



The existing reception and grooming parlour serving the business, located immediately to the west of the existing house, falls outside the application site boundary, but would be converted into three garages to serve Foss Bank house.

1.4 A Design and Access Statement including a sustainability statement, has been submitted to support the application. This sets out the planning history and an assessment of the proposal. It concludes that the proposals would remove the noise issue associated with the kennels and cattery, whilst having no impact on surrounding properties or any overlooking or loss of privacy to surrounding properties. It confirms the applicant's intention to utilise the orientation of roofs to accommodate photovoltaic panels and the possible use of ground or air source heat pumps.

## **2.0 POLICY CONTEXT**

1. Yorkshire and Humber Regional Spatial Strategy – Green Belt policies YH9(C) and Y1 (C1 and C2);

2. National Planning Policy Framework (March 2012)

3. 2005 Draft York Local Plan (4<sup>th</sup> set of changes). Relevant policies include:

- CYSP6 – Location Strategy
- CYGP1 - Design
- CYGP4A – Sustainability
- CGP15A - Development and Flood Risk
- CYGB1 - Development within the Green Belt
- CYGB6 – Housing development outside settlement limits
- CYNE1 – Trees, woodlands, hedgerows
- CYNE6 – Species protected by law
- CYNE7 – Habitat protection and creation
- CYH2A – Affordable housing
- CYH3C – Mix of dwellings on Housing Site
- CYH4a – Housing windfalls
- CYH5A – Residential Density
- CYT4 - Cycle parking standards
- CYL1C – Provision of New Open Space in Development

4. Draft York Local Plan (2014) Publication Draft – relevant policies include:

- DP2 – Sustainable Development
- DP3 – Sustainable Communities
- SS1 – Delivering Sustainable Growth for York
- SS2 – The Role of York's Green Belt

- D1 – Landscape and Setting
- D2 – Placemaking
- G14 – Trees and Hedges
- GB1 – Development in the Green Belt
- CC2 – Sustainable Design and Construction
- ENV4 – Flood Risk
- T1 – Sustainable Access

### 3.0 CONSULTATIONS

3.1 The application was publicised by the display of a site notice and notification letters to statutory consultees and adjacent owners/occupiers. The consultation period expired on 26.2.16.

#### INTERNAL

#### DESIGN CONSERVATION AND SUSTAINABLE DEVELOPMENT

##### (i) CITY ARCHAEOLOGIST

3.2 This application site covers an area of relatively undisturbed ground to the north of Earswick. The site may potentially contain archaeological features relating to a prehistoric-Romano-British landscape and/or medieval and post-medieval agricultural practices. It is possible that excavations for the foundations of the proposed dwellings and associated service connections may reveal or disturb archaeological features or deposits. It will be necessary to record any revealed features and deposits through an archaeological watching brief on all groundworks. Requests condition ARCH2.

##### (ii) COUNTRYSIDE AND ECOLOGY OFFICER

3.3 From the photographs of the site and consideration of the surrounding habitat, the buildings to be demolished have potential to support roosting bats. From looking at the file, this was raised in the 2009 application 09/01956/OUT and in the pre-application advice provided in January 2015.

3.4 As protected species are a material consideration, this application cannot be determined without further information on the presence/absence and potential impacts on bats. A preliminary roost assessment can be undertaken at any time of the year; however emergence surveys are restricted to May - September.

#### PUBLIC PROTECTION

3.5 The application is for the construction of four dwellings on proposed development site which is located on an existing commercial/residential site which

has been occupied as a boarding kennels for a number of years. The existing use of the site has been the subject of a number of complaints about statutory noise nuisance due to dog barking from the kennels which culminated in City of York Council serving a noise abatement notice on the proprietors in September 2013. The noise abatement notice is still active and prohibits the recurrence of noise nuisance due to dog barking.

3.6 As a result of the above, Public Protection consider that the proposed new dwellings would result in the removal of any further noise nuisance affecting residential properties in the vicinity and so would support the application from this perspective.

3.7 In terms of the impact of noise from the surrounding area on the proposed dwellings, a few concerns are raised even though there is a pig farm located to the north east of the site, at a distance of approximately 250 metres away, at Hall Farm.

3.8 There have been objections by members of the public and note that an objection has been received by the owners of Hall Farm, where it is stated that an intensive pig farming operation is undertaken. The concerns relate to the potential impact of noise and odour from their operations as they state that they currently have 2,000 pigs on their farm. Only 4 historical complaints have been received according to the Council's records of noise and odour complaints about their operations. Two of the complaints related to odour associated with muck spreading on the fields around the farm and the other two complaints regarding noise from the sounding of a high level alarm which was indicating that one of the pig units was overheating.

3.9 Given the stated number of pigs at Hall Farm, the Environment Agency has been consulted, as farms which have more than 2,000 pigs require and environmental permit to operate. The Environment Agency has confirmed that they have no record of complaints regarding the farm or of an environmental permit being in operation. As a result of the above, the potential for loss of amenity due to odour or noise from Hall Farm affecting the proposed four new dwellings is low.

3.10 The objector states that they have no objections to the principle of development but are concerned over the potential for complaint in the future. It cannot be ensured that the intensive pig unit would not be subject to complaints from future residents. However historic complaints would indicate that this would be unlikely, particularly given that Foss Bank Farm is already occupied as a residential property at a similar distance to the proposed new houses.

3.11 In terms of contaminated land, requests that a condition be attached to any permission granted due to potential for contamination associated with the former uses of the land.

3.12 In accordance with paragraph 35 of the NPPF and the Council's Low Emission Strategy (October 2012), the environmental protection unit would recommend that a condition be placed upon any approval given requiring an electric vehicle charge point.

## HIGHWAY NETWORK MANAGEMENT

3.13 Request deferral to allow revised plans showing larger garages to accommodate modern vehicles and cycle storage and the highway access to be 5m wide for a 10m length from the back of the verge. A bin collection at the site entrance though within the property curtilage is requested as turning within the site would not accommodate a refuse vehicle turning. A more detailed plan of the entrance is required to show that the piers, trees, relationship of the bin collection point and sightlines achievable can be assessed.

## EDUCATION

3.14 No requirement.

## PUBLIC REALM AND SPORT AND ACTIVE LEISURE

3.15 Off site play, amenity and sports pitch payments are required and will be used within the Earswick Parish Council area.

## HOUSING DEVELOPMENT

3.16 Requests an affordable housing contribution of £34,700.70 if applicable to meet the interim policy.

## EXTERNAL

### EARSWICK PARISH COUNCIL

3.17 Support.

## LOCAL RESIDENTS

3.18 Hon Alderman Richard Watson writes in support of the application. He sets out the history of the site referencing the allegations of noise from the site, describes the proposal that he considers to be very carefully thought out and explains that the proposed development would not adversely affect the two purposes of the Green Belt at this juncture being protecting the setting of the approach to the City and preventing coalescence and would remove a land use conflict.

3.19 Emails of support submitted by the applicant and the applicant's husband, Andrea Royle and Stephen Royle of Foss Bank Farm, making the following points:

- 15 to 20 vehicles attend the premises daily attending the premises dropping dogs in and out along with grooms etc.

- A noise abatement notice is in force on the kennels, served by York City Council, with the threat from York Magistrates Court of a £20,000 fine should the order be breached, which would mean inevitable closure;

There has been a letter drop for people to object to this development on the grounds of traffic overload, sustainability and pollution;

The proposal for 4 dwellings would half the amount of cars and get rid of the noise irritant;

- Intention is to develop the site in order to re-locate my family business in order to remove the ongoing noise abatement order;

- Residents from Earswick Chase (Fosslands) have complained of noise from barking dogs, coming from Foss Bank Kennels;

- Application is for a very small re-development of 4 properties, on land where buildings already stand, would remove a nuisance, would remove any prospect of criminal prosecution and would enable Foss Bank Kennels to re-locate.

3.20 There have been 44 emails of support from residents of York (including Earswick, Strensall, Huntington, Wheldrake, Stockton on the Forest, Naburn), Alne, Harrogate, Bradford, Saltburn-by-the-Sea and Scotland (former Councillor Richard Moore), some of whom are customers of the Kennels/Cattery, including the following comments:

- Impact of noise abatement notice on family run business, causing stress to proprietors and forcing them to relocate business;

- Access already present and proposal would result in reduction in traffic flows as business replaced by only four houses;

- Four houses would be better for neighbouring properties as removes noise from barking dogs;

- Proposed development would be sympathetic to local area;

- Proposal is only small scale and would incorporate landscaping and green areas;

- There would be no encroachment on existing open space or land that is not already in use with buildings;

- Development would not put any pressure on local amenities or infrastructure;

- Similar type of development to that of existing farm buildings further along Strensall Road;

- Proposal would provide much needed housing in the greater York area;

- Kennels are valued local amenity that has been in operation long before the neighbouring properties were built and claims of noise pollution are exaggerated and unjustified;

- Garden Village development, approved in 2003, establishes precedent for development on another part of the same site;

- There would be no visual or openness disamenity and the site is brownfield land;
- Development can be undertaken using sustainable techniques and the site is on a regular bus route;
- Site is in flood zone 1 and a retention pond for surface water drainage is supported as it would reduce the amount of water entering the public drainage system;
- Removal of noise nuisance that impacts on residential amenity;
- Access and parking addressed and there would be little traffic movement;
- Potential for bats can be addressed by a bat survey with measures taken to accommodate bats in the new development;
- Unreasonable that an existing operation has to take remedial action to address an issue that was known when the neighbour purchased their property knowing that the operation existed.

3.21 Two letters received on behalf of the Keep Earswick Rural Action Group, making the following objections and comments:

- The proposed development is an encroachment onto Green Belt land;
- The 'very special circumstances' test set out in NPPF has not been met;
- The proposal breaches the special planning rules for development of existing farm buildings;
- The changes would adversely affect the landscape character and visual amenity of the area;
- Vehicular access to the site will compromise road safety;
- Additional properties will overload the already strained drainage and sewage infrastructure;
- Concerned application is a precursor to incremental perimeter development on the outskirts of Earswick;
- Submitted Counsel opinion that confirms that: the proposal is inappropriate development in the Green Belt for which very special circumstances must be demonstrated; the officer's response letter shows that the Council recognises the severity of the test the applicant must pass; the planning system does not exist to guarantee a landowner value in their land and 'compensating' a landowner is not a very special circumstance; any grant of planning permission could be challenged as it would be unlawful.

3.22 There have been 36 objections received from local residents, including the following grounds:

- The proposed development is on Green Belt land, would lead to coalescence and there are no 'very special circumstances' to justify encroachment onto Green Belt;
- The layout designs extend beyond the historical footprint of the Fossbank Kennels and therefore do not satisfy the special planning rules for development of farm buildings;
- This application is essentially (albeit larger) than two earlier applications, both that were rejected because of the Green Belt and nothing has changed

- Development would be readily visible from many vantage points and would detract from the open character and appearance of the site, causing harm to Green Belt, landscape and visual amenity of area;
- There is plenty of brown sites in an around York to build on;
- Impact of access to Strensall Road adds to the possibility of accidents as cars speed from the north and the proposed entrance is much nearer than the current garden village;
- Concerned this is just the start of a larger development which could infill the space between it and Strensall Road causing greater issues in terms of traffic safety, additional traffic on what is already an extremely busy route onto the inner ring road.
- The noise nuisance raised in 2011 and again in 2013 can be adequately dealt with by sound proofing buildings, erecting acoustic fencing and revising management practices at the kennels;
- An attempt to raise capital to facilitate relocation is not a sufficient justification to offset the harm that would be caused to the Green Belt by this inappropriate development.
- Expresses sympathy with kennel owner, but proposal is not a logical conclusion;
- Supporting views are from kennel customers who would not be visiting the area if the kennels are moved;
- Traffic will increase at peak times on the Strensall road heading to the ring road as the new premises will increase traffic at this time, compared to the current kennel traffic which will be more dispersed throughout the day.
- The exit to the proposed development is very close to the speed reduction signs and as such traffic is not always obeying the 30mph limit as they have been travelling at 60mph up until this point.
- Extra run-off into River Foss will increase flood risk and the sewage system is already overstretched;
- Lack of supporting infrastructure in Earswick with no shops, pubs, or schools;
- The expansion of the footprint of the development on green belt land without special circumstances would be setting a precedent;
- Initial results of Earswick's Neighbourhood Planning process strongly suggests that villagers do not want the village to be developed.

3.23 One email from a local resident, neither objecting nor supporting the proposal, but making the following points: - Advised to object based on Green Belt retention, but on the other hand the replacement of the old kennel building with modern ones is a good thing. Understands concern about opening the door to other constructions.

## **4.0 APPRAISAL**

4.1 The key considerations material to the determination of the application are:

- Principle of development
- Green Belt policy

- Openness and purposes of Green Belt
- Character and appearance
- Flood risk
- Highway safety
- Residential amenity
- Ecology
- Archaeology
- Local facilities
- Other considerations

## POLICY CONTEXT

4.2 Section 38(6) of the Planning and Compensation Act 2004 requires that determinations be made in accordance with the development plan unless material considerations indicate otherwise. The development plan for York comprises the retained policies in the Yorkshire and Humber Regional Spatial Strategy ("RSS") saved under the Regional Strategy for Yorkshire and Humber (Partial Revocation) Order 2013. These policies, YH9(C) and Y1(C1 and C2), relate to York's Green Belt and the key diagram, Figure 6.2, insofar as it illustrates the general extent of the Green Belt. The policies state that 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.

4.3 Central Government guidance is contained in the National Planning Policy Framework (NPPF, March 2012). Paragraph 7 of the National Planning Policy Framework says planning should contribute to the achievement of sustainable development by balancing its economic, social and environmental roles. Footnote 9 of paragraph 14 contains restrictions where this presumption in favour of sustainable development does not apply, including land designated as Green Belt. Paragraph 17 lists twelve core planning principles that the Government consider should underpin plan-making and decision-taking, such as seeking high quality design and protecting Green Belt.

4.4 Section 6 of the NPPF states that housing applications should be considered in the context of the presumption in favour of sustainable development (paragraph 49), with housing in rural areas being located where it will enhance or maintain the vitality of rural communities (paragraph 55).

4.5 Section 7 of the NPPF requires good design. At paragraph 56, it says that good design is a key aspect of sustainable development, is indivisible from good planning and should contribute positively to making places better for people.

4.6 Section 9 'Protecting Green Belts' says that the essential characteristics of Green Belts are their permanence and openness (paragraph 79).

Paragraph 80 sets out the purposes of Green Belt. These are to check unrestricted sprawl of large built up areas; to prevent neighbouring towns merging into one another; to assist in safeguarding the countryside from encroachment; to preserve the setting and special character of historic towns; and, to assist in urban regeneration. Paragraph 88 states that when considering any planning application, local planning authorities should ensure that substantial weight is 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, is clearly outweighed by other considerations. With regard to new buildings, paragraph 89 states that the construction of new buildings is inappropriate in Green Belt unless it falls within one of the listed exceptions.

4.7 Section 10 'Meeting the challenge of climate change, flooding and coastal change offers advice on locating new development to avoid increased flood risk.

4.8 Section 11 'Conserving and enhancing the natural environment' says that the planning system should contribute to and enhance the natural environment by, amongst other things, minimising impacts on biodiversity and providing net gains in biodiversity where possible as well as preventing adverse affects on pollution and land instability.

4.9 Section 12 'Conserving and enhancing the historic environment' requires local planning authorities to recognise the significance of heritage assets and conserve them in an appropriate manner.

4.10 The City of York Draft Local Plan (DLP) was approved for development control purposes in April 2005. Its policies are material considerations in the determination of planning applications, although it is considered that their weight is limited except when they are in accordance with the NPPF. The relevant policies are summarised in section 2.2 above. Policies considered to be compatible with the aims of the NPPF and most relevant to the development are GP1 'Design' and GB1 'Development in the Green Belt'.

4.11 At this stage, policies in the 2014 Publication Draft Local Plan are considered to carry very little weight in the decision making process (in accordance with paragraph 216 of the NPPF).

## SITE AND HISTORY

4.12 The application site is located on the west side of Strensall Road, between the settlements of Earswick and Strensall. It comprises an area of land 4,715sq.m. at the end of a 290m long (approximately) private driveway. The driveway currently serves the dwellinghouse, known as Foss Bank, the paddocks and stables and a kennels/cattery business that occupy a collection of single storey buildings to the rear of the existing house.

Only the single storey, L-shaped building housing the kennels and the quarantine building fall within the application site boundary. The kennel building is of brick and tile construction and follows the site boundaries at the north-western corner of the site. The quarantine building is also a single storey structure adjacent to the cattery building. The remainder of the application site is exercise space serving the kennels or orchard. The site is landscaped on its boundaries and within it, including a line of evergreen trees along the boundary between the kennels and the existing house.

4.13 To the north of the site are open fields and Hall Farm - an intensive pig farming operation. To the south is a field that separates the site from a large more modern housing estate, which is an extension to the Earswick settlement that falls within its defined settlement limit. To the west is open land used as a playing field/play area and beyond this the River Foss. To the east, beyond the original house and its paddock, is Strensall Road, with a row of houses on its eastern side.

4.14 The kennels and cattery business has been present at the site for many years and pre-dates the housing estate to the south. There have been previous pre-application enquiries and two outline planning applications relating to development of the site for housing.

4.15 Most recently, outline planning permission (09/01956/OUT) was refused at Committee in 2010 for three new houses on the grounds that the proposal constituted inappropriate development for which there was no compelling benefit that clearly outweighed harm.

4.16 Subsequent to this, a pre-application enquiry was submitted in 2014/2015. This concluded that the proposal would only be supported if compelling evidence could be provided that constitutes the very special circumstances to clearly outweigh definitional and other identified harm to the Green Belt. Advice was given as to the information/evidence that could be submitted to support the applicant's case. The need for a bat survey of the buildings to be submitted with any application for the site was highlighted in the response.

## PRINCIPLE OF DEVELOPMENT

4.17 Whilst the RSS has otherwise been revoked, its York Green Belt policies have been saved together with the key diagram which illustrates the general extent of the Green Belt around York. These policies comprise the S38 Development Plan for York. The policies in the RSS state that the detailed inner and rest of the outer boundaries of the Green Belt around York need to be defined to protect and enhance the nationally significant historical and environmental character of York. The Key Diagram of the RSS and the 2005 Draft Local Plan proposals map identify the site within the general extent of Green Belt. The site is considered as having Green Belt status when assessing the merits of the proposed development against the National Planning Policy Framework and Guidance, relevant local plan policies

and other material considerations. In accordance with footnote 9 to paragraph 14 of the NPPF, the usual presumption in favour of sustainable development established by the NPPF does not apply in Green Belt locations. Instead, the more restrictive policies in section 9 of the NPPF apply.

## GREEN BELT POLICY

4.18 Paragraph 79 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 permanence. 'Openness' is considered as meaning an absence of built development. Paragraph 80 sets out the five purposes of the Green Belt:

- to check the unrestricted sprawl of large built-up areas;
- to prevent neighbouring towns merging into one another;
- to assist in safeguarding the countryside from encroachment;
- to preserve the setting and special character of historic towns; and,
- to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

4.19 Paragraph 88 of the NPPF establishes that 'substantial weight' should be given to any harm to the Green Belt. Paragraph 87 states that inappropriate development that is, by definition, harmful to the Green Belt, should not be approved except in 'very special circumstances'. '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.

4.20 In terms of the Green Belt status of the site, the main considerations are:

- whether the proposal constitutes inappropriate development in the Green Belt;
- its effect on the openness of the Green Belt and the purposes of including land within it;
- if it is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

4.21 Paragraph 89 of the NPPF states that the construction of new buildings in Green Belts is inappropriate development, unless it falls within one of the specified exceptions. One such exception is the complete or partial redevelopment of previously developed land, whether or not in use, providing it would not have a greater impact on openness of the Green Belt and the purpose of including land within it.

4.22 Whilst the proposal involves the complete redevelopment of the kennels business, it would have a greater impact on the openness of the Green Belt than the existing development. This is due to the replacement of two single storey outbuildings located to the rear of the existing house with four detached two storey houses and associated driveways and garaging. As such, the proposal constitutes inappropriate development that is, by definition, harmful to the Green Belt. In accordance with paragraph 88 of the NPPF, substantial weight must be attributed to this definitional harm by the decision maker.

## IMPACT ON OPENNESS AND GREEN BELT PURPOSES

4.23 In addition to the harm by reason of inappropriateness, consideration also needs to be given to other harm to the Green Belt. The NPPF states that the essential characteristics of Green Belts are their openness and their permanence.

4.24 The site comprises land that surrounds an existing two storey dwelling house and that accommodates two single storey outbuildings. Two further single storey buildings, comprising a cattery and stables, are proposed to be removed. These are within the applicant's ownership, but fall outside the planning application boundary. The remainder of the site is undeveloped other than the single width access track. The land is divided by field boundaries and means of enclosure, such as around the kennels, and there are trees and planting within the area that is the application site. The site, in its wider context, reads as a single host dwelling within its own plot of land with related outbuildings. The kennel block and quarantine building are single storey and of low scale, and as such, there is limited visibility of them when viewed from Strensall Road and they are not prominent in views from the surrounding open land.

4.25 The proposal, on the other hand, would introduce four 1 ½ storey detached houses with associated garages that would be spread across the site as well as an increased level of domestication. The dwellings would be readily visible from publicly accessible vantage points, which would detract from the open character and appearance of the site.

4.26 Furthermore, the site was assessed as part of the York Green Belt Appraisal (February 2003), which acts as a key document for the Local Plan evidence base, and identifies significant areas of Green Belt as primary constraints against future development. This site was identified in the appraisal, along with a much larger area that extends north and south, as undeveloped land between the settlements of Earswick and Haxby that prevents coalescence and in doing so maintains their historic character and setting. As a result, the site was discounted as part of the Council's Strategic Housing Land Availability Appraisal, when it was put forward for consideration by the land owner.

4.27 The update to the Green Belt Appraisal undertaken as part of the preparation of a Local Development Framework and titled 'Historic Character and Setting Technical Paper, January 2011', considered whether to exclude the site of the former Foss Bank Farm and including the land between this and the housing estate to the south from the 'Area Preventing Coalescence' to allow to residential development. However, it concluded that as the gap between the settlements at this point is particularly narrow, any development in this area would have a significant impact and as such no change was made to the historic character and setting boundary.

4.28 The site has since been assessed as part of the preparation of the new Local Plan for the City. In the City of York Local Plan Preferred Options document (June 2013), the site at Foss Bank Farm remains within an Area Preventing Coalescence (figure 5.3) and within a Regional Green Corridor stretching north from Strensall to the City (figure 17.1). The site has considered again in 2014 as part of the City of York Local Plan Further Sites Consultation (June 2014) and the Site Selection Paper Addendum (September 2014), where it failed the assessment criteria in its access to residential services and as part of the site (the former Foss Bank Farm) was identified as a natural environmental asset that protects historic character and the regional green corridor. Whilst the Local Plan has not been adopted, the background documents have some weight as they have been through a consultation process and are an indication of the future local planning policy approach towards the site.

4.29 Therefore, in addition to definitional harm, it is considered that the proposal would cause further harm to the openness of the Green Belt, which would undermine the purposes of including land within it, namely checking unrestricted sprawl of large built-up areas, preventing neighbouring 'towns' merging into one another and preserving the setting of historic towns. This harm on openness should be afforded substantial weight by the decision maker.

## CHARACTER AND APPEARANCE

4.30 The NPPF, at paragraph 64, advises against poor quality design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

4.31 The houses themselves are of an appropriate design to a rural location and the layout and density would not result in a cramped arrangement either with the existing dwelling or between the proposed houses. The lower height would help to reduce the visual impact of the buildings on the general appearance of the site when viewed from outside. Nevertheless, the design of the buildings would not overcome the adverse impact the proposal would have on the character and appearance of the site. Where the current buildings on the site read as a host dwelling with ancillary outbuildings, the proposed development would be seen as a collection of houses

removed from the existing housing estate to the south and the ribbon development along Strensall Road and separated by the open fields that surround the site. This would erode the rural character of the area.

## FLOOD RISK

4.32 Paragraph 103 of the NPPF states that development should be directed to the areas of low flood risk and that development should not result in an increase of flood risk within the site or elsewhere.

4.33 The site falls within flood zone 1 and, as such, should not suffer from river flooding. The applicant was advised at pre-application stage to submit a drainage report to demonstrate how foul and surface water would be discharged. The application form states that foul sewage would be discharged to a package treatment plant and surface water disposed of via a soakaway. A drainage document has been prepared by the architect and submitted in support of the application, but does not contain sufficient information to satisfy the Council's Flood Risk Engineer that surface water, in particular, could be adequately drained. In view of the lack of information provided with the application, a condition would be required to be attached to any approval.

## HIGHWAY SAFETY

4.34 The NPPF encourages sustainable travel and the location of development in sustainable and accessible locations. The application proposes additional residential properties on a site isolated from local services, but on the public transport route from York City Centre to Strensall. The Council's Highway Network Management officer has requested amendments to the scheme, particularly the size of the garages, the access arrangements and provision for refuse storage. Revised plans have been submitted that increase the dimensions of the garages so as to fit a modern car and to widen the width of the access from Strensall Road. Further amendments are required including the provision of a roadside refuse collection area to serve the five houses that would be on site as refuse vehicles would not be able to access and turn within the site. Subject to these changes, the proposal is considered to be acceptable in highway terms.

## RESIDENTIAL AMENITY

4.35 One of the core principles of planning outlined in the NPPF is to seek a good standard of amenity for all existing and future occupants.

4.36 The nearest residential properties are located to the south of the site and form part of a large modern housing estate. They are at a distance of over 30m from the site and separated by a field.

The proposed houses would not have any impact on the nearby houses in terms of overlooking, overshadowing or increased sense of enclosure. Indeed, the removal of the existing commercial use and associated noise and its replacement with the domestic use of the land would benefit the local community.

4.37 The proposed houses, and retained host dwelling, would have sufficient private amenity space and parking to serve them. The arrangement of the dwellings would mean that adequate separation distances would be retained between the properties on site. The houses would be at a distance of approximately 250m of the pig farm located to the north of the site. Whilst there have been noise and odour complaints about the operations at Hall Farm, these have not related to the pigs themselves. It is also noted that the proposed houses would be no closer to the adjacent farm than the current host property at the site. In light of this, and the fact that the Environment Agency has received no complaints nor have record of an environmental permit being in operation for the farm, the Public Protection Officer considers that the potential loss of amenity to the proposed four new dwellings is low. The Public Protection Officer requests conditions covering contamination and electric vehicle charge points be attached to any approval.

4.38 In light of the above, no objections are raised to the proposal on the grounds of residential amenity and there would be negligible harm caused in this respect.

## ECOLOGY

4.39 Paragraph 118 of the NPPF aims to conserve and enhance biodiversity, including the refusal of planning applications where development would adversely affect Sites of Special Scientific Interest, ancient woodland and European protected sites. The site does not fall within any of these designations.

4.40 The existing buildings at Foss Bank are considered to have the potential to support roosting bats, considering their construction and the surrounding habitat. The applicant has been advised as part of the pre-application enquiry to have a bat survey carried out to see if there is any evidence of occupancy or suitable habitat present and submit this survey, along with any proposed mitigation, with any application. No such survey has been undertaken. The applicant has written to confirm that such a survey would be carried out following the grant of planning permission. However, as a protected species, the presence of bats within the building is a material consideration and the application cannot be determined without information on the presence/absence and potential impacts on bats. The lack of this information, requested as part of the pre-application enquiry, is grounds for refusal.

## ARCHAEOLOGY

4.41 Section 12 of the NPPF advises that planning should conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations. Paragraph 131, in particular, states that local planning authorities should take account of the desirability of sustaining and enhancing an asset's significance, the positive contribution it can make to sustainable communities and the positive contribution new development can make to local character and distinctiveness. Paragraph 135 requires the effect of an application on the significance of a non-designed heritage asset to be taken into account in determining an application.

4.42 The City Archaeologist has identified the site as having the potential to contain archaeological features relating to a prehistoric Romano-British landscape and/or medieval and post-medieval agricultural practices. As such, the proposal may reveal or disturb these archaeological features and any deposits. Therefore, in line with advice in the paragraph 40 of the Planning Policy Guidance document that accompanies the NPPF, a condition requiring an archaeological watching brief on all groundworks has been requested by the City Archaeologist. Any harm to archaeological deposits and features can be adequately addressed and mitigated through the imposition of conditions.

## LOCAL FACILITIES

4.43 The application proposes the introduction of four additional family sized properties to the area. The Council's Education Officer has confirmed that there would be no requirement for a commuted sum payment towards education facilities to cater for the additional children generated by the development if approved. The Council's Public Realm and Sport and Active Leisure Officer has requested a commuted sum payment towards off-site public open space (play and amenity space and sports pitches) in lieu of on-site provision. Based on the number of bedrooms proposed, this would equate to a figure of 8,426. The Council's Housing Development Officer has requested an affordable housing contribution of £34,700.70 to meet the interim policy. These matters could be covered by means of a legal agreement.

## OTHER CONSIDERATIONS

4.44 Paragraphs 87-88 of the NPPF advise that permission should be refused for inappropriate development, unless other considerations exist that clearly outweigh identified harm to the Green Belt and which would amount to very special circumstances.

4.45 Whilst the applicant has not formally submitted a statement setting out the very special circumstances case as advised at pre-application stage, the design and access statement and letters provided by the applicant set out the following circumstances:

- the removal of a noise nuisance and the consequential benefits to the wider community;
- the impact that the noise abatement notice has had on the viability of the kennel business and the costs involved in relocation of the family business;
- the proposals relate to already developed land and would reduce the massing of the buildings on site and have a footprint slightly more than the buildings to be removed.

4.46 The previous application seeking outline consent for the erection of three homes to replace the kennels business was refused planning permission in 2010 on Green Belt policy grounds as well as the unsustainable location of the site. The applicant put forward at the time a case for very special circumstances being: the relocation of a 'bad neighbour' and the resultant benefits to residential amenity; the reuse of previously developed land; and, the visual improvement to the site. These were not accepted as sufficiently compelling to outweigh harm to the openness and purpose of the Green Belt.

4.47 Since the 2010 refusal, a noise abatement notice has been served by the Council against the operation of the kennels business, which the applicant claims has adversely affected the viability of the client's business. This is in terms of a reduction in the number of dogs, loss of a lucrative York City Stray Dogs contract and reduced opening times for drop off and collection. The applicant states that an appeal against the noise abatement order at the Magistrates Court failed, where it was accepted that the 'best practicable means' of management practises had been employed to address the noise nuisance. Sound proofing of the buildings was not considered to be a suitable solution by a sound proofing company as the noise was when the dogs were in the outdoor space not the kennels.

4.48 The removal of a potential noise nuisance and the consequential benefit this would have for local residents has been accepted by a Planning Inspector in an appeal outside City of York Council's boundary as being capable of constituting very special circumstances to be weighed in the balance when against restrictive Green Belt policy. The appeal decision related to the replacement of a kennels for 90 dogs and 60 cats with one modest dwelling. This application proposes the replacement of a business with 23 individual kennels and 14 individual cattery units with four dwellings.

4.49 The applicant was advised at pre-application stage to submit the following information/evidence to support any planning application in order to justify what was then the erection of three dwellings:

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- The measures that have been employed/implemented by the applicant to address the noise complaints and overcome the abatement notices in order that the business can be viable;
- The recent marketing of the site to another user;
- An open book viability assessment of the value of the business, cost of relocation including information on alternative sites and likely development costs and sale value of the properties.

4.50 On the first point, the applicant has confirmed that the issue with the dogs barking is whilst they are outside the kennel building being exercised and, therefore, it would be difficult to attenuate the noise. Other measures adopted in the management of the business, including the reduction in the number of dogs and hours of drop off and collection, have not resolved the problem and have affected the viability of the business.

4.51 With regards the second point, the applicant has submitted estate agent documentation (prepared in 2008) when the site was marketed as a kennels, cattery, stables and office accommodation, but with potential for light industrial, office and commercial premises. The site was advertised for sale separate from the existing dwelling, which diminishes its attractiveness as an on-going business, regardless of the commercial use, due to its isolated location. Furthermore, the sale particulars reference that the land would be subject to a restricted covenant precluding the conversion of the buildings to residential use, thereby preventing the presence of a dwelling in connection with an alternative commercial (or rural business) venture. The applicant confirms that the kennels were marketed at a cost of £770 + VAT and that the only interest was from two property developers.

4.52 The applicant provides details of alternative premises that were on the market at the time of the pre-application enquiry and relate to properties with at least one dwelling on site with the associated buildings that either had established kennel/cattery businesses or the potential to be converted to such a use. These properties range from £625,000 for a dwelling with outbuildings in Strensall to £1.2 million for an established boarding kennels, stables and two three bedroom homes in the North Yorkshire Moors.

4.53 However, the applicant has confirmed recently that an assessment of development costs or sale values for the proposed properties has not been undertaken as it is considered to be too early in the application process. Therefore, whilst the personal situation set out by the applicant are acknowledged and could form part of a very special circumstances case for allowing some redevelopment of the site, there is no clear justification for the erection of four dwellings at the site and the consequential harm to the openness and purposes of the Green Belt previously identified.

4.54 Officers do not agree that the replacement of one single storey building, albeit 247 sq.m. (and 416.18m including the office, cattery and stable buildings), with four 1 ½ storey dwellings with detached garages would reduce the massing of structures on site. Whilst the site is previously developed, Green Belt policy would only allow redevelopment of such land, whether partial or complete, if there is no greater harm to openness, which officers have concluded above that the proposal would not satisfy this provision.

4.55 As a result of the above, the issues set out by the applicant to justify inappropriate development in the Green Belt are not of overriding weight, either individually or collectively, in the consideration of the application to clearly outweigh the identified harms to the Green Belt. Therefore the very special circumstances necessary to justify the development do not exist.

## **5.0 CONCLUSION**

5.1 The application site is within the general extent of the York Green Belt. The proposal constitutes inappropriate development for the purposes of paragraph 88 of the NPPF, and by definition causes harm to the Green Belt. The proposed development would cause additional harm to the openness of the Green Belt and conflicts with the key purposes of including land within it set out in paragraph 80. The definitional harm and other harm to the purposes and openness of the Green Belt must be afforded substantial weight when applying the NPPF policy test – namely, that very special circumstances will not exist unless the potential harm to Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations.

5.2 It is considered that the other considerations put forward by the applicant, when considered individually and collectively, are not compelling reasons sufficient to clearly outweigh the identified harm to the openness and purposes of the Green Belt and that the very special circumstances necessary to justify the development do not exist.

5.3 Furthermore, the applicant has not undertaken and submitted the necessary survey to assess the presence of, or impact on, a protected species, as advised at pre-application stage.

## **6.0 RECOMMENDATION: Refuse**

1. Policies YH9 and Y1 of the Yorkshire and Humber Plan Regional Spatial Strategy to 2026 defines the general extent of the Green Belt around York with an outer boundary about 6 miles from the city centre. The application site is located in Green Belt as identified in the City of York Development Control Draft Local Plan (April 2005) and forms part of an area preventing coalescence

between Haxby and Earswick. It is considered that the proposed development consisting of the direction of four dwellings and associated garages following the removal of single storey outbuildings, constitutes inappropriate development in the Green Belt as set out in Section 9 of the National Planning Policy Framework. As such, the proposal results in harm to the Green Belt, by definition, and harms the openness of the Green Belt and conflicts with the purposes of including land within it. No 'very special circumstances' have been demonstrated by the applicant that would clearly outweigh this harm. The proposal is, therefore, considered contrary to advice within the National Planning Policy Framework, in particular section 9 'Protecting Green Belt land' and City of York Draft Local Plan Policy GB1.

2. The existing buildings at Foss Bank are considered to have the potential to support roosting bats, given their construction and the surrounding habitat. No survey has been undertaken to assess the potential occupancy. As such, there is insufficient information to allow the impact of the proposed development on this protected species to be fully considered. The proposal is, therefore, considered contrary to advice within the National Planning Policy Framework, in particular section 11 'Conserving and enhancing the natural environment' and City of York Draft Local Plan Policies NE6 and NE7.

## **7.0 INFORMATIVES:**

### **STATEMENT OF THE COUNCIL'S POSITIVE AND PROACTIVE APPROACH**

1. In considering the application, the Local Planning Authority has implemented the requirements set out within the National Planning Policy Framework (paragraphs 186 and 187) in seeking solutions to problems identified during the processing of the application. Notwithstanding the above, it was not possible to achieve a positive outcome, resulting in planning permission being refused for the reasons stated.

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