

North York Moors National Park Authority

Delegated decision report

Application reference number: NYM/2021/0351/OU

Development description: outline application for construction of up to 5 no. principal residence dwellings with associated access (matters reserved: appearance, landscaping, layout and scale)

Site address: Land west of Highfield, Sled Gates, Fylingthorpe

Parish: LCPs of Fylingdales and Hawsker-cum-Stainsacre

Parish: Fylingdales

Case officer: Mrs Hilary Saunders

Applicant: SIW Properties

c/o agent,

Agent: Alistair Flatman Planning

fao: Mr Alistair Flatman, 24 West End Grove, Horsforth, Leeds, West Yorkshire, LS18 5JJ,

Director of Planning's Recommendation

Refusal for the following reason(s)

Refusal reason code	Refusal reason text
1	The Planning Authority considers that clear visibility of 68.2metres cannot be achieved along the public highway in a southern direction from a point 2 metres from the carriageway edge measured down the centre line of the access road and consequently traffic generated by the proposed development would be likely to create conditions prejudicial to highway safety. The proposal is therefore contrary to Policy CO2 and CO7 of the North York Moors Local Plan which only permits new development where it is of a scale which the adjacent road network has the capacity to serve without detriment to highway safety.
2	The existing roadside hedgerow classifies as being a habitat of importance (under the NERC Act) and therefore its proposed removal would result in habitat loss, contrary to the National Parks Statutory Purposes as set out in Strategic Policy A and Policy ENV1 of the NYM Local Plan, which states that there will be a presumption in favour of the retention and enhancement of existing hedgerows of value on all developments.

Consultation responses

Parish

Object

22 December 2021 –Previously registered comprehensive objections remain. In addition, further reasons for objection are as follows:-

Significant speeding both uphill and downhill; splay calculations were in error; setback distance is wrong; no basis for unquantified claims of net gain on hedge removal and shrub planting; a full hedge flora cannot be magically returned by planting shrubs; the applicant has provided no biodiversity data for NYMNP to evaluate; there is no reason to change the decisions of previous applications that were refused on highways grounds.

12 August 2021 – The traffic survey suggests that the traffic is lighter than 20 years ago –the survey was done in December during a pandemic lockdown! The second monitoring point indicated on the plans was not there, also according to the figures somehow vehicles went missing between the two points.

This road is busier than it has ever been. Cyclists are following the route of the Tour de Yorkshire and their numbers have increased exponentially.

Cars have to park on the right hand side of the road as the houses do not have drives and garages. Cars park on both sides. The road is narrow and buses cannot pass each other. The pavement is used regularly by the bus going up hill.

The Inspector who dismissed the appeal said the land/access should not be used until the Highway Department did work on the road or put a scheme in place to reduce the speed of the traffic. Nothing has changed.

The ecological survey of the hedge was only done at one time of year and no allowance has been made for other species that become obvious earlier or later in the year.

5 July 2021 - The sight lines information given to the Highways Department is different to the ones on the plans. The owners of the hedges that have to be taken down to allow for the proper sight lines have still not been approached for permission.

26 May 2021 -This is not a windfall site. The 4 inch diameter sewage pipe is at capacity, there is also the problem of the discharge of private water. The plans are an inaccurate representation of the hedges and trees on the site and adjacent properties. There has been no reasonable ecological survey.

The applicants omit to note that several previous applications were refused on Highways grounds, including:

Document title

NYM/2006/0652/FL – on visibility grounds

NYM/2007/0146/FL- on highways safety grounds.

14 years later a survey took place near the end of a lockdown on 3-9 December 2021 and found only 75% of that number- very atypical. As Govt advised us all to stay at home, it is a gross underestimate. It is unlikely that 14 years on, with a much higher vehicle ownership, that traffic has declined. Of course, it was in winter in a period of Covid restrictions, not a normal summer's set of days.

The Applicant noted that the proposed site ingress and egress is within a 30 mph area. Yet 55% of vehicles approaching downhill were, according to the applicant, going more than 30mph- with 5 > 45mph. That affects the splays. Delivering their proposed splays of 58m to the west and 40m to the east would still be a problem- just as they were at the last Appeal failure.

Given the fact there hasn't been any traffic calming measures implemented or even considered the reasons for the Inspectors decision still stands in 2021.

The splays as drawn would affect a Victorian-era hedge. The hedge should be protected and subject to a final botanical survey may well come under the 1997 Hedgerow Regulations for protection as well. There is not just one fence to be considered, the sight lines rely on neighbours being willing or to cut their fences down. In fact they might be breaking the law if they do so as they are agricultural hedges.

The application ignores any biodiversity interests or possible net gains (required by both the NYMNP Local Plan of 2020 and the 2019 NPPF) as there are not desk or field surveys. It ignores most of the relevant sections of the 2020 NYMNP Local Plan and the Supplementary Planning Document 3.

The Parish Council Objection to the application is based on all the above items.

Highways

Recommend refusal - The LHA are not aware of where an allowance to say the Y distance looking left can be adjusted away from the nearside kerblin for the reason that the oncoming traffic will not be at this location. The far side does frequently have parked cars on the road which has the resulting effect of pushing the oncoming vehicles, including buses, out into the near side lane. Therefore the LHA does not accept the claim that the visibility can be measured at a point 0.9 metres out into the road.

Section 7.7.7 of Manual for streets does say that the X value for measuring visibility can be adjusted to 2 metres for lightly trafficked roads and as the proposed access is a private drive and the flows of traffic on the major road are relatively low, the LHA are willing to agree that this can be applied for this location.

The applicant's calculations in determining the required visibility splays include small adjustments for gradients, wet weather etc. The LHA has not evaluated these figures as it does not have a bearing on the ultimate conclusion that the LHA has made. The proposals for the downhill, north side visibility is that a distance of 47.4 metres is required. The latest revised plan, AMA/20940/SK/006 dated 09/11/2021 shows this to be achievable by moving the access point southwards from the previous layout. The applicant has claimed that the Y value of 47.4 can be achieved but this is relying on the X value being relaxed to 2 metres and the hedges are maintained so that it does not overhang the proposed highway extents.

For the uphill, south side, the required visibility distance is 68.2 metres. The applicant claims that the Y value visibility can be achieved only by taking a point 0.9 metres out from the kerbline into the carriageway. The achievable distance on the kerbline is in the region of 48 metres. These figures are relying on the X value being relaxed to 2 metres and the hedges of the neighbouring properties maintained so that they do not overhang the existing highway extents.

Yorkshire Water

No objections subject to conditions

Environmental Health

No objections

Third party responses

The following people all object for some or all of the reasons stated below:

Mr McGovern, Middlethorpe, Sledgate Farm, Sled Gates, Fylingthorpe

Dr T Reed, The Pond House, Sledgates

Mr C Bancroft, Muir Lea Stores, Muir Lea New Road, Robin Hoods Bay

V A Mennell, Newthorpe, Sledgates

Mrs S J Pickering, Northview, Sledgates, Fylingthorpe

Mr & Mrs Wittering, Sledgates Cottage, Fylingthorpe

Mr & Mrs Ryder, Highfield Cottage, Sledgates, Fylingthorpe

Mr & Mrs Storey, 2 Kingston Garth, Fylingthorpe

Mr J Collinson, Coppergarth, Sledgates, Fylingthorpe

Mr T Collindon, Cambronne, Sledgates, Fylingthorpe

Mrs C Harrison, Moorland Rise, Sledgates, Fylingthorpe

Jo Parry, Briar Lea, Sledgates, Fylingthorpe

MW Hardwick, Copsford, Sledgates

Mrs P Andrews, Keldy, Sledgates

Mrs White, Flying Hall School, Robin Hoods Bay

Mr & Mrs Hodgson, Magnolia, Sledgates

- Harm to highway safety – which is no less than it was in 2007 and the latest speed survey by the applicant only serves to reinforce this view.
- 3 previous applications have been refused due to highway safety and the road has become busier with increased traffic, caravans, motorhomes, no change to previous reasons .
- The loss of a hedge of 1997 Hedgerow Regulations standard and field biodiversity.
- Loss of privacy and outlook.
- The buses and lorries still have to cross the centre line and use the pavement on occasions to pass due to cars parked legally outside their property.
- The proposed development site has been refused planning permission several times since 1986 by highways and the national parks planners.
- Since 1986 the traffic has increased due to the popularity of Robin Hoods Bay.
- A lot of properties in the village are now holiday homes, we don't need any more.
- The field contains a lot of wildlife which would disappear if this planning goes ahead.
- None of the previous and numerous applications have been successful, either at first attempt, or at appeal. Could there be very valid reasons for this, reasons that are still applicable today?
- The ancient hedge and stone wall that line the path along the frontage of the field currently mean that road safety and visibility splays cannot be achieved.
- The complete decimation of an ancient hedge and stone wall over the complete span of the frontage onto Sledgates, in the region of 90-meters, and the creation of a path of approximately 3 meters width, to replace the narrow village path that has existed for centuries, might too be alien and somewhat out of place?
- This, in the 'important gateway' to the village.
- The new hedge would, by necessity, have to be repositioned some three, perhaps four feet back into the field, completely altering the streetscape that has existed for hundreds of years. As there is a 'presumption' that ancient hedges and pathways be retained within the National Park, is completely unacceptable.
- The refusal of 2005 application, which was for four dwellings left the existing hedge intact and was refused because the works necessary to create a safe access would result in an alien and unduly obtrusive form of development.'
- Proposal pays scant regard to Highway Safety, the maintenance and enhancement and particular character of the village or the healthy protection, retention and enhancement of the biodiverse ancient areas of our special home.
- Incorrect statements in the application summary.
- Unsupported assertions in supporting documents.
- Delivery of the claimed visibility splay relies on the hedgerows of others, not just the developer.
- This hedge qualifies as important as it has a bank or wall supporting the hedgerow; less than 10% gaps and more than 3 woodland species.
- There are only two routes into the Robin Hood's Bay. The first is from the Whitby to Scarborough Road via Hawsker, and the second is from the same road by via Sledgates (the proposed access for this development). As Robin Hood's Bay

becomes increasingly popular, the traffic situation into, and within, the village presents considerable problems. There is a lack of adequate parking in Robin Hood's Bay centre which means both entry roads, including Sledgates, are regularly lined with cars parked partly on verges and partly on the road, lines of them sometimes stretching nearly back to the main road. Presumably the people who would be living in those houses may have several cars per household and will also have visitors seeking access and parking?

- Similarly no consideration appears to have been given to the reality of construction vehicles accessing the site, or access for those involved with the provision of services to the houses.
- Among other matters is the pedestrian flow along what is a narrow pavement on that stretch of road. Motorhomes often park at the top of Sledgates and their owners walk into the village, as do visitors in Bed and Breakfast at the top of the hill. Many pupils from Fyling Hall school regularly use the footpath to access the school to and from the village during term-time and groups of them walking up and down are a regular feature during term time. Many children from this stretch of the road also regularly walk to school or to the park along it.
- We watch the bats that roost there and fly over at night, the barn owl flies across it and hunts in it, we have seen so many types of birds (including bullfinches who are becoming increasingly rare) appearing in and out of the boundary hedges, the badgers come over the road from there and deer regularly wander around it.
- The Appeal in January 2008 was rejected on the basis of very sensible submissions by the Highways Department, who considered that the application to develop the land for housing should not be approved on the basis of very real safety concerns about site access, all of which still apply.
- The means by which foul sewage and water run off will be dealt with is unclear and needs clarifying. Both land drains and mains water and sewage drainage are a particular issue at that point on Sled Gates and from the staining on the road surface at the proposed site entrance the issues can be easily observed.
- The proposed development site is currently part of an agricultural field and yet the plans show no access to the rest of the field.
- The field itself is of high ecological value, the land is currently low intensity agricultural land grazed by sheep and as such host to a diverse range of species. It is regularly frequented by deer, foxes, badgers, bats, birds of prey including buzzards and multiple species of owl are regularly viewed hunting the area. The land is quite marshy and as such is also home to frogs, toads, newts etc. The site and land adjacent to it could certainly be home to protected and priority species and likewise are extremely important habitats, as such I feel it imperative that full surveys are carried out.
- Parking for the 5 houses is barely sufficient and visitors to the dwellings on the site who might park on the road would cause further issues with visibility.
- If the existing field gate access is to be closed off and replaced with the proposed access point, how will tractors and agricultural vehicles safely access the site? It is

clear that they will need to use the new entrance to the site to access the field behind it - a gateway in the back hedgerow is indicated for that purpose.

Publicity expiry

Site notice expiry date – 16 June 2020

View of application site heading up Sledgates away from the village. Site is behind hedgerow and photo demonstrates bend in the road



View down the hill on Sledgates towards village of Fylingthorpe – application site just out of view to the right



Hedgerow on left proposed to be removed and demonstrates poor sightlines



View into site from adjacent land to east



Background

This application relates to part of a field fronting onto the main 'C' class road that runs through the village of Fylingthorpe. The front of the site is bounded by a low stonewall which has historically been topped by a hedgerow.

The site is located towards the edge of the village. The character of this part of the village derives in part from the mix of short terraces adjacent the site to the east and larger detached dwellings in spacious grounds to the west. On the opposite side of the road are a number of small semi-detached houses.

Outline Planning Permission for the erection of two dwellings on this site was refused in 1987 and dismissed at appeal. Notably the Planning Inspector considered that residential development here would constitute infill between the centre of the village and development to the west but considered that the works required to create a safe highway access would likely to require major alterations to the hedge and wall, which could have an adverse impact on the character and appearance of the locality. Prior to this appeal refusal, two applications were refused over the space of three years, one for 6 houses and one for 4.

Planning permission was again refused in 2005 for the construction of two pairs of semi-detached dwellings set back from the back edge of the pavement. With this application it was proposed that the existing front boundary wall and hedge would be removed, with a new stone faced retaining wall and hedgerow being re-created further back from the road in order to achieve the necessary sightlines. New tree and hedgerow planting would be undertaken at the rear of the site and the existing row of mature trees on the western boundary would be retained with some additional planting also being undertaken. A 1.5 metre boundary fence would be erected on the eastern boundary with the adjacent dwellings. This application was refused on the basis that the design, form and general appearance of the development would result in an alien and unduly obtrusive form of development which would harm the character and appearance of this important gateway site into Fylingthorpe village.

Full planning permission was then refused again in 2006, for the erection of two 4 bedroom detached houses with associated garaging, with vehicular access being from a similar (relocated approximately 3.5m further along site boundary) point as the existing field access. This application was refused on the basis that adequate sight-lines could not be achieved.

A further application was refused in 2010 for the erection of two 4 bedroom detached dwellings with associated garaging with vehicular access. This application was refused because at that time the previous local plan had been superseded by the Local Development Framework which had introduced a change (Core Policy J) with a tighter definition on infill plots which stated that an infill site is "a small gap within a continuously built up frontage within the main built up area of the settlement which can accommodate no more than one dwelling".

Furthermore, Core Policy J also sought to resist speculative development. The proposal did not comply with the requirements of CPJ.

The Local Development has now been superseded by the 2020 Local Plan which has reverted back to allowing development on some larger sites and consequently this current application was submitted. This application is in outline form and seeks permission for construction of up to 5 no. principal residence dwellings with associated access (matters reserved: appearance, landscaping, layout and scale).

Main issues

Local Plan

Strategic Policy A – National Park Purposes – seeks to take a positive approach to new development, in line with the presumption in favour of sustainable development and where decisions are consistent with National Park statutory purposes:

1. To conserve and enhance the natural beauty, wildlife and cultural heritage of the National Park;
2. To promote opportunities for the understanding and enjoyment of the special qualities of the National Park by the public.

It is explained within the Policy text that sustainable development means development which maintains and enhances geodiversity and biodiversity through conservation and enhancement of habitats and species.

Policy CO7 - Housing in Larger Villages – Sets out that in order to support the wider service function of Larger Villages, principal residence and affordable housing will only be permitted on suitable small sites (suitable for up to 5 dwellings) within the main built up area of the village only, with proposals meeting the need for smaller dwellings.

Policy CO2 – Highways - only permits new development where it is of a scale which the adjacent road network has the capacity to serve without detriment to highway safety; the external design and layout and associated surfacing works take into account, as appropriate, the needs of all users including cyclists, walkers, horse riders and users of mobility aids; and highway detailing, road improvements and street furniture are sensitive to the character, heritage, built form and materials of the area, the need to conserve and enhance biodiversity and are the minimum required to achieve safe access.

Policy ENV1 - Trees, Woodlands, Traditional Orchards and Hedgerows - states that there will be a presumption in favour of the retention and enhancement of existing trees, woodland, traditional orchards and hedgerows of value on all developments.

Where the wider sustainability benefits of the development clearly outweigh the loss, proposals will be expected to minimise harm and provide a net biodiversity and amenity gain, with appropriate replacement of lost trees or hedgerows.

Material Considerations

The main issues in this case are considered to be whether this site constitutes a suitable site under Policy CO7, whether its development complies with the criteria set out in that policy and whether the proposed development complies with the requirements of other Local Plan policies, especially highway safety and natural habitats.

It is considered that this does comprise a suitable small site within the main built up area of the village of Fylingthorpe and so falls to be considered under Policy CO7. Previous Planning Inspectors found at appeal that:

“The site is on the edge of the village with small, semi-detached properties opposite and larger detached dwellings in spacious grounds to the west.

I consider that development of the appeal site would be infill between the centre of the village and the development to the west”.

The Inspector went on to dismiss that appeal as he considered it had not been satisfactorily shown that an environmentally sensitive access could be achieved. This is particularly pertinent to the current application.

Whilst accepting that the site might comprise a suitable site in terms of Policy CO7 consideration must be given as to whether the site can achieve safe access which is a requirement of Policy CO7 as well as Policy CO2.

The Highway Authority has given the proposals extensive considerations and the applicant’s agent has submitted a number of traffic surveys and plans in an effort to overcome the Highway Authority concerns. However, the Highways Authority have concluded that satisfactory sightlines cannot be achieved and have consequently recommended refusal on highway safety grounds.

In terms of the issue of the hedgerow, during consideration of previous applications, evidence was found, to suggest that this hedgerow was in place prior to 1845, and although there are some discrepancies between maps as to whether or not this was a hedge or a fence, the presence of this boundary prior to 1845 makes it historically important. In view of this, it has not previously been considered desirable to lose this defined boundary.

The Authority’s Ecologist has been consulted on the current application and has advised that based on the data available, it is considered that the hedge is worthy of retention under the hedgerow regulations. However, it understands that whilst considered worthy of retention under the hedgerow regulations, its removal could still

be authorised by an approved planning application as that legislation overrides the hedge regulations, but that this should be considered in the planning balance. All hedgerows containing native woody species are considered priority habitats. This does not give them firm legal protection but does mean that as a public body we have to have a 'due regard' for their importance when undertaking our functions. If consented for removal it would mean that the mitigation and compensation requirements would be higher than for non-priority habitat so that we can ensure that overall biodiversity loss is not permitted.

In view of the above it is considered that the proposal would result in habitat loss, contrary to the National Parks Statutory Purposes as set out in Strategic Policy A and Policy ENV1 of the NYM Local Plan, which states that there will be a presumption in favour of the retention and enhancement of existing hedgerows of value on all developments.

Conclusion

In view of the above it is considered that the proposals would have a detrimental impact on highways safety and result in undesirable habitat loss. Consequently, the proposal would be contrary to Policies CO2, CO7 and ENV1 and refusal is recommended.

Pre-commencement conditions

N/A

Contribution to Management Plan objectives

N/A

Explanation of how the Authority has worked positively with the applicant/agent

Refusal (No Amendments Requested/Departure from Development Plan)

The Authority's Officers have appraised the scheme against the Development Plan and other material considerations and concluded that the scheme represents a form of development so far removed from the vision of the sustainable development supported in the Development Plan that no changes could be negotiated to render the scheme acceptable and thus no changes were requested.