



**Report Reference Number:** 2017/0701/OUT (8/14/114A/PA)

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

APPLICATION NUMBER:	2017/0701/OUT	PARISH:	Kelfield Parish Council
APPLICANT:	Mr R Atkinson	VALID DATE:	22 June 2017
		EXPIRY DATE:	17 August 2017
PROPOSAL:	Outline application for demolition of garage, farm buildings and glasshouse and erection of residential development (all matters reserved)		
LOCATION:	Yew Tree House Main Street Kelfield York North Yorkshire YO19 6RG		
RECOMMENDATION:	REFUSE		

## 1. INTRODUCTION AND BACKGROUND

- 1.1 This application has been brought back before Planning Committee following consideration at the 10<sup>th</sup> January 2018 meeting, where Members resolved “To DEFER the application in order to give the applicant the opportunity to work with Officers to submit a revised plan more acceptable to the site boundaries and development limits”. A presence or absence survey of all accessible watercourses within 500m of the application site was also required to be submitted in order for the Local Planning Authority to assess the impact of the proposed development on European Protected Species (specifically great crested newts).
- 1.2 Members should be aware that since the application was previously brought before Planning Committee, an appeal (reference: APP/N2379/W/17/3170320) in respect of an outline application (reference: 2016/0597/OUT) (with all matters reserved) for the erection of a residential development following the demolition of an existing

dwelling, garage, farm buildings and glasshouse at Yew Tree House, Main Street Kelfield has been dismissed by the Planning Inspectorate. The Inspector concluded “The proposal has failed to demonstrate that it would not have an adverse effect on protected species and their habitat or upon heritage assets. It would also fail to comply with local and national policy which seeks to reduce the need to travel by locating new development in sustainable locations. The contribution to housing, including affordable housing, and the limited economic benefits of the scheme would not outweigh this identified harm.” This appeal decision is a material consideration in the determination of the current application and is included in Appendix 2 for reference.

- 1.3 Since the 10th January 2018 resolution of Planning Committee and the 31<sup>st</sup> January 2018 appeal decision in respect of appeal reference APP/N2379/W/17/3170320, the applicant’s agent has submitted a revised location plan (drawing no. 01A) and a revised illustrative layout plan (drawing no. 697/02). These reduce the area of the application site, such that it no longer includes an area of land to the rear of Glen House, Sycamore House and Rose Cottage. This effectively removes Plot 8 which was shown on the now superseded indicative layout plan (drawing no. 697/01). Furthermore, an updated design and access statement (incorporating a heritage statement) has been submitted and a Great Crested Newt Survey (incorporating a presence or absence survey) undertaken by Astute Ecology Ecological Consultants, dated June 2018, has been submitted.
- 1.4 In addition, since the application was previously brought before Planning Committee, the revised National Planning Policy Framework (NPPF) was published in July 2018.
- 1.5 As such, Planning Committee is required to re-consider this application in light of these material changes.

## **2. CONSULTATION AND PUBLICITY**

Since the resolution at Planning Committee on 10 January 2018 the following additional comments have been received.

- 2.1 **NYCC Ecology** – Initial response 18.09.2018: Although the proposed development would not impact on any breeding ponds, it would result in the loss of around 0.3 hectares of potential terrestrial habitat and, due to the proximity of the ponds, “It has been assessed that there is a high risk of Great Crested Newt (GCN) being disturbed, injured or killed during site clearance”. In order to assess whether the proposed GCN mitigation would meet the requirements of the Conservation of Habitats & Species Regulations 2017, it is requested that further information from the applicant regarding:

- The ownership and future management of the proposed receptor area and wildlife corridor.
- The residual impact of the development after mitigation.
- Whether the proposed mitigation would be expected to maintain the favourable conservation status of the local GCN population.

Further response following submission of additional information 05.11.2018: With regards to point (1) this is acceptable in principle and a management plan for this

area can be provided by condition. In relation to points (2) and (3) the assessment provided by the applicants Ecologist is satisfactory and the conclusion is agreed that the favourable conservation status of the species would be maintained. For completeness, it is recommended that the ecology report is updated with the assessment provided to be updated as suggested by the Ecologist.

- 2.2 **Conservation Officer** – No objections. Recommendations on size, siting and design of properties for reserved matters application.
- 2.3 **Neighbour Comments** – No further letters of representation have been received since this application was heard at the 10 January 2018 Planning Committee.

### 3. APPRAISAL

3.1 The main issues which require re-consideration since the application was last presented to Planning Committee are as follows:

- The Principle of the Development
- Impact on the Character and Appearance of the Area
- Impact on Heritage Assets
- Nature Conservation and Protected Species
- Impact on Archaeology
- Impact on Residential Amenity
- Impact on Highway Safety
- Flood Risk and Drainage
- Land Contamination
- Affordable Housing
- Recreational Open Space
- Waste and Recycling

#### **The Principle of the Development**

- 3.2 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. Policy SP1 is therefore consistent with the guidance in Paragraph 11 of the NPPF.
- 3.3 The development limit boundary runs through the application site, such that the application site is located part within the defined development limits of Kelfield, which is a Secondary Village as identified within the Core Strategy, and is part located outside the defined development limits of Kelfield and is therefore located within the open countryside.
- 3.4 Policy SP2A (b) of the Core Strategy states that "Limited amounts of residential development may be absorbed inside Development Limits of Secondary Villages where it will enhance or maintain the vitality of rural communities and which conform to the provisions of Policy SP4 and Policy SP10". Policy SP4 (a) of the Core Strategy states that, in Secondary Villages, "conversions, replacement dwellings, redevelopment of previously developed land, filling of small linear gaps in otherwise built up residential frontages, and conversion/ redevelopment of farmsteads" will be acceptable in principle. Policy SP4 (b) of the Core Strategy

states that proposals for the conversion and/or redevelopment of farmsteads to residential use within development limits will be treated on their merits.

- 3.5 A revised location plan (drawing no. 01A) and a revised illustrative layout plan (drawing no. 697/02) have been submitted in August 2018. These show a reduced area of the application site, such that it no longer includes an area of land to the rear of Glen House, Sycamore House and Rose Cottage. This effectively removes Plot 8 which was shown on the now superseded indicative layout plan (drawing no. 697/01). The revised illustrative layout plan (drawing no. 697/02) demonstrates how the site could accommodate up to six dwellings, in addition to the existing farm house which would be retained as part of the proposals. On the revised illustrative layout plan, only plots 2 and 3 would be located within the defined development limits of Kelfield. These two units on their own would constitute “filling of small linear gaps in otherwise built up residential frontages” as they would front Main Street and are located within a small gap between the existing farm house (Yew Tree House) to the east and a terrace of dwellings to the west. The part of the development located within the defined development limits of Kelfield would also amount to the “redevelopment of a farmstead”. However, the remainder of the application site projects a substantial distance to the north beyond the frontage development within the open countryside. As such, the application site would not constitute “filling of small linear gaps in otherwise built up residential frontages” or the “redevelopment of a farmstead” wholly within the defined development limits. The proposal would therefore not be in accordance with Policies SP2A (b) and SP4 of the Core Strategy.
- 3.6 Moreover, Policy SP2A (c) of the Core Strategy 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 communities, in accordance with Policy SP13; or meet rural affordable housing need (which meets the provisions of Policy SP10), or other special circumstances”.
- 3.7 The proposal would not accord with Policy SP2A(c) as it is not for rural affordable housing need and there are no special circumstances. The application should therefore be refused unless material considerations indicate otherwise.
- 3.8 The NPPF is a material consideration and this is predicated on the principle that sustainable development is about positive growth and states that the Planning System should contribute to the achievement of sustainable development. Paragraphs 15 to 217 of the NPPF, taken as a whole, constitute the Government’s view of what sustainable development in England means in practice for the planning system.

#### Sustainability of the Development

- 3.9 In respect of sustainability, the site is located part within and part outside the defined development limits of Kelfield, which is a Secondary Village as identified within the Core Strategy, where there is scope for limited amounts of residential development to be absorbed inside development limits of Secondary Villages.

- 3.10 The village of Kelfield has not been considered as part of Background Paper 5, Sustainability Assessment of Rural Settlements, Revised July 2008. This is because Kelfield is not considered to be a sustainable settlement due to its lack of local services, such as a primary school, general store, post office and doctor's surgery, which would serve the day-to-day needs of its residents and its limited access to public transport. This means that residents would be heavily dependent on the use of a private car to satisfy their day-to-day needs.
- 3.11 Under appeal reference APP/N2379/W/17/3170320, which related to an outline application (reference: 2016/0597/OUT) (with all matters reserved) for the erection of a residential development following the demolition of an existing dwelling, garage, farm buildings and glasshouse at Yew Tree House, Main Street Kelfield, the Inspector considered whether the development was in a sustainable location. The Inspector concluded that "the proposal would be contrary to the aims of sustainable development explicit in the Framework, which seek to avoid a pattern of development which leads to reliance on the private car" and acknowledged that "The proposal would allow new residents to provide some support for services in Kelfield and nearby villages. However, as such services are relatively limited, this reduces the weight I attribute to this as a benefit". Although the application site relating to the appeal decision was larger and the illustrative layout plan showed the provision of twelve dwellings, ten of which would fall outside the defined development limits (while the revised illustrative layout plan for the current proposal shows the provision of six dwellings, in addition to the existing farm house, four of which would fall outside the defined development limit) it is considered the comments of the Inspector are still relevant to the principle of the development in respect of whether the current development proposed is in a sustainable location.
- 3.12 Under appeal reference APP/N2379/W/17/3170320, the Inspector also noted the Council's concerns that the proposal would be contrary to the aims of sustainable development explicit in the NPPF, which seeks to avoid a pattern of development which leads to reliance on private car. The Inspector noted the "very limited public services" in Kelfield and the limited access to public transport in Kelfield would be "unlikely to serve the needs of most people and most future residents of the development would be largely dependent upon the private car to access work and services". The Inspector concurred with the Council's view that "larger numbers of dwellings would have a proportionate effect in relation to numbers of car trips and that this cumulative effect is a relevant consideration". In this regard the Inspector concluded that "the [appeal] proposal would contribute to a pattern of development where residents would be largely reliant upon private car and would fail to reduce the need to travel. The [appeal] proposal would allow new residents to provide some support for services in Kelfield and nearby villages. However, as such services are relatively limited; this reduces the weight attributed to this as a benefit". As such, the Inspector concluded that the appeal proposal failed to comply with Policy SP2 of the Core Strategy which seeks to focus new development within the existing settlements best placed to provide services to support new residents.
- 3.13 Officers consider the comments of the Inspector in relation to whether the appeal proposal was in a sustainable location, equally applies to the current proposal. The revised illustrative layout plan demonstrates that the majority of the development would be located outside the defined development limits of Kelfield, where in accordance with Policy SP2A (c) of the Core Strategy, development is limited to certain circumstances, with which the proposal would not comply. The proposal

would therefore not focus new development within the existing settlements best placed to provide services to support new residents and would instead contribute to a pattern of development where residents would be largely reliant upon private car and would fail to reduce the need to travel. The proposal would therefore fail to comply with Policy SP2 of the Core Strategy which seeks to focus new development within the existing settlements best placed to provide services to support new residents. The proposal would also still conflict with guidance provided in the NPPF in relation to achieving sustainable patterns of development. These are factors which weigh against the proposal in the planning balance.

#### Settlement Strategy, Previous Levels of Growth and the Scale of the Proposal

- 3.14 The location of the development proposal would undermine the spatial strategy for the district as set out in the Core Strategy, in particular the settlement hierarchy set out at policy SP2. The focus on Selby as a Principal Town and on Tadcaster and Sherburn-in-Elmet as Local Service Centres would not be supported by further development taking place outside of the development limits at a 'fourth tier' level (secondary villages) settlement in the hierarchy. The strategy and hierarchy aims to support and deliver economic, regeneration, social and environmental objectives for the district and was assessed as a sustainable option through the adoption of the Strategy.
- 3.15 Policy SP5 of the Core Strategy designates levels of growth to each of the 3 main towns, the group of Designated Service Villages and the group of Secondary Villages based on their infrastructure capacity and sustainability. This policy set a minimum target of 170 for Secondary Villages as a whole, this target was to be met from existing commitments only. Data taken from the 2017-2022 Five Year Housing Land Supply Report – 30th September 2017 update (which uses a base data of the 30th of September 2017) shows that this minimum target has already been substantially exceeded, with 321 homes built or with permission since the start of the plan period in April 2011.
- 3.16 Secondary Villages have exceeded their minimum target by more than 3 times. Of concern to the delivery of the District's spatial strategy is that this has occurred only 6 years into the Core Strategy plan period, with 10 years of the plan period still remaining.
- 3.17 This disproportionate level of growth in the Secondary Villages, in the fourth tier for sustainability in the Councils settlement hierarchy, undermines the Council's spatial strategy, which directs the majority of development to the Principal Town of Selby, the Local Service Centres and the Designated Service Villages.
- 3.18 Notwithstanding this level of growth in the Secondary Villages as a whole, Policies SP2 and SP4 of the Core Strategy do allow for a limited amount of housing growth within the Secondary Villages. However, the scale of this development, at up to six dwellings, is clearly well in excess of this limited scale of development that can be sustainably supported by a Secondary Village and is expected by Policies SP2 and SP4 of the Core Strategy. The proposal would therefore be contrary to Policies SP2 and SP4 of the Core Strategy.

### The 'fall-back'

- 3.19 It is established case law that if an applicant can demonstrate a 'fall-back' position, this may constitute a material consideration to be taken into account in determining the application. A 'fall-back' is an existing consent which is capable of being implemented irrespective of the decision on this current application. Under Mansell v Tonbridge And Malling Borough Council [2017] EWCA Civ 1314, which concerned the redevelopment of a site of a large barn and a bungalow to provide four dwellings, Lindblom LJ confirmed the legal considerations in determining the materiality of a fall-back position as a planning judgement were: (1) 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; (2) 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.
- 3.20 Following consideration of the application at the 10<sup>th</sup> January 2018 Planning Committee meeting, where one of the Members questioned what could be done at the site under Class Q of Part 3 of Schedule 2 The Town and Country Planning (General Permitted Development) (England) Order 2015, the applicant's agent has submitted a revised illustrative layout plan (drawing no. 697/02), which demonstrates how the site could accommodate up to six dwellings, in addition to the existing farm house which would be retained as part of the proposals. The applicant's agent has advised that permitted development rights would now allow for up to five dwellings to be created within existing agricultural buildings, subject to a prior notification application. On this basis, and taking into account that the revised illustrative layout plan (drawing no. 697/02) shows the provision of four dwellings outside the defined development limits, the applicant's agent considers this represents a fall-back position which should be given significant weight.
- 3.21 The applicants agent is correct that the Town and Country Planning (General Permitted Development) (England) Order 2015 (Class Q of Part 3 of Schedule 2) allows for the conversion of agricultural buildings – or parts thereof – to residential development to provide up to 5 dwellings, with a maximum residential floor space of 865 square metres (which can be made up from a combination of larger and smaller dwellinghouses), subject to a prior approval application. However, the applicant's agent has not fully considered and demonstrated how, if at all, these permitted development rights could be implemented at the application site.
- 3.22 The applicant's agent has been requested by Officers to provide further information regarding the potential fall-back position, so Officers can assess the fall-back position against the current proposals and consider the extent of the weight (if any) that could be given to this. The applicant's agent has declined to submit such further information. The applicant's agent has not demonstrated that the existing agricultural building at the site could reasonably converted to up to five dwellings under Class Q of Part 3 of Schedule 2 The Town and Country Planning (General Permitted Development) (England) Order 2015. Furthermore, Officers doubt

whether such a quantum of development could be achieved through Class Q, given the size and scale of the existing agricultural building. Notwithstanding this, the red edge boundary of the application site projects well beyond the existing agricultural building at the site and the revised illustrative layout plan (drawing no. 697/02) shows the provision of dwellings beyond the footprint of the existing agricultural building, extending further into the open countryside, which would not be favourable to any potential fall-back position which could be demonstrated in relation to the conversion of the existing agricultural building under Class Q.

- 3.23 Having regard to the above, Officers consider that no weight should be attached to a potential fall-back position under Class Q of Part 3 of Schedule 2 The Town and Country Planning (General Permitted Development) (England) Order 2015, as insufficient information has been submitted to demonstrate that such a fall-back position exists, which would be capable of being implemented irrespective of the decision on this current application, and that the current proposal would be preferable.

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

- 3.27 When the application was taken to Planning Committee on 10 January 2018, Members were advised that while Officers considered an appropriate appearance, scale and landscaping of the proposed dwellings could be achieved at the reserved matters stage, which would not result in any significant adverse impact on the character and appearance of the area, Officers did not consider that an appropriate layout of the proposed dwelling could be achieved at the reserved matters stage, without having a significant adverse impact on the character and appearance of the area.
- 3.38 Since the application was previously taken to Planning Committee, a revised location plan (drawing no. 01A) and a revised illustrative layout plan (drawing no. 697/02) have been submitted. These reduce the area of the application site, such that it no longer includes an area of land to the rear of Glen House, Sycamore House and Rose Cottage. This effectively removes Plot 8 which was shown on the now superseded indicative layout plan (drawing no. 697/01). The revised illustrative layout plan (drawing no. 697/02) demonstrates how the site could accommodate up to six dwellings, in addition to the existing farm house which would be retained as part of the proposals. Plots 2 and 3 would be located to the site frontage, while plots 4-7 would wrap around the north (rear) and east side of the existing agricultural building which would be demolished as part of the proposals.
- 3.29 Furthermore, since the application was previously taken to Planning Committee, an appeal (reference: APP/N2379/W/17/3170320) in respect of an outline application (reference: 2016/0597/OUT) (with all matters reserved) for the erection of a residential development following the demolition of an existing dwelling, garage, farm buildings and glasshouse at Yew Tree House, Main Street Kelfield has been determined by the Planning Inspectorate. While the appeal was dismissed, the Inspector concluded in respect of the impact of the development on the character and appearance of the area that an appropriate layout could be secured at the reserved matters stage.
- 3.30 Under appeal reference APP/N2379/W/17/3170320, the Inspector noted that “buildings along Main Street sit close to the road with long gardens which lie



behind” and notes that “the existing pattern of development, where the built envelope sits relatively close to Main Street forms a strong frontage” such that “the size and position of the site has the potential to facilitate an incongruously suburban back land development, which could erode the strong built form evident in the wider streetscene”. Notwithstanding this, the Inspector concluded that a scheme could come forward at the reserved matters stage which continued the relatively tight urban form along Main Street, while any dwellings to the rear could be positioned close to the existing built envelope so that rear gardens extended towards the rear of the site. Taking account of the Inspectors conclusions in relation to appeal reference

3.31 APP/N2379/W/17/3170320, it is considered that an appropriate appearance, scale, landscaping and layout of the proposed dwellings could be achieved at the reserved matters stage in respect of the scheme put forward under this outline application, without having any significant adverse impact on the character and appearance of the area. The proposal is 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 and the advice contained within the NPPF.

### **Impact on Heritage Assets**

- 3.32 The application site is located within the historic village of Kelfield and within the setting of the Scheduled Ancient Monument of Kelfield moated site and fishpond to the north.
- 3.33 When the application was taken to Planning Committee on 10 January 2018, Members were advised that Officers considered that an appropriate layout, appearance, scale and landscaping of the proposed dwellings could be achieved at the reserved matters stage, which would not result in any harm to any designated or non-designated heritage assets.
- 3.34 Under appeal reference APP/N2379/W/17/3170320, the Inspector concluded that without a meaningful assessment of the significance of the heritage assets, or any rigorous appraisal of setting, they could not be satisfied as to the extent of any harm to heritage assets and their setting. On this basis, the Inspector concluded that the proposal would fail to comply with the requirement of policy SP18 which seeks to conserve the District’s heritage assets and with guidance in the Framework which has similar aims.
- 3.35 Since the application was previously taken to Planning Committee and following the appeal decision, amended plans have been submitted (as previously detailed in this report) and the applicant’s agent has also submitted a revised design and access statement which incorporates a heritage statement. The Heritage Statement identifies heritage assets which have the potential to be affected by the proposals, provides a meaningful assessment of their significance and an assessment of the impact of the proposals on those heritage assets.
- 3.36 The application has been re-assessed by the Council’s Conservation Officer - the comments of whom are noted and agreed. The Council’s Conservation Officer reiterates that throughout the application process, the existing property at the site, known as Yew Tree House, has been identified as a non-designated heritage asset and the retention and upgrading of this property as part of the proposals is fully

supported from a conservation perspective. Under appeal reference APP/N2379/W/17/3170320, the Inspector agreed that Yew Tree House was capable of being considered as a non-designated heritage asset, and its significance should be taken into account in determining the impact of the scheme. In terms of the impact of the proposals on non-designated and designated heritage assets, the Council's Conservation Officer notes that the proposed development would impact on the setting of the non-designated and designated heritage assets. However, they conclude that if the development is well designed, respects the historic street pattern of Kelfield and contains dwellings which reflect the existing character of Kelfield, the impact could be mitigated such that the proposals would not result in any harm to any designated or non-designated heritage assets. Going forward, the Council's Conservation Officer advises that any proposed new properties at the site should be constructed using materials to match those found in the local area and the scale, form and proportions of any new properties should reflect traditional buildings. On the basis of the above, the Council's Conservation Officer raises no objections to the proposals.

- 3.36 Having regard to the above, it is considered that an appropriate layout, appearance, scale and landscaping of the proposed dwellings could be achieved at the reserved matters stage, which would not result in any harm to any designated or non-designated heritage assets in accordance with Policy ENV27 of the Selby District Local Plan, Policies SP18 and SP19 of the Core Strategy and the advice contained within the NPPF.

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

- 3.37 An Extended Phase 1 Habitat Survey undertaken by Wold Ecology Ltd, dated January 2017, was originally submitted with the application. The survey concluded that a great crested newt population was present within 500m of the application site; 500m being the range that great crested newts may travel to a terrestrial habitat and /or other aquatic breeding site. The survey set out that the terrestrial habitat within the application site is excellent for great crested newts as it provides daytime refugia, foraging area, hibernation areas and dispersal route ways. As such, the survey sets out that in order to comply with the requirements of the latest Natural England guidance, a presence or absence survey of all accessible watercourses within 500m of the application site must be undertaken. The survey should comprise four survey site visits during the period mid-March to mid-June, with at least two site visits during the period between mid-April to mid-May. As the extended phase 1 survey was undertaken outside this specific time period, a great crested newt presence/absence survey has not been completed.
- 3.38 Since the application was previously taken to Planning Committee, a great crested newt presence/absence survey has been undertaken by Astute Ecology ecological Consultants, dated June 2018. This has been assessed by NYCC Ecology, who have advised that although the proposed development would not impact on any breeding ponds, it would result in the loss of around 0.3 hectares of potential terrestrial habitat and, due to the proximity of the ponds, "It has been assessed that there is a high risk of great crested newts being disturbed, injured or killed during site clearance". In order to assess whether the proposed great crested newt mitigation would meet the requirements of the Conservation of Habitats and Species Regulations 2017, NYCC Ecology requested that further information be provided by the applicant regarding: (1) the ownership and future management of

the proposed receptor area and wildlife corridor; (2) the residual impact of the development after mitigation; and (3) whether the proposed mitigation would be expected to maintain the favourable conservation status of the local great crested newt population.

- 3.39 In response to the above comments of NYCC Ecology, the applicant's agent has advised that: (1) the ownership of the would remain with the applicant and future management of the proposed receptor area and wildlife corridor could be conditioned; (2) that given the proposed mitigation in measures in Section 6.2 of the report, the residual effects of construction of the proposed scheme on great crested newts would be reduced to the extent that they are no longer significant, and in fact may lead to a positive effect significant at the local level; and (3) that the favourable conservations status of the local great crested newt population would be maintained via the proposed mitigation measures in Section 6.2 of the submitted Ecology report.
- 3.40 NYCC Ecology have been re-consulted on the above information and have advised that the future management of the proposed receptor area and wildlife corridor can be conditioned and agree that the favourable conservation status of the species would be maintained. NYCC Ecology have recommended that for completeness, the ecology report is updated with the assessment provided to be updated as suggested by the applicant's Ecologist.
- 3.41 Subject to conditions requiring (1) the development to be carried out in accordance with the recommendations of the Extended Phase 1 Habitat Survey undertaken by Wold Ecology Ltd, dated January 2017 and the Great Crested Newt Presence/Absence Survey undertaken by Astute Ecology ecological Consultants, dated June 2018 and (2) the proposed future management of the proposed receptor area and wildlife corridor, it is considered that the proposal would not harm any acknowledged nature conservation interests and is therefore in accordance with Policy ENV1 (5) of the Selby District Local Plan, Policy SP18 of the Core Strategy and the advice contained within the NPPF.

### **Impact on Archaeology**

- 3.42 NYCC Heritage Services have been consulted on the proposals and have advised that the application site is located within the historic village of Kelfield. The settlement is mentioned in the Domesday Book of 1086 meaning that it existed prior to the Norman Conquest. Kelfield owes much of its current layout and character to Norman planning following the Conquest. The core of the village takes the traditional form of a Main Street with property plots on either side. These will have been in semi-continuous occupation for over 1000 years. These plots take the traditional form of long rear garths and terminate at a consistent rear boundary or back lane. The application site occupies the location of several medieval property plots. NYCC Heritage Services conclude that it is unlikely for the proposals to have a significant impact on archaeological deposits, although there is some potential for damage to medieval features, particularly in less disturbed areas of the site. Therefore NYCC Heritage Services raise no objections to the proposals in terms of their impact on archaeology, subject to a condition requiring a scheme of archaeological mitigation recording is undertaken in response to the ground disturbing works associated with the proposal.

### **Impact on Residential Amenity**

- 3.43 An indicative layout plan has been submitted with the application, which demonstrates how the site could accommodate up to six dwellings, in addition to the existing farm house which would be retained as part of the proposals. The layout, scale, appearance and landscaping of the dwellings is reserved for subsequent approval at the reserved matters stage, however, having regard to the indicative layout plan it is considered that an appropriate scheme could be achieved at the reserved matters stage to ensure that no significant adverse effects of overlooking, overshadowing or oppression between the proposed dwellings and for the existing dwellings surrounding the application site.
- 3.44 Furthermore, the Environmental Health Officer raises no objections to the proposal in terms of noise and disturbance.
- 3.45 Having regard to the above, it is considered that an appropriate scheme could be achieved at the reserved matters stage, which would not result in any significant detrimental impacts on the residential amenities of the occupiers of the existing or proposed dwellings in accordance with Policy ENV1(1) of the Selby District Local Plan and the advice contained within the NPPF.

### **Impact on Highway Safety**

- 3.46 The application seeks outline planning permission for residential development with all matters reserved. An indicative layout plan has been submitted with the application, which demonstrates that the existing dwelling could be served from the existing access, while two further access points from Main Street could be created to serve the proposed dwellings.
- 3.47 The comments of the Parish Council and neighbouring properties have been noted regarding the impact of the proposal on highway safety. However, NYCC Highways have been consulted on the proposals and have advised that they have no objections to the proposals at the outline stage, subject to ten conditions relating to: detailed plans of road and footway layout; construction of roads and footways prior to the occupation of the dwellings; discharge of surface water; the construction requirements of private access/verge crossings; visibility splays; pedestrian visibility splays (individual dwellings); details of access, turning and parking; the provision of approved access, turning and parking areas; the conversion of garages into habitable accommodation; and on-site parking on-site storage and construction traffic during development.
- 3.48 Subject to the aforementioned conditions, it is considered that an appropriate scheme could be achieved at the reserved matters stage which would be acceptable in terms of highway safety in accordance with Policies ENV1 (2), T1 and T2 of the Selby District Local Plan and the advice contained within the NPPF.

### **Flood Risk and Drainage**

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

- 3.50 In terms of drainage, the submitted application form sets out that surface water would be disposed of via an existing watercourse, but does not set out how foul drainage would be disposed of. The Ouse and Derwent Internal Drainage Board and Yorkshire Water have been consulted on the proposals.
- 3.51 The Ouse and Derwent Drainage Board note that the applicants intend for surface water be disposed of via an existing watercourse, but note that no further details have been provided regarding the nature and location of the relevant watercourse. The Board advise that their preference would be to see the use of sustainable methods of surface water disposal, wherever possible, retaining the water on site. The Board notes that historically some elements of the site have been drained to a soakaway and would therefore recommend that this option be investigated for the proposed development. Should infiltration prove to be unsatisfactory for the proposed development and the applicant propose to use a discharge to a watercourse (directly or indirectly) as the method of surface water disposal, the applicant would need to demonstrate that the site already drains to that facility. Further, where discharge to a watercourse is to be used, the Board would seek that run-off from the site be constrained and that the discharge from the development is attenuated to 70% of the pre-development rate (based on 140 l/s/ha for proven connected, impermeable areas and 1.4 l/s/ha for Greenfield areas). With storage calculations to accommodate a 1:30 year storm with no surface flooding, along with no internal flooding of buildings or surface run-off from the site in a 1:100 year storm event. All calculations should include a 20% allowance for climate change. Having regard to the above, the Board have no objections to the proposal at the outline stage subject to four conditions relating to: drainage works to be agreed prior to the commencement of development; evidence of existing surface water discharge; surface water to adjacent watercourse; and testing for the effectiveness of soakaways.
- 3.52 Yorkshire Water note that a 400mm surface water sewer runs through the site, but raise no objections at the outline stage, subject to two conditions relating to: no building or other obstruction being located over or within 3.5 metres of the centre line of the public sewer running through the site; and no piped discharge of surface water from the application site until works to provide a satisfactory outfall have been completed in accordance with submitted and approved details.

### **Land Contamination**

- 3.53 The application is supported by a Contamination Statement prepared by MM Planning. This has been assessed by the Council's Contaminated Land Consultant who raises no objections to the proposals at this stage, subject to five conditions relating to the investigation of land contamination, the submission of a remediation scheme, verification of remedial works and reporting of unexpected contamination. This is to ensure that as a minimum, a Phase 1 Desk Study is completed prior to the re-development of the site, since it has been used for agriculture and horticulture for a significant period of time, with the possibility of pesticides and other potentially contaminating substances being present on the site. Agricultural buildings have also been identified on site, which have the potential to have stored machinery, equipment and chemicals which have the potential to introduce contamination to the site.

- 3.54 Subject to the aforementioned conditions, it is considered that the proposal would be acceptable in respect of land contamination in accordance with Policy ENV2 of the Selby District Local Plan, Policy SP19 of the Core Strategy and the advice contained within the NPPF.

### **Affordable Housing**

- 3.55 Core Strategy Policy SP9 and the accompanying Affordable Housing Supplementary Planning Document (SPD) sets out the affordable housing policy context for the District. 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.
- 3.56 However, the NPPF is a material consideration and states at paragraph 63 - "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). To support the re-use of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount". 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".
- 3.57 The application is outline; however a revised illustrative layout plan (drawing no. 697/02) demonstrates how the site could accommodate up to six dwellings, in addition to the existing farm house which would be retained as part of the proposals. Given the proposed number of dwellings is below 10 (and Officers do not consider that the site could accommodate 10 or more dwellings) and the site area is less than 0.5 hectares, the proposal is not considered to be major development as defined in Annex 2 of the NPPF. It is therefore considered that having had regard to Policy SP9 of the Core Strategy, the Affordable Housing SPD and the advice contained within the NPPF, on balance, the application is acceptable without a contribution for affordable housing.

### **Recreational Open Space**

- 3.58 In respect of contributions towards recreational open space, Policy RT2 of the Selby District Local Plan should be afforded limited weight due to its conflict with the CIL. Given the scale of the proposal, it is considered that no direct contribution is required due to the adoption of the CIL.

### **Waste and Recycling**

- 3.59 For developments of 4 or more dwellings developers must provide waste and recycling provision at their own cost and as such should the application be approved a condition could be imposed to secure a scheme for the provision of waste and recycling.

## **4. CONCLUSION**

- 4.1 The application seeks outline planning permission (with all matters reserved) for the erection of residential development following the demolition of the existing

glasshouse, agricultural buildings and garage at the site. The existing farm house (Yew Tree House) would be retained as part of the proposals.

- 4.2 The development limit boundary runs through the application site, such that the application site is located part within the defined development limits of Kelfield, which is a Secondary Village as identified within the Core Strategy, and is part located outside the defined development limits of Kelfield and is therefore located within the open countryside. The proposal would not constitute any of the types of development that area acceptable in principle under Policies SP2 or SP4 of the Core Strategy. The proposal is therefore contrary to Polices SP1, SP2 and SP4 of the Core Strategy and hence the overall Spatial Development Strategy for the District.
- 4.3 The proposal is considered to be acceptable in respect of other main issues including the impact on the character and appearance of the area, impact on heritage assets, nature conservation and protected species, archaeology, residential amenity, highway safety, flood risk and drainage, land contamination, affordable housing, recreational open space and waste and recycling in accordance with relevant policies of the Development Plan and the advice contained within the NPPF. Notwithstanding this, greater weight must be given to the proposals non-compliance with Policies SP1, SP2 and SP4 of the Core Strategy and hence the overall Spatial Development Strategy for the District.

## **5. RECOMMENDATION**

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

01. The development limit boundary runs through the application site, such that the application site is located part within the defined development limits of Kelfield, which is a Secondary Village as identified within the Core Strategy, and is part located outside the defined development limits of Kelfield and is therefore located within the open countryside. The proposal would not constitute any of the types of development that are acceptable in principle and is therefore contrary to Polices SP2 and SP4 of the Core Strategy and hence the overall Spatial Development Strategy for the District.

## **6. Legal Issues**

### **6.1 Planning Acts**

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

### **6.2 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.

### **6.3 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.

**7. Financial Issues**

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

**8. Background Documents**

Planning Application file reference 2017/0701/OUT and associated documents.

**Contact Officer:**

Jenny Tyreman, Senior Planning Officer

**Appendices:** Appendix 1: 10<sup>th</sup> January 2018 Planning Committee Report  
Appendix 2: Appeal Decision Reference APP/N2379/W/17/3170320





**Report Reference Number:** 2017/0701/OUT (8/14/114A/PA)  
**Agenda Item No:**

**To:** Planning Committee  
**Date:** 10<sup>th</sup> January 2018  
**Author:** Jenny Tyreman (Senior Planning Officer)  
**Lead Officer:** Ruth Hardingham (Planning Development Manager)

APPLICATION NUMBER:	2017/0701/OUT	PARISH:	Kelfield Parish Council
APPLICANT:	Mr R Atkinson	VALID DATE:	22nd June 2017
		EXPIRY DATE:	17th August 2017
PROPOSAL:	Outline application for demolition of garage, farm buildings and glasshouse and erection of residential development (all matters reserved)		
LOCATION:	Yew Tree House Main Street Kelfield York North Yorkshire YO19 6RG		
RECOMMENDATION:	REFUSE		

This application has been brought before Planning Committee as it has been called in by Cllr Casling on the following grounds:

- The development would improve the visual appearance of Main Street at this point by filling in a large untidy gap and filling the street line with new and sympathetically designed properties.
- The proposal would provide economic, social and environmental benefits to the settlement in accordance with paragraph 7 of the NPPF.

In addition, more than 10 letters of representation have been received, which raise material planning considerations and officers would otherwise determine the application contrary to these representations.

## 1. INTRODUCTION AND BACKGROUND

### Site and Context

- 1.1 The development limit boundary runs through the application site, such that the application site is located part within the defined development limits of Kelfield, which is a Secondary Village as identified within the Core Strategy, and is part located outside the defined development limits of Kelfield and is therefore located within the open countryside.
- 1.2 The application site comprises part of Yew Tree Farm, including the existing farm house (Yew Tree House), and the adjoining farm yard area, including four buildings: a glass and timber framed greenhouse; a single storey shed; an agricultural building; and a single storey garage.
- 1.3 To the north of the application site is agricultural land associated with Yew Tree Farm and within the same ownership as the application site. Beyond this is the Scheduled Ancient Monument of Kelfield moated site and fishpond. To the east and west of the application site is residential development to the north side of Main Street, while to the south of the application site is Main Street, with residential development to the south side of Main Street beyond.

### **The Proposal**

- 1.4 The application seeks outline planning permission (with all matters reserved) for the erection of residential development following the demolition of the existing glasshouse, agricultural buildings and garage at the site. The existing farm house (Yew Tree House) would be retained as part of the proposals.
- 1.5 An indicative layout plan has been submitted with the application, which demonstrates how the site could be laid out to accommodate seven dwellings, in addition to the existing farm house which would be retained as part of the proposals. The indicative layout plan also demonstrates how the existing dwelling could be served from the existing access, while two further access points from Main Street could be created to serve the proposed dwellings.

### **Relevant Planning History**

- 1.6 The following historical applications are considered to be relevant to the determination of this application.
  - An outline application (reference: 2016/0597/OUT) (with all matters reserved) for the erection of residential development following the demolition of an existing dwelling, garage, farm buildings and glasshouse was refused on 30<sup>th</sup> August 2016.

The application was refused for the following reasons:

1. The majority of the application site is located within the open countryside outside the development limits of Kelfield which is defined as a Secondary Village within the settlement hierarchy. The proposed development does not comprise any of the types of development that are acceptable in principle under Policy SP2A(c) of the Core Strategy and hence the overall Spatial Development Strategy for the District. The proposal is therefore contrary to Policy SP2A(c) and SP4 of the Core Strategy.

2. The proposed scheme is considered not to be located in a sustainable location due to the lack of facilities serving the village of Kelfield and there is an increased need for the use of a motor vehicle. The proposed scheme is considered not to be sustainable in relation to the three dimensions to sustainable development of being of an economic, social and environmental nature. The proposed scheme therefore fails to accord with Policy SP1 and Paragraph 7 and of the NPPF.
3. The location, siting and scale of the proposal would spur out significantly into the open countryside, would not result in a natural rounding off of the settlement and does not follow the existing built form within the surrounding area. The proposal would appear as an intrusive and incongruous development, divorced from and out of character with the form and layout of this part of the village. Therefore the proposals would have a significantly harmful impact on the setting of the village and the character of the area contrary to Policies SP4 and SP19 of the Core Strategy and ENV1 of the Selby District Local Plan.
4. The proposed scheme is located 37metres north from a pond and a watered moat. There are a further three ponds within 100metres to the west of the application site. The proposed scheme fails to provide sufficient information to assess the impact of the proposal on great crested newts and any other protected species on the application site. The proposed scheme therefore fails to accord with Policy ENV1 (5) of the Local Plan, Policy SP18 of the Core Strategy and the framework within the NPPF.
5. The proposed scheme has failed to provide a mechanism to secure the contribution of onsite recreation open space and therefore fails to accord with Policy RT2 b) i) of the Selby District Local Plan.
6. The proposed scheme fails to provide sufficient information to assess the impact of the proposal on the Scheduled Monument of 'Kelfield moated site and fishpond'. The proposed scheme therefore fails to accords with Policies ENV1 and ENV28 of the Local Plan, Policies SP18 and SP19 of the Core Strategy and the NPPF.

This application is currently at appeal, with a hearing due to take place on 17 and 18 January 2018.

## 2. CONSULTATION AND PUBLICITY

*(All immediate neighbours were informed by letter, a site notice was erected and statutory consultees notified)*

- 2.1 **Parish Council** – No objections, but raise the following matters: 1) The two new accesses onto Main Street could have an adverse impact on road safety; 2) Separate access to plot three seems unnecessary; 3) Adequate off-street car parking should be provided within the site to accommodate all new properties.
- 2.2 **NYCC Highways** – No objections at the outline stage, subject to ten conditions relating to: detailed plans of road and footway layout; construction of roads and footways prior to the occupation of the dwellings; discharge of surface water; the construction requirements of private access/verge crossings; visibility splays; pedestrian visibility splays (individual dwellings); details of access, turning and parking; the provision of approved access, turning and parking areas; the

conversion of garages into habitable accommodation; and on-site parking on-site storage and construction traffic during development.

- 2.3 **Ouse and Derwent Internal Drainage Board** – No objections at the outline stage, subject to four conditions relating to: drainage works to be agreed prior to the commencement of development; evidence of existing surface water discharge; surface water to adjacent watercourse; and testing for the effectiveness of soakaways.
- 2.4 **Yorkshire Water** – No objections at the outline stage, subject to two conditions relating to: no building or other obstruction being located over or within 3.5 metres of the centre line of the public sewer running through the site; and no piped discharge of surface water from the application site until works to provide a satisfactory outfall have been completed in accordance with submitted and approved details.
- 2.5 **Contaminated Land Consultant** – No objections, subject to conditions relating to: investigation of land contamination; submission of a remediation scheme; verification of remedial works; and reporting of unexpected contamination.
- 2.6 **Environmental Health** – No objections.
- 2.7 **Natural England** – No comment.
- 2.8 **North Yorkshire Bat Group** - No response within statutory consultation period.
- 2.9 **Historic England** – No comment.
- 2.10 **Conservation Officer** – No objections at this stage.

The retention of the existing farm house (Yew Tree House) is fully supported. The revised indicative layout is more reflective of the agricultural and rural character of Kelfield and would blend in easier with the existing townscape. It is advised that proposed new properties are constructed using materials to match those found in the local area and that the scale, form and proportions of the new properties reflect traditional buildings.

In terms of the impact of the proposals on the Scheduled Ancient Monument, the proposals would impact upon the setting of the designated heritage asset. However, if the development is well designed, respects the historic street pattern of Kelfield and contains dwellings which reflect the existing character of Kelfield, the impact could be mitigated.

- 2.11 **HER Officer** – No objections at this stage, subject to a condition requiring a scheme of archaeological mitigation recording to be undertaken in response to the ground disturbing works associated with the proposal.
- 2.12 **Development Policy** – Comments provided in respect of: the Council's five year housing land supply; the principle of the development; previous levels of growth and the scale of the proposal; and the relation of the proposal to the development limit boundary.

- 2.13 **Waste and Recycling Officer** – No comment.
- 2.14 **Public Rights of Way Officer** - No response within statutory consultation period.
- 2.15 **Neighbour Comments** – Twenty four letters of support, seven letters of objection and one neutral letter have been received as a result of the advertisement of the application. Objectors have raised concerns in respect of the principle of the development outside the defined development limits of a Secondary Village, the impact on heritage assets, the impact on residential amenity, the impact on highway safety and flood risk and drainage.

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

#### **Constraints**

- 3.1 The development limit boundary runs through the application site such that the application site is located part within the defined development limits of Kelfield, which is a Secondary Village as identified within the Core Strategy, and is part located outside the defined development limits of Kelfield and is therefore located within the open countryside.
- 3.2 The application site is located within the setting of the Scheduled Ancient Monument of Kelfield moated site and fishpond.
- 3.3 The application site comprises potentially contaminated land resulting from agriculture/nurseries.
- 3.4 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)**

- 3.5 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.
- 3.6 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**

3.7 The relevant Core Strategy Policies are:

- SP1 – Presumption in Favour of Sustainable Development
- SP2 – Spatial Development Strategy
- SP4 – Management of Residential Development within 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**

3.8 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)".

3.9 The relevant Selby District Local Plan Policies are:

- ENV1 - Control of Development
- ENV2 - Environmental Pollution and Contaminated Land
- ENV27 – Scheduled Ancient Monuments and Important Archaeological Sites
- RT2 - Open Space Requirements for New Residential Development
- CS6 - Developer Contributions to Infrastructure and Community Facilities
- T1 - Development in Relation to the Highway Network
- T2 - Access to Roads

## **Other Policies and Guidance**

3.10 Affordable Housing Supplementary Planning Document

3.11 Developer Contributions 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
- Impact on Heritage Assets
- Impact on Archaeology
- Design and Impact on the Character and Appearance of the Area
- Impact on Residential Amenity
- Impact on Highway Safety

- Flood Risk and Drainage
- Nature Conservation and Protected Species
- Land Contamination
- Affordable Housing
- Recreational Open Space
- Education and Healthcare, Waste and Recycling

### **The Principle of the Development**

- 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.
- 4.3 Policy SP1 is therefore consistent with the guidance in Paragraph 14 of the NPPF.
- 4.4 The development limit boundary runs through the application site, such that the application site is located part within the defined development limits of Kelfield, which is a Secondary Village as identified within the Core Strategy, and is part located outside the defined development limits of Kelfield and is therefore located within the open countryside.
- 4.5 Policy SP2A (b) of the Core Strategy states that "Limited amounts of residential development may be absorbed inside Development Limits of Secondary Villages where it will enhance or maintain the vitality of rural communities and which conform to the provisions of Policy SP4 and Policy SP10". Policy SP4 (a) of the Core Strategy states that, in Secondary Villages, "conversions, replacement dwellings, redevelopment of previously developed land, filling of small linear gaps in otherwise built up residential frontages, and conversion/ redevelopment of farmsteads" will be acceptable in principle. Policy SP4 (b) of the Core Strategy states that proposals for the conversion and/or redevelopment of farmsteads to residential use within development limits will be treated on their merits.
- 4.6 An indicative layout plan has been submitted with the application, which demonstrates how the site could accommodate up to seven dwellings, in addition to the existing farm house which would be retained as part of the proposals. On the indicative layout plan, only plots 2 and 3 would be located within the defined development limits of Kelfield. These two units on their own would constitute "filling of small linear gaps in otherwise built up residential frontages" as they would front Main Street and are located within a small gap between the existing farm house (Yew Tree House) to the east and a terrace of dwellings to the west. The part of the development located within the defined development limits of Kelfield would also amount to the "redevelopment of a farmstead". However, the remainder of the application site projects a substantial distance to the north beyond the frontage development within the open countryside. As such, the application site would not constitute "filling of small linear gaps in otherwise built up residential frontages" or the "redevelopment of a farmstead" wholly within the defined development limits. The proposal would therefore not meet Policies SP2A (b) and SP4 of the Core Strategy.
- 4.7 Moreover, Policy SP2A (c) of the Core Strategy 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 communities, in accordance with Policy SP13; or meet rural affordable housing need (which meets the provisions of Policy SP10), or other special circumstances”.

- 4.8 The proposal would not accord with Policy SP2A(c) as it is not for rural affordable housing need and there are no special circumstances. The application should therefore be refused unless material considerations indicate otherwise.
- 4.9 At the time of writing this report, the Council can confirm that they have a five year 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.
- 4.10 The NPPF is a material consideration and this is predicated on the principle that sustainable development is about positive growth and states that the Planning System should contribute to the achievement of sustainable development, with particular emphasis on boosting significantly the supply of housing. Paragraphs 18 to 219 of the NPPF, taken as a whole, constitute the Government’s view of what sustainable development in England means in practice for the planning system.

#### Sustainability of the Development

- 4.11 In respect of sustainability, the site is located part within and part outside the defined development limits of Kelfield, which is a Secondary Village as identified within the Core Strategy, where there is scope for limited amounts of residential development to be absorbed inside development limits of Secondary Villages.
- 4.12 The village of Kelfield has not been considered as part of Background Paper 5, Sustainability Assessment of Rural Settlements, Revised July 2008. This is because Kelfield is not considered to be a sustainable settlement due to its lack of local services, such as a primary school, general store, post office and doctor’s surgery, which would serve the day-to-day needs of its residents and its limited access to public transport. This means that residents would be heavily dependent on the use of a private car to satisfy their day-to-day needs.

#### Settlement Strategy, Previous Levels of Growth and the Scale of the Proposal

- 4.13 The location of the development proposal would undermine the spatial strategy for the district as set out in the Core Strategy, in particular the settlement hierarchy set out at policy SP2. The focus on Selby as a Principal Town and on Tadcaster and Sherburn-in-Elmet as Local Service Centres would not be supported by further development taking place outside of the development limits at a ‘fourth tier’ level (secondary villages) settlement in the hierarchy. The strategy and hierarchy aims to support and deliver economic, regeneration, social and environmental objectives for the district and was assessed as a sustainable option through the adoption of the Strategy.



- 4.14 Policy SP5 of the Core Strategy designates levels of growth to each of the 3 main towns, the group of Designated Service Villages and the group of Secondary Villages based on their infrastructure capacity and sustainability. This policy set a minimum target of 170 for Secondary Villages as a whole, this target was to be met from existing commitments only. Data taken from the 2017-2022 Five Year Housing Land Supply Report – 30th September 2017 update (which uses a base data of the 30th of September 2017) shows that this minimum target has already been substantially exceeded, with 321 homes built or with permission since the start of the plan period in April 2011.
- 4.15 Secondary Villages have exceeded their minimum target by more than 3 times. Of concern to the delivery of the District's spatial strategy is that this has occurred only 6 years into the Core Strategy plan period, with 10 years of the plan period still remaining.
- 4.16 This disproportionate level of growth in the Secondary Villages, in the fourth tier for sustainability in the Councils settlement hierarchy, undermines the Council's spatial strategy, which directs the majority of development to the Principal Town of Selby, the Local Service Centres and the Designated Service Villages.
- 4.17 Notwithstanding this level of growth in the Secondary Villages as a whole, Policies SP2 and SP4 of the Core Strategy do allow for a limited amount of housing growth within the Secondary Villages. However, the scale of this development, at up to 7 dwellings, is clearly well in excess of this limited scale of development that can be sustainably supported by a Secondary Village and is expected by Policies SP2 and SP4 of the Core Strategy.

#### **Impact on Heritage Assets**

- 4.18 The application site is located within the historic village of Kelfield and within the setting of the Scheduled Ancient Monument of Kelfield moated site and fishpond to the north.
- 4.19 The application has been supported by a Design and Access Statement, which incorporates a Heritage Statement. The statement acknowledges that the proposal has the potential to affect heritage assets, namely the non-designated heritage asset of the existing farm house (Yew Tree House) and the designated heritage asset of the Scheduled Ancient Monument of Kelfield moated site and fishpond to the north. In terms of the impact of the proposals on the Scheduled Ancient Monument, the statement sets out that it is not visible in private views from the site or public views from the Main Street, due to intervening buildings, hedgerows and tree cover. The statement also sets out that the separation distance between the application site and the Scheduled Ancient Monument would be 35-40 metres. The statement concludes that having regard to the above factors, the proposal would have significantly less than substantial harm on the setting of the Scheduled Ancient Monument. In terms of the impact of the proposals on the existing farm house, the statement sets out that the applicants do not consider that building to be of historic interest. The statement sets out that the building is constructed of local brick similar to many of the traditional houses in Kelfield and the wider area and considers there are other better maintained examples of this style of dwelling elsewhere. The statement also sets out that the existing farm house has undergone various modernisations and therefore retains little of its original internal features. It

is the applicant's opinion that refurbishing the dwelling to bring it to a good standard would not be viable, however, no further information has been provided in terms of viability. The statement concludes that despite the above factors, the existing farm house would be retained as part of the proposals at the request of the Local Planning Authority.

4.20 The application has been assessed by the Council's Conservation Officer. The comments of the Council's Conservation Officer are noted and agreed. In terms of the assessment of significance, the Council's Conservation Officer sets out "Kelfield is considered to be an historic settlement, it is mentioned in the Domesday Survey of 1086 as Chelchefelt and its layout is considered to have existed since to this period with a main street with long plots to either side. To the north of the application site is Kelfield Moated site and fishpond which dates from the 13th Century. The application site contains the 19th Century farm house and 20th Century farm buildings to the rear. Through the application process, the property, Yew Tree House has been identified as a non-designated heritage asset. A non-designated heritage asset can be a building, monument, site, place, area or landscape identified as having a degree of significance. It is considered that this building has architectural value in terms of its aesthetic value, it has a positive external appearance which contributes to the street scene and adds to the character of Kelfield. With regards to the setting of the nearby designated heritage assets, the NPPF states that setting contributes to significance and setting does not depend on views only. The heritage statement within the design and access statement focusses purely on the views and the distance between the application site and the scheduled monument. There may be an historical relationship between the application site and the scheduled monument." In terms of impact assessment, the Council's Conservation Officer notes that the application seeks outline planning permission for residential development with all matters reserved. In terms of the potential impact of the proposals on the Scheduled Ancient Monument of Kelfield moated site and fishpond to the north, the Council's Conservation Officer notes that the proposed development would impact on the setting of the designated heritage asset. However, they conclude that if the development is well designed, respects the historic street pattern of Kelfield and contains dwelling which reflect the existing character of Kelfield, the impact could be mitigated. In terms of the existing farm house (Yew Tree House), the retention of this non-designated heritage asset is fully supported from a Conservation perspective. Furthermore, the Council's Conservation Officer notes that the revised indicative layout is more reflective of the agricultural and rural character of Kelfield and would blend in with the existing townscape. Going forward, the Council's Conservation Officer advises that any proposed new properties at the site should be constructed using materials to match those found in the local area and the scale, form and proportions of any new properties should reflect traditional buildings.

4.21 Having regard to the above, it is considered that an appropriate layout, appearance, scale and landscaping of the proposed dwellings could be achieved at the reserved matters stage, which would not result in any substantial harm to any designated or non-designated heritage assets in accordance with Policy ENV27 of the Selby District Local Plan, Policies SP18 and SP19 of the Core Strategy and the advice contained within the NPPF.

### **Impact on Archaeology**

4.22 NYCC Heritage Services have been consulted on the proposals and have advised that the application site is located within the historic village of Kelfield. The settlement is mentioned in the Domesday Book of 1086 meaning that it existed prior to the Norman Conquest. Kelfield owes much of its current layout and character to Norman planning following the Conquest. The core of the village takes the traditional form of a Main Street with property plots on either side. These will have been in semi-continuous occupation for over 1000 years. These plots take the traditional form of long rear garths and terminate at a consistent rear boundary or back lane. The application site occupies the location of several medieval property plots. NYCC Heritage Services conclude that it is unlikely for the proposals to have a significant impact on archaeological deposits, although there is some potential for damage to medieval features, particularly in less disturbed areas of the site. Therefore NYCC Heritage Services raise no objections to the proposals in terms of their impact on archaeology, subject to a condition requiring a scheme of archaeological mitigation recording is undertaken in response to the ground disturbing works associated with the proposal.

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

4.23 The development limit boundary runs through the application site, such that the application site is located part within the defined development limits of Kelfield, which is a Secondary Village as identified within the Core Strategy, and is part located outside the defined development limits of Kelfield and is therefore located within the open countryside.

4.24 The application site comprises part of Yew Tree Farm, including the existing farm house (Yew Tree House), and the adjoining farm yard area, including four buildings: a glass and timber framed greenhouse; a single storey shed; an agricultural building; and a single storey garage.

4.25 To the north of the application site is agricultural land associated with Yew Tree Farm and within the same ownership as the application site. Beyond this is the Scheduled Ancient Monument of Kelfield moated site and fishpond. To the east and west of the application site is residential development to the north side of Main Street, while to the south of the application site is Main Street, with residential development to the south side of Main Street beyond. Residential properties within the immediate vicinity of the application site comprise a mixture of two storey terraced, semi-detached and detached dwellings. Furthermore, materials used on residential properties within the vicinity of the application site vary, but predominantly consist of a mixture of red brick and rendered properties with pantile roof tiles of varying colours.

4.26 The application seeks outline planning permission for residential development with all matters reserved. Notwithstanding this, an indicative layout plan has been submitted with the application, which demonstrates how the site could accommodate up to seven dwellings, in addition to the existing farm house which would be retained as part of the proposals. The indicative layout shows infill development to the front of the site, a range of linked dwellings resembling converted farm buildings to the rear of the site, with a detached farmhouse on the footprint of the existing glasshouse to the rear of the site.

- 4.27 Having had regard to the indicative layout plan and the surrounding context it is considered that an appropriate appearance, scale and landscaping of the proposed dwellings could be achieved at reserved matters stage to ensure that the proposed development would not have a significant adverse impact on the character and appearance of the area.
- 4.28 Notwithstanding the above in terms of the appearance, scale and landscaping of the proposed dwellings, in terms of the layout of the proposed dwellings, the proposal would inevitably result in backland development, which would not follow the existing linear pattern of built form to the north side of Main Street and would project significantly from the dwellings fronting the north side of Main Street. Furthermore, the layout of the proposed dwellings would encroach out into the open countryside, would not result in a natural rounding off of the settlement and would not have an appropriate relationship to the existing development to the North side of Main Street. It is therefore considered that an appropriate layout of the proposed dwellings could not be achieved at the reserved matters stage without having a significant adverse impact on the character and appearance of the area.
- 4.29 Having regard to the above, while it is considered that an appropriate appearance, scale and landscaping of the proposed dwellings could be achieved at the reserved matters stage, which would not result in any significant adverse impact on the character and appearance of the area, it is not considered that an appropriate layout of the proposed dwelling could be achieved at the reserved matters stage, without having a significant adverse impact on the character and appearance of the area. The proposal would therefore be contrary to Policy ENV1 (1) and (4) of the Selby District Local Plan, Policy SP19 of Core Strategy and the advice contained within the NPPF.

#### **Impact on Residential Amenity**

- 4.30 An indicative layout plan has been submitted with the application, which demonstrates how the site could accommodate up to seven dwellings, in addition to the existing farm house which would be retained as part of the proposals. The layout, scale, appearance and landscaping of the dwellings is reserved for subsequent approval at the reserved matters stage, however, having regard to the indicative layout plan it is considered that an appropriate scheme could be achieved at the reserved matters stage to ensure that no significant adverse effects of overlooking, overshadowing or oppression between the proposed dwellings and for the existing dwellings surrounding the application site.
- 4.31 Furthermore, the Environmental Health Officer raises no objections to the proposal in terms of noise and disturbance.
- 4.32 Having regard to the above, it is considered that an appropriate scheme could be achieved at the reserved matters stage, which would not result in any significant detrimental impacts on the residential amenities of the occupiers of the existing or proposed dwellings in accordance with Policy ENV1(1) of the Selby District Local Plan and the advice contained within the NPPF.

#### **Impact on Highway Safety**

- 4.33 The application seeks outline planning permission for residential development with all matters reserved. An indicative layout plan has been submitted with the application, which demonstrates that the existing dwelling could be served from the existing access, while two further access points from Main Street could be created to serve the proposed dwellings.
- 4.34 The comments of the Parish Council and neighbouring properties have been noted regarding the impact of the proposal on highway safety. However, NYCC Highways have been consulted on the proposals and have advised that they have no objections to the proposals at the outline stage, subject to ten conditions relating to: detailed plans of road and footway layout; construction of roads and footways prior to the occupation of the dwellings; discharge of surface water; the construction requirements of private access/verge crossings; visibility splays; pedestrian visibility splays (individual dwellings); details of access, turning and parking; the provision of approved access, turning and parking areas; the conversion of garages into habitable accommodation; and on-site parking on-site storage and construction traffic during development.
- 4.35 Subject to the aforementioned conditions, it is considered that an appropriate scheme could be achieved at the reserved matters stage which would be acceptable in terms of highway safety in accordance with Policies ENV1 (2), T1 and T2 of the Selby District Local Plan and the advice contained within the NPPF.

### **Flood Risk and Drainage**

- 4.36 The application site is located within Flood Zone 1, which has a low probability of flooding.
- 4.37 In terms of drainage, the submitted application form sets out that surface water would be disposed of via an existing watercourse, but does not set out how foul drainage would be disposed of. The Ouse and Derwent Internal Drainage Board and Yorkshire Water have been consulted on the proposals.
- 4.38 The Ouse and Derwent Drainage Board note that the applicants intend for surface water be disposed of via an existing watercourse, but note that no further details have been provided regarding the nature and location of the relevant watercourse. The Board advise that their preference would be to see the use of sustainable methods of surface water disposal, wherever possible, retaining the water on site. The Board notes that historically some elements of the site have been drained to a soakaway and would therefore recommend that this option be investigated for the proposed development. Should infiltration prove to be unsatisfactory for the proposed development and the applicant propose to use a discharge to a watercourse (directly or indirectly) as the method of surface water disposal, the applicant would need to demonstrate that the site already drains to that facility. Further, where discharge to a watercourse is to be used, the Board would seek that run-off from the site be constrained and that the discharge from the development is attenuated to 70% of the pre-development rate (based on 140 l/s/ha for proven connected, impermeable areas and 1.4 l/s/ha for Greenfield areas). With storage calculations to accommodate a 1:30 year storm with no surface flooding, along with no internal flooding of buildings or surface run-off from the site in a 1:100 year storm event. All calculations should include a 20% allowance for climate change. Having regard to the above, the Board have no objections to the proposal at the outline

stage subject to four conditions relating to: drainage works to be agreed prior to the commencement of development; evidence of existing surface water discharge; surface water to adjacent watercourse; and testing for the effectiveness of soakaways.

- 4.39 Yorkshire Water note that a 400mm surface water sewer runs through the site, but raise no objections at the outline stage, subject to two conditions relating to: no building or other obstruction being located over or within 3.5 metres of the centre line of the public sewer running through the site; and no piped discharge of surface water from the application site until works to provide a satisfactory outfall have been completed in accordance with submitted and approved details.

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

- 4.40 An Extended Phase 1 Habitat Survey undertaken by Wold Ecology Ltd, dated January 2017, has been submitted with the application. The survey concludes that a great crested newt population is present within 500m of the application site; 500m being the range that great crested newts may travel to a terrestrial habitat and /or other aquatic breeding site. The survey sets out that the terrestrial habitat within the application site is excellent for great crested newts as it provides daytime refugia, foraging area, hibernation areas and dispersal route ways. As such, the survey sets out that in order to comply with the requirements of the latest Natural England guidance, a presence or absence survey of all accessible watercourses within 500m of the application site must be undertaken. The survey should comprise four survey site visits during the period mid-March to mid-June, with at least two site visits during the period between mid-April to mid-May. As the extended phase 1 survey was undertaken outside this specific time period, a great crested newt presence/absence survey has not been completed.
- 4.41 The applicants have been advised that a presence or absence survey of all accessible watercourses within 500m of the application site must be undertaken at the outline application stage. However, the applicants have not submitted such a survey and consider such a survey could be conditioned and undertaken at a later stage.
- 4.42 In this respect, it is noted that the species protection provisions of the Habitats Regulations contain three "derogation tests" which must be applied by Natural England when deciding whether to grant a licence to a person carrying out an activity which could harm a European Protected Species. For development activities this licence is normally obtained after planning permission has been obtained. The three tests are that:
- the activity to be licensed must be for imperative reasons of overriding public interest or for public health and safety;
  - there must be no satisfactory alternative; and
  - favourable conservation status of the species must be maintained.
- 4.43 Woolley v Cheshire East Borough makes it clear that, notwithstanding the licensing regime, a Local Planning Authority must also address these three tests when deciding whether to grant planning permission for a development which could harm a European Protected Species. A Local Planning Authority, failing to do so, would be in breach of Regulation 3(4) of the 1994 Regulations, which requires all public

bodies to have regard to the requirements of the Habitats Directive in the exercise of their functions. Natural England consider it essential that appropriate survey information supports a planning application prior to determination and do not regard the conditioning of ecological surveys to a planning consent as an appropriate use of planning conditions.

- 4.44 Having regard to the above, in the absence of a presence or absence survey of all accessible watercourses within 500m of the application site, there is insufficient information for the Local Planning Authority to assess the impact of the proposed development on European Protected Species (specifically great crested newts). The proposal is therefore contrary to Policy ENV1 (5) of the Selby District Local Plan, Policy SP18 of the Core Strategy, the advice contained within the NPPF and The Conservation of Habitats and Species Regulations 2010.

### **Land Contamination**

- 4.45 The application is supported by a Contamination Statement prepared by MM Planning. This has been assessed by the Council's Contaminated Land Consultant who raises no objections to the proposals at this stage, subject to five conditions relating to the investigation of land contamination, the submission of a remediation scheme, verification of remedial works and reporting of unexpected contamination. This is to ensure that as a minimum, a Phase 1 Desk Study is completed prior to the re-development of the site, since it has been used for agriculture and horticulture for a significant period of time, with the possibility of pesticides and other potentially contaminating substances being present on the site. Agricultural buildings have also been identified on site, which have the potential to have stored machinery, equipment and chemicals which have the potential to introduce contamination to the site.
- 4.46 Subject to the aforementioned conditions, it is considered that the proposal would be acceptable in respect of land contamination in accordance with Policy ENV2 of the Selby District Local Plan, Policy SP19 of the Core Strategy and the advice contained within the NPPF.

### **Affordable Housing**

- 4.47 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. It is therefore considered that having had regard to Policy SP9 and the PPG, on balance, the application is acceptable without a contribution for affordable housing.

### **Recreational Open Space**

- 4.48 In respect of contributions towards recreational open space, these policies should be afforded limited weight due to their conflict with the CIL. It is considered that no direct contribution is required due to the adoption of the CIL.

### **Waste and Recycling**

- 4.49 For developments of 4 or more dwellings developers must provide waste and recycling provision at their own cost and as such should the application be

approved a condition could be imposed to secure a scheme for the provision of waste and recycling.

## **Legal Issues**

### 4.51 Planning Acts

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

### 4.52 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.

### 4.53 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**

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

## **5. CONCLUSION**

5.1 The application seeks outline planning permission (with all matters reserved) for the erection of residential development following the demolition of the existing glasshouse, agricultural buildings and garage at the site. The existing farm house (Yew Tree House) would be retained as part of the proposals.

5.2 The development limit boundary runs through the application site, such that the application site is located part within the defined development limits of Kelfield, which is a Secondary Village as identified within the Core Strategy, and is part located outside the defined development limits of Kelfield and is therefore located within the open countryside. The proposal would not constitute any of the types of development that area acceptable in principle under Policies SP2 or SP4 of the Core Strategy. The proposal is therefore contrary to Policies SP2 and SP4 of the Core Strategy and hence the overall Spatial Development Strategy for the District.

5.3 In terms of the layout of the proposed dwellings, the proposal would inevitably result in backland development, which would not follow the existing linear pattern of built form to the north side of Main Street and would project significantly from the dwellings fronting the north side of Main Street. Furthermore, the layout of the proposed dwellings would encroach out into the open countryside, would not result in a natural rounding off of the settlement and would not have an appropriate relationship to the existing development to the North side of Main Street. It is therefore considered that an appropriate layout of the proposed dwellings could not be achieved at the reserved matters stage without having a significant adverse impact on the character and appearance of the area. The proposal would therefore be contrary to Policy ENV1 (1) and (4) of the Selby District Local Plan, Policy SP19 of Core Strategy and the advice contained within the NPPF.



- 5.4 In the absence of a presence or absence survey of all accessible watercourses within 500m of the application site, there is insufficient information for the Local Planning Authority to assess the impact of the proposed development on European Protected Species (specifically great crested newts). The proposal is therefore contrary to Policy ENV1 (5) of the Selby District Local Plan, Policy SP18 of the Core Strategy, the advice contained within the NPPF and the advice contained within the NPPF and The Conservation of Habitats and Species Regulations 2010.

## **6. RECOMMENDATION**

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

01. The development limit boundary runs through the application site, such that the application site is located part within the defined development limits of Kelfield, which is a Secondary Village as identified within the Core Strategy, and is part located outside the defined development limits of Kelfield and is therefore located within the open countryside. The proposal would not constitute any of the types of development that are acceptable in principle and is therefore contrary to Policies SP2 and SP4 of the Core Strategy and hence the overall Spatial Development Strategy for the District.
02. The proposal would inevitably result in backland development, which would not follow the existing linear pattern of built form to the north side of Main Street and would project significantly from the dwellings fronting the north side of Main Street. Furthermore, the layout of the proposed dwellings would encroach out into the open countryside, would not result in a natural rounding off of the settlement and would not have an appropriate relationship to the existing development to the North side of Main Street. It is therefore considered that an appropriate layout of the proposed dwellings could not be achieved at the reserved matters stage without having a significant adverse impact on the character and appearance of the area. The proposal is therefore be contrary to Policy ENV1 (1) and (4) of the Selby District Local Plan, Policy SP19 of Core Strategy and the advice contained within the NPPF.
03. In the absence of a presence or absence survey of all accessible watercourses within 500m of the application site, there is insufficient information for the Local Planning Authority to assess the impact of the proposed development on European Protected Species (specifically great crested newts). The proposal is therefore contrary to Policy ENV1 (5) of the Selby District Local Plan, Policy SP18 of the Core Strategy, the advice contained within the NPPF and the advice contained within the NPPF and The Conservation of Habitats and Species Regulations 2010.

**Contact Officer:** Jenny Tyreman

**Appendices:** None