

Parish: Skutterskelfe

Ward: Hutton Rudby

7

Committee Date : 12 May 2022
Officer dealing : Mr Nathan Puckering

Target Date: 11 February 2022

Date of extension of time (if agreed): 8 March 2022

21/02972/MRC

Variation of conditions attached to Application Reference Number: 14/01130/FUL-Construction of a (Use Class D1) day care, education, training and (Use Class C2) respite facilities for adults with learning and other difficulties.

At: Depot Skutterskelfe Yarm North Yorkshire

For: Noble Charitable Trust.

1.0 Site, context and proposal

- 1.1 In 2014 permission was granted for the construction of a day care, education, training and respite facility for people with learning difficulties on a site in Skutterskelfe. Said site is a parcel of land just to the east of the office and depot belonging to Noble Fuels. It sits around 1.8 miles west of Stokesley. The applicant in that instance was The Yatton House Society. Upon commencing implementation of the permission in 2017, it was decided that the Society could no longer proceed with the development. At this point, Breckenbrough School, another recognised provider of care and support for people with special educational needs based in Sandhutton, picked up the permission and now wish to proceed to implement it fully.
- 1.2 This s.73 application is wishing to alter several conditions on the original permission. Condition 2 of said permission controls the use and limits it to "Use Class D1 day care, education, training centre for adults with learning and other difficulties or a mixed Use Class D1 and C2 day care, education, training and respite care centre for adults with learning and other difficulties". Condition 9 of the permission relates to operating hours and states "The (Use Class D1) day care uses in the building shall not take place outside of the hours of 08.30hrs to 17.00hrs unless otherwise agreed in writing with the Local Planning Authority." As part of this application, the applicant is wishing to replace reference to 'use class D1' with 'use class F1'. This is effectively an administrative change due to the fact use class D1 no longer exists and was replaced with F1 in a recent change to the Use Class Order. It is noted that the focus of the activity of the applicants is to provide services and facilities for children rather than adults.
- 1.3 Secondly, the applicant is wishing to alter the approved plans condition to allow a reduced scheme tailored more to their requirements. The new building will sit within the same footprint but will be reduced in size. There are also changes to the overall site layout in terms of the internal access road. The changes can be summarised as follows:
 - The building will now be a standard rectangular shape, with a mono-pitched roof. It will measure 32.735m x 16.125m and will have a maximum height of 7.007m.
 - The new building will have a timber frame and be clad with vertical tongue and grooved panels.
 - The access will still enter in the north western corner but instead of running along the northern boundary and down the eastern side of the site, it will now run down the western edge and in front of the building for a drop off point. Car parking is provided adjacent to the entrance in the north western corner of the wider site.

- 1.4 Due to the previous Landscape Plan and Travel Plan being no longer relevant to this new scheme, amended versions of both were submitted as part of this application.

2.0 Relevant planning & enforcement history

- 2.1 14/01130/FUL - Construction of a (Use Class D1) day care, education, training and (Use Class C2) respite facilities for adults with learning and other difficulties - Granted
- 2.2 14/01130/DIS04, 14/01130/DIS05 & 14/01130/DIS07 - Discharge conditions 4, 5 & 7 (landscaping, means of enclosure and transport) of permission 14/01130/FUL - Granted

3.0 Relevant Planning Policies:

As set out in paragraph 2 of the NPPF planning law requires that applications for planning permission be determined in accordance with the Development Plan unless material considerations indicate otherwise. The law is set out at Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990.

Local Plan Policy S1: Sustainable Development Principles
Local Plan Policy S5: Development in the Countryside
Local Plan Policy E1: Design
Local Plan Policy E2: Amenity
2Local Plan Policy E7: Hambleton's Landscapes
Local Plan Policy IC2: Transport and Accessibility

4.0 Consultations

- 4.1 Parish Council - objected initially on the following grounds:
- A material start was never made and therefore the permission has expired.
 - Concern that there is a lack of clarity on why the reference to use class D1 is being altered and the knock-on effect this will have on the permission.
 - The variation to the reference to use classes 'goes to the heart of the permission'. The PC claim that the permission is now for a "boarding facilities" and as such is now a full C2 use. This includes uses far beyond what was initially granted. Furthermore, use class F1 is too broad.
 - Concern expressed regarding the impact on amenity, with the car parking now located closer to residents and potential for floodlighting.
 - The new proposed use is fundamentally different to the original proposal. To the extent that it can be determined from the limited information provided, it would be expected to have a much greater and potentially unacceptable adverse impact on the amenity of neighbours with potentially year round 24/7 use vs weekdays 08:30 to 17:00.

Second objection following re-consultation:

- The Landscape Plan shows there is a boundary hedge to be removed from the northern boundary with no explanation why.
- The Travel Plan shows no reference to the new Local Plan. Other general inconsistencies with the Travel Plan with reference to overnight accommodation, no reference to staffing for overnight stays and amount of parking needed.
- There is reference to a 'phase 2' but no explanation of what this entails.
- The main concern remains the fact the changes proposed go to the heart of the permission - "there is no good reason why the permission should be broadened to incorporate parts of Use Class F which are not required, and in seeking to do so, the application goes to the heart of the matter..."

4.2 NYCC Highways - no comments received to either the initial consultation or the re-consult.

4.3 Site Notice & Neighbour Notification - 6 letters of objection from 5 different objectors on the initial consultation. These can be summarised as follows:

- Work hasn't commenced and thus the permission has expired.
- "The change of age range and type of attendee from adults with learning difficulties (Yatton House) to children with complex behavioural conditions and disorders (Breckenbrough School). The original plan had an objective to provide replacement amenities for the very local Yatton house with its deep connection to local people and supporters."
- Why develop the rural Skutterskelfe when Breckenbrough School has a lot of land at its main site over 20 miles away and the environmental impact this will have.
- No clarification on overnight stays.
- Updates to Landscape Plan and Travel Plan are required.
- Lack of information on security floodlighting and the impact on amenity and wildlife, as well as sewerage outflows and electric supply.
- Waste materials may remain on site such as asbestos and this may cause health and safety risks.
- Impact on amenity by way of light pollution and noise and disturbance.
- Additional traffic.
- Removal of trees and wider ecological impact.
- Security concerns.

Following corrected plans, an additional letter from the agent and updated Landscape and Travel Plans, a 10 day re-consultation was carried out. There were then 5 further letters of objection received. Additional points raised can be summarised as follows:

- Concern with reference to a 'phase 2'.
- The Landscape Plan will remove a lot of mature trees and hedging. It is lacking for a development of this size.
- There remains a lack of detail on future use of the site.

5.0 Analysis

5.1 The main issues in this instance are a) whether the existing permission remains extant, b) whether the changes go to the heart of the permission and thus require a new planning application rather than a variation of the existing consent, c) the acceptability of the change in design, d) amenity, e) landscaping and ecology, f) highway safety and the updated Travel Plan, and g) nutrient neutrality. A number of

objections refer to concerns with the fact supporting documents refer to a 'phase 2' of the development. Any future development is a matter for the future, if and when an application for this is received.

Whether the 2014 Permission Remains Extant:

- 5.2 Given the age of the permission which this application is looking to vary, it must be established whether work ever began and thus this permission remains extant. For development to be considered to have begun, S.56 of the Town and Country Planning Act 1990 outlines the definition of a 'material operation'. This definition includes "the digging of a trench which is to contain the foundations, or part of the foundations, of a building".
- 5.3 Upon Officer's conducting a site visit, what appeared to be groundworks were evident within the site. It is claimed these were dug in 2017. Upon receipt of the objections calling this into question, the agent submitted two Statutory Declarations and dated photographs of these being dug and work commencing. Considering the evidence available and applying the correct legal test of "balance of probability", it is found that work commenced on the development in 2017 and therefore the permission remains extant, and this s.73 application remains lawful and valid.
- The Scope of the Changes
- 5.4 Concern has been expressed by the Parish Council and several residents that the changes proposed under this application "go to the heart of the permission" and thus a new application should be required.
- 5.5 The Parish Council claim that the rewording of conditions 2 and 9 and reference to use class F1 would open up the possibility of the site being used as a vast array of things which now come under the umbrella of use class F1 and that this therefore fundamentally changes the scope of the development. This is not accepted. The wording of condition 2 still limits the use to a "day care, education, training and respite care centre for adults with learning and other difficulties". This caveat will remain in the condition and thus it will still prevent any other use which falls under class F1 from operating on the site in the same way it previously wouldn't have allowed other D1 uses, such as a place of worship for example. The age of users is discussed later.
- 5.6 Another concern which has arisen from the objections is that the change of applicant has brought with it a change to the way in which the site would be operated. Under the operation of Yafforth House, there was to be occasional respite care. The principle of this has been established under the previous permission and is not up for debate under this application. The agent has clarified that Breckenbrough School will not actually operate a respite care side of the operation. The bed spaces provided will be used solely for infrequent overnight trips which will be tagged onto the end of an activity evening. This is very much an ancillary use and is considered to be within the scope of the previous permission, which could lawfully operate within a respite facility. Therefore, these concerns are unfounded.
- 5.7 One final issue that was raised on several occasions was the fact that the initial permission referred to "adults with learning difficulties" and now it is to be children. This issue was raised with the agent and the fact it may be that the new intended operation may fall outside the scope of the condition due to the age specific control in the original wording. It has since been agreed that the change to the wording of this condition shall replace the word "adult" with "people". This change would not

go beyond the scope of what is allowed under a s.73 application, whilst allowing the new operation to operate under this condition.

- 5.8 Overall, the scope of the changes to the conditions proposed can be dealt with under this s.73 application.

Design and Landscaping

- 5.9 Policy E1 of the Local Plan concerns design and states that all development should be of a high quality, integrating successfully with its surroundings in terms of form and function, reinforcing local distinctiveness and help to create a strong sense of place. It sets out a list of design principles that help to achieve this overarching aim and relate to things such as form, scale, layout, height, density, visual appearance, visual relationships, views and vistas, the use of materials, native tree planting and landscaping.

- 5.10 The overall scale of the building has been reduced to quite an extent and therefore the building will still sit comfortably in its surroundings and not appear cramped or forced. The design of the building itself now utilises timber on most aspects, including cladding and a timber frame. The overriding character is akin to a rural visitor centre or the like. This is wholly in keeping with the countryside location and ensures the form and visual appearance will remain sympathetic to the surroundings.

- 5.11 Given the change to the site layout, an updated Landscape Plan was requested. Fundamentally, the updated plan is not massively different to the original plan in that it retains the vast majority of the existing landscaping in the centre of the site, as well as the buffer on the eastern boundary and in the southwest corner. Initially, it was not clear whether the established hedge on the northern boundary, which is a rather important screening feature, was to be retained. However, the applicant clarified that it is and an amended plan showing this was submitted.

- 5.12 The design of the building itself and the amended Landscape Plan are considered to create a sympathetic scheme which will integrate with its surroundings. Compliance with policy E1 is therefore achieved.

Amenity

- 5.13 Policy E2 precludes any development that would have a detrimental impact on amenity. Concerns have been raised relating to noise and disturbance and light pollution.

- 5.14 None of the changes proposed under this application give way to any additional concerns regarding amenity that were not assessed under the original application. The operating hours on the site will remain conditioned as they were previously and no changes to the layout or design of the development will have a material impact on issues of amenity. Reference to the fact the kitchen is to be located on the same side as the adjacent dwelling is noted but this is still some 85m away so will not cause any issues in terms of amenity.

5.15 Concerns with floodlights are noted but these are speculative. There is no reference to lighting that would impact adjacent neighbours. If any additional lighting was necessary, this may be subject to a separate application in the future and the impact would be fully assessed if this were the case.

5.16 Overall, the proposal complies with policy E2.

Ecology

5.17 Policy E3 of the Local Plan is explicit in that all development must demonstrate the delivery of a net gain for biodiversity.

5.18 A number of the objections refer to the knock-on impact in terms of the loss of trees and wildlife. It should be noted that this was an issue to be considered when the initial application came in and it was clearly decided that development of the site in question was acceptable on the grounds of ecological impact. No changes proposed in this case would have a material impact in the respect of additional ecological impact.

5.19 A letter from Naturally Wild, an Ecological Consultant, has been submitted outlining the results of a baseline biodiversity assessment. This concludes that the landscaping scheme can be designed to diversify the habitat and achieve a gain for biodiversity. A condition requiring a management plan to be submitted prior to construction to ensure this is achieved is recommended.

5.20 The area in question is part of a commercial forestry undertaking and any tree removal will have to be in full accordance with the Felling Licence which covers issues with replanting requirements.

Highway Safety and the Updated Travel Plan

5.21 No changes proposed impact the access from the adjacent C road onto the site or will lead to a material increase in traffic to and from the site. An updated Travel Plan was submitted which was tailored to the new operation. It is noted that the use of public transport to serve the users of the site will be limited for safety reasons. This is accepted. There are no changes to the travel plan which make it unsound or unsustainable in the context of the proposed development.

Nutrient Neutrality

5.22 In March 2022, Natural England announced that The Teesmouth and Cleveland Coast Special Protection Area is being adversely affected by nutrient pollution. The effect of this is that the Local Planning Authority must not determine any application within the River Tees catchment area that may lead to an increase in the amount of nitrogen being discharged into the watercourse. The site in this case is within the catchment area.

5.23 Planning Practice Guidance sets out how a competent authority must decide if a plan or project proposal that affects a European site protected by the Conservation of Habitats and Species Regulations 2017 as amended (known as the Habitats Regulations) can go ahead. The first step in the process is deciding whether a Habitat Regulations Assessment is required. This requires the Local Planning Authority to carry out a screening process. The PPG outlines that this is a simple assessment to check if a proposal:

- is directly connected with or necessary for the conservation management of a European site
- risks having a significant effect on a European site on its own or in combination with other proposals

- 5.24 As already set out, Natural England have identified that anything within the River Tees catchment area is directly connected with the conservation of a European site. Hence the proposal in this case meets requirement one.
- 5.25 The second requirement is for the LPA to check if there's a risk or possibility of a significant effect based on the evidence. On this occasion, the site will provide overnight accommodation for infrequent overnight trips associated with the wider operation. This clearly comes with it the possibility of the development increasing the discharge of nutrient into the watercourse due to them potentially being on site for a longer period. However, one must also consider the fall-back option of the current extant permission, relative to this new proposal.
- 5.26 In contrast, the previous scheme would've offered respite care as a central part of the whole operation. It included rooms for 20 bed spaces which would've been operated on a regular basis as opposed to the 8 bed spaces now proposed, which will be used on an irregular basis.
- 5.27 The reduction in the number of bed spaces and the frequency in which these will be used as overnight accommodation within the newly proposed scheme leads one to the conclusion that relatively speaking there will actually be a net reduction in the amount of nitrogen discharged into the watercourse in comparison to the existing fall-back extant permission. As such, the result of the screening process in this instance is that a Habitat Regulations Assessment is not required.

Planning Balance

- 5.28 It is considered that the principle of development has been established through the earlier, extant permission. It is further considered that the amendments to the development do not result in any significant additional impact, taking into account both, policies contained within the Local Plan and matters pertaining to Nutrient Neutrality. It is considered that the proposed development will provide a much needed service to the District.

6.0 Recommendation

- 6.1 That subject to any outstanding consultations the application be **GRANTED** subject to the following condition(s)
1. The building shall not be used other than as a Use Class F1 day care, education, training centre for people with learning and other difficulties or a mixed Use Class F1 and C2 day care, education, training and respite care centre for people with learning and other difficulties.
 2. Notwithstanding the provision of any Town and Country Planning General Permitted or Special Development Order for the time being in force, the areas shown on the drawing marked 1881 00- 00- DR- 91- 01 Rev P4 for parking spaces, turning areas and access shall be kept available for their intended purposes at all times.

3. The Landscape Plan (drawing no. 1881 00- 00- DR- 91-02 Rev P2) received by Hambleton District Council on the 17.02.2022 shall be implemented fully. No part of the development shall be used after the end of the first planting and seeding seasons following the approval of the landscaping scheme, unless the approved scheme has been completed. Any trees or plants which within a period of 5 years of planting die, are removed, or become seriously damaged or diseased, shall be replaced with others of similar size and species.
4. The plan showing boundary treatments (drawing no. 01) received by Hambleton District Council on 17.12.2014 under application 14/01130/DIS05 shall be implemented fully prior to the development coming into use. All boundary walls, fences and other means of enclosure shall be retained and no part thereof shall be removed without the prior consent of the Local Planning Authority.
5. The Travel Plan received by Hambleton District Council on 07.02.2022 shall be implemented fully and the development thereafter shall be carried out and operated in accordance with the Travel Plan.
6. If contamination is found or suspected at any time during development that was not previously identified all works shall cease and the LPA shall be notified in writing immediately. No further works (other than approved remediation measures) shall be undertaken or the development occupied until an investigation and risk assessment carried out in accordance with CLR11, has been submitted to and approved in writing by the LPA. Where remediation is necessary a scheme for the remediation of any contamination shall be submitted and approved by the LPA before any further development occurs. No top soil or other growing medium shall be imported to the site unless a certificate has been received and retained by the developer for later inspection to confirm that it is free from contamination. The development shall not be occupied until the approved remediation scheme has been implemented and a verification report detailing all works carried out has been submitted to and approved in writing by the local planning authority.
7. The (Use Class F1) day care uses in the building shall not take place outside of the hours of 08.30hrs to 17.00hrs unless otherwise agreed in writing with the Local Planning Authority.
8. The operator of the respite care centre shall maintain a register of the names and permanent addresses of the users of the overnight respite care centre and shall make this available for inspection by officers of the Local Planning Authority.
9. The catering facilities shall at all times remain ancillary to the operation of Breckenbrough School as a day-care centre facility and shall not be used for any independent commercial purpose with the prior written consent of the Local Planning Authority.
10. The permission hereby granted shall not be undertaken other than in complete accordance with the drawings 1881 01- ZZ- DR- 20-02 Rev

P3, 1881 ZZ- ZZ- DR- 21-01 Rev P3, 1881 ZZ- ZZ- DR- 08-01 Rev P4 and 1881 00- 00- DR- 91-01 Rev P4 received by Hambleton District Council on 17.12.2021, 07.02.2022 & 17.02.2022 unless otherwise approved in writing by the Local Planning Authority.

11. Prior to the clearing of the site, a management plan outlining how a net gain for biodiversity can be achieved through the landscape scheme shall be submitted to the Local Planning Authority. This shall then be implemented fully.

The reasons are:-

1. To protect the amenities of adjacent residents and limiting the scope of the use to that set out in the application.
2. In accordance with Policy IC2 and to ensure these areas are kept available for their intended use in the interests of highway safety and the general amenity of the development.
3. In order to soften the visual appearance of the development and provide any appropriate screening to adjoining properties in accordance with Local Plan policies S5, E3 and E7.
4. To protect the amenity of the neighbouring residents and to ensure that the development is appropriate to the character and appearance of its surroundings in accordance with the Local Plan Policies E2 and S5.
5. In order, as far as practicable, to reduce the use of private transport to and from the site.
6. In order to take proper account of the risks to the health and safety of the local population, builders and the environment and address these risks.
7. To protect the amenities of adjacent residents due to noise associated with the use of and movements to and from the facility in accordance with the Local Plan policies E2.
8. To protect the amenities of adjacent residents by preventing the establishment of a freestanding C2 use in accordance with the Local Plan policies S1 and E2.
9. To protect the amenities of adjacent residents by preventing the establishment of an independent café in accordance with the Local Plan policies S1 and E2.
10. In order that the development is undertaken in a form that is appropriate to the character and appearance of its surroundings and in accordance with the Local Plan policies S1, E1 and E2.
11. To ensure the scheme leads to a biodiversity net gain, as per the requirements of policy E3.