

PLANNING COMMITTEE – 19th October 2021

REFERENCE NUMBER: 21/00938/FL **Application Expiry Date:** 29 June 2019
Application Type: Full Planning Permission

Proposal Description: Demolition of two polytunnels and erection of one dwelling (revised scheme of 20/01272/FL)

At: Land To The North Of School Farm Church Land And South Of Conlands, Carr Lane, Brackenfield

For: Mr and Mrs Walker

Third Party Reps: 16 **Parish:** Brackenfield Parish Council
Ward Name: Shirland Ward

Author of Report: Alice Lockett **Date of Report:** 30th September 2021

MAIN RECOMMENDATION: REFUSE



1.0 Reason for Report

- 1.1 Cllr Liggett a Ward Member has called the application into committee stating that she *“would like the committee to decide the impact and the balance between removing the horticultural poly tunnels and the replacement with a 1.5 storey family accommodation and whether the proposal would outweigh the harm”*.

2.0 Proposal and Background

- 2.1 The proposal is to build a 1.5 storey dwelling at the site with associated garden and using the existing access. The potting shed building on site would remain but the house would be located within the area currently occupied by polytunnels.
- 2.2 The application site is known as Leafield Nursery and is located to the east of Carr Lane and to the south of the property known as Conlands.
- 2.3 Brackenfield is classed as a level 4 settlement within the Publication Draft Local Plan which is considered to have limited sustainability. It does not have a Settlement Development Limit and as such the whole of the village is located within the open countryside for the purposes of determining this application.
- 2.4 The site is separated from the main part of Brackenfield by an open field. The proposed house would be located at least 20m from the nearest property.
- 2.5 Although not located within the Special Landscape Area as outline in the adopted Local Plan, the site is within the primary Area of Multiple Environmental Sensitivity (AMES) which is referenced in landscape policy SDC3 of the Publication Draft Local Plan.
- 2.6 Carr Lane is designated as footpath 19 in the parish of Brackenfield.
- 2.7 The site is a former horticultural nursery and as such is still considered to have an agricultural use. Agricultural land is not considered previously developed for planning purposes.

3.0 Relevant Planning History

- 3.1 07/01049/FL - Proposed horticultural nursery including the construction of two polytunnels a potting/storage shed portaloo water tank eight sleeper beds and the creation of a parking and turning area. **Withdrawn**
- 3.2 08/00066/FL - Proposed horticultural nursery including construction of two poly tunnels a potting/storage shed portaloo water tank eight sleeper beds and the creation of a parking and turning area (Resubmission of NED/07/01049/FL). **Conditionally Approved**
- 3.3 17/00996/OL - Outline application with some matters reserved for the erection of two detached dwellinghouses. **Refused**
- 3.4 19/01063/OL - Outline application with all matters reserved except of access for the erection of two dwellings. **Refused**
- 3.5 20/01272/FL - Demolition of polytunnels and steel storage building and erection of one dwelling with garage. **Withdrawn**

4.0 Consultation Responses

4.1 Highways' Comment:

Comments are given on the basis that such current activity or similar allowed under the use class could take place without the need for further planning permission.

It is noted that there is currently no residence on site which presumably means vehicular movements take place in association with the activities carried out although no specific information is given in this respect.

Carr Lane is the route of a Public Right of Way (Footpath 19 on the Definitive Map for the area) giving a right of way on foot only. You may wish to ensure that vehicular access to the site would be available given that it is not included in the red line boundary. From information available it would seem that there would be sufficient space for the safe passage for a car and pedestrian.

Although no specific information is given in respect of current vehicular movements, it is considered that it would be difficult to demonstrate demonstrable harm such that any recommendation of refusal might be sustainable.

There are, therefore, **no objections** to the proposal and it is recommended that the following conditions are included in any consent.

1. The proposed dwelling shall not be occupied until space has been laid out within the site in for parking of 3 No. vehicles (minimum space

dimensions 2.4m x 5.5 clear of any shared/manoeuvring area) and for vehicles to turn so that they may enter and leave the site in a forward gear (to include at a minimum smaller service /delivery vehicles e.g. supermarket delivery). Once provided, such spaces shall be maintained free from any impediment to their designated use for the life of the development.

2. There shall be no gates or other barriers on the access/driveway except that already existing which shall not be moved forward of its current position.

4.2 The Coal Authority has **no objection** to the proposed development subject to the imposition of the conditions to secure Intrusive site investigations and remedial work.

4.3 The councils Environmental Health Officer has **no objection** subject to the imposition of conditions to secure a contaminated land assessment, remediation and validation.

4.4 Brackenfield Parish Council **objects** to the proposal they have concerns about sewerage and that the proposal does not meet the character of the village as described in the Brackenfield Neighbourhood Plan policy CH1.

5.0 Representations

5.1 10 objections have been received from members of the public including the Brackenfield Neighbourhood Plan Group. In summary the points raised were:

- That the development site is outside of the settlement limit and that Brackenfield is a level 4 settlement and so the site must be considered to be in the countryside
- That Brackenfield has very little services and therefore is not a sustainable location.
- That the site does not confirm to the definition of infill development
- That the proposed house is an intrusion into the countryside
- That the proposed house does not meet policies CH1, CH2 and H1 of the Brackenfield Neighbourhood Plan
- That the benefits of a new build to Brackenfield are very small this was agreed by the inspector on the previous application who said that the economic and social benefits of two dwellings would be marginal.
- Carr Lane is a footpath and an increase in traffic would be dangerous to walkers
- The house will impinge on an important view as outlined in the Neighbourhood Plan
- The house is not in keeping with the character of the area and will harm the distinctive character of the area

- The dwelling will be prominent and intrusive into the countryside
- The site provided a sense of separation between the building on Church Lane and School Lane
- The land is agricultural
- The poly tunnels should have been removed when the site ceased to be a nursesey.
- The applicant seems to be implying that they will only remove the poly tunnels if they get permission for the house.
- It is misleading to suggest that the proposal is an improvement to the field
- The proposal will result in increased traffic on Carr lane and problems with the junction.

(Officer Comment: all these points are addressed in the assessment in section 7 below)

- The sewerage system is not capable of coping with an additional property

(Officer Comment officers have not received comments from Severn Trent Water to substantiate or refute this)

5.2 3 Supporting comments have been received. In summery the points raised are as follows:

- Self builds enhance the diversity of the village
- The house will not be detrimental to wildlife
- A house will look tidier than the poly tunnels

5.3 The applicants have submitted a statement summarising their reasons for wanting to build on the site, this statement has been signed by 3 local people who appear to support the application.

5.4 Councillor Cupit, **Ward Member** has written the following **objection** comment:

I strongly object to this latest application on this site. I consider this application and proposal to be against the relevant local and national policies, including the adopted Brackenfield Neighbourhood Plan. Even more key, the importance of this site as remaining an open and greenfield area has been recently recognised nationally, through the planning inspectorate decision for a previous iteration of these proposals, appeal reference APP/R1038/W/20/3249376.

As such, I consider that this application, if approved, would set a harmful precedent for the local area and cause significant damage to the current rural character and planning protections that cover the settlement of Brackenfield.

6.0 Relevant Policy and Strategic Context

6.1 The Development Plan comprises the North East Derbyshire Local Plan and the Brackenfield Neighbourhood Plan. The most relevant policies in determining this application are as follows:

6.2 Brackenfield Neighbourhood Plan

Policy CH1 Protecting the countryside and landscape

Policy CH2 Protecting local character and distinctiveness

Policy NE2 Dark skies

Policy H1 Housing provision

6.3 North East Derbyshire District Local Plan

GS1 Sustainable Development

GS5 Settlement Development Limits

GS6 New Development in the Countryside

NE1 Landscape Character

NE2 Special Landscape Areas

NE9 Development and Flood Risk

BE1 General Design Principles

BE2 External Lighting and Flood Lighting

H3 Housing Outside the Settlement Development Limits

H12 Design and Layout of New Housing

T2 Highway Access and the Impact of New Development

T5 Walking and Cycling

T6 Public Transport

T9 Car Parking Provision

CSU4 Surface Water and Foul Water Drainage

CSU6 Contaminated Land

6.4 The North East Derbyshire District Local Plan (2014-2034) (PDLP)

The new Local Plan was submitted for examination in May 2018, with public hearings taking place in November/December 2018 and March 2019. The Inspector issued her interim findings in letters dated 18th February and 21st March, 2019. Consultation on Main Modifications was undertaken in 2020 ending on 31st January 2021. All comments/representations received were forwarded to the Inspector for consideration. The Inspector's final report on the Plan was received on 19 July and it is expected that the Plan will be adopted in autumn 2021.

The emerging Local Plan is therefore at an advanced stage and should be attributed appropriate weight in decision making.

The most relevant policies of the PDLP in respect of determining this application are as follows:

SS1 Sustainable Development
SS8 Development in Small Villages and Hamlets
SS9 Development in the Countryside
LC4 Type and Mix of Housing
SDC3 Landscape Character
SDC11 Flood Risk and Drainage
SDC12 High Quality Design and Place Making
SDC14 Land potentially affected by Contamination or Instability
ID3 Sustainable Travel

6.5 **National Planning Policy Framework (NPPF)**

The overarching aims of the National Planning Policy Framework (NPPF) are also material in the assessment of this application and have been taken into account.

7.0 **Planning Issues**

7.1 The development site is located outside the defined settlement development limits as set out in both the extant Local Plan and the PDLP. The site is therefore located within countryside for planning purposes.

7.2 **Sustainability of the site Policy GS1, SS1, NP Policy H1 and NPPF**

The village of Brackenfield does not have a Settlement Development Limit (SDL) and is considered to be in the countryside for the purpose of this application. The PDLP considers Brackenfield to be a level 4 settlement as such it is not considered to be a sustainable location.

7.3 In countryside locations policy H3 of the local plan only allows new houses under very specific circumstances, none of which apply here. PDLP policy SS8 and the Brackenfield Neighbourhood Plan (NP) Policy H1 are more permissive allowing limited small scale infill development.

7.4 This development site is located approximately 100m to the north of the main road which runs through the village and is approximately 30m from the nearest dwelling. It is separated from the main part of the village by open fields. Part of the land to the south of the property which is closer to the main part of the village was refused permission for two dwellings in 2020. This decision was upheld at appeal. In this case the inspector recognised that the site did represent a gap and that the development would be infill but that that the gap was integral to the character of the area which comprises clusters of buildings with areas of open space that form wide gaps. As a consequence, the inspector considered that whilst the site was infill the impact of development on it was harmful to the character of the area.

7.5 In this case however the proposed dwelling would not fill a gap between clusters of buildings. Whilst there is a house (Conlands) to the north it is

not read in conjunction with this site being separated by a large, dense, mature hedge which completely hides it. To the south there is a large gap to any other buildings it is therefore only bounded by development on one side and therefore cannot be considered to represent infill. As a consequence the proposal does not meet the requirements of policies H3 of the Local Plan, SS8 of the PDLP or H1 of the NP.

7.6 Policies GS6, SS9 and CH1

Local Plan policy GS6 allows for appropriate development in the countryside which is in keeping with the character and does not represent an intrusion into the countryside.



7.7 The design of the proposal is for a modern 1.5 storey dwelling with rooms in the roof space. The roof space rooms are served by dormer windows in the front elevation. Houses located closest to the development site are mostly mid- 20th century former council houses and bungalows. Dormer window are not prevalent. However it is considered that due to the mixed nature of the housing in the vicinity of the site the proposed design is not out of keeping with the character of the area.

7.8 However the proposed location of the dwelling facing towards and clearly visible from School Lane, is considered to represent an intrusion in to the countryside. As a consequence the policy does not meet the requirements of policies GS6 of the Local Plan or SS9 of the PDLP.

7.9 Impact on Landscape NE1, SDC3, CH1 & CH2 & NPPF

The site is located within the open countryside and the primary Area of Multiple Environmental Sensitivity (AMES). Policy NE1 of the Local plan requires that development proposal preserve or enhance the distinctive landscapes of the district. Policy SDC3 of the PDLP allows proposals for new development where they would not cause significant harm to the

character, quality, distinctiveness or sensitivity of the landscape, or to important features or views, or other perceptual qualities. Further these proposal should be informed by, and be sympathetic to, the distinctive landscape areas identified in the Derbyshire Landscape Character Assessment and the AMES. This is in accordance with paragraph 174 (a) of the NPPF where requires that developments contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes.

7.10 In this case and as discussed above, the proposal is considered to be an intrusion into the countryside and as such would cause harm to the character, quality and distinctiveness of the landscape in this part of Brackenfield. In particular it would encroach on one of the gaps which are seen to be a feature of the layout of the village. The fact that the building would be easily seen from the main highway through the village and footpath 19 further supports the argument that the proposal would have a negative impact on the landscape character at this point.

7.11 Impact on an important view

Brackenfield Neighbourhood Plan (policies CH1 and CH2) will only support development which demonstrate that they reinforce and enhance the local character. CH1 in particular requires that to be supported development proposals must protect and enhance the historic landscape and local character identified in the Brackenfield Historic and Character Assessment Report 2018 and that development proposals must not significantly harm the important views identified on the Map in Appendix F and described in the Brackenfield Important Views Report 2018.



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7.12 The view from the end of Carr Lane across the field containing the development site towards Ogston Reservoir is one of these the development site is one of the important views highlighted in the Important Views report and shown as view 1 on the above map.



As can be seen in the above photograph, the existing polytunnels, whilst visible are for the most part below the hedge line and due to their construction their impact is minimal. The proposed dwelling would be more than 2m taller, being of a greater scale and massing; and being of permanent construction would have a much greater, permanent impact on this protected view as identified in the Brackenfield Neighbourhood Plan.

7.13 Impact on the character of an identified Gap between Development

The impact of a permanent dwelling on the identified gaps between development highlighted in the Brackenfield Neighbourhood Plan would diminish the impact of that gap on the local character and distinctiveness of the area and would therefore not be in accordance with NP policy CH2. As such it is considered that the proposal does not meet the requirements of Local Plan policies NE1, PDLP policy SDC3 and policies CH1 and CH2 of the Brackenfield Neighbourhood Plan.

- 7.14 Policy NE2 of the Brackenfield Neighbourhood Plan aims to minimise light pollution and maintain views of night time skies. It is considered that the proposed design which has a large amount of glazing in the front elevation combined with the open nature of the site with the field to the foreground would have an impact on views of the night sky towards Ogston Reservoir from School Lane and Carr Lane (footpath 19). If members are minded to approve the scheme any external lighting from the site should be controlled by way of condition to limit light spill.

7.15 Material Considerations

A number of material considerations are considered below, however officers do not believe these considerations outweigh the harm outlined above.

7.16 Previously Developed Land

The site is a former horticultural nursery which was granted permission in 2008 for the two poly tunnels and a potting shed (08/00066/FL). Section 336 of the Town and Country Planning Act 1990 defines 'agriculture' as including: '**horticulture, fruit growing, seed growing**, dairy farming; the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land).

- 7.17 Therefore it is considered by officers that the land and buildings have an agricultural use and therefore cannot be considered as previously developed land. As a consequence the site does not fall into the category of sustainable development under policy GS1 paragraph (b) of the Local Plan and SS1 (b) of the PDLP.

7.18 Impact of the existing poly tunnels

The permission granted for the nursery included a condition that the polytunnels and raised beds (but not the steel shed) should be removed when the horticultural use ceased. The beds were removed after the nursery ceased trading but the polytunnels remain. The agent argues that the condition is not enforceable and indeed an enforcement case was opened and closed in 2014. However since, as argued above horticulture is not a different use class from agriculture it could be argued that the use has not ceased and that the polytunnels can continue to be used in conjunction with horticulture and as argued in paragraph 7.16 they do not represent development. The agent goes on to argue that a house would be more visually attractive than the polytunnels.

7.19 By virtue of the 2008 permission the polytunnels are acceptable agricultural development in that position and that their impact on the countryside, gaps and views are acceptable. Unlike buildings of more permanent construction, when polytunnels fall into disrepair they quickly become assimilated back into the countryside and have very little impact even if the hoops remain. As argued above, the impact of the proposed dwelling on the countryside, gap and important view would be much greater than that of the polytunnels in use and it therefore follows that it would be of even greater permanent impact than polytunnels in disrepair. Therefore it is not logical to argue that their replacement by a permanent house of greater scale and massing is an improvement to the countryside in that location.

7.20 Consideration of weight given to PDLP - contra to agent arguments

The applicants' argue that the adopted Local Plan is out of date and that there are uncertainties surrounding the PDLP which means that it cannot be afforded much weight. However it is considered that the saved policies of the adopted Local Plan are consistent with the NPPF. Further the Local Authority has received the final report on the PDLP from the inspector and it is expected that the plan will be adopted by the Council in the autumn. In this case the policies in the PDLP support the policies of the adopted plan and can be given significant weight.

7.21 Impact on housing numbers

The applicants' accept that the council is able to show a 5 year housing supply but argue that the due to the out of date nature of the save polices of the adopted Local Plan and uncertainty regarding the PDLP that the council cannot rely on its policy and the presumption in favour of sustainable development is triggered. However as has been outlined above, the saved policies of the adopted local plan are in accordance with the NPPF and the PDLP is at an advances stage and as such both carry significant weight. Nevertheless the benefits of a single dwelling to the council's housing supply is generally seen by inspectors to carry, at best, limited weight.

7.22 Highways

It is noted that there is currently no residence on site which presumably means vehicular movements take place in association with the activities carried out although no specific information is given in this respect.

7.23 Carr Lane is the route of a Public Right of Way (Footpath 19 on the Definitive Map for the area). From information available to officers it would seem that there would be sufficient space for the safe passage for a car and pedestrian.

7.24 Although no specific information is given in respect of current vehicular movements, it is considered that it would be difficult to demonstrate demonstrable harm such that any recommendation of refusal might be sustainable.

7.25 Land Contamination and Stability including Coal Risk Assessment
The site falls within the defined Development High Risk Area for Coal mining and that there are coal mining features and hazards within the site. A coal Risk assessment has been submitted. The Coal Authority raised no objections to the redevelopment of this site, subject to the LPA imposing a suitably worded condition to secure the undertaking of intrusive ground investigations, as considered necessary by Midland Surveying & Engineering Ltd.

7.26 The council's environmental health team have no objections to the proposal subject to the usual contaminated land conditions requiring phase 1 contaminated land survey and subsequent remediation and validation.

7.27 Flood Risk
The site is located within flood zone 1 so is considered at low risk of flooding and as such did not require a flood risk assessment. The Applicants have indicated that surface water will be disposed of by means of a soakaway and will not be added to the mains sewers.

7.28 Sewerage
Some objectors have mentioned that the sewage system in this part of Brackenfield is not capable of supporting the sewage from an additional property. Severn Trent Water have been consulted but have not responded to the consultation request. Details of the disposal of foul water can be dealt with by condition if planning permission is granted.

7.29 Biodiversity
The site is not designated for nature conservation and the poly tunnels are not considered suitable locations for bat roosts. As such it is not considered that the proposal will have a negative impact on protected species.

8.0 Summary and Conclusion

- 8.1 This application is for a new single storey dwelling with rooms in the roof to be located in the northern corner of the site. As a former horticultural nursery the site has an agricultural use. The dwelling will be located in the area currently occupied by two poly tunnels the steel agricultural building on the site will remain as part of the development. The field within which the site is located has been identified by the inspector who dismissed the appeal on application 19/01063/OL as "*one of those areas of open space that are integral to the distinctive open, rural character of The Green*". The site also forms the foreground of one of the important views as outlined in the Brackenfield Neighbourhood Plan and is clearly visible from School Lane and Footpath 19 in the parish of Brackenfield.
- 8.2 In this case the proposal is for a building located on land which although previously a horticultural nursery has not had its use changed from agricultural and is therefore not considered to be previously developed.
- 8.3 It is not considered that the proposal constitutes infill development as it is bounded by development on one side only and is located a considerable distance from other dwellings in the village.
- 8.4 Its location away from the main part of the village of Brackenfield and within a parcel of land which is considered to contribute strongly to the distinctive open, rural character of The Green and therefore this part of the village means that it will have a harmful impact on the character of the area.
- 8.5 The building would be clearly visible from the main road and footpath 19 in the parish of Brackenfield therefore it represents a prominent intrusion into the countryside. Further the proposal would have a permanent and harmful impact on an important view as outlined in the Brackenfield Neighbourhood Plan.
- 8.6 The proposal does not fall into the categories of dwelling which the Development Plan supports in the countryside and so development would erode the character of the countryside in this location and cause harm to the distinctive landscape in this area.
- 8.7 No material considerations have been put forward which outweigh this harm.
- 8.8 As such the proposal fails to comply with North East Derbyshire Local Plan policies GS1, GS6, NE1 and H3; policies CH1, CH2, NE2 and H1 of the Brackenfield Neighbourhood Plan and policies SS1, SS8, SS9 and SDC3 of the Publication Draft Local Plan and the aims of the NPPF when read as a whole.

8.9 Human Rights have been considered and applied to the determination of this application.

9.0 Recommendation

9.1 **REFUSE** the application for the following reason/s:

1. The development site is located within open countryside to the north of the village of Brackenfield which is a level 4 village where development under countryside polices apply.

The site does not represent limited infill as it is located a considerable distance from the main part of the village with open field between it and other development to the south. The previous use of the site was agricultural and therefore cannot be considered to be previously developed land.

The land on which the site is located has been identified as one of the gaps between development which characterises Brackenfield. It also forms the foreground of an important view as outlined in the Brackenfield Neighbourhood Plan. Although the design of the building itself is not considered to be out of keeping with the area its siting, scale and massing makes it highly visible from important viewpoints, School Lane and public footpath 19. As such it is considered that it is an intrusion into the countryside and harms the character of the primary Area of Multiple Environmental Sensitivity.

There are no material considerations which outweigh these harms.

As such it is considered that the proposal does not meet the requirements of policies GS1, GS6, NE1 and H3 of the North East Derbyshire Local Plan, Policies CH1, CH2, NE2 and H1 of the Brackenfield Neighbourhood Plan and polices SS1, SS8, SS9 and SDC3 of the Publication Draft Local Plan and the aims of the National Planning Policy Framework when read as a whole.