



Report Reference Number: 2019/1214/FUL

To: Planning Committee
Date: 1st April 2020
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Lead Officer: Ruth Hardingham (Planning Development Manager)

APPLICATION NUMBER:	2019/1214/FUL	PARISH:	Selby Town Council
APPLICANT:	Selby Town Council	VALID DATE: EXPIRY DATE:	23rd December 2019 17th February 2020 (extension of time agreed until 3 rd April 2020)
PROPOSAL:	Proposed erection of a bee apiary		
LOCATION:	Cemetery Long Mann Hills Road Selby		
RECOMMENDATION:	MINDED TO APPROVE SUBJECT TO EXPIRY OF CONSULTATION PERIOD AND NO NEW MATERIAL CONSIDERATIONS BEING RAISED		

This application is to be determined by the Planning Committee since it does not accord with Policy ENV29 of the Selby District Local Plan. This policy states that proposals for the development of local amenity space will not be permitted. Since the proposal would comply with all other relevant criteria and it is considered that there are material considerations which support the application and the recommendation is for approval subject to the expiry of the consultation period on the Press Notice and no new material considerations being raised.

1. INTRODUCTION AND BACKGROUND

Site and Context

- 1.1 The application site is located within the defined development limits of Selby within the local amenity space as defined on the Proposals Map of the Selby District Local Plan (2005), namely Selby Cemetery.
- 1.2 The application site consists of a grassed parcel of land within the north east part of the old part of Selby Cemetery with some mature trees. There is an area with the headstones and two chapels beyond them to the west of the site, a grassed area with a group of mature trees and a pathway beyond them to the south, a mature hedge separating the residential area and the cemetery to the east and mature hedge with a highway, namely Westfield Road, and residential area beyond it to the north.

The Proposal

- 1.3 The application seeks planning permission for the erection of a bee apiary to provide a community facility for the learning of beekeeping and education of local primary school children.
- 1.4 The proposal would consist of a timber framed building identified as a “Bee Free Zone” in the submitted Planning Statement and an enclosure surrounding the building within which hives would be located.
- 1.5 The timber framed building would measure approximately 2.4 metres in width by 7 metres in depth, and would have a height of approximately 3 metres, and would have four clear viewing windows. The enclosure would measure approximately 8 metres in depth by 10 metres in width and would have a height of approximately 2.4 metres.
- 1.6 The enclosure would be erected using timber posts positioned into metal fence post spikes, and the green garden netting would be used between the posts.
- 1.7 The objective of the proposal as stated in the Planning Statement is to be for the training of new beekeepers at weekends, for the educational visits for primary school’s student during the weekdays, and would be open for public viewing on certain days and offered an opportunity to participate in the inspection of colonies of bees.

Relevant Planning History

- 1.8 There were no historical applications found which are considered to be relevant to the determination of this application.

2. CONSULTATION AND PUBLICITY

2.1 NYCC Highways – No objections

- 2.2 **Environmental Health** – Noted in the first response that it is proposed that the apiary would accommodate parties for educational visits during the weekdays and advised that this would introduce a new source of noise to the area. Whilst did not object to the proposals, it was recommended that a restriction is considered regarding the number of party visits and asked for clarification from the applicant on how often these will take place.

- 2.3 **Environment Agency** – Advised that the proposed development does not fall within the ‘householder and minor extensions’ category and is located in Flood Zone 2, and as such a FRA should be submitted and a sequential test should be carried out. Advised that both should be proportionate to the risk, so can be short and concise, but they are required.
- 2.4 **Neighbour Summary** - All immediate neighbours were informed by letter and a site notice was erected on 10 January 2020.

The application has been re-advertised as departure from the development plan by posting a new site notice on 6 March 2020 (expires 27 March 2020) and in press on 5 March 2020 (expires 2 April 2020). Members will be updated on Planning Committee on this issue.

Although no representations have been received as a result of consultation at the time of the collation of the Officers Report, the applicant has provided 3 letters from 3 primary schools located in Selby supporting the proposals.

3 SITE CONSTRAINTS

Constraints

- 3.1 The application site is located within the defined development limits of Selby and is located within the local amenity space.
- 3.2 The site is located within Flood Zone 2, which has a medium probability of flooding.

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 - Spatial Development Strategy
- SP15 - Sustainable Development and Climate Change
- SP18 - Protecting and Enhancing the Environment
- SP19 - Design Quality

Selby District Local Plan

- 4.7 The relevant Selby District Local Plan Policies are:

- ENV1 - Control of Development.
- ENV29 – Protection of Local Amenity Space

5 APPRAISAL

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

- The Principle of the Development
- Design and Impact on the Character and Appearance of the Area
- Impact on Residential Amenity
- Impact on Highway Safety
- Flood Risk and Climate Change

The Principle of the Development

- 5.2 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", to secure development that improves the economic, social and environmental conditions in the area, and sets out how this will be undertaken.
- 5.3 Policy SP2A(c) of the Core Strategy states that "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" and that "Selby as the Principal Town will be the focus for new housing, employment, retail, commercial, and leisure facilities".

- 5.4 Policy ENV29 of the Selby District Local Plan states that “Proposals for the development of local amenity space, as defined on the proposals map, will not be permitted”.
- 5.5 The application site is located within the grounds of public amenity space within the defined development limits of Selby Town which is a Principal Town as identified in the Core Strategy. The site is located within the local amenity area as identified in Selby Local Plan proposals map.
- 5.6 The proposal seeks to provide a community facility by the provision of a bee apiary for the learning of bee keeping and the education of local primary school children on a part of the grassland located within Selby Cemetery where the headstones have been removed and relocated. Paragraph 180 of the NPPF advises that (amongst other things), decisions should take account of the sensitivity of the site and in doing so they should identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value. Although the proposed use will bring more people into the area, is considered to be a quiet form of educational activity consistent with the tranquil rural character of the site.
- 5.7 Although Policy ENV29 does not allow the development of local amenity areas, Paragraph 12 of the NPPF states that ‘Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed’.
- 5.8 The new structure would be built on the grassland within the cemetery grounds, the proposal is for a lightweight structure which would allow beekeeping, training of new beekeepers, educational visits for primary school students and would be open to public for viewing. As such, it is therefore considered that given that the proposed building would be for a community use and would provide opportunities for informal recreational activities, it is also considered to be compatible with and positively contribute to the existing use of a local amenity space which is therefore considered to be a material consideration.
- 5.9 In addition to the above, the proposed development would be located in Selby, which is a Principal Town as identified in Core Strategy and the most sustainable settlement of the District. Indeed the proposed apiary would be located within walking distance from a number of primary schools located in Selby and Brayton and would be easily accessible due to its location, the applicant has submitted 3 letters from different primary schools supporting the proposal which outlined the benefits of the proposed development to education of primary school students being as follows:
- Opportunity for children to learn first-hand about the valuable contribution bees make to people’s lives and environment
 - Learning about safety and experience what it is like to be a beekeeper
 - Educating young people on the important job of the bee and allows the children a closer encounter with the natural world
 - There would be many links to the science natural curriculum
 - Educating children on contributions which can be made to halt the decline of bee population by using this interesting and positive action

- 5.10 Furthermore, the development would contribute to helping to improve biodiversity given its nature and would therefore contribute to protecting and enhancing the natural environment. Paragraph 175 (d) states that development whose primary objective is to conserve or enhance biodiversity should be supported.
- 5.11 In this context and having considered all the available evidence, it is therefore considered that the proposed development would provide sustainability benefits which are material planning considerations and would comply with Policies SP1 and SP2 of the Core Strategy and the NPF.

Design and Impact on the Character and Appearance of the Area

- 5.12 The application site is located within the north east part of Selby Cemetery which is located within southern part of Selby Town and is surrounded by predominantly residential properties.
- 5.13 An indicative layout plan has been submitted with the application, which demonstrates the approximate location of the proposed apiary. The supporting statement includes a 3D image showing an example of how the proposed apiary could look like within the context of the surrounding area. Furthermore, an elevations drawing has been submitted with the application, which demonstrates the scale of the apiary, and a Construction Notes sheet which describes how the proposed apiary would be constructed and states that the proposed structure will be lightweight to minimise ground disturbance.
- 5.14 In terms of appearance, the construction notes, supporting statement and elevations drawing set out that the largest proportion of the structure would be green garden netting held by timber posts which would enclose the bee hives and would surround the proposed viewing area building. The building itself would be of timber construction with a ply sheeting roof covered by waterproof felt. It is considered that the proposed green fencing would not appear overly dominant or prominent within the site or the surrounding area due to the translucent nature of the material and due to its colour. Furthermore, the proposed building would be built of natural materials, would be of a modest size and scale and would be mostly enclosed by the proposed green netting which would reduce the prominence of the structure within the area and would partially shield it from view.
- 5.15 Given the built form of the surrounding area, the size, scale, nature and design of the proposed structure, it is considered that the proposal would not be visually prominent or discordant within the landscape given its backdrop against existing vegetation and residential development. The scheme is for small scale structure and, on balance, it is considered that the proposals would not result in a harmful effect on the character of the surrounding area.
- 5.16 It is noted that there are no trees present within the area the apiary would be sited however, there are trees present within the wider application site which positively contribute to the character and appearance of the surrounding area. As such, it is considered necessary and appropriate to impose a condition requiring the existing trees located within the application site to be retained and protected during construction.
- 5.17 Having regard to the above, it is considered that the proposed development would not result in any significant detrimental impacts on the character and appearance of

the area in accordance with 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

- 5.18 The proposed structure would be of a modest size and scale and would be significantly distanced from any of the residential properties. As such, it is considered that no significant adverse effects of overlooking, overshadowing or oppression would be caused to the existing dwellings located close to the application site.
- 5.19 The Environmental Health Officer has been consulted and raised concerns regarding introduction of a new source of noise to the area and suggested to restrict the number of party visits. However, the suggested restriction is not considered to meet the six tests for the imposition of planning conditions as identified in the Paragraph 55 of the NPPF which are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects
- 5.20 It has been suggested to the applicant to reduce the hours of operation which has been proposed by the applicant to be as follows via an email exchange:
- a. 09.00 hours to 20.00 hours Monday – Friday
 - b. 09.00 hours to 18.00 hours on Saturdays
 - c. 10.00 hours to 16.00 hours on Sundays and Bank and Public Holidays

It is noted that the apiary proposed would operate until 20.00 on weekdays which is outside daylight hours during winter season. However, it is also noted from a submitted Planning Statement that training of new beekeepers would take place predominantly on weekends during months between May and September, and that the apiary would not be actively used through Autumn and Winter, and would be available for viewing only during these periods. As such and given the nature and scale of the proposed development, the proposed operating hours are considered acceptable.

- 5.21 On balance having considered both the comments of the Environmental Health Officer, the hours proposed by the Applicants, the nature and scale of the proposed development, the current use of the land it is not considered that this type of development would cause a significant effect of noise and disturbance to the area and the proposal is therefore considered acceptable subject to a condition securing the above operational hours.
- 5.22 Having had regard to the above, it is considered that the proposed scheme would not result in any significant detrimental impacts on the residential amenities of the occupiers of the neighbouring properties in accordance with Policy ENV1(1) of the Selby District Local Plan and the advice contained within the NPPF.

Impact on Highway Safety

- 5.23 The application form states that there is no new or altered vehicular access and no new or altered pedestrian route proposed. It also states that there is no on-site parking proposed. It is noted that there is a number of schools are within the walking distance of the application site. Furthermore, although it is noted that there would be training sessions organised for the new beekeepers, it is considered that due to the size, scale and nature of the proposed development, the number of visitors is unlikely to drastically increase as to create detrimental impact on highways.
- 5.24 NYCC Highways have been consulted on the proposals and have advised that they have no objections.
- 5.25 It is noted that the red line of the application site does not adjoin the adopted highway. However, it is also noted that the land which has a pathway, parking and access to the site is within the ownership of the applicant. A revised application site plan is being sought from the applicant, but as they own the intervening land there is no requirement for a revised Certificate on the application. Members will be shown the updated Site Location Plan as part of the Officers Update at committee.
- 5.26 Having considered the above and the scale and nature of the proposed development, it is considered that the proposal is acceptable in terms of highway safety in accordance with Policies ENV1 (2) of the Selby District Local Plan and the advice contained within the NPPF.

Flood Risk and Climate Change

- 5.27 The application site is part located within Flood Zone 2 which has been assessed as having between a 1 in 100 and 1 in 1,000 annual probability of river flooding (1% - 0.1%), or between a 1 in 200 and 1 in 1,000 annual probability of sea flooding (0.5% - 0.1%) in any year.
- 5.28 The Environment Agency has been consulted and advised although they note the nature and scale of the development, both FRA and a Sequential Test are required.
- 5.29 The Council has produced a guidance note on the application of the sequential test within Selby District – “Selby District Council Flood Risk Sequential Test Developer Guidance Note” dated October 2019. The sequential test is required to steer new development to areas with the lowest risk of flooding. Having regard to the national policy contained within the NPPF and the advice contained within the Guidance Note, the sequential test would be required for the erection of the propose apiary. In terms of the application to the sequential test to the proposed development, given the nature of the proposed development, it would be considered reasonable to narrow down the geographical coverage area for the sequential test to the land within the applicant’s ownership.
- 5.30 There was no sequential test submitted with the application. Notwithstanding this, Officers have undertaken the sequential test on the proposed development in accordance with the national policy contained within the NPPF and the advice contained within the Council’s Guidance Note, using the geographical coverage area of the land within the applicant’s ownership. Most of the land within the applicant’s ownership is located within Flood Zone 2, aside from some areas to the west and south west of the application site, which are currently occupied by chapels, access and parking areas and some of burial grounds which are in use and would therefore not be of a sufficient size to accommodate the proposed

development. As such, the proposal is considered to be acceptable in terms of passing the sequential test. Having reviewed the proposal against vulnerability classification, the proposed development is classified as 'less vulnerable' and the exception test is not required in this instance.

- 5.31 It is noted that a completed Flood Risk Assessment form for Householder and other minor extensions was submitted with the application. However, the proposed development does not fall within the 'householder and minor extensions' category and is in Flood Zone 2. As such and for the proposal to be in accordance with national policy when considering flood risk, namely Paragraph 163 and footnotes 50 and 51 of the NPPF, a site-specific Flood Risk Assessment proportionate to the risk is required to be submitted. Although the EA is not required to be consulted in this instance due to the scale and nature of the proposal, the Local Planning Authority need to follow the Standing Advice. The Standing Advice relates to surface water management, access and evacuation and floor levels. Officers are seeking further information from the applicant relating to flood risk assessment. Members will be updated on this issue at Planning Committee.

6 CONCLUSION

- 6.1 The application seeks full planning permission for the erection of a bee apiary.
- 6.2 The proposed development is contrary to Policy ENV29 of the Selby District Local Plan but in accordance with Policies SP1 and SP2 of the Core Strategy and Policy ENV1 of the Selby District Local Plan. Having considered all the available evidence and having taken a balanced planning view as outlined within this report, it is therefore considered that the proposed development would provide sustainability benefits which are material planning considerations in this particular case, such as positive contribution to the existing use of a local amenity space, provision of opportunities for informal recreational activities, benefits to the education of primary school students and would contribute to helping to improve biodiversity.
- 6.3 Furthermore, having assessed the proposals against the relevant policies, it is considered that the proposal is acceptable in respect of the design and impact on the character and appearance of the area, impact on residential amenity, and impact on highway safety.
- 6.4 With regards to flood risk, Officers are seeking further information from the applicant to confirm that the proposal complies with the EA Standing Advice Note. Members will be updated on this issue at Planning Committee.

7 RECOMMENDATION

This application is recommended to be minded to GRANT subject to confirmation that the proposals comply with the Environment Agency's Standing Advice Note, and subject to expiry of consultation period and no new material considerations being raised, and the following conditions:

01. The development for which permission is hereby granted shall be begun within a period of three years from the date of this permission.

Reason:

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

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

- LOC01 –Layout Plan
- 02 – Location Plan
- 03 – Proposed Elevations
- 04 - Proposed Floor Plans

Reason:

For the avoidance of doubt.

03. The materials to be used in the construction of the external surfaces of the apiary hereby permitted shall be as stated in the Construction Notes received by the Local Planning Authority 19 November 2019.

Reason:

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

04. The use hereby permitted shall not take place outside the following times:

09.00 am to 20.00 - Monday to Friday

09.00 am to 18.00 - Saturday

10.00 am to 16.00 pm - Sundays and Bank/Public Holidays

Reason:

This condition is imposed in accordance with policy ENV1 of the Selby District Local Plan and in the interests of the amenities of the area.

05. The trees located within the application site shall be retained and no development shall take place until a scheme for tree protection measures (both above and below ground) to be implemented during the construction period has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:

- (i) Details of a construction exclusion zone (including protective fencing of a height and design which accords with the requirements BS 5837: 2012) to be formed around the root protection areas of those trees within and/or overhanging the site to be retained.
- (ii) Details of any excavation to take place within the root protection areas of those trees within and/or overhanging the site to be retained.
- (iii) Details of the foundations of any building, hardstandings and/or boundary treatments to be constructed within the root protection areas of those trees within and/or overhanging the site to be retained.

The development shall thereafter be carried out in strict accordance with the tree protection measures contained in the duly approved scheme throughout the entirety of the construction period.

Reason: To ensure that adequate measures are put in place to protect existing trees during construction

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 2019/1214/FUL and associated documents.

Contact Officer: Irma Sinkeviciene (Planning Officer)

Appendices: None