

Item Number: 7
Parish: Amotherby Parish Council
Appn. Type: Full Application
Applicant: Mr John Hopkinson
Proposal: Formation of vehicular access off Amotherby Lane C173 with hardstanding and parking area.
Location: Reservoir (covered) Amotherby Lane Amotherby Malton North Yorkshire

Registration Date: 10 August 2021
8/13 Wk Expiry Date: 5 October 2021
Overall Expiry Date: 17 September 2021
Case Officer: Niamh Bonner **Ext:** 43325

CONSULTATIONS:

Highways North Yorkshire	Recommends Conditions
Ellie Hook AONB Manager	Comments
Amotherby Parish Council	Objects

Representations:

SITE:

The proposed site relates to a former Yorkshire Water reservoir, which has been in private ownership for over 10 years. This is sited on the western side of Amotherby Lane, located approximately 1.5 kilometres from the Amotherby Crossroads to the north. The site is surrounded by agricultural land.

This is located within land designated as 'Wider Open Countryside' under the Ryedale Plan, Local Plan Strategy and the Howardian Hills Area of Outstanding Natural Beauty.

The reservoir/water storage building itself is a concrete reinforced structure, which is predominately underground, with grassed earth banks above ground level. The site rises steeply to the west and at present incorporates an unauthorised access centrally along the boundary with Amotherby Lane, with associated mesh fencing. Hard surfacing has been installed within the site, where parking can be undertaken.

It is not specifically detailed within the incoming information, but from reviewing the planning history, this access appears to have been in situ for a number of years and enforcement queries were raised at various points. It appears that an unsurfaced access was present in 2011, formalised further in 2015 with gates and new fencing, with the access and other areas of the site resurfaced in 2018.

PROPOSAL:

The proposal seeks planning permission for the formation of a new vehicular access off Amotherby Lane C173 with hardstanding and parking area.

The new site access which would span approximately 6.1 metres in width would be positioned to the eastern boundary of the site, at the most northerly point, in close proximity to the existing field accessing serving the land to the north. It is noted in the Design and Access Statement that this new access is sought as it would meet the current standards of visibility splays in northerly and southerly directions along Amotherby Lane unlike the original site access. It is also noted that this would improve the access also to and from the adjacent field and that it will provide a further passing place along Amotherby Lane.

The existing site access, which is more centrally positioned would be closed off, with the verge regraded and grass seeded, with a new hedge planted along the remainder of the eastern boundary. This new hedging would span approximately 37 metres in total, of which approximately 28.75 metres would fall within the application site.

The existing 1.8 metre high mesh fencing would be repositioned inside the line of the reinstated hedge. An additional 10 metre section of hedging is proposed along the northern boundary.

The site currently incorporates a sizable area of hardstanding and limited additional hardstanding would be required, except to form the new access. The hardstanding would remain stoned, as current existing. The site would be drained by three new ACO road drains, draining to 2no. soakaways. No site surface water drainage appears to be present currently.

It is confirmed in the Design and Access Statement that the reservoir/water storage building would not be affected by this application.

POLICIES:

Local Plan Strategy - Policy SP1 General Location of Development and Settlement Hierarchy
Local Plan Strategy - Policy SP13 Landscapes
Local Plan Strategy - Policy SP16 Design
Local Plan Strategy - Policy SP17 Managing Air Quality, Land and Water Resources
Local Plan Strategy - Policy SP19 Presumption in Favour of Sustainable Development
Local Plan Strategy - Policy SP20 Generic Development Management Issues
National Planning Policy Framework
National Planning Practice Guidance

HISTORY:

11/00443/FUL: Change of use and alteration of water storage building to form a three bedroom holiday let to include amenity area, parking and turning area, upgraded vehicular access and landscaping. This application was refused for the following reasons:

1. The proposed access by which vehicles associated with this proposal would leave and rejoin the county highway, is unsatisfactory since the required visibility of 2.4m x 90m cannot be achieved at the junction with the county highway and therefore, in the opinion of the Local Planning Authority, the intensification of use which would result from the proposed development is unacceptable in terms of highway safety. As such, the development is contrary to the provisions of Policies AG5 (iv) and T3 of the Ryedale Local Plan.

2. The proposed development will have a significant adverse impact on the character and appearance of the surrounding countryside and the Howardian Hills Area of Outstanding Natural Beauty. As such, it is contrary to the provisions of PPS4 - Planning for Sustainable Economic Growth and PPS7 - Sustainable Development in Rural Areas, Policy EC7 of the Tourism Good Practice Guide and Policies AG5 (iii), (iv) and (v) and ENV2 of the Ryedale Local Plan.

This refusal was the subject of an appeal with the Planning Inspector who dismissed the appeal on the 21st February 2012.

REPRESENTATIONS:

A very detailed consultation response has been received from Amotherby Parish Council on the 14th September 2021. This document has been appended in full to the Committee Meeting Agenda (where Members can read the full unsummarised letter) and confirms that the Parish Council object to the application on a number of grounds.

These include the following summarised reasons:

- The site has a long history of unauthorised development, with the Parish Council first raising concerns in January 2011, the applicant having held planning law in contempt with no successful action having been taken.
- A 1.8m high mesh fence has been installed adjacent to the highway, vehicular access and hardstanding constructed although refused in 2011 application, excavation to the west, installation of patio doors to the west, storage of vehicles, boat and other items within the site at odds with local policy and its position within the AONB where there is a duty to preserve or enhance the scenic qualities.
- There are no permitted development rights associated with use as a reservoir.
- The application should not be judged against the backdrop of unauthorised development, but the pre 2010 situation when the site was an unobtrusive grass mound.
- The site when used as a reservoir had no vehicular access, but a small pull off/layby in the verge whereby Yorkshire Water staff could park to access the site. The current unauthorised access should not be there and to use its presence to justify a “better” access is perverse.
- The proposal whilst it may have some qualities in terms of highway visibility would impact the scenic qualities of the AONB and would require significant excavation of the verge embankment, which will be particularly noticeable.
- Concerns over intensification of the use of the site if new access is approved to an indeterminate level and its impact upon the AONB and Highway Safety. Refusal of this application would prevent this intensification.
- The LPA should investigate the claim the site use is B8 storage and distribution, if not the requirement for an access is nullified and permission would be needed to use the site for such a purpose.
- To conclude the Parish Council strongly object and consider this development will have a significant adverse impact on the scenic qualities of this part of the Howardian Hills AONB. The development would lead to an intensification of the use of the site with consequential adverse impacts on the landscape, highway safety, potentially surface water runoff. This is contrary to the Ryedale Local Plan Strategy and the NPPF.
- Enforcement action is also sought.

A response to this letter was made by the Planning Agent on the 3rd October 2021 which is also appended in full to the Committee Meeting Agenda for Members to consider. This comments on the following summarised areas:

- Access and Highway Safety
- The Boundary Treatment
- The Lawful Use of the Site
- Landscape Impact
- Vehicle Size

APPRAISAL:

The main considerations in assessing the impact of this application are:

- i) Principle of the Development
- ii) Character, Form and Impact upon Area of Outstanding Natural Beauty.
- iii) Highway Impact
- iv) Other matters, including consultation responses

i) Principle of the Development

The proposed access arrangements sought via this planning application will serve an existing brownfield site. The concerns of the Parish Council are acknowledged and this site remains under active planning enforcement investigation.

It is however Officer's opinion that the improvement/formation of an access and associated works to serve an existing brownfield site is generally acceptable type of development in principle (subject to access and highway safety considerations and form/character and landscape considerations.) The approval of such an application would not grant any permission for the wider change of use at the site and it is clearly confirmed in the supporting information that no change of use is sought.

It is noted that the Agent and Applicant are of the view that the site benefits from a B8 use, for storage and distribution. An email dated 28th February 2013 between the then Development Management Manager at Ryedale District Council and the Applicant has been provided. This confirms that the Development Manager at that time considered the site benefitted from a B8 use and that it had done so since its inception as a reservoir in the mid 20th Century.

This has been further reviewed independently as part of this present application. The 'Land Use Gazetteer (2nd Edition) The Comprehensive Guide to Land Uses and their Use Classes' provides commentary on the lawful uses of various types of reservoirs and water storage tanks.

'Water Company Storage or Distribution Place'/'Water Storage Tank'/'Water Storage Tower' all incorporate a use class of B8. It is considered that these are fitting. This was also described as a 'Water Storage Building' under the 2011 application.

The Reservoir options within the above referenced document (excerpt below) are potentially not as directly applicable to this site, being for agricultural purposes/ a reservoir (hydraulic/metal/pneumatic) manufacturing place/reservoir for inland waterways(not commercial or cruising) by statutory undertakers/ reservoir service, by statutory undertaker.

Reservoir (agricultural)	Pmtd. 6	
Reservoir (hydraulic) manufacturing place	B2	to B1; to B8 max. 235 m2
Reservoir (metal) manufacturing place	B2	to B1; to B8 max. 235 m2
Reservoir (pneumatic) manufacturing place	B1	to/from B8 max 235 m2; from B2
Reservoir for inland waterway (not commercial or cruising) by statutory undertaker	Pmtd. 17C	

Land Use Gazetteer		A-2
Land Use	Class	Permitted Ch
Reservoir liner, PVC, manufacturing place where vinyl chloride may be emitted	B2	to B1; to B8 max.
Reservoir, service, by statutory undertaker	Pmtd. 17E	

The Case Officer contacted Yorkshire Water directly to ascertain how the site was used when under their ownership. In an email dated 28th October 2021 Yorkshire Water confirmed “*This site was sold by YW in 2010 and was previously used as a service reservoir. This is where we store treated water.*” The Case Officer subsequently queried “*Would you have the information of whether there was any water treatment occurring in the building itself, or if it was more of a water storage tank/building after the water was treated elsewhere?*” Yorkshire Water responded to note “*Service reservoirs are just big storage tanks. It held clean water after it has been treated in the water treatment works, and before it is piped to the end users.*” This is considered important in understanding the lawful use of the site.

Furthermore, an appeal decision is considered relevant in the consideration of the lawful use of the site. (Appeal Ref: APP/F9498/W/15/3134763 Ham Lane Reservoir, Ham Lane, Roadwater, Watchet, Somerset.) In this appeal the Inspector made the following point in paragraph 4; “*The use of the site as a service reservoir by means of a water storage tank would, in my view, fall within Use Class B8 of the Town and Country Planning (Use Classes) Order 1987 (as amended).*” That case has some differences to the situation currently under consideration as part of this application, however this conclusion on the use class by the Inspector is considered relevant.

The Case Officer and the Senior Planning Enforcement Officer undertook a further site visit on the 25th October 2021 where the site was viewed internally. This appeared to form a large underground chamber with floor to ceiling metal stairs, with storage of materials undertaken. It appeared unlikely that the original form and design of the water tank/service reservoir had altered significantly.

Ryedale District Council’s Council Tax Department have confirmed that “Mr Hopkinson has been liable for the business rates at these premises from 1 April 2013. They are rated by the VOA as Store & Premises. They have been rated from the same date. Rateable value £1325.”

On balance, given the evidence above and the lack of evidence to suggest a sui generis use, it is considered against the balance of probabilities that the site is likely to benefit from a lawful B8 storage and distribution use.

Therefore, as this relates to access improvements to brownfield land with what is taken to be a lawful B8 storage and distribution use, the proposed development is considered acceptable in principle. This is notwithstanding the access and associated fencing originally being installed without the benefit of planning permission. In determining an application such as this, lawfully Officers are required to assess the application on its own merits and whilst it is disappointing that works have occurred without planning permission, this is not a material consideration to which weight can be given.

This application gives the opportunity to create a regularised access to the appropriate highway standards and facilitate the removal of the originally created access and reinstatement of the verge.

It is Officer’s opinion that should an application of this type have been submitted at this site if no access was present, it is likely that this would receive the same support (if acceptable in terms of the other aforementioned material planning considerations.) There remains a physical structure/building which will require maintenance and consequently safe vehicular access to a long established site such as this is not unreasonable.

ii) Character, Form and Impact upon Area of Outstanding Natural Beauty.

The site fall within the wider open countryside and the Howardian Hills Area of Outstanding Natural Beauty (AONB.) Policy SP13 of the Ryedale Plan Local Plan Strategy notes that in the AONB, the landscape will be protected and enhanced by encouraging new development and land management practices which reinforce the distinctive elements of landscape character;

Development proposals should contribute to the protection and enhancement of distinctive elements of landscape character that are the result of historical and cultural influences, natural features and aesthetic qualities including:

- *The distribution and form of settlements and buildings in their landscape setting*
- *The character of individual settlements, including building styles and materials*
- *The pattern and presence of distinctive landscape features and natural elements (including field boundaries, woodland, habitat types, landforms, topography and watercourses)*
- *Visually sensitive skylines, hill and valley sides*
- *The ambience of the area, including nocturnal character, level and type of activity and tranquillity, sense of enclosure/exposure*

SP16 Design of the Ryedale Plan, Local Plan Strategy notes: Development proposals will be expected to create high quality durable places that are accessible, well integrated with their surroundings and which “*Reinforce local distinctiveness and... Protect amenity and promote well-being.*”

The Howardian Hills Area of Outstanding Natural Beauty Manager was consulted and on the 14th October 2021 they noted “*I confirm that I viewed the application details and visited the site but I did not submit a response as I do not consider it will have a significant impact on the natural beauty of the Howardian Hills AONB.*”

It is considered that in totality, this proposal would result in development that would help to help facilitate safe access and egress at this existing established site with a B8 use. This type of associated development is not at odds with the nature of the application site and the form and design is considered generally acceptable.

It is further considered that this proposal could have some wider immediate benefits to the current site. The landscaping, including the reinstatement of the grass verge and the installation of hedging which may help to reduce the prominence of the 1.8m high mesh fence in time is welcomed. This will be the subject of a specific landscaping condition, which will control the number and species of hedging. This will also ensure should any hedging fail within 5 years of the date of the decision notice that this would be replanted.

However, it is also noted that the extension and formalisation of the existing hardstanding could potentially allow for and support the more intensive use of the site in contrast to the current relatively low key storage use focused around the internal storage, in particular though the potential increase in activity externally within the site which could be significantly more visible from public viewpoints. It is considered that this could have a potential detrimental impact upon the character of the site and the surrounding locality; and subsequently the AONB.

As indicated above, Policy SP13 Landscapes notes “*development proposals should contribute to the protection and enhancement of distinctive elements of landscape character that are the result of historical and cultural influences, natural features and aesthetic qualities including:*

- *The ambience of the area, including nocturnal character, level and type of activity and tranquillity, sense of enclosure/exposure.*”

With this Policy of the adopted development plan in mind, it is therefore considered appropriate to include some conditions to prevent this type of potential material harm. This will include a condition to prevent lighting without the submission of an appropriate application to the LPA – this is considered reasonable and it is noted that the site would have no permitted development rights for such development. The second is the inclusion of a condition to prevent external storage of goods, materials or other effects. This is considered reasonable to relate to the land within the submitted red line. Furthermore, it is considered that the storage of items within the proposed hardstanding could have impacted upon the Highways Officer’s assessment of access and highway safety at the site as this could undermine safe access and egress.

Therefore the concerns of the Parish Council are acknowledged and undoubtedly the site has changed in terms of its visual appearance since Yorkshire Water vacated the premises. However it is not considered that this proposed scheme, subject to recommended conditions, would be materially harmful to the character of the site, nor would it have a significant impact upon the natural beauty and special values of

the statutorily protected Area of Outstanding Natural Beauty, as confirmed by the AONB Officer.

iii) Highway Impact

North Yorkshire County Council Highways were consulted on the proposal and confirmed the following in a responses dated 2nd September 2021 “*In assessing the submitted proposals and reaching its recommendation the Local Highway Authority has taken into account the following matters:*

The local Highway Authority offers no objections in principle to the proposals as outlined in the submitted documents, subject to the implementation of the re grading of the highway verge as per drawing number 01.2021.PA08 and the following conditions would be considered favourable to the existing access arrangement.

The design standard for the site is Manual for Streets and the required visibility splay is 2.4 metres by 90 metres. The available visibility once the proposed measures are implemented is 2.4 metres by 90 metres. Consequently the Local Highway Authority recommends that the following Conditions are attached to any permission.”

These conditions related to construction of the access, visibility splays, retention of parking and turning areas and a construction management plan.

Following review of this, it is not considered that this proposed development, including the new access, repositioned fencing or landscaping works would have any adverse impact in terms of access or highway safety. Therefore, whilst the concerns of the Parish Council in relation to a potential intensification of use possibly impacting highway safety are noted, following careful review the Statutory Consultee has concluded that subject to condition, this proposal would not have a materially harmful impact upon the highway network.

v) Other matters, including consultation responses.

No responses have been received from any third parties beyond the Parish Council.

The Parish Council’s point relating to intensification is noted, however any future intensification at the site would not amount to a material change of use, capable of being enforced against if the end use remained within the same use class. It is however considered that the suggested conditions to prevent external storage and lighting will help to prevent detrimental impacts. The submitted Design and Access Statement confirms that the intention is to continue to use this site for storage and distribution purposes and this would not in planning terms impact on the assessment of the current application for vehicular access

The proposed installation of soakaways and ACO drains is welcomed in improving the surface water drainage infrastructure.

Whilst this application is simply for operational development and not a change of use, it is considered that the confirmed use of the application site would not be likely to result in harmful effects in terms of residential amenity, given its isolated location from neighbouring dwellings.

Subject to the recommended conditions, the development has been found to be acceptable in principle and in terms of character, form, design and landscape impact, and access and highway safety.

Therefore officers are satisfied that this proposal conforms with Policies SP1 General Location of Development and Settlement Hierarchy, SP13 Landscapes, SP16 Design, SP17 Managing Air Quality, Land and Water Resources and SP20 Generic Development Management Issues, Presumption in Favour of Sustainable Development of the Ryedale Local Plan, Local Plan Strategy and the National Planning Policy Framework.

RECOMMENDATION:**Approval**

1 The development hereby permitted shall be begun on or before .

Reason: To ensure compliance with Section 51 of the Planning and Compulsory Purchase Act 2004

2 The development hereby permitted shall be carried out in accordance with the following approved documents/plan(s):

Site Location Plan (1:50000)

Site Location Plan (1:2500)

Proposed Site/Block Plan and Relationship with Amotherby Lane (Drawing no. 01.2021.PA02)

Proposed Site/Block Plan and Relationship with Amotherby Lane with Levels and Section Lines (Drawing no. 01.2021.PA03)

Sections Through Site Sheet 1/2 (Drawing no. 01.2021.PA04)

Sections Through Site Sheet 2/2 (Drawing no. 01.2021.PA05)

Reason: For the avoidance of doubt and in the interests of proper planning.

3 The crossing of the highway verge and/or footway must be constructed in accordance with the approved details on drawing number 01.2021.PA08 and cross section construction to Standard Detail number E50 Rev A and the following requirements.

- Any gates or barriers must be erected a minimum distance of 6 metres back from the carriageway of the existing highway and must not be able to swing over the existing or proposed highway.
- That part of the access extending 6 metres into the site from the carriageway of the existing highway must be at a gradient not exceeding 1:10.
- Provision to prevent surface water from the site/plot discharging onto the existing or proposed highway must be constructed in accordance with the approved details shown on drawing 01.2021.PA03 and maintained thereafter to prevent such discharges.
- The final surfacing of any private access within 2 metres of the public highway must not contain any loose material that is capable of being drawn on to the existing or proposed public highway.
- Measures to enable vehicles to enter and leave the site in a forward gear.

All works must accord with the approved details.

Reason: To ensure a satisfactory means of access to the site from the public highway in the interests of highway safety and the convenience of all highway users in accordance with Policy SP20 of the Ryedale Plan, Local Plan Strategy.

MHi-C New and altered Private Access or Verge Crossing -(MHC-03)

Notwithstanding any valid planning permission for works to amend the existing highway, you are advised that a separate licence will be required from North Yorkshire County Council as the Local Highway Authority in order to allow any works in the existing public highway to be carried out. The 'Specification for Housing and Industrial Estate Roads and Private Street Works' published by North Yorkshire County Council as the Local Highway Authority, is available to download from the County Council's web site:

[https://www.northyorks.gov.uk/sites/default/files/fileroot/Transport%20and%20streets/Road%2C%20highways%20and%20pavements/Specification for housing and industrial estate roads street works 2nd edition.pdf](https://www.northyorks.gov.uk/sites/default/files/fileroot/Transport%20and%20streets/Road%2C%20highways%20and%20pavements/Specification%20for%20housing%20and%20industrial%20estate%20roads%20street%20works%202nd%20edition.pdf)

The Local Highway Authority will also be pleased to provide the detailed constructional

specifications referred to in this condition.

- 4 There must be no access or egress by any vehicles between the highway and the application site at Reservoir at Amotherby Lane until splays are provided giving clear visibility of 90 metres measured along both channel lines of the major road from a point measured 2.4 metres down the centre line of the access road. In measuring the splays, the eye height must be 1.05 metres and the object height must be 0.6 metres. Once created, these visibility splays must be maintained clear of any obstruction and retained for their intended purpose at all times.

Reason: In the interests of highway safety in accordance with Policy SP20 of the Ryedale Plan, Local Plan Strategy.

MHi-D Visibility Splays -(MHC-05)

An explanation of the terms used above is available from the Local Highway Authority.

- 5 No part of the development must be brought into use until the access, parking, manoeuvring and turning areas for all users at Reservoir at Amotherby Lane have been constructed in accordance with the details approved in writing by the Local Planning Authority. Once created these areas must be maintained clear of any obstruction and retained for their intended purpose at all times.

Reason: To provide for appropriate on-site vehicle facilities in the interests of highway safety and the general amenity of the development in accordance with Policy SP20 of the Ryedale Plan, Local Plan Strategy.

- 6 No development must commence until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. Construction of the permitted development must be undertaken in accordance with the approved plan. The Plan must include, but not be limited, to arrangements for the following in respect of each phase of the works:
1. Details of any temporary construction access to the site including measures for removal following completion of construction works;
 2. Restriction on the use of the existing access for construction purposes;
 3. Wheel washing facilities on site to ensure that mud and debris is not spread onto the adjacent public highway;
 4. The parking of contractors' site operatives and visitor's vehicles;
 5. Areas for storage of plant and materials used in constructing the development clear of the highway;
 6. Details of site working hours;
 7. Contact details for the responsible person (site manager/office) who can be contacted in the event of any issue.

Reason: In the interest of public safety and amenity in accordance with Policy SP20 of the Ryedale Plan, Local Plan Strategy.

- 7 Unless otherwise agreed in writing with the Local Planning Authority, prior to any above ground construction of the new access hereby approved, plans showing full details of a landscaping and planting scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for the planting of new hedging and show any areas to be grass seeded or turfed. The submitted plans and/or accompanying schedules shall indicate numbers, species, heights on planting, and positions of all hedging plants. All planting, seeding and/or turfing comprised in the above scheme shall be carried out during the first planting season following the commencement of the development, or such longer period as may be agreed in writing by the Local Planning Authority. Any planting, seeding and/or turfing which, within a period of five years from being planted, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of

similar sizes and species, unless the Local Planning Authority gives written consent to any variation.

Reason: To enhance the appearance of the development hereby approved in accordance with policy SP20 of the Ryedale Plan - Local Plan Strategy.

- 8 Unless otherwise agreed in writing with the Local Planning Authority, there shall be no installation of any lighting externally within the application site without the submission and approval of an appropriate planning application.

Reason: To prevent light pollution and to protect the nocturnal character and appearance of the locality and the Area of Outstanding Natural Beauty in accordance with policies SP13, SP16 and SP20 of the Ryedale Plan - Local Plan Strategy.

- 9 Unless otherwise agreed in writing with the Local Planning Authority, there shall be no external storage of any goods, materials or other effects within the red line of the application site.

Reason: To prevent harm to the character and appearance of the landscape by virtue of visual impact and activity within this sensitive open countryside location and to protect the character and appearance of the Area of Outstanding Natural Beauty and to protect access and highway safety in accordance with policies SP13, SP16 and SP20 of the Ryedale Plan - Local Plan Strategy.