



**Report Reference Number 2022/1028/COU**

**To: Planning Committee**  
**Date: 9<sup>th</sup> November 2022**  
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**Lead Officer: Hannah Blackburn (Planning Development Manager)**

APPLICATION NUMBER:	2022/1028/COU	PARISH:	Biggin Parish Council
APPLICANT:	Mr & Mrs Earle	VALID DATE: EXPIRY DATE:	2nd September 2022 28th October 2022
PROPOSAL:	Change of use of grassland to domestic garden in connection with Oxmoor Lodge (retrospective)		
LOCATION:	Oxmoor Lodge Meadows Edge Biggin Leeds North Yorkshire LS25 6GL		
RECOMMENDATION:	REFUSE		

This application has been brought before Planning Committee as the Ward Councillor for the area where the proposal lies has requested it to be heard by the Committee in writing within 21 days of the publication of the application in the weekly list. The following reasons for Committee consideration were noted, which are considered to be valid material planning reasons:

1. The proposals are similar to other applications which the Council has approved recently, such as the application in North Duffield which was approved by Committee in December 2021 (ref 2020/1391/FUL).
2. It is important to provide reasonable private amenity space with properties, provided that the proposal would not have any significant adverse impact on the residential amenities of the occupiers of any neighbouring residential properties and there is no significant adverse effect on the character and appearance of the surrounding countryside. Having assessed the proposals, I consider that these proposals meet this test and are therefore compliant with Policy ENV1 (1) and H15 of the Selby District Local Plan and the NPPF.

## **1. INTRODUCTION AND BACKGROUND**

### **Site and Context**

- 1.1 The application site is located to the south of the edge of the Biggin village which is identified as a Secondary Village in the Selby District Core Strategy. The application site is on agricultural land to the south east of the detached two-storey dwelling and its curtilage as approved under application 2015/1004/OUT and a subsequent approval of reserved matters under reference 2017/0129/REM. This application is a resubmission of a previously refused similar application 2022/0042/COU which sought to regularise the use of this agricultural land as private garden area.
- 1.2 The site forms a part of larger agricultural parcel of land lying within the ownership of the applicant and there is agricultural land to the south west and north east of the site with the host property with its curtilage to the north west of it.
- 1.3 The parcels of agricultural land to the south west and north of the site were subject to similar planning applications for the change of use of grassland to domestic garden under references 2022/0040/COU (Fentune House) and 2021/1453/FUL (Appleton House) respectively which were also refused in March 2022. The parcel of land to the south west to the rear of Oxmoor Lodge is currently also subject to a similar resubmission reference 2022/1027/COU for the change of use of grassland to domestic garden and is pending consideration, but is to be also considered by this Committee.
- 1.4 It is noted that there are no detailed plans provided to show the proposed boundary treatments and given that the development already occurred without planning permission, the boundary treatments as proposed have therefore been identified by the Case Officer during site visit as retrospectively erected low height post and rail timber fence with a hedge planted along its south west and north east boundaries and the south east boundary is left open and connected with the agricultural land beyond the site. The application has therefore been assessed on this basis.
- 1.5 Case Officer noted from a site visit that various domestic features are present within the application site such as small storage building, children's play equipment, a bench and a summerhouse. However, these features do not form part of this application and are therefore not considered further in this report.

### **The Proposal**

- 1.6 The application seeks planning permission retrospectively for the change of use of grassland to domestic garden in connection with a dwelling known as Oxmoor Lodge and is a resubmission of a previously refused application 2022/0042/COU.
- 1.7 It is noted that no changes have been made to the proposals since previous refusal, however the Planning Statement accompanying the application has been updated setting out the arguments in support of the application.

### **Relevant Planning History**

- 1.8 The following historical application is considered to be relevant to the determination of this application.

- Application Number 2015/1004/OUT (8/61/27M/PA) outline application for the erection of 5 No. dwellings including details of access (all other matters reserved) on land at Croft Farm, Oxmoor Lane, Biggin was approved in December 2015
- Application 2017/0129/REM (8/61/27Q/PA) - reserved matters application for approval of details including appearance, landscaping, site layout and scale for 5 No detached dwellings including associated garaging and access at Croft Farm, Oxmoor Lane, Biggin was approved in April 2017
- Application 2022/0042/COU for the change of use of grassland to domestic garden (Retrospective) at Oxmoor Lodge, Meadows Edge, Biggin was refused in March 2022 for the following reasons:
  1. *The development, which has already occurred, due to the nature, scale, design and location, is not considered to improve the economic, social and environmental conditions in this area and the change of use of agricultural land to garden land doesn't fall within the exceptions to the forms of development allowed in the open countryside set out in Policy SP2 of the SDCS. As such, the proposal is contrary to Policy SP1 and SP2 of the SDCS and the NPPF.*
  2. *The development, which has already occurred, is considered to result in a visually harmful urban spur projecting into the wider open field at the southern edge of this small rural settlement adversely altering its rural character and the formerly approved clearly defined edge to the village. The projection of urban use into the open countryside has a suburbanising effect on the natural landscape and would unacceptably alter the character and appearance of the open countryside and the setting of the village and it therefore conflicts with the aims of Policies ENV1 and H15 of the SDLP, Policy SP19 of the SDCS and with the NPPF.*

Sites nearby:

- Application 2022/0040/COU for the change of use of grassland to domestic garden (retrospective) at Fentune House, Meadows Edge, Biggin was refused in March 2022.
- Application Number 2022/0039/FUL for the erection of a single storey storage building required for maintenance of paddock/grassland land (retrospective) at Fentune House, Meadows Edge, Biggin was refused in March 2022.
- Application 2021/1453/FUL for the erection of a green house, summerhouse with a small gravel area to the front and a lean-to shed and change of use of land to residential curtilage (retrospective) was refused in March 2022.
- Application 2022/1027/COU for the change of use of grassland to domestic garden in connection with Fentune House (retrospective) at Fentune House, Meadows Edge, Biggin is currently pending consideration but is to be also considered by this Committee.

## **2. CONSULTATION AND PUBLICITY**

- 2.1 **Parish Council** – No objections as the site cannot be seen from the roadside or by neighbours. All immediate neighbours are making the same application for change of use to domestic garden and therefore presume they support each other's applications. The Council therefore support all the applications as detailed above as they have no impact on residential amenity or on the green belt surrounding the area.

- 2.2 **NYCC Highways** – Confirmed that no objections to the proposed change of use.
- 2.3 **Yorkshire Water Services Ltd** – No response was received during a statutory consultation period.
- 2.4 **Selby Area Internal Drainage Board** – In this instance the Selby Ara IDB have no comment.
- 2.5 **County Ecologist** – This is a retrospective application, and we have no way of knowing whether any there was any significant ecological interest attached to the site previously, although the 2007 Google Earth images suggest permanent pasture with seasonally wet areas possibly associated with ridge-and-furrow. Also note that a periodically wet area had been converted to a pond by 2020 and this should be retained.
- 2.6 **Public consultations** – site notices were posted on the 20<sup>th</sup> September 2022. No representations have been received as a result of this advertisement.

### 3. **SITE CONSTRAINTS**

#### **Constraints**

- 3.1 The site is located outside the defined development limits of the Secondary Village of Biggin and is therefore within the open countryside for planning purposes.

### 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 various documents including the Selby District Core Strategy Local Plan (adopted 22nd October 2013), 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, the Minerals and Waste Joint Plan (adopted 16 February 2022), and the adopted neighbourhood plans neither of which relate to the site.
- 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 took place early in 2020. Consultation on preferred options and additional sites took place in early 2021. The Pre-submission Publication Local Plan is currently subject to a period of formal consultation prior to submission to the Secretary of State for Examination. Given the stage of the emerging Local Plan, the policies contained within it are attributed no weight and as such are not listed in this report.
- 4.4 The National Planning Policy Framework (July 2021) (NPPF) replaced previous iterations of the NPPF. 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 2021 NPPF and, in particular, the sections listed below.

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

*“219. ....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 2013 (SDCS)**

- 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
- SP19 - Design Quality

### **Selby District Local Plan 2005 (SDLP)**

- 4.7 The relevant Selby District Local Plan Policies are:

- ENV1 - Control of Development
- H15 - Extensions to Curtilages in the Countryside

### **National Planning Policy Framework (NPPF)**

- 4.8 The relevant sections are:

- Section 2 – Achieving sustainable development
- Section 4 – Decision-making
- Section 12 – Achieving well-designed places
- Section 15 – Conserving and enhancing the natural environment

### **Minerals and Waste Joint Plan 2022 (MWJP)**

- 4.9 The relevant Minerals and Waste Joint Plan Policies are:

- S01 – Safeguarded Surface mineral resources
- S02 – Developments proposed within Safeguarded Surface Mineral Resource areas
- S06 – Minerals ancillary infrastructure safeguarding

## **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 open countryside  
Impact on residential amenities  
Ecology issues  
Minerals and Waste

### **Principle of the development**

- 5.2 Policy SP1 of the SDCS 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 It is argued in the submission that the land in question is redundant and isolated and has no economic value. However, the proposed development, due to the nature, scale, design and location, is only considered to provide private benefit to the occupiers of the associated residential property and the factors outlined in the Planning Statement and noted above are not considered to demonstrate that it would improve the economic, social and environmental conditions in this area.
- 5.4 SDCS Policy SP2(c) states that "Development in the countryside (outside Development Limits) will be limited to the replacement or extension of existing buildings, the reuse of buildings preferably for employment purposes, and well-designed new buildings of an appropriate scale, which would contribute towards and improve the local economy and where it will enhance or maintain the vitality of rural communities, in accordance with Policy SP13; or meet rural affordable housing need (which meets the provisions of Policy SP10), or other special circumstances." Policies SP10 and SP13 relate to housing and economic growth respectively. In light of the above policy context, Policy SP2A(c) is silent on changes of use of land.
- 5.5 Saved Policy H15 of the SDLP allows garden extensions in principle subject to not causing a significant adverse effect on the character and appearance of the surrounding countryside and subject to the proposed means of enclosure being appropriate to the adjoining countryside. Those issues are considered in the next section of this report. Although Selby District Local Plan precedes the NPPF, it should be afforded substantial weight as it is consistent with the NPPF, particularly paragraphs 130 & 174. Paragraph 130 states that planning decisions should, inter alia, ensure that developments add to the overall quality of the area and are sympathetic to local character and history. Paragraph 174 requires that planning decisions contribute to and enhance the natural and local environment., recognising the intrinsic character and beauty of the countryside.
- 5.6 Therefore, taken as a whole Policies SP1 and H15 of the Development Plan do not exclude the extension of curtilages outside development limits provided it would be a sustainable form of development which improves the environmental conditions in the area, and which meets the requirements of Policy H15 in terms of the impact on the surrounding countryside in terms of the means of enclosure.

### **Design and impact on the character and appearance of the open countryside**

- 5.7 The property is a detached two storey dwelling in a small ground of 5 residential properties further to the south of the main Biggin village envelope. The property and the land which is subject to this application are set outside the defined development limits of Biggin as defined by the SDLP and are therefore within the open countryside.

Boundary treatments consist of those as described in the introduction section. The development is therefore subject to policies H15 and ENV1 of the SDLP and Policy SP19 of the SDCS and advice contained within the NPPF.

- 5.8 SDCS Policy SP19 requires that “Proposals for all new development will be expected to contribute to enhancing community cohesion by achieving high quality design and have regard to the local character, identity and context of its surroundings including historic townscapes, settlement patterns and the open countryside. Both residential and non-residential development should meet the following key requirements:  
A) Make the best, most efficient use of land without compromising local distinctiveness, character and form;  
B) Positively contribute to an area’s identity and heritage in terms of scale, density and layout.
- 5.9 SDLP Policy ENV1 (1) requires development to take account of the effect upon the character of the area, with ENV1 (4) requiring the standard of layout, design and materials to respect the site and its surroundings. SDLP Policy ENV1 is broadly consistent with the aims of the NPPF and should therefore be given significant weight.
- 5.10 Policy H15 of the SDLP specifies that proposals to extend the curtilage of properties outside defined Development Limits will only be permitted if there is no significant adverse effect on the character and appearance of the surrounding countryside, and the proposed means of enclosure would be appropriate to the adjoining countryside.
- 5.11 Paragraph 130 of the NPPF states that planning decisions should ensure that developments, amongst other things, a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development; b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping; and c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities).
- 5.12 Paragraph 174 of the NPPF states that planning policies and decisions should contribute to and enhance the natural and local environment by, amongst other things a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan) and b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland.
- 5.13 It is noted that other dwellings within this cul-de-sac have also extended curtilage without planning permission. Those were considered under applications 2022/0040/COU & 2021/1453/FUL which were refused. One of the above mentioned properties has resubmitted application which is currently being considered by the Council under reference 2022/1027/COU. However, in determining this application, no favourable weight should be attributed to the fact that this development which is subject to this application and other unauthorised developments have occurred. Moreover, this application must also be assessed as if it had not occurred already.
- 5.14 The application site and other 4 properties located at this cul-de-sac form a small group of dwellings with clearly defined curtilages with the garden areas as originally approved being of a reasonable size and commensurate with the size of the

properties. These dwellings were approved due to the Council not having a 5 year housing land supply at the time and the southern boundary of this small settlement has already been significantly altered. The originally approved garden boundaries of these properties were post and rail fencing along all boundaries. There is agricultural land adjacent to the south east of the property known as Oxmoor Lodge, part of which is subject to this application. The application is for the change of use of agricultural land to domestic garden projecting into open countryside by approximately 29 metres.

- 5.15 The agricultural land to the south east of the site did not form part of the original application 2015/1004/OUT and was indicated on the layout plans as pasture accessed by the track located to the west of the group of these dwellings.
- 5.16 The rear garden boundaries of properties on Meadows Edge as approved under application 2015/1004/OUT form a consistent clearly defined boundary edge between the built development at this cul-de-sac and an open field of a substantial size wrapping around the eastern corner of this group of dwellings with a wider open countryside to the east, south and west. Following a site visit it is noted that this field have been divided and enclosed by fencing into separate parcels of land to the rear of each of the 5 dwellings.
- 5.17 It is argued in the Planning Statement that the proposals would not visually harm the area. However, in any event the argument that extended garden area would be out of public view would not be compelling in principle, as it could be repeated too often to the overall detriment of the character and appearance of the countryside.
- 5.18 It is also argued in the Planning Statement that following the outline approval 2015/1004/OUT and a subsequent reserved matters approval 2017/0129/REM for the dwellings, the land was redundant and had waste materials across it which the applicants have removed which has improved the appearance of the area. However, this land which extended beyond the approved residential curtilages did not form part of the application and was indicated as pasture land with a separate access. As such, this matter is therefore not given any weight.
- 5.19 In terms of boundary treatments, it is noted that a post and rail fencing was erected along the south west and north east boundaries of the land owned by the applicant. The south east boundary was left open, without any formal boundary treatments and there is no distinction between the proposed garden area and agricultural land beyond it thus creating pressure for future garden extension.
- 5.20 The edge of this small rural settlement has already been adversely affected by the housing development beyond its limits approved under application 2015/1004/OUT however, as approved, it currently clearly defines the southern boundary to this very small rural settlement. The substantial ad hoc projections of urban character in the form of residential gardens further encroaching into the into the open countryside are therefore considered to adversely impact on the clearly agreed boundary edge. Furthermore, given the character of this very small settlement surrounded by open countryside, the significant scale and extent of the urban encroachment amplifies the harm.
- 5.21 In addition to the above, the extension of a manicured domestic garden beyond the original curtilage into agricultural land forms a detrimental suburban incursion into an open rural character. This, combined with delineation of the currently clearly defined boundary of the 5 properties at this location is considered to create a discordant feature which is out of keeping with the prevalent characteristics of the area. The



proposal is therefore considered to be a sporadic domestic interruption into agricultural land causing detrimental harm to the intrinsic character of this rural landscape.

- 5.22 The reference to previously approved planning applications for garden extensions in North Duffield (ref 2020/1391/FUL) and Newton Kyme (2022/0383/COU) made by the Ward Councillor in their call in request and by the Agent in the Planning Statement are noted. However, 2020/1391/FUL was a modest linear extension to previously very small gardens of a number of residential properties forming a clear edge of the settlement boundary and projecting by approximately 6 metres into open countryside which was not considered to significantly alter the settlement boundary. Also, 2022/0383/COU was a very small garden extension not projecting further into the countryside than the already fenced off estate area. These are therefore not considered to be comparable to the current proposal for an ad hoc substantial garden extension where the settlement boundaries have already been significantly affected by the residential development. Furthermore, the presence of apparently similar proposals within the district is not, in itself, a reason to allow more inappropriate and unacceptable development, and this application needs to be considered on its own planning merits.
- 5.23 Having taken into account all of the above, the development, which has already occurred, is considered to result in the harmful spur of suburban development beyond the original curtilage of the dwelling into the wider open field at the southern edge of this small rural settlement adversely altering its rural character and the formerly clearly defined edge to the village. The projection of urban use into the open countryside has a suburbanising effect on the natural landscape and unacceptably alters the character and appearance of the open countryside and the setting of the village. The proposal therefore conflicts with the aims of Policies ENV1 and H15 of the SDLP and Policy SP19 of the SDCS.

### **Impact on Residential Amenities**

- 5.24 Relevant policies in respect of the effect upon the amenity of adjoining occupiers include Policy ENV1 (1) of the SDLP. Significant weight should be attached to this policy as it is broadly consistent with the aims of the NPPF to ensure that a good standard of amenity is achieved.
- 5.25 The key considerations in respect of residential amenity are considered to be the potential of the proposal to result in overlooking of neighbouring properties, overshadowing of neighbouring properties and whether oppression would occur from the size, scale and massing of the development proposed.
- 5.26 Given the nature of the proposal to extend residential curtilage of Oxmoor Lodge, Meadows Edge, Biggin, and the boundary treatments, it is considered that the proposal would not have any significant adverse impact on the amenities of the occupiers of any neighbouring residential properties. The amenities of the adjacent residents would therefore be preserved in accordance with Policy ENV1 (1) of the SDLP.

### **Ecology issues**

- 5.27 The site is not a protected site for nature conservation but contains a pond, located within its southern corner. Policy SP18 of the SDCS. Significant weight should be

attached to the Local Plan Policy ENV1 as it is broadly consistent with the aims of the NPPF.

- 5.28 NYCC Ecologist has been consulted on the proposals who advised that this is a retrospective application and there is no way of knowing whether there was any significant ecological interest attached to the site previously, although the 2007 GoogleEarth images suggest permanent pasture with seasonally wet areas possibly associated with ridge-and-furrow. NYCC Ecology also note that a periodically wet area had been converted to a pond by 2020 which should be retained. Having reviewed this, it is therefore considered that the prevention of infilling or removal of the pond can be adequately addressed via a condition.
- 5.29 Given the above, it is considered that the proposal would not harm any acknowledged nature conservation interests or protected species and is therefore in accordance with Policy ENV1 (5) of the SDLP, Policy SP18 of the SDCS and the advice contained within the NPPF subject to a condition.

### **Minerals and Waste Local Plan**

- 5.30 The application site is located within a Surface Minerals Safeguarding Area. However, as the application is for the change of use of land, it constitutes 'exempt development' as set out in paragraph 8.55 of the Minerals and Waste Joint Plan and no further consideration of this matter is required. The proposal therefore complies with Policies S01, S02 and S06 of the Minerals and Waste Joint Plan 2022.

## **6. CONCLUSION**

- 6.1 The proposals are acceptable in terms of their impacts on residential amenities of neighbouring occupiers, ecology matters and minerals and waste matters.
- 6.2 The Development Plan, taken as a whole, does not exclude the extension of residential curtilages into open countryside, provided it would be a sustainable form of development which improves the environmental conditions in the area, and which meets the requirements of Policy H15.
- 6.3 The development, which has already occurred, is considered to result in the harmful spur of suburban development beyond the original curtilage of the dwelling into the wider open field at the southern edge of this small rural settlement adversely altering its rural character and the formerly clearly defined edge to the village. The projection of urban use into the open countryside has a suburbanising effect on the natural landscape and would unacceptably alter the character and appearance of the open countryside and the setting of the village. The proposal therefore conflicts with the aims of Policies ENV1 and H15 of the SDLP and Policies SP1 and SP19 of the SDCS.

## **7. RECOMMENDATION**

This application is recommended to be REFUSED for the following reasons:

01. The development, which has already occurred, is considered to result in the harmful spur of suburban development beyond the original curtilage of the dwelling into the wider open field at the southern edge of this small rural settlement adversely altering its rural character and the formerly clearly defined edge to the village. The projection of urban use into the open countryside has a suburbanising effect on the natural landscape and would

unacceptably alter the character and appearance of the open countryside and the setting of the village and consequently does not improve the environmental conditions in the area. It therefore conflicts with the aims of Policies ENV1 and H15 of the SDLP, Policies SP1 and SP19 of the SDCS and with the NPPF.

## **8. Legal Issues**

### **8.1 Planning Acts**

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

### **8.2 Human Rights Act 1998**

It is considered that a decision made in accordance with this recommendation would not result in any breach of convention rights.

### **8.3 Equality Act 2010**

This application has been determined with regard to the Council's duties and obligations under the Equality Act 2010. However it is considered that the recommendation made in this report is proportionate taking into account the conflicting matters of the public and private interest so that there is no violation of those rights.

## **9. Financial Issues**

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

## **10. Background Documents**

Planning Application file reference 2022/1028/COU and associated documents.

**Contact Officer: Irma Sinkeviciene (Senior Planning Officer)**

**Appendices: None**