



**Report Reference Number:** 2018/0800/FUL

**Agenda Item No:** 6.2

**To:** Planning Committee  
**Date:** 10 October 2018  
**Author:** Jenny Tyreman (Senior Planning Officer)  
**Lead Officer:** Ruth Hardingham (Planning Development Manager)

APPLICATION NUMBER:	2018/0800/FUL	PARISH:	South Milford Parish Council
APPLICANT:	Mr Ian Lindsay	VALID DATE: EXPIRY DATE:	30 July 2018 24 September 2018
PROPOSAL:	Section 73 application to vary Condition 04 (drawings) of approval 2010/0507/FUL for the construction of a five bedroom, three storey detached house		
LOCATION:	Quarry Drop Westfield Lane South Milford Leeds West Yorkshire LS25 5AP		
RECOMMENDATION:	APPROVE		

This application has been brought before Planning Committee as 10 letters of representation have been received which raise material planning considerations and Officers would otherwise determine the application contrary to these representations.

Members should be advised that the applicant has submitted an appeal for the non-determination of the application on 26 September 2018. However, this appeal is yet to be validated by the Planning Inspectorate. Members will be updated of the situation regarding the appeal at committee.

## 1. INTRODUCTION AND BACKGROUND

### Site and Context

- 1.1 The application site is located within the defined development limits of South Milford, which is a Designated Service Village as identified in the Core Strategy.
- 1.2 The application site comprises part of a former magnesium limestone quarry. The quarry face is to the south side of the application site adjacent to Westfield Lane, and as such there is an approximate 6.4 metre difference in the ground level between the application site and Westfield Lane.
- 1.3 The application site fronts Westfield Lane to the south and is bound by residential development to the north, south, east and west.

### **The Proposal**

- 1.4 The application has been made under Section 73 of the Town and Country Planning Act 1990 and the proposal seeks to vary Condition 4 (drawings) of planning permission reference 2010/0507/FUL for the construction of a five bedroom, three storey detached house at Quarry Drop, Westfield Lane, South Milford. The changes proposed under this Section 73 application are: (1) to amend the footprint of the dwelling at ground, first floor and second floor level so the north west corner and south west corner are rounded rather than square; and (2) accordingly alter fenestration details in the west and south elevations.

### **Relevant Planning History**

- 1.5 The following historical applications are considered to be relevant to the determination of this application:
- 1.6 An application (reference: 2010/0507/FUL) for the construction of a five bedroom, three storey detached house was permitted on 02.08.2010.
- 1.7 A part retrospective application (reference: 2016/0850/FUL) for the erection of a detached three storey dwelling and the erection of temporary building for residential use during the construction period was permitted on 15.09.2016.
- 1.8 An application (reference: 2016/1190/FUL) to remove condition 9 (hours of work) of planning permission 2016/0850/FUL Part retrospective application for the erection of a detached three storey dwelling and the erection of temporary building for residential use during the construction period was refused on 02.12.2016. A subsequent appeal (reference: APP/N2739/W/17/3168058) was dismissed on 04.07.2017.
- 1.9 An application (reference: 2017/0757/PPP) for a certificate of lawful development for the proposed continuation of a development to build a 3 storey 5 bedroom house in accordance with 2010/0507/FUL was refused on 09.10.2017. A subsequent appeal (reference: APP/N2739/X/17/3186468) was allowed on 06.07.2018.

## **2. CONSULTATION AND PUBLICITY**

*(All immediate neighbours were informed by letter, two site notices were erected and statutory consultees notified)*

- 2.1 **Parish Council** – No objection to this application, as it is a small change to the plans of the house. Note that there are two live planning permissions for the same

plot - 2010/0507/FUL and 2016/0850/FUL - both are for a 3-storey 5-bedroom house which is currently underway, but the 2016 appears to have a slightly different footprint and height, as well as conditions relating to the allowed working hours and deadline for completion, whereas the 2010 does not. Note that at the Parish Council meeting on 11 September 2018 various neighbours complained about noise disruption (Including at evenings and weekends) and the duration of the construction. Note that the applicant has referred to "voluntary noise reduction measures" and suggests that these measures are explored to protect neighbouring residents' residential amenity.

2.2 **NYCC Highways** – No objections.

2.3 **Selby Area Internal Drainage Board** – No objections, subject to recommendations.

2.4 **Yorkshire Water** – No response within statutory consultation period.

2.5 **Neighbour Summary** – All immediate neighbours have been informed by letter and two site notices have been erected (one on High Street and one on Westfield Lane). Ten letters of representation have been received as a result of this advertisement, objecting to the application on the following grounds: (1) the impact of the proposals on the residential amenity of neighbouring properties in terms of noise, disturbance, privacy and light; (2) the length of time the build has been ongoing; (3) non-compliance with a working hours condition attached to planning permission reference 2016/0850/FUL and queries/requests regarding whether a working hours condition would be attached to the current application should it be approved; (4) queries/requests whether a completion date condition would be attached to any planning permission granted, as per the one attached to planning permission reference 2016/0850/FUL; (5) which planning permission is being implemented and whether the temporary living accommodation and fence to the south/east boundary benefit from planning permission; (6) vehicles blocking the highway and vehicle being parked on High Street causing highway safety issues; (7) the size of the proposed development; (8) the development not being built in accordance with the 2010 permission, having a higher roofline, greater floor area, different floor levels and different boundary treatments.

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

#### **Constraints**

3.1 The application site is located within the defined development limits of South Milford, which is a Designated Service Village as identified in the Core Strategy.

3.2 The application site is located within Flood Zone 1, which has a low probability of flooding.

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

3.3 The National Planning Policy Framework (July 2018) replaces the first NPPF published in March 2012. The Framework does not change the status of an up to date development plan and where an application conflicts with such a plan,

permission should not usually be granted (paragraph 12). This application has been considered against the 2018 NPPF.

### **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
- SP4 – Management of Residential Development in Settlements
- SP5 – The Scale and Distribution of Housing
- SP9 – Affordable Housing
- SP15 – Sustainable Development and Climate Change
- SP16 - Improving Resource Efficiency
- SP18 – Protecting and Enhancing the Environment
- SP19 – Design Quality

### **Selby District Local Plan**

3.5 Annex 1 of the National Planning Policy Framework (NPPF) outlines the implementation of the Framework. As the Local Plan was not adopted in accordance with the Planning and Compulsory Purchase Act 2004, the guidance in paragraphs 212 and 213 of the NPPF noting that the NPPF should be taken into account in determining applications, and that existing policies should not be considered out of date simply because they were adopted prior to the publication of the NPPF and that due weight should be given to them according to their degree of consistency with the Framework, so the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given.

3.6 The relevant Selby District Local Plan Policies are:

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

### **Other Policies and Guidance**

3.7 Affordable Housing Supplementary Planning Document

## **4. APPRAISAL**

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

- The Principle of the Development
- Design and Impact on the Character and Appearance of the Area
- Impact on Residential Amenity
- Impact on Highway Safety
- Other Issues

## **The Principle of the Development**

- 4.2 The Town and Country Planning Act 1990 Section 73 allows for applications to be made to undertake development without complying with conditions attached to such an approval. Paragraph (2) of Section 73 states "On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and —
- (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and
- (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application."
- 4.3 As such the only consideration of this application is in relation to the conditions of the approval and the impact the proposed variation would have. Therefore key to the determination of this application is whether a new planning consent for the development with the proposed variation to Condition 4 (Drawings) of planning permission 2010/0507/FUL would be contrary to the provisions within the development plan or whether there are reasonable grounds for refusal if these conditions were not retained in their present form.
- 4.4 The previous planning permission for the construction of a five bedroom, three storey detached house at Quarry Drop, Westfield Lane, South Milford was considered acceptable under planning approval reference 2010/0507/FUL, subject to conditions and according with relevant policies in place at that time.
- 4.5 A recent appeal decision dated 6 July 2018 (appeal reference: APP/N2739/X/17/3186468) has confirmed that planning permission reference 2010/0507/FUL remains extant and the works permitted by it can be lawfully continued. The Inspector therefore issued a certificate of lawfulness in respect of the construction of a three storey, five bedroomed detached dwelling in accordance with drawings listed under Condition 4 of 2010/0507/FUL. As the permission remains extant, an application can be lawfully made under Section 73 of the Town and Country Planning Act 1990, to vary Condition 4 (Drawings).
- 4.6 Since the approval of planning permission reference 2010/0507/FUL the Selby District Core Strategy Local Plan was formally adopted by the Council at the Extraordinary meeting of the Full Council on 22 October 2013. The policies within the Selby District Core Strategy Local Plan (2013) replace a number of Selby District Local Plan (2005) policies. In addition, the National Planning Policy Framework (NPPF) was published in July 2018. Although the policy context has changed since the decision for planning approval reference 2010/0507/FUL was made, with the adoption of the Selby District Core Strategy Local Plan (2013) and the publication of the NPPF (2018), the policy position remains the same. Had the proposal been assessed against the adopted Selby District Core Strategy Local Plan (2013) and NPPF (2018), the proposal would still have been considered acceptable in principle.

- 4.7 The proposed variation of Condition 4 (Drawings) of planning permission 2010/0507/FUL incorporates the following amendments: (1) to amend the footprint of the dwelling at ground, first floor and second floor level so the north west corner and south west corner are rounded rather than square; and (2) accordingly alter fenestration details in the west and south elevations.
- 4.8 The impacts arising from these amendments are considered in the following sections of this report.

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

- 4.9 The original planning permission (reference: 2010/0507/FUL) assessed the proposals in respect of their design and impact on the character and appearance of the area and established that the proposals were acceptable with respect to the layout, scale, appearance and landscaping, subject to a condition relating to the approval of materials.
- 4.10 The proposed amendments would alter the footprint of the dwelling at ground, first floor and second floor level so the north west corner and south west corner would be rounded rather than square and would also alter fenestration details in the west and south elevations.
- 4.11 The proposed amendments, given their nature and design, are not considered to have any significant adverse impact on the character and appearance of the area beyond the original permission and are therefore considered to be acceptable in accordance with Policy ENV1 (1) and (4) of the Selby District Local Plan, Policy SP19 of the Core Strategy Policy SP19 and the advice contained within the NPPF.

### **Impact on Residential Amenity**

- 4.12 The original planning permission (reference: 2010/0507/FUL) assessed the proposals in respect of their impact on the residential amenity of neighbouring properties in terms of whether they would result in any adverse impacts in terms of overlooking, overshadowing or oppression and established that the proposals were acceptable with respect to the layout, scale and appearance (including fenestration details).
- 4.13 The proposed amendments would alter the footprint of the dwelling at ground, first floor and second floor level so the north west corner and south west corner would be rounded rather than square and would also alter fenestration details in the west and south elevations.
- 4.14 The proposed amendments, given their nature and design, are not considered to have any significant adverse impact on the residential amenity of neighbouring properties in terms of in terms of overlooking, overshadowing or oppression beyond the original permission and are therefore considered to be acceptable in accordance with Policy ENV1 (1) of the Selby District Local Plan and the advice contained within the NPPF in these respects.
- 4.15 A number of letters of representation have been received which raise concerns regarding the length of time that the development has been ongoing and noise and disturbance resulting from construction works impacting on the residential amenity

of neighbouring properties. Policy ENV1 (1) and ENV2A of the Selby District Local Plan seek to ensure a good amenity for residential occupiers, which is consistent with the advice contained within the NPPF and the PPG in relation to noise and disturbance.

- 4.16 There are a history of permissions at the site, which have been summarised in the “Planning History” section of this report. Planning permission 2010/0507/FUL did not include any conditions restricting the hours and days that construction works could take place. However, under a subsequent planning permission, reference 2016/0850/FUL, the Local Planning Authority attached a condition restricting construction hours in the interest of the amenities of the adjacent properties and having had regard to Policy ENV1 of the Selby District Local Plan. The applicants sought to remove this condition under application reference 2016/1190/FUL, which was refused by the Local Planning Authority on 02 December 2016 and subsequently dismissed at appeal (reference: APP/N2739/W/17/3168058) on 04 July 2017. The Inspector considered the removal of the condition restricting the hours and days that construction works could take place would harm the living conditions of nearby residents in relation to noise and disturbance in conflict with Policy ENV1 of the Selby District Local Plan.
- 4.17 In determining a Section 73 application, the Local Planning Authority can impose additional conditions beyond those proposed in the application, provided that:
- (a) The conditions imposed are ones which could have been imposed on the original grant of permission; and
  - (b) The conditions do not permit amendments which would amount to a “fundamental alteration” of the development proposed by the original application.
- 4.18 The construction of the five bedroom, three storey detached house at Quarry Drop, Westfield Lane, South Milford has been ongoing for 7-8years. Representations from adjacent properties submitted with application references 2018/0850/FUL, 2016/1190/FUL, 2017/0757/CP and the current application, along with planning enforcement complaints have highlighted harm to the occupiers of neighbouring dwellings through noise and disturbance resulting from construction works. The application site is tightly bound by residential properties, with those fronting High Street located a minimum of 10 metres away from the site boundary; No. 24 Westfield Lane to the east, located a minimum of 7 metres from the site boundary at a higher elevation; and Westmere to the west, located 18 metres from the site boundary at a higher elevation. Given the location of the site, surrounded by residential properties to all sides, the evidence of the length of time the development has been ongoing, and the representations from neighbouring properties regarding the harm to living conditions through noise and disturbance resulting from construction works, it is considered reasonable and necessary to consider whether a condition restricting construction hours should be attached to any approval of planning permission under the current Section 73 application.
- 4.19 Under appeal reference APP/N2739/W/17/3168058 the Inspector stated “a condition may be considered necessary if the effect of not having it in place or removing it would lead to significant harm”. Policy ENV1 of the Selby District Local Plan seeks to ensure a good amenity for residential occupiers, which is consistent with the advice contained within the NPPF and the PPG in relation to noise and

disturbance. The Local Planning Authority have received numerous letters of representations to planning applications at the site, along with planning enforcement complaints highlighting harm to the occupiers of neighbouring dwellings through noise and disturbance resulting from construction works. In light of this it is considered that a condition restricting construction hours would be necessary, would be relevant to planning and relevant to the development permitted in relation to the site context, evidence of complaints about working hours and there is a clear planning purpose to protect amenity in relation to local planning policy. Without a restriction on working hours there is evidence of harm to residential amenity of nearby residents. A condition relating to working hours would be enforceable because it would be possible to detect a contravention and remedy any such breach by not working outside the specified hours. Furthermore, the Inspector on appeal reference APP/N2739/W/17/3168058 considered the working hours condition, subject of that appeal, was sufficiently precise so as to have sensible meaning when read as a whole and was not uncertain. A similarly worded condition could be attached to the current application, thus the same would apply in terms of enforceability and preciseness.

- 4.20 Having regard to the above factors, the Local Planning Authority consider it prudent to attach a condition restricting construction hours to any approval of planning permission in the interests of the amenities of the adjacent properties and having had regard to Policy ENV1 of the Selby District Local Plan. The condition is one which could have been imposed on the original grant of permission; and the condition does not permit amendments which would amount to a “fundamental alteration” of the development proposed by the original application.

### **Impact on Highway Safety**

- 4.21 The original planning permission (reference: 2010/0507/FUL) assessed the proposals in respect of their impact on highway safety and established that the proposals were acceptable with respect to the access and layout, subject to a condition requiring the accesses to the site to be laid out and constructed in accordance with certain requirements detailed within the condition.
- 4.22 The proposed amendments do not alter the access, parking and turning areas within the application site. North Yorkshire County Council Highways have been consulted on the application and have advised that there are no local highway authority objections to the proposals. As the access has now been laid out and constructed, it is not necessary to attach any conditions to any approval of planning permission relating to the access.
- 4.23 Having regard to the above, it is considered that the proposals are acceptable in respect of highway safety in accordance with Policy ENV1 (2) of the Selby District Local Plan, Policy T1 of the Core Strategy and the advice contained within the NPPF.

### **Other Issues**

- 4.24 There are a history of permissions at the site, which have been summarised in the “Planning History” section of this report. Concerns have been raised over which planning permission is being implemented and whether the temporary living accommodation and fence to the south/east boundary benefit from planning



permission in light of the recent appeal decision (reference: APP/N2739/W/17/3168058) granting a certificate of lawfulness in respect of the construction of a three storey, five bedroomed detached dwelling in accordance with drawings listed under Condition 4 of 2010/0507/FUL and the subsequent Section 73 application. To clarify, the applicant currently has two consents which they could implement: 2010/0507/FUL and 2018/0850/FUL. Should planning permission be granted under the current application, the applicant would have three consents they could implement: 2010/0507/FUL, 2018/0850/FUL and 2018/0800/FUL. The Local Planning Authority will be seeking to establish from the applicant which of the consents they are implementing i.e. which they are building the dwelling house under, the temporary living accommodation and the fence to the south/east boundary. The applicant could implement more than one planning permission provided that the development carried out thereunder does not render one or other of the planning permissions incapable of being implemented or physically impossible to implement.

- 4.25 Concerns have been raised over the height of the development, as currently constructed. The applicants have advised that a temporary roof is currently in situ, which does not reflect the height of the development on completion.
- 4.26 Concerns have been raised regarding construction vehicles blocking the road. Such complaints should be directed towards North Yorkshire County Council Highways for further investigation. Further, concerns have been raised regarding un-neighbourly parking on High Street. This is not a material consideration which can be taken into consideration in the determination of this application and is a separate civil matter which should be discussed between the relevant parties.

## **5. CONCLUSION**

- 5.1 The application has been made under Section 73 of the Town and Country Planning Act 1990 and the proposal seeks to vary Condition 4 (drawings) of planning permission reference 2010/0507/FUL for the construction of a five bedroom, three storey detached house at Quarry Drop, Westfield Lane, South Milford. The changes proposed under this Section 73 application are: (1) to amend the footprint of the dwelling at ground, first floor and second floor level so the north west corner and south west corner are rounded rather than square; and (2) accordingly alter fenestration details in the west and south elevations.
- 5.2 The proposed amendments are not considered to have any significant adverse impact on the character and appearance of the area, the residential amenity of neighbouring properties in terms of overlooking, overshadowing or oppression, or highway safety beyond the original permission and are therefore considered to be acceptable in accordance with Policies ENV1 and T1 of the Selby District Local Plan, Policy SP19 of the Core Strategy and the advice contained within the NPPF.
- 5.3 Given the location of the site, surrounded by residential properties to all sides, the evidence of the length of time the development has been ongoing, and the representations from neighbouring properties regarding the harm to living conditions through noise and disturbance resulting from construction works, it is considered reasonable and necessary to attach a condition restricting construction hours in the interests of the amenities of the adjacent properties and having regard to Policy ENV1 of the Selby District Local Plan.

## 6. RECOMMENDATION

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

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

LOC 01 – Location Plan  
02 – Block Plan  
02 – West Elevation  
03 Rev 1 – East Elevation  
04 – South Elevation  
08 – North Elevation  
05 – Ground Floor  
06 – First Floor  
07 – Second Floor  
12 – Plan Drawing  
13 – Services Drawing

Reason:

For the avoidance of doubt.

02. Within three months of the date of this permission details of the materials to be used in the construction of the exterior walls and roof(s) of the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. Only the approved materials shall be utilised.

Reason:

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

03. No construction works shall take place on site outside the hours of 8am-6pm Monday to Friday, 9am to 1pm Saturday, or at all on Sundays and Bank Holidays.

Reason:

In interests of the amenities of the adjacent properties and having had regard to Policy ENV1 of the Selby District Local Plan.

## 7. Legal Issues

### 7.01 Planning Acts

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

### 7.02 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.

### 7.03 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.

### 8. **Financial Issues**

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

### 9. **Background Documents**

Planning Application file reference 2018/0800/FUL and associated documents.

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

**Appendices:** None