

REPORT FOR WESTERN AREA PLANNING COMMITTEE**Report No.**

Date of Meeting	21 August 2019
Application Number	19/03240/OUT
Site Address	Homefield Farm, 4 West Ashton Road, Yarnbrook
Proposal	Rebuilding of a two bedroomed cottage on the footprint of a former cottage which was demolished 35 years ago (outline application considering the principle and access only)
Applicant	Mr R F Burbidge
Town/Parish Council	WEST ASHTON
Electoral Division and Ward Member	SOUTHWICK– Cllr Horace Prickett
Grid Ref	386,962 155,167
Type of application	Full Planning
Case Officer	David Cox

Reason for the application being considered by Committee

Cllr Horace Prickett has requested that should officers be minded to refuse this application, it should be brought before the elected members of the area planning committee for its determination to consider that *“this is an application to rebuild a cottage demolished on the grounds of being ‘unfit for habitation’ several years ago. It amounts to a restoration of the ‘street scene’”*.

1. Purpose of Report

Having assessed the merits of the proposed development and tested it against the policies of the development plan and other material considerations, officers recommend that the application should be refused.

2. Report Summary

The main issues discussed in this report are as follows:

- The Principle of the Development
- Highway Safety and Parking
- Impact on Ecology

3. Site Description

The application site is considered to be an area of open countryside located at front of Homefield Farm located approximately 225 metres from what is considered to form the built up area of Yarnbrook (which is a designated small village without settlement limits). There is some evidence of hardstanding on the site but it is in a poor condition.

The access road that serves the site (which is also a public right of way footpath WASH20) leads to Homefield Farm off the A350 between Yarnbrook and Melksham and serves two dwellings (Homefield Farm and No 121 Yarnbrook Road). Within 60 metres of this access and located to the south west, there is another access serving 7 further dwellings.

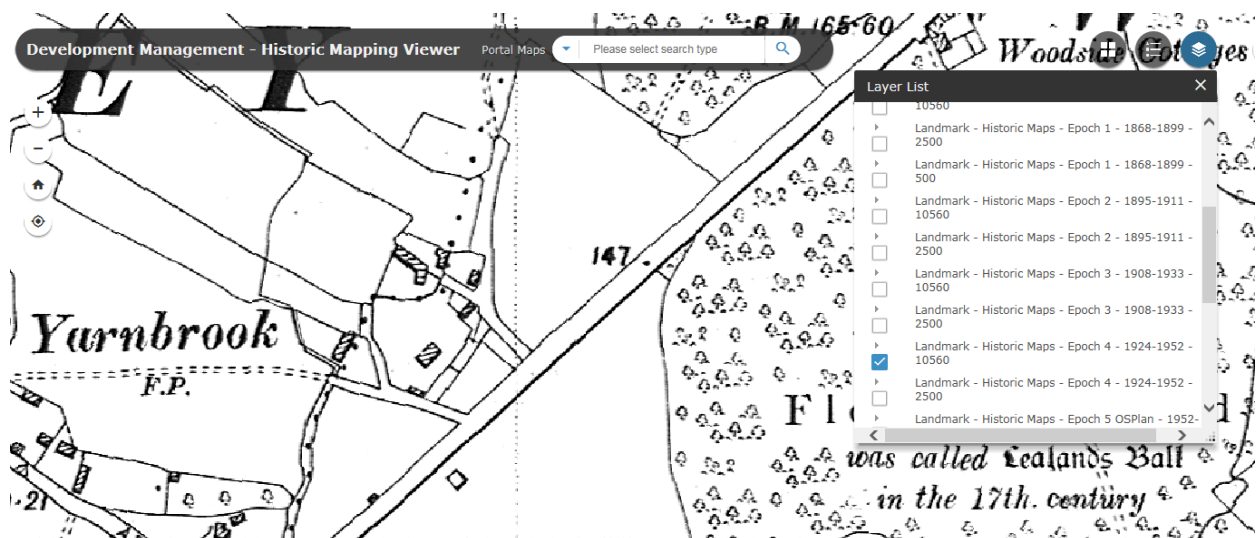
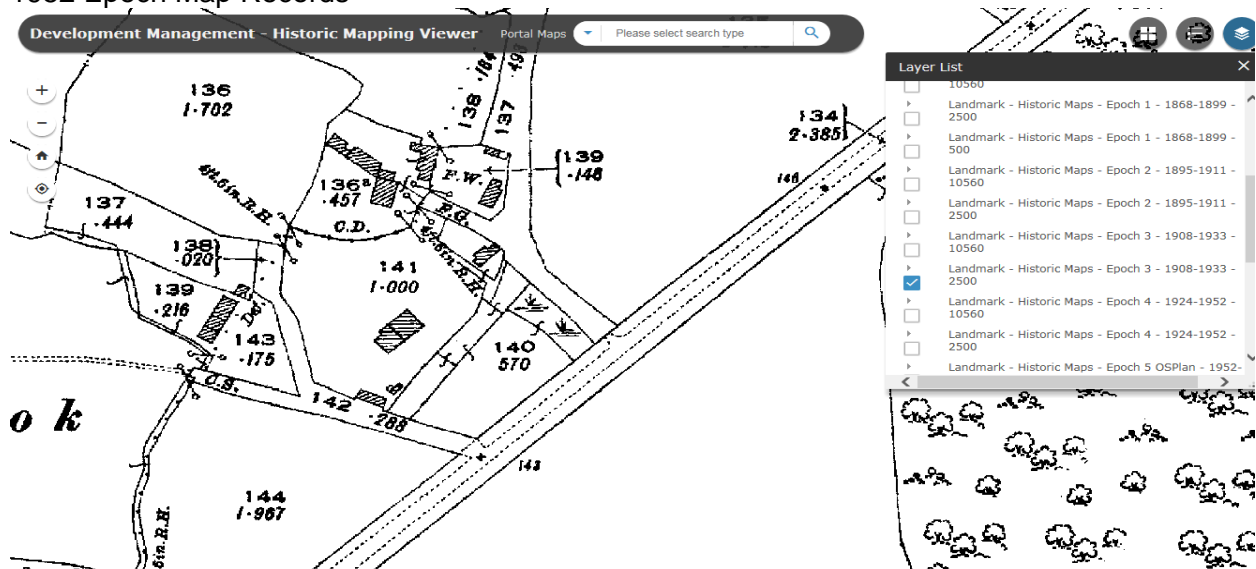
The A350 has a pavement connection to Yarnbrook but is located on the opposite side of the road from Homefield Farm. With reference to Council mapping systems sections of the site are prone to 1:100 surface water flooding with the entire site also identified as having ground water flooding issues.

The application site and its context



4. Planning History

There is no relevant planning history for the site. The historic mapping records however indicate a building (numbered as '123') on the site as referenced by the following 1908-1933 and 1924-1952 Epoch Map Records



5. The Proposal

This application seeks to gain outline permission for a 'replacement dwelling' which was demolished 35 years ago. The outline application indicatively proposes a 2-bed dwelling with connections to be made to Wessex Water infrastructure with the outline application limited to access only with all other matters being 'reserved' for a subsequent application.

6. Planning Policy

The Wiltshire Core Strategy (WCS) - The following Core Policies (CP) are relevant when assessing this application: CP1 (Settlement Strategy), CP2 (Delivery Strategy), CP3 (Infrastructure Requirements), CP29 (Trowbridge Area Strategy), CP50 Biodiversity and Geodiversity; CP57 (Ensuring High Quality Design and Place Shaping), CP60 (Sustainable Transport), CP61 (Transport and Development), CP62 (Development Impacts on the Transport Network), CP64 (Demand Management)

When adopting the WCS, some policies remain saved from the West Wiltshire District Local Plan (1st Alteration) (WWDLP) U1a – foul water drainage

Wiltshire Housing Land Supply Statement – Base Date April 2018 – published March 2018

The National Planning Policy Framework (NPPF), National Planning Practice Guidance (NPPG)

The Habitat Directive and Habitat Regulations

The Trowbridge Bat Mitigation Strategy SPA (Draft)

7. Summary of Consultation Responses

West Ashton Parish Council – Supportive

North Bradley Parish Council – Supporting subject to complying with Trowbridge Mitigation Bat Strategy

Wiltshire Council Highways Officer – Objects. The site is located outside of the local development boundary and this residential development at this location would be contrary to the sustainability policies contained in the Wiltshire Core Strategy (Core Policies 60 and 61) and the National Planning Policy Framework 2019 (Section 9, paras 102, 103, 108 & 110), which aim to reduce the need to travel particularly by private car and encourage the use of sustainable transport alternatives.

Access to the proposed new dwelling is via footpath WASH20, which is not recorded as a public vehicular highway. The only recorded public rights along it are on foot. In order to drive a vehicle along here, the householder would be required to prove a demonstrable private right of vehicular access. Without this private right, use of motor vehicles to access the site would be committing an offence under Section 34 of the Road Traffic Act 1988. The granting of planning permission would not grant the applicant or future occupier with a vehicular right of access over the footpath. The applicant should seek private legal advice on this matter.

In addition, there are concerns raised with regards to the junction of the footpath and the A350, as visibility is severely substandard for a 50mph road; and, is restricted by the overgrown hedgerow that appears to be outside of the applicant's control. Furthermore, concerns are raised over the width of the footpath, which at approximately 3m, would not allow two cars to pass. This would likely to cause turning vehicles to wait on the A350 and create a conflict on the footpath itself, all to the detriment of highway safety.

Wiltshire Council Public Rights of Way Officer – No objection subject to proving a right of vehicular access over the footpath WASH20.

Wiltshire Council Ecology Officer – Objects. This application needs to be considered in light of the Council's Trowbridge Bat Mitigation Strategy SPA, which was published in draft in February 2019. This document supports the Council's Housing Site Allocations Plan and it currently provides the best available evidence on which to consider the implications of the Habitats Regulations on planning applications in the Trowbridge area where they have potential to impact on the Bath and Bradford on Avon Bats SAC.

This application cannot be screened out of an appropriate assessment as it lies within the 'red zone' identified in the aforementioned Mitigation Strategy. In the strategy, this zone is identified as one where development is at high risk of leading to loss of habitat of critical importance to SAC bats both alone and in-combination with other plans and projects. Developments in this zone also have a high risk of leading to recreational impacts on woodlands used by breeding Bechstein's in combination with other developments. In addition, this particular development site lies along flight routes used by Bechstein's bats during radio-tracking studies undertaken to support the proposed Ashton Park development in 2013.

Currently this application does not comply with the TBMS. Before this application can be lawfully approved, an appropriate assessment needs to be conducted and a conclusion of '*no adverse effects on the integrity of the Bath and Bradford on Avon Bats SAC*' must be reached. In order to achieve this favourable outcome the requirements of the TBMS would need to be met and, in particular, the following would need to be demonstrated:

1. The development does not comprise an increase in residential curtilage
2. Core bat habitats are buffered by 15m minimum zones where light levels are below 1 lux
3. There is no net loss of habitats of value to bats (including trees, hedgerow, woodland, wetland or grassland)
4. There will be no interruption of potential bat flight routes
5. A contribution is secured to towards mitigation for in-combination effects on habitats

8. Publicity

A site notice was displayed of 28 June. Following this consultation one representation was received which can be summarised as follows:

No objection in principle with the local resident remembering the former building. There is a historic existing easement / passage that runs through the land connecting footpaths WASH20 and WASH9 and the applicant would need to ensure that it is not blocked or obstructed as part of this application.

9. Planning Considerations

Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise. In this case, the Wiltshire Core Strategy, including those policies of the West Wiltshire District Plan that continue to be saved and enshrined within the WCS, constitutes the relevant development plan for the Trowbridge area.

9.1 Principle of the Development

9.1.1 Core Policy 1 'Settlement Strategy' and Core Policy 2 'Delivery Strategy' of the Wiltshire Core Strategy (WCS) outlines the Council's adopted strategy which identifies the settlements where additional sustainable residential development should take place to improve the lives of all those who live and work in Wiltshire.

9.1.2 The adopted WCS identifies Yarnbrook in Core Policy 29 as a small village and Appendix F confirms that Yarnbrook is a small village that does not have development boundary limits. Core Policy 1 states that small villages have a low level of services and facilities, and few

employment opportunities and consequently, development proposals should be limited to 'infill' opportunities. The WCS is clear in setting out the provisions for new housing growth within the existing built area of small villages to be limited to proposals that satisfy the following tests:

- i) Respects the existing character and form of the settlement
- ii) Does not elongate the village
- iii) Does not consolidate an existing sporadic loose knit areas of development related to the settlement

9.1.3 This application proposal does not satisfy any of the exception policies or criterion set within WCS paragraph 4.25 – which is linked to Core Policy 2.

9.1.4 It is submitted that the application site is not within the existing built area of Yarnbrook. It is further submitted that the centre of Yarnbrook comprises the roundabout and the built up area (and the resultant character and form of the settlement) to comprise of the ribbon development immediately off it, primarily identified by the petrol station and the public house. As seen in the image below, there are three strong lines of development off the roundabout leading to Westbury and North Bradley; but the development on the road leading to West Ashton and the application site is considered to be physically detached and visually separated from the essential group of properties within Yarnbrook which the following aerial insert illustrates.



9.1.5 The above inserts are taken from the Council's mapping database and it's important to appreciate that the plots demarcated in yellow along West Ashton Road, includes land associated to No.133 (identified by the red triangle) which is not all considered to be residential curtilage (as evidenced by the series of site photos dating from May 2009 through to September 2016 reproduced on the following page) which, in planning terms, creates a degree of separation for the residential plots located further to the north compared to the nucleus of housing at Yarnbrook – located to the south east and south west. The southern half of the plot of land at No. 133 is considered to be 'open countryside' which creates a visual and physical break between Yarnbrook and the dwellings to the north, including the application site.



Land at No133 (southern section of the red lined Triangle site shown above) dated 2009



Land at No133 (southern section of the red lined Triangle site shown above) dated 2011



Land at No133 (southern section of the red lined Triangle site shown above) dated 2016

9.1.6 The following image reproduced on the next page looking south west with the access that would serve the application site on the right. Officers submit that this photo helps illustrate the visually separation of this site compared to the nucleus of properties forming part of Yarnbrook.



9.1.7 Officers argue that the application site is not a policy compliant infill development opportunity as defined by the terms contained within Core Policy 2. Officers argue that the proposal would not (i) respect the existing character and form of the small village of Yarnbrook.

9.1.8 Whilst the proposal would not breach WCS CP2 criterion (ii) by elongating the village, as the proposal would not expand the built form to the north east, it is submitted that there would be conflict with CP2 criterion (iii) by consolidating the existing sporadic loose knit areas of development that relate to the settlement. Homefield Farm, No 121 and the 7 dwellings that are served by the other access off the A350 are considered to be a sporadic loose knit area of development given the separation from Yarnbrook.

9.1.9 It is submitted therefore that the development proposal is contrary to Core Policies 1, 2 and 29 of the Wiltshire Core Strategy.

9.1.10 The submitted supporting planning statement claims that the proposal is supported by WCS Core Policy 36 – *Economic Regeneration* and by paragraph 118 of the NPPF as the site is 'brownfield land/previously developed land'. However, officers must counter this claim by arguing that neither policy applies in this instance.

9.1.11 Paragraph 118 (c) of the NPPF states that planning decisions should;

“...give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land;

In response to the above, officers argue that the site cannot be considered to be brownfield/previously developed land. The NPPF defines brownfield land/previously developed land as:

*“Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; **land in built-up areas such as residential gardens**, parks, recreation grounds and allotments; and, **land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.**”
(Emphasis added by officers)*

9.1.12 WCS Core Policy 36 is our adopted policy that seeks to secure and maximise economic development opportunities. It is not clear how the proposed outline application for a dwelling

house would deliver sustainable economic benefit. In any event, CP36 refers to the regeneration of brownfield sites within principal settlements, market towns and local service centres, as identified in Core Policy 1. Since this site is outside of these areas, CP36 does not apply.

9.1.13 The application submission relies on the fact that a dwelling once stood on the site and that it was demolished approximately 35 years ago when it became unfit for habitation. The consequential demolition without securing planning permission (and making a material start) for a replacement dwelling has left the site with no fall back. It is well established tenet of planning that once a building has been demolished and ceases to exist and it cannot be relied upon as substantive material planning consideration to justify any future application (and in this case, several decades later). The recent example of the unauthorised and subsequent need to demolish a partially constructed musician's studio at Forewoods Common (under application 13/01395/FUL) demonstrates this principle. Officers argue that the site has the characteristics of the open countryside as the following (dated) aerial photographs illustrate – which are followed by an up-to-date site photo of the site taken by the case officer.



2001



2005/6



2014



9.1.14 For the best part of the past two decades, the application site has largely been covered with trees and it is submitted that the site has blended into the landscape in the 35 years since the previous dwelling was demolished. The surrounding landscape comprises open countryside fields and small groups of trees and woodlands. The hard standing on the site is not readily visible and is unlikely to be suitable for any new dwelling. In terms of established policy, officers cannot support this application on the basis that it is not considered to be an appropriate and policy compliant infill opportunity and nor is policy compliant brownfield/previously development.

9.2 Impact on Highway Safety and Car Parking

9.2.1 The Council's Highways Officer has objected on the grounds that the proposal (for a new dwelling in the open countryside) is in an unsustainable location, whereby the future occupiers would rely on the use of the private car for most, if not all modes of transit and daily needs.

9.2.2 Paragraph 109 of the NPPF states that "*Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety*". The highways officer states that they have concerns regarding the junction of the footpath access with the A350, as visibility is substandard for a 50mph road, as it is restricted by the overgrown hedgerow. The visibility splays required for a 50mph zone equate to 2.4 x160m to the nearside road edge. Visibility to both nearside curbs are required as this is a road along which overtaking can occur. The submitted blue-lined plan which accompanies this outline application shows that both hedgerows are outside of the applicants control which means the local planning authority cannot reasonably impose or secure obligation on the applicant to provide improvements. It should be also noted that the existing available visibility splays have not been demonstrated on the submitted plans.

9.2.3 Furthermore, the highways officer has raised concerns over the width of the footpath, which at approximately 3 metres; it would not allow two cars to pass. This would likely cause turning vehicles to wait on the A350 and / or create a future conflict on the footpath itself, all to the detriment of highway safety.

9.2.4 It is submitted that the proposed visibility splays and the lack of width of the access lane would cause an '*unacceptable impact on highway safety*' and would be substantive grounds for a refusal.

9.2.5 The highways officer also stated that the proposed access would be via a public right of way footpath (WASH20) which is not recorded as a public vehicular highway, with the only recorded rights along it being on foot. The construction of a new dwelling to be access by motor vehicles off this lane would require the applicants to demonstrate a private right of vehicular access and without this private right, future occupiers/owners would be committing an offence under Section 34 of the Road Traffic Act 1988. The applicant has not demonstrated this private right of vehicular access which is a flaw with the application. An application that seek outline planning permission with the means of access being a detailed matter for consideration (without this confirmation) constitutes as a significant omission and is additional grounds for refusing planning permission.

9.3 Impact on Ecology

9.3.1 The Council's ecologist objects to the application on the basis that the application does not comply with the draft Trowbridge Bat Mitigation Strategy (TBMS). The application was submitted with an Ecological appraisal which acknowledged the TBMS but the report is not supported by an 'appropriate assessment' and instead relies entirely on "*the proposed development plans to re-instate a property on an identical footprint of a dwelling that existed on site in the last 20-30 years. The majority of the site is formed of short perennial vegetation that has colonised the rubble/debris from the former dwelling. As such, no net increase in residential curtilage is anticipated.*" Officers do not accept this as a reasonable explanation for not carrying out the required appropriate assessment. This application cannot be lawfully screened out of an appropriate assessment as it lies within the 'red zone' of the TBMS. In the strategy, this zone is identified as one where development is at high risk of leading to loss of habitat of critical importance to SAC bats both alone and in-combination with other plans and projects. Residential forms of development in this zone also have a high risk of leading to recreational impacts on woodlands used by breeding Bechstein's in combination with other developments. In addition, this particular development site lies along flight routes used by Bechstein's bats during radio-tracking studies undertaken to support the proposed Ashton Park development in 2013.

9.3.2 As stated within a previous section of this report, it is a well-established planning fact that once a building has been demolished it can no longer be relied upon for any replacement submission. The fact that the former dwelling was demolished over 30 years ago diminishes the material weight to be given to the former dwelling. Up until fairly recently, the site has been largely covered with trees and it hasn't produced any light pollution since the previous building was in use. The application site could be an important site for bats and this proposal could have adverse impacts. Without an appropriate assessment, the application cannot be lawfully approved. The submitted ecological appraisal recommends a series of mitigation measures within section 5, but mitigation cannot be used without the required appropriate assessment being carried out first.

9.3.5 An appropriate assessment is essential and given the absence of one, to assess the impacts and integrity of the Bath and Bradford on Avon Bats SAC, the application cannot be supported. This critical assessment has not been carried out by the applicants and the application should be refused on this basis.

10. S106 / Developer Contributions

No S106 financial contributions are sought for this site or development. CIL burdens would however apply to the proposed dwelling.

11. Conclusion (The Planning Balance) - Officers accept that a dwelling previously existing on the site around 35 years ago. However, following its demolition without securing planning permission for its replacement, there is no longer a valid policy argument to allow its replacement nearly 4 decades later. The proposed dwelling must be tested on the basis that it is for a new dwelling in the open countryside (and not as a replacement). The site is not considered to be a sustainable location and it is not supported by the relevant planning policies contained within either the Wiltshire Core Strategy or the NPPF. Furthermore, the application fails to demonstrate that a suitable adequate means of access can be provided for a new dwelling (which is part of this outline application) and the applicant has failed to prove the site benefits from a private right to be accessed by motor vehicles to make use of the PRoW. The proposal has also not been appropriately screened or assessed against the draft Trowbridge Bat Mitigation Scheme; and as such, there is a fundamental ecology reason to refuse this outline application.

12. RECOMMENDATION: Refuse for the following reasons

1. The proposed new dwelling would be outside of any development limits and would not constitute as a policy compliant infill development; and, instead would be an unsustainable form of development. The proposal would not respect the existing character and form of the small village of Yarnbrook. It would also consolidate the existing sporadic loose knit form of development at Yarnbrook contrary to Core Policies 1, 2, 29, 60 and 61 of the Wiltshire Core Strategy.

2. The access road (which is also a PRoW (WASH20)) and the junction are of an inadequate width to support the resulting increased vehicular use. Furthermore the additional traffic that would be generated by this proposal at the junction of public right of way WASH20 and the A350 West Ashton Road would be detrimental to road safety interests for all users due to the sub-standard visibility at the junction contrary to Core Policies 57 ix) and xiv) and 61 ii) of the Wiltshire Core Strategy. The applicant has also failed to prove a private right of vehicular access over the public right of way. Without this confirmation, the development cannot be considered to be sustainable development.

3. The application is not supported by an '*appropriate assessment*' that appraises and confirms that the development would not result in having '*adverse effects on the integrity of the Bath and Bradford on Avon Bats SAC*'. The proposal is therefore contrary to Core Policy 50 of the Wiltshire Core Strategy.