (c) of the CS. It would be a substantial encroachment into a Greenfield site in the open countryside and would not represent a natural rounding off to the settlement. The scheme would therefore result in a development which would have a significant and demonstrably harmful impact on the character, form and setting of the village.

- 03 The layout and form of the development would not reflect the existing layout and form of nearby development and would result in a harsh urban appearance dominated by frontage hardstanding and parking areas which would be at odds with the existing form, layout and character with the other dwellings on Marsh Lane due to position and scale of the dwellings and the singles access with scale and position of the hard standing at the front of the site.

The decision notice was dated the 10 January 2018 and the decision was not challenged by the Applicants via an Appeal.

## **2. CONSULTATION AND PUBLICITY**

2.1 **Bolton Percy Parish Council** – note that their comments are the same as on the earlier application (2017/0411/FUL), comments summarised as follows:

- The proposal is on Greenfield site and is outside the village envelope. This could set a president for future developments.
- The access road to the site is a narrow single-track lane with no passing places, with no line of site for oncoming traffic.
- The already problems with sewage in this area still applies. Sewage overflowing from manholes which these properties would have to be connected. These manholes are situated behind the properties on Marsh Lane and overlook the lngs, which floods when the River Wharfe is high, and can stand there for many weeks.
- If this development goes ahead there would be major problems with site vehicles/deliveries getting to site which would involve them parking on this narrow lane to unload, thus blocking it to residents and emergency vehicles.
- this is not an appropriate style of development and out of character with the other properties in this rural lane, and with the size and number of bedrooms would dominate the landscape.
- the number of extra cars which would have to use this quiet lane, including deliveries of oil etc. (minimum of 6 and possibly more) which will be required in this rural village.

2.2 **SDC Development Policy** - Have advised that that the application should be considered against both the saved policies in the adopted 2005 Selby District Local Plan (SDLP) and the 2013 Selby District Core Strategy (CS). The key issues which should be addressed are:

- Impact on the Council's Housing Land Strategy
- The Principle of Development
- Previous Levels of Growth and the Scale of the Proposal
- Relation of the Proposal to the Development Limit
- Impact on Nature Reserve

Further comments were sought from SDC Development Policy in relation to the additional information on the site and the arguments that the site is previously developed land. In response the Development Policy Officer confirmed that "Regardless of how this issue is determined in the decision, this consideration is not material to the principle of development (as admitted by the applicant in their supplementary statement) and so does not change the Planning Policy Team's advice on this application".

2.3 **Yorkshire Water** – advised that if planning permission is to be granted, the following conditions should be attached in order to protect the local aquatic environment and YW infrastructure:

- separate systems of drainage for foul and surface water on and off site in the interest of satisfactory and sustainable drainage;
- No piped discharge of surface water from the application site shall take place until works to provide a satisfactory outfall, other than the existing local public sewerage, for surface water have been completed in accordance with details submitted to and approved by the Local Planning Authority to ensure that the site is properly drained and in order to prevent overloading, surface water is not discharged to the foul sewer network.

It is noted in their response that from the submitted planning application surface water is proposed to be drained to SUDs, so Yorkshire Water assumes that surface water will not discharge to public sewer as such development of the site should take place with separate systems for foul and surface water drainage. The separate systems should extend to the points of discharge. Foul water domestic waste should discharge to the 150 mm diameter public foul sewer recorded in crossing the site.3. On the Statutory Sewer Map, there is a 150 mm diameter public foul sewer recorded to cross the site. It is essential that the presence of this infrastructure is taken into account in the design of the scheme. However, in this instance, due to the pipe's small diameter YWS would look for a "build over" to be controlled by Requirement H4 of the Building Regulations 2000 and no protective condition is required. A proposal by the developer to alter/divert a public sewer will be subject to YW requirements and formal procedure in accordance with Section 185 of the Water Industry Act 1991.

2.4 **Ainsty Internal Drainage Board** – confirmed that the site sits close / within the Boards District and assets adjacent to the site include The Foss and Town Field Dyke; noting that these watercourses are known to be subject to high flows during storm events. Confirmed would wish to see a sustainable design solution to drainage to mimic surface water flows and that consideration should be given to whether the surface water arrangements from the site are to connect to a public or private asset (watercourse or sewer) before out-falling into a watercourse or, to outfall directly into a watercourse in the Board area.

Also note that the applicant should be advised that the Board's prior consent is required for any development including fences or planting within 9.00m of the bank top of any watercourse within or forming the boundary of the site. Any proposals to culvert, bridge, fill in or make a discharge to the watercourse will also require the Board's prior consent.

Recommends use of a conditions that requires drainage works to be agreed in consultation with the Internal Drainage Board and this scheme thus to be implemented before the development is brought into use.

Also note a series of criterion to be considered in designing these systems and for the testing of soakaways, in the interest of ensuring a satisfactory means of drainage and to reduce the risk of flooding

2.5 **Natural England** –advised that based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts

on statutorily protected sites or landscapes. Natural England's advice on other natural environment issues is set out below Bolton Percy Ings Site of Special Scientific Interest Based on the plans submitted, Natural England considers that the proposed development will not damage or destroy the interest features for which the site has been notified and has no objection.

- 2.6 **NYCC Ecology** – Initial comments on the application raised concerns in terms of the age of the assessment and the structure of the report. So, although it was accepted that the site was probably of low value ecologically there is a need for an updated assessment and clearer defined mitigation / conclusions within the Report to define between recommendations necessary to ensure compliance with planning policy and more generic good practice guidance.

Following receipt of an updated Ecology Report prepared by (Wold Ecology, dated May 2019, the County Ecologist advised that “In terms of protected species, a small population of Great Crested Newt (GCN) is known to occur in a pond about 170 metres north of the nearest boundary of the application site. The ecology report concludes that whilst there is a small risk of encountering individual newts on the application site, the proposed development would not compromise the viability of the local GCN population. Moreover, adherence to a Method Statement included within the ecology report would minimise risks to individuals of this species. This revises a previous assessment which concluded that a European Protected Species licence would be required; we understand this is due to a review of the distances involved, which changes the likely risk level. In relation to these conclusions” On this basis advised that:

- agree that the proposed development would not jeopardise the favourable conservation status of the local GCN population, so complies with the requirements of the Conservation of Habitats & Species Regulations 2017.
- The decision on how best to ensure compliance with the protection of individual animals under the Wildlife & Countryside Act 1981 (as amended) is ultimately a matter for the applicant to discuss with their ecological advisor. We agree that the Method Statement represents a reasonable level of effort to minimise risks.
- would still like to see a hibernaculum created to compensate for the potential loss of terrestrial habitat, though we accept that the distance between the application site and the GCN pond, together with the small size of the GCN population, reduce the potential significance of any habitat loss.
- No potential bat roosting habitat was identified within the application site and the ecology report concluded that the site "is not considered integral to the favourable population status of local bat populations". This seems a reasonable conclusion.
- The habitats present within the application site are generally of low nature conservation value and do not require compensation apart from any hedgerow removal, which should be compensated for by a proportionate amount of native-species planting, either within the proposed development or off-site. This is referred to in the ecology report, but we are unclear how this requirement has been incorporated into the design of the scheme.

Thus, the County Ecologist advised that they “...*would not expect the proposed development to have any significant impact on Bolton Percy Ings Site of Special Scientific Interest (SSSI) due to the distance between the sites. Great Marsh is a former Site of Importance for Nature Conservation (SINC) adjoining the application site but was de-designated after it was re-surveyed in 1998, as it no longer met the*

*criteria for SINC selection. The nature conservation value of the former SINC would be influenced primarily by agricultural practices and small-scale development on adjoining land would be unlikely to have a significant impact on any remaining interest”.*

The County Ecologist has also noted that in the initial comments it was suggested that the Report should distinguish between recommendations necessary to ensure compliance with planning policy and more generic good practice guidance. This hasn't really been achieved. In this context they have advised that should Selby District Council be minded to grant permission for this application, recommend conditions along the following lines, based on the findings of the ecological assessment:

- The development should adhere to the Great Crested Newt Method Statement set out in section 7.8.5 of the ecology report (Wold Ecology, May 2019)
- The development should adhere to the advice provided in section 7.9 of the ecology report in relation to birds. This includes timing of vegetation clearance and provision of nest boxes.
- External lighting should not shine directly onto adjoining grassland, hedgerow and woodland habitats likely to be used by foraging bats.

**2.7 Campaign To Protect Rural England (North Yorkshire)** – noted objection to the application although notes acknowledges the applicant's attention to detail in this matter and welcomes the proactive approach which is in line with the principles contained in the National Planning Policy Framework. In summary the objection is noted as being on the basis that:

- This current application is therefore considered as a re-application with very little differences between the previous proposal and the current scheme
- The site is currently used by a tree surgeon for the storage of wood and as such is considered to be undeveloped
- Any historic buildings on the site - predating 1940 which were smaller in size than that considered by these proposals are considered irrelevant in planning terms. In line with policy provisions
- The proposals are within the open countryside and there is no apparent 'need' for the proposals and the proposals are therefore contrary to National and Development Plan policy
- The application site is not within the adopted development limits for Bolton Percy, therefore, is contrary to SP2. Policy SP4 details the exceptional circumstances as to when development in the open countryside would be permitted, however, the proposals do not constitute any of these circumstances as they do not relate to an economic need or established agricultural business within the vicinity, therefore, the proposal is not in conformity with Policy SP4.
- The scheme is not 100% affordable housing so it cannot be considered to be acceptable as a rural exception site.
- There is no apparent need for the development in terms of housing numbers / supply arguments
- The site is not infill development
- CPRE North Yorkshire have been contacted by members who are concerned about the access arrangements for the proposed development. The applicant has proposed to retain the existing access from the site directly from Marsh Lane and create a courtyard effect within the development site. Marsh Lane is a single-track road with designated passing points, which can lead to congestion

problems at particular times of the year. Whilst there has been no objection to the proposals on Highways Grounds, members are concerned that the approval of three large additional dwellings at this particular location will serve to increase localised issues further

- Members have contacted CPRE North Yorkshire with concerns relating to foul sewerage flooding on the site and potential risk of contamination. Concerns relate to a perceived worsening of the current situation should an additional three dwellings be approved at this location. Should they be so minded as to approve this application, the Council would need to be satisfied that these issues have been taken into account and that any health and safety issues relating to issues with sewerage have been resolved and would not lead to an increased risk to existing occupants of the village and future occupants of this site.
- Members have contacted CPRE North Yorkshire raising concerns in terms of impact on heritage assets and note that the proposal lays to the south of the existing Bolton Percy Conservation Area. There are also a number of Listed Buildings within the village which should be assessed and although it is considered that the site as proposed, will not cause a detrimental impact on the Conservation Area or other assets within winter periods and potential mitigation measures are incorporated into the design stage as required prior to determining the application
- Consider that the proposed design of the proposal is aesthetically pleasing and that the architect has paid attention to local character and styles. The fact that the proposals are seeking to accommodate the needs of future occupiers in different stages of life is welcomed. Whilst the positive merits of these should be taken into account in the planning balance,

2.8 **North Yorkshire Bat Group** – no response received.

2.9 **NYCC Highways** – recommends conditions on any consent relating to

- Private Access/Verge Crossings: Construction Requirements
- Visibility Splays of 60 metres measured along both channel lines of the major road (Marsh Lane) from a point measured 2 metres down the centre line of the access road.
- Construction Management Plan

2.10 **Contamination Consultant** – Advised that the Phase 1 Report shows that the site is currently used for the cutting and sorting of timber, with areas of burning / bonfires present onsite and an old well/ pump in the north-eastern corner. The site was previously occupied by buildings (thought to be residential properties) and ponds, but by 1950 these were no longer recorded. No landfill sites or past industrial activities are listed within 250m. The report concludes that made ground could be present due to the past use of the site, including the potential infilling of the ponds, and the more recent timber works. As such advises that there is a “low to moderate geotechnical risk and a very low contamination risk have been identified at the site” and that the “...report recommends that a Phase 2 investigation, comprising the installation of mini percussion boreholes and associated soil sampling and ground gas / groundwater monitoring, is carried out. As such although it is noted that the Phase 1 report provides a good overview of the site's history, setting and its potential to be affected by contamination. However, in my opinion the contamination risk is more likely to be moderate (rather than very low), due to the potential presence of made ground and the evidence of burning / bonfires.”

In this context a series of conditions are suggested:

- Investigation of Land Contamination Prior to development, an investigation and risk assessment (in addition to any assessment provided with the planning application)
- Submission of a Remediation Scheme
- Verification of Remedial Works
- Reporting of Unexpected Contamination

2.11 **Neighbour Summary** - All immediate neighbours were informed by letter, a site notice was posted, and an advert placed in the press. The application received over 10 letters of support and submissions from a further 5 people / bodies in objection.

The comments in **objection** can be summarised as follows:

#### *Principle of Development*

- The application is the same as the 2017/0411/FUL and should be refused as in direct conflict with the Core Strategy and there have been no material changes in the strategy documents.
- The site is contrary to Policy SP2A(c) of the Core Strategy
- The Council has a 5-year housing land supply so the Core Strategy should not be ignored
- The site is outside the development limits of the village so it is not infill
- The site is rural in character and allow development on the site would set a precedent
- Housing should be directed to other places including designated service villages and there is no need for development in this rural area
- Residents have advised us that there were no houses or buildings or structure remains on the site and maps don't support any assertion that there have been
- A former occupier of Chapel House used to plough the land and plant with vegetables and potatoes
- The site is not unsightly it is rural and open countryside
- Only change since last application was considered is that there have been developments completed in the village envelope
- The development is not needed given that the Council has a 5-year housing land supply, the noted cases in the applicant's submission are not applicable
- The site is outside the development limit which was defined through a local plan process and as such this is the basis that the Council has for the definition of development limits and that should be what is used for basis for assessing the application
- The applicants have made no meaningful attempt to provide any case or evidence with regard the contribution that it may be able to make to the vitality of the rural community and compliance with Policy SP2 and SP4 of the Core Strategy
- None of the information provided by the applicants could be considered to be sufficient to either individually or cumulatively outweigh the clear conflict with the adopted development plan

#### *Previously Development Land*

- Never seen any buildings on the site (lived in village since 1974)

- Having considered the PDL Statement now submitted with the application it is noted that this case was not made previously made in anyway and the now submitted information not only misinterprets the conclusions of officers on the last application in terms of PDL / abandonment and the Officer at that stage considered that the historic development of the site does not have relevance to the assessment of the principle of development
- The definition of PDL in the NPPF relates to a visual assessment of the appearance of the site within the surrounding landscape, the attempt by the applicants to make the usability of the site relevant to this issue is incorrect application of the test and needs to be completely set aside by Officers
- In making their case the Agent has confused the difference between curtilage and planning units, and provide a dual case that the site is both developed and part of the built up area of the village - whilst also claiming the site is a “rural garden” that does not therefore form on the exclusions within the NPPF - the reference to the rural garden is not borne out by the facts as neither sites forms part of the curtilage of a lawful dwelling
- The applicants can't reasonably seek to “have their cake and eat it”, and their representations in support of both legs of their argument provide no reasonable assistance to the Officer tasked with determining the proposal
- The applicants have misinterpreted the NPPF definition and the definition of development within S55 of the Planning Act
- The Authority needs to take a view on the lawful use of the site which would require consideration of an application for Certificate of Lawful Use or Development and no such application is in place
- The PDL Statement is not a “sworn” statement and provides little new information and in reality, demonstrates more the lawful use of the site
- The remains of any physical development on the site have been almost entirely removed and erased and the site has blended with its surroundings
- There is no living memory evidence of any housing on the site

### *Design*

- The new homes will not complement the character or enhance the streetscape
- Would suburbanise what is a genuine unspoilt narrow country lane
- The applicants implies that the development will help bridge the gap between existing houses but he has allocated the boundary of Chapel View to be extended increasing that gap and thus resulting in a flaw in his argument
- The layout does not reflect the building line / character of the area and the garages are close to the road

### *Ecology*

- The site is a haven for wildlife and habitat
- The survey information should be updated (noted in comments pre- submission of the updated survey)

### *Other*

- The site is not a sustainable location there is no shop / school or functioning pub in the village and the development would result in car journeys to access services.
- The development will not result in spending the village just further afield so there is no local benefit

- There are already access and congestion problems on Marsh Lane which is a single track without designated passing places and the development would increase pressure on this rural road
- The noted bus service is daytime only and there is threat of its withdrawal
- The Information supplied with the application is inadequate
- There has not been any fly tipping on the site and the submitted photos purporting to be fly tipping are actually galvanised tanks that was there to cap off an old unground well in the adjoining garden area of the adjacent property
- The Council should verify that those registering support for the scheme have indeed written the letters

The comments in **support** can be summarised as follows:

#### *Principle of Development*

- Up to the 1950's this site had residential units on it and much of the solid foundations still exist, it is not green belt and has never been agricultural – it should be considered to be brownfield
- The site has been left too long, weed ridden and untidy
- The site is previously developed land with no agricultural history it will not set a precedent for further housing
- Development will enhance the village and contribute to the vitality of the community
- Development limits don't make the site outside the village – it is a dead-end road and the site is in the township
- SDC have approved other sites outside the development limits on PDL because it was seen as sustainable development and not just because of the 5 year housing land supply
- The houses represent sustainable development for Bolton Percy

#### *Design*

- The development is well thought out and will only be an asset to the village
- The units are designed by an architect and are of a high quality

#### *Other*

- Will not impinge on sewerage system
- Highways and the IDB have supported the scheme
- Would provide much needed smaller housing in the village for people wanting to downsize and stay in the village

### **3 SITE CONSTRAINTS**

#### **Constraints**

- 3.1 The site lies outside the development limits of Bolton Percy, a Secondary Village in the Core Strategy. To the west the land slopes sharply down towards Great Marsh which is within Flood Zone 3. However, the application site and falls within Flood Zone 1.

## **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 (July 2021) (NPPF) replaced the February 2019 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 2021 NPPF.
- 4.5 Annex 1 of the National Planning Policy Framework (NPPF) outlines the implementation of the Framework -

*"219...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 (SDCS) 2013**

- 4.5 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
  - SP18 - Protecting and Enhancing the Environment
  - SP19 - Design Quality

### **Selby District Local Plan (SDLP) 2005**

- 4.6 The relevant Selby District Local Plan Policies are:

ENV1 - Control of Development  
T1 - Development in Relation to Highway  
T2 - Access to Roads

#### **4.7 National Planning Policy Framework (NPPF) 2021**

- 2 Achieving sustainable development
- 4 Decision making
- 5 Delivering a sufficient supply of homes
- 8 Promoting healthy and safe communities
- 9 Promoting sustainable transport
- 11 Making effective use of land
- 12 Achieving well-designed places
- 14 Meeting the challenge of climate change, flooding and coastal change
- 15 Conserving and enhancing the natural environment

Annex 1: Implementation

Annex 2: Glossary

Annex 3: Flood risk vulnerability classification

#### **Other Policies/Guidance**

- Five Year Housing Land Supply Report 2020 – 2025 (Position at 21<sup>st</sup> March 2020)
- Affordable Housing Supplementary Planning Document, 2013
- Developer Contributions Supplementary Planning Document March 2007
- National Design Guide

### **5 APPRAISAL**

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

1. The Principle of Development on the Site for Residential Use
2. Character and form of the area and the village.
3. Highways
4. Residential amenity
5. Nature conservation and protected species
6. Flood risk, drainage and climate change.
7. Land Contamination
8. Affordable housing
9. Other Matters

#### **Principle of Development**

- 5.2 The application site is wholly outside the development limits of the settlement of Bolton Percy, which is a secondary village, the site is therefore in open countryside.
- 5.3 There is a single dwelling to the immediate north and open views to the east and west. There is a further dwelling to the south, but this is separated from the site. As such the site follows a linear form along Marsh Lane and represents a linear extension of the village beyond the existing built form.
- 5.4 At the time of writing this report, the Council can confirm that they have a five-year 7.7 years) housing land supply. The fact of having a five-year land supply cannot be

a reason in itself for refusing a planning application. The broad implications of a positive five-year housing land supply position are that the relevant policies for the supply of housing in the Core Strategy (SP5) can be considered up to date and the tilted balance presumption in favour of sustainable development does not apply.

- 5.5 The NPPF is a material consideration and states that sustainable development is about positive growth and that the Planning System should contribute to the achievement of sustainable development. The NPPF, taken as a whole, constitutes the Government's view of what sustainable development in England means in practice for the planning system.
- 5.6 Policy SP1 of the Selby District Core Strategy Local Plan (2013) (CS) 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.
- 5.7 Policy SP2 of the CS sets out the long-term spatial direction for the district and provides guidance for the proposed general distribution of future development across the district. The settlement hierarchy is ranked on the Principal Town of Selby, Local Service Centres, Designated Service Villages and smaller villages. The CS identifies Bolton Percy as a 'secondary village'. Policy SP2 sets out that a limited amount of residential development may be absorbed inside Development Limits of secondary villages where it would enhance or maintain the vitality of rural communities, and which confirm to Policy SP4 of the Core Strategy.
- 5.8 Policy SP2A(c) 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. The site lies outside the development limits of Bolton Percy village. The proposal does not constitute any of the forms of development set out under SP2A(c). In light of the above policy context the proposals for residential development are contrary to Policy SP2 of the Core Strategy and should be refused unless material considerations indicate otherwise.
- 5.9 The submissions made in support of the application, including those provided on the 1<sup>st</sup> December 2021, refer to the position of the applicants being that the site is previously developed land and not greenfield and reference is made to other submissions being considered or consented by the Council for development outside development limits, and confirmation that the scheme is a "Self Build" for the Applicant (Mr Tomlinson) and his two sons. Arguments have also been made that the Development Limits are out of date, that the houses will not be isolated, and that site is Flood Zone 1, previously developed and represents sustainable development.
- 5.10 In terms of the scheme being for Self-Build then the applicant has stated in his 1<sup>st</sup> December 2021 submissions that the scheme is a self-build, for the Applicant and his two sons, who wish to re-establish roots in the village where they have owned land for over 25 years. The Self Build and Custom House Building Act was brought into force in 2015. This introduced a requirement to keep a self-build and custom

housebuilding register of individuals and associations of individuals who are seeking to acquire serviced plots of land in the authority's area for their own self build and custom housebuilding. The Act requires Local Planning Authorities to give suitable development permission to enough suitable serviced plots of land to meet the demand for self-build and custom housebuilding in their area. Such housing can be either market or affordable housing. In considering whether a home is a self-build or custom build home, relevant authorities must be satisfied that the initial owner of the home will have primary input into its final design and layout. However, it is not considered that there is sufficient information submitted with the application to evidence the proposal complies with the relevant requirements of the Self Build and Customer House Building Act 2015, as no information over that stated above has been provided.

- 5.11 In some circumstances permission has been granted for small sale development outside of development limits, including pockets of greenfield land which project beyond the development limits. However, these have generally been in more sustainable locations such as Designated Service Villages where a number of other site specific or historic factors in addition to the sustainability of the location or the physical characteristics have additionally contributed towards the justification. However, in all cases the overriding consideration and starting point for determination is the development plan policy, which comprises of the saved policies of the Local Plan and the Core Strategy. In terms of the emerging Local Plan and a potential opportunity to review development limits, at the present time this is at an early stage and such little weight can be afforded to any progressing policy approach. The saved policies of the Local Plan and the Core Strategy remain the adopted development plan for the area for the purposes of Section 38(6) of the Town and Country Planning Act. This site lies outside the development limits of a secondary village for which significant weight has been attached. Bolton Percy is one of the smallest and least sustainable settlements within the district and as such in the absence of any other material considerations which attract significant weight. Officers are of the view that the development plan, the settlement strategy and the housing supply is up to date and as such the proposal is unacceptable.
- 5.13 In terms of the Development Limits, it is acknowledged that these were defined a number of years ago and whilst as part of the review of updating the existing Core Strategy the Development Limits will be reviewed, there is currently no indication of how and the methodology which will take place. Moreover, changes to the plan are not yet completed and it is still in the early stages with any changes being finalised in 2023 and therefore do not carry any weight at this time. There is nothing within the NPPF which suggests that the definition of settlement boundaries is no longer a suitable policy response to managing development and that such policies are out of date. Whilst there are recent developments which have gone beyond the defined settlement boundaries, each case has been determined on its individual merits including the two referred to, where circumstances, in the officers' view are materially different to this application. These do not bind the Council to approve this application and each application is to be considered on its own merits.
- 5.14 Whilst Officers accept there is a need to be minded of other recommendations and decisions, every case is assessed on its merits and against the Development Plan and taking full account of its context and characteristics and the associated material considerations. Although the case at Skipwith is noted, every case is assessed on its merits against the development plan it is not considered that the scheme for Marsh Lane should be simply supported off the back of another decision even if some characteristics of the site are similar. In addition, Appeal Decisions for

dwelling outside the development limits of Secondary Villages have been dismissed on the basis of sustainability and accessibility to services, facilities and employment. As mentioned in paragraph 5.12 above Bolton Percy has limited facilities and services and is classed as one of the smallest settlements. Officers are therefore of the view that the settlement is one of the least sustainable and the approach is consistent with the aforementioned appeal decisions.

- 5.15 Having considered the arguments made by the Applicants, it is the view of Officers that the development of the site, is contrary to the development plan there are no material considerations that would outweigh this and provide justification to deviate from this position.
- 5.16 The site is outside the Development Limits of Bolton Percy and would extend development beyond that defined in the Local Plan, would encroach into open countryside and its development is contrary to SP2 and it represents an unacceptable form of development.

### **Impact of the Development on the character and form of the area and the village**

- 5.17 Residential development in the village is contained within very clear and defined boundary limits set by the extent of the existing housing which flanks both sides of Marsh Lane on the south side of the village. Marsh Lane is narrow and rural in character. The existing housing development extends further south on the west side of the lane than the east in a ribbon form of dwellings fronting the road. Beyond the last house known as Chapel View there are no further dwellings and the narrow lane beyond this point is characterized by high hedges on either side enclosing open undeveloped land. The land on the west of the lane slopes sharply down away from the road towards a Site of Nature Conservation (SINC) which encompasses the Marsh areas along the Foss. On the East side of Marsh Lane, the last house is Wheat Croft beyond which is the open pastoral setting to the village which is part of the wider agricultural landscape round the village.
- 5.18 The proposed development would result in a substantial visual change in the landscape context as a result of the projection of the development into the currently undeveloped site. Due to its size and position it would not represent a natural rounding off. It would represent a further ribbon extension of the dwellings beyond Chapel View projecting the development of the village even further south into this rural lane. Moreover, there would be a gap between the application site and the development limits which are drawn close to the side elevation of Chapel View. There is no clear boundary to the side garden of Chapel View with shrub planting to the side leading out to a large area of mown grass merging in with this application site. As such there would be an intervening parcel of land outside of the development limits for which the land use is unclear.
- 5.19 It is noted that there are further dwellings to the south including Green Acres, and Sunnyside (a pair of semi-detached dwellings) and Town End Farm. However, these are well beyond the development limits of the village and are sporadic isolated dwellings in the countryside. This development would expand the settlement southwards, creating an additional block of development encroaching and jutting out into the rural open countryside location beyond the development limits at this southern end of the village. There is hedgerow to the road frontage and to the southern boundary of the application site. However, there are no clearly defined boundaries on the north or west sides. The proposal would create a new

harsh urban development within a substantial open area of land which would not create a new logical or defensible edge to the settlement.

- 5.20 In terms of the layout, a single access is proposed onto Marsh Lane. Whilst this meets Highway requirements it results in a layout which is dominated by a substantial single joint area of hardstanding and parking at the front. This would create a harsh appearance at odds with the existing form, layout and character with the other dwellings on Marsh Lane which have individual accesses with small areas of hardstanding and landscaped front gardens.
- 5.21 The applicants' comments are noted that the site arrangement is reminiscent of the 'loose courtyard plans' of the traditional small farmstead with the proposed building cluster intended to respect the linear development of buildings along Marsh Lane whilst also adopting the irregularity of some open space and some building elements slightly set back from this line to give an overall broken linear form, in keeping with the rural grain of buildings within the Lane. However, overall, the development is considered to be a harmful encroachment into undeveloped rural land beyond the development limits of the village.
- 5.22 The applicants have submitted information in support of the application referencing historical maps and noting comments from long standing residents of the area. However, the historical development on the site as shown on the maps provided do indicate the presence of two small buildings with small curtilages which bear no comparison to the extent of development now proposed or the extent of the curtilage area now proposed. Moreover, these buildings have long since gone and the site has reverted back to land defined as 'greenfield'.

The NPPF defines previously developed land as:

*'...land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.'*

Officers are of the view that the land is therefore not previously developed land, as such the historic buildings have no relevance to the assessment of the principle of development.

- 5.23 Overall, it is considered that the development, due to its scale, location and extent would be a substantial encroachment into open countryside and does not represent a natural rounding off to the settlement. Moreover, the layout form and design of the scheme would not reflect the existing character layout and form of development in the village. The scheme would therefore result in a development which would have a significant and demonstrably harmful impact on the character, form and setting of the village contrary to the aims of Policies SP1, SP18 and SP19 of the SDCSLP, ENV 1 of the SDLP and with the NPPF.

## **Impact on Highway Safety**

- 5.24 Policies ENV1 (2), of the Local Plan require development to ensure that there is no detrimental impact on the existing highway network or parking arrangements. Policy T1 of the Local Plan relate to consideration of the highways impacts of development. Policy T1 notes that development should be well related to existing highways networks and will only be permitted where existing roads have adequate capacity otherwise off-site highways works may be required.
- 5.25 The scheme shows a single access from Marsh Lane which then serves the dwellings and NYCC Highways raise no objections to the scheme subject to a series of conditions.
- 5.26 Having had regard to the above it is considered that the scheme is acceptable in terms of highway safety and the impact on the road network. Paragraph 111 of the NPPF states that:

*‘Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.’*

The proposal is therefore considered to be acceptable in respect of the local and national planning policies.

## **Impact on Residential Amenity**

- 5.27 Policy ENV1 (1) requires that the District Council take account of:

*"The effect upon... the amenity of adjoining occupiers".*

It is considered that policy ENV1 (1) of the Selby District Local Plan should be given significant weight as one of the core principles of the NPPF is to ensure that a good standard of residential amenity is achieved in accordance with the emphasis within the NPPF. In addition, Policy ENV2A states that:

*"Proposals for development which would give rise to, or would be affected by, unacceptable levels of noise, nuisance, contamination or other environmental pollution including groundwater pollution will not be permitted unless satisfactory remedial or preventative measures are incorporated as an integral element in the scheme."*

- 5.28 One of the twelve core planning principles of the NPPF is to always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. The key considerations in respects of residential amenity are considered to be the potential of the proposal to result in overlooking, overshadowing and overbearing.
- 5.29 The layout plan is spacious with adequate levels of privacy and amenity provided for future occupants without impacting on the living conditions of the occupants of nearby dwellings. The distance between the proposed dwellings and existing properties is more than the required minimum.
- 5.30 It is therefore considered that the scheme is an appropriate design with respect to residential amenity which would ensure that no significant detrimental impact is

caused to existing residents through overlooking, overshadowing or creating an oppressive outlook in accordance with policy ENV1(1) of the Local Plan and the NPPF.

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

- 5.31 Policy ENV1(5) states that proposals should not harm acknowledged nature conservation interests or result in the loss of open space of recreation or amenity value, or which is intrinsically important to the character of the area. These policies should be given significant weight as they are consistent with the NPPF. Protected Species are protected under the 1981 Wildlife and Countryside Act and the Conservation of Habitats and Species Regulations 2010. The presence of a protected species is a material planning consideration.
- 5.32 The application site is not on or near a formal designated protected site. However, it is in close proximity to a locally designated SINC. An Ecology Report has been submitted with the application dated May 2019 and it is accepted that the site is of low ecological value by the County Ecologist with defined mitigation.
- 5.33 The County Ecologist has also advised that they would not expect the development to have any significant impact on the Bolton Percy SSSI due to the distance to the site and given the Great Marsh (following reassessment) is no longer a SINC and any impact would be unlikely to have any significant impact. As such the County Ecologist has noted no objection and advised the Council that the development if supported should be required to adhere with the GCN Method Statement at Section 7.8.5, section 7.9 in relation to birds and that all external lighting should not shine onto the adjoining grassland, hedgerow or woodland habitats likely to be used as foraging bats.
- 5.34 On balance it is considered that the Applicants have demonstrated to the satisfaction of the consultees that the impacts on protected species and habitats subject to appropriately worded conditions should Members resolved to grant permission contrary to officer recommendation.

### **Flood Risk, Drainage and Climate Change**

- 5.35 Relevant policies in respect to drainage, climate change and flood risk include Policy ENV1(3) of the Local Plan and Policies SP15 and SP16 of the Core Strategy.
- 5.36 The application site is located in Flood Zone 1, which comprises land assessed as having a less than 1:1000 annual probability of flooding. It is therefore low risk and is considered to be at a low probability of flooding.
- 5.37 Although there are local objections and concerns about local flooding, the application is accompanied by a Flood Risk Assessment which examines potential flood risk as above and considers the options for Surface water drainage and Foul water drainage. The scheme would attenuate surface water flows to restrict the flow of water to greenfield rate. Yorkshire Water and the IDB raise no objections subject to a series of conditions and informative which could be attached.
- 5.38 In terms of climate change then the Policy SP15 (B) states that to ensure development contributes toward reducing carbon emissions and are resilient to the effect of climate change schemes should where necessary or appropriate meet 8 criteria set out within the policy. Having had regard to the nature and scale of the

proposal, it is considered that its ability to contribute towards reducing carbon emissions, or scope to be resilient to the effects of climate change is so limited that it would not be necessary and, or appropriate to require the proposals to meet the requirements of criteria of SP15 (B) of the Core Strategy. Therefore, having had regard to Policy SP15 (B) it is considered that the proposal is acceptable.

- 5.39 It is considered that, should Members resolve to grant permission contrary to officer recommendation, subject to appropriately worded conditions the scheme would be acceptable and accord with the aforementioned local and national policies in terms of flood risk, drainage and climate change.

### **Land Contamination**

- 5.40 Relevant policies in respect of land contamination include Policy ENV2 of the Selby District Local Plan and Policy SP19 “Design Quality” of the Core Strategy
- 5.41 The Council’s Contamination Consultant has reviewed the submitted information and has advised that the Phase 1 Report shows that the site is currently used for the cutting and sorting of timber, with areas of burning / bonfires present onsite and an old well/ pump in the north-eastern corner. The site was previously occupied by buildings (thought to be residential properties) and ponds, but by 1950 these were no longer recorded. No landfill sites or past industrial activities are listed within 250m. They have also noted that the report concludes that made ground could be present due to the past use of the site, including the potential infilling of the ponds, and the more recent timber works. As such advises that there is a “low to moderate geotechnical risk and a very low contamination risk have been identified at the site” and that the *“...report recommends that a Phase 2 investigation, comprising the installation of mini percussion boreholes and associated soil sampling and ground gas / groundwater monitoring, is carried out”*. In this context although it is noted that the Phase 1 report provides a good overview of the site's history, its setting and its potential to be affected by contamination there is likely to be moderate (rather than very low), due to the potential presence of made ground and the evidence of burning / bonfires and a series of conditions are suggested.
- 5.42 The proposals, subject to conditions would therefore be acceptable with respect to contamination in accordance with Policy ENV2 of the Local Plan and Policy SP19 of the Core Strategy should Members resolve to grant planning permission contrary to officer recommendation.

### **Recreational Open Space**

- 5.43 Policy RT2 of the Selby Local Plan deals with the provision of recreational open space and this should be afforded significant weight in addition to the Developer Contributions Supplementary Planning Document, Policy SP19 of the Core Strategy and the NPPF. However, as Policy RT2 only requires recreational open space to be provided for schemes of 5 or more dwellings, no provision is required in respect of the proposal as it does not meet this trigger point. The application would therefore be acceptable without a contribution for recreational open space and is therefore in accordance with Policies RT2 of the Local Plan, Policy SP9 of the Core Strategy and the NPPF.

## **Affordable Housing**

- 5.44 Core Strategy Policy SP9 and the accompanying Affordable Housing Supplementary Housing Document (SPD) sets out the affordable housing policy context for the district.
- 5.45 Core Strategy Policy SP9 states 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.
- 5.46 The NPPF is however a material consideration and states at paragraph 64 that

*“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).”*

Major development’ is defined in Annex 2: Glossary as “For housing, development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more”

- 5.47 The application proposes three dwellings and as such is not a major development. It is therefore considered that having had regard to Policy SP9 of the Core Strategy, the Affordable Housing SPD and the national policy contained within the NPPF, on balance, the application is acceptable without a contribution for affordable housing as it does not meet the trigger point.

## **Other Matters arising from Consultations**

- 5.48 A series of other issues have been raised in comments on the application. These are assessed in the following section.
- 5.49 Objectors have noted that the applicants should be making a submission for a Certificate of Lawfulness for the scheme. No submission is before the Council for such a certification and therefore although these comments are noted this is not for consideration.
- 5.50 Objectors have questioned the status of the statement by the Applicants on the PDL status of the site, noting reference to this being a “sworn statement”. The PDL Supporting Statement was submitted in support of the application and as such has been accepted as part of the case in support of the application and there is no requirement for a sworn statement.

## **6 CONCLUSION**

- 6.1 The site is outside the development limits of Bolton Percy and the proposed scheme does not fall within any of the acceptable forms of development included in Policy SP2 (c) of the CS. It would be a substantial encroachment into land defined as greenfield within the open countryside and neither can be considered as representing a natural rounding off to the settlement. The scheme would therefore result in a development which would have a significant and demonstrably harmful impact on the character, form and setting of the village.
- 6.2 Moreover, the layout and form of the development would not reflect the existing layout and form of nearby development and would result in a harsh appearance at odds with the existing form, layout and character with the other dwellings on Marsh

Lane due to position and scale of the dwellings and the singles access with scale and position of the hard standing at the front of the site.

- 6.3 The expansion of the village beyond the development limits would undermine the spatial integrity of the development plan and the ability of the council to deliver a plan led approach. The proposal does not fall within any of the categories of development set out in Policy SP2 (c) would therefore conflict with the Spatial Development Strategy for the District and the overall aim of the development plan to achieve sustainable patterns of growth. Whilst the NPPF sets out the Government's objective of boosting the supply of homes, this is significantly outweighed by the reasons as set out in this report. Officers are of the view that the proposal is not sustainable development and is contrary to the Selby Development Plan.

## 7 RECOMMENDATION

This application is recommended to be **REFUSED** on the following grounds:

- 01 The proposal for 3 dwellings is not considered to be appropriate to the size and role of Bolton Percy, a settlement, which is secondary Village in the Core Strategy. The expansion of the village beyond the development limits would undermine the spatial integrity of the development plan and the ability of the council to deliver a plan led approach. The proposal does not fall within any of the categories of development set out in Policy SP2 (c) would therefore conflict with the Spatial Development Strategy for the District and the overall aim of the development plan to achieve sustainable patterns of growth.
- 02 The site is outside the development limits of Bolton Percy and the proposed scheme does not fall within any of the acceptable forms of development included in Policy SP2 (c) of the CS. It would be a substantial encroachment of a greenfield site in the open countryside and would not represent a natural rounding off to the settlement. The scheme would therefore result in a development which would have a significant and demonstrably harmful impact on the character, form and setting of the village contrary to policy SP2 and paragraph 174 of the NPPF.
- 03 The layout and form of the development would not reflect the existing layout and form of nearby development and would result in a harsh urban appearance dominated by frontage hardstanding and parking areas which would be at odds with the existing form, layout and character with the other dwellings on Marsh Lane due to position and scale of the dwellings and the singles access with scale and position of the hard standing at the front of the site contrary to policies SP1, SP18 and SP19 of the Selby District Council Core Strategy, policy ENV 1 of the Selby District Council Local Plan and Chapter 12 of the NPPF.

## 8 Legal Issues

### 8.1 Planning Acts

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

## 8.2 Human Rights Act 1998

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

## 8.3 Equality Act 2010

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

## 9 **Financial Issues**

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

## 10 **Background Documents**

Planning Application file reference 2019/0031/FUL and associated documents.

### **Contact Officer:**

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**Appendices:** None