

**Item Number:** 12  
**Application No:** 22/00573/FUL  
**Parish:** Malton Town Council  
**Appn. Type:** Full Application  
**Applicant:** Mr & Mrs Corrigan  
**Proposal:** Erection of 1no. three bedroom dormer bungalow with associated access and landscaping (revised detail to refusal 20/00386/FUL dated 10.07.2020)  
**Location:** Land South Of Middlecave Road Malton North Yorkshire

**Registration Date:** 13 October 2022  
**8/13 Wk Expiry Date:** 8 December 2022  
**Overall Expiry Date:** 22 August 2022  
**Case Officer:** Niamh Bonner **Ext:** 43325

#### **CONSULTATIONS:**

<b>Yorkshire Water Land Use Planning</b>	no response
<b>Malton Town Council</b>	recommend refusal please see email.
<b>Highways North Yorkshire</b>	recommends conditions

**Representations:** Mr John Fenton, Mr Richard Kimber, Dennis And Patricia Bowers, Mr James Dix, Sue And Laurie Thackray, Mrs Ayshea Minchella, Mr Nick Balshaw, Bob & Jacqui Rogers, Mrs Catherine Whittington, Mr Simon Thackray, Mr John Till, Mr Dennis Bowers, Ian Conlan, Mrs Paula Riley,

#### **UPDATE REPORT FOR COMMITTEE MEETING 25<sup>th</sup> OCTOBER 2022.**

##### **Introduction**

This proposal was originally brought to Planning Committee on the 2<sup>nd</sup> August 2022, where it was deferred for site visit. The site visit undertaken on Tuesday 16<sup>th</sup> August 2022.

Members in attendance included Cllr Potter, Cllr Andrews, Cllr Cleary, Cllr Goodrick, Cllr Burr. Apologies were received from Cllr Mason

This proposal was included on the Planning Committee Agenda for the meeting dated 30<sup>th</sup> August 2022.

This update report should be read in conjunction with the previous Case Officer's report on the Agenda for the 2<sup>nd</sup> August 2022 meeting. This was Agenda Item 14 and commenced on page 134 terminating on page 200. This should also be read in conjunction with the previous Case Officer's report on the Agenda for the 2<sup>nd</sup> August 2022 meeting. This was Agenda Item 7 and commenced on page 9 terminating on page 83.

A late pages update on this item was provided which was a consultation from Malton Town Council on the 23<sup>rd</sup> August recommending refusal.

However, at the meeting on the 30<sup>th</sup> August, a request was made to defer the item until the October meeting, which was agreed by Members. This was due to a procedural issue identified within a response from Stone and Associates Architects on behalf of Mr and Mrs Thackray of 65 Middlecave Road (dated 26<sup>th</sup> August 2022.)

##### **Highlighted procedural issue and subsequent measures undertaken:**

Notice of the proposed development should have been served by the Agent/Applicant on all land

owners, who in this instance are Susan Balshaw and Nicholas Balshaw. It appears that notice was only served on Nicholas Balshaw which was not correct.

Consequently, the application was made invalid whilst the correct notices were served on both of the joint owners, updated Certificates issued to the LPA and the requisite period of 21 days passed.

Notice was served on Susan Balshaw and Nicholas Balshaw on the 12<sup>th</sup> September 2022 and copies of the notice served were provided to the LPA, together with an updated section of the application form. Following the 21 day period, the application has now been revalidated and this issue concluded.

No objection to the scheme have been received from either of the joint owners who were fully aware of the scheme. There is no requirement for any readvertisement.

### **Additional consultation responses:**

Following the publishing of the original committee report, the additional formal consultation period expired on the 9<sup>th</sup> August 2022.

Further consultation responses were received prior to the Planning Committee meeting on the 2<sup>nd</sup> August 2022 and were printed for members on their desks. These included an objection from Ian Conlon of 83 Middlecave Road, Malton on the 1<sup>st</sup> August 2022 and an objection from Paula and Andrew Riley, Yew Tree Lodge 71 Middlecave Road, Malton.

A 'public statement' from Simon Thackray of Sweet Pea Cottage, Brawby was emailed to Members and Officers just prior to the Planning Committee meeting on the 2<sup>nd</sup> August 2022. This has been added to the planning file.

A letter of objection was received on the 8<sup>th</sup> August 2022 from N and D Fenton, occupiers of Gilross, 67 Middlecave Road.

This raised concerns on the following summarised points, but can be reviewed in full on the planning file.

- Concern over noise and light pollution relating to vehicular traffic.
- The proposed house and access would change the nature, heritage and character of this section of Middlecave Road.
- Amenity impacts for residents in adjacent properties, by noise and reduced privacy.
- Impact upon symmetry of existing properties of no. 63 and 4 by moving of front door.
- Impacts upon parking.
- Long narrow access would be out of character, difficult for construction vehicles and passing, creating additional noise.

It is considered that the majority of these issues have been considered in the previous Officer's report which this update report should be read in conjunction with.

It is however considered necessary to note in relation to the point raised about symmetry that the adjoining property no. 65 Middlecave Road does presently include a door in the northern elevation, therefore it is not considered that the proposed doorway to the northern elevation at no. 63 would result in harmful impacts to either the symmetry or the character of these dwellings or harmfully impact the wider street scene.

A letter of objection received on 14<sup>th</sup> August was received from Sue and Laurie Thackray occupiers of no. 65 Middlecave Road. This included pages 97-98 (Section 13) of the Approved Document B Volume 1 2019 edition which is a Building Regulations document dealing with the provision of routes for a pumping apparatus. The response from Mr and Mrs Thackray noted "*As mentioned in our previous objection, the plans for this development include a narrow access drive of 62m with hardly sufficient turning space for a car never mind a fire engine or other emergency vehicle.*"

*Building regulations, approved document B Volume 1, 2019 edition, section B5, section 13, state fire and rescue vehicles should not have to reverse more than 20m from the end of an access road. The attached document, taken directly from those building, states that there should be a turning circle, hammerhead or other point at which the vehicle can turn. The proposed plans certainly do not allow for this.”*

This point is acknowledged and although the Building Regulations process is entirely separate to planning and would not be a material planning issue, if a potential issue could have possible impacts upon the suitability of an application, it can be pragmatic to check this in advance. Contact was made with the North Yorkshire Building Control Partnership with plans and details of the application provided.

Simon Nichol, Operations Manager noted on the 15<sup>th</sup> August 2022 “*The dwelling would need to comply with Regulation B5 appliance access and this would be checked on application.*

*However I need to stress the diagram submitted by the objector from Approved Document B is guidance only and not regulation. There are other ways to demonstrate compliance (fire service agreement, sprinklers, misting systems etc). So the objection in my opinion is valid but compliance with the Building Regulations can be met in more ways than just the through guidance of the Approved Documents. There are lots of new dwellings that don't meet the basic guidance (the 20m reversing distance is actually a relic from when the fire service arrived with horse drawn equipment!) but have been deemed to allow adequate access for fire fighters/appliances. It is not always necessary to construct hammer heads as drawn in the guidance.*

*It's difficult to offer specific advice on compliance to that particular property at this early stage. I don't mind this information being passed to any party should they need clarity.”*

It is therefore concluded that compliance could potentially be achieved and this will be fully dealt with at Building Regulation Stage.

A response from Stone and Associates Architects on behalf of Mr and Mrs Thackray of 65 Middlecave Road (dated 26<sup>th</sup> August 2022.)

This included the following summarised points:

- Reference to land registry information and the present ownership of the plot jointly by Nicholas and Susan Balshaw. Certificate B only served on one owner.
- Points about land registry parcels and their separation.
- Would the proposed house be located over a sewer outlet pipe associated with Beech Cottage?
- The application for the lawful development certificate was made on 10/02/2021 after the ‘House’ and the ‘Development Plot’ were separated legally. Therefore is the application for lawful development was not actually legally attached to the house. It would not usually be the case that legally separated parcels of land can benefit from Permitted Development rights of a legally separated house.
- Any reference to the 2021 Certificate of Permitted Lawfulness/Permitted Development requires further scrutiny before it is used as any justification for development. Until this is proved legally safe any reference should be removed from consideration.
- Concerns over accuracy of plans. The plans are derived from OS Data. This is not reliable as baseline data as the level of accuracy is not specific to the location at a scale of 1:200.
- Concerns about thickness of fencing and existing hedges and the proposed access driveway, - the proposed plans are insufficient with regard to accuracy. The reference to additional space on drawing no. A904001 F that does not physically existing is irrelevant and should be omitted. The officer report notes an agreement to move the fence has been made, but this could be challenged. Also note the position of the existing lamp post would be circa 1m into the middle of the proposed driveway as a result.
- The distance measures between the proposed building and 37 Maiden Greve is unlikely to be

accurate.

- Suggest a topographical survey as the OS data is not suitable to prove the access width is sufficient and the distances to other properties are correct and deliverable and as the proposal has no set datum for finishes ridge and eaves heights.
- Elevation drawing shows roof lights in close proximity to a flue, this will not be permitted by building regulations.
- Proposed material for the flue is not listed, steel would not be appropriate.
- NYBCP provided commentary in the Officer's report. Please can you confirm the officer was made aware the driveway is in excess of 50m in length and no sweep path radius has been provided for the fire tender. In addition the house has two solid fuel fire flues. Sprinklers cannot be 100% relied on. This is a point that has been enforced by NYBCP on other sites.
- Concern over parking proposals for existing house and reversing onto the highway. Photograph supplied of existing arrangements.
- Recent lawful development certification set out the existing house requires 4 garages. Proposed space would be a significant change to this requirements.

The points contained within this response are acknowledged.

Notice of the proposed development should have been served by the Agent/Applicant on all land owners, who in this instance are Susan Balshaw and Nicholas Balshaw. It appears that notice was only served on Nicholas Balshaw which was not correct.

Consequently, the application was made invalid whilst the correct notices were served on both of the joint owners, updated Certificates issued to the LPA and the requisite period of 21 days passed.

Notice was served on Susan Balshaw and Nicholas Balshaw on the 12<sup>th</sup> September 2022 and copies of the notice served were provided to the LPA, together with an updated section of the application form. Following the 21 day period, the application has now been revalidated and this issue concluded.

No objection to the scheme have been received from either of the joint owners who were fully aware of the scheme. There is no requirement for any readvertisement.

The points about the land registry parcels and their separation are noted. However this was addressed as part of the lawful development scheme consideration (21/00175/CLOPUD). Advice was sought from Kings Chambers on that and other points and the following conclusions were made, which remain relevant at this time. The Officer's report noted: *"Further consideration was given to the points raised within the representations, in relation to the separate land registry parcels and whether these impact upon the extent of the domestic curtilage associated with Lindisfarne. Whilst historic ownership could be a relevant factor to consider when identifying the extent of curtilage, it is not determinative. As the LPA, following review with Counsel are of the view that the land upon which it is proposed outbuilding would be built is within the curtilage of Lindisfarne, then it is capable of potentially benefitting from the identified PD rights afforded to properties within the GDPO."*

The point in relation to the accuracy of the plans has been raised with the Agent, it was queried *"Are you content that the mapping you have used is fully accurate and that the garage would not encroach onto any neighbouring land? Is perhaps that the hedge is under the ownership of the property to the east no. 36 Maiden Greve?"* They confirmed the *"Drawing has been based on OS map purchased from Promap licence number 100022432."* It is common for plans such as these to be based on OS software. Furthermore, although concerns have been raised about the precise accuracy of distances from neighbouring properties and this has been responded to, also in practical terms, given the distances involved it is not considered there would be material impacts experienced. It is also not considered for this proposed chalet bungalow in a relatively level site that it would be justified to seek existing and proposed levels through the application of a 'levels' condition. This is not routinely applied to all residential development sites and it is not considered that this would be 'reasonable' in this instance, thus not meeting the tests of soundness for planning conditions.

This point relating to the whether the proposed house is over the sewer outlet pipes for a Package

Treatment Plant at Beech Cottage is noted. This would relate to clean water and could be rerouted if necessary. Whilst it is not considered that the positioning of pipes running through a site would preclude for planning purposes a new dwelling, it may form an issue for Building Control. However, as there is a condition for a drainage strategy, it is suggested that the mapping of existing drainage infrastructure within is submitted as part of this. Condition 11 has consequently been updated.

The access and highway safety element has previously been reviewed by the NYCC Highways Officer who has visited the site. They have been recontacted in relation to this point and Members will be updated on any response. The point relating to the four garages included within the lawful development certificate application is noted, but this is not of relevance in the determination of this application which meets with the NYCC Highways minimum parking standards for both properties.

The point relating to the North Yorkshire Building Control discussions is noted, the Officer in question (the Operations Manager) was aware the driveway was over 50m in length as they received an annotated plan and he did not see any turning circle, nor ask for this information. He noted that "*The dwelling would need to comply with Regulation B5 appliance access and this would be checked on application.*"

*However I need to stress the diagram submitted by the objector from Approved Document B is guidance only and not regulation. There are other ways to demonstrate compliance (fire service agreement, sprinklers, misting systems etc). So the objection in my opinion is valid but compliance with the Building Regulations can be met in more ways than just the through guidance of the Approved Documents. There are lots of new dwellings that don't meet the basic guidance (the 20m reversing distance is actually a relic from when the fire service arrived with horse drawn equipment!) but have been deemed to allow adequate access for fire fighters/appliances. It is not always necessary to construct hammer heads as drawn in the guidance."*

These checks have been made and it is not considered that this access would preclude the Building Regulations approval, however fundamentally, this is an entirely separate regime to the planning process and does not carry material weight in the determination of this application.

Similarly, the point about the proximity of rooflights and flues has been conveyed to the Agent. It is noted that a condition to ensure that the flue has a matt black finish has been agreed.

### **Other updates:**

During the site visit, queries were made over the retention of existing landscaping along the access track and to the northern boundary and western boundary of the site. The Agent confirmed that along the access track, with the 4.066m width, as much of the boundary landscaping would be retained where possible. This would be detailed on the landscaping plan and the landscaping protection plan, both secured via condition to be submitted prior to the commencement of development.

The Agent has updated the plans (001 Rev F) to indicate the pedestrian access from the access track to the rear garden of Lindisfarne and to illustrate that the right of access to the side of the dwelling would allow for a "*2.4m wide private drive, 1.2m clear space for maintenance/access for existing dwelling and 0.466m for landscaping.*" The proposed approved plans condition will be updated to reflect this amendment.

In light of the request by Member's a lighting condition has also been included in the list of conditions below.

### **Conclusion:**

To conclude, it remains the view of Officers that the proposed dormer bungalow development can be accommodated within this backland location. It is acknowledged that this is a very similar scheme to that refused under the 2020 application, however the proposed access route being achievable under permitted development rights following submission of the Certificate of Proposed Lawfulness

application weights in favour of the application. The persons most likely to be affected are the occupiers/future occupiers of Lindisfarne, no. 63 Middlecave Road.

There are proposed changes to the internal arrangement of that property, including the relocation of the principal (front) door, and this can be undertaken under permitted development rights by its owner.

For clarity, it is noted that previously proposed condition no. 11 indicated that it would be required to close up the existing main access door to the side eastern elevation of Lindisfarne, no. 63 Middlecave Road and the a new access door installed on the northern elevation of the property prior to the occupation of the new dwelling.

However, it has been established that the Local Planning Authority cannot impose a condition on the works being undertaken. This is because the existing property is neither within the red outline of the application, nor within land within the applicant's control. Therefore in order to provide surety to the Local Planning Authority that these works will be undertaken, a unilateral undertaking will be instead be required to ensure that the works are undertaken. The proposal is considered to be now, on balance, with a signed unilateral undertaking, and the proposed conditions acceptable in amenity terms.

The Agent has confirmed that this will be supplied in an email dated 22<sup>nd</sup> August 2022 noting *"I have received confirmation this morning that the client will undertake the unilateral agreement in relation to the works to no.63 Middlecave Road."* The previously proposed condition has been omitted.

Whilst this does relate to 'backland' development, given the prevailing character of the surrounding dwellings at this point, it is not considered that this would be unacceptable or materially harmful, particularly as following careful consideration there are no material harmful amenity impacts identified. It is also considered that this would be acceptable in terms of access and highway safety.

Therefore on balance, Officers recommend this proposal is approved, subject to the range of conditions.

**RECOMMENDATION: Approval** subject to conditions and the receipt of a signing unilateral undertaking by the owner of 63 Middlecave Road.

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):

Location and Block Plan (Drawing no. 004 Rev A)

Development Plan (Drawing no. 001 Rev F)

Proposed Floor Plans (Drawing no. 002 Rev E)

Proposed Elevations (Drawing no. 003 Rev D)

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

3 Notwithstanding the approved plans, prior to any above ground construction of the dwellings hereby approved, or such longer period as may be agreed in writing with the Local Planning Authority, further details and samples of all materials to be used on the exterior of the buildings the subject of this permission shall be submitted to and approved in writing by the Local Planning Authority.

Informative: As discussed with the Agent, given the Case Officer is unfamiliar with the proposed 'hardy plank' material it has been agreed that a sample of this will be provided and if not suitable, a fire retardant timber utilised instead.

Reason: To ensure a satisfactory external appearance and to satisfy the requirements of Policies SP16 and SP20 of the Ryedale Plan - Local Plan Strategy.

- 4 Unless otherwise agreed in writing with the Local Planning Authority, prior to the commencement of development, plans showing 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 any trees/shrubs and show any areas to be grass seeded or turfed and indicate the accurate positioning of all existing landscaping to be retained. The submitted plans and/or accompanying schedules shall indicate numbers, species, heights on planting, and positions of all trees and shrubs. 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 trees or shrubs 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.

Informative: As discussed with the Agent on the 22nd July 2022, this shall related to land within the red and blue lined land.

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

- 5 Prior to the commencement of the development a drawing showing the alignment for protective for the protection of those trees and hedgerows to be retained shall be submitted to the Local Planning Authority for approval in writing. The design of the protective fencing and its alignment shall be in accordance with BS 5837:2012 Trees in relation to demolish, design and construction - Recommendations, or a similar design agreed in writing with the Local Planning Authority. The approved fencing shall be erected prior to the commencement of the development including any demolition or soil stripping.

Reason: to ensure that the long-term health of the landscaping to be retained is not compromised as a consequence of development and in accordance with Policy SP13 - Landscapes - Ryedale Local Plan Strategy.

- 6 Prior to its installation, full details of any hard surfacing within and fencing within/adjoining the application site shall be submitted for the prior written approval of the Local Planning Authority.

Reason: To ensure a satisfactory external appearance and to satisfy the requirements of Policies SP16 and SP20 of the Ryedale Plan - Local Plan Strategy.

- 7 Notwithstanding the provisions of Schedule 2, Part 1 of the Town & Country Planning (General Permitted Development) Order 1995 (or any Order revoking, re-enacting or amending that Order) development of the following classes shall not be undertaken other than as may be approved in writing by the Local Planning Authority following a specific application in that respect:

Class A: Enlargement, improvement or alteration of a dwellinghouse

Class B: Roof alteration to enlarge a dwellinghouse

Class C: Any other alteration to the roof of a dwellinghouse

Class D: Porches

Class E: Provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of a dwellinghouse or the maintenance, improvement or other alteration of such a building or enclosure

Class F: Hard surfaces incidental to the enjoyment of a dwellinghouse

Class G: Chimneys, flues, etc on a dwellinghouse

Reason: To ensure that the appearance of the areas is not prejudiced by the introduction of unacceptable materials and/or structure(s).

- 8 No further doors, windows, or other openings shall be installed on the dwelling hereby approved at first floor level or within the roof slopes without the submission of an appropriate planning application.

Reason: To protect the privacy of adjoining properties and to comply with Policy SP20 of the Ryedale Plan - Local Plan Strategy.

- 9 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. wheel washing facilities on site to ensure that mud and debris is not spread onto the adjacent public highway;
  2. the parking of contractors' site operatives and visitor's vehicles;
  3. areas for storage of plant and materials used in constructing the development clear of the highway;
  4. details of site working hours;
  5. 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.

- 10 The IMPROVED crossing of the highway footway must be constructed in accordance with the approved details and/or Standard Detail number E50 REV A and the following requirements
- o 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.
- 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/Roads%20and%20highways%20and%20pavements/Specification\\_for\\_housing\\_\\_\\_ind\\_est\\_roads\\_\\_\\_street\\_works\\_2nd\\_edition.pdf](https://www.northyorks.gov.uk/sites/default/files/fileroot/Transport%20and%20streets/Roads%20and%20highways%20and%20pavements/Specification_for_housing___ind_est_roads___street_works_2nd_edition.pdf) .

The Local Highway Authority will also be pleased to provide the detailed constructional specifications referred to in this condition.

- 11 Prior to the commencement of development, a drainage strategy shall be submitted to the Local Planning Authority for its prior written approval to confirm on proposed measures for foul and surface water discharges. This shall include the mapping of any existing drainage infrastructure together with its rerouting if necessary. All drainage works should only be undertaken in accordance with the agreed details.

The suitability of soakaways, as a means of surface water disposal, should first be ascertained in accordance with BRE Digest 365 or other approved methodology. If soakaways are feasible, surface water shall be directed to a soakaway in accordance with the British Standard requirements to the satisfaction of the approved Building Control Inspector.

If soakaways are not feasible, details of an alternative means of surface water disposal must be sought.

Informative: The drainage strategy should follow the guidance set out in the Environment Agency's "Advice for local authorities on non-mains drainage from non-major development." This is available at the following link:

[https://ecab.planningportal.co.uk/Uploads/EA\\_LPA\\_advice\\_non\\_major\\_dev\\_non\\_mains\\_drainage\\_2019.pdf](https://ecab.planningportal.co.uk/Uploads/EA_LPA_advice_non_major_dev_non_mains_drainage_2019.pdf)

Reason: In the interests of satisfactory and sustainable drainage in accordance with Policy SP17 of the Ryedale Plan, Local Plan Strategy.

- 12 Unless otherwise approved in writing by the Local Planning Authority, no lighting shall be installed at externally to serve the development hereby approved unless first agreed in writing with the Local Planning Authority.

Reason: In the interests of the character of the locality and to prevent harmful light pollution in accordance with Policy SP16 and SP20 of the Ryedale Plan, Local Plan Strategy.