



**Report Reference Number:** 2018/0681/FULM

**To:** Planning Committee  
**Date:** 5 December 2018  
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**Lead Officer:** Ruth Hardingham (Planning Development Manager)

APPLICATION NUMBER:	2018/0681/FULM	PARISH:	Birkin Parish Council
APPLICANT:	JE Hartley Ltd	VALID DATE: EXPIRY DATE:	22 August 2018 21 November 2018
PROPOSAL:	<p>Retrospective application for the following works:</p> <ol style="list-style-type: none"> <li>1. Change of use of the buildings and land from agricultural use to industrial B2 use which includes: <ul style="list-style-type: none"> <li>• Installation and the use of 5 biomass boilers for the drying and heating woodchip;</li> <li>• Storage of the logs on the hardstanding;</li> <li>• Processing logs to woodchip;</li> <li>• Storage of woodchip within the buildings;</li> <li>• Drying the woodchip for wholesale;</li> <li>• Drying and using the woodchip for the heating for the proposed agricultural building under application reference number 2017/1381/FULM.</li> </ul> </li> <li>2. The improvement and replacement of a hard standing area.</li> <li>3. The creation of a soil heap 'bund' along the northern boundary.</li> <li>4. The installation external extractor vents and flues to the building.</li> <li>5. The installation of a weighbridge.</li> <li>6. The creation of a new access road.</li> </ol>		
LOCATION:	Viner Station, Roe Lane, Birkin, Knottingley, West Yorkshire		
RECOMMENDATION:	REFUSE		

This item has been brought to Planning Committee at the decision of the Head of Planning.

# 1. INTRODUCTION AND BACKGROUND

## Site and Context

- 1.1 The application site is located outside of the defined development limits in the open countryside. The site lies beyond but adjacent to the Green Belt on its western boundary.
- 1.2 There are currently five agricultural buildings at Viner Station which surround a concrete and mud yard which are in the immediate vicinity of the application site.

## The Proposal

- 1.3 This is a retrospective application for the following works:
  1. Change of use of the buildings and land from agricultural use to industrial B2 use. However it is the opinion of officers that the description of the proposal does not accurately reflect the works that are taking place which includes:
    - Installation and the use of 5 biomass boilers for the drying and burning of woodchip;
    - Storage of the logs on the hardstanding;
    - Processing logs to woodchip;
    - Storage of woodchip within the buildings;
    - Drying the woodchip for wholesale;
    - Drying and using the woodchip for the heating for the proposed agricultural building under application reference number 2017/1381/FULM.
  2. The improvement and replacement of a hard standing area.
  3. The creation of a soil heap 'bund' along the northern boundary.
  4. The installation of external extractor vents and flues to the building.
  5. The installation of a weighbridge.
  6. The creation of a new access road.

## Relevant Planning History

- 1.4 The following historical applications are considered to be relevant to the determination of this application.
  - CO/1975/21460 - Permitted - 08.04.1975 - Grain Store.
  - CO/1975/21478 - Permitted - 13.05.1975 - Re-siting Grain Store.
  - CO/1975/21479 – Permitted - 14.07.1975 - Agricultural General Purpose Store.
  - CO/1976/21480 – Permitted - 13.10.1976 - Farm Weighbridge And Weighbridge Office.
  - 2009/0393/FUL - Finally Disposed Of - 08.12.2015 - Erection of 14 No. 125 metre high wind turbines, crane hard standings, meteorological mast, temporary construction compound, tracks, cabling and associated infrastructure.
  - 2018/0290/PPP – Withdrawn – 18.05.2018 - Lawful development certificate for a proposed replacement of existing fossil fuel heaters with four biomass heat generating boilers.

There is currently an application pending for consideration Planning Reference: 2017/1381/FULM for the proposed erection of a new grain store including a

chemical store and roof mounted solar PV this will be bought to Members following the determination of this current application.

## 2. CONSULTATION AND PUBLICITY

**County Public Rights Of Way Officer** - No response received.

**Yorkshire Water** - No response received.

**Designing Out Crime Officer** – No comments to make

**North Yorkshire Fire & Rescue Service** - have no objection/observation to the proposed development

**Selby Area Internal Drainage Board** - No response received.

**North Yorkshire County Council** - No response received.

**Parish Council** – Object to the application.

**Environmental Health** – No objections

**Highways Authority** - Since initially assessing the submitted proposals and reaching their recommendation, the Local Highway Authority has taken into account the highway network width and condition and has now recommended refusal of the application.

**Historic Officer** – No objections

**NYCC Flood Risk Officer** – More information required on:

- Full drainage plan, including details of drainage from roof area.
- Details of impermeable area and calculations used to size soakaways.
- Any ground investigations and information used to determine infiltration rates.
- An exceedance flood flow plan.
- Pollution prevention proposals.
- A maintenance schedule.

### **Neighbour Comments**

The proposal has been advertised in the press, all immediate neighbours have been informed by letter and a site notice has been erected. 31 objections have been received and one letter of support,

Objections are summarised below:

- Large vehicles and farm vehicles cause windows to rattle.
- Litter caused by the development.
- Cause ruts and damage to the highway.
- Small bridge in Birkin being damaged.
- Business too large for the village.
- Danger to walkers, walking dogs cyclists and riding horses.
- Children cannot play on the street due to the vehicles.
- It is an agricultural area not an industrial area.

- The development should be beneficial to agriculture.
- Too many HGV's, movements and inappropriate road infrastructure.
- Affect character and landscape of the area.
- Affect the Green Belt.
- Carried out works without planning permission.
- Will cause flood risk to the village.
- Nearby roads too small.
- Development will cause dust.
- No mention how by-product will be monitored and controlled.
- Too long hours of operation.
- Noise and traffic pollution.
- Increase traffic will increase potential for road accidents.
- Will have an effect on agricultural jobs in the area.
- The raw materials should be located near this type of development to reduce carbon footprint.
- Council should serve a stop notice because of harm caused by excessive noise, smoke emission and excessive HGV movements.
- The scheme has caused the loss of storage of grain capacity. New grain store unnecessary.
- Traffic speeding.

Supporting comments are:

- Applaud the change from fossil fuel to bio-mass boilers for the grain air driers and hope that this will sustain the business going forward. I run routinely on these roads and haven't noticed much HGV traffic increase. However, I would like to see pathways added to these roads, if that is possible, to separate walker/runners from the traffic.

**Planning Policy** – The key issues which should be addressed are:

1. The Spatial Development Strategy
2. Rural Diversification
3. Renewable Energy
4. Impact on amenity
5. Impact on the Landscape

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

#### **Constraints**

- 3.1 The application site is located outside the defined development limits and is located within the open countryside. Whilst the site is not located within the Green Belt, it abuts it on its western boundary.
- 3.2 The application site is located within Flood Zone 2.
- 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.

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

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

- 3.5 The relevant Core Strategy Policies are:

SP1 - Presumption in Favour of Sustainable Development  
SP2 - Spatial Development Strategy  
SP13 - Scale and Distribution of Economic Growth  
SP15 - Sustainable Development and Climate Change  
SP18 - Protecting and Enhancing the Environment  
SP19 - Design Quality

### **Selby District Local Plan**

- 3.6 Annex 1 of the National Planning Policy Framework (NPPF) outlines the implementation of the Framework. Paragraph 213 provides as follows:

“.....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)”.

- 3.7 The relevant Selby District Local Plan Policies are:

ENV1 - Control of Development  
ENV2 - Environmental Pollution and Contaminated Land  
EMP8 - Conversion to Employment Use-Countryside  
T1 - Development in Relation to Highway  
T2 - Access to Roads

## **4. APPRAISAL**

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

- 1) The Spatial Development Strategy
- 2) Rural Diversification
- 3) Impact on amenity
- 4) Impact on the Landscape
- 5) Highway safety and the impact on the Highway network
- 6) Protected species
- 7) Flood risk and drainage

### **The Spatial Development Strategy**

- 4.2 Core Strategy Policy SP2 sets out the spatial development strategy for the district and states that the majority of new development will be directed towards the towns and more sustainable villages. The application site is located within the open

countryside. Policy SP2 states that development in the open countryside 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 where it will enhance or maintain the vitality of rural communities, meet rural affordable housing need, or other special circumstances.

- 4.3 The application site is located within the open countryside. The proposal involves the re-use of a grain store for the storage and processing of logs to woodchip and the installation of 5 biomass boilers. This use is considered to be a B2/B8 use for the reasons outlined in the section below. The re-use of this former grain store has resulted in the requirement for a new grain store which is the subject of a separate planning application ref. 2017/1381/FULM. On this basis, the application is considered to be an intensification of the site and which will create the need for a new building within the open countryside, which is contrary to Policy SP2 and the spatial development strategy which aims to focus the majority of new development to the district's towns and more sustainable villages.

### **Rural Diversification**

- 4.4 Para 83 of the NPPF provides guidance with regards to supporting a prosperous rural economy and states that planning policies and decisions should enable the sustainable growth and expansion of all types of business in rural areas (through the conversion of existing buildings and well-designed new buildings) and the development and diversification of agricultural and other land-based rural businesses.
- 4.5 Para 84 states that policies and decisions should recognise that in order for sites to meet local business needs in rural areas, they may be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable. The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.
- 4.6 Policy SP13 of the Core Strategy provides guidance with regards to the scale and distribution of economic growth and parts C and D are considered to be the most relevant. Policy SP13C states that in rural areas, sustainable development (on both greenfield and previously developed sites) which brings sustainable economic growth through local employment opportunities or expansion of businesses and enterprise will be supported including (inter alia) the reuse of existing buildings and infrastructure; and the diversification of agriculture and other land based rural businesses.
- 4.7 Policy SP13D requires that in all cases, development should be sustainable and be appropriate in scale and type to its location, not harm the character of the area, and seek a good standard of amenity.
- 4.8 Saved policy EMP8 also provides further guidance with relation to farm diversification and states that proposals for the conversion of rural buildings for commercial / industrial uses will be permitted subject to the following 6 criterion:

- The building is structurally sound and capable of re-use without substantial re-building
- The proposed re-use or adaptation will generally take place within the fabric of the building
- Conversion would not damage the fabric and character of a building of architectural or historic interest
- The form, bulk and general design of the building is in keeping with its surroundings
- The conversion of the building and ancillary works would not have a significant effect on the character and appearance of the area
- The proposal would not create conditions prejudicial to highway safety or which would have a significant adverse effect on local amenity.

4.4 In assessing the application, it is important to form a view on whether the proposal constitutes appropriate farm diversification. Despite the description of the proposal, it is the view of officers that the application proposes the change of use from agricultural to a mixed use comprising B2 General Industrial uses and B8 Storage and Distribution uses. Whilst the processing of logs to woodchip is a B2 use, when determining the overall use of the site, consideration has been given to the purpose of the 5 biomass boilers. One of the boilers is intended to heat the proposed new grain store whilst the other four boilers are being used for drying woodchip as part of the distribution process. It is on this basis that officers' consider the use of the building to combine a mix of B2 and B8 uses.

4.5 Given that the majority of the biomass boilers are for drying woodchip for distribution and sale off-site, the dominant use is considered to be B2 and B8 Storage and Distribution uses. Furthermore, the existing agricultural facility cannot sustainably farm the amount of timber that is being chipped as part this process and as such timber is being brought onto the site by haulage vehicles. The lorry movements created by this proposal are considered to be unsustainable for such a rural location given intensification of the site. On this basis, the proposal is not considered to be sustainable or appropriate in scale and type to its location, as per Policy SP13D.

4.6 It is the view of officers that it is not the intention of relevant policies in the NPPF, Core Strategy and Selby District Local Plan relating to farm diversification to allow for the intensification of sites in the open countryside and to permit the introduction of B2 /B8 uses in rural locations on this scale. Whilst farm diversification is encouraged by policy, it does not allow for inappropriate commercial / industrial development in the open countryside and does not mean that agricultural buildings can be re-used for employment purposes, regardless of their nature and intensity. The retrospective application proposes a new operation which is industrial in nature and does not directly relate to the agricultural use of the site, other than one of the biomass boilers which is proposed will heat the new grain store that is currently under consideration under planning ref. 2017/1381/FULM.

4.7 Having regard to the above, the proposal will significantly intensify the use of the site and introduce inappropriate industrial development to the open countryside. In addition the lorry movements created by this proposal are considered to unsustainable for this open countryside location and would affect the character of this open countryside location through the intensification form the use. It is therefore considered to be contrary to policy SP13 of the Core Strategy, saved policy EMP8 of the Local Plan and paragraphs 83 and 84 of the NPPF.

### **Impact on amenity**

- 4.8 The Environmental Health team were consulted on the application who requested the submission of an air quality assessment and noise assessment. Environmental Health were consulted on these documents and raised no objections.
- 4.9 Having regard to the above, the proposed scheme is considered not to have a detrimental impact upon air quality and noise. Due to the combination of: the orientation of the site; the size, scale and siting of the proposed scheme; and the site's distance from the neighbouring properties, the proposal is considered not to cause any significant adverse effects on the amenity of adjacent residents. The proposed scheme therefore accords with Policies ENV1 and EMP8 (6) of the Selby District Local Plan, Policy SP19 of the Core Strategy and the advice contained within the NPPF.

### **Impact on the Landscape**

- 4.10 The site is located in the open countryside. Whilst the application site is not located within the Green Belt, the Green Belt is located to the south and west of the site and immediately abuts it on the site's western boundary.
- 4.11 The existing buildings at Viner Station consist of different sizes, shapes and designs and the siting of flues and extractors vents vary. The retrospective external extractor vents and flues included in the application are considered to be in keeping with the character and form of flues and vents that already exist on site. The addition of these vents and flues are considered not to create clutter excessively on the buildings due to their position and siting on the building.
- 4.12 The applicant has installed a weighbridge, a feature which was historically present on the site and is considered to be commonly found in and around a farming complex. Visits to the site have revealed that logs are being stored at substantial heights which are prominent in the landscape, but the height of log storage could be conditioned if permission were granted.
- 4.13 Given that the application proposes a change of use, rather than built development, it is considered that the scheme has a negligible visual impact on the surrounding landscape when compared to the existing agricultural use and it is considered that the imposition of relevant conditions, including adherence with a landscape scheme could negate any negative impact on the landscape. It is not considered that the proposals would therefore have a negative visual impact on the adjacent Green Belt.
- 4.14 Having had regard to the above, the proposal is considered to create an intensification of the site, which on balance would not have a harmful unacceptable impact on the character and appearance of the area or encroach into the open countryside or visual impact on the adjacent Green Belt. The proposal therefore accords with Policy SP18 of the Core Strategy and advice contained within the NPPF.

### **Highway safety and the impact on the Highway network**

- 4.15 The vehicular access for the site is from the road to the West of the site via the existing site entrance. Once on site, vehicles will be directed north and along the



area of hardstanding situated next to the northern building. They will cross the weighbridge and then proceed to the eastern hardstanding area. Once they have deposited or collected material they will then proceed to exit the site from the same route they entered by.

4.16 The applicant has stated that there is:

- Approximately 1,427 lorry transport movements per annum;
- Or approximately 27 per week;
- Or 5 per day of virgin wood deliveries to site (these movements only account for a one-way trip so will double if accounting for movements in and out of site).

4.17 NYCC Highways have been consulted on the application and initially they did not raise any objections to the proposal either singularly or cumulatively with application ref. 2017/1381/FULM. However, since this initial assessment and reaching their recommendation, the Local Highway Authority has taken into account the highway network width and condition and has now recommended refusal of the application. The Local Highway Authority recommendations were initially for conditions relating to visibility and mud of the highway on highway safety grounds. Since the original response was submitted, NYCC Highways Officers have been made aware of numerous local objections relating to an increase of large vehicles on narrow roads/through local villages. On further inspection, NYCC Highways have noted an increase of large vehicles and overrun of the verges of the public highway which can be attributed to vehicles visiting the site.

4.18 NYCC Highways Officers consider that the roads leading to the site by reason of their poor alignments/insufficient widths/poor condition and lack of footways are considered unsuitable for the traffic which would be likely to be generated by this proposal and would interfere with the free flow of traffic with consequent danger to highway users by virtue of its proximity to the public highway network. On the basis of this assessment the local highway authority recommends that this proposal is refused. It is considered that the proposals would result in a significant detrimental impact on the existing highway network and highways safety and would therefore not accord with Policies EMP8 (6), ENV1 (2), T1 and T2 of the Selby District Local Plan, Core Strategy Policy SP19 and the NPPF.

### **Protected species**

4.18 A Preliminary Ecological Appraisal has been submitted in support of the related application ref. 2017/1381/FULM, which advises that based on the nature of the proposed development, the distance between the site and protected sites and the nature of the protected sites, means that the proposed development is not predicted to result in any significant effects on protected sites. No Habitats of Principal Importance are present at the site. None of the habitats at the site are assessed as being of value at greater than the site level. In addition to this the submitted report advises that based on the habitats present and the site location, the site is not considered likely to support a notable breeding bird assemblage, although Species of Principal Importance such as skylark potentially breed on the site in small numbers.

4.19 The submitted report states that no waterbodies potentially suitable for the breeding of great crested newts have been identified within 500 metres of the site. It is therefore considered very unlikely that great crested newts would occur at the site and no further surveys or mitigation measures for bats are considered necessary. In

addition to this it states that no evidence of badger or other notable fauna was observed at the site. Brown hare, a Species of Principal Importance in England, could potentially be present within the site on an occasional transitory basis. No further surveys or mitigation measures for other fauna are considered necessary.

- 4.20 The County Council Ecologist has been consulted on the related application 2017/1381/FULM and was satisfied that the outcome of the PEA is sufficient to determine the application in relation to ecological matters. The County Ecologist confirms that they agree with the findings of the PEA - notably, that the site is of low ecological value in terms of habitats and species which are legally protected or of principal importance.
- 4.21 As such it is considered that the proposed would not harm any acknowledged nature conservation interests and the proposed scheme therefore accord with the requirements of the Habitats Regulations 2010, Policy ENV1(5) of the Selby District Local Plan, Policy SP18 of the Core Strategy and the NPPF

### **Flood risk and drainage**

- 4.22 The application site is located within Flood Zone 2. Paragraph 164 of the NPPF states that “Applications for some minor development and changes of use should not be subject to the sequential or exception tests but should still meet the requirements for site-specific flood risk assessments set out in footnote 50. “
- 4.23 The proposed scheme is a change of use of the building and the surrounding land within the application site from an agricultural use to an industrial use and therefore is not required to pass the sequential or exception tests.
- 4.24 A FRA was submitted with the proposal providing mitigation measures as appropriate. The FRA is considered to be acceptable. It is recommended to impose a condition the development be carried out in accordance with the submitted FRA.
- 4.25 The submitted application form states that surface water will be disposed via a soakaway. The IDB and Yorkshire Water were consulted on the application and did object to the proposal.
- 4.26 The North Yorkshire Flood Risk Officer has requested further information in regards to drainage details including a full drainage plan, details of impermeable area and calculations used to size soakaways, any ground investigations and information used to determine infiltration rates, an exceedance flood flow plan, pollution prevention proposals and a maintenance schedule. This information has not yet been provided by the applicant so there are insufficient details to assess if the proposals are acceptable in regards to drainage.
- 4.27 On the basis of the above and insufficient information submitted, the proposed scheme is not considered to be acceptable in terms of flood risk and drainage and therefore does not accords with Policies SP15, SP16, SP19 of the Core Strategy, and the advice contained within the NPPF.

### **Legal Issues**

#### **4.28 Planning Acts**

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

#### 4.29 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.

#### 4.30 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**

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

## **5. CONCLUSION**

5.1 Having regard to the development plan, all other relevant local and national policy, consultation responses and all other material planning considerations, the proposed development would be unacceptable in terms of the spatial development strategy set out in Policy SP2 of the Core Strategy and the proposal will significantly intensify the use of the site and introduce inappropriate industrial development to the open countryside. In addition the lorry movements created by this proposal are considered to unsustainable for this open countryside location and would affect the character of this open countryside location through the intensification form the use. It is therefore considered to be contrary to Policy SP13 of the Core Strategy, saved Policy EMP8 of the Local Plan and paragraphs 83 and 84 of the NPPF.

5.2 The roads leading to the site are by reason of their poor alignments/insufficient widths/poor condition and lack of footways are considered unsuitable for the traffic which would be likely to be generated by this proposal and would interfere with the free flow of traffic with consequent danger to highway users by virtue of its proximity to the public highway network. It is considered that the proposals would result in a significant detrimental impact on the existing highway network and highways safety and would therefore not accord with Policies EMP8 (6), ENV1 (2), T1 and T2 of the Selby District Local Plan, Core Strategy Policy SP19 and the NPPF.

5.3 The applicant has failed to provide sufficient information in regards to drainage and the Council therefore cannot be satisfied that the proposals are acceptable in terms of flood risk and drainage. Therefore the proposals fail to accord with Policies SP15, SP16, SP19 of the Core Strategy, and the advice contained within the NPPF.

5.4 Other matters of acknowledged importance such as the impact on the character of the area and visual impact on the Green Belt, flood risk, residential amenity, and nature conservation are considered to be acceptable.

## **6. RECOMENDATION**

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

1. Having regard to the development plan, all other relevant local and national policy, consultation responses and all other material planning considerations, the proposed

development would be unacceptable in terms of the spatial development strategy set out in Policy SP2 of the Core Strategy and the proposal will significantly intensify the use of the site and introduce inappropriate industrial development to the open countryside. In addition the lorry movements created by this proposal are considered to be unsustainable for this open countryside location and would affect the character of this open countryside location through the intensification of the use. It is therefore considered to be contrary to policy SP13 of the Core Strategy, saved Policy EMP8 of the Local Plan and paragraphs 83 and 84 of the NPPF.

2. The roads leading to the application site by reason of their poor alignments/insufficient widths/poor condition and lack of footways are considered unsuitable for the traffic which would be likely to be generated by this proposal and would interfere with the free flow of traffic with consequent danger to highway users by virtue of its proximity to the public highway network. It is considered that the proposals would result in a significant detrimental impact on the existing highway network and highways safety and would therefore not accord with Policies EMP8 (6), ENV1 (2), T1 and T2 of the Selby District Local Plan, Core Strategy Policy SP19 and the NPPF.
3. The applicant has failed to provide sufficient information in regards to drainage and the Council therefore cannot be satisfied that the proposals are acceptable in terms of flood risk and drainage. Therefore the proposals fail to accord with Policies SP15, SP16, SP19 of the Core Strategy, and the advice contained within the NPPF.

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