



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

**To:** Planning Committee  
**Date:** 16 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: EXPIRY DATE:	22nd June 2017 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:	GRANT		

## 1. INTRODUCTION AND BACKGROUND

- 1.1 This application has been brought back before Planning Committee following consideration at the 5<sup>th</sup> December 2018 Planning Committee where Officers recommended refusal of the application but Members resolved the following:

“The Committee were minded to APPROVE the application, and asked Officers to bring back to Committee suitably worded conditions to limit the number of properties on the site to the number proposed in the outline application.”

## 2. CONSIDERATIONS

- 2.1 Since the 5<sup>th</sup> December Planning Committee, Officers have sought legal advice on the appropriateness of the proposed conditions limiting the number of properties at the site in the light of a recent appeal decision at Barff Lane, Brayton under

reference: APP/N2739/W/17/3185834 (copy of appeal decision and costs decision in Appendix 1). That appeal was made under Section 78 of the Town and Country Planning Act 1990 against a grant of outline planning permission subject to conditions, one of which was a condition limiting the number of properties on the site, worded as follows:

*“The number of dwellings authorised by this permission shall not exceed two, and any reserved matters application(s) submitted pursuant to conditions 1 and 2 shall be limited to this maximum in total.*

*Reason:*

*“In the interests of the amenities of the adjoining residential properties, having regard to Policy ENV1 of the Selby District Local Plan.”*

- 2.3 Under appeal reference APP/N2739/W/17/3185834, the Inspector decided that the above condition restricting the number of properties at the site was unreasonable for the following reasons:-

*“Ultimately what the site can accommodate in terms of numbers will be dependent upon the layout of the site, the disposition of dwellings in relation to surrounding development, and the size and type of the dwellings proposed; all of which have been reserved for future consideration. If, at the reserved matters stage, the details fail to meet residential amenity standards, or are unacceptable for any other reason, then it would be open to the Council to refuse those details or seek amendments that may require a reduction in the number of dwellings.”*

- 2.4 It is now proposed to adopt the same approach that was rejected by the Inspector under the Barff Lane appeal and which resulted in a costs award against the Council. Legal advice on adopting the same approach is that a condition restricting the number of dwellings at the site to the number proposed in the outline application would not accord with national policy guidance and the commentary in the Barff Lane appeal decision highlights its shortcomings. As the Inspector points out, if there are good planning reasons which means that the number of dwellings on site should be limited, this is a matter that can be considered at the reserved matters stage, so there is a mechanism for addressing this issue.

- 2.5 Therefore, having regard to the Barff Lane appeal decision and the above legal advice, Officers would not recommend that a condition restricting the number of dwellings at the site should be attached to any planning permission granted and the recommendation set out in Section 3 of this report does not therefore include a condition limiting the number of properties on the site to the number proposed in the outline application.

- 2.6 Notwithstanding the above, should Planning Committee decide to proceed in granting the application with a condition limiting the number of properties on the site to the number proposed in the outline application, Officers would recommend the application be approved subject to the conditions detailed in Section 3 of this report, in addition to a condition restricting the number of properties at the site with the following wording:

*“Notwithstanding the provisions of the Town and Country Planning (General permitted Development) (England) Order 2015 (or any Order revoking or re-*

*enacting that Order), any reserved matters application(s) submitted pursuant to Conditions 1 and 2 shall include the retention of the existing dwelling at the site, known as Yew Tree House, and the total number of additional dwellings to be erected at the site shall be limited to a maximum of six.*

*Reason:*

*“To ensure that the proposal is carried out in accordance with the parameters on which the outline application has been assessed.”*

### **3. RECOMMENDATION**

3.1 This application is recommended to be GRANTED subject to the following conditions:

01. Applications for the approval of the reserved matters referred to in Condition 2 herein shall be made within a period of three years from the grant of this outline permission and the development to which this permission relates shall be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason:

In order to comply with the provisions of Section 51 of the Planning and Compulsory Purchase Act 2004.

02. Approval of the details of the (a) appearance, (b) landscaping, (c) layout, (d) scale and (e) the means of access to the site (hereinafter called 'the reserved matters') shall be obtained from the Local Planning Authority in writing before any development is commenced.

Reason:

This is an outline planning permission and these matters have been reserved for the subsequent approval of the Local Planning Authority, and as required by Section 92 of the Town and Country Planning Act 1990.

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

01A – Location Plan

Reason:

For the avoidance of doubt.

04. No demolition/development shall commence until a Written Scheme of Investigation has been submitted to and approved in writing by the Local Planning Authority in writing. The scheme shall include:

- a) An assessment of significance and research questions;
- b) The programme and methodology of site investigation and recording;
- c) The programme for post investigation assessment;
- d) Provision to be made for analysis of the site investigation and recording;

- e) Provision to be made for publication and dissemination of the analysis and records of the site investigation;
- f) Provision to be made for archive deposition of the analysis and records of the site investigation;
- g) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

No demolition/development shall take place other than in strict accordance with the Written Scheme of Investigation approved under this condition. The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under this condition and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason:

In accordance with Section 16 of the NPPF (paragraph 199) as the site is of archaeological significance.

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

Reason:

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

06. There shall be no establishment of a site compound, site clearance, demolition, excavation or depositing of material in connection with the construction on the site until proposals have been submitted to and approved in writing by the Local Planning Authority for the provision of:

- a. On-site parking capable of accommodating all staff and sub-contractors vehicles clear of the public highway
- b. On-site materials storage area capable of accommodating all materials required for the operation of the site.

The approved areas shall be kept available for their intended use at all times that construction works are in operation.

Reason:

In accordance with Policies ENV1, T1 and T2 of the Selby District Local Plan and to provide for appropriate on-site vehicle parking and storage facilities, in the interests of highway safety and the general amenity of the area.

07. No building or other obstruction including landscape features shall be located over or within 3.5 metres either side of the centre line of the public sewer i.e. a protected strip width of 7 metres that crosses the site. If the required stand-off distance is to be achieved via diversion or closure of the sewer, the developer shall submit evidence to the Local Planning Authority that the diversion or closure has been agreed with the relevant statutory undertaker and that prior to construction in the affected area, the approved works have been undertaken.

Reason:

In order to allow sufficient access to the public sewer for maintenance and repair work at all times.

08. No development approved by this permission shall be commenced until the Local Planning Authority in consultation with the Internal Drainage Board has approved a Scheme for the provision of surface water drainage works. Any such Scheme shall be implemented in accordance with the approved details before the development is brought into use. The following criteria should be considered:

- Any proposal to discharge surface water to a watercourse from the redevelopment of a brownfield site should first establish the extent of any existing discharge to that watercourse.
- Peak run-off from a brownfield site should be attenuated to 70% of any existing discharge rate (existing rate taken as 140lit/sec/ha or the established rate whichever is the lesser for the connected impermeable area).
- Discharge from "greenfield sites" taken as 1.4 lit/sec/ha (1:1yr storm).
- Storage volume should accommodate a 1:30 yr event with no surface flooding and no overland discharge off the site in a 1:100yr event.
- A 20% allowance for climate change should be included in all calculations.
- A range of durations should be used to establish the worst-case scenario.
- The suitability of soakaways, as a means of surface water disposal, should be ascertained in accordance with BRE Digest 365 or other approved methodology.

Reason:

To ensure the development is provided with satisfactory means of drainage and to reduce the risk of flooding.

09. The development hereby permitted shall be carried out in strict accordance with the Great Crested Newt Survey (Report Reference: AE18.144) undertaken by Astute Ecology Ltd dated June 2018, updated in December 2018 received by the Local Planning Authority on 3 December 2018.

Reason:

In the interests of nature conservation and the protection of protected species and in order to comply with Policy ENV1 (5) of the Selby District Local Plan and Policy SP18 of the Selby District Core Strategy Local Plan.

10. No development approved by this permission shall be commenced until an ecological management plan for the proposed receptor area and wildlife corridor identified in the Great Crested Newt Survey (Report Reference: AE18.144) undertaken by Astute Ecology Ltd dated June 2018, updated in December 2018, has been submitted to and approved in writing by the Local Planning Authority. The ecological management plan shall be implemented in accordance with the approved details thereafter. The content of the ecological management plan shall include the following:

- A description and evaluation of the features to be managed.
- Aims and objectives of the management.
- Appropriate management options and prescriptions.

- Preparation of a management schedule.
- Details of monitoring and remedial measures.

Reason:

In the interests of nature conservation and the protection of protected species and in order to comply with Policy ENV1 (5) of the Selby District Local Plan and Policy SP18 of the Selby District Core Strategy Local Plan.

11. Prior to development, an investigation and risk assessment (in addition to any assessment provided with the planning application) must be undertaken to assess the nature and extent of any land contamination. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:
- i. a survey of the extent, scale and nature of contamination (including ground gases where appropriate);
  - ii. an assessment of the potential risks to:
    - human health,
    - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
    - adjoining land,
    - groundwaters and surface waters,
    - ecological systems,
    - archaeological sites and ancient monuments;
    - an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

Reason:

To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

12. Prior to development, a detailed remediation scheme to bring the site to a condition suitable for the intended use (by removing unacceptable risks to human health, buildings and other property and the natural and historical environment) shall be prepared and is subject to the approval in writing of the Local Planning Authority, if required following the investigation and risk assessment undertaken in relation to Condition 12. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Reason:

To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

13. Prior to first occupation or use, the approved remediation scheme shall be carried out in accordance with its terms and a verification report that demonstrates the effectiveness of the remediation carried out shall be produced and be subject to the approval in writing of the Local Planning Authority.

Reason:

To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems.

14. In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

Reason:

To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

15. Prior to the occupation of any dwelling, waste and recycling provision shall be provided for each of the dwellings.

Reason:

In order to comply with the Adopted Developer Contribution Supplementary Planning Document (2007).

#### **4. Legal Issues**

##### **4.1 Planning Acts**

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

##### **4.2 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.

##### **4.3 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.

**5. Financial Issues**

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

**6. Background Documents**

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

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

**Appendices:**

Appendix 1 - Appeal Decision and Costs Decision Reference  
APP/N2739/W/17/3185834



