



The countryside charity
North and East Yorkshire

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Branch Chair
Mrs Jan Arger

Authority: Hambleton District Council

Type of consultation: Planning Consultation

Full details of application/consultation: 22/02594/OUT – Outline application (all matters reserved) for mixed use development of commercial and light industrial complex comprising of 1nr 40,000sqft warehouse, 2nr 10,000 sqft warehouse and 4nr 3,500 sqft, along with drive thru coffee shop and 74 bed hotel with associated car parking and access.

At land: Land at York Road, Thirsk, North Yorkshire

Type of response: Objection

Date of Submission: 19th January 2023

All responses or queries relating to this submission should be directed to the Secretary for the Trustees at the contact details shown above on this frontispiece.

All CPRE North and East Yorkshire comments are prepared by the charity using professional planners whose research and recommendations form the basis of this response in line with national CPRE policies.

External planning consultant used in this response:



KVA Planning Consultancy
Katie Atkinson, BA (Hons), Dip TP, MA
MRTPI
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Comment

CPRE North and East Yorkshire ('CPRENEY') welcomes the opportunity to comment on the proposals for a mixed use development of commercial and light industrial warehouses, drive-thru coffee shop, hotel and car park with access at land at York Road, Thirsk. The site is adjacent to a recently approved site for a petrol station, drive thru restaurant and drive thru coffee shop with HGV parking etc. and is within the same overall ownership.

The proposals are subject to an outstanding request to the Planning Casework Unit in respect of a joint EIA screening direction request between CPRENEY and Friends of the Earth Thirsk.

CPRENEY strongly object to these proposals on the following grounds:

- The site is within the open countryside;
- The detrimental impact of the proposals on the character and appearance of the countryside;
- The detrimental impact on the Green Infrastructure Corridor;
- The detrimental ecological impacts of the proposal (including lack of BNG);
- The detrimental impact on the Thirsk and Sowerby Conservation Area; and
- The proposals are contrary to local and national planning policy.

Having had the opportunity to consider the details and submitted documents, CPRENEY fully endorse the comments and concerns raised by Friends of the Earth Thirsk, Historic England, Andy Wilson and many of the individual objectors who have submitted responses to the Council.

CPRENEY objected strongly to the previous application by the applicant on the adjacent site (20/01136/FUL) and at that time commissioned a Heritage Assessment of the site to be undertaken by a professional heritage consultant. Whilst that is acknowledged that that assessment is for the adjacent site, CPRENEY consider that many of the points raised in that assessment remain relevant to this proposal and indeed have been reiterated by both the County Council's Conservation Officer and Historic England. As such, the previous CPRENEY objection including that Heritage Assessment are appended to this response as points raised in both reports are pertinent to the determination of this proposal.

Furthermore, CPRENEY are concerned that by separating the site into two large planning parcels (the previous application which had a footprint of 3.1Ha alongside the current one subject to this proposal, which has a footprint of circa 2.65Ha) the applicant has potentially avoided EIA by effectively salami-slicing the site.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that an application should be determined in accordance with the development plan unless material planning considerations indicate otherwise. The planning system should contribute to achieving sustainable development. The National Planning Policy Framework ('NPPF') (2021) aims to deliver sustainable development through the implementation of its policies.

The Hambleton Local Plan was adopted (Feb 22) by Hambleton District Council ('the Council') following its independent examination.

The site is outside the development limits and as such is wholly within the open countryside for planning purposes. The Council chose not to allocate the site in the Local Plan, instead, allocated alternative employment sites, in close proximity to this site for employment uses at 'Sowerby Gateway' and an extension to an existing site north of Dalton Airfield Industrial Estate, which indicates that the Council have sufficient land to accommodate such a proposal. CPRENEY consider that the proposed buildings, particularly their scale and mass,

will be completely incongruous at this location in the open countryside and will have a detrimental impact on the open setting of the settlements of Thirsk and Sowerby and on the Conservation Area – which is less than 200m from the boundary of the site.

The Proposed Development would directly result in the loss of land designated as a Green Infrastructure corridor without offering any measures setting out how biodiversity will be materially enhanced as a result of the proposal. In fact, there does not appear to be any assessment of Biodiversity Net Gain ('BNG') submitted alongside the proposals. Furthermore, the applicant has not submitted any information in relation to the impact the proposals will have on the nearby SINC. It is understood that the proposal will require the permanent rerouting of a public right of way which currently exists through the site, however, it is considered that this will deter members of the public who reside at this side of the village from accessing the countryside easily which has been so vital for many as a result of the recent pandemic. Further, visitors to Cod Beck and the surrounding land may stop visiting the site due to the complete alteration of the character of this site and the associated noise and loss of tranquility.

It is noted that the applicant has not provided a noise impact assessment or indeed a light impact assessment with the submitted documents (both of which may be required via an EIA). Given the proximity to the settlement, the SINC and the Conservation Area, it is considered that both matters (light and noise) may result in pollution and a detrimental impact on as a result of the proposal which should be considered prior to the determination of the proposal. Hours of operation and activity on site may impact these matters further and should be explored at the outline stage given the scale of the proposal.

CPRENEY consider that the Council is unable to properly fulfil its statutory duties required under the Planning (Listed Buildings and Conservation Areas) Act 1990 in having special regard and attention to the desirability of preserving the features and settings of designated assets, or their character or appearance as the documents submitted by the Council do not adequately assess matters of significance in relation to known assets at the site and in the vicinity (as set out in the appendix to this report).

In conclusion, CPRENEY consider that the proposal is contrary to many local and national planning policies which indicate that the proposal should be refused. Should the Council be so minded as to approve this substantial site, CPRENEY consider that this will undermine the Councils recently approved planning policies causing a dangerous precedent to be set.

CPRENEY reserves the right to comment further should any additional information be submitted in support of the proposal.



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APPENDIX 1

Authority: Hambleton District Council

Type of consultation: Planning Application

Full details of application/consultation: 20/01136/FUL – Construction of petrol filling station (Sui Generis) with associated retail kiosk (Use Class A1), drive-thru restaurant (Use Class A3/A5) and drive-thru coffee shop (Use Class A1/A3) with associated car parking, service arrangements, landscaping and access

At land at: Adjacent to Oakfield, York Road, Thirsk, North Yorkshire

Type of response: Objection

Date of Submission: 24th July 2020

All responses or queries relating to this submission should be directed to the Secretary for the Trustees at the contact details shown above on this frontispiece.

Please note, CPRE has undergone a national rebrand and whilst the charity, ethos and motivation remains the same – CPRE will now be known as 'CPRE – The Countryside Charity'

All CPRE North Yorkshire comments are prepared by the charity using professional planners whose research and recommendations form the basis of this response in line with national CPRE policies.

External planning consultant used in this response:



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1 Voyage Ltd.
Beth Davies,
MA Hons, PgDip

Comment

CPRE North Yorkshire ('CPRENY') welcomes the opportunity to comment on this major application for a new petrol filling station, retail and restaurant use, car parking, landscaping and associated works at York Road, Thirsk.

CPRENY have several concerns relating to the proposed development at this location, however, their predominant grounds for objection are:

1. The site is unallocated within the Development Plan (adopted and emerging) and is located within the open countryside;
2. The detrimental impact on the important countryside setting of the settlements of Thirsk and Sowerby from the south;
3. The removal of 390m of hedgerow;
4. The detrimental impact caused by the proposals on the setting of the Thirsk and Sowerby Conservation Area;
5. There is no identified 'need' for the proposals, especially given the proximity of nearby filling stations;
6. The detrimental economic impact of the proposals on the market town of Thirsk;
7. The detrimental impact of the proposals on the amenity of residents at the adjacent permanent G&T park; and,
8. The proposals are thus contrary to both local and national planning policies.

Planning Analysis

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that an application should be determined in accordance with the development plan unless material planning considerations indicate otherwise. The planning system should contribute to achieving sustainable development. The National Planning Policy Framework ('NPPF') (2019) aims to deliver sustainable development through the implementation of its policies. Paragraph 11 states that for decision making this means:

- c) *'approving development proposals that accord with an up-to-date development plan without delay; or*
- d) *where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁷, granting permission unless:*
 - I. *The application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
 - II. *Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.'*

Paragraph 213 of the NPPF clarifies that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Weight should be given to them according to their consistency with the NPPF. (The closer the policies in the plan to the policies in the Framework, the greater the weight that should be attributed).

The Development Plan relevant to this application consists of three documents:

- Core Strategy DPD (April 2007);

- Development Policies DPD (February 2008); and,
- Allocations DPD (December 2010).

Hambleton District Council ('HDC') have recently submitted their emerging Local Plan to the Secretary of State for independent examination. Inspectors have been appointed although at the time of writing, hearings are not yet scheduled. Due to the late stage of plan preparation, weight can be attributed to the emerging policies in accordance with paragraph 48 of the revised NPPF.

Objection 1 -The site is unallocated within the Development Plan (adopted and emerging) and is located within the open countryside

The 3.1Ha site is located so the south of Thirsk, adjacent to the A170 and to the west of the A19 and is outside the settlement limits of the market town. It is undeveloped land in agricultural usage and thus a greenfield location. Neither the adopted Hambleton Development Plan documents (listed above) or the emerging Local Plan allocate the site for development.

The site was put forward as a potential allocation and assessed by the Council for both housing and employment land. The Council ultimately chose not to include it within the emerging Local Plan for either type of proposed development, despite having an existing access from the A170 roundabout, since the site *'is in a prominent location which does not relate well to the existing form and character of the settlement'* (HDC, Alternative Sites Consultation April 2017).

Alternative employment sites were allocated within the emerging Local Plan, in close proximity to this site for employment uses at 'Sowerby Gateway' TIS-3 and an extension to an existing site north of Dalton Airfield Industrial Estate – DAI-1 which further indicates that the Council have sufficient land to accommodate such a proposal. CPRENY consider that these sites would accommodate this level of development if it is proved to be required given the number of filling stations and drive-thru' restaurants already situated along the A168, the A170 and the A19.

Policy CP4 of the adopted Core Strategy sets out that Development in the open countryside *'will only be supported when an exceptional case can be made for the proposals in terms of Policies CP1 and CP2.'* CPRENY do not consider any exceptional case has been presented for a new service station at this location. Similarly, Emerging Local Plan Policy S5 sets out how the Council will seek to *'protect and enhance the intrinsic beauty, character and distinctiveness of the countryside as an asset'*. It goes on to set out that development in the countryside would only be supported if it is *'specifically supported by other policies in the development plan or national policy and would not harm the character, appearance and environmental qualities of the area in which it is located and protects the best and most versatile agricultural land'* (setting criteria as to how this is to be achieved). The supporting text to this policy also states that *'development in the countryside will be resisted unless it is expressly allowed by other policies of this local plan or any other part of the adopted development plan.'*

Emerging Policy EG7 sets out the circumstances in which employment development will be supported in locations outside the main built form of a defined settlement limit. None of the proposals fall into this category so cannot be considered in conformity with this policy.

Emerging Local Plan Policy EG2 explains the Council's approach to the protection and improvement of areas of land and buildings currently in employment use including those application for sui generis uses setting out that applications for such development will only be supported *if* it is in a key employment location – which this is not. It also provides that to be supported, the proposal must demonstrate that there is no other suitable land or buildings available.

The policies within the development plan (both adopted and emerging) do not allow for the development of this type in this location, therefore, the proposals cannot be in conformity with the plan and should be refused. Furthermore, the Council discounted this site from allocation within emerging Local Plan, expressly due to the detrimental impact which would occur because of its development.

Objection 2 - The detrimental impact on the important countryside setting of the settlements of Thirsk and Sowerby from the south;

As set out above, the Council's policy department discounted this site from allocation within the emerging policy document due to the impact any development of this location would have on the character of the settlement given its prominent location in the open countryside.

The HDC Settlement Character Study (2016) produced as part of the Local Plan evidence base, identifies this area as part of the 'area of high landscape and historic value' and identified historic strip fields – therefore, an indication of potential archaeological interest. These elements also evidenced in the Council's Alternative Sites Consultation (2017).

The site is within the North Yorkshire Green Infrastructure Corridor and located 500m from a Site of Importance for Nature Conservation (SINC).

Cumulatively, and when considering the policy context set out above for objection 1, CPRENY, consider the site wholly unsuitable for any type of development including the proposed usage.

Objection 3 - The removal of 390m of hedgerow

Having considered the documents submitted in support of the proposals, CPRENY is aware there appears to be a discrepancy between documents. The Preliminary Ecological Appraisal (PEA) sets out a series of impacts and recommendations. Within the impacts are noted the loss of approximately 260m of species rich hedgerow likely of parish value and loss of species poor hedgerow of local value – later qualified as being a further 130m of hedgerow, totalling a loss of 390m. Conversely, the Planting Strategy submitted with the application sets out that hedgerows will be enhanced by additional planting. The DAS submitted on behalf of the applicant, does not clarify hedgerow loss. CPRENY consider this should be clarified by the applicant prior to determination by the Council.

National Planning Policy is very clear that proposals should demonstrate a measurable net gain in biodiversity (paragraph 175d) and the emerging Environment Bill is expected to set out a requirement for all proposals to achieve a net gain of 10% in biodiversity, which is already being rolled out as good practice across the country. CPRE campaign for the retention of valuable hedgerows both nationally and locally, recognising their intrinsic roles providing both amenity value for local residents and visitors to the countryside alongside facilitating wildlife habitats.

The PEA also reports that a number of protected species (including Great Crested Newts, Water Vole, Badger, ground nesting birds) may be present or are capable of being present on the site or using it for foraging. Whilst the risk of the presence of these species has been considered as low by the applicant's ecologists, this should be borne in mind should an approval be awarded in terms of timing of ground works and development and CPRENY believe a Construction Environmental Management Plan alongside a Landscape and Ecological Management Plan should be prepared to the satisfaction of the Local Planning Authority prior to any development being undertaken on site.

Objection 4 - The detrimental impact caused by the proposals on the setting of the Thirsk and Sowerby Conservation Area

The application site is situated within 100m of the Thirsk and Sowerby Conservation Area and is thus considered to form part of its setting. CPRENY instructed a heritage specialist (1 Voyage Ltd) to consider Heritage Matters in relation to the proposal and the report is appended to this representation at Appendix 1.

Both CPRENY and 1 Voyage Ltd concur with the applicant that the proposals would not impact on any Listed Building, however, strongly disagree with the applicant in that the proposals, *will*, in our opinion, detrimentally impact upon the important setting of the Conservation Area. There is a clear inter-visibility between the application site and the Conservation Area. The site is clearly visible from the approach to Pudding Pie Hill and Blakey Bridge from both the A170 and from the north along the public footpath through The Flatts. From the A170 adjacent to the site, there are clear views across the fields to the Conservation Area and towards Holy Rood House and a row of Victorian terraced houses. The Conservation Area boundary is formed from a well-used path which follows Cod Beck and there is clear intervisibility with this part of the Conservation Area also. The greenfield, agricultural land contributes to the rural setting of the Conservation Area.

Please see Appendix 1 for the detailed reasoning behind this objection and sets out the historical importance of the application site to the growth of Thirsk and Sowerby and its integral role within the setting of the Conservation Area.

As such the proposals do not accord with Section 16 of the NPPF regarding the protection of the historic environment, nor the policies in the adopted Local Plan – namely DP10 and DP28, but also emerging Local Plan policy E5 which explains that proposals which ensure that elements that have been identified as making positive contributions to the historic interest of a conservation area and its setting are preserved and where appropriate enhanced, having regard to settlement character assessments and conservation area appraisals – will be supported. CPRENY therefore believe that the proposals should be refused in line with reasons set out in Appendix 1.

Objection 5 - There is no identified 'need' for the proposals, especially given the proximity of nearby filling stations;

The Planning Statement submitted in support of the application sets out that the proposed development is anchored by a BP and M&S Simply Food franchise and sets out that the location was chosen as an opportunity to capitalise on both passing trade from traffic along the A19 and York Road (A170) and from residents in Thirsk. However, there is no justification for the proposal in planning terms regarding an 'unmet need'.

The application site is located within 300m of a new fuel station on the A19 – accessible to both north and south bound traffic flows and within 1100m of the Gulf fuel station on Long Street within Thirsk. There also exist petrol stations at Tesco on Station Road and also BP and Shell filling stations alongside both a Starbucks and a Diner on the A168 near the site (accessible to traffic flowing in each direction without needing to cross the central strip).

It is acknowledged that the site benefits from good vehicular access, the fact remains that there are already several filling stations within and adjacent to the settlement of Thirsk. Whilst there is not an M&S store or a McDonalds within Thirsk, there are a number of supermarket and food stores including high street and independent coffee shops within the settlement. The one thing there is not at these facilities is HGV parking. However, as mentioned in the comment to Objection 1 in this report – the Council have allocated land at Sowerby Gateway and an extension to Dalton Industrial Estate where this activity could be incorporated

without the detrimental impact on the natural and historic environment and without impacting the other filling stations in the vicinity.

Objection 6 - The detrimental economic impact of the proposals on the market town of Thirsk

The Hambleton Development Plan identifies Thirsk as a principal service centre, and this is carried forward to the emerging Local Plan. Emerging Local Plan policy S3 states that the Council will seek to enhance the economy by maintaining and enhancing the range of existing employment land and enhance the visitor economy in totos whilst supporting the growth and diversification of the rural and agricultural economy. As such opportunities for development have been identified as 'allocations' in the emerging Local Plan and as stated before, this site was not deemed appropriate for any form of development by the Council's policy team in the submission draft Local Plan as set out above.

The Council has sought to improve the economy in Thirsk and currently offers 1hr free parking which is often taken up by both residents 'popping' into Thirsk for supplies and visitors choosing to break their journeys. Both the NPPF and the Local Plan (adopted and emerging) operate a town centre first policy. The applicant argues a sequential test should be applied due to a lack of alternative sites in the town centre, however, no justification for the proposals has been given and CPRENY do not consider the lack of a McDonalds an example of 'unmet need' given the amount of A3 businesses in the town. Should McDonalds wish to have a presence in Thirsk, it is considered that they could be located within the town centre.

Furthermore, to the south of the site and accessed off the A168 slip road is the Thirsk Garden Centre which has a large café and carparking area alongside the retail area. The coffee shop provides takeaway Costa Coffee and produce.

CPRENY are concerned that should this application be approved, the development would have a detrimental impact on existing businesses within the town, which are already faced with challenging recovery operations following the recent lockdown resulting from COVID-19.

The proposals are wholly inconsistent with emerging policy S5, EG3 alongside EG4, EG5 or EG7 for rural business diversification as discussed above.

Objection 7 -The detrimental impact of the proposals on the amenity of residents at the adjacent permanent traveller site

The north of the application site is bordered by an established permanent traveller site. Emerging Local Plan policy E2 states that 'All proposals will be expected to provide and maintain a high standard of amenity for all users and occupiers [...] and users of neighbouring land and buildings, in particular those in residential use.' Matters to be considered should include obtrusive lighting, air pollution, dust, odour, water pollution and noise amongst others.

The section of the site which borders the caravans will be utilised by the 352m² McDonalds restaurant – measuring 5.8m at its highest (the applicant has also indicated totem advertisement signage would be used – which we are assuming would be illuminated, although it does not form part of this application) and approximately 62 car parking bays. The McDonalds would operate as a Drive-thru and sit in restaurant. No opening times are proposed on the application form and neither the Planning Statement or DAS discusses this.

An odour abatement survey has been undertaken and suggestions made to reduce potential odour from the site – CPRENY has no comment to make on the suggested conditions and would consider these effective.

A Noise Impact Assessment has been undertaken and conditions suggested to reduce noise, however, it is very difficult to determine the exact impact without knowing potential proposed operations at specific time frames and whether the site is intended to be operating 24hrs. Furthermore, with the capacity for HGV parking and large refuelling station – CPRENY are concerned that vehicular noise during the evening but particularly between the hours of 22.00 – 07.00 will provide a nuisance to the adjacent traveller site. It is well documented that noise nuisance and sleep deprivation can severely impact health.

In a similar way, CPRENY would have concerns regarding the access of vehicles and HGVs into this part of the open countryside, adjacent to the traveller park during the evening and night time house – noise associated with vehicles slowing down, stopping, turning and engines starting can be considerable and noticeable during times when background noise levels are low.

CPRENY would hope the Council would be satisfied in terms of all matters which would impact on the amenity of the residents at the Traveller Park as a result of these proposals prior to determination.

Objection 8 -The proposals are thus contrary to both local and national planning policies

CPRENY have several concerns relating to the proposals for this development on unallocated land in the open countryside and in the setting of the Thirsk and Sowerby Conservation Area as set out above. HDC, fundamentally, considered this site inappropriate for any form of development and thus did not allocate it for development in the emerging Local Plan. Therefore, this site should not be awarded planning approval to the detriment of the Council's own evidence.

As such, CPRENY believe that the application proposals are contrary to several adopted Development Plan policies, emerging Local Plan policies and national guidance set out in the NPPF.

Conclusion

In conclusion, CPRENY believe that the proposal for development of this site should be refused for being contrary to both local and national planning policies in relation to the matters set out above.

Appendix 1, attached to this report sets out the detailed Heritage Matters raised following an assessment of the applicant's HIA, considered by 1 Voyage Ltd on behalf of CPRENY.

Should any further information be submitted in support of the proposals, CPRENY reserve the right to comment further.

Appendix 1

Heritage Matters – 1 Voyage Limited



1 VOYAGE LTD

20/01136/FUL

Land adjacent York Road, Thirsk

Heritage Matters

Beth Davies
1voyageltd@gmail.com

1Voyage Ltd
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15.7.2020

For the attention of the CPRENY

Comments on Application 20/01136/FUL with regards Heritage Matters

The application is accompanied by a Heritage Impact Assessment (HIA) which has been funded by the applicant and which is therefore unlikely to be wholly objective. This HIA unsurprisingly concludes that no harm will be caused to the setting, appreciation or significance of any heritage assets and argues that the application therefore satisfies all national and local legislation and policy regarding the conservation of heritage assets. I disagree with this conclusion.

I concur with the HIA that there will be no direct impact on any designated heritage assets as a result of this application. There will however be an impact on the setting of designated heritage assets including Thirsk and Sowerby Conservation Area, the Grade II listed Blakey Bridge and Pudding Pie Hill bowl barrow which is a Scheduled Monument.

The NPPF defines setting as *'the surroundings in which a heritage asset can be experienced'*. As there is clear inter-visibility between the application site and the Conservation Area, the application site forms part of setting of the Conservation Area and the heritage assets it contains. In the approach to Pudding Pie Hill and Blakey Bridge from both the A170 and from the north along the public footpath through The Flatts, the application site can also be seen. It therefore informs part of the psychological experience of arrival at these heritage assets and therefore forms part of their setting. From the section of the A170 which runs past the application site, there are clear views across open fields towards the Conservation Area (Fig 1). These views have not been acknowledged in the applicant's HIA, and Fig 3.2, which is the only photograph included of the site within the HIA, has been taken at an acute angle to avoid inclusion of these views.

From the application site, and the A170 beyond, the rooflines and upper sections of masonry of Holy Rood House and a terrace of Victorian cottages (Figs 2, 3 and 4) can be seen projecting above the trees. These are all historic buildings which contribute to the architectural and historic character of

the Conservation Area and which are identified as variably 'key unlisted buildings and buildings of local interest' within the Conservation Area Appraisal. The Conservation Area boundary is formed from a well-used footpath which follows the course of the Cod Beck and there is clear inter-visibility with this part of the Conservation Area from the application site. The greenfield, agricultural land, of which the application site forms a part, contributes positively to the rural setting of the Conservation Area. The views of the historic buildings appearing from the trees, set beyond the green foil of pastoral and arable fields, aids our understanding of the Conservation Area as a rural settlement with strong agricultural links.



Fig 1 Across application site to historic buildings within Conservation Area (boundary is tree line)



Fig 2 Holy Rood House and Victorian terrace within CA with application site in foreground



Fig 3 Holy Rood House, Sowerby Road



Fig 4 Historic terrace on Sowerby Road

In views east from the Conservation Area, the application site contributes to the rural outlook (Fig 5). The applicant's HIA agrees, stating at 4.4.2 that, '***The enclosed fields and hedgerows form the setting of the conservation area east of Cod Beck...***' but tries to argue that, '*Due to the tree coverage around Cod Beck, the intervening hedgerows and the flat topography limiting inter-visibility, the site does not make a particular contribution to the setting of the conservation area.*' Whilst these trees may limit inter-visibility with the historic core of the settlement, there are clear views towards the application site from the footpath to the east of Cod Beck. The CAA identifies that the green tongue around Cod Beck is an historic and integral part of the Conservation Area. It is therefore irrelevant whether there is built form here. What is pertinent is that the application site can be seen from the Conservation Area and is located in what the applicant has identified as being the Conservation Area's setting. The A170 itself is not visible and although moving vehicles can be seen, which create the awareness of a road, the view is of open fields, backed by trees with the hills of the North York Moors beyond. Where trees do not effectively screen the urban development of

the industrial site and pylons the resultant view undermines the rural setting of the Conservation Area. This demonstrates that further harm would be caused from additional urban encroachment, activity and light pollution from the proposed development.



Fig 5 View towards application site from Conservation Area boundary with hill fort in distance

A Conservation Area Appraisal (CAA) for Thirsk and Sowerby Conservation Area was adopted by Hambleton District Council in December 2010. At 5.4.3, this identifies that the land surrounding the Conservation Area is ‘particularly flat’ which reinforces the argument that the proposed, man-made bunds would be inappropriate additions within the landscape setting of the Conservation Area. Most importantly it states at 5.2.67 that, ***Sowerby Flatts and the fields to the south have two extremely important roles in the Conservation Area, firstly by maintaining the separation between Sowerby and Thirsk and secondly by allowing the two settlements to be viewed from a distance.*** The proposed development would constitute urban encroachment from Thirsk industrial estate towards Sowerby which would undermine this setting. It would also block distant views of Sowerby from the east.

The CAA divides the Conservation Area into a number of character areas and Blakey Bridge and Pudding Pie Hill both fall within Character Area 8: The Flatts. It clarifies, however, at 5.2.2, that ***‘Although these areas are described individually they are intrinsically linked and dependent for much of their character on the relationship to surrounding landmarks and wider views.’*** The HIA tries to argue that the modern development to the south of the bypass and the bypass itself have urbanised

the setting of the heritage assets to the south-east and this is used to justify the proposed development and urban encroachment that it represents. The CAA is clear however at 5.1.3 that from the south, *'the bypass set on its embankment screens the village completely'*. Accordingly, the bypass embankment also screens the modern development to the south and as such the HIA's argument that this development legitimises the proposal is unsound.

In Map 2 South, the CAA identifies a Key View north-west from the summit of Pudding Pie Hill. The view north-east towards the application site and back from the site towards Pudding Pie Hill, is currently interrupted by a small number of, what appear to be self-setting, trees on its eastern slope. It is likely, however, that during the six months of the year when the trees are not in leaf that views would be afforded of the application site. The HIA agrees with this, stating at 4.11 that *'there may be some glimpsed visibility between the two'*. Historic England's guidance advises that views can change over time and it is certain that at some point in the future these trees will either die or be removed. It is considered unlikely that they will be replaced as the hill is a Scheduled Monument and tree roots can cause damage to archaeology. The Monument is also clearly much visited and there may well be local opposition to future tree planting which would interrupt opened views towards Sutton Bank. As such, there is strong potential for the view from Pudding Pie Hill towards the application site to be completely unobstructed in years to come and equally for views towards the Monument from the application site and the A170 beyond to be opened up.

At present, views afforded to the north-east (during winter months and if/when the trees were removed) would enhance the views from the Scheduled Monument contributing to its Aesthetic Fortuitous Value. The HIA concurs stating that, *'The barrow remains in an agricultural setting'*. It would also help aid our understanding of the dominance of the mound over the local landscape and the status afforded to the burial mound by its contemporaries thus enhancing its Historical Illustrative Value and Aesthetic Design Value. The proposed development with its substantial plan form, earth bunds, structures, light pollution and urban encroachment would all undermine the status of the Monument and the legibility of the original function of the Monument and its connection with its wider landscape. As such the proposal would undermine its Aesthetic Design, Aesthetic Fortuitous and Historical Illustrative Value thereby eroding its heritage significance. The HIA highlights the harm caused to the setting by the construction of the A168 stating that *'The setting of the barrow was significantly altered with the creation of the A168'*. By recognising that the barrow remains in an 'agricultural setting' and that modern, urban infrastructure and development has undermined this agricultural setting, the applicant's HIA inadvertently identifies that the proposed development will further harm the agricultural setting of Pudding Pie Hill.

The CAA states at 6.4.1 that the reason that the Conservation Area boundary was not extended to include further agricultural land beyond the Flatts was that, *'any extension would include ... unnecessary agricultural land that is protected from development through other planning policies'*. The exclusion of the application site from the Conservation Area does not therefore infer that it does not contribute towards the setting of the settlement or any of the heritage assets contained therein. It adds at 6.4.2 that, *'the southern and eastern boundaries are well defined by agricultural land and the bypass'*. This indicates that the author of the CAA considered the agricultural land to the east of Thirsk, of which the application site forms a part, to form the boundary to and therefore the setting of the Conservation Area. This statement also clearly demonstrates that the proposed urban development would be at odds with, and therefore would undermine, the agricultural, landscape setting to the south-east of the Conservation Area.

Relevant Appeals

It is clear that the application site features in views towards and from the heritage assets discussed. However, the High Court, in *Steer v Secretary of State for Communities and Local Government & Ors [2017]*, clarified that the setting of a heritage asset is not solely established by the visual and physical connection of the surroundings with the heritage asset. Historic, social and economic connections will also be relevant considerations. Similarly, in the case of *Catesby Estates Ltd and SSCLG v Steer [2018]* the Court of Appeal confirmed that the setting of heritage assets "is not necessarily confined to visual or physical impact" but that other considerations are potentially relevant. These considerations would include light pollution, noise, smells and the psychological experience of a heritage asset.

In the *Catesby v. Steer* case, the Court of Appeal identified three general points which apply in setting cases:

- Section 66(1) of the Listed Buildings Act 1990 requires the decision-maker to understand what the setting of the asset is – even if its extent is difficult or impossible to delineate exactly – and whether the site of the proposed development will be within it or in some way related to it.
- Although the exercise is not purely subjective, there is not (and could not be) a single approach to identifying the extent of a heritage asset's setting. The decision-maker must apply planning judgment, having regard to relevant policy, guidance and advice. It is **necessary to concentrate on the 'surroundings in which the heritage asset is experienced', keeping in mind that those**

"surroundings" may change over time, and also that the way in which a heritage asset can be "experienced" is not limited only to the sense of sight.

- The effect of a particular development on the setting of a heritage asset – where, when and how that effect is likely to be perceived, whether or not it will preserve the setting of the listed building, whether, under government policy in the NPPF, it will harm the "significance" of the listed building as a heritage asset, and how it bears on the planning balance – are all matters for the planning decision-maker" and **subject to the requirement to give considerable importance and weight to the desirability of preserving the setting of a heritage asset.**

The impact of the proposal on the historic, associative, psychological and sensory appreciation of the heritage assets all therefore need to be considered with the presumption in favour of preserving the setting of heritage assets.

The HIA states that site is formed from *'relatively flat, agricultural land used for grazing and arable farming.'* This enclosed, agricultural landscape is an historic one which is evident in the 1853 map at Fig 6. The erosion of this historic field system to facilitate the proposed development and the introduction of substantial, man-made, earth bunds to try and screen the development would fail to conserve the flat, historic landscape pattern and undermine views out of the Conservation Area over the historic, agricultural landscape. It would also undermine the associative relationship between the rural settlements of Thirsk and Sowerby with their agricultural setting. The increased activity, noise and light pollution associated with the site would undermine the tranquil, rural setting and the psychological and sensory appreciation of the heritage assets especially in the approach along the Cod Beck footpath.

The HIA describes the local landscape, stating, *'the site is within an area of countryside, the character of which is defined by enclosed fields, tall hedges and interspersed trees and the Cod Beck watercourse lined with greenery.'* It adds at 4.2 that, *'the wider setting of the conservation area is one of agricultural character, with the historical enclosed field pattern evident'*. Through these very statements the HIA admits that the proposed development is not in keeping with the historic landscape context. The HIA tries to argue that, *'this rural, agricultural character is interrupted by the A168'* implying that the presence of the A168 somehow nullifies the contribution that the historic fields to its north make towards the setting of the heritage assets. It is true that the A168 represents a modern, urban intrusion within the landscape. The reality, however, is that the A170, which is an historic route visible in the 1853 map at Fig 6, and the A168 now combine to act as a boundary to this historic landscape to the east and south of the heritage assets. Development has occurred along

the east of the A170 but, apart from the odd small-scale dwelling and a small, tightly formed cluster of development centred on the roundabout, the south side of the A170 has remained largely undeveloped and rural in character with the A170 acting as a boundary between the rural setting of Sowerby and Thirsk and the light industrial estate beyond. In the approach to Thirsk Conservation Area when travelling north along the A170, the industrial estate is well screened, conserving the rural character of the setting of the Conservation Area of which the application site forms a part (Fig 7).



Fig 6 Copyright National Library of Scotland: OS Six inch England and Wales Series 1842-1952 (surveyed 1853)



Fig 7 View from south: Thirsk industrial estate is well hidden and the character is rural transition

Conclusion

Historic England's Guidance, '*Historic Environment Good Practice Advice in Planning, Note 3– The Setting of Heritage*' highlights a number of types of, '*Views which contribute more to understanding the significance of a heritage asset*'. Of these views the application site contributes to:

b. those where town- or village-scape reveals views with unplanned or unintended beauty (views out towards the application site and back from the application site towards the Conservation Area where the highly attractive landscape of flat, historic fields enhance the setting of the Conservation Area and reveal views of historic buildings within the historic core).

c. those with historical associations, including viewing points and the topography of battlefields (views to and from the top of Pudding Bowl Hill which enhance an understanding of its status and function).

In addition to these views, the application site forms part of the historic, landscape setting to the heritage assets discussed and has associative value as part of the agricultural landscape in which these assets developed. It contributes to both a psychological awareness that the heritage assets are rural assets and a sensory appreciation of these assets, especially in the approach along the Cod Beck footpath.

The following tests are used by the HIA to assess whether the proposed development is acceptable. Whilst the HIA has found that each test is met, I disagree and have provided my own responses below.

1 Does the proposal conserve and, where appropriate, enhance the setting, significance and special architectural or historic interest of the affected heritage assets? (s.66(1) of the 1990 Act; Paragraphs 192 and 193, NPPF; CS DPD Policy CP16; DPD Policies DP28, DP29 and DP30)

No-it erodes the historic, enclosed field system which forms part of the rural setting of the Conservation Area, Pudding Pie Hill and Blakey Bridge. It will undermine the rural experience and therefore our psychological understanding of these heritage assets in the approach to these assets via the A170 and the Cod Beck footpath by blocking views towards and from heritage assets across historic fields. Light pollution, increased activity, urban encroachment and a psychological awareness of the development's proximity will all further erode our psychological and sensory experience of these heritage assets. The impact of the development should not be considered purely as an impact on views.

2 Does the proposal preserve or enhance the character and appearance of the conservation area? (DPD Policy DP28)

No-it undermines its rural and historic character by eroding part of the historic, enclosed field system which forms part of its setting and blocks views of historic buildings within the Conservation Area.

3 Does the proposal including its built form and landscaping respect the local context, character and distinctiveness, including its landscape, built form and historic environment? (CS DPD Policy CP17; IPGN paras. 2-4; DPD Policies DP32 and DP33).

No. The large, modern built forms are at odds with the historic forms of the Conservation Area. The development does not respect and conserve the historic, linear field pattern but combines and bisects fields to create an amorphous site of modern form. The erosion of the historic, enclosed field pattern will undermine local context and the introduction of substantial, man-made bunds will further undermine the characteristically flat landscape. As a result, the historic landscape setting of the heritage assets will be undermined.

4 Does the design of the proposal neither have a detrimental effect on the immediate environment, nor on any important long-distance views? (DPD Policies DP30 and DP32)

No-the proposal will block views towards and away from the Conservation Area and Pudding Pie Hill and will be seen in the view from Sutton Bank in the North York Moors National Park (a protected landscape) which is dubbed as 'The Finest View in England'.

In summary I conclude that the application is contrary to legislation and policy relating to the conservation of heritage assets and would therefore recommend refusal.

I hope these comments are of use. If you would like to discuss them in any more detail please do not hesitate to contact me.

Kind regards,

Beth

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