

COMMITTEE REPORT

Date: 28 April 2022 **Ward:** Osbaldwick And Derwent

Team: East Area **Parish:** Osbaldwick Parish
Council

Reference: 21/00415/FULM

Application at: Land Comprising Field At 463582 452080 Murton Way York
For: Change of use of field from rough grazing to green burial area
with landscaping

By: Mrs Louise Pink

Application Type: Major Full Application

Target Date: 17 March 2022

Recommendation: Refuse

1.0 PROPOSAL

THE SITE

1.1 The application site comprises a field, (OS field pt 6610) currently in use as rough grazing for cattle. The site is 3.7ha in size, lying directly north of the residential properties on the north side of Murton Way, in Osbaldwick. The site is accessed from three points: through a farm gate between Nos. 21 and 23 Murton Way, from a farm gate and stile from Galligap Lane and via an existing public right of way (PRoW) through the adjacent field. The field can be crossed in a SW/NE direction along the PRoW across the field to join with Outgang Lane to the north-east.

1.2 The site is largely rectangular in shape with a triangular parcel to the north-east. Field boundaries comprise post and rail fencing to the west and north, treed hedgerow to the east, and domestic gardens to the south (mix of timber fencing and hedgerows). The fields contain clear medieval ridge and furrow. Open agricultural land extends to the north, the candidate Site of Importance for Nature Conservation (SINC) is located to the immediate east, and beyond is Murton Way industrial estate and a gypsy traveller site. Proposed housing site ST7 'Land east of Metcalfe Lane' lies c240m to the north at the nearest point (Policies Map North, Publication Draft Local Plan 2018).

1.3 The site is in the Green Belt, and a strip within the eastern edge of the site, including the vehicle access, is within flood zone 3 (high risk of flooding). The north-east corner is flood zone 2 (medium risk of flooding). Osbaldwick Beck runs along

the south side of Murton Way at a distance of 2m from the boundary at its closest point. Osbaldwick Conservation Area follows the settlement boundary; along the site's southern and western edge.

PROPOSAL

1.4 The application is for the change of use of the field from rough grazing to a Green Burial Area with landscaping, surfacing of an existing access from Murton Way and creation of a vehicle turning area with 2no. disabled parking spaces and cycle parking. Osbaldwick Parish Council (the applicant) advise that St. Thomas's Church, Osbaldwick has been a 'closed churchyard' for many years and St. James's Church in Murton will likely reach capacity within three years resulting in no local burial ground for Parishioners within Osbaldwick or Murton Parish areas. The Parish Council are not aware of any proposals by City of York Council or private providers to provide alternative burial facilities within the Parish.

1.5 As such, the application site has been identified for a Green Burial Area. It is considered likely, based on existing figures, that less than ten burials would take place per annum with a maximum of 40 over a five year period. Access would be retained from Murton Way for a hearse, with the deceased carried by foot, tractor or on a horse and cart to their final resting place. Burial plots would be unmarked and deceased buried in simple shrouds. It is proposed that the burials would extend across the whole site northwards with a 10m strip either side of the PRow.

1.6 New hedgerow planting is proposed along the north and western boundaries of native mixed species, and specimen native trees local to the area (such as oak). Ornamental trees would be planted graduating northwards following the burials towards the centre of the site. The northern part of the site where the ridge and furrow exists would be managed as a wildflower meadow. It is intended to maintain the existing PRow but also extend it to connect with the entrance from Murton Way.

2.0 POLICY CONTEXT

City of York Publication Draft Local Plan (2018)

GB1 Development in the Green Belt
SS9 Land east of Metcalfe Lane
D2 Landscape and Setting
D6 Archaeology
GI1 Green infrastructure
GI2 Biodiversity and access to nature

GI4 Trees and hedgerows
GI7 Burial and memorial grounds
ENV4 Flood risk
T1 Sustainable access

City of York Draft Local Plan Adopted for Development Control Purposes (2005)

GB1 Development in the Green Belt
GP1 Design
C1 Community facilities

3.0 CONSULTATIONS

INTERNAL

Forward Planning

3.1 The site should be considered as within the general extent of the Green Belt and that the proposed use is not 'inappropriate development' in the Green Belt. The proposals are considered to satisfy the provisions of Policy GI7 'Burial and memorial grounds' in principle, although there is only limited evidence of local need and no assessment of alternative sites, and no reference for the need for a burial ground in the emerging Neighbourhood Plan for Murton.

3.2 Land to the north of the application site is housing allocation ST7 for 845 dwellings. Access is proposed off Murton Way as set out in Policy SS9 'Land East of Metcalfe Lane'.

3.3 There are a number of significant unresolved objections relating to these policies. Four housing developers are seeking to alter/extend the boundary of the allocation to the north, west and / or south to provide more housing and to develop the site as a garden village with a range of facilities or to better relate to the existing urban area as an urban extension. Two propose the access to Murton Way through the northern part of the application site, rather than via Outgang Lane as shown on the Local Plan Policies Map. Other representations received object to the principle of the housing allocation, wishing to preserve the Green Belt and the setting of York.

3.4 Site ST7 contributes to the council's five year housing land supply. In line with paragraph 48 NPPF 2021, only limited weight can be attached to Policy SS9 and the

proposed housing allocation at this time. However, consideration must be given to any implications of granting permission for this change of use application and the latest masterplanning for ST7.

3.5 While the policy map's location for the access is only indicative and subject to masterplanning, access via Murton Way set out in Policy SS9 is supported by the developers. Their representations modify the indicative location currently identified and show it going through part of the application area. The developer's responses will be discussed through the Local Plan examination and may require modifications to the policies map and accompanying policy SS9. Consideration must be given to the implications of granting permission on the delivery of strategic housing allocation ST7, particularly with regard to the potential vehicular access from Murton Way.

Design, conservation and sustainable development (Landscape Architect)

3.6 The landscape architect has no objection to the principle of the proposed development. However the burials must be compatible with the ridge and furrow so they can still be read. The change of use presents an incentive for the land to be managed appropriately as outlined in the submission which would serve to enhance the landscape character of this open tract of land immediately to the north of the village and from the PRow. Improvements to the landscape resource would include increasing species diversity and therefore its amenity, planting of a suitably located heritage orchard, reinstatement of hedgerow, increase in the number of trees and a new public footpath from Murton Way. A condition for agreeing a suitable landscape management plan is advised.

Design, conservation and sustainable development (City Archaeologist)

3.7 The fields contain clear medieval ridge and furrow. Beneath these earthworks earlier archaeological features may survive. The wider landscape in this area contains features dating to the late prehistoric and Romano-British period. This site has not been subject to any archaeological investigation. The burial of human remains and planting of trees will have a detrimental impact on any archaeological resource on the site (including the ridge and furrow). A program of evaluation is required to attempt to clarify whether there is any below ground resource on this site and how it may be impacted by the proposal. A geophysical survey followed by trial trenching in selective areas should allow an assessment of the quality and quantity of any archaeological features that may survive. This work can be conditioned although the applicant may wish to undertake the initial survey as soon as possible

to provide some clarity on the archaeological potential of the site. The extant ridge and furrow will also need to be recorded as presumably it will be cut into when burials take place. An archaeological evaluation is required but this can be secured by condition.

Design, conservation and sustainable development (Ecologist)

3.8 Further information is required and a Preliminary Ecological Appraisal (PEA) submitted for consideration prior to determination. Officer Note: This was duly undertaken by the applicant and submitted.

3.9 The ecologist advised that as the proposed design includes wildflower, tree and hedgerow planting a management plan will be required to safeguard these natural assets and ensure the proposal can achieve Biodiversity Net Gain. Once survey data has been collected, a clear understanding of how the associated ecology will be effected and a suitable planting scheme can be established, a Landscape and Ecological Management Plan (LEMP) will be required to detail how these enhancement are to be installed, managed and maintained.

3.10 Reviewing the PEA submission of October 2021, the ecologist advised that they had no objection to the application subject to conditions relating to:

- (1) The completion, submission and approval of required ecological surveys and any protected and notable species protected from harm, damage and disturbance during the proposed works;
- (2) Approval and implementation of a biodiversity enhance plan/drawing;
- (3) Approval of and implementation of a Landscape and Ecological Management Plan (LEMP); and
- (4) No vegetation clearance during the active bird nesting season.

Flood Risk Management

3.11 The application site is in Environment Agency (EA) Flood Zones 2 and 3 therefore a Flood Risk Assessment should be submitted for approval by FRM and the EA. Details are required for the surfacing materials of the access and car park. FRM object to the use of tarmac planings as it would be impervious and also to crushed rubble and stones; these would still compact to an extent to prevent permeability. It is likely that formal drainage will be required if the surface is to withstand vehicular loading, and for the access over the existing soft verge. This

drainage would need to be designed in accordance with CYC's Sustainable Drainage Systems Guidance for Developers where infiltration methods of surface water disposal will need to be explored as the first preference following a percolation test.

3.12 The lack of details/investigation with regards to groundwater remains following the submission of the Tier 1 assessment. If not fully understood/investigated, this could preclude the site for its intended use and also have a detrimental effect on the existing drainage systems and downstream watercourses, therefore this investigation must be carried out and prior to determination of the application.

Highways Network Management

3.13 HNM commenting on the original submission, requested that further details were provided on the proposed access, gating arrangements, width of hardstanding and vehicular swept path and tracking of a hearse. Reversing of a laden hearse would potentially be undignified / impractical particularly with a narrow gateway. Turning is recommended within the site to allow funeral vehicles to access and egress the site in forward gear and clear access must be provided for emergency vehicles.

3.14 Parking is not acceptable on the highway cross-over as it would obstruct access. Murton Way has no parking restrictions and therefore no guaranteed space for parking on the highway. It is known that there is strong opposition to parking restrictions within Osboldwick Village. Consideration should therefore be made to accommodate parking for key family cars (including limousines) and blue badge holders within the site (in addition to access for hearse and emergency services). Furthermore, Murton Way is narrow and parked cars restrict movements east/west to a single direction (give way). The road forms part of a bus route, and is well trafficked by other vehicles. Large amounts of parking on street to attend burials is likely to cause obstruction to the free flow of traffic. Should a modest amount of parking not be able to be accommodated on site; consideration should be given to parking restrictions on Murton Way to allow suitable 'passing places' for buses and other traffic. Temporary parking restrictions for burials could be secured on a shorter timescale under 'emergency' powers or with a three week lead in if appropriate.

3.15 Pedestrian access should be to DDA requirements. Details of the means of access (gates/styles) to the existing and proposed right of ways should be identified.

Public Protection

3.16 Burial grounds can pose potential contamination risks to soil and groundwater, so steps need to be taken to reduce and manage these risks. PP have concerns regarding the proposed orchard on the southern part of the site and would recommend that only trees with non-edible fruits are planted on the site, in order to protect public health. The Environment Agency will provide detailed comments in relation to groundwater and are likely to require a hydrogeological assessment and a long term monitoring plan.

EXTERNAL

Environment Agency

3.17 The EA's first consultation response in March 2021 was that they objected to the proposal because the applicant had not supplied adequate information to demonstrate that the risks posed to groundwater can be satisfactorily managed. They continued stating that information submitted highlighted that groundwater levels in the vicinity of the site can be found just 1.4m below ground level. Therefore there is potential that there will not be a 1m unsaturated zone from the bottom of the burial pit to the highest predicted annual groundwater level and there could be standing water in the burial pit when it has been dug. This will fail to comply with two of the minimum requirements, as well as position statement L3 of 'The Environment Agency's approach to groundwater protection' (2018). A Tier 1 groundwater risk assessment is required. Planning permission should be refused on these grounds.

3.18 They advised that they have no objections to the proposed development on flood risk grounds, subject to the inclusion of a planning condition that there must be no raising of ground levels within flood zone 3, and all excess spoil / arisings must be disposed of appropriately, or if retained within the site it must be located outside of the floodplain.

3.19 The applicant then provided further information to the EA. A second consultation response was received from the EA in June 2021. They advised that due to the anticipated burial rate of less than 10 per year, they were removing their objection, and that the risk to groundwater could be satisfactorily managed.

3.20 The proposed Green Burial Area is located upon the Sherwood Sandstone

Formation (Principal aquifer), this is overlain by a superficial geology which protects the bedrock aquifer and filters the water before reaching it. The borehole logs from the British Geological Survey (BGS) website show that the cohesive superficial deposits in this area are variable in nature and extent, but give protection to the principal aquifer. Whilst locally water levels may be very shallow in the drift deposits, site specific information is not available. The site is therefore considered to be a “low risk groundwater area”, which means that an environmental permit will not be required and they would not provide an Environment Agency site specific risk assessment. A pre-commencement of development condition is advised requiring a Tier 1 assessment to be undertaken confirming the site is suitable for the proposed use, before the site comes into first use. A hydrogeological risk assessment must be undertaken to show that there are minimal risks to the environment either at time of burial, or in the future. Reference should be made to the Environment Agency document ‘Assessing the Groundwater Pollution Potential of Cemetery Developments’.

3.21 They continued stating that the LPA should be satisfied that in principle any new human cemetery must:

- be at least 250 metres from a well, borehole or spring used to supply water that is used for human consumption, or for use in dairy farms;
- be at least 30 metres from any other spring or watercourse, and at least 10 metres from any field drain;
- have at least one metre of subsoil below the bottom of the burial pit, allowing a hole deep enough for at least one metre of soil to cover the remains; and
- have at least one metre of unsaturated zone (the depth to the water table) below the base of any grave. Allowance should also be made to any potential rise in the water table (at least one metre should be maintained).

3.22 The applicant was advised of DM officers concerns that this criteria had not been met and information submitted to date of the high water table evidenced from boreholes around the site, indicated it was not suitable for human burials as water would be standing in the graves. A Tier 1 Desktop Assessment was then prepared by Tetra Tech and submitted by the applicant. A final letter of advice was received from the EA following reconsultation in November 2021. This stated that a Tier 2 Risk Assessment should be undertaken to ensure the minimum requirements can be met, which can be secured as a pre-commencement of development condition before the site is operational. The requirements for burial grounds were set out in their letter:

- Requirement 1: No human burials within a groundwater protection zone, within 10m of the nearest land drain, within 30m of the nearest watercourse, within 50m of any well, spring or borehole, or within 250m of any where the water is intended for human consumption or used in food production, or in areas having karstic groundwater flow characteristics.
- Requirement 2: No human burials on land which is liable to flooding.
- Requirement 3: The base of each grave should be at least 1m above the highest predicted annual groundwater level.
- Requirement 4: There should be no standing water in graves when dug.
- Requirement 5: Graves should not be dug in unaltered or unweathered bedrock.

Foss Internal Drainage Board (Foss IDB)

3.23 The IDB has assets close to the site in the form of Outgang Drain (to the east) and Osbaldwick Beck (to the south). These watercourses are known to be subject to high flows during storm events. Outgang Drain is partly culverted and partly “open” watercourse. The Board is also aware of an ordinary, culverted, watercourse to the west of the site known as Galligap Lane Culvert. This culvert is not maintained by the Board and therefore it is the responsibility of the riparian owner to maintain. However, the IDB believe it is in a state of disrepair and partially/fully blocked. Any discharge to a board maintained watercourse or ordinary watercourse requires consent from the Board. The Board has no objections in principle to the development, however the IDB is aware that the land has a high water table and can be subject to flooding in winter. Suitable investigations should therefore be carried out given the site’s proposed use. If the applicant is proposing to install a land drainage system, then the Board’s prior written consent would be required. An informative is advised.

4.0 REPRESENTATIONS

4.1 Six neighbours/interested parties have commented in support of the proposals. In addition to general comments in support, the following is advised:

- The site is not well managed, there are derelict buildings adjacent, silted up ponds, and ditches which require clearing out.
- The land is collectively owned by the beneficiaries of the Jewitt Trust. The Trustees also administer the letting of the land for grazing rights and the collection of annual rents, which are then distributed to the beneficiaries.

- An Option Agreement is in place to purchase the land, subject to obtaining planning permission for housing development in favour of BDW Trading Ltd (Barratt Homes).
- Both parcels of land, the 9.15 acres (application site) and the 45.41 acres owned by the Jewitt Trust have not been selected for proposed housing development in the Local Plan, submitted by the City of York Council on 25 May 2018 for independent examination.
- Many benefits of the Green Burial ground include increased biodiversity, access to nature, aesthetics of a woodland meadow and keeping separation between Osbaldwick and housing site ST7 to the north. There are multiple routes the access roads could take.
- Murton Parish Council confirm that the need for an alternative burial site will become pressing for Murton Parish as the small graveyard at St James's Church will be full within a couple of years.

4.2 Nine interested parties/neighbours have raised objections as follows:

- The field is susceptible to groundwater flooding as the water table is high.
- The site floods each year. Concerns about floodwater from the burial ground entering gardens.
- Concerns about dust blown towards the neighbours and health impact.
- Government guidance for human and animal burials must be 'at least 30m from any spring or watercourse not used for human consumption or not used in food production'. The neighbour has a well 1.5m from the site boundary which provides water to a 30,000 litre fish pond and irrigation for the garden. The burial ground will contribute to contamination of the pond.
- How will floral and other tributes be managed for the deceased?
- Concerns over parking and traffic management.
- There should be additional security measures such as fencing to protect neighbours from increased numbers of visitors.
- An ecological survey should be undertaken.
- Is there local demand for this facility or will it attract patronage from a much wider area with concerns over traffic and pollution for local residents?
- the proposal is in direct conflict with the delivery of proposed housing site ST7 which has the potential to accommodate a minimum of 845 dwellings. The ST7 site has been chosen by the Council following a substantial body of evidence. Within the body of the text accompanying the proposed allocation, it is a requirement that vehicular access is taken from Murton Way. The Green Burial

Ground will significantly undermine the delivery of one of the main strategic residential allocations.

- Alternative sites for the Green Burial ground should have been investigated.
- The land is not available to purchase.

5.0 APPRAISAL

KEY ISSUES

5.1 The key issues are considered to be:

- Principle of development (green belt, local need, burial policy)
- Housing site ST7
- Potential contamination
- Ground water and drainage
- Archaeology
- Landscape and ecology
- Highways and access

LEGISLATION

5.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that determinations be made in accordance with the development plan unless material considerations indicate otherwise.

PLANNING POLICY CONTEXT

National Planning Policy Framework (2021)

5.3 Central Government guidance is contained in the National Planning Policy Framework ("NPPF") 2021. It is a material consideration in the determination of this application. Paragraph 11 establishes the presumption in favour of sustainable development, which runs through both plan-making and decision-taking. In decision taking this means approving development proposals without delay that accord with an up-to-date development plan. In the absence of relevant development plan policies or where they are out-of-date, permission should be granted unless policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the proposed development, or any adverse impacts of doing so would significantly or demonstrably outweigh the benefits when assessed

against the policies in the Framework as a whole. To achieve sustainable development, the planning system has three overarching objectives; economic, social and environmental objectives.

5.4 Section 13 protects Green Belt land, the fundamental aim is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts being openness and permanence. Paragraphs 149 and 150 confirms that cemeteries and burial grounds, including any associated new buildings, are appropriate in the Green Belt providing they preserve openness and do not conflict with Green Belt purposes.

5.5 Section 14 sets out principles on planning and flood risk, directing development away from areas at risk of flooding or where it is necessary in such areas, be made safe for its lifetime without increasing flood risk elsewhere. Burial grounds are not listed in the flood risk vulnerability classifications (Annex 3), however amenity open space is 'water compatible development'. 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. Flood risk must not be increased elsewhere. Development should only be allowed in areas at risk of flooding where it can be demonstrated that within the site the most vulnerable development is located in areas of lowest flood risk, and safe access and escape routes are included. Changes of use do not require sequential or exception tests but should meet the requirements for site-specific flood risk assessments.

5.6 Section 15 confirms that planning decisions should contribute to and enhance the natural environment by protecting and providing net gains for biodiversity. Planning decisions should ensure a site is suitable for its proposed use taking account of ground conditions and any risks arising from contamination, ensuring that adequate site investigation information, prepared by a competent person, is available to inform these assessments (para. 183). New development should be appropriate for its location taking into account likely effects of pollution on health, living conditions and the natural environment as well as the potential sensitivity of the site and wider area (paragraph 185).

5.7 Section 9 supports sustainable transport choices; walking, cycling and public transport. In determining applications, it must be ensured that safe and suitable access to the site can be achieved for all users. Development should only be refused if there is unacceptable impact on highway safety.

5.8 Section 12 on well-designed places requires development to function well and add to the overall quality of the area with suitable layout and appropriate landscaping.

5.9 Section 16 is on conserving and enhancing the historic environment explaining that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 194 states that where a site has the potential to include heritage assets with archaeological interest, LPAs should require developers to submit an appropriate desk-based assessment and where necessary, a field evaluation.

Regional Spatial Strategy

5.10 The saved policies from the Yorkshire and Humber RSS relate to the general extent of the York Green Belt. TY9C and Y1C confirm that the Green Belt extends to its outer boundary approximately 6 miles from the city centre. The detailed inner and the rest of the outer boundaries of the Green Belt around York should be defined to protect and enhance the nationally significant historical and environmental character of York, including its historic setting, views of the Minster and important open areas.

City of York Publication Draft Local Plan (2018)

5.11 The Publication Draft City of York Local Plan 2018 ('2018 Draft Plan' or 'eLP') was submitted for examination on 25 May 2018, with initial hearings taking place in late 2019. In accordance with paragraph 48 of the NPPF the Draft Plan policies can be afforded weight according to:

- The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- -The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- The degree of consistency of the relevant policies in the emerging plan to the policies in the previous NPPF published in March 2012. (NB: Under transitional arrangements plans submitted for examination before 24 January 2019 will be assessed against the 2012 NPPF).

5.12 The evidence base underpinning the 2018 Draft Plan is capable of being a material consideration in the determination of planning applications.

5.13 The following policies are of relevance. SS2 on the role of the Green Belt states the primary purpose is to safeguard the setting and special character of York. GB1 on development in the Green Belt confirms cemeteries are an appropriate use providing openness, Green Belt purposes, and the character and setting of the city are preserved.

5.14 Policy SS9 relates to housing site ST7 'Land East of Metcalfe Lane' (which is located c240m to the north at the nearest point). It confirms the site is capable of delivering approximately 845 dwellings as a garden village. Vehicular access will be from Stockton Lane to the north of the site and / or Murton Way to the south. Access from Murton Way should avoid impact on 'Osballdwick Meadows' SINC. The Policies Map North however shows the indicative strategic site access not through the application site, but connecting to Outgang Lane.

5.15 D2 Landscape and setting states that landscape quality and character should be conserved and enhanced. D6 archaeology states that development proposals will be supported where they do not harm significances of the site not its setting. Where this is unavoidable, mitigation measures should be agreed.

5.16 GI1 Green infrastructure seeks to enhance York's landscape, geodiversity, biodiversity and natural environment by recognising the multi-functional role of green spaces and enhancing green corridors and spaces. It also seeks to increase appropriate access to nature and open spaces for recreation and well-being needs. GI2 'Biodiversity and access to nature' requires development to avoid loss or significant harm to Sites of Importance for Nature Conservation (SINCs) whether directly or indirectly. Development should result in a net gain in biodiversity. Policy GI4 protects existing trees and hedgerows.

5.17 G17 Burial and memorial grounds states that planning permissions for the use of land as a burial/memorial ground will be granted provided that:

- i) There is an identified local need
- ii) The site is accessible by public transport
- iii) Surface water drainage is adequate and there is no threat to groundwater quality
- iv) The proposal would not have an adverse impact on landscape quality, nor the historic character and setting of York nor on residential amenity
- v) The proposal includes a land management and maintenance programme.

5.18 ENV4 flood risk requires a flood risk assessment to be submitted for any development in flood zones 2 and 3 to ensure it will be safe. It also sets out the requirements for sequential and exception tests based on flood risk vulnerability. T1 'Sustainable access' supports development where it minimises the need to travel and provides suitable, safe and attractive access for all transport users. Development proposals must demonstrate that there is safe and appropriate access to the adopted highway.

City of York Draft Local Plan including the 4th set of changes, adopted for development control purposes (2005) (DCLP)

5.19 The DCLP was approved for development management purposes in April 2005. Whilst it does not form part of the statutory development plan, its policies are considered to be capable of being material considerations in the determination of planning applications where policies relevant to the application are consistent with those in the NPPF, albeit with very limited weight.

5.20 Policy SP2 confirms the primary purpose of the York Green Belt to be to safeguard the setting and historic character of the city. Policy SP3 seeks to safeguard the historic character and setting of York which includes protection of the environmental assets and landscape features; including open countryside, around York. Policy GB1 confirms development in the Green Belt will only be granted planning permission where it would not detract from openness, not conflict with Green Belt purposes and not prejudice the setting of the city, and it is for one of several purposes including cemeteries.

5.21 GP1 design requires development proposals to respect and enhance the local environment, retain the rural character and setting of villages and ensure that residents are not unduly affected by noise, disturbance or overlooking. Policy C1 states that planning applications for social, health, community and religious facilities will be granted permission provided that the proposed development is of a scale and design appropriate to the character and appearance of the locality and it would meet a recognised need.

Evidence base

City of York Council – Independent Burial Ground Capacity Survey Report 2017

5.22 All parishes and CYC were invited to participate in the survey, whether they had a burial ground or not to ascertain burial ground capacity availability and the needs of the local authority of the next 20 years. 14 parishes and 3 city wards responded out of a possible 34 (ie 50% response). Osbaldwick and Murton Parishes did not respond to the survey. The survey found that there was significant differences between the different parishes in terms of number of internments and availability of burial space, with only three having burial capacity of 50 years or more, and one other having over 20 years. However the total number of internments in relation to the number of deaths is quite unbalanced: the number of deaths in 2015/16 was 2,462 and those accounted by the survey were just 678 internments (ie. 27.8%). There are parishes with no more land for expansion of their burial grounds. The three major burial grounds for the city's population are York Crematorium (ashes only, capacity of 15 years, but it could expand), York Cemetery (burial capacity of 10 years for graves and 20 years for ashes) and Fulford Cemetery (capacity 50 years but could expand). There is a need for further burial grounds particularly in the north of the city.

APPRAISAL

Need

5.23 York is serviced by both local parish graveyards and cemeteries and city wide facilities. The graveyard at St. Thomas's Church, Osbaldwick has been a 'closed churchyard' for many years and St. James's Church in Murton will likely reach capacity within three years. It is considered reasonable therefore that a local cemetery / burial ground would be attractive to local residents, although this has not been pursued through the formal Local Plan / Neighbourhood planning process.

5.24 Green Burial sites however offer an alternative, 'green' form of burial with corpses buried in unmarked graves in coffins or shrouds made from natural, sustainable materials on sites serving a conservation purpose. Currently the site is semi-improved grassland used for grazing. The application proposed that the Green Burial site be managed as a wildflower meadow with an annual hay crop and possible sheep grazing with woodland planting to the south following the burial line as it moves northwards across the site. Existing trees would be retained and significant new hedgerow planting undertaken with hedgerow trees. The existing public right of way across the site would remain and be extended south to connect with the access from Murton Way.

5.25 The applicant advises that the maximum capacity of the proposed cemetery is 40 burials in any five year period and no more than 10 in any one calendar year. Development management officers have contacted two other Green Burial sites in York at Fulford and Rufforth who advise of an average of 3 and 10 green burials per year respectively, suggesting demand anticipated for the proposed site is reasonable (maximum ten per year). There is a need for the facility for Osbaldwick Parishioners and the site is in a sustainable location, accessible by bus, on foot and by bicycle in accordance with eLP policy G17.

Green Belt

5.26 The site is identified as being within the Green Belt, in both the draft and eLP. As this boundary has not been formally adopted, and as the site falls within the 6 mile outer boundary as defined by the RSS, and in accordance with the *Wedgewood v City of York Council* judicial review, an assessment should be undertaken of whether the land serves Green Belt purposes.

5.27 The land is open in character comprising semi-improved grassland in agricultural use as grazing land, bounded by hedgerows and trees on three sides and with a defined settlement edge of housing and domestic gardens to the south. Beyond the site to the north, the open countryside (farmland) continues. The site is appropriately identified as Green Belt.

5.28 The proposals are for a change of use to a Green Burial ground. Graves would be unmarked, and a short access road and small car park for 2no. cars with gravel surface and a couple of Sheffield bicycles stands is proposed, tucked into the south-east corner of the site, adjacent to the settlement boundary and using an existing track and farm gate. The car park would comprise approximately 432 sq.m of gravel surfacing and the access track, also with gravelled surface, would be 5m wide and extend for a length of 30m between two dwellings on Murton Way to the car park. This track is within the settlement boundary and not in the Green Belt. No buildings are proposed within the site. The limited vehicle access, occasionally, transitory and limited activity on the site will result in a very marginal change to the tranquil nature of the field, on maximum 10 occasions per year when burials take place. The unmarked graves mean that any visits post burial, would be anticipated to be less than a traditional cemetery and as the PRoW already crosses the site, no overall change to its current use with general public having access. As such the scheme maintains the openness and permanence of the Green Belt and supports Green Belt aims by preserving its natural unbuilt state, preventing the urban area

extending north into the countryside, and preserving the rural setting of Osbaldwick which already benefits from access by local residents for limited recreational use / functional access in terms of the public footpath. It is considered to be appropriate development in the Green Belt in accordance with paragraph 150(e) of the NPPF 2021.

Housing Allocation

5.29 The application site is not within strategic housing site ST7 'Land East of Metcalfe Lane' in the eLP but 240m south of the site with open countryside between. Policy SS9 explains that masterplanning will determine the design of the new garden village. Vehicular access will be from Stockton Lane to the north of the site **and / or** Murton Way to the south, with a small proportion of public transport traffic potentially served off Bad Bargain Lane. The Policies Map North shows the option of connecting to Murton Way as **not** passing through the site and connecting to Murton Way to the east, via Outgang Lane. However it is understood that this is an indicative route and may change following any masterplanning exercise and consideration by the Local Plan Inspectors of the developers unresolved objections at the examination in public.

5.30 Despite objections by landowners and housing developers, and advice from Forward Planning Officers, in terms of determining this application it is considered that there is no conflict with housing site ST7 nor policy SS9. The access route is one of two options, the other bring Stockton Lane. The proposed route is not shown as going through the Green Burial site.

5.31 Whilst the Parish Council are the applicant, they are not the site owners. It is lawful to grant planning permission without the applicant having any interest in the land, provided the landowners are notified.

Appropriateness of the site as a Green Burial Ground

5.32 The vehicular access from Murton Way and the eastern edge of the site is in Flood Zone 3 (high risk of flooding). The strip of land in the north-east corner of the site extending towards Outgang Lane is in Flood Zone 2. The Environment Agency have confirmed they had no objection to the proposal on flood risk grounds.

5.33 Referencing the minimum requirements of the EA, there should be no burials in these areas and this could be addressed by condition and an amendment to the

submitted revised 'Concept Masterplan' dated January 2022 to take the burial zone out of these higher risk areas (as previously requested).

5.34 There remain concerns about the suitability of the site for human burials through reference to the EA's minimum requirements. It is understood that the removal of their objection was due to the low level of burials per year and the lack of need for an Environmental Permit. However it did not preclude the applicants need to meet these requirements.

5.35 The original submission provided evidence that the ground water was at shallow depths, circa 1.4m below ground level. Due to lack of ownership of the site, on site surveying is not possible. A desk top Tier 1 Assessment, prepared by Tetra Tech was undertaken with report dated October 2021. This report confirmed that whilst the solid bedrock underlying the site is Principal aquifer, it is not within a Source Protection Zone and there are no abstraction points within 1km of the site (Very Low vulnerability ranking). The closest water course is Osbaldwick Beck 2m to the south (Very High vulnerability ranking). The site is at risk of flooding in the east and north-east from surface waters. British Geological Survey boreholes in close proximity to the site indicate shallow groundwater at less than 2m below ground level (very high vulnerability ranking). However the report shows that ground water was encountered at 1.4m below ground level at 15m to the south-east of the site boundary, at 1.2m at 75m to the south, at 1.1m at 80m to the east and also 1.4m at 80 m to the east. This is in fact shallower than first reported and it is not known if these borehole test were undertaken in wet winter months. There are further ground water strikes at greater depths being 2.4m to the south east and 65m to the south.

5.36 Overall, the Tier 1 report concludes the vulnerability scores low to moderate vulnerability ranking and an Intermediate-risk development where at Tier 2 Assessment is required to gather site specific information including intrusive investigation to confirm ground conditions, monthly groundwater and surface water sampling for at least a year, and mathematical modelling of the pollution potential of the burial site.

5.37 Referencing online EA guidance 'Cemeteries and burials: prevent groundwater pollution' (2017 updated 2020), it states that all graves must have at least 1m clearance between the base of the grave and the top of the water table, they should not have any standing water in them when dug, and be deep enough that there is at least 1m of soil cover over the coffin or body. All the evidence presented to date by the applicant, of the shallow ground water levels at less than

2m in depth and found at 1.1m, 1.2m and 1.4m at various boreholes around the site, demonstrates that the site is not suitable for human burials. The only means of confirming otherwise would be through a site specific Tier 2 Assessment which cannot be undertaken as the applicant cannot gain access.

5.38 Whilst the EA have advised of a pre-commencement condition, this key requirement goes to the heart of the principle of the development. The NPPF at paragraphs 183 and 185 states that planning decisions should ensure a site is suitable for its proposed use taking account of ground conditions and any risks arising from contamination, ensuring that adequate site investigation information, prepared by a competent person, is available to inform these assessments. New development should be appropriate for its location taking into account likely effects of pollution on health, living conditions and the natural environment as well as the potential sensitivity of the site and wider area. The proposal is contrary to these principles as the Tier 1 Report evidence demonstrates otherwise. It is also contrary to eLP policy G17 'Burial and memorial grounds' part (iii).

5.39 A pre-commencement of development condition, as proposed by the EA is not appropriate with reference to the NPPF paragraphs 183 and 185 given that the unresolved groundwater issues go to the very heart of whether the site is suitable for the proposed development.

Archaeology

5.40 The proposed development site is an undeveloped piece of land on the edge of the historic settlement of Osbaldwick. The fields contain clear medieval ridge and furrow. Beneath these earthworks earlier archaeological features may survive. The wider landscape in this area contains features dating to the late prehistoric and Romano-British period. This site has not been subject to any archaeological investigation. However, as the presence of archaeological remains is unknown, no harm can be identified and there are no 'designated heritage assets'. The balance with public benefits and any harm is not required and the survey can be conditioned.

Landscape

5.41 The proposals are supportable on landscape grounds providing measures are in place to ensure that the ridge and furrow could still be read. The change of use presents an incentive for the land to be managed appropriately to enhance the landscape character by nurturing the ridge and furrow meadow for species amenity

and increasing its amenity value, planting of a woodland, reinstatement of the hedgerow and introduction of a new public footpath. The proposals are thus in accordance with GI1 Green infrastructure in the eLP. Should the application be supported, a management plan could be conditioned.

Ecology

5.42 Due to the potential impact on biodiversity through the disturbance to the ground cover and below ground soil structures from the burials, together with proposed landscaping, a desk-top Preliminary Ecological Appraisal (PEA) was requested from the applicant. Detailed ecological survey work would also have been desirable at pre-decision stage, but due to restricted site access, it was determined the PEA would be sufficient with additional surveys conditioned as necessary. As the proposed design includes wildflower, tree and hedgerow planting a management plan will be required to safeguard these natural assets and ensure the proposal can achieve Biodiversity Net Gain. Habitats outside the redline boundary may need consideration and further assessment of their value, i.e. four ponds are present within 500m of the application site, these ponds should be assessed for their potential to support Great Crested Newts. If protected species are identified within the application site, a European Protected Species (EPS) licence may be required. Where an EPS is required works on site shall not under any circumstances commence unless appropriate Natural England licenses are provided or other means of certification as listed by the local planning authority's ecologist. Many ecological surveys can only be undertaken at set times of year, which may cause delays to the project.

5.43 In conclusion, subject to conditions for further survey work, biodiversity enhancement plan, Landscape and Ecological Management Plan (LEMP), and protection for nesting birds the proposal is supportable from an ecological perspective and found to be in accordance with GI2 Biodiversity and access to nature in the eLP.

Drainage

5.44 The flood risk drainage engineers maintain that surface water drainage is required beneath the proposed gravelled car park and access. This remains disputed and unresolved, but should planning permission be granted, this could be addressed by condition.

Access and Parking

5.45 The access and parking arrangements on site have been revised to ensure safe and dignified access to the site for mourners. The parking area has been increased to enable a hearse to park on site and not block the exit for emergency vehicles, and to manoeuvre and exit in forward gear. There is also space for two vehicles to park on site. Cycle parking provision has been agreed in principle, albeit not shown on the revised plans, but could also be conditioned. Details of the timber gate to Murton Way have been provided showing a 3m wide vehicular gate with a separate 1.2m wide pedestrian gate to the right with a drop in removable centre post to enable the pedestrian gate to be left open at all times to enable access to the new PRow footpath.

5.46 The site is adjacent to Osbaldwick Village with bus services running along Murton Way into and out of the city centre. For local residents of Osbaldwick it is a short walk or cycle. In terms of additional vehicle parking off-site, Murton Way has unrestricted parking. The highways officer has advised that the preference would be for parking restrictions to be applied to a section of Murton Way to ensure the access is not blocked by a parked car, for sight lines to be maintained and allow larger vehicles (eg. hearse, tractor) to make the turn into the site. Temporary restrictions are an alternative but have a three week lead in time but may be appropriate due to the low rate of anticipated burials. There may be an option to reduce this time period under 'emergency powers' if required. This could be secured by a traffic management plan by condition. As such the parking and access arrangements are deemed acceptable.

6.0 CONCLUSION

6.1 The application is for a Green Burial site on a meadow to the north of Murton Way in the suburb of Osbaldwick. The site is within the Green Belt but considered appropriate development with no harms to openness and permanence, fulfilling Green Belt aims. Whilst revised plans and additional information has concluded that there is a need for additional burial ground in the Parish, with landscape, ecological and amenity benefits, and appropriate access, the principle of the site as suitable for the intended use has not been accepted with all evidence indicating otherwise and two of the key Environment Agency requirements not met: Requirement 3: The base of each grave should be at least 1m above the highest predicted annual groundwater level and Requirement 4: There should be no standing water in graves when dug. As the applicant is unable to submit a Tier 2 Assessment prior to determination, the application is found not to be in accordance with paragraphs 183 and 185 of the NPPF (2021) and contrary to policy G17 'Burial

and memorial grounds' part (iii) of the eLP as evidence to date indicates that the site is inappropriate for the proposed use due to the high water table. Refusal of planning permission is recommended. Other requirements, such as clearance from Osbaldwick Beck, ponds and waterbodies, no burials in areas liable to flood, and the need for surface water drainage beneath the car park and access could be dealt with as amendments to the proposed drawings or via condition.

7.0 RECOMMENDATION: Refuse

1 Planning permission is refused for the proposed Green Burial Site on a field to the north of Murton Way, Osbaldwick as it is not considered a suitable use taking account of ground conditions, being the high groundwater table recorded in the vicinity. The submitted Tier 1 Assessment lists British Geological Survey boreholes in close proximity encountering groundwater at 1.1m, 1.2m and 1.4m below ground level at distances of 15m to 80m to the south and east of the site. The Environment Agency's minimum requirements 3 and 4 appear unable to be satisfied being that the base of each grave must be a minimum of 1m above the highest predicted annual ground water level and that there should be no standing water in the graves when dug. As the applicant is unable to submit a Tier 2 Assessment prior to determination, which would confirm the conditions within the site itself as they do not have access to the site, the application is found not to be in accordance with paragraphs 183 and 185 of the National Planning Policy Framework (2021) as the site is considered unsuitable for the proposed use due to existing ground conditions and adequate site investigation information has not been supplied to indicate otherwise with potential pollution effects on health and the natural environment. It is also contrary to policy G17 'Burial and memorial grounds' part (iii) of the Publication Draft Local Plan 2018 as it appears surface water drainage is not adequate and there is a threat to ground water quality.

8.0 INFORMATIVES:

Notes to Applicant

1. STATEMENT OF THE COUNCIL'S POSITIVE AND PROACTIVE APPROACH

In considering the application, the Local Planning Authority has implemented the requirements set out within the National Planning Policy Framework (paragraph 38) in seeking solutions to problems identified during the processing of the application. The Local Planning Authority took the following steps in order to achieve a positive outcome:

- Advised the applicant to submit a Tier1 assessment and confirm ground water depths from evidence from borehole logs providing guidance from the EA on where these could be obtained
- Advised the applicant that a Tier 2 assessment was required prior to decision and that it could not be conditioned in accordance with legal advice and reference to the

NPPF

- Sought amendments to address highways and drainage concerns
- Advised a Preliminary Ecological Appraisal (PEA) was required prior to determination
- Discussed the Environment Agency's advice with them, particularly the removal of the objection and minimum requirements for human burials
- Sought legal advice on the pre-commencement of development Grampian condition to secure the Tier 2 Assessment

Contact details:

Case Officer: Sophie Prendergast

Tel No: 01904 555138