



## Report of the Chief Planning Officer

### NORTH AND EAST PLANS PANEL

Date: 01<sup>st</sup> December 2016

**Subject: Application 15/06569/FU - Change of use of dwelling, land and outbuildings used for fish farm to use as a single dwelling with garden and domestic outbuildings, including removal of condition 3 of approval 33/336/03/FU, 47 Thorner Lane, Scarcroft**

#### APPLICANT

Jacob Aquaculture Ltd.

#### DATE VALID

09.11.2015

#### TARGET DATE

(Extension sought)

#### Electoral Wards Affected:

Harewood

Yes

Ward Members consulted  
(Referred to in report)

#### Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

#### RECOMMENDATION:

**DEFER and DELEGATE APPROVAL to the Chief Planning Officer, subject to the specified conditions below (and such other conditions as he may consider appropriate) and the submitted unilateral undertaking under S106 which commits to:**

- a) No fish farming or recreational fishing use of the land;
- b) Occupy the land as a single dwelling and not subdivide the planning unit, and;
- c) Demolish the two outbuildings to the west of the site and restore the land.

**In the circumstances where the undertaking has not been completed within 3 months the final determination of the application shall be delegated to the Chief Planning Officer.**

1. Standard time limit.
2. Plans to be approved.
3. Infilling of central pond and reinstatement.
4. Biodiversity enhancement measures to retained ponds/implementation and management of measures.
5. Boundary treatment to be agreed.
6. Landscaping scheme/implementation of landscaping scheme.
7. External lighting only to be in accordance with an agreed scheme.
8. Parking scheme.

9. Laying out and retention of parking scheme.
10. Refuse storage provision/collection point.
11. Removal of permitted development rights (any extensions, roof alterations, boundary treatment, or curtilage buildings).
12. Drainage scheme.
13. Construction management plan for the infilling of the central pond, to include details of deliveries and measures to suppress dust and noise.
14. Contaminated land conditions in relation to the verification of imported material and any unexpected contamination.

## **1.0 INTRODUCTION**

- 1.1 The application site is located within the designated Green Belt and has a lengthy planning history. The application seeks to remove occupancy restrictions placed on a previous planning permission, which granted permission for a dwelling restricted in terms of occupancy to those employed in a fish farming enterprise at the site. The application also proposes the change of use of land to form a domestic garden.
- 1.2 In considering the proposal the principle consideration is whether or not the proposal represents inappropriate development in the Green Belt. Following consideration of this aspect the next test is, under the circumstances that exist today, whether or not the planning condition is still relevant and necessary. Overall the proposal is considered to be inappropriate development in the Green Belt, by virtue of the proposed residential curtilage, but it is considered that the necessary very special circumstances exist to clearly outweigh this harm by way of inappropriateness.
- 1.3 On the basis of the evidence available officers are of the view having taken the appropriate technical advice that the fish farm is no longer a viable commercial operation. This consideration in combination with other negotiated aspects of the scheme, which will enhance the visual amenity and openness of the Green Belt and deliver biodiversity enhancements, results in a recommendation to grant planning permission. The report is presented to North and East Plans Panel following a request for Panel consideration received from Ward Councillor Rachael Procter, due to the complex history of the site and its location within and implications for the Green Belt.

## **2.0 PROPOSAL**

- 2.1 The application proposes the change of use of buildings formerly used for fish farming to domestic use and [in respect of the dwelling on the land] the removal of condition which restricts occupancy to those employed by the business, resulting in the use of the application site as a C3 dwelling with unrestricted occupancy (i.e. the removal of condition 3 of 33/336/03/FU). The application also proposes the change of use of land to form a domestic garden and the infilling of the central pond to facilitate the new use.
- 2.2 The application is accompanied by a signed draft undertaking under Section 106 of the Planning Act, committing the owner(s) and successors in title to the following:
  - Not to use the application site or adjoining (blue edged land) for any form of commercial fish rearing or for any form of organised social or recreational fishing purposes, from the date of commencement of the development (i.e. implementation of the permission).
  - Demolition of the outbuildings to the north west of the dwelling and reinstatement of the land [this land to be excluded from the proposed residential garden].

- Not to subsequently subdivide the unit to create more than one planning unit.

2.3 The application is accompanied by the following supporting documents:

- Production Capacity Study produced by JBA Consulting (March 2015)
- JBA Consulting letter in relation to Production Capacity Study (July 2015).
- Hydrological and Hydrogeological report (November 2014)
- Financial Statement (July 2015)
- Draft Unilateral Undertaking (dated 20<sup>th</sup> November 2015)
- Conservation and Biodiversity Enhancement and Management Plans (June 2016)
- CIL Questionnaire

### 3.0 SITE AND SURROUNDINGS

3.1 The application site comprises a dwelling and outbuildings including a two-storey hatchery with five outdoor ponds, which were last in use as a fish farm for the production of Koi Carp. The site is located on the north side of Thorner Lane, east of the Village, set within the designated Green Belt and Special Landscape Area. The ponds form part of the Leeds Habitat Network. The site is accessed from Thorner Lane via a single track driveway. To the east of the driveway, south of the application dwelling, is a substantial detached dwelling Manor Farm. The site is bounded to the north by a small brook beyond which is a Public Right of Way and by rough pasture to the west and east. A detached dwelling, Roselandia, is located beyond the pasture to the west.

### 4.0 RELEVANT PLANNING HISTORY

Planning application history:

4.1 H31/183/81: Two trout ponds in ground of house [Manor Farm] (0.37ha) – Approved 22.06.81

33/95/94: Change of use of domestic garden and trout ponds to koi carp ponds and siting of a mobile dwelling – Refused 26.08.94 for the following reasons:-

*The proposed dwelling does not constitute development considered appropriate to a rural area under Policies N13 of the West Yorkshire County Structure Plan, GB2 of the Wetherby and District Local Plan and N33 of the Draft Revised Leeds Unitary Development Plan, and if permitted, would conflict with the principles of Green Belt control over development according to the guidance given in Central Government Circulars 42/55 and 14/84 and in Planning Policy Guidance Note 2: Green Belts. Furthermore, the very special circumstances required to justify the setting aside of Green Belt Policy do not exist in this instance, especially when taking into account the fact that the applicant currently owns an existing dwelling in very close proximity to that proposed.*

4.2 33/43/95: Change of use of trout ponds and domestic garden to fish farm and temporary siting of office store and laboratory buildings - Approved 24.03.95.

4.3 33/309/96: Detached store and detached 2 storey office and laboratory to fish farm - Approved 14.2.97.

4.4 33/200/97/FU: Resiting of detached garage to fish farm – Approved 22.08.97.

- 4.5 0-33/31/97/MOD: Toilet extension to detached office and store (relates to 33/309/96) - Approved 4.11.97
- 4.6 0-33/37/97/MOD: Detached store and detached 2 storey office and laboratory to fish farm - Height of building increased to 5.66metres south wall - Approved 16.1.98.
- 4.7 33/291/98/FU: Single storey rear extension to fishery - Approved 9.12.98. Condition 3 – Premises shall be used only for a restroom and shelter for anglers and specifically no retail sales of goods and/or hot and cold food.
- 4.8 33/317/98/FU: Detached fish breeding and rearing unit to the fishery – Approved 24.02.1999
- 4.9 33/170/99: Change of use of part of fishery to one bedroom dwelling. Approved 18.7.00. Condition 1 – use permitted until 31.3.02.
- 4.10 33/138/02: Removal of Condition 1 of 33/170/99 - Withdrawn 17.9.02.
- 4.11 33/18/03/FU: Detached single storey fish rearing unit. Approved 31.05.03
- 4.12 33/85/03: Removal of Condition1 or permission 33/170/99 - Approved 30.6.04. Condition 1 – occupation restriction to persons employed at Springwater Koi and shall not be occupied as a separate dwelling unconnected with the main business.
- S106 agreement – 1. Not to implement 33/85/03 until fish rearing unit has been completed. 2. Not to implement 33/336/03 (change of use of part of dwelling to offices and extension to form enlarged dwelling) until fish rearing unit approved under 33/18/03 and 33/53/04 has been erected.
- 4.13 33/53/04/FU – Repositioning of approved detached single storey fish rearing unit – Approved 30.06.04, subject to conditions which included the preclusion of retail sales direct from the site and restricting delivery hours.
- 4.14 33/336/03: Change of use of part of dwelling to office and 2 storey side extension to form enlarged dwelling. Approved 30.6.04
- S106 agreement – 1. Not to implement 33/85/03 until fish rearing unit has been completed. 2. Not to implement 33/336/03 (change of use of part of dwelling to offices and extension to form enlarged dwelling) until fish rearing unit approved under 33/18/03 and 33/53/04 has been erected.
- 4.15 33/53/04: Repositioning of approved detached single storey fish rearing unit. 6.95 metres high and windows to ground floor only - Approved 30.5.04.
- 4.16 08/00509/CLE: 47a Thorner Lane Certificate of lawfulness for use of building as dwelling house - Refused 19.03.08.
- 4.17 08/02896/FU Change of use of fish rearing building and office with ancillary residential accommodation to 1 dwelling house. Refused 25.11.08 for the following reasons:-

*The proposed development will result in an inappropriate form of development in the Green Belt causing harm to the character and openness of the Green Belt. In the absence of any very special circumstances the proposal is considered to be contrary*

*to Policies N33 and N37 of the Unitary Development Plan 2006 and guidance contained within PPG2, PPS7 and advice within Circular 11/95.*

- 4.18 08/03519/FU Removal of condition 1 of application 33/85/03/FU relating to residency occupancy. Refused 25.11.08 for the following reasons:-

*The proposed development will result in an inappropriate form of development in the Green Belt causing harm to the character and openness of the Green Belt. In the absence of any very special circumstances the proposal is considered to be contrary to Policies N33 and N37 of the Unitary Development Plan 2006 and guidance contained within PPG2, PPS7 and advice within Circular 11/95.*

- 4.19 08/03523/FU Removal of condition 3 of application 33/336/03/FU relating to residency occupancy. Refused 25.11.08 for the following reasons:-

*The proposed development will result in an inappropriate form of development in the Green Belt causing harm to the character and openness of the Green Belt. In the absence of any very special circumstances the proposal is considered to be contrary to Policies N33 and N37 of the Unitary Development Plan 2006 and guidance contained within PPG2, PPS7 and advice within Circular 11/95.*

- 4.20 09/02877/FU Variation of condition no 1 (Occupancy) of application 33/85/03/FU: Non determination appeal Allowed, subject to conditions including that the occupation of the dwelling be limited to a person solely or mainly employed (including self-employed) in the fish farm business at the site (and spouse/dependants of such a person).

- 4.21 09/02938/FU Change of use of part of dwelling to an office and a two storey side extension: Non determination appeal Allowed, subject to conditions including that the occupation of the dwelling be limited to a person solely or mainly employed (including self-employed) in the fish farm business at the site (and spouse/dependants of such a person).

- 4.22 09/04135/FU Variation of condition no 1 (Occupancy) of application 33/85/03/FU: Refused 19.11.09: for the following reasons:-

*It is considered that the proposed variation of condition could result in the occupation of the residential accommodation by persons unconnected to the current business use, which could lead to pressure for further development in the Green Belt causing harm to the character and openness of the Green Belt. Furthermore it is considered that the proposals could potentially prejudice the continued use of the business if the residential accommodation were not available in connection with the business. In the absence of any very special circumstances the proposal is considered to be contrary to Policies N33 and N37 of the Unitary Development Plan 2006 and guidance contained within PPG2 and PPS7.*

- 4.23 09/04136/FU Variation of condition no 3 (Residency condition) of application 33/336/03/FU: Refused 20.11.09: Reasons as above.

- 4.24 15/06602/FU Change of use – Application returned.

Planning Enforcement History:

- 4.25 08/00339/NCP3 - Building not in erected in accordance with approved plans:

An Enforcement notice was served on the 18th June 2008 for *without planning permission the erection of a two storey building to fish breeding and rearing premises in a manner that is materially different to the details shown on the approved plans to planning permission 33/53/04/FU dated 30th June 2004*, in particular the height of the walls to eaves level has been significantly increased, the roof has been constructed to a shallower pitch and openings for windows/doors have been formed at first floor level.'

An appeal was lodged against the enforcement notice and the appeal - Allowed on ground (a) and the enforcement notice quashed and planning permission granted.

- 4.26 ENF/1162/04/33 - Use of fish breeding and sales offices/stores for residential purposes.

An Enforcement notice was served dated 12th May 2008 for ' without planning permission the change of use of a two storey building erected for the purpose of a fish breeding unit to use for the purposes of a single dwelling house'. Notice withdrawn in March 2008.

- 4.27 08/00303/UCU3 – Use of building as dwelling – No further action.

## **5.0 HISTORY OF NEGOTIATIONS**

- 5.1 Officers met with the applicant in December 2015 following pre-application discussions, and have continued to give advice and negotiate in consultation with Ward Councillors. The applicant has now agreed to put the central pond beyond use by filling it in, to demolish redundant buildings to the northwest of the dwelling and to draw in the proposed garden more tightly to remove the land on which they are sited. The applicant has also submitted a unilateral undertaking under Section 106 to commit to use the site as a single planning unit only and not to carry out any resumption of fish farming or recreational angling use of the retained ponds/land. The applicant has also agreed to biodiversity enhancements of the retained ponds.

## **6.0 PUBLIC/LOCAL RESPONSE**

- 6.1 Public consultation on the application has taken the form of formal statutory consultations. A site notice was placed at the front of the site on 27th November 2015. A press advert was published in the Boston Spa and Wetherby News on 26th November 2015, advertising the development at a departure. Immediate neighbours of the site were also notified in writing. In response to this publicity one third-party letter of objection has been received from the occupants of Roselandia, the dwelling to the west. Objection raised therein can be summarised as follows:

- Documents listed in the application are missing from the on-line details [this is reference to information of a financial nature in respect of the submitted financial statement which has been withheld];
- A sluice gate system at two points along the beck was installed but the applicant has not used this system. If necessary a bore hole could provide sufficient water for the ponds;
- Contrary to the application the site is visible from a public footpath forming part of the Leeds Country Way;
- In 1994 an application (33/95/94/FU) to site a mobile home on the land was refused because the dwelling would conflict with the principles of control over development in the Green Belt, and due to a lack of financial information on the commercial viability of the proposed business, and in the following year an

application for outline planning permission for two dwellings with detached garages was refused.

- In 1995 planning permission was granted for temporary siting of an office, store and laboratory building (33/43/95/FU), despite Koi Carp in the ponds being an ornamental species of fish and not agriculture. Further permissions were given for the building of a garage, first fish hatching and rearing unit, and then a second larger fish hatching and rearing unit. The office, store and laboratory building were the subject of numerous planning applications including conversion of part of it to a one-bedroomed dwelling for a fish farm worker (33/170/99) and a two storey side extension. The Council required the owner to enter into a Section 106 agreement with respect to applications 33/85/03 and 33/336/03 to tie the residential use to the expansion of the fish rearing business and imposed conditions in relation to the occupancy of the dwelling (this being the subject of the current application);
- In 2004 the Local Government Ombudsman (LGO) was asked to investigate the planning decisions in relation to the buildings on the site, and by that time the floor area of the office, store and laboratory had increased fourfold. The LGO in her letter of 20th November 2008 described this increase as "*beyond all proportion to the initial structure*" and considered that the development amounted to a "*substantial five bedroomed five bathroom country residence*". Furthermore the LGO stated that "*there does not appear to be any clear line of reasoning behind the Council's decisions to approve the many planning applications.*"
- The other buildings on the site bear a close resemblance to dwellings and a Planning Inspector, in May 2009, concluded that the second fish hatching and rearing building "*was not completed in accordance with the approved plans*", and that "*the erection of the building was inappropriate development in the Green Belt*". The then owner of the site claimed to have a "*growing and thriving*" fish breeding and sales business, but had found it necessary to cease the business due to ill health. However, the LGO after making extensive enquiries concluded that the business was a "*transparent scam*".
- The owner then applied for change of use to one dwellinghouse and removal of the occupancy restrictions to the property, with applications 08/02896/FU, 08/03519/FU and 08/03523/FU being refused;
- A further attempt was made in 2009 to vary condition 1 of 33/85/03, this was refused and an appeal against the decision dismissed following an informal hearing on 16th February 2010. Referring to circular 11/95 paragraph 103, the Inspector stated that "*It is considered that a personal desire to continue to live at the premises and cease to operate the business does not constitute sufficient reasons to outweigh other planning considerations relating to the occupancy of this dwelling in the Green Belt*";
- The circumstances pertaining to the current application do not differ substantially from those associated with similar applications submitted by the previous owner of the property and those applications were refused. It is evident that the applicant has gone to considerable effort and expense to improve the living accommodation, yet has not matched this with a determined effort to establish a viable fish farm business. To allow the site to be used solely for residential purposes would be contrary to Green Belt policy and would facilitate further applications for residential occupancy of the proposed outbuildings by the current and any future owner of the site. [the submitted S106 agreement would preclude this].

6.2 Scarcroft Parish Council has been notified of the application and in response comments that: "*The Council resolved to object to the removal of Condition 3 of approval 33/336/03/FU on the grounds that it would fundamentally alter the current land use for the site. The Parish Council believes that the land should continue to be used for general agricultural/rural business purposes.*"

6.3 Ward Councillor Rachael Procter has been briefed on the proposals and has requested that the application be considered at Plans Panel, due to the complex history of the site and potential impacts on the Green Belt. Councillor Rachael Procter also comments that the red line site area proposed for the curtilage is rather large, that the ponds should be back-filled to put them beyond use, and additional landscaping should be required.

## 7.0 CONSULTATION RESPONSES

7.1 LCC Transport Development Services:  
No objections subject to conditions.

7.2 Environment Agency:  
(08.09.15) Summary: The fish farm does not have consent to discharge water but does have consent to abstract water. Consent would not be required to discharge clean water, but it would be required to discharge contaminated water. The status of Collingham Beck is "good", having been classed "bad" in 2013, however, the Beck does however have failing elements for Phytobenthos principally caused by elevated phosphates/nitrates linked to diffuse agricultural sources. The site is located within the Wharfe & Lower Ouse Millstone Grit and Carboniferous Limestone WFD Groundwater Body, where the current quality status is classed as "poor". This is mainly due to mine waters affecting the quality of surface waters within the Yorkshire Dales National Park. We have no groundwater level monitoring in this area so cannot provide comment on the hydrogeological regime in this area. There is no moratorium on groundwater abstraction in this area.

7.3 Environment Agency [reconsultation]  
(08.11.12) We are unable to comment on the viability of the enterprise. We have additional comments to those made on 08<sup>th</sup> September, but regret that we are unlikely to be of any further assistance in this matter.

7.4 We accept the interactions between surface water and groundwater have been complicated by man-made features at this location. Conceptual site models should be refined with the best available information, in this case, refined in light of any additional information from the recommendations within the submitted reports. We have no groundwater level monitoring in this area and are therefore unable to provide comment on the hydrogeological regime in this area. Due to an improvement in the status for fish, the 2015 WFD classification for overall ecological status is now 'moderate'.

7.5 The abstraction licence number quoted in section 2.4.1 is incorrect; it should be 2/27/20/208. (The number is correctly quoted in table 2-2). The abstraction rates for abstraction licence 2/27/20/296 quoted in table 2-4 are incorrect. The actual rates authorised under that licence are 54.54 cubic metres per day and 8,000 cubic metres per year. Any changes to the impoundment structures in the brook which hold water up, or any new structures to be built, may need an impoundment licence.

7.6 LCC Flood Risk Management: FRM has no records of the drainage of the site. Drainage systems should have been approved under the Building Regulations. There are no public sewers in the vicinity so either a soakaway should exist, or should be put in place, to deal with the surface water runoff from the various buildings and any hardstanding(s). The development should not be put to use as a single dwelling with outbuildings until a scheme detailing existing/proposed surface water drainage works have been submitted and approved and brought into use.



- 7.7 LCC Agricultural Surveyor: Summary: Alternative uses could include occupation in connection with agricultural, equestrian, or kennels enterprises. The location is not however close to any functional agricultural need, kennels would probably be problematic for neighbours, and the land holding is modest and so could not support an equestrian enterprise. There is no evidence of a pent up demand for agricultural workers accommodation in the locality, and with regard to the available evidence on viability, on balance it is considered that the occupancy condition has outlived its usefulness.
- 7.8 LCC Nature Conservation: The submitted conservation and biodiversity enhancement and management plans submitted are satisfactory to ensure protection of sensitive habitats and enhancement will be carried out.
- 7.9 LCC Rights of Way: No comment.

## **8.0 PLANNING POLICIES:**

- 8.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for Leeds currently comprises the Core Strategy (2014), saved policies within the Leeds Unitary Development Plan (Review 2006) and the Natural Resources and Waste Development Plan Document (2013).

### Local Planning Policy

- 8.2 The most relevant Core Strategy policies are outlined below:

Spatial Policy 1	Location of Development
Spatial Policy 8	Economic development priorities
Policy EN2	Sustainable design and construction
Policy EN1	Climate change
Policy EN5	Managing flood risk
Policy G8	Protection of important species and habitats
Policy G9	Biodiversity improvements
Policy T2	Accessibility requirements and new development
Policy P10	Design
Policy P12	Landscape

- 8.3 The most relevant saved policies of the Leeds Unitary Development Plan (Review) are outlined below:

GP1	Land use and the proposals map
GP5	General planning considerations
GB25	Garden extensions in the Green Belt
N23/N25	Landscape design and boundary treatment
N33	Development in the Green Belt
N37	Special Landscape Area
N37A	Development in the Countryside
LD1	Landscape schemes

### Relevant Supplementary Planning Guidance:

8.4 Natural Resources and Waste Local Plan (adopted).  
Parking SPD

National planning policy guidance:

8.5 The National Planning Policy Framework was published on 27<sup>th</sup> March 2012 and sets out the Government's planning policies for England and how these are expected to be applied, alongside other national planning policies. In this case the following sections are relevant:

Achieving sustainable development

Section 1 Building a strong, competitive economy

Section 7 Requiring good design

Section 9 Protecting Green Belt land

Section 10 Meeting the challenge of climate change, flooding and coastal change

Section 11 Conserving and enhancing the natural environment

Decision-taking

Annex 1 Implementation

8.6 For decision taking the NPPF states that, amongst other considerations, this means that development that accords with the development plan should be approved without delay. The footnote to Para 14 does however caveat that the presumption in favour of sustainable development does not apply where specific policies in the Framework indicate development should be restricted (Footnote 9). Footnote 9 states that:

8.7 *"For example, those policies relating to sites protected under the Birds and Habitats Directives (see paragraph 119) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion."* [My emphasis]. Given that the site is within the designated Green Belt, the presumption in favour does not therefore apply, and one needs to consider the proposal amongst others against the provisions of NPPF Green Belt policies contained in Section 9.

**9.0 MAIN ISSUES:**

- Principle of Development
- The Condition
- Green Belt and Special Landscape Area
- Highways
- Biodiversity
- CIL
- Balance of the Considerations

**10.0 APPRAISAL:**

Principle of Development:

10.1 The application seeks a change of use of buildings formerly used as part of a fish farming enterprise to domestic use and the removal of an historic occupancy condition relating to the dwelling at the site, which currently restricts occupancy of the existing dwelling to a person solely or mainly employed in the fish farm business at the site (and the spouse/dependants of such a person). The application also proposes the change of use of part of the fish farm's curtilage to form a residential garden to serve

the residential accommodation. The application proposes the reuse of buildings that are of permanent and substantial construction in the Green Belt to an unrestricted C3 residential use. These aspects are consistent with the exemptions under Section 9 of the NPPF and as such are development that is not inappropriate in the Green Belt, provided that they preserve openness. The use of part of the site of the ponds as domestic garden is not however appropriate development in the Green Belt and the test in this regard is therefore whether or not the required necessary very special circumstances exist to approve inappropriate development in the Green Belt. This aspect is considered in detail under 'Green Belt and Special Landscape Area' below.

- 10.2 Turning to the matter of the occupancy condition Paragraph 206 of the National Planning Policy Framework states that planning conditions should only be imposed “*where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects*” [My emphasis]. In respect of planning conditions the six tests must all be satisfied each time a decision to grant planning permission subject to conditions is made. Essentially in this case the Council is asked to consider the planning permission for the dwelling, former hatchery and various associated outbuildings, afresh, without any occupancy restriction on the dwelling in terms of the former fish farming use.
- 10.3 The question in this particular regard is, therefore, whether or not it continues to be necessary for an occupancy condition to remain in place for a rural based worker employed in the fish farming business, in order to make the development acceptable in planning terms, given the Green Belt location of the site. The decision on this matter therefore turns on whether or not there is sufficient evidence to demonstrate that the occupancy condition has outlived its usefulness, and is therefore no longer necessary. Otherwise clearly the condition should stand, as it was one which was originally imposed to ensure the protection of the Green Belt and Green Belt purposes from inappropriate development and any other harm.

#### Occupancy Condition

- 10.4 Clearly when first imposed the condition was necessary in order to ensure that the creation of a dwelling fell within one of the exemptions under the restrictive controls over new buildings in Green Belt, which is discussed further below, in order to safeguard the countryside from encroachment and inappropriate development. The site has a very long and complex planning history, which includes multiple applications, enforcement notices, a number of planning and enforcement appeals, and which has seen the involvement of the Local Government Ombudsman. Notwithstanding this long history however the current application should of course be considered on its merits.
- 10.5 The application is predicated on the basis that, notwithstanding a lengthy history involving the previous owner, the current owner (having acquired the site in 2011) has sought to run the authorised fish farming business at the site, having put investment into the business, but that notwithstanding this investment it is not an economically viable concern and nor is there any real prospect of it being made so. The case is therefore advanced that the condition no longer serves a planning purpose. In support of the case the applicant has submitted a number of reports and statements. The first of these is the submitted Hydrological and Hydrogeological Conceptual Model prepared by a Lead Hydroecologist at JBA Consulting, based on a desk-based study, a site walkover survey, investigation of a drained pond bed and a topographical survey. It sets out recommendations for further work required in order to determine the likelihood of the site being able to sustain the rearing of Koi Carp in high densities. In summary it concludes:

- The fish ponds are not fed by a single discrete spring but by groundwater and though the capacity appears to exist no water is currently being moved through the man-made network which were set up to obtain water from the beck;
- If the beck upstream were de-silted, water retaining structures repaired, and swan neck culverts adjusted to the correct levels, then the water from the beck could be brought into the system and be transferred between the ponds;
- The water in Fish Pond 1 is significantly higher than that of Fish Ponds 5 and 6, due in part to the water level in the beck adjacent to Fish Pond 1 being at an artificially higher level, the beck and Fish Pond 1 being in hydraulic continuity;
- The available evidence suggests that there is scope for developing a ground water supply borehole to top up the ponds;
- There may also be scope to raise the water level in the beck adjacent to the lower fish ponds (5, 6 & 7).

10.6 The report goes on to make recommendations for further work, summarised as follows:

- If an attempt is made to make use of the inflow pond system from the beck it is recommended that the channel of the beck upstream of the western water level control structure is de-silted and that repairs are made to the control structure to ensure that a depth of water is held behind it;
- Numerous swan neck culverts connecting the ponds are stuck tight – measures should be taken to return the swan neck culverts to their full functionality or their replacement;
- Possibility of installing additional water retaining structures at the downstream end of the beck should be explored to keep ponds at a higher level though such works would need to be approved by the Environment Agency;
- The current water distribution network does not allow for any inflow to Fish Pond 6 – if required an adjustable culvert should be installed leaving from Fish Pond 5 to Fish Pond 6 so a down flow can be achieved;
- A fisheries ecologist should be consulted to advise on whether, if the water network were improved as per the above could a constant flow of water be maintained from the beck and through the ponds, would it be possible to operate this site as a commercially viable fish farm;
- It would be prudent to get an idea of the inflows and outflows to the system that would be required to create sufficiently healthy ponds;
- If the beck cannot support the inflow rate required then a borehole should be explored and a fisheries ecologist should be consulted on suitability of abstracted groundwater.

10.7 Following on from this the second report is a Production Capacity Study, also prepared by a Lead Hydroecologist at JBA Consulting. The study concludes that the unit will operate at a loss if sales are based on wholesale, and only a marginal profit can be made via retail sales, without taking into account additional expenditure required to deliver the necessary production capacity. The study also notes that there are a number of significant issues which compromise the site's ability to produce Koi Carp either in sufficient quantity or quality, summarised as follows:

- There are insufficient ponds on site to support production capacity sufficient to generate a profit;
- There appears to be no potential to dig more ponds for expansion;
- There is evidence of groundwater emergence in the bottom of the ponds making pond management very difficult;

- Water supply currently available is from a small brook and is potentially compromised by the operation of surface water abstraction upstream, posing a risk to the surety of water supply for the operation – water supply from mains is not viable due to cost and water quality issues;
- A lack of evidence of a discharge consent from the Environment Agency (EA) [confirmed by the EA], which is a major issue preventing the draining down of ponds;
- In terms of the likelihood of getting consent to discharge, the brook is within the Collingham Beck catchment, which is currently failing to achieve the appropriate status under the Water Framework Directive (issues with fish populations, phytobenthos [organisms which are indicators of water quality] and ammonia concentration), both confirmed by the EA;
- It is likely that investment in waste water treatment facilities would be required to enable the site to operate successfully as an intensive or extensive fish farm whilst obtaining the necessary discharge consent (if one could be obtained);
- The site is located at the far northern edge of what is considered to be the viable area for outside pond Koi production; and
- The farm is located on a slope with a north-eastern aspect, which will further hamper efforts to maintain the ponds close to optimum growth temperatures.

10.8 A further letter has been submitted from JBA consulting, which summarises the improvements that would be required at the site for a fish farming enterprise to be practicably feasible:

- Clay lining of the ponds and upgrading of the existing water level control facilities - £30,000
- Installation of appropriate waste water treatment facilities - £25,000
- Installation of appropriate tank facilities (this assumes there is space available) and protective polytunnel erection - £50,000

10.9 Notwithstanding the investment required (circa £100,000), JBA consulting go on to comment on the significant concern over the ability to legitimately discharge waste water from the site. As identified in the capacity study no discharge licence for the site exists and the EA confirms this, meaning pond management best practice is not achievable. Notwithstanding that the above submitted evidence has been prepared by the EA's former lead fisheries officer at the EA's Calverton Fish Farm, the EA have been asked by officers to provide specialist comment on the submitted reports. Following this request they have however been unable to provide any specialist to comment in relation to the submitted evidence that would either validate it or run counter to it, save for offering some correction of licence number and abstraction rate, which does not fundamentally alter the findings of the reports. The Environment Agency has also been unable to recommend any third party who the local planning authority would be able to instruct to independently comment the submitted reports. Given the provenance of the author of the reports and the inability of the Environment Agency to provide any specialist comment to the contrary, it is considered that the evidence submitted with the application should be accepted. In the absence of any evidence to the contrary, the weight of evidence accompanying the application would seem to demonstrate that any resumption in the fish farming business is not viable at this location without significant additional investment, and that even if this were made there are serious questions about the viability of a fish farming business at this location at its current restricted scale. It would also appear to the case that, even were the requisite further investment required made, it could at best deliver only a marginal profit. On the basis of the evidence available it would therefore seem that the former

business use is not a viable concern and that the condition as currently worded has outlived its usefulness.

- 10.10 It has been queried by officers why no marketing of the business has taken place. The response has been that it is not a viable concern, evidence demonstrating this is in the public domain under cover of this application and would need to be disclosed to any purchaser, and that with the current occupancy restriction there would therefore be little interest in the site, which not an unreasonable assertion. Ordinarily one would consider whether or not a different wording of the occupancy condition might allow for occupancy by an agricultural worker, however, the Local Planning Authority has no evidence of any pent up demand for agricultural workers dwellings in the locality, it would not serve any functional need identified, and on this basis it would be unreasonable and unnecessary to amend to wording in this way. It is therefore considered that, on the evidence available, the condition has outlived its usefulness and favourable consideration should therefore be given in principle to the removal of condition and change of use sought, subject to consideration of the implications for the Green Belt and the balance of the other considerations, all of which are discussed below.

#### Green Belt and Special Landscape Area

- 10.11 National planning policy sets out that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances (Para 87). It sets out that that substantial weight should be given to harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt, by reason of inappropriateness and any other harm, is clearly outweighed by other considerations (Para 88).
- 10.12 Paragraph 90 of the NPPF provides that certain forms of development are not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt. These include “*the re-use of buildings provided that the buildings are of permanent and substantial construction*”;

Paragraph 80 of the NPPF sets out the five purposes of Green Belt as follows:-

- to check the unrestricted sprawl of large built-up areas;
  - to prevent neighbouring towns merging into one another;
  - to assist in safeguarding the countryside from encroachment;
  - to preserve the setting and special character of historic towns; and
  - to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.
- 10.13 Together paragraph 89 (which allows for other exceptions not relevant in this case) and paragraph 90 provide a closed list of exceptions. In this case the application proposes a change of use of existing buildings, a change of use of land to form a residential garden and the removal of an occupancy condition. It is clear the buildings for which a change of use is sought are permanent buildings of substantial construction. From paragraph 90 of the NPPF there is no conflict with Green Belt policy in relation to this aspect of the proposals, provided the proposals do not harm openness or conflict with the purposes of including land within the Green Belt. The proposed change of use of the curtilage of the fish farm to form a residential garden is however inappropriate development, being outside the closed list of exceptions under paragraphs 89 and 90, and not ordinarily supported by Saved UDP Review policy GB25 Garden Extensions, which states that there will be a presumption against garden extensions into the Green Belt. From the above the Council must give

substantial weight to this harm by way of inappropriateness, and any other harm, and should not approve the application unless other considerations clearly outweigh the identified harm.

- 10.14 A number of other considerations are relevant in the balance of other considerations. Firstly, the proposed residential garden forms a reduced part of a much wider and established fish farm curtilage which benefits from a lawful fish farm use. Under the submitted S106 agreement this established use would cease and the curtilage would be drawn in. In relation to the advice at paragraph 81 of the NPPF which states that *“Once Green Belts have been defined, local planning authorities should plan positively to enhance the beneficial use of the Green Belt, such as looking for opportunities to provide access; to provide opportunities for outdoor sport and recreation; to retain and enhance landscapes, visual amenity and biodiversity; or to improve damaged and derelict land”*, whilst the proposal ends the prospect of any recreational angling use, the proposal does deliver both biodiversity enhancement benefits for the retained ponds, which would remain as part of the Leeds Habitat Network, and it does deliver visual amenity improvements and improvements to openness through the demolition of redundant buildings.
- 10.15 The application site is located within the designated Special Landscape Area. Saved UDP (Review) 2006 policy N37 seeks to prevent harm to the character and appearance of the landscape, and guides new development so that its siting, design and materials are sympathetic to the landscape. Save for the infilling of the central pond and the construction of boundary treatment (to be covered by condition), the proposal does not involve significant development, and the existing fish farming curtilage is drawn back from its existing extent. As is discussed above it also includes a beneficial commitment to remove two buildings to the northwest. Whilst reducing the impact of the existing built form on the openness of the Green Belt their removal would also be of benefit to the appearance of the Special Landscape Area, and this is a positive factor in the balance of considerations, and there is therefore no undue conflict with policy N37.

#### Highways

- 10.16 The site was formerly in use as a fish farm, with a residential element. This brought with it the potential for commercial vehicular movements together with those generated by staff employed by the business, and those generated by the occupants of the workers living in the dwelling. The application proposes a solely domestic use of the site, as a single dwelling, and is therefore a less intensive use in highways terms. There is sufficient parking and turning space to serve a single dwelling and the application does not therefore raise any highway safety concerns. Conditions are however recommended to agree a rationalised parking arrangement and to agree refuse storage and collection facilities following cessation of any business use. This would be a neutral factor in the balance of considerations.

#### Biodiversity

- 10.17 The ponds form part of the Leeds Habitat Network. Part of the negotiated package of benefits includes the retention of two main ponds either side of the proposed residential garden, together with two smaller ponds. The largest pond within the proposed residential garden would be filled in, landscaped, and put beyond use, in order to address the potential safety concerns of future occupants. Recommended condition 5 can secure boundary treatment between these areas. In accordance with Core Strategy Policy G8 and advice contained within the NPPF in relation to biodiversity enhancement, biodiversity enhancement and conservation management

plans have been received and the nature conservation officer considers that that these are acceptable. The precise detail of the biodiversity improvements can be secured by condition and, because they go beyond what would ordinarily be required for a single dwelling, these improvements would be a positive factor in the balance of considerations.

## CIL

10.18 The Community Infrastructure Levy (CIL) was adopted by Full Council on the 12th November 2014 and was implemented on the 06th April 2015. The development does not however introduce any CIL liable new uses or floorspace and is therefore not CIL liable. This information is provided for Members information only however and it is not material to the decision on this application.

## 10.19 Balance of the Considerations

On the balance of the considerations from the above it is considered that the occupancy condition is no longer relevant and the reuse of the existing occupancy restricted dwelling and hatchery, as an occupancy unrestricted dwelling with ancillary accommodation, is not inappropriate development by definition. Whilst inappropriate development in the Green Belt the proposed residential garden is reduced from the existing fish farm curtilage, fish farming and/or any recreational use is given up under the submitted S106 agreement, and the proposal delivers improvements to the openness and visual amenity of the Green Belt and Special Landscape Area through demolition of redundant structures, and biodiversity enhancements. Taken together these considerations clearly outweigh the harm by way of inappropriateness raised by the proposed residential garden, so as to comprise the necessary very special circumstances required to justify approval of the application.

## **11.0 CONCLUSION**

11.1 The resumption and continuation of a fish farming business at the site would require significant investment. Even with that investment there are serious questions about water quality and the potential to discharge contaminated fish farm water from the site into the adjacent watercourse. Even with the significant further investment required the submitted evidence suggests that the enterprise could, at best, deliver only a marginal profit. Clearly no operator would make such an investment to obtain only marginal profit, and a buyer for the concern is unlikely given the submitted reports which are in the public domain. The land holding itself is not of a scale that could deliver additional ponds to improve profitability, and even if it were the shortcomings in water surety, water quality, and the question mark over potential for discharge from rearing ponds to the adjacent watercourse all brings into serious doubt the likelihood of the fish farming business being expanded to deliver a reasonable profit level. In any event such expansion would inevitably require further physical development (additional ponds with water control/treatment structures), which would of course impact on the openness of the Green Belt and the landscape, and substantial weight should be given to any such potential harm. On balance it is considered that the condition is no longer therefore required.

11.2 The application represents inappropriate development in the Green Belt by virtue of the proposed residential garden use of Green Belt land. The application is however supported by a commitment to reduce the amount of development and extent of the site, which would reduce the impact on openness and impact on visual amenity. The application is also supported by a commitment to prevent any business or recreational use of the remaining ponds, which subject to the submitted biodiversity enhancement

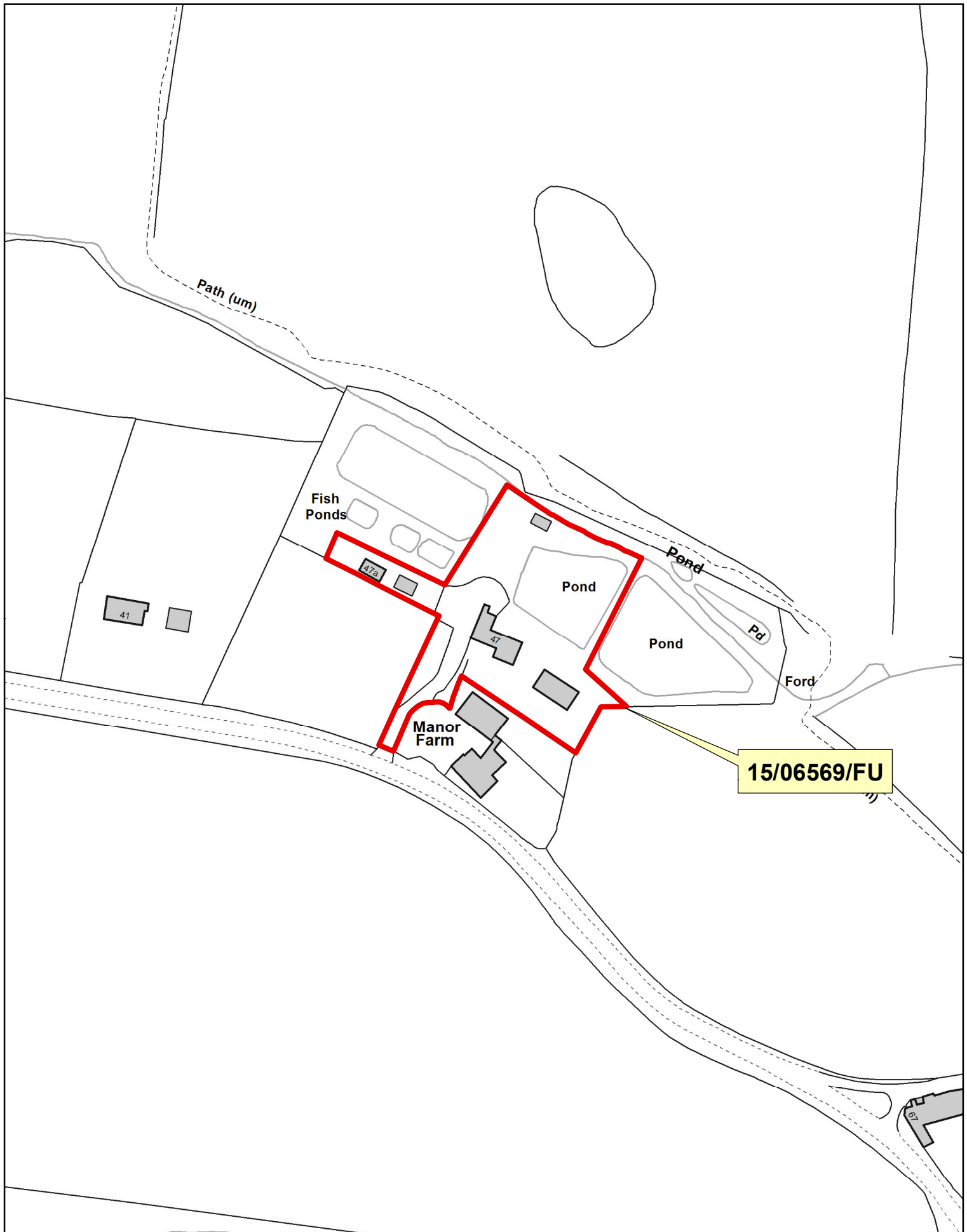


and conservation measures will also deliver biodiversity benefits. The site is not required or suitable for any other agricultural, equestrian or kennel use, and on the balance of these considerations and in light of the submitted evidence, it is considered that the application is acceptable on its merits, the occupancy restriction having outlived its usefulness and in Green Belt terms the necessary very special circumstances having been demonstrated. The application is therefore recommended for approval, subject to the submitted undertaking and conditions as set out at the header of the report.

**Background files:**

Application case files 15/06569/FU  
Signed undertaking under S106.

Certificate of Ownership – Certificate A completed



# NORTH AND EAST PLANS PANEL

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