

COMMITTEE REPORT

Date: 13 March 2024 **Ward:** Rural West York
Team: West Area **Parish:** Upper Poppleton Parish Council

Reference: 23/00999/FUL
Application at: Muddy Boots The Gardens Boroughbridge Road York YO26 6QD
For: Change of use of land to open air recreational space and erection of 2no. Tipis with associated access and landscaping

By: Mr and Mrs Nimmo
Application Type: Full Application
Target Date: 12 October 2023
Recommendation: Approve

1.0 PROPOSAL

1.1 The application site is Muddy Boots Nursery, where a former agricultural building has been converted and is in use as a children's pre-school nursery providing general childcare. Adjacent to the nursery buildings, the application site includes an existing outdoor play area enclosed by post and rail fencing and an open field to the south-west. The site area is approx. 1.54 hectares. The application site is located in the Green Belt. Access to the site is from the A59 via a shared private drive serving the nursery and two adjacent houses.

1.2 The proposals relate to the change of use of land to form an open-air recreational space and the erection of two tipis, with associated access and landscaping. The tipis would be erected on a temporary basis for a period of 5 years.

1.3 The two adjoining tipis would be located in the north-east part of the field, adjacent to the nursery building and existing outdoor play area. The tipis are of a relatively large scale, mass and footprint. The tipis would be approx. 7.4m in total height, and approx. 6.8m in height to the head of the canvas part of the tents. The tipis would be approx. 10.3m in length. With the sides down, the total width of the tipis would be approx. 20.6m, and with the sides up, the total width of the tipis would be approx. 26m. The applicant has confirmed that there would be no fixed play equipment on the site, with only natural resources used for activities such as den

building, assault courses, bug hunts etc. Toilet provision for the forest school would be via two portable toilets located adjacent to the north field boundary. At the time of the site visit, a single tipi or cone shaped tent was in situ in the field to the south-west of the nursery building, with two portable toilets adjacent.

1.4 The purpose of the proposals is to enhance the existing nursery provision with the opportunity for outdoor play in a 'forest school' setting. The tipi structures are intended to provide an interesting and exciting place for children to learn and explore. The proposals would enable 16 children from the Muddy Boots nursery in Acomb to travel by minibus to attend sessions at the forest school. This would in turn create additional early years and childcare places in the Acomb nursery setting.

1.5 It is noted that the number of children on the Boroughbridge Road nursery site is limited to 90 by condition 13 of planning permission 16/02090/FUL. This requirement is intended to safeguard the amenities of local residents, ensure that the use of the site is not intensified to such an extent as to have an unacceptable impact on the local highway network and to maintain safe access and egress to and from and within the site.

Site history

Ref. 15/01836/FUL Conversion, extension and change of use of outbuildings and adjacent land to pre-school nursery (use class D1), associated car and cycle parking and widening of access, permitted 19.02.2016.

Ref. 16/02090/FUL Variation of condition 2 of permitted application 15/01836/FUL to alter the roof design and incorporate PV panels, add an external emergency escape staircase, changes to fenestration and relocate the cycle store, permitted 16.11.2016.

Ref. 20/02294/FUL Erection of two detached buildings for use as outdoor classrooms, refused 15.03.2021.

2.0 POLICY CONTEXT

NATIONAL PLANNING POLICY FRAMEWORK (NPPF)

2.1 Key chapters and sections of the NPPF are as follows;

Achieving sustainable development (chapter 2)

Decision-making (chapter 4)

Promoting healthy and safe communities (chapter 8)

Achieving well-designed and beautiful places (chapter 12)

Protecting Green Belt land (chapter 13)

Conserving and enhancing the natural environment (chapter 15)

UPPER POPPLETON AND NETHER POPPLETON NEIGHBOURHOOD PLAN

2.2 The Development Plan for Upper/Nether Poppleton is the Upper Poppleton and Nether Poppleton Neighbourhood Plan which came into force with effect from 19 July 2017. Section 38(6) of the Planning and Compensation Act 2004 and NPPF at paragraph 12 requires that determinations be made in accordance with the development plan unless material considerations indicate otherwise. Green Belt Policy PNP1 is relevant here.

REGIONAL SPATIAL STRATEGY FOR YORKSHIRE AND HUMBER

2.3 Whilst the Regional Spatial Strategy for Yorkshire and Humber, May 2008, (the RSS) has otherwise been revoked, its York Green Belt policies have been saved together with the key diagram which illustrates those policies and the general extent of the Green Belt around York.

PUBLICATION DRAFT LOCAL PLAN (2018)

2.4 The Publication Draft Local Plan 2018 was submitted for examination on 25 May 2018. Modifications were consulted on in February 2023 following examination, a further Hearing Session will take place in March 2024. The Draft Plan policies can be afforded weight in accordance with paragraph 48 of the NPPF. The following policies are relevant;

HW4: Childcare Provision

ED6: Preschool, Primary and Secondary Education

D1: Placemaking

D2: Landscape and Setting

GI1: Green Infrastructure

GB1: Development in the Green Belt

POPPLETON VILLAGE DESIGN STATEMENT (VDS)

2.5 Adopted in August 2003, the VDS includes design guidelines and advises that to maintain the village's rural character/atmosphere, there should be green and open land between Poppleton and York.

3.0 CONSULTATIONS

INTERNAL

Landscape Architect

3.1 No objections were raised to the proposals. A detailed landscape scheme would be required as a condition of consent.

Countryside and Ecology Officer

3.2 Advised that the application site and an appropriate buffer are subject to a Preliminary Ecological Appraisal (PEA) that would include recommendations for design options to avoid significant effects on important ecological features, identify mitigation measures as far as possible and identify enhancement opportunities and where further surveys for specific habitats and/or species are required.

3.3 Following the submission of the PEA, the Countryside and Ecology Officer raised no objections to the proposals, subject to conditions of consent relating to; biodiversity enhancements, including the provision of bat boxes, bird boxes, hedgehog enhancements and hedgehog improvement planting; a management plan to prevent the further spread of an invasive non-native species, Himalayan Balsam, which is present within the application site; and precautionary measures to ensure that nesting birds are protected from harm during construction.

Education Support Service and Quality Improvement Advisory Team

3.4 Support the application as it will enable the recently approved tender for the creation of an additional 16 early years and childcare places to be awarded. Muddy Boots was identified as the preferred provider to deliver high quality provision with a forest school approach including a focus on children with special educational needs. Part of the requirements of awarding this tender was obtaining planning application for the erection of tipis to provide the forest school provision.

Highway Network Management

3.5 No highway concerns were raised.

EXTERNAL

Upper Poppleton Parish Council

3.6 No objections.

Ainsty Internal Drainage Board

3.7 Response advising that the Board has assets in the wider area in the form of various watercourses. These watercourses are known to be subject to high flows during storm events. The main concern raised is the disposal of any surface water from the two tipis which, collectively, are approximately 200m² in size, together with any new impermeable hard surfaces. The proposals include the discharge any surface water from the development into soakaways. However, on reviewing permitted application ref. AOD/16/00242, the Board notes that soakaways were not viable due to the ground conditions and that the applicant therefore connected into the mains combined sewer. Soakaways may not therefore be viable for the application site adjacent to the nursery building.

3.8 The Board advised that details of surface water drainage for the application site require to be confirmed. The suitability and capacity of soakaways should be ascertained and if this is not proven or the location is considered to be detrimental, alternative proposals for surface water drainage, including attenuation, will require to be considered.

4.0 REPRESENTATIONS

4.1 Comments of support were received from interested parties which are summarised as follows;

- Children benefit from the forest school experience where they are learning outdoors in the fresh air and this has a positive impact on their social and emotional well-being.
- The forest school helps develop children's confidence and social skills with a wide range of outdoor activities shared with other children, such as spotting wildlife, foraging for berries and building a campfire.

- The forest school enables children to experience the joy of playing outdoors, where they can develop an appreciation of nature and explore a large green open space together with their peers.

5.0 APPRAISAL

Key Issues

5.1 The key issues are; i) whether the proposal would be inappropriate development in the Green Belt having regard to the Framework including the effect on openness; ii) If the development is inappropriate, would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Green Belt

5.2 Paragraph 142 of the NPPF states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence. Paragraph 152 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 153 states that substantial weight should be given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. Policy GB1 Development in the Green Belt of the DLP 2018 reflects Green Belt policy in the NPPF.

5.3 Paragraph 154 of the NPPF states that the construction of new buildings is inappropriate unless they fall into one of six exceptions, including b) the provision of appropriate facilities (in connection with the existing use of the land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and does not conflict with the purposes of including land within it.

5.4 NPPF paragraph 155 states that certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These include e) material

changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds).

5.5 The Upper Poppleton and Nether Poppleton Neighbourhood Plan 2017, paragraph 4.1.2 considers that the general extent of the Green Belt land surrounding the villages of Upper Poppleton and Nether Poppleton forms an important part of the special open and agricultural character of the setting of the nationally significant historic city of York.

5.6 With regard to the current proposals, the use of the field in itself for outdoor recreation would not necessarily harm openness or be inappropriate. However, the erection of two adjoining tipis of a significant height, mass and footprint in the field would appear visually intrusive within the open agricultural landscape setting. As such the proposals would fail to preserve the openness of the Green Belt and would conflict with the purposes of including land within it. Therefore, the proposals constitute inappropriate development which is by definition harmful to the Green Belt and should not be approved except in very special circumstances.

Provision of Pre-School Facilities

5.7 The NPPF does not contain specific policies relating to nurseries. However, at paragraph 97, within the section 'promoting healthy and safe communities', it states that planning decisions should (among other things) ensure that established facilities and services are able to develop and modernise, and are retained for the benefit of the community.

5.8 DLP Policy HW4: Childcare Provision states that development proposals for new or expanded childcare provision will be supported by the Council where that helps meet the city's need for childcare provision. Applications for new childcare provision should be accompanied by an assessment that demonstrates the need for additional childcare provision in the locality. Any proposed new or replacement childcare facilities should be sited in accessible locations within or near to the areas of identified need, they should be well-served by public transport, and be easily accessible by walking and by bike.

5.9 DLP 2018 Policy ED6: Preschool, Primary and Secondary Education states that the provision of sufficient modern educational facilities for the delivery of preschool, primary and secondary school education to meet an identified need and address deficiencies in existing facilities will be facilitated.

5.10 The proposed forest school would accommodate up to 16 children from either the nursery on site or from the Muddy Boots nursery in Acomb. Children from the Acomb nursery would travel by mini bus to the forest school, freeing up capacity for additional children to attend the Acomb nursery. It is noted that there is a shortage of early years/childcare provision in the Acomb area. The forest school would operate during daytime nursery hours, and not after dark, from Monday to Friday each week throughout the year with the exception of Bank Holidays and the period between Christmas and New Year when the nurseries are closed.

5.11 Muddy Boots Nurseries have been awarded a grant by City of York Council for capital works associated with the creation of 16 new full-time equivalent early years and childcare places in the local vicinity of Lowfield Green. It is anticipated there will be parental demand for childcare arising from a new sustainable development in the Lowfield Green area. As a provider with several nursery sites in York, Muddy Boots Nurseries can deliver the additional places through some structural changes, including the new forest school, as part of a wider package of works.

Natural Environment

5.12 NPPF Chapter 15: Conserving and enhancing the natural environment, paragraph 180 states that planning policies and decisions should contribute to and enhance the natural and local environment by: b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland. In the glossary, the best and most versatile agricultural land is defined as land in Grades 1, 2 and 3a of the Agricultural Land Classification (ALC).

5.13 The application site area is approx. 1.54 hectares. The agricultural land that would be the subject of the proposed change of use to form an open-air recreational space has an ALC of Grade 2 – very good quality agricultural land. This is defined as land with minor limitations that affect crop yield, cultivations or harvesting. A wide range of agricultural and horticultural crops can usually be grown. Given the proposed change of use would be to an outdoor recreational space and the site area is relatively small, it is considered that the proposals would not lead to a significant loss of agricultural land. The change of use would not stop the land being put into agricultural use in the future.

Very Special Circumstances

5.14 The NPPF states that inappropriate development should not be approved except in very special circumstances justifying an exception to Green Belt policy. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

5.15 The agent has put forward the following arguments in support of the application.

5.16 In terms of the need for childcare and pre-school facilities, with reference to the Childcare Act 2006, Section 6, the local authority has a duty to secure sufficient childcare to meet the needs of parents to enable them to take up or remain in work, or to undertake education or training to obtain work. The Council's Annual Childcare Sufficiency Assessment 2022 shows there has been a reduction in childcare providers and nursery places in the York area over the previous 2 years. The Acomb Ward was identified as an area with some unmet demand for childcare. Access to childcare for a child with SEND or additional needs has been affected by a number of factors, including the reduction in the number of nursery places in the York area partly due to providers capping places due to recruitment and retention issues.

5.17 City of York Council identified a need for early years and childcare provision arising from the Lowfield Green development in Acomb. Muddy Boots Nurseries have been awarded a grant by the Council for the provision of 16 new full time equivalent early years and childcare places in the local vicinity of Lowfield Green, with a focus on prioritising and encouraging places for children with SEND and other vulnerable children aged 0-5 years. The creation of a forest school at the Poppleton nursery would enable 16 children from the Acomb nursery site to attend sessions at the forest school once a week on a rota basis. The forest school provision is a means of meeting the identified need for childcare and pre-school facilities in the Acomb area.

5.18 Alternative locations were reviewed to establish whether there are other childcare providers that could accommodate the additional nursery places within the area specified by the Council for the purposes of the grant funding. The Council's Education Support Service considered that many of the existing childcare providers within the required catchment area are unable to offer the full day care provision across the whole year, or are at full capacity with a limited number of places

available that would be insufficient to meet the additional need likely to arise from the Lowfield Green housing development.

5.19 With regard to education and learning, the forest school would be a natural but practical space offering an enhanced learning environment for children, providing opportunities to explore the outdoors, develop a connection with nature and improve a range of skills from personal, social and emotional, to physical development and communication. The forest school would enable children to develop an interest in the great outdoors and respect for the environment.

5.20 In terms of inclusivity, the forest school would be of benefit to children for Special Educational Needs and Disabilities (SEND) and vulnerable children, creating learning and development opportunities for those children who are particularly in need of specific intervention. Small group work would take place within the outdoor environment, particularly for children getting ready for school. The forest school would enable the nurseries to teach and care for children in a wider variety of spaces and contexts, vital especially for SEND children where additional support is needed to meet children's needs.

THE PLANNING BALANCE

5.21 The application would support an established local business and the local economy by creating new or enhanced job prospects. The additional childcare provision would enable working parents to take up or remain in work. The overall the benefit to the local economy is likely to be small.

5.22 The proposed open air recreational space and adjoining tipis forming the forest school would improve the facilities for general childcare provision in the area. It is noted that there is a shortage of early years and childcare provision in the Acomb area which the forest school is intended to serve. As 16 additional childcare places would be created at the forest school, there is a public benefit associated with meeting an identified educational need.

5.23 The additional capacity provided by the recreational space and tipis forming the forest school would be of benefit to children with special educational needs and disabilities and those considered vulnerable and as a result there is a public benefit in terms of meeting specific educational and social needs.

5.24 Further housing developments in the area may bring about the need for additional nursery provision. However, current applications should not be judged against the possibility of future need.

5.25 Against the public benefits of the proposals, in meeting identified educational and social needs with additional childcare provision, is the harm to the Green Belt due to inappropriateness, conflict with the purposes of the Green Belt and impact on openness. In the planning balance, whilst giving substantial weight to the harm to the Green Belt as stated in the NPPF, it is considered that in this instance, the harm is clearly outweighed by other considerations.

5.26 The application is not considered to result in harm to neighbour amenity or have any material highway issues over and above existing. Drainage matters are the subject of an informative.

6.0 CONCLUSION

6.1 The change of use of the field to form an open-air recreational space is not considered inappropriate in the Green Belt as this element of the proposals would preserve openness and would not conflict with the purposes of including land within the Green Belt. Given the relatively large scale and mass of the two adjoining tipis and their location within the field, the tipis would have an impact on openness and are therefore considered inappropriate development that is harmful to the Green Belt as set out in section 13 of the National Planning Policy Framework. However, the tipis form part of the proposed forest school that would enable the creation of 16 new early years and childcare places in the Acomb Ward where there is an identified need for additional early years/childcare provision. Therefore, it is considered that very special circumstances exist that clearly outweigh harm to the Green Belt due to inappropriateness and impact on openness.

7.0 RECOMMENDATION: Approve

1 TIMEL2 Development start within 3 yrs (LBC/CAC)

2 The development hereby permitted shall be carried out in accordance with the following plans and other submitted details:-

Drawing no. ASK(2)_003 revision B, Site plan proposed

Drawing no. PWP750 103 revision 01, Tipi details

Product specification sheet: Indirect combustion mobile space heater model EC85,

received 31.01.2024

Product specification sheet: Chemical toilet, received 31.01.2024

Reason: For the avoidance of doubt and to ensure that the development is carried out only as approved by the Local Planning Authority.

3 Within three months of commencement of development a detailed landscape scheme shall be submitted to the Local Planning Authority for approval in writing. This shall include the species, stock size, density (spacing), and position of trees, shrubs and other plants; seed mixes, sowing rates, mowing and maintenance regimes. The approved scheme shall be implemented within a period of twelve months from the start of development. Any trees or plants which within a period of ten years from the substantial completion of the planting and development, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species, unless the Local Planning Authority agrees alternatives in writing.

Reason: So that the Local Planning Authority may be satisfied with the variety, suitability and disposition of species and other landscape details across the site, since the landscape scheme is integral to the amenity of the development.

4 A biodiversity enhancement plan/drawing shall be submitted to and be approved in writing by the Local Planning Authority prior to the commencement of works. The contents of the plan shall include, but not be limited to the recommendations set-out in the Preliminary Ecological Appraisal, provided by Wold Ecology, dated July 2023. The approved works shall be carried out in accordance with details shown on the approved enhancement plan/drawing.

Reason: To take account of and enhance the biodiversity and wildlife interest of the area, and to be in accordance with Paragraph 180 d) of the NPPF (2023) to contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

5 Prior to the commencement of development, an invasive non-native species protocol shall be submitted to and approved by the local planning authority, detailing the containment, control, and removal of Himalayan balsam on site. Management measures shall be carried out strictly in accordance with the approved scheme.

Reason: To ensure that an adequate means of eradicating or containing the spread of an invasive non-native species listed on Schedule 9 of The Wildlife and Countryside Act 1981 (as amended), and to prevent further spread of the plant which would have a negative impact on biodiversity and existing or proposed landscape features.

6 No vegetation clearance shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful and detailed check of suitable habitats for active nests immediately before the works commence. Written confirmation should be submitted to the local planning authority, detailing where works within suitable habitats have been undertaken within the nesting bird period, the outcome of checking surveys, and identify requirements for protection measures.

Reason: To ensure that nesting birds are protected from harm during construction. All British birds, their nests and eggs (with certain limited exceptions) are protected by Section 1 of the Wildlife and Countryside Act 1981, as amended.

7 The opening hours of the use shall be restricted to 07.30 to 18.00 Monday to Friday. It shall not be open on Saturdays or Sundays.

Reason: To align with the opening hours of the nursery and to protect neighbouring residential amenity.

8 Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 or The Town and Country Planning (General Permitted Development) Order 2015 as amended or as may be subsequently amended, the land and buildings subject to this application shall only be used for the purposes of providing a children's day nursery.

Reason: To ensure that the impact of any alternative use of the site on highway safety and the free-flow of traffic from potential alternative uses which would otherwise be allowed through permitted development rights can first be formally considered by the Local Planning Authority.

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:

- In discussion with the applicant and agent, revised proposals were submitted including details of very special circumstances in support of the application.

2. NESTING BIRDS

The applicant is reminded that, under the Wildlife and Countryside Act 1981, as amended (section 1), it is an offence to remove, damage or destroy the nest of any wild bird while that nest is in use or being built. Planning consent for a development does not provide a defence against prosecution under this act. Buildings, trees and scrub are likely to contain nesting birds between 1st March and 31st August inclusive. Suitable habitat is present on the application site and is to be assumed to contain nesting birds between the above dates, unless a recent survey has been undertaken by a competent ecologist to assess nesting bird activity.

3. HEDGEHOGS

The applicant is advised to consider using permeable fencing or leaving occasional gaps suitable to allow passage of hedgehogs. Any potential hibernation sites including log piles should be removed outside the hibernation period (which is between November and March inclusive) in order to avoid killing or injuring hedgehogs.

Hedgehogs are of priority conservation concern and are a Species of Principal Importance under section 41 of the NERC Act (2006). An important factor in their recent population decline is that fencing, and walls are becoming more secure, reducing their movements and the amount of land available to them. Small gaps of approximately 13x13cm can be left at the base of fencing to allow hedgehogs to pass through. Habitat enhancement for hedgehogs can easily be incorporated into developments, for example through provision of purpose-built hedgehog shelters or log piles. <https://www.britishhedgehogs.org.uk/wp-content/uploads/2019/05/developers-1.pdf>

4. WILDLIFE AND LIGHTING

When designing external lighting its potential impacts on light sensitive species should be considered. Direct lighting and light spill should be avoided where new bat roosting and bird nesting features are installed, on trees, soft landscaping, and 'green' linear features, such as hedges. Advice on lighting design for light sensitive species is available from the Bat Conservation Trust (2018) Bats and artificial lighting in the UK guidance: <https://cdn.bats.org.uk/pdf/Resources/ilp-guidance-note-8-bats-and-artificial-lighting-compressed.pdf?mtime=20181113114229&focal=none>

5. SUSTAINABLE DRAINAGE METHODS

The Internal Drainage Board has indicated that the local watercourses are subject to high flows during storm events. In terms of surface water drainage, the applicant should, where practical, seek to use sustainable drainage methods at the property, in order to reduce the rate of surface water run-off into the local watercourses.

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