

North Yorkshire Council

Community Development Services

Selby and Ainsty Area Planning Committee

11th December 2024

**ZG2023/1153/FUL –ERECTION OF THREE NEW DETACHED DWELLINGS WITH NEW
ACCESSES TO GARDEN LANE ON LAND TO THE SOUTH OF 44 GARDEN LANE,
SHERBURN IN ELMET**

BY MR ROBERT PARKIN

Report of the Assistant Director - Planning – Community Development Services

1.0 Purpose of the Report

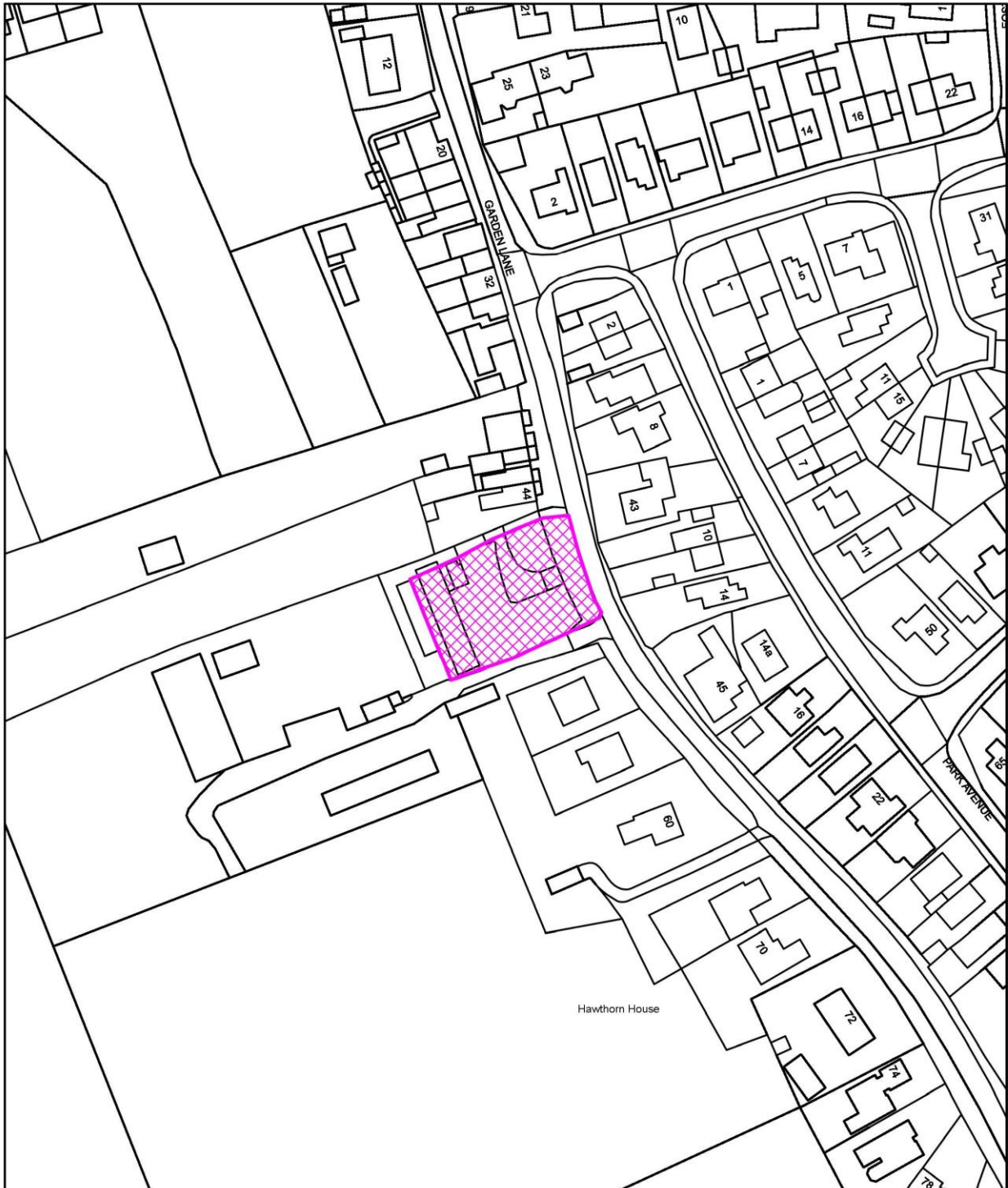
- 1.1 To determine a full planning application for the development of 3 dwellings with new accesses onto Garden Lane on land to the south of 44 Garden Lane, Sherburn In Elmet.
- 1.2 This application is reported to Committee as a result of a call in from the Ward Member, Cllr Bob Packham on the basis that it was adjacent to a scheme also on a safeguarded land. A site visit was held on the 11th March 2024, however it was deferred from Planning Committee on the 13th March 2024 to allow Officers to consider the scheme in the context of comments made by the Applicants following the publication of the initial report.
- 1.3 The Application has not come back to Committee until this time given the context noted in 1.2 above and due to discussions on the highways matters and conditions for the scheme.

2.0 SUMMARY RECOMMENDATION: It is recommended that full planning permission be GRANTED for the reasons stated in Section 12 of this report.

- 2.1. This is an application for full planning permission for the development of 3 dwellings with new accesses onto Garden Lane on land to the south of 44 Garden Lane, Sherburn In Elmet which is land which includes a series of semi-derelict structures situated to the west of Sherburn in Elmet on Garden Lane at the edge of the built settlement of Sherburn-in-Elmet.
- 2.2. Garden Lane itself not only serves existing residential properties it also serves Sherburn High School and the Mytum and Selby Waste Recycling Centre. The site is safeguarded land outside the development limits of the settlement.

- 2.3. There are no there are no outstanding technical issues in relation layout and design and it is considered that on balance the scheme can be supported in these terms and the scheme is considered acceptable in terms of policies in the Core Strategy and saved policies of the Local Plan as well as guidance within the NPPF.
- 2.4. Although the site lies largely out with the development limits of the settlement and on safeguarded land it is considered that there are material considerations to outweigh this position and thus to override the conflict with the spatial strategy and as such the scheme is considered acceptable in principle on balance, notwithstanding the conflict with Policies SP2 of the Core Strategy and SL1 of the Selby District Local Plan.

44 Garden Lane, Sherburn in Elmet
ZG2023/1153/FUL



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3.0 PRELIMINARY MATTERS

- 3.1. Access to the case file on Public Access can be found here:- [ZG2023/1153/FUL | Erection of three new detached dwellings with new accesses to Garden Lane on land to the south of 44 Garden Lane, Sherburn in Elmet, Leeds | 44 Garden Lane Sherburn In Elmet Leeds North Yorkshire LS25 6AU \(selby.gov.uk\)](#)
- 3.2. The application was submitted in late 2023 and lies immediately adjacent to a site subject of application 2022/1236/FULM, which was considered at the Selby and Ainsty Planning Committee on 20th November.
- 3.3. The Planning History for the site includes the following applications:
 - Application CO1978/24459 (Alt Ref 8/58/147/PA) which was the erection of a single dwelling and was granted on the 27th September 1978
 - Application 2015/1362/FUL which was for the “Retrospective application for siting of static caravan for the sole purposes of restroom and storage facilities/office to aid in the general day to day running of the nursery and smallholding”, which was refused on the 26th February 2016 on the basis that “The retrospective static caravan for the purposes of a restroom and storage facilities/office to aid in the general day to day running of the nursery for a hobby use does not fall under any of the categories which are identified as being appropriate development in the open countryside set out within policy SP2A (c), nor does the scheme demonstrate that any special circumstances exist in order for the scheme to be considered appropriate in this location. The scheme therefore fails to comply with policy SP2A (C) of the Core Strategy”.
- 3.4. There is no evidence of the implementation of the consent granted in 1978 on the Council’s records and the decision on 2015/1362/FUL was not subject of an appeal.

4.0 SITE AND SURROUNDINGS

- 4.1. The site is the site of a former garden nursery which is currently not operating situated to the west of Sherburn in Elmet on Garden Lane at the edge of the built settlement of Sherburn-in-Elmet. The site area is 1042 square metres. Garden Lane itself not only serves existing residential properties, as well as Sherburn High School and the Mytum and Selby Waste Recycling Centre.
- 4.2. The application site is not within a Conservation Area, nor are there any listed buildings in close proximity to the site. There are also no trees on the site or adjacent to it subject to protection via a Tree Preservation Order. Sherburn Willows SSSI is located 0.7km from the site. The site is within Flood Zone 1 and is therefore at low risk of flooding.
- 4.3. There is a mix of housing within the immediate vicinity of the site including traditional terrace stock, detached properties, as well as recent new builds and earlier estates to the east.

5.0 **Description of Proposal**

- 5.1. This application seeks full consent for the erection of 3 detached dwellings with new accesses onto Garden Lane.
- 5.2. The proposed units are two and half storey (with veluxes on top floor) with parking provided to the side of each dwellings and block paved turning areas being set out to the front of the dwellings and patio / garden areas to the rear. Within the garden areas there is a 2.1m x 1.05m steel cycle store provided and bin storage is provided within the paved area to the frontage.
- 5.3. New hedgerow planting is proposed to the rear boundary of the plots with a natural grassland area being provided between this and the building on the adjacent site to the immediate west of the plot.
- 5.4. Car charging points are shown to be added to the side elevation of each unit and fencing is proposed to define the plots on the frontage, as well as to define the rear garden areas.
- 5.5. The submitted Site Layout Plan (Rev I) shows tarmacked accesses with grass area adjacent to the accesses. The existing hedge to the south of the development is shown to be partly retained or replanted and planting is shown within the hedging to the rear of the gardens and on the southern boundary of the grassland area.
- 5.6. The plans also show that there is to be an access created to the retained building adjacent to the application site which is in the same ownership. This access runs between Plot 3 and 44 Garden Lane to the north of the application site. However, this is not within the red line so this is not part of the consideration of the application and is shown on the pans for information purposes only.
- 5.7. The submission plans are as follows:
- Location Plan Ref 101978.04
 - Existing Site Plan Ref 101978.01
 - Tree Constraints Plan Ref 765/01 (received 21/02/2024)
 - Tree Protection Plan Ref 765/02/A
 - Tree Planting Plan Ref 765/03/A
 - Proposed Site Plan Ref 101978.02 Rev I
 - Proposed Site Plan with Sight Lines Ref 101979.0 Rev A
 - Proposed Floor Plans & Elevations Ref 101978.03 Rev A

A series of technical reports have also been submitted with the application including:

- Planning Statement including Design and Access Statement prepared by Mike Harris Planning received 20th October 2023

- Phase 1 Desk Study prepared by Chevin Geoenviro Associates Ltd dated February 2023 and associated plans
 - Arboricultural Report prepared by Enviroscope Consulting dated February 2024
 - Preliminary Ecological Appraisal, Biodiversity Feasibility Assessment and Recommendations for Biodiversity Enhancement prepared by LOBO Ecology
 - Small Sites Matrix Calculations received 21st February 2024
 - Proposed Site Plan including BNG Provision received 21st February 2024 as part of Preliminary Ecological Appraisal, Biodiversity Feasibility Assessment and Recommendations for Biodiversity Enhancement prepared by LOBO Ecology
 - Soakaway Tests Summary received 30th October 2023
 - Soakaway Tests prepared by GA Site Investigation Lid dated 10th October 2023
- 5.8. The application has been amended during its consideration to provide additional information on sight lines for the new accesses and to update plans to ensure consistency and reflect the details shown on the tree constraints plan, the biodiversity plans and landscaping plans.
- 5.9. Access to the units will be taken from Garden Lane with each dwelling having individual access points. Visibility splays have been confirmed on the main access at 2.4m x 42m as shown on Dwg Ref 101979.0 Rev A.
- 5.10. The design of the dwellings includes the use of headers and sills to the windows, includes veluxes on the roof on both the front and rear elevations and folding rear doors out into the garden. The side elevations of the units are blank.
- 5.11. The proposed materials noted on the application form and in the Design & Access Statement are proposed to be red brick, artificial roof tiles, with UPVC windows and doors. The materials for the hardstanding areas have not been confirmed at this stage but the Application Form notes that these will be block paved with permeable block pavers and the submitted site layout plan confirms this to be the case.
- 5.12. The drainage approach for the site uses soakaways for surface water and mains sewers for the foul sewerage.
- 5.13. The scheme is accompanied by a Small Sites Biodiversity Net Gain Matrix and the submitted Site Layout Plan shows new hedgerow planting and a planted natural grass area beyond the garden areas.

6.0 PLANNING POLICY AND GUIDANCE

- 6.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that all planning authorities must determine each application under the Planning Acts in accordance with Development Plan so far as material to the application unless material considerations indicate otherwise.

Adopted Development Plan

6.2. The Adopted Development Plan for this site is:

- 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
- Minerals and Waste Joint Plan (adopted 16 February 2022)

Emerging Development Plan – Material Consideration

6.3 The Emerging Development Plan for this site is:

- Selby District Council Publication Draft Local Plan (Reg 19)

6.4 On 17 September 2019, Selby District Council agreed to prepare a new Local Plan. Consultation on issues and options took place early in 2020 and further consultation took place on preferred options and additional sites in 2021. The Pre-submission Publication Local Plan (under Regulation 19 of the Town and Country Planning (Local Development) (England) Regulations 2012, as amended), including supporting documents, associated evidence base and background papers, was subject to formal consultation that ended on 28th October 2022. A further round of consultation on a revised Regulation 19 Publication Local Plan was undertaken in March 2024 and the responses are now being considered. Following any necessary minor modifications being made it is intended that the plan will be submitted to the Secretary of State for Examination.

6.5 In accordance with paragraph 48 of the NPPF, given the stage of preparation following the consultation process and depending on the extent of unresolved objections to policies and their degree of consistency with the policies in the NPPF, the policies contained within the emerging Local Plan can be given weight as a material consideration in decision making and, if relevant, will be referred to in the body of the report.

- The North Yorkshire Local Plan

6.6 No weight can be applied in respect of this document at the current time as it is at an early stage of preparation.

Guidance - Material Considerations

6.4 Relevant guidance for this application is:

- National Planning Policy Framework 2023
- National Planning Practice Guidance
- National Design Guide 2021
- Sherburn in Elmet Village Design Statement, December 2009

- Five Year Housing Land Supply Report 2022-2027 (position at 31st March 2022) published September 2022.

7.0 CONSULTATION RESPONSES

7.1. The following consultation responses have been received and have been summarised below. Consultations were sent out for 14 days to the Parish Council and the Ecology Officers on the updated information received on the 29th February 2024. Any additional comments will be reported to Committee.

7.2. **Sherburn in Elmet Town Council** – (12th December 2023) made the following objections:-

Suitability for Development - The land in question is designated as 'safeguarded' for development if needed. Sherburn in Elmet has seen vast growth in recent years, with c. 1200 new properties added. Further significant developments have been identified along the A162 and to the south of Sherburn, the latter equating to over 300 additional new homes. Cumulatively, this greatly exceeds any other neighbouring community's contribution to Selby's housing need and, importantly, the town's local facilities, public transport, highways, footpaths and active travel infrastructure have not kept pace with the rate of new development. There are significant ongoing concerns about the detrimental impact of cumulative completed, on-going and proposed developments for residents and our local environment. The Town Council does not believe that the number of new houses proposed in an application should impact the fundamental question of whether safeguarded land is appropriate for development, given the wider context of growth across Sherburn in Elmet. Other applications on this safeguarded land were previously refused on grounds of suitability. Previous reasoning for refusal highlighted that:

"There is no justification to give planning permission for the development of any safeguarded land in an ad hoc way at this stage given the significant contribution Sherburn in [sic] making to the overall supply of new houses in the District Any decision to release safeguarded land without proper consideration through the local plan process prevents proper consultation with the community on the nature, location and extent of any future development in the village The lack of community involvement to shape the future role and character of Sherburn in Elmet is a material consideration."

Paragraph 11 of the NPPF states that "for plan making, a) all plans should promote a sustainable pattern of development that seeks to: meet the development needs of their area; align growth and infrastructure". This has not been met. Furthermore, Paragraph 148 of the NPPF states explicitly that "planning permission for the permanent development of safeguarded land should only be granted following an update to a plan which proposes the development". As far as the Town Council is aware, this condition has not been met either.

Environmental Impact - Paragraph 11 of the NPPF also goes on to state that "all plans should ... improve the environment; mitigate climate change ... and adapt to its effects." The Town Council does not believe that these criteria have been met by the proposal as it stands. The application does not provide any information about proposed schemes

to reduce the development's impact on local and national energy infrastructure. For example, there is no indication that the dwellings will integrate solar panels on roofs, be supplied by air/ground source heat pumps (in place of gas), or make other positive contributions to improving the dwellings' environmental impact (beyond EV chargers). As well as the energy efficiency and independence measures outlined above, the Town Council would also like to see small but impactful considered, such as bee bricks, bird boxes, hedgehog highways, etc

- 7.3. **NYC Highways** – Discussions in October / November 2024 where held with the Applicants in relation to the turning areas for the scheme, with updated tracking been provided for review by Highways Officers. As a result further comments were received from highways requesting conditions in relation to
- New and altered Private Access or Verge Crossing
 - Visibility Splays
 - Provision of Approved Access, Turning and Parking Areas
 - Construction Phase Management Plan- Small site
- Highways Officers have also confirmed that through S278 of the Highways Act the works on the frontage within highways land would need their consent.
- 7.4. **Yorkshire Water** – no response received in the statutory consultation period. If a response is received prior to Committee members will be updated accordingly.
- 7.5. **Selby Area Internal Drainage Board** – (17th November 2023) – the IDB were consulted but advised that the application site is not within their administrative area. Members are advised that there is no other IDB covering this area.
- 7.6. **NYC Ecology** – (15th November 2023) advised that they have no specific comments regarding the site but the applicant would need to ensure that all works are compliant with wildlife protection legislation. This would need to be considered, for example, in relation to timing of vegetation clearance: preferably, this should be undertaken outside the bird breeding season (March to August for most species) or, if not, after a competent has first confirmed that no active nests are present.
- Note that the applicant has submitted a Biodiversity Net Gain calculation using the Small Sites Metric. This shows a small uplift based on a new grassed area with tree and hedgerow planting and is therefore compliant with policy.
- As with 2022/1236/FULM, we have reservations about the potential for increased recreational pressure on Sherburn Willows Site of Special Scientific Interest/Yorkshire Wildlife Trust nature reserve. However, the current application is on a much smaller scale.
- The Ecology Officer was consulted on the revised plans and ecology in February 2024 and they have acknowledged that the PEA and BNG small sites metric has been updated and confirmed that the BNG assessment demonstrates that the site is capable of delivering 15.24% for habitat units and 45.33% for Hedgerow units - this meets the current policy requirements for small sites. She has also noted "The PEA recommends that a Biodiversity and Enhancement Management Plan (BEMP) will be required" and agrees with their recommendation, as such she suggests that a condition would be appropriate in this instance for the submission of a BEMP. In addition, the Officer has

advised “In terms of the protection and mitigation for species associated with the site” and that “a condition securing adherence with the measures set out within Section 5.2 of the PEA”.

- 7.7. **Contaminated Land Consultant** – advised that the Phase 1 Desk Study Report shows that the site was previously used as part of the Garden Lane Nursery site. Several buildings/sheds, gravel parking areas, grassed areas, and stockpiles of building rubble and miscellaneous items (including cars and an old boiler) are present on the site. The overall risk from potential contamination has been estimated to be moderate to low, and an intrusive site investigation is necessary to clarify the potential risks. The report recommends that an initial investigation would ideally be carried out using a dynamic sampler. Where accessible this would be around the footprint of the areas/buildings that are to be developed and ideally would also include any new areas of proposed landscaping. The dynamic sampler has the added benefit of providing boreholes, which may be used to install ground gas monitoring points. Thus, enabling a subsequent ground gas risk assessment. During this investigation clarification would be gained by sampling site soils and groundwater for a range of contaminants and/or leachable constituents. If significant fill materials, remnant building waste or historical foundations are encountered, an asbestos survey of these areas should also be carried out, alongside assessment of materials used in any existing site structures. As such they concluded that the Phase 1 report provides a good overview of the site’s history, its setting, and its potential to be affected by contamination. As such, they confirm that the report and the proposed site investigation works are acceptable. If contamination is found, please note that appropriate remedial action will be required to make the site safe and suitable for its proposed use and on this basis they recommend that the following planning conditions are attached to any planning approval:
- Condition 1: Investigation of Land Contamination prior to development (excluding demolition),
 - Condition 2: Submission of a Remediation Strategy
 - Condition 3: Verification of Remediation Works
 - Condition 4: Reporting of Unexpected Contamination
- 7.8. **Heritage Officer (Archaeology)** – (27th November 2023) – advised that the area has some archaeological potential for the Roman period with the discovery of rare, Roman 'gypsum' burials reported nearby. However, there have been a number of archaeological assessments of the sites to the immediate south in recent years. These have been largely negative. It is also likely that the horticultural use of the current site will also have had a negative impact on archaeological deposits should they have been present. As such, no objections were made to the application and no conditions were noted.
- 7.9. **Minerals and Waste** – (20th November 2023) – advised that there “are no active quarry sites or waste facilities within 500 metres of this 44 Garden Lane, Sherburn In Elmet, Leeds and no sites have been proposed for allocation for minerals or waste activities in the Minerals or Waste Joint Plan within that 500m zone”. Also confirmed that the site is within a Minerals and Waste Safeguarding Area for Limestone and sand and gravel, however, does fall within the exemption criteria stated in paragraph 8.55 of the MWJP (2022) as a redevelopment of previously developed land not increasing the footprint of the former development.

Local Representations

- 7.10. The application was advertised via site notices with notices also been erected on the 29th November 2023 and via Press Notice published on the 30th November 2023.
- 7.11. Representations have been received from one individual and a summary of the comments is provided below, however, please see website for full comments.
- The access for traffic on Garden Lane and either going through to the Main Road or onto Tomlinson Way is very restricted due to the existing terrace housing where there is parking in front of the properties considerably restricting the road width from before Tomlinson Way to the junction with the main road.
 - When some additional housing was built down Garden Lane a few years ago it was on the basis that this would be the only development. Since then there has been an application to build 72 houses, reduced to 67 and now further reduced to 66. In addition, there is this smaller development.
 - This is the access to the High School and, at times Mytum wagons also use it. The narrowness of the lane is not conducive to further development.

8.0 ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

- 8.1. The development proposed does not fall within Schedule 1 or 2 of the Environmental Impact Assessment Regulations 2017 (as amended). No Environment Statement is therefore required.

9.0 MAIN ISSUES

- 9.1. The key considerations in the assessment of this application are:
- Principle of development
 - Impact on the Character and Form of Locality
 - Highways Impacts
 - Residential Amenity
 - Landscaping
 - Flood Risk and Drainage
 - Impact upon nature conservation sites and protected species, and biodiversity net gain
 - Land Contamination
 - Archaeology
 - Climate change
 - Minerals and Waste
 - Education, healthcare, waste and recycling

10.0 ASSESSMENT

Principle of Development

- 10.1. Policy SP1 of the Selby District Core Strategy Local Plan (2013) 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" and sets out how this will be undertaken. Policy SP1 is therefore consistent with the guidance in Paragraph 14 of the NPPF and should be afforded significant weight.
- 10.2. Policy SP2 of the Core Strategy sets out the long-term spatial direction for the former Selby District and provides guidance for the proposed general distribution of future development across the District. The settlement hierarchy is ranked on the Principal Town of Selby, Local Service Centres, Designated Service Villages and smaller villages.
- 10.3. Policy SP2A(c) of the Core Strategy says:

“Development in the countryside (outside Development Limits) will be limited to the replacement or extension of existing buildings, the re-use 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.”
- 10.4. The application site lies to the west of Sherburn in Elmet, which is a Local Service Centre as defined by Policy SP2A of the Selby District Core Strategy Local Plan.
- 10.5. The site lies partly outside the Development Limits for the settlement as defined in the Selby District Local Plan (2005). This limit runs around the rear of the properties on Garden Lane and Church Hill, and is intact with the exception of a couple of in-fill properties along the road frontage on Garden Lane. The Development Limit on the west side of Sherburn in Elmet has been largely unchanged since the limits were established in the 2005 Local Plan.
- 10.6. The proposal does not constitute any of the forms of development set out under SP2A(c). In light of the above policy context the proposals for residential development are contrary to Policy SP2 of the Core Strategy. Substantial weight to the conflict with the development plan (and the related conflict with the intentions of the Framework) should be given in this case. The proposal should therefore be refused unless material considerations indicate otherwise.
- 10.7. Following the latest iteration of the NPPF (December 2023), for local planning authorities who have passed “regulation 18” stage in the preparation of a new local plan, an adequate supply of land means demonstration of at least 4 years worth of supply (in accordance with paragraphs 77 and 226 of the Framework). The Selby Local Plan is at Regulation 19 stage. The Council’s position is that it is able to demonstrate a 4 year housing land supply. However, the fact of a Council being able to demonstrate

a housing land supply in line with the NPPF cannot be a reason in itself for refusing a planning application.

Safeguarded Land

- 10.8. The application site designated as “Safeguarded Land” within the Selby District Local Plan 2005 at this side of Sherburn in Elmet meaning that it was identified as an area suitable for housing to provide for the long term housing need within the District. The Local Plan states that land excluded from the Green Belt outside Development Limits, but not allocated for development, will be safeguarded as part of a potential long-term reserve beyond 2006, in accordance with Policy SL1. The release of the “safeguarded land”, if required to meet long-term development needs, would only be made in a controlled and phased manner through future Local Plan or land supply reviews, possibly extending over successive review periods.
- 10.9. This is supported by Paragraph 148 of the NPPF which confirms that safeguarded land is identified between the urban area and the Green Belt in order to meet longer term development needs stretching well beyond the plan period. It makes it clear that safeguarded land is not allocated for development at the present time and planning permission for the permanent development of safeguarded land should only be granted following a Local Plan review which proposes its development.
- 10.10. It is important to note that the application site is a small frontage section of the allocated safeguarded site and is only 1,042 square metres in size. Some other smaller parts of the safeguarded land, which front Garden Lane, have been granted consent for dwellings despite, for example, 2015/0582/FUL which is to the south of this site.
- 10.11. Policy SL1 is a carried forward policy from the SDLP. It states that “within areas of safeguarded land as defined on the proposals map, proposals for development which would prejudice long term growth beyond 2006 will not be permitted. It is intended that the release of safeguarded land, if required, will be carried out in a controlled and phased manner extending over successive reviews of the Local Plan.”
- 10.12. Given the site’s saved designation as safeguarded land, the main issue for consideration is whether the site should be kept free of permanent development at the present time in order to maintain the site’s availability for development in the longer term.
- 10.13. The release of safeguarded land was intended to be undertaken in a controlled and phased manner through future Local Plan reviews. The submitted Planning Support Statement argues that this scheme “is a minimal, limited infill development, positioned between the existing dwellings fronting Garden Lane”, that does not preclude the future use of the wider safeguarded land, whether this is for the scheme being considered under 2022/1236/FULM or another scheme. In addition, they argue that “the site is a windfall site that can provide dwellings for the District”.
- 10.14. It is accepted by the Council that other safeguarded land in the district includes areas of land around Sherburn and Hillam. Some of the land (Hodgsons Gate / Pinfold Garth) has been released for development but it should be noted that this was either on appeal

or against the background of the Council not having a 5 year housing land supply. Indeed, the Inspector for the appeal decision on land to the east of the application site at Hodgson's Gate (APP/N2739/W/16/3144900 dated 06 December 2016) commented that;

“the site was safeguarded some 11 years ago as a resource for accommodating residential growth beyond 2006. It has been kept free of permanent development all of this time and its release now reflects the changed circumstances in the District with regard to the slow delivery of new residential development to meet a new housing requirement.”

10.15. The Inspector concluded that in the specific circumstances at the time of determination, being a lack of five year housing land supply, “given its status as a parcel of a larger area of safeguarded land, it is not necessary for the appeal site to be kept free of permanent development at the present time in order to maintain its availability for development in the longer term”. Such a justification does not exist at this time as the Council has the required housing land supply in place, so the decision to release safeguarded land for housing development should be resisted, unless material considerations clearly outweigh the conflict.

10.16. The relevant material factors to be taken into consideration in weighing up whether to release this part of the safeguarded land is appropriate given the level of development witnessed in Sherburn in Elmet to date and whether it is acceptable to allow for more development, taking into specific account the sustainability of the settlement and whether it is appropriate, given the time period since its designation and the review of the plan, to release this safeguarded land; other material considerations are considered in following sections. Also, material to this decision is the consent issued under 2015/0582/FUL where it was considered that the scheme could be supported as the development limits and safeguarded land were at that time under review as part of the PLAN Selby sites and allocations document in line with commentary detailed in the Core Strategy and it was also noted that having considered the emerging PLAN Selby evidence on the sensitivity of the landscape to development it is considered that the overall landscape assessment parcel for the area to which the application relates is of medium sensitivity to development, with the settlement fringe considered of low quality. In addition, it was also noted in this decision that “regard should be had to the need to maintain the five year housing land supply and that given the nature of the site, its relationship to the development boundary and the quantum of development proposed. Taking these factors into consideration it is considered that the harm caused by conflict with Policies SL1 and SP2A(c) is outweighed such on balance the proposal is considered to be acceptable”.

Sustainability

10.17. Paragraph 11 of the NPPF sets out the presumption in favour of sustainable development in determining applications and that Local Plans are the key to delivering sustainable development that reflects the vision and aspirations of local communities as such development that does not accord with an up to date plan will not normally constitute sustainable development. However, Paragraph 12 of the NPPF makes clear

that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. When a planning application conflicts with an up to date plan permission should not normally be granted.

- 10.18. In terms of sustainability the application site abuts Sherburn in Elmet, which is a Local Service Centre in the Core Strategy. The settlement provides a range of services and as a Local Service Centre is considered to be one of the key settlements. Therefore, in terms of access to facilities and a choice of mode of transport, the site although located outside the defined development limits of the settlement, it can be considered as being in a sustainable location.
- 10.19. Given the position with the housing land supply, it is considered that the site should be kept free of permanent development at the present time in order to maintain its availability for development in the longer term, having regard to the requirements of local and national planning policy unless material consideration indicate otherwise.

Previous levels of growth

- 10.20. CS Policy SP5 designates levels of growth to each of the 3 main towns which includes Sherburn in Elmet, the group of Designated Service Villages and the group of Secondary Villages based on their infrastructure capacity and sustainability. A large number of housing sites have been delivered in Sherburn since the beginning of the plan period. For example, Sherburn in Elmet has seen 1,121 dwellings built in the settlement since the start of the plan period in April 2011 and has a remaining 190 dwellings with approval, giving a total of 1,311 dwellings. This significantly exceeds the minimum target of 790 dwellings between 2011-2027 which is set out for Sherburn in Elmet by Policy SP5.

Deliverability and Mix

- 10.21. The application is for three 3 bed detached dwellings and as the application seeks full consent there is no reason to question the deliverability of the site. The NPPF aim of boosting and maintaining the supply of housing is a material consideration when evaluating planning applications. An approval on this site would provide additional dwellings to the housing supply which adds significant weight in favour of the proposal.

Relationship of the Proposal to the Development Limit

- 10.22. Core Strategy Policy SP18 aims to protect the high quality and local distinctiveness of the natural and man-made environment; therefore it is important to determine the impact the proposed scheme has on its surroundings. The site is located in the countryside but partly overlaps the defined development limits of Sherburn. From the emerging PLAN Selby evidence on the sensitivity of the landscape to development it is considered that the overall landscape assessment parcel for the area to which the application relates is of medium sensitivity to development, with the settlement fringe considered of low quality.

- 10.23. The site currently is un-used and is the site of a former garden nursery. Dwellings bound the site to the north (no 44 Garden Lane) and beyond an access road, new dwellings are located to the south. To the west, is a building formally used for the nursery operation, which is to be retained, which is also designated as safeguarded land. The application site does not have the character, form or appearance of what normally would be considered to be countryside, nor is the development limit well defined on the ground. In fact, the development limit along Garden Lane does include several properties along its western side, which sits outwith the limits, or part in and part outside. The proposed development would reflect this arrangement as the frontage part of the site would be within the development limits.
- 10.24. Given the location and scale of the proposed dwellings, it is considered that the proposal would be in keeping with the residential frontage of Garden Lane and would not detract from the form and character of the countryside and would form a new defensible boundary.
- 10.25. As such the proposals are not considered to significantly harm the open countryside or undermine the development limits. Furthermore, any conflict with Policy SL1 and the NPPF would be limited and would be outweighed by the sustainable location of the proposal and the sites relationship to the development limits.

Conclusion on the Principle of the Development

- 10.26. The proposal would be the release of land partly outside of development limits. It would therefore conflict with the fundamental aims of Policies SP1 and SP2 of the Core Strategy, which should be afforded substantial weight.
- 10.27. The site is safeguarded land which has been set aside from the Green Belt and has been considered as suitable for future development beyond the 2005 plan period. Although the Emerging Local Plan has been subject of consultations it has not been submitted for examination and as noted above has no weight in terms of decision making until it has progressed further and been subject of examination and progressed.
- 10.28. It is not considered that the release of this site would lead to an unacceptably high level of growth in the settlement (given the scheme is for 3 units) and the site is in a sustainable location and there is nothing to suggest that the local infrastructure cannot accommodate the development at this scale. Nor, would the development of the site prejudice the potential future development of the remainder of the safeguarded land allocation. As such, in assessing the proposal against the three dimensions of sustainable development set out within the NPPF, the development would in some way provide the social, economic and benefits, which weigh in favour of the scheme.
- 10.29. It is considered that the development of this small site would not prejudice the wider development of the safeguarded land site, and as it would infill a gap on the Garden Lane frontage, this has weight as a material consideration in its favour. In addition, although the scheme is development of a site on safeguarded land, there are material considerations to weigh in favour of the development, given its location, the scale of the proposed development and the sites relationship to the development limits.

- 10.30. In considering the application for the two dwellings to the south of this site (which were consented under 2015/0582/FUL), the view was taken that the impact of development of the site would not impact on landscape that was highly sensitive given its edge of settlement location which is considered to be of low quality. In addition, regard was given to the need to maintain housing land supply, as well as the character of the site, the relationship to the settlement boundary and the quantum of development.
- 10.31. The application before Members under this application has a similar relationship with the settlement and the development limits as the scheme consented under 2015/0582/FUL and as outlined, it is considered that there are material considerations that outweigh the conflict with the spatial strategy and as such the scheme is considered acceptable in principle on balance and to conflict with Policies SP2 of the CS and SL1 of the SDLP.

Impact on the Character and Form of Locality

- 10.32. Policy ENV1 requires account is taken of the effect upon the character of the area and the potential loss, or adverse effect upon, features important to the character of the area. CS Policy SP18 requires the high quality and local distinctiveness of the natural and man-made environment will be sustained by 1. Safeguarding and, where possible, enhancing the historic and natural environment including the landscape character and setting of areas of acknowledged importance. Policy SP19 requires residential development to “Incorporate new and existing landscaping as an integral part of the design of schemes, including off-site landscaping for large sites and sites on the edge of settlements where appropriate”.
- 10.33. NPPF paragraph 135 states “Planning policies and decisions should ensure that developments:... (b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping; (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)”.
- 10.34. In terms of the impact of the scheme on the character and form of the locality, then the site is on Garden Lane, adjacent to the existing built form and lies facing the road frontage, so it is visible from the Green Belt to the west.
- 10.35. The views from within the site are over the land to the west and onto Garden Lane with limited views of All Saints Church tower.
- 10.36. Development of the site will change the character of the area through the introduction of built form but in landscape and visual terms the development of the site is acceptable. Although development of the site will change the character of the site, there would not be any impact on the adjacent Green Belt land in terms of openness and the impact on the wider LILA is not considered significant due to limited views of the site and the fact that it sits in the context of the existing development on Garden Lane.

Highways Impacts

- 10.37. Core Strategy Policy SP15 requires the proposal should minimise traffic growth by providing a range of sustainable travel options (including walking, cycling and public transport) through Travel Plans and Transport Assessments and facilitate advances in travel technology such as Electric Vehicle charging points; and make provision for cycle lanes and cycling facilities, safe pedestrian routes and improved public transport facilities.
- 10.38. Core Strategy Policy SP19 requires the proposal to be accessible to all users and easy to get to and move through; and create rights of way or improve them to make them more attractive to users, and facilitate sustainable access modes, including public transport, cycling and walking which minimise conflicts.
- 10.39. Local Plan Policy ENV1 requires account is taken on the relationship of the proposal to the highway network, the proposed means of access, the need for road/junction improvements in the vicinity of the site, and the arrangements to be made for car parking.
- 10.40. Local Plan Policy T1 states “Development proposals should be well related to the existing highways network and will only be permitted where existing roads have adequate capacity and can safely serve the development, unless appropriate off-site highway improvements are undertaken by the developer”.
- 10.41. Local Plan Policy T2 states “Development proposals which would result in the creation of a new access or the intensification of the use of an existing access will be permitted provided: 1) There would be no detriment to highway safety; and 2) The access can be created in a location and to a standard acceptable to the highway authority. Proposals which would result in the creation of a new access onto a primary road or district distributor road will not be permitted unless there is no feasible access onto a secondary road and the highway authority is satisfied that the proposal would not create conditions prejudicial to highway safety.”
- 10.42. Policy T7 encourages the provision of cycle routes and parking. Policy VP1 supports the provision of parking spaces/facilities in new developments up to the maximum car parking standards as set out in Appendix 4 of the Local Plan. These are considered to have been superseded by the North Yorkshire County Council Interim Guidance on Transport Issues including Parking Standards and Advice on Transport Assessments and Travel Plans (2015).
- 10.43. NPPF paragraph 108 requires transport issues be considered from the earliest of development proposals so that impacts of development on transport networks can be addressed; opportunities from existing or proposed transport infrastructure, and changing transport technology and usage, are realised – for example in relation to the scale, location or density of development that can be accommodated; opportunities to promote walking, cycling and public transport use are identified and pursued; and the environmental impacts of traffic and transport infrastructure can be identified, assessed

and taken into account – including appropriate opportunities for avoiding and mitigating any adverse effects, and for net environmental gains. NPPF paragraph 108 recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making.

- 10.44. Paragraph 112 permits maximum parking standards in certain limited circumstances. The aforementioned NYCC standards are minimum standards.
- 10.45. Paragraph 114 requires in assessing applications it should be ensured that: “(a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location; (b) safe and suitable access to the site can be achieved for all users; (c) the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance, including the National Design Guide and the National Model Design Code; and (d) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.”
- 10.46. Paragraph 115 states “Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”
- 10.47. The aforementioned development plan policies are considered broadly consistent with the NPPF and are given significant weight.
- 10.48. The site layout plan shows parking for each unit alongside the side elevations of the properties, with turning areas to the frontage of the dwellings. There is no garage provision for the units, however each unit is to be provided with a cycle storage unit within the rear garden area. Given the sites location adjacent to the Local Service Centre of Sherburn in Elmet then it is considered that there are options available to future occupiers to access not only public transport, but there are also services within proximity to the site making the site a sustainable location.
- 10.49. NYC Highways have considered the development proposals for this site and additional information was provided during the life of the application on visibility splays and turning, as a result they have confirmed no objections to the scheme subject to conditions to control construction of the accesses to the dwellings, provision and retention of visibility splays and the provision of and retention of the internal parking areas and turning areas all of which can be controlled via condition.
- 10.50. A condition relating to the requirement for a Construction Traffic Management Plan is appropriate in this instance, notwithstanding the development being for only three units. given the location of the site, it is considered it is not unreasonable to require agreement for a Construction Traffic Management Plan, in the interests of highway safety.
- 10.51. In order also to ensure that the frontage area of the plots are acceptable in terms of planting, boundary treatments and the sighting of the bins, to ensure the visibility is not

obstructed, then a condition is considered appropriate, to ensure that these details are agreed prior to the commencement of development, notwithstanding those shown on the submitted plans.

- 10.52. As such, it is considered that the proposal is acceptable in terms of highway safety, in accordance with Policies ENV1 (2), T1 and T2 of the Local Plan and the advice contained within the NPPF.

Residential Amenity

- 10.53. Relevant policies in respect of the effect upon the amenity of adjoining occupiers include Policy ENV1. Significant weight is given to this policy, as it is broadly consistent with NPPF paragraph 135 (f) which seeks to ensure a high standard of amenity for existing and future users. 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.
- 10.54. The proposed development lies adjacent to Garden Lane and to the south of 44 Garden Lane. Access is shown between 44 Garden Lane and Plot 3 of the new development to the building to rear of the site, which is in the applicants ownership, but this is not in the red line and therefore, this is not part of the scheme being considered by Members. Should consent be granted to the scheme been considered under 2022/1236/FULM then the access to this development would sit to the south of Plot 1 and 56 Garden Lane. The side gable of Plot 1 is blank so there would be no overlooking of the existing access to the land to the rear. There is an existing hedgerow along the boundaries to these adjacent accesses, siting to the side of Plots 1 and 3, which is to be retained.
- 10.55. Plot 1 and 3 will be adjacent to accesses to other uses / developments. However, given the design of both Plot 1 and 3, where there will be no side windows and the retention of hedgerows and the addition of fencing to the boundaries, this relationship is acceptable and is not considered to be so detrimental, so as to warrant the scheme for the 3 dwellings as unacceptable on amenity grounds.
- 10.56. The internal layout shows a range of relationships between the existing dwellings on Garden Lane and proposed new dwellings. All of the proposed units are two and half storey. The relationships between the proposed dwellings and those on the Garden Lane frontage meet the appropriate separation distances and do not result in unacceptable relationships in terms of overlooking or overshadowing and boundary treatments have been identified that secure boundaries and protect amenity. Removal of permitted development rights for any additional windows to the side elevations of Plots 1 and 3 will also assist in ensuring there is no additional overlooking as a result of additional windows being added at a later date, without planning permission being sought. The scale and massing of the new dwellings is also considered to be acceptable in terms of the relationship to the existing dwellings.
- 10.57. Therefore, the proposal would not harm residential amenity and would accord with Policies ENV1 of Selby District Local Plan and Policies SP13 of Selby Core Strategy.

Further, the proposal would not contravene the rights guaranteed by the Human Rights Act 1988, in terms of Article 8 'Right to respect for private and family life.

Landscaping

- 10.58. Policy ENV1 requires account is taken of the effect upon the character of the area and the potential loss, or adverse effect upon, features important to the character of the area. CS Policy SP18 requires the high quality and local distinctiveness of the natural and man-made environment will be sustained by 1. Safeguarding and, where possible, enhancing the historic and natural environment including the landscape character and setting of areas of acknowledged importance. Policy SP19 requires residential development to "Incorporate new and existing landscaping as an integral part of the design of schemes, including off-site landscaping for large sites and sites on the edge of settlements where appropriate".
- 10.59. NPPF paragraph 135 states "Planning policies and decisions should ensure that developments:... (b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping; (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)".
- 10.60. The application is accompanied by plans showing retained and removed landscaping, as well as details of additional planting that will be undertaken. The proposed approach is considered appropriate and acceptable to Officers, as it incorporates new and existing landscaping, as an integral part of the design of schemes, as well as including off-site landscaping for land between the garden and the building to the rear for this development in its own right. However, in order to ensure that the final details of the boundaries, frontage planting and bin storage remain acceptable should the adjacent site come forward for development in advance of this scheme and in order to ensure visibility is maintained, then a condition is appropriate to agree these final details prior to the commencement of development.

Flood Risk and Drainage

- 10.61. Relevant policies in respect of flood risk, drainage and climate change include Policy ENV1(3) of the Selby District Local Plan and Policies SP15 "Sustainable Development, which seeks to apply sequential and exceptions tests, and Climate Change", SP16 "improving Resource Efficiency" and SP19 "Design Quality" of the Core Strategy. NPPF paragraph 165 requires "Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere." Paragraph 168 states, "The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed

development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.”

- 10.62. The application site lies within Flood Zone 1, as noted in the Environment Agency’s flood mapping with a low risk of flooding. There is no requirement for a sequential or exception test to be undertaken as a result and the proposal is considered to not contribute to flooding elsewhere.
- 10.63. The application form confirms that surface water will be managed via soakaways and that foul sewerage will go to the main sewer. The application is accompanied by soakaway testing, which have been undertaken by an appropriate consultant and confirm that there is a very good rate of infiltration, and that the soakaways can be formed on the lower land within a minimum distance of 5 metres from the dwellings. Although a full technical design would be needed to meet building regulations requirements to provide drainage for the dwellings, Officers have no reason to question the submitted assessment and as given, there are no comments on the application, it is considered that as scheme will need to meet building regulations requirements to provide drainage for the dwellings, the scheme can be considered acceptable in drainage terms.
- 10.64. As such, it is considered that an appropriate drainage scheme can be secured by condition and therefore, the scheme is considered acceptable in terms of drainage and flood risk and the noted policies in the development plan and the NPPF.

Contaminated land, noise and air quality

- 10.65. Policy ENV2 of the Local Plan states, “Proposals for development which would give rise to, or would be affected by, unacceptable levels of noise, nuisance, contamination or other environmental pollution including groundwater pollution will not be permitted unless satisfactory remedial or preventative measures are incorporated as an integral element in the scheme.” Part B of the policy allows contaminated land conditions to be attached to permissions.
- 10.66. Core Strategy Policy SP18 seeks to protect the high quality of the natural and man-made environment by ensuring that new development protects soil, air and water quality from all types of pollution. This is reflected in Policy SP19 (k), which seeks to prevent development from contributing to, or being put an unacceptable risk from unacceptable levels of soil, or water pollution, or land instability.
- 10.67. NPPF paragraph 180 requires decisions should contribute to and enhance the natural and local environment by: preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability; and remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate. Paragraph 189 requires decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural

environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so, Council's should mitigate and reduce to a minimum, potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life. Paragraph 192 requires decisions should sustain and contribute towards compliance with relevant limit values, or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones, and the cumulative impacts from individual sites in local areas.

- 10.68. These development plan policies are consistent with the NPPF and are given significant weight.
- 10.69. In terms of contaminated land considerations the application includes a Phase 1 Desk Study Report and Envirocheck Maps prepared by Chevin Geoviro Associates (dated February 2023).
- 10.70. The Phase 1 Desk Study Report shows that the site was previously used as part of the Garden Lane Nursery site. Several buildings/sheds, gravel parking areas, grassed areas, and stockpiles of building rubble and miscellaneous items (including cars and an old boiler) are present on the site. The overall risk from potential contamination has been estimated to be moderate to low, and an intrusive site investigation is necessary to clarify the potential risks. The report recommends that an initial investigation would ideally be carried out using a dynamic sampler. Where accessible this would be around the footprint of the areas/buildings that are to be developed and ideally would also include any new areas of proposed landscaping. The dynamic sampler has the added benefit of providing boreholes, which may be used to install ground gas monitoring points. Thus, enabling a subsequent ground gas risk assessment. During this investigation clarification would be gained by sampling site soils and groundwater for a range of contaminants and/or leachable constituents. If significant fill materials, remnant building waste or historical foundations are encountered, an asbestos survey of these areas should also be carried out, alongside assessment of materials used in any existing site structures.
- 10.71. The Council Consultant has considered the submitted report and has advised that, "The Phase 1 report provides a good overview of the site's history, its setting and its potential to be affected by contamination and recommends that the following planning conditions are attached to any planning approval:
- Condition 1: Investigation of Land Contamination prior to development (excluding demolition),
 - Condition 2: Submission of a Remediation Strategy
 - Condition 3: Verification of Remediation Works
 - Condition 4: Reporting of Unexpected Contamination
- 10.72. In this context and subject to the noted conditions, the scheme is considered as acceptable in terms of land contamination and to accord with Policy ENV2 of the Local Plan and the guidance in the NPPF.

10.73. In this context and subject to the noted conditions, the scheme is considered as acceptable in terms of contamination subject to conditions, it is considered that the scheme accords with Policy ENV2 of the Local Plan and the guidance in the NPPF.

Impact upon nature conservation sites and protected species, and biodiversity net gain

10.74. Local Plan Policy ENV1 requires account is taken of the potential loss, or adverse effect upon, significant wildlife habitats.

10.75. The foreword to Core Strategy Policy SP2 states the protection and enhancement of biodiversity and natural resources is a basic principle of national planning guidance, which can also influence the location of development. Policy SP18 requires the high quality and local distinctiveness of the natural and man-made environment will be sustained by promoting effective stewardship of the District's wildlife by a) safeguarding international, national and locally protected sites for nature conservation, including SINCs, from inappropriate development. b) Ensuring developments retain, protect and enhance features of biological and geological interest and provide appropriate management of these features and that unavoidable impacts are appropriately mitigated and compensated for, on or off-site. c) Ensuring development seeks to produce a net gain in biodiversity by designing-in wildlife and retaining the natural interest of a site where appropriate.

10.76. NPPF paragraph 180 requires decisions should contribute to and enhance the natural and local environment by protecting and enhancing sites of biodiversity value in a manner commensurate with their statutory status or identified quality in the development plan; minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

10.77. NPPF paragraph 186 requires when determining planning applications, local planning authorities should apply the following principles: a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

10.78. The development plan policies are consistent with the NPPF and are given significant weight.

10.79. The Conservation of Habitats and Species Regulations 2017 (as amended) requires the LPA to determine if the proposal may affect the protected features of a habitats site before deciding whether to permit development. This requires consideration of whether the proposal is likely to have significant effects on that site. This consideration – typically referred to as the 'Habitats Regulations Assessment screening' – should take into account the potential effects both of the proposal itself and in combination with other proposals.

10.80. Therefore, Selby District Core Strategy Policy SP18 and the NPPF seeks for the development to produce a net gain in biodiversity, though do not specify a percentage

net increase. Given that the existing habitat will be removed to facilitate the development, it is the Council's duty to secure biodiversity improvement, although given that the application was submitted prior to mandatory BNG coming into force, this does not need to be the full 10% level.

10.81. The application is accompanied by the following:

- Preliminary Ecological Appraisal, Biodiversity Feasibility Assessment and Recommendations for Biodiversity Enhancement prepared by LOBO Ecology
- Small Sites Matrix Calculations received 21st February 2024
- Proposed Site Plan including BNG Provision received 21st February 2024 as part of Preliminary Ecological Appraisal, Biodiversity Feasibility Assessment and Recommendations for Biodiversity Enhancement prepared by LOBO Ecology

10.82. Ecology Officers have considered the latest information and have advised that BNG assessment demonstrates that the site is capable of delivering 15.24% for habitat units and 45.33% for Hedgerow units and that this meets the current policy requirements for small sites. In addition, it is noted that the PEA recommends that a Biodiversity and Enhancement Management Plan (BEMP) will be required. The Ecologist has noted support for the recommendation and would suggest that a condition would be appropriate in this instance for the submission of a BEMP, alongside condition securing adherence with the measures set out within Section 5.2 of the PEA.

10.83. As noted above then, the application is not subject to consideration for mandatory BNG as it was submitted before this legislation came into force (which was mid April 2024). The uplift that has been shown is considered to accord with NPPF and Selby District Core Strategy Policy SP18.

10.84. As such, subject to conditions as noted by the Ecology Officer, the scheme is considered acceptable.

Archaeology

10.85. Core Strategy Policy SP18 requires the high quality and local distinctiveness of the natural and man-made environment will be sustained by safeguarding and, where possible, enhancing the historic and natural environment including the landscape character and setting of areas of acknowledged importance; and conserving those historic assets which contribute most to the distinct character of the District and realising the potential contribution that they can make towards economic regeneration, tourism, education and quality of life.

10.86. Local Plan Policy ENV1 requires consideration of the potential loss, or adverse effect upon, significant buildings, related spaces, trees, wildlife habitats, archaeological or other features important to the character of the area.

10.87. Policy ENV28 requires that where development proposals affect sites of known or possible archaeological interest, the District Council will require an archaeological assessment/evaluation to be submitted as part of the planning application; where

development affecting archaeological remains is acceptable in principle, the Council will require that archaeological remains are preserved in situ through careful design and layout of new development; where preservation in situ is not justified, the Council will require that arrangements are made by the developer to ensure that adequate time and resources are available to allow archaeological investigation and recording by a competent archaeological organisation prior to or during development.

- 10.88. NPPF paragraph 198 requires in determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.
- 10.89. These development plan policies are consistent with the NPPF and are given significant weight.
- 10.90. The application site is within an archaeological consultation zone. The Councils Heritage Officer advised that the area has some archaeological potential for the Roman period with the discovery of rare, Roman 'gypsum' burials reported nearby. However, there have been a number of archaeological assessments of the sites to the immediate south in recent years. However, these are noted as largely being negative and he also notes that it is also likely that the horticultural use of the current site will also have had a negative impact on archaeological deposits should they have been present. As such, he has noted no objection to the application.
- 10.91. In this context, the schemes impact on heritage in terms of archaeology is considered to have been fully assessed and the scheme therefore accords with the noted policy in the development plan.

Climate Change

- 10.92. The NPPF in paragraph 157 states that "the planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.
- 10.93. The Selby District Core Strategy Policy SP15 'Sustainable Development and Climate Change' in section B states that in order to ensure development contributes towards reducing carbon emissions and are resilient to the effects of climate change, schemes should where necessary, improve energy efficiency, minimise energy consumption

through layout and design, use sustainable construction techniques incorporate water efficient design and sustainable drainage systems.

- 10.94. As part of the application, the site layout plan shows that all units will have EV Charging points, and although the applicants have not provided any further information to set out how the scheme complies with the requirements of Policy SP15, it is considered that for a development of this scale, nothing further is required in policy terms and such provision is now covered by Building Regulations in any instance. As such, the scheme is considered to meet the policy requirements.

Minerals and Waste

- 10.95. The site is within a sand and gravel safeguarding area; and a limestone safeguarding area as designated by Policy S01: Safeguarded surface mineral resources of the Minerals and Waste Joint Plan, which states, “The following surface minerals resources and associated buffer zones identified on the Policies Map will be safeguarded from other forms of surface non-mineral development to protect the resource for the future:
ii) All sand and gravel, clay and shallow coal resources with an additional 250m buffer”.
- 10.96. Policy S02: Developments proposed within Surface Mineral Resource areas states within the safeguarded minerals resource areas shown on the policies map, permission for development other than minerals extraction will be granted where:
- “i) It would not sterilise the mineral or prejudice future extraction; or
 - ii) The mineral will be extracted prior to the development (where this can be achieved without unacceptable impact on the environment or local communities), or
 - iii) The need for the non-mineral development can be demonstrated to outweigh the need to safeguard the mineral; or
 - iv) It can be demonstrated that the mineral in the location concerned is no longer of any potential value as it does not represent an economically viable and therefore exploitable resource; or
 - v) The non-mineral development is of a temporary nature that does not inhibit extraction within the timescale that the mineral is likely to be needed; or
 - vi) It constitutes ‘exempt’ development (as defined in the Safeguarding Exemption Criteria list), as set out in paragraph 8.55).
- 10.97. NYC Minerals and Waste Officers have considered the application and have advised that that there are no active quarry sites, or waste facilities within 500 metres of the site and no sites have been proposed for allocation for minerals or waste activities in the Minerals or Waste Joint Plan within that 500m zone. They have also confirmed that the site is within a Minerals and Waste Safeguarding Area for Limestone and sand and gravel, however, does fall within the exemption criteria stated in paragraph 8.55 of the MWJP (2022) as a redevelopment of previously developed land, not increasing the footprint of the former development.
- 10.98. As such, the scheme is considered to accord with the requirements of the policies in the Minerals and Waste Local Plan.

Waste and Recycling, Open Space, Education and Healthcare

- 10.99. Local Plan Policy ENV1 requires account is taken of the capacity of local services and infrastructure to serve the proposal, or the arrangements to be made for upgrading, or providing services and infrastructure. Policy RT2 sets out the requirements on open space provision. NPPF paragraph 34 requires plans to set out the contributions expected from development. Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 requires planning obligations must only be sought where they meet all of the following tests: a) necessary to make the development acceptable in planning terms; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development.
- 10.100. These development plan policies are consistent with the NPPF and are given significant weight.
- 10.101. Given the scale of the development, it is not considered necessary to require any contributions to education, open space or healthcare. In terms of waste and recycling the submitted plans show an area for the siting of bins to the front of the dwelling which is sufficient in scale to provide space for 4 bins and the developer / occupier will be able to arrange for provision of these bins via the Council once the scheme is ready for occupation.
- 10.102. As such, the scheme is considered acceptable in terms of these aspects.

Section 149 of The Equality Act 2010

- 10.103. Under Section 149 of The Equality Act 2010 Local Planning Authorities must have due regard to the following when making decisions: (i) eliminating discrimination, harassment and victimisation; (ii) advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (iii) fostering good relations between persons who share a relevant protected characteristic and persons who do not share it. The protected characteristics are: age (normally young or older people), disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation.
- 10.104. The proposed development would not result in a negative effect on any persons of or persons with The Equality Act 2010 protected characteristics.

11.0 PLANNING BALANCE AND CONCLUSION

- 11.1 The site represents development of a site partly on safeguarded land outside of development limits and there have to be material considerations to weigh in favour of the development to allow the release of this land given its scale, its relationship to Garden Lane and the approach taken by the Council on earlier small-scale schemes for development of land within the safeguarded land allocation, which front onto

Garden Lane. As such, the scheme is considered acceptable in principle notwithstanding the conflict with Policies SP2 of the Core Strategy Local Plan and SL1 of the Selby District Local Plan subject to conditions.

- 11.2 The scheme layout and design of the units are considered to be appropriate for the site context and of a scale and density that reflects the mix in the area. There are no technical constraints to the development of the site in terms of highways, flood risk, drainage, archaeology, impact on minerals/waste assets, ecology or landscaping as assessed above.
- 11.4 Given the scale of the development, it is not considered necessary to require any contributions to education, open space, or healthcare. In terms of waste and recycling the submitted plans show an area for the siting of bins to the front of the dwelling which is sufficient in scale to provide space for 4 bins and the developer / occupier will be able to arrange for provision of these bins via the Council, once the scheme is ready for occupation. As such, appropriate mitigation is in place to address impacts from the development.
- 11.5 In conclusion, the development of this on partly safeguarded land, outside of development limits and development of such sites is only acceptable in principle, if material considerations exist that outweigh the conflict with Policy SL1 and the spatial strategy as defined by the development plan under SP2. Given that material consideration exist in this case, the scheme is considered acceptable in principle, notwithstanding Policies SP2 of the Core Strategy Local Plan and SL1 of the Selby District Local Plan.

12.0 **RECOMMENDATION**

- 12.1 That planning permission be **GRANTED** subject to the conditions listed below:

Recommended conditions:

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

Reason:

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

- 2 The development hereby permitted shall not be carried out otherwise than in strict and complete accordance with the plans and specifications listed below:

Location Plan	Ref 101978.04
Existing Site Plan	Ref 101978.01
Tree Constraints Plan	Ref 765/01 (received 21/02/2024)
Tree Protection Plan	Ref 765/02/A
Tree Planting Plan	Ref 765/03/A
Proposed Site Plan	Ref 101978.02 Rev I

Proposed Site Plan with Sight Lines Ref 101979.0
Proposed Floor Plans & Elevations Ref 101978.03 Rev A

Reason:

For the avoidance of doubt, to ensure that no departure is made from the details approved and that the whole of the development is carried out, in order to ensure the development accords with Selby Local Plan Policy ENV1.

- 3 Notwithstanding the details shown on Proposed Site Plan Ref 101978.02 Rev I consent has not been given for the creation of the access between Plot 3 and 44 Garden Lane Sherburn in Elmet.

Reason

For the avoidance of doubt

- 4 Notwithstanding the provisions of Class A to Schedule 2, Part 1 of The Town and Country Planning (General Permitted Development) (England) Order 2015 no new windows and/or openings may be placed in the side elevations of plots 1 and 3 without the prior written consent of the Local Planning Authority.

Reason:

In order to safeguard the rights of control of the Local Planning Authority and in the interests of the amenity of the adjoining residential property, having had regard to Policy ENV1.

- 5 Prior to the commencement of the development hereby approved, details of the materials to be used in the construction of the exterior walls and roof(s) of the dwellings shall be submitted to and approved in writing by the Local Planning Authority, and only the approved materials shall be utilised.

Reason:

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

- 6 Notwithstanding the details the hard and soft landscaping as shown on Drawing Numbers - Tree Planting Plan (Ref 765/03/A) and Proposed Site Plan (Ref 101978.02 Rev H) the details of the boundary treatment, bin stores and planting on the Garden Lane frontage shall be submitted to and approved by the Local Planning Authority prior to the commencement of development. The hard and soft landscaping shall then be carried out in its entirety within the period of twelve months beginning with the date on which development is commenced, or within such longer period as may be agreed in writing with the Local Planning Authority. All landscaping shall be adequately maintained for the period of five years beginning with the date of completion of the scheme and during that period all losses shall be made good as and when necessary.

Reason:

To secure the satisfactory implementation of the proposal, having had regard to Policy ENV1 of the Selby District Local Plan.

- 7 No development must commence until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. Construction of the permitted development must be undertaken in accordance with the approved plan.

The Plan must include, but not be limited, to arrangements for the following in respect of each phase of the works:

1. details of any temporary construction access to the site including measures for removal following completion of construction works;
2. restriction on the use of Garden Lane access for construction purposes;
3. wheel washing facilities on site to ensure that mud and debris is not spread onto the adjacent public highway;
4. the parking of contractors' site operatives and visitor's vehicles and details of Parking should be approved by LHA
5. areas for storage of plant and materials used in constructing the development clear of the highway;
6. details of site working hours;
7. details of the measures to be taken for the protection of trees; and
8. contact details for the responsible person (site manager/office) who can be contacted in the event of any issue.

Reason:

In the interest of public safety and amenity and having had regard to Policy ENV1 of the Selby District Local Plan.

- 8 The development must not be brought into use until the access to the dwelling(s) hereby approved at 44 Garden Lane, Sherburn In Elmet, Leeds has been set out and constructed in accordance with the 'Specification for Housing and Industrial Estate Roads and Private Street Works' published by the Local Highway Authority and the following requirements:

The access must be formed with 6 metres radius kerbs, to give a minimum carriageway width of metres, and that part of the access road extending 4.5 metres into the site must be constructed in accordance with Standard Detail number E50 and the following requirements.

- Any gates or barriers must be erected a minimum distance of 6 metres back from the carriageway of the existing highway and must not be able to swing over the existing or proposed highway.
- Provision should be made to prevent surface water from the site/plot discharging onto the existing or proposed highway in accordance with the specification of the Local Highway Authority.
- Measures to enable vehicles to enter and leave the site in a forward gear.

All works must accord with the approved details.

Reason:

To ensure a satisfactory means of access to the site from the public highway in the interests of highway safety and the convenience of all highway users.

- 9 There must be no access or egress by any vehicles between the highway and the dwellings hereby approved at 44 Garden Lane, Sherburn In Elmet, Leeds until splays are maintained giving clear visibility of 42 metres measured along both channel lines of the major road from a point measured 2.4 metres down the centre line of the access road. In measuring the splays, the eye height must be 1.05 metres and the object height must be 0.6 metres. Once created, these visibility splays must be maintained clear of any obstruction and retained for their intended purpose at all times.

Reason:

In the interests of highway safety

- 10 No dwelling to be must be brought into use until the access, parking, manoeuvring and turning areas for all users of the dwellings at 44 Garden Lane, Sherburn In Elmet, Leeds have been constructed in accordance with approved Proposed Site Layout Plan (Ref 101979.0 Rev A). Once created these areas must be maintained clear of any obstruction and retained for their intended purpose at all times.

Reason:

To provide for appropriate on-site vehicle facilities in the interests of highway safety and the general amenity of the development.

- 11 Prior to development (excluding demolition), a site investigation and risk assessment must be undertaken to assess the nature, scale and extent of any land contamination and the potential risks to human health, groundwater, surface water and other receptors. A written report of the findings must be produced and is subject to approval in writing by the Local Planning Authority. It is strongly recommended that the report is prepared by a suitably qualified and competent person.

Reason:

To ensure that the site is suitable for its proposed use taking account of ground conditions and any risks arising from land contamination.

- 12 Where remediation works are shown to be necessary, development (excluding demolition) shall not commence until a detailed remediation strategy has been submitted to and approved by the Local Planning Authority. The remediation strategy must demonstrate how the site will be made suitable for its intended use and must include proposals for the verification of the remediation works. It is strongly recommended that the report is prepared by a suitably qualified and competent person.

Reason:

To ensure that the proposed remediation works are appropriate and will remove unacceptable risks to identified receptors.

- 13 Prior to first occupation or use, remediation works should be carried out in accordance with the approved remediation strategy. On completion of those works, a verification report (which demonstrates the effectiveness of the remediation carried out) must be submitted to and approved by the Local Planning Authority. It is strongly recommended that the report is prepared by a suitably qualified and competent person.

Reason:

To ensure that the agreed remediation works are fully implemented and to demonstrate that the site is suitable for its proposed use with respect to land contamination. After remediation, as a minimum, land should not be capable of being determined as contaminated land under Part 2A of the Environmental Protection Act 1990.

- 14 In the event that unexpected land contamination is found at any time when carrying out the approved development, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and, if remediation is necessary, a remediation strategy must be prepared, which is subject to approval in writing by the Local Planning Authority. Following completion of measures identified in the approved remediation strategy, a verification report must be submitted to and approved by the Local Planning Authority. It is strongly recommended that all reports are prepared by a suitably qualified and competent person.

Reason:

To ensure that the site is suitable for its proposed use taking account of ground conditions and any risks arising from land contamination.

- 15 The development hereby permitted shall be carried out in strict accordance with Section 5.2 of the Preliminary Ecological Appraisal, Biodiversity Feasibility Assessment and Recommendations for Biodiversity Enhancement prepared by LOBO Ecology.

Reason:

In the interests of nature conservation and the protection of protected species and in order to comply with saved Policy ENV1 (5) of the Selby District Local Plan, Policy SP18 of the Selby District Core Strategy Local Plan, national planning policy contained within the NPPF, the 1981 Wildlife and Countryside Act and the Conservation of Habitats and Species Regulations 2017.

- 16 The site shall be developed with separate systems of drainage for foul and surface water on and off site.

Reason:

In the interest of satisfactory and sustainable drainage, in order to comply with Policy ENV1 of the Selby District Local Plan.

- 17 Prior to the use commencing or the commencement of any drainage works (whichever is the sooner), details for the method of disposal of the foul water shall be submitted to and agreed in writing the Local Planning Authority. The details shall include a timetable for implementation and works shall be carried out in accordance with the agreed details.

Reason:

To ensure the development does not lead to groundwater pollution, in accordance Local Plan Policy ENV2 and paragraph 180 of the NPPF.

- 18 Prior to the development being brought into use, a scheme for the provision of surface water drainage works shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details prior to the development being brought into use.

Reason:

To ensure the development is provided with satisfactory means of drainage and to reduce the risk of flooding.

Recommended Informative(s)

INFORMATIVE

The Local Planning Authority worked positively and proactively with the applicant to identify various solutions during the application process to ensure that the proposal comprised sustainable development and would improve the economic, social and environmental conditions of the area and would accord with the development plan. These were incorporated into the scheme and/or have been secured by planning condition. The Local Planning Authority has therefore implemented the requirement in Paragraph 38 of the NPPF.

INFORMATIVE - COAL AUTHORITY - LOW RISK AREA

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848.

Further information is also available on the Coal Authority website at:

www.gov.uk/government/organisations/the-coal-authority

Standing Advice valid from 1st January 2023 until 31st December 2024

INFORMATIVE - NEW AND ALTERED PRIVATE ACCESS OR VERGE CROSSING

Notwithstanding any valid planning permission for works to amend the existing highway, you are advised that a separate licence will be required from North Yorkshire Council as the Local Highway Authority in order to allow any works in the existing public highway to be carried out. The information is available on the Council's web site: www.northyorks.gov.uk/roads-parking-and-travel/roads-and-pavements/pavements-and-kerbs The Local Highway Authority will also be pleased to provide the detailed constructional specifications referred to in this condition.

Target Determination Date: 18th December 2024

Case Officer: Yvonne Naylor (yvonne.naylor@northyorks.gov.uk)

Appendix A – Proposed Site Plan Ref 101978.02 Rev I