



Report Reference Number: 2019/0751/FUL

To: Planning Committee
Date: 9 October 2019
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Lead Officer: Ruth Hardingham (Planning Development Manager)

APPLICATION NUMBER:	2019/0751/FUL	PARISH:	Selby Town Council
APPLICANT:	Mr Ian Campey	VALID DATE:	18th July 2019
		EXPIRY DATE:	12th September 2019
PROPOSAL:	Retrospective application for a stage and change of use of garage to outside bar/store, with bin store fenced area		
LOCATION:	Unicorn Inn Bondgate Selby YO8 3LS		
RECOMMENDATION:	GRANT		

This application has been brought before Planning Committee at the request of the local ward councillor on the grounds of loss of residential amenity due to potential noise disturbance.

1. INTRODUCTION AND BACKGROUND

Site and Context

- 1.1 The application site is located within the defined development limits of Selby within a predominantly residential area. Residential properties exist to the south and west of the application site in the culs-de-sac known as Kirkby Avenue and High Meadow. Attached to the public house immediately to the north are 2 residential properties fronting Bondgate beyond which are commercial buildings which run along the northern boundary of the application site. To the east of the application site, across Bondgate, are agricultural fields.

The Proposal

- 1.2 The application is retrospective and seeks planning permission for the erection of a stage, the change of use of a garage outbuilding to an outside bar/store, and the

erection of a fence to contain a bin store area. The works have already been completed and brought into use.

Relevant Planning History

- 1.3 The following historical applications are considered to be relevant to the determination of this application.

Application Number: 2018/0422/FUL, Description: Proposed family room extension with external children's play area, change of boundary and change of use at first floor from domestic to bed sit rooms, demolition of existing garage/store. Unicorn Inn, Bondgate, Selby, YO8 3LS, Decision: PER. Decision Date: 30-AUG-18

Application Number: 2011/1230/FUL, Description: Proposed erection of 3 detached houses to part of rear car park at 15 Bondgate, Selby, YO8 3LX, Decision: REF. Decision Date: 25-OCT-12

Application Number: 2013/0692/CAR, Description: Application for inclusion on the Community Asset Register. 15 Bondgate, Selby, YO8 3LX, Decision: PER. Decision Date: 17-SEP-13

Application Number: 2013/1054/FUL, Description: Erection of 3No. detached houses to part of rear car park of the Unicorn Inn, 15 Bondgate, Selby, YO8 3LX. Decision: REF. Decision Date: 13-MAR-14

2. CONSULTATION AND PUBLICITY

- 2.1 **NYCC Highways Canal Rd** - there are no Local Highway Authority objections to the proposed development.
- 2.2 **Pland Use Planning Yorkshire Water Services Ltd** – no comments received.
- 2.3 **Selby Area Internal Drainage Board** – no comments received.
- 2.4 **Environmental Health** – note that the stage has been used to host live music events which have resulted in noise complaints being received by the Council which in turn ultimately led to the application being submitted. Investigations are currently being undertaken into alleged noise nuisance arising from the premises, in particular the use of the stage. Alternative legislative regimes do exist in relation to noise from licenced premises, the main pieces of legislation being the Licensing Act 2003 and the Environmental Protection Act 1990. Both pieces of legislation are concerned with Nuisance as defined by relevant case law. It is worth noting that Nuisance is broadly defined as an unlawful and/or unreasonable interference with the enjoyment of land whereas the Planning regime seeks to protect residential amenity in terms of observable effect level. In view of the differences between the regimes, it is recommended that the alternative regimes should not be relied upon to achieve Planning objectives. In view of the above, the applicant should be required to consider the proposals with respect to noise impact in terms of the NPPF, PPG and relevant local policies and submit further information to demonstrate compliance with the relevant policies including an assessment of the likely impact together with any proposals for mitigation.

A further response was received which recognises that the applicant has not submitted any meaningful information to demonstrate compliance with relevant

policies. It is considered that if consent for the use of the stage as initially proposed, i.e. unrestricted, goes ahead there exists the potential for the development to give rise to impacts on nearby dwellings at or above the significant level (Significant Observed Adverse Effect Level) which must be avoided. Monitoring results from events held on 28/7/19 and 18/8/19 are available that clearly support this view. Therefore, in the opinion of the Environmental Health Officer, unconditional approval should not be countenanced.

However, the response goes on to say that outright refusal may be difficult to justify, as current Government Policy is generally supportive of small music venues such as pubs and clubs and the socioeconomic benefit they bring to the community. It is considered that a refusal of permission would likely be overturned if appealed which, dependent on what conditions are attached could be a bad outcome for this Council. Another potential outcome is that the applicant accepts the decision and simply replaces the current structure with a temporary or moveable stage that would not require planning consent. Should this scenario happen then, since the premises is licenced to sell alcohol, events could take place unrestricted so long as less than 500 people attend and activity ceases before 23:00; again this would be a very bad outcome for this Council.

The applicant has not submitted any proposals to consider for planning conditions. The Environmental Health Officer is of the opinion that it would be very difficult for the applicant to control events in terms of noise levels due to the stage being in the open air and the close proximity of the nearest residential receptor which would make engineering controls very unlikely to have any appreciable effect.

In view of the above there is a need to strike a balance, existing Institute of Acoustics guidance does not really cover this scenario and is in the process of being updated in any event. It is therefore proposed that a condition restricting events to no more than one in any month, 4 in any year, no events on Sundays and finishing not later than 19:00 be used. Such an approach would allow the public house to hold a limited number of events which balances the needs of the business with the rights of the nearby residents to enjoy their property in the context that they do live next door to a public house. If such conditions were imposed and adhered to the Environmental Health Officer would be confident that this Council would not be in a position of considering action under The Environmental Protection Act for Nuisance as the conditions would offer sufficient protection from noise for the residents.

2.5 **Selby Town Council** - Object to this application, firstly, on the grounds of loss of residential amenity due to potential noise disturbance and, secondly, that the applicant should have made a planning application before the works were carried out. It is suggested that the District Council could promote the necessity for planning permission for such proposals more widely.

2.6 **Representations**

One letter of objection has been received as follows;

- Residential amenity. The grounds of my property cannot be enjoyed during the full day of the event, set up time and disbanding time included. The level of noise is unbearable

- Noise and disturbance resulting from use. The level of noise both inside and out of my property is excessive and overrides internal TV and music system noise, rendering occupation difficult or will necessitate leaving for the day
- Adequacy of parking/loading/turning. Parking in the Unicorn grounds is inadequate and full prior to the arrival of event goers
- Highway safety. Illegal Parking up to the junction of Kirby Avenue and Bondgate observed, double footpath parking witnessed on Kirby Avenue entrance road at both events.
- External Bar represents a new point of sale requires planning and licensing consent and brings internal pub noise out into the outdoor space and is not required.

One letter of support has been received as follows;

- We live next door to the Unicorn these outdoor events are not held every week, the last one on 28th July was held to raise funds for a defibrillator which will be for the use of the public, the Unicorn has been refurbished and food is being served once again the Unicorn has become the hub of the community catering for families so many pubs these days are being shut to make way for housing so it's refreshing to see one on the up and not declining as for noise we do not object to the outside events its bringing people together nobody could live any nearer than we do.

3 SITE CONSTRAINTS

Constraints

- 3.1 The application site is located within the defined development limits of Selby and within Flood Zone 3, albeit in an area benefitting from flood defences without which there would be a high probability of flooding. The defences protect the area against a river flood with a 1% chance of happening each year. The site does not contain any heritage assets nor is there any ecological interest likely to be affected by the development.

4 POLICY CONSIDERATIONS

- 4.1 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.
- 4.2 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.
- 4.3 On 17 September 2019 the Council agreed to prepare a new Local Plan. The timetable set out in the updated Local Development Scheme envisages adoption of a new Local Plan in 2023. Consultation on issues and options would take place early in 2020. There are therefore no emerging policies at this stage so no weight can be attached to emerging local plan policies.

4.4 The National Planning Policy Framework (February 2019) (NPPF) replaced the July 2018 NPPF, first published in March 2012. The NPPF does not change the status of an up to date development plan and where a planning application conflicts with such a plan, permission should not usually be granted unless material considerations indicate otherwise (paragraph 12). This application has been considered against the 2019 NPPF.

4.5 Annex 1 of the National Planning Policy Framework (NPPF) outlines the implementation of the Framework -

“213.existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).”

Selby District Core Strategy Local Plan

4.6 The relevant Core Strategy Policies are:

SP1 – Presumption in Favour of sustainable Development
SP2 – Sustainable Development Strategy
SP14 – Town Centres and Local Services
SP19 – Design Quality

Selby District Local Plan

4.7 The relevant Selby District Local Plan Policies are:

ENV1 – Control of Development
ENV2 – Environmental Pollution and Contaminated Land
T1 – Development in Relation to the Highway Network
T2 – Access to Roads

5 APPRAISAL

5.1 It is considered that the main issues to be taken into account when assessing this application are:

- 1) The Principle of the Development
- 2) Design and Impact on the Character and Appearance of the Area
- 3) Impact on Residential Amenity
- 4) Impact on Highway Safety
- 5) Flood Risk and Drainage
- 6) Land Contamination
- 7) Other Issues

5.2 The Principle of the Development

5.3 Policy SP2A of the Core Strategy relates to the spatial development strategy for Selby District and states “The majority of new development will be directed to the towns and more sustainable villages depending on their future role as employment, retail and service centres, the level of local housing need, and particular

environmental, flood risk and infrastructure constraints". Further, the policy states "Selby as the Principal Town will be the focus for new housing, employment, retail, commercial, and leisure facilities".

- 5.4 Core Strategy Policy SP14 offers support for local shops and services outside of established town centres.
- 5.5 The NPPF states that, to provide social, recreational and cultural facilities and services the community needs, planning decisions should plan positively for the provision and use of community facilities such as, amongst others, public houses.
- 5.6 The application site is located within the defined development limits of Selby but outside of the town centre and the proposals, as set out above, are considered to be in accordance with Policies SP2 and SP14 of the Core Strategy and national policy contained within the NPPF which should be given significant weight. The impact of the proposals still, however, needs to be considered in ensuring that the development is sustainable, particularly in environmental terms as the application site is within a predominantly residential area.

5.7 Design and Impact on the Character and Appearance of the Area

- 5.8 Selby District Local Plan Policy ENV1 requires the effect of development upon the character of the area to be taken into account together with the standard of design in relation to the site and its surroundings. Core Strategy Policy SP19 similarly expects new development to have regard to local character. The NPPF requires new development to be sympathetic to local character while not preventing or discouraging appropriate change.
- 5.9 The application seeks to regularise the works that have been undertaken on site to provide the stage, bar/store and bin store. The stage is a newly constructed extension to the existing outbuilding (previously used as a garage and store) and measures 4.8 by 3.6 metres. The gently sloping roof measures 3.1 metres at the front and 2.85 metres to the rear with the performance area being some 0.85 metres above ground level. The building is constructed in timber with panel boarding to the front and side above which are found lengths of timber fencing (side) and tubular metal fencing (front) which serve as barriers to the raised stage area and which is accessed by a small flight of timber stairs to the front.
- 5.10 The former garage/store building has been altered by the removal of a small, single storey lean-to at the front, the introduction of two personnel access doors and the cladding of the front ground floor of the building in timber boarding. The upper floor remains unaltered. To the front, a covered area measuring 2.9 by 7.9 metres has been constructed, again in timber.
- 5.11 Timber fencing has been erected between existing concrete bollards around the boundary of the site at the junction of Kirkby Avenue and Bondgate. Timber fencing has also been erected around and within a grassed area to the rear of the site described as a children's play area. The remainder of the site is surfaced in tarmac with part being marked out as car parking and the remainder having timber tables and benching which provide for outside seating close to the stage.
- 5.12 The works to create a stage and the alterations to the existing outbuilding are within a part of the site that was previously contained within a 2 metre concrete post and timber panel fence. Whilst the timber used to carry out the majority of the works is

still relatively bright, being untreated, the works have resulted in some visual improvement. It is considered that further improvement would result from the timber elements being stained or painted in a dark colour to reduce the visual impact. This can be secured through an appropriately worded planning condition. Other works of improvement have been undertaken to the main public house building with both internal and external refurbishment apparent.

5.13 Whilst the works undertaken have clearly altered the appearance of the site, subject to a condition to secure the staining/painting of the timber used in the erection of the stage, the covered area and the alterations to the outbuilding, it is not considered that any significant adverse impact on the character and appearance of the area has resulted and there is therefore no conflict with Policy ENV1 of the Selby District Local Plan, Policy SP19 of the Core Strategy and national policy contained within the NPPF.

5.14 Impact on Residential Amenity

5.15 The application site is located within a predominantly residential area, with residential properties to the north, south and west of the application site with commercial buildings to much of the northern boundary. Selby District Local Plan policies ENV1 and ENV2 require the effect of new development to take account of the amenity of adjoining occupiers and, where unacceptable levels of noise would arise, to incorporate satisfactory remedial or preventative measures. Core Strategy Policy SP19 similarly seeks to prevent development from contributing to unacceptable levels of noise pollution. The NPPF also expects that new development will not undermine the quality of life.

5.16 The grounds associated with the public house can be used in association with that use without the need for specific planning permission, subject to any conditions attached to the licence for the premises. Such activities could in themselves result in a degree of disturbance to neighbouring properties due, primarily, to noise. The use of temporary or moveable structures could, for example, facilitate events likely to generate noise but would be beyond planning control. However, both the erection of the stage and the provision of bar facilities in the outbuilding do require planning permission and have the potential to see external activity increase and change in nature and, therefore, the matter warrants further consideration given that the surroundings are primarily residential in nature.

5.17 The NPPF, at paragraph 170, states that new development should be prevented from contributing to unacceptable levels of noise pollution. Paragraph 180 states that new development should be appropriate for its location “taking into account the likely effects of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.” Specifically, noise from new development should be mitigated and reduced to a minimum with significant adverse impacts avoided.

5.18 This advice is repeated in the Noise Policy Statement for England (NPSE, published in 2010) which identifies the following aims;

- avoid significant adverse impacts on health and quality of life;
- mitigate and minimise adverse impacts on health and quality of life.

5.19 The NPSE recognises that noise management is a complex issue that depends not just on the physical aspects of sound but also the human reaction to it which will

differ. The subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected.

- 5.20 The applicant has not submitted any assessment of the noise likely to be associated with the stage and outside bar facility but has stated that the aim is to promote “family community events”. Given that the stage is intended to be used for live music performances (indeed 2 such events have already taken place) it is inevitable that noise will be generated. Further discussions have taken place with Environmental Health and officers have confirmed that monitoring data has shown noise levels associated with the use of the stage for live music events to be “extremely loud”. This being the case, it is appropriate to consider the noise as being present and intrusive with an observed adverse effect as described in national Planning Practice Guidance (PPG). It follows that action should be considered to mitigate and reduce to a minimum the noise impact.
- 5.21 PPG identifies ways in which noise impacts can be mitigated including the following;
- engineering: reducing the noise generated at source and/or containing the noise generated;
 - layout: where possible, optimising the distance between the source and noise-sensitive receptors and/or incorporating good design to minimise noise transmission through the use of screening by natural or purpose built barriers, or other buildings;
 - using planning conditions/obligations to restrict activities allowed on the site at certain times and/or specifying permissible noise levels differentiating as appropriate between different times of day, such as evenings and late at night, and;
 - mitigating the impact on areas likely to be affected by noise including through noise insulation when the impact is on a building.
- 5.22 Given the location of the application site, the nature of the stage which is a covered but essentially open structure and the type of events/activity intended by the applicant, engineering and layout means of mitigation are unlikely to be successful in any meaningful way. The Environmental Health Officer concurs with this view. Noise cannot be contained and could fluctuate in level due to such factors as weather conditions and the type of event being staged. The use of planning conditions to control the use of the stage does, however, offer the potential to mitigate the noise likely to arise to a point considered to be reasonable in both protecting residential amenity whilst providing the public house, a valued community facility, with an avenue to support the business.
- 5.23 In respect of the use of the stage for live music events, the applicant had anticipated that applications to the Council (Environmental Health) for Temporary Events Notices would be required and provide for a means of controlling the events. However, Environmental Health has confirmed that such a Notice would not be required as the events would take place within the area of land licensed to sell alcohol, anticipated to take place in front of an audience of less than 500 and not continue beyond 23.00 hours. Whilst the applicant has suggested that “the choice of music will be to appeal to general family tastes” and that “the volume levels will be aimed to the immediate seating area in front of the stage”, it is considered necessary to control events further in order to achieve a reasonable balance between protecting the amenities of neighbouring residents and allowing for some community events to take place.

- 5.24 To this end, and in consultation with Environmental Health, the following restrictions are considered reasonable and necessary and could be secured through appropriately worded planning conditions;
- no more than one event in any single month
 - no more than 4 events in any calendar year
 - no events to take place on a Sunday
 - events to finish no later than 19.00 hours.
- 5.25 The applicant has stated that the beer garden facility (presumably served by the bar created in the outbuilding) will operate between the hours of 13.00 and 20.00 with background noise levels no different to those that currently occur. If planning permission is to be granted, a planning condition should be employed to control the opening hours of the outbuilding bar albeit not the use of the land as a beer garden given the grounds associated with the public house can be used in association with that use without the need for specific planning permission as previously mentioned.
- 5.26 It is recognised that the owner of a neighbouring residential property and Selby Town Council have raised concerns regarding the potential for the proposals to increase noise and disturbance. However, given the nature of the proposals, which provide for the public house to offer community events and support the viability of the business, it is considered that the conditions suggested above would represent a reasonable means of mitigation that would avoid any significant adverse impacts in terms of noise and disturbance. As such the proposal can be considered to be in accordance with policies ENV1 and ENV2 of the Selby District Local Plan Core Strategy Policy SP19 and national policy contained within the NPPF.

5.27 Impact on Highway Safety

- 5.28 Selby Local Plan policies ENV1, T1 and T2 all seek to ensure that new development can be accommodated within the existing highway network without detriment to highway safety. The NPPF suggests that development should only be refused permission on highway grounds if there would be a severe and unacceptable impact on the road network.
- 5.29 The works undertaken have not reduced the area available for parking within the site given the previous fence around the outbuilding which has been removed to facilitate the stage, bar and associated covered area. It is acknowledged that tables and seating have been placed on an area available for car parking (albeit outside of the area formally laid out with marked car parking spaces) but this can occur without the need for planning permission. The representations of a neighbouring resident that raise objections in respect of the adequacy of on-site parking and highway safety issues are noted, however, North Yorkshire County Council Highways have been consulted on the proposals and have not raised any objections. Any issues arising from events associated with use of the subject stage are by their nature temporary and localised and are not considered to be severe. It is therefore considered that the proposal would be acceptable in terms of highway safety and is therefore in accordance with Policies ENV1, T1 and T2 of the Selby District Local Plan and national policy contained within the NPPF.

5.30 Flood Risk and Drainage

- 5.31 The application site is located within Flood Zone 3, in an area benefitting from flood defences, which has been assessed as having between a 1 in 100 or greater annual probability of river flooding (>1%) in any one year.
- 5.32 NPPF paragraph 164 states that "Applications for minor development and changes of use should not be subject to the Sequential or Exception Tests but should still meet the requirements for site-specific flood risk assessments". The NPPG defines minor development and includes the extension of an existing building used for non-domestic purposes where the floor space created by the development does not exceed 250 square metres. A sequential and exception test is therefore not required in this instance.
- 5.33 A Flood Risk Assessment form was submitted with the proposal which states that floor levels within the proposed development will be set no lower than existing levels and flood proofing of the proposed development has been incorporated where appropriate. The FRA is considered to be acceptable. The proposed scheme is therefore in accordance with national policy contained within the NPPF.
- 5.34 In terms of drainage, the submitted application form sets out that surface water would be disposed of via a sustainable drainage system, while foul sewage would be disposed of via mains sewer. The Selby Area Internal Drainage Board has been consulted on the application but have not responded. In response to previous applications on the site, the IDB has not raised any objection to development with a greater footprint. Consequently, it is considered that the proposals are acceptable in respect of flood risk and drainage.

5.35 Land Contamination

- 5.36 The application site has previously been assessed by the Councils Contaminated Land Consultant who, in 2018, advised that the site has not historically had any potential contaminative use. There is no reason to believe that the situation has changed since the earlier advice was received and, consequently, it is considered that the proposal would be acceptable in respect of land contamination and is therefore in accordance with Policy ENV2 of the Selby District Local Plan, Policy SP19 of the Core Strategy and national policy contained within the NPPF all of which seek to protect the public from harmful effects where contamination is suspected.

5.37 Other Issues

- 5.38 The Localism Act 2011 and associated regulations set out the provisions that give communities the right to identify a building or other land that they believe to be of importance to their community's social well-being. The aim is that, if the asset comes up for sale, then the community will be given a fair chance to make a bid to buy it on the open market. Notwithstanding this, the inclusion of a building or other land on the Community Asset Register will not jeopardise its value or future development potential and the landowner will still be able to seek planning permission or allocation in the Local Plan for alternative development. The Unicorn Inn and associated land has been added to the Community Asset Register.

6 CONCLUSION

- 6.1 Having had regard to the development plan, all other relevant local and national policy, consultation responses (particularly that received from Environmental Health) and all other material planning considerations, it is considered that the principle of the proposed development is acceptable and, subject to the recommended conditions, would not have a significant and unacceptable adverse impact on the character and appearance of the area, the residential amenity of the occupants of neighbouring properties, highway safety, flood risk and drainage, or land contamination. The application is therefore considered to be in compliance with Policies ENV1, ENV2, T1 and T2 of the Selby District Local Plan, Policies SP1, SP2, SP14 and SP19 of the Core Strategy and national policy contained within the NPPF.

7 RECOMMENDATION

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

01. The stage hereby approved shall not be used for events involving amplified or other music performances on more than one occasion in any single month and not more than 4 occasions in any calendar year.

Reason: In the interests of the residential amenity of occupiers of neighbouring properties.

02. The stage hereby approved shall only be used for events involving amplified or other music performances between the following hours:

13:00 - 19:00 Monday - Saturday and not at any time on Sundays.

Reason: In the interests of the residential amenity of occupiers of neighbouring properties.

03. The outside bar hereby approved shall only be used between the following hours:

13.00 - 20.00 on any day.

Reason: In the interests of the residential amenity of occupiers of neighbouring properties.

04. Within 6 months of the date of this permission, the timber used in the erection of the stage, the covered area and the alterations to the outbuilding shall be stained/painted in a colour that shall first have been agreed in writing by the Local Planning Authority.

Reason: In the interests of the visual amenity of the area.

8 Legal Issues

8.1 Planning Acts

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

8.2 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.

8.3 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.

9 Financial Issues

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

10 Background Documents

Planning Application file reference 2019/0751/FUL and associated documents.

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Appendices: None