



Report Reference Number: 2017/1346/FUL

Agenda Item No: 6.4

To: Planning Committee
Date: 6 June 2018
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Lead Officer: Ruth Hardingham (Planning Development Manager)

APPLICATION NUMBER:	2017/1346/FUL	PARISH:	Saxton Cum Scarthingwell Parish Council
APPLICANT:	Mr Andy Shuter	VALID DATE: EXPIRY DATE:	2 January 2018 27 February 2018
PROPOSAL:	Erection of a dwelling following demolition of a barn		
LOCATION:	Peartree Farm Main Street Saxton Tadcaster North Yorkshire LS24 9PY		
RECOMMENDATION:	REFUSE		

This application has been brought before Planning Committee because 10 letters of support have been received contrary to the officer's recommendation for refusal.

1. INTRODUCTION AND BACKGROUND

Site and Context

- 1.1 The application site comprises former agricultural land and a barn that lies to the west of Main Street, Saxton.
- 1.2 The vehicular access to the site is within the defined development limits of the village and Saxton Conservation Area and the remaining area of the site is outside the development limits and the Conservation Area and this includes the position of the barn and the new dwelling. The site falls within Flood Zone 1 which is low probability of flooding.

- 1.3 The whole site lies within Green Belt and Locally Important Landscape Area.

The Proposal

- 1.4 The application is submitted in full for the demolition of a barn and erection of a dwelling. The dwelling would be erected on the same footprint as the barn and the scale and mass would match the previous approval on the site under reference 2017/0333/COU.
- 1.5 The access to the site would be taken off Main Street and there is allocated off street parking within the site.

Planning History

- 1.6 Application reference CO/2002/0552 (Permitted - 01.07.2002) Proposed erection of extensions to the side and rear elevations of existing bungalow to provide additional living accommodation

Application reference 2014/1166/FUL (Permitted - 09.04.2015) Proposed construction of new detached house and garage

Application reference 2016/0803/ATD (Permitted - 02.09.2016) Prior notification for a barn conversion into dwelling house using existing access

Application reference 2017/0333/COU (Permitted - 06.11.2017) Proposed change of use and external alteration to the barn to a single dwellinghouse

Application reference 2017/0346/DOC (Conditions - 04.05.2017) Discharge of conditions 02 (materials), 03 (Landscaping), 07 (Site compound) and 08 (archaeology) of approval 2014/1166/FUL for proposed construction of new detached house and garage

2018/0002/PPP (Refused 9.3.2018) Lawful development certificate for erection of detached double garage.

2.0 CONSULTATION AND PUBLICITY

- 2.1 The application was advertised in the press as a departure from the development plan and located within a Conservation Area and a site notice and neighbour notification letter. Ten letters of support have been received citing the following comments:

- The proposal would fit in with rest of the village and the Conservation Area.
- In full support of the application
- The property will enhance the village
- It will make a positive contribution to the local built environment replacing an incongruous asbestos roofed brick building with a local limestone design
- The proposal accords with the development plan
- The proposed building is more in keeping with the village than the redundant structure.

2.2 NYCC Highways

No objection subject to conditions.

2.3 Yorkshire Water

No comments received on the application.

2.4 Ainsty (2008) Internal Drainage Board

No comments.

2.5 Environmental Health

No objection subject to condition.

2.6 Historic England

No comments.

2.7 Contaminated Land Consultant - York City Council

No objection subject to conditions.

2.8 Parish Council

Objection citing the following concerns:

- Proposal has more fenestration which would encroach on the privacy of neighbours,
- Materials are out of keeping in a conservation area,
- New dwelling outside the development limits.

3.0 SITE CONSTRAINTS AND POLICY CONTEXT

Constraints

3.1 The application site lies within the Green Belt and partly within Saxton Conservation Area and Saxton defined development limits. The barn and the new dwelling would be situated outside defined development limits and outside the Conservation Area boundary.

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

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

3.3 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise". This is recognised in paragraph 11 of the NPPF, with paragraph 12 stating that the framework does not change the statutory status of the development plan as the starting point for

decision making. The development plan for the Selby District comprises the Selby District Core Strategy Local Plan (adopted 22nd October 2013) and those policies in the Selby District Local Plan (adopted on 8 February 2005) which were saved by the direction of the Secretary of State and which have not been superseded by the Core Strategy.

Selby District Core Strategy Local Plan

3.4 The relevant Core Strategy Policies are:

SP1 - Presumption in Favour of Sustainable Development
SP2 - Spatial Development Strategy
SP3 - Green Belt
SP9 - Affordable Housing
SP15 - Sustainable Development and Climate Change
SP18 - Protecting and Enhancing the Environment
SP19 - Design Quality

Selby District Local Plan

3.5 As the Local Plan was not adopted in accordance with the Planning and Compulsory Purchase Act 2004, applications should be determined in accordance with the guidance in Paragraph 215 of the NPPF which states " In other cases and following this 12-month period, due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)".

The relevant Selby District Local Plan Policies are:

- ENV1 - Control of Development
- ENV2 - Environmental Pollution and Contaminated Land
- ENV15 - Locally Important Landscape Areas
- T1 - Development in Relation to Highway
- T2 - Access to Roads

Other Documents

Affordable Housing Supplementary Planning Document

4.0 APPRAISAL

4.1 The key issues in the determination of this application are considered to be:

- Principle of Housing Development in the Green Belt
- Openness of the Green Belt
- Purposes of including land within the Green Belt
- Character and Form of the Locality
- Impact on Residential Amenity
- Highways
- Flood risk and drainage
- Affordable housing

- Nature conservation interests
- Contaminated Land
- Fallback
- Design
- Balancing Whether Very special circumstances exist sufficient to outweigh the harm to the Green Belt by inappropriateness.
- Conclusion

Principle of Housing Development in the Green Belt

- 4.2 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" and sets out how this will be undertaken. The application site lies partly within and partly outside the settlement boundary of Saxton. The proposed dwelling and most of the curtilage of this new dwelling would be sited outside the development limits with only the access to Main Street being within development limits. It is therefore considered that the majority of the development site would be located outside development limits in the open countryside that is Green Belt.
- 4.3 Policy SP2, criteria C states that, development in the countryside will be limited to certain exceptions which include the replacement of existing buildings. However, SP2 criteria D overrides criteria C by requiring development which is in the Green Belt to conform to Policy SP3 Green Belt which aligns with the criteria set down in the NPPF. This sets out the fundamental aims of Green Belt land which are to prevent urban sprawl and keep land permanently open and that the essential characteristics of Green Belts are their openness and their permanence. The NPPF defines inappropriate development and makes clear that inappropriate development should not be approved unless an applicant has demonstrated that 'Very Special Circumstances' (VSC) exist.
- 4.4 The NPPF sets out that the construction of new buildings is inappropriate in the Green Belt. Exceptions to this are set out in a number of bullet points under paragraph 89 and 90. Bullet point 4 allows the replacement of a building, provided the new building is in the same use and is not materially larger than the one it replaces. This application seeks to replace an existing agricultural building with a new dwelling. As such would be the replacement of a building in a different use.
- 4.5 The principle of development of the site for a single dwelling in the open countryside and Green Belt would be contrary to Policies SP2D, SP3 and the NPPF as it includes development that does not fall within the exceptions listed in paragraphs 89 and 90 of the NPPF. The development is thereby clearly inappropriate development in Policy terms.
- 4.6 Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 of the NPPF states that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

Impact on Openness of the Green Belt

- 4.7 The proposal would replace an existing building with the main change in terms of impact on the openness of the Green Belt, being the increase in the roof height by increasing the eaves and ridge height. This building operation (which increases the scale, bulk and mass of the building), would impact on the openness of the Green Belt when compared to the existing building on the site. However, when considered against the planning approval for conversion and building operations it would match. For example the existing building measures circa 17.6m x 16.9m foot print and the approval scale of the previous permission measures circa 9m to ridge height and circa 3.5m to eaves height.

The proposed dwelling would be sited on the same footprint as the existing barn, as noted on the plans and would measure the same dimensions as that previously approved. This would ensure that there would be no materially greater harm on the openness of the Green Belt, compared to the fallback position that is planning reference 2017/0333/COU. It is therefore concluded that the proposed development would have no adverse impact on the openness of the Green Belt.

Impact on Character and Form of the Locality

- 4.8 The vehicular access taken from Main Street into the site is located within Saxton Conservation Area and the barn and the new dwelling is located outside the Conservation Area boundary. The access track would be shared with another plot that fronts Main Street which has approval for a single dwelling and is noted on plan being permeable block paving and loose gravel. This operational development is considered to have a neutral effect on the character and appearance of the Conservation Area.
- 4.9 The agricultural building on the site is constructed using red brick walls with vertical timber clad gable elevations and a profiled metal clad roof. These materials have been commonly used in the construction of farm buildings in the district. This building would be demolished and replaced with a new building of similar scale, bulk and mass. However, the external materials would not be similar to the barn. The walls would be magnesium limestone, with gable elevations vertical cedar panelling and a grey pantile roof. Fenestration in the new dwelling would be constructed using natural oak frames and doors would have the same. New roof lights would be conservation velux type in natural oak.
- 4.10 The application site is surrounded by various forms of buildings which range from single and two storey dwellings and agricultural buildings. External building materials evident in the village range from stone and brick walls and various roof tile finishes. The farm buildings also vary which are located on the edge of the village from brick walls to cement render finished walls.
- 4.11 The proposal would be erected on the same foot print of the barn and the scale would match the previous approval for the conversion and roof lift. The scale, bulk and mass of a dwelling on this site has therefore already been accepted. The proposed materials and fenestration are considered in the context of its surroundings and there are no consistent building forms. It is considered that the proposal materials would not look out of place in this location and it would ameliorate with other buildings nearby. Despite being located in close proximity to

the conservation area boundary, it is considered that the new building would not adversely affect the setting of the character and appearance of the conservation area, when compared to the previous approval.

- 4.12 The proposal also lies within a Locally Important Landscape Area and consideration has been given to Policy ENV15 of Selby District Local Plan. The policy seeks to ensure priority is given to the conservation and enhancement of the character and quality of the landscape with particular attention paid to the design, layout, landscaping of development and the use of materials in order to minimise its impact. The proposed scale, bulk, mass and external materials are considered to be acceptable in LILA. The site is open on its western perimeter and there is a mix of stone wall, wooden fencing and planting on the northern perimeter. There is fencing and nearby buildings sited on the southern perimeter and to the front of the site would be a new timber panelled fence. Given the open space around the building, it would be necessary to seek a robust landscaping scheme for the site and this could be secured by condition.
- 4.13 The planning constraints on the site include an ancient monument, but this is located at St. Marys Church circa 950m away to the west and the separation distance and intervening fields ensures that there would be adverse effect on its setting. Towton Battlefield site lies on the northern boundary of Saxton village and is circa 400m from the application site. There are buildings in the village that intersect the two sites and this ensures that there is no adverse effect on the setting of the battlefield.
- 4.14 As such, it is considered that the scale, appearance, character and form of this proposal would accord with Policies ENV1 (1) and (4) of Selby District Local Plan, Policies SP18 and SP19 of the Core Strategy and the advice contained within the NPPF in this respect.

Impact on Residential Amenity

- 4.15 The Parish Council has raised an objection with respect to fenestration in the proposal and encroaching on the privacy of neighbours. The previous approval scheme has fenestration at ground and first floor levels and the same is proposed here. There are roof lights in the roof slopes but given the separation distance of 33m to a bungalow to the front of the site and a distance of circa 18m to buildings to the south, there would be no adverse loss of privacy for neighbours.
- 4.16 Environmental Health were consulted on the application and advised that the demolition phase of development may negatively impact upon nearby residential amenity due to the potential for generation of dust, noise & vibration. The environmental Protection Act 1990 allows for the abatement of statutory nuisance in relation to noise, dust and vibration. However, the development may detrimentally impact upon existing residential amenity, it may not be deemed to constitute a statutory nuisance. A demolition hour's condition is therefore recommended.
- 4.17 It is therefore considered that the proposal would not result in any significant impact on neighbouring properties in accordance with Policy ENV1 (1) of the Selby District Local Plan and SP19 (k) of the Core Strategy.

Highways

- 4.18 The proposal includes vehicular access taken off Main Street. This is the same access that was proposed in the previous approval and no highway objection was received. In this case, NYCC Highways have no objections to the proposal subject to conditions.
- 4.19 There is adequate space about the dwelling to park. The proposed site block plan shows a new double garage on plan but this wasn't included in the description, or have plans submitted for consideration. This garage is therefore not assessed in this application and consequently not considered for determination. This garage could be conditioned out of the plan for reasons of clarity and avoidance of doubt.
- 4.20 As such, it is considered that the scheme is acceptable and in accordance with policies ENV1(2) and T1 of the Local Plan, Policy SP19 of the Core Strategy and Paragraph 39 of the NPPF with respect to the impacts on the highway network.

Flood Risk and Drainage

- 4.21 The application site is located in Flood Zone 1 as noted in the Environment Agency flood mapping. It is therefore considered that the development would be located in an acceptable location.
- 4.22 The application form states that foul sewerage is to be disposed by a mains sewer and surface water is to be disposed of by soakaway. Yorkshire Water were consulted on the application and no response was received. The internal Drainage board were consulted on application the site does not fall under their control.
- 4.23 It is considered the proposal would be acceptable in terms of flood risk and drainage and therefore accords with Policies SP15, SP16, SP19 of the Core Strategy, and the advice contained within the NPPF.

Affordable Housing

- 4.24 Core Strategy Policy SP9 and the accompanying Affordable Housing SPD sets out the affordable housing policy context for the District.
- 4.25 Policy SP9 outlines that for schemes of less than 10 units or less than 0.3ha a fixed sum will be sought to provide affordable housing within the District. The Policy notes that the target contribution will be equivalent to the provision of up to 10% affordable units. The calculation of the extent of this contribution is set out within the Affordable Housing Supplementary Planning Document which was adopted on 25 February 2014.
- 4.26 However, in the context of the West Berkshire decision it is considered that there is a material consideration of substantial weight which outweighs the policy requirement for the commuted sum. Officers therefore recommend that, having had regard to Policy SP9 and the PPG, on balance, the application is acceptable without a contribution for affordable housing.

Nature Conservation Interests

- 4.27 A Bat Assessment and Ecology Summary accompanies the application. These reports were submitted in the previous application and found to be satisfactory. The former notes recommendations and it would be reasonable and necessary to seek to control this by condition.
- 4.28 As such it is considered that the proposed would not harm any acknowledged nature conservation interests and therefore accord with the requirements of the Habitats Regulations 2010, and ENV1(5) of the Selby District Local Plan, Policy SP18 of the Core Strategy and the NPPF.

Contaminated Land

- 4.29 A home check contaminated report accompanies the application and this has been reviewed by Officers. Conditions are recommended and these are considered reasonable and necessary given the history to the site.
- 4.30 The proposal is therefore considered to be acceptable in regards to contamination and is therefore in accordance with Policy ENV2 of the Local Plan.

Fallback

- 4.31 The Court of Appeal in *Mansell v Tonbridge And Malling Borough Council* [2017] EWCA Civ 1314 has clarified when a 'fallback' development may be a material planning consideration for an alternative development scheme. The court also re-examined the correct interpretation of Class Q general permitted development rights (i.e. agricultural building to residential dwelling). This alternative GPDO development was considered a 'fallback' position and given material planning consideration by the council in granting the permission.
- 4.32 The case concerned an appeal of the first instance decision of Garnham J in dismissing a claim for judicial review of a planning permission granted by Tonbridge and Malling Borough Council. The development being the demolition of a barn and bungalow and the construction of four detached dwellings.
- 4.33 One of the challenges in the appeal by the appellant concerned whether there was a 'real prospect' of development under the Class Q GPDO rights on the lack of contemporaneous evidence that the landowner had contemplated such development.

Lindblom LJ confirmed the legal considerations in determining the materiality of a fallback position as a planning judgement were:

- the basic principle is that for a prospect to be a "real prospect", it does not have to be probable or likely: a possibility will suffice;
- there is no rule of law that, in every case, the "real prospect" will depend, for example, on the site having been allocated for the alternative development in the development plan or planning permission having been granted for that development, or on there being a firm design for the alternative scheme, or on the landowner or developer having said precisely how he would make use of any permitted development rights available to him under the GPDO. In some cases that degree of clarity and commitment may be necessary; in others, not.

This will always be a matter for the decision-maker's planning judgment in the particular circumstances of the case in hand.

- 4.34 He then concluded that the clear desire of the landowner to develop, and maximise the value of, the site was sufficient to demonstrate there was a real prospect to the Class Q GPDO fallback position in this case. Therefore, the council made no error in law in giving material weight to such fallback position.
- 4.35 As noted above, the application site benefits from two permissions to convert the barn on the site for residential use and the latter permission involves increasing the bulk and mass of the building. Taking into account the Mansell Court of Appeal case, in particular the principle of a 'real prospect' of either of those permissions being engaged, it is considered that the prospect is real if this application was refused for example. The landowner has invested time and money in applying for permissions and land around the site has been prepped for future development.
- 4.36 The fallback position is considered a material planning consideration that can be considered to contribute to VSC in this case, but this alone is not considered to outweigh the harm to the Green Belt, by virtue of the definitional harm.

Design

- 4.37 The agent has submitted additional information for consideration and this includes the materials change to the external appearance of the building being an enhancement and the design being an improvement over the existing barn design and materials. The sustainability of the proposal with reference to the construction of the new building, reducing carbon emissions by implementing energy efficiency measures and utilizing renewable energy systems where appropriate is also noted by the agent.

Benefits of the scheme

- 4.38 The proposal would provide short term jobs in construction of the dwelling. There would also be an increased expenditure from future occupants as a result of the delivery of an additional dwelling and use of local amenities and facilities. There would also be a positive contribution towards the objectively assessed housing need in the district.

Whether 'Very Special Circumstances' exist sufficient to outweigh the harm to the Green Belt by reason of Inappropriateness

- 4.39 The main issue to assess is whether any of the above matters taken individually or collectively, amount to the VSC necessary to outweigh the harm to the Green Belt through inappropriateness.
- 4.40 What constitutes very special circumstances (VSC), will depend on the weight of each of the factors put forward and the degree of weight to be accorded to each is a matter for the decision taker. Firstly, it is to determine whether any individual factor taken by itself outweighs the harm. Secondly to consider whether, a number of factors ordinary combine to create VSC.

- 4.41 The weight to be given to any particular factor will be very much a matter of degree and planning judgement. There is no formula for providing a ready answer to any development control question on the green belt. Neither is there any categorical way of deciding whether any particular factor is a 'very special circumstance' and the list is endless but the case must be decided on the planning balance qualitatively rather than quantitatively.
- 4.42 The fallback position mentioned above is noted. Both of these approvals can be commenced and the development proposed would not increase the size of the resulting structure beyond what has been already approved. If granted, this permission would result in a new building of the same size and impact. As such it is considered that the fallback position is neutralising in terms of the impact on the Green Belt because the position is the same and in balance.
- 4.43 The benefits of the scheme include short term provision of jobs in construction. In itself this is not a VSC and is common to most developments. A further benefit is the contribution of one dwelling to the housing market. This would be of some benefit but the contributions arising from the provision of one dwelling are limited in relation to overall housing needs and are not considered to constitute a VSC. The appellant considers the design and materials of the proposal and the construction methods to be a visual improvement and to improve overall energy efficiency. The design of the dwelling would be of some improvement in terms of materials and design but there is little difference visually between what already has approval and what is now proposed. The stated improvements in energy efficiency have not been quantified. For example there is no detailed professional assessment in terms of energy demand and CO2 emissions between the proposed house and the fallback position. As such there is no evidence to substantiate this claim.
- 4.44 For VSC to exist the harm by reason of inappropriateness needs to be "*clearly outweighed*". It is not enough simply to show that the harm and the countervailing considerations are in balance or marginally providing improvement to the site.
- 4.45 The above considerations and minor benefits are not considered either individually or taken collectively to constitute VSC sufficient to '*clearly outweigh*' the harm to the Green Belt. As such they do not amount to very special circumstances that would outweigh the definitional harm to the Green Belt due to this inappropriate development.

Legal Issues

- 4.46 Planning Acts
This application has been determined in accordance with the relevant planning acts.
- 4.47 Human Rights Act 1998
It is considered that a decision made in accordance with this recommendation would not result in any breach of convention rights.
- 4.48 Equality Act 2010
This application has been determined with regard to the Council's duties and obligations under the Equality Act 2010. However it is considered that the recommendation made in this report is proportionate taking into account the

conflicting matters of the public and private interest so that there is no violation of those rights.

Financial Issues

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

5.0 CONCLUSION

5.1 The proposed development of the site for a single dwelling is considered to be inappropriate development in the Green Belt as it does not fall within any of the exceptions listed in paragraphs 89 and 90 of the NPPF. As such, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The applicant has not demonstrated and Very Special Circumstances' either collectively or individually sufficient to outweigh the definitional harm to the Green Belt. The proposal thereby fails to accord with Policy SP2 (d) and SP3 of Selby District Core Strategy and with the NPPF.

6 RECOMMENDATION

This application is recommended to be REFUSED for the following reason:

01 The site lies within the designated Green Belt in the adopted Selby District Core Strategy wherein there is a presumption against development for purposes other than those categories specified in paragraphs 89 and 90 of the National Planning Policy Framework.

The development is not specified in paragraphs 89 and 90 of the National Planning Policy Framework and represents inappropriate development in the Green Belt and results in harm to the openness of the Green Belt and should not be permitted unless there are very special circumstances to justify the development.

Insufficient very special circumstances to clearly outweigh the resultant Green Belt harm have been demonstrated. The proposal therefore fails to meet the advice contained in Policies SP2 (d) and SP3B of the Core Strategy, which requires accordance with National Green Belt Policy, and Chapter 9 of the National Planning Policy Framework (Green Belt).

Contact Officer: Case Officer Fiona Ellwood, Principal Planning Officer

Appendices: None