



## Report of the Chief Planning Officer

### NORTH AND EAST PLANS PANEL

Date: 5<sup>th</sup> July 2018

**Subject: 18/01769/FU – Retrospective application for the housing of animals within a detached agricultural building at, Swillington Organic Farm, Coach Road, off Wakefield Road, Swillington, LS26 8QA**

#### APPLICANT

Mrs Jo Cartwright

#### DATE VALID

21<sup>st</sup> March 2018

#### TARGET DATE

14<sup>th</sup> May 2018

#### Electoral Wards Affected:

**GARFORTH AND SWILLINGTON**

Yes

Ward Members consulted  
(referred to in report)

#### Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

### **RECOMMENDATION: GRANT A TEMPORARY PERMISSION subject to the following condition(s):**

1. The use of the building for the accommodation of livestock shall cease within twelve months

#### **1.0 INTRODUCTION**

1.1 The application relates to an existing barn which was erected under agricultural permitted development rights in 2016, but which from March 2017 has been used to house animals. The applicant wishes to continue to use the barn for livestock and thus retrospective consent is sought for this use of the structure.

1.2 As the structure lies close to a listed building and the applicant is leasing land from St Aidan's Trust, which is managed by Leeds City Council, the application has been referred to Plans Panel for determination.

1.3 Councillor Mark Dobson has expressed support for the proposal.

#### **2.0 PROPOSAL:**

2.1 The existing barn measures approximately 21m<sup>2</sup> and has a pitched roof to a height of 5.5m at eaves and 8.4m to ridge. The structure is constructed of pre-cast concrete panels to its lower walls with timber boarding to the upper portion and a fibre cement roof. The interior of the barn is subdivided into a number of pens and at the time of site visit the floor was laid with fresh straw.

### **3.0 SITE AND SURROUNDINGS:**

3.1 The application relates to Swillington Organic Farm which is an established farming enterprise located to the east of the A642 and within the Green Belt and a Special Landscape area. The farm is accessed via a narrow, uneven track which marks the northern boundary of the agricultural unit, and leads to the farm shop, a collection of farm buildings and a dwelling which is assumed to serve the farm. The access continues a little further to the east and a footpath continues on toward Astley Lane, with the vehicular access turning to the south, leading to Swillington House, the application barn, fishing ponds associated with the farm and an area of hardstanding used for car parking. Historic walled gardens assumed to be associated with the former Swillington Hall, demolished in 1952 are located to the rear of the farm shop and an area of caravan storage is situated to the west of the access road. The holding is a mixed organic farm, farming 500 acres (150 acres owned and 350 acres grazing licence from St Aiden's). As outlined within the submitted supporting information there are approximately 80 beef cattle, 100 sheep, 30 pigs, 1200 chickens and 200 seasonal poultry. Cattle and sheep numbers have recently been increased due to an extended grazing licence with St Aiden's and in addition to the 80 beef cattle there are 45 breeding cattle and 45 calves being reared.

3.2 Historically the farm was a larger unit which has now been subdivided, with Swillington House to the immediate east of the application building now within separate ownership. This is a grade II listed building, with a U-shaped footprint and constructed of ashlar stone with a slate roof.

### **4.0 RELEVANT PLANNING HISTORY:**

4.1 16/03657/DAG Agricultural Determination for detached storage building  
**Approved**

14/04962/DAG Determination for single storey detached storage unit  
**Not Required**

33/461/05/FU Change of use of riding stables involving alterations to poultry slaughter house  
**Approved**

### **5.0 HISTORY OF NEGOTIATIONS:**

5.1 Following the officer site visit concerns relating to noise and odour were raised with the agent and mitigation measures were requested. In response the agent notes that no consultees have raised such concerns and has declined to provide any odour mitigation. Additional planting between the barn and Swillington House has been proposed to minimise noise. A condition relating to planting has not been included at this time due to the recommendation of a temporary permission.

### **6.0 PUBLIC/LOCAL RESPONSE:**

- 6.1 The site has been advertised by Site Notice and in the Yorkshire Evening Post. The applicant has also used their business communications to raise awareness of the planning application.
- 6.2 Ten letters of objection have been received from the occupants of Swillington House; 24 letters of support have been received from seventeen addresses including from the applicant, employees, customers and a veterinary practice in Retford, Nottinghamshire. Of these seventeen addresses the nearest to the site is 208 Leeds Road, approximately 2.5 miles away in Rothwell (an employee) and others are from Liverpool, Coldstream, Lockerbie, Herefordshire and Gloucester.
- 6.3 The objection letters raise concern regarding noise and odour, with noise being a particular concern during the night and audio recordings provided as part of the submissions. Concern is also raised regarding the planning prior approval process, the accuracy of the submitted landholding information, the human rights act, and health and safety legislation.
- 6.4 The letters of support note that the farm is a working business that produces high quality food, that the barn supports animal welfare, and that the structure is screed from the adjacent dwelling. The RSPB have written to note the wetland environment within the land leased from St Aidens Trust means that animals may have to be moved at short notice.
- 6.5 Swillington Parish Council raise no objection to the development.

## **7.0 CONSULTATIONS RESPONSES:**

- |     |                       |   |
|-----|-----------------------|---|
| 7.1 | Highways              | No objection  |
|     | Agricultural Surveyor | Notes that the size of the structure is reasonable for the needs of the holding and concludes that the noise and odour impacts are unlikely to be unreasonable.   |
|     | Environmental Health  | Note that the structure is part of a working farm and the impacts cannot easily be mitigated, and also that noise recording equipment has been offered to the objectors but declined at the present time. |

## **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), The Aire Valley Area Action Plan and any made Neighbourhood Development Plan.

### Local Planning Policy

- 8.2 The following Core Strategy policy is relevant to the proposal:

<u>SP8</u>	Seeks to ensure a competitive local economy and supports the growth and diversification of the rural economy.
<u>P10</u>	Seeks to ensure that new development is well designed and respect its context.
<u>P11</u>	Seeks to ensure that Leeds' heritage assets are conserved and enhanced.
<u>P12</u>	Seeks to ensure Leeds' landscapes are protected.

The following saved UDPR policies are also relevant:

<u>GP5:</u>	Seeks to ensure that development proposals resolve detailed planning considerations, including amenity.
<u>BD6:</u>	Seeks to ensure that development proposals respect the scale, form and detail of the original building.
<u>BD5:</u>	Seeks to ensure new development protects amenity.
<u>N37:</u>	Special Landscape Area
<u>N37A:</u>	Development within the countryside

### National Planning Policy

- 8.3 The National Planning Policy Framework (2012) sets out the Government's planning policies for England and how these are expected to be applied. It sets out the Government's requirements for the planning system. The National Planning Policy Framework must be taken into account in the preparation of local and neighbourhood plans and is a material consideration in planning decisions.
- 8.4 The introduction of the NPPF has not changed the legal requirement that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The policy guidance in Annex 1 to the NPPF is that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. The closer the policies in the plan to the policies in the Framework, the greater the weight that may be given. It is considered that the local planning policies mentioned above are consistent with the wider aims of the NPPF. Draft revisions to the NPPF are currently being consulted upon; at the present time these carry little weight.
- 8.5 The Planning Practice Guidance (PPG) provides comment on the application of policies within the NPPF. The PPG also provides guidance in relation to the imposition of planning conditions. It sets out that 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. The Neighbourhood Planning Act 2017 requires that all pre-commencement conditions are agreed in advance with applicants.

## **9.0 MAIN ISSUES**

- 1) Green Belt
- 2) Rural Enterprise
- 3) Design and Character / Visual Amenity
- 4) Neighbour Amenity
- 5) Representations

## **10.0 APPRAISAL**

### Green Belt

- 10.1 The proposed development is located within the Green Belt. As outlined within the National Planning Policy Framework (NPPF) the essential characteristics of Green Belt are their openness and their permanence. The construction of new buildings within the Green Belt is inappropriate, except within certain circumstances. As outlined within the NPPF inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances.
- 10.2 The barn was originally constructed under Part 6 of section 2 of the General Permitted Development Order, which allows the construction of agricultural buildings subject to certain conditions and criteria. One of these is that the structure is not used to house animals. As noted above the structure is now being used to house animals, and this permission does not seek retrospective consent for the erection of the structure, merely its extended use. The use of the building to house animals will have no greater impact upon the Green Belt than its use to house hay, fodder and equipment. As such the application is acceptable in this regard.

### Rural Enterprise

- 10.3 Spatial Policy 8 of the Core Strategy and section 3 of the Framework seek to support a prosperous rural economy, noting that the sustainable growth and expansion of businesses and enterprises in rural area will be supported. It is understood that the farm has recently expanded the available grazing areas by leasing additional land from St Aidens Trust and that as a consequence the herd size has increased and thus the additional barn is required. There is therefore policy support for the expansion of the business, including the necessary building and structures to support that expansion. Whilst the principle of the development is therefore acceptable, both in respect of the Green Belt and economic development, before reaching a view as to whether the barn is acceptable its impact upon visual amenity and neighbour amenity must first be considered. These assessments are outlined below.

### Design and Character / Visual Amenity

- 10.4 The National Planning Policy Framework states that “good design is indivisible from good planning” and authorities are encouraged to refuse “development of poor design”, and that which “fails to take the opportunities available for the improving the character and quality of an area and the way it functions, should not be accepted”. S72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory duty upon the decision maker to pay special attention to the desirability of preserving or enhancing the character or appearance of the listed building. In such cases, it is necessary to have special regard to the desirability of preserving the building or its setting or any feature of special architectural or historic interest which it possesses. This statutory framework is reinforced by the National Planning Policy Framework (the Framework) at Section 12. Core Strategy policy P11 reflects this special duty and seek to ensure that development is appropriate to its context and preserves the city’s heritage assets. Policy P10 of the Core Strategy seek to ensure that new development is of high quality and is appropriate to its context whilst policy P12 seeks to protect the character, quality and biodiversity of Leeds’ townscapes and landscapes. As outlined above the site is located within a special landscape area (saved policy N37) and it is therefore important to ensure that new development does not harm its character and quality.
- 10.5 The barn which has been constructed is large and is a distinctly utilitarian structure, which has a semi-industrial appearance. Whilst this might suggest that its presence

within a special landscape area and close to a listed building is not appropriate, the barn is typical of modern agricultural buildings and lies adjacent to a similar structure located to the immediate north. The barn is therefore an agricultural building, set adjacent to similar buildings and within a working agricultural landscape, of which the listed building is formally a part. The barn is set approximately 70m from the listed building, and is separated from it by a shared access road and some existing established planting. The listed building is also enclosed by a domestic wall and gates, with a courtyard to the front and outbuildings and gardens to the rear. There is thus a clear sense of separation between the house and the farm building, with the former having a defined curtilage and setting which is both physically distinct and of a different character to the working farm. The physical separation between the two structures and the clearly separate character of each landholding means that the barn is not considered to cause harm to the setting of the listed building. As such the application is acceptable in this regard.

### Residential Amenity

- 10.6 As outlined within Policy P10 of the Core Strategy and saved policy BD5 of the UDP new development must protect amenity, including residential amenity. There is only one independent residential dwelling in close proximity to the barn which is Swillington House to the east. The occupants of this dwelling have raised concern about noise (in particular disturbed sleep) as well as odour. Site visits have been made by the case officer and the agricultural surveyor to the organic farm, and also by the case officer to Swillington House.
- 10.7 At the time of the case officer's site visit to the farm no significant odour was perceptible, nor any significant noise; similar observations were recorded by the agricultural surveyor. During the site visit to Swillington House cattle were audible from within the property, including in upper floor bedrooms. Odour was perceptible from a field to the east where manure had been deposited in piles, clearly over a number of weeks/months. The issues of noise and odour will be discussed in turn.

### *Noise*

- 10.8 It is clear from the neighbour's objection letters that the noise and disturbance they experience is related to the cattle which are housed / weaned within the building. The letters acknowledge that this is not a permanent source of noise, and it is clear that the problems are most acute during the winter months and during weaning. The neighbours have reported particular concerns about lost sleep and night time noise and have reported noise levels of over 80dBb within bedrooms during night-time hours (11pm – 7am). The council has no definitive guidance relating to acceptable noise levels, however the WHO night noise guidance suggests that levels should not exceed 40dB. It is therefore clear that if the recorded levels of over 80bB are accurate, then the impact upon the amenity of Swillington House will be severe and unacceptable. It is understood that neighbours have been in contact with Environmental Health since late last year, and noise monitoring equipment was offered in spring in order to assess the noise impact of the barn. This equipment has been declined at the present time as cattle are no longer routinely housed in the barn and thus the noise impacts are not at the same levels as previously experienced.
- 10.9 Within the objection letters attention has been drawn to the fact that the permitted development regulations under which the barn was constructed prevent the erection of buildings used for cattle within 400m of residential dwellings. From this the inference is drawn that any structure within 400m must, as an a priori fact be harmful to amenity. This however is not the case, and it is simply that any structure within

400m of a residential dwelling that is used to house animals requires planning permission, and thus the impact upon amenity can be fully assessed. In making such an assessment the views of relevant specialist consultees will be of significance. As noted above, both the agricultural surveyor and environmental health colleagues have reviewed the application and both conclude that the barn is part of a working farm, and suggest that the noise levels created by the building are unlikely to be any worse than that generated by cattle within the fields and the general activity of the farm.

- 10.10 These conclusions are noted, although it should also be borne in mind that the barn is now the second structure used to house animals in proximity to Swillington House and thus this creates a concentration and intensification of activities, particularly during weaning and over wintering. The use of the barns and associated activity will have a materially different impact than the general grazing of cattle on land which is remote from the residential dwelling. This said planning permission can only be refused where there is clear and demonstrable evidence of unreasonable harm. At present, the reported 80dB reading taken by the neighbours is unverified by the authority's environmental health team, and in the absence of independent readings, the refusal of planning permission on account of noise would be un-evidenced and thus unreasonable. It is for this reason that officers are recommending that a temporary permission be considered for a period of twelve months, as this would allow the full impact of the structure to be considered through all seasons. If harm is demonstrated through environmental health monitoring then the permission would fall away after twelve months; if harm is not demonstrated than a further application can be made and permanent permission granted. Temporary permissions can sometimes be considered unreasonable as they can require significant investment on the part of an applicant with no guarantee of a permanent return. However, in this instance the building has already been erected and its interior is fitted out to enable the use required by the working farm. As such a temporary permission would pose no financial risk to the applicant, nor curtail the working of the farm, and thus is not an unreasonable proposition in the circumstances.

#### *Odour*

- 10.11 As outlined above concern is also raised by the objectors about the impact of odour. The presence of manure piles on fields to the immediate rear of Swillington House was noted during the officer site visit to the neighbours, and odour from these piles was perceptible within the gardens and grounds of Swillington House. It was also clear that manure has been deposited within the field over a long period of time and thus depositing refuse material close to the neighbours is an established practice. No odour was detected within the barn or its immediate environs by the case officer or the agricultural surveyor, with the surveyor noting that more frequent cleaning of the structure will likely lead to increased odour. Whilst it is unfortunate that the manure is deposited close to the neighbours garden area and not on fields further away from the house, there is little that can be done to regulate this aspect of the working farm. It is likely that this practice pre-dated the construction of the barn, and the manure piles will include material from other structures such as the other barn to the north. Planning conditions can only address the direct impacts of a development and it would be very difficult enforce any condition that sought to regulate the impact of manure from the application barn, as other areas of the farm will still generate manure, and could be stored or deposited anywhere within the farm's land. Officers have requested that the agent look to mitigate the impact of the odour from the manure piles, and it was hoped that perhaps a management plan that sought to deposit such material away from the dwelling would be produced. However, the

agent has declined to address the odour impacts and as noted the ability of the LPA to address this issue through the current planning application is limited, and even a condition that sought to manage the waste material from the application barn would not likely resolve the concerns of the neighbours in relation to odour.

#### *Overdominance and Overshadowing*

- 10.12 Concern has been raised by the neighbours in relation to the size and scale of the barn. The barn is undoubtedly a structure with a large footprint, and is essentially two stories in scale and is visible from the front windows of Swillington House. However, at a distance of approximately 70m the barn cannot be said to have an unreasonably overbearing or overdominant impact upon main windows and main amenity space, nor to cause harmful overshadowing. The barn has undoubtedly changed the view experienced by the residents of Swillington House, from one of open fields to a semi-industrial structure, however there is no right to a pleasant view within planning legislation, merely the right to appropriate outlook and light penetration. As noted the distance to the barn is sufficient to mitigate any impact in these respects.

#### Other Matters

- 10.13 All material considerations raised through representations have been discussed above. It is noted that the objectors have drawn attention to the ECHR, Health and Safety Legislation, the planning prior approval process and the accuracy of the submitted landholding information.
- 10.14 Concern has been raised relating to public health and the impact of the odour emissions. Whilst public health is a general material planning consideration, specific harmful impacts of any development are regulated by separate legislation and regimes. It is generally accepted that when considering planning applications a Local Planning Authority must assume that these regimes will operate effectively and not seek to duplicate the regulatory functions of other public bodies.
- 10.15 Article 8 of the European Convention on Human Rights relates to the right to privacy and a family life. It is well established that the grant, or denial, of planning permission does not breach the European Convention on Human Rights. The general purpose of the ECHR is to protect human rights and fundamental freedoms and to maintain and promote the ideals and values of a democratic society. It sets out the basic rights of every person together with the limitations placed on these rights in order to protect the rights of others and of the wider community. The planning system by its very nature respects the rights of the individual whilst acting in the interest of the wider community. It is an inherent part of the decision-making process to assess the effects that a proposal will have on individuals and weigh these against the wider public interest in determining whether development should be allowed to proceed.
- 10.16 In respect of the landholding information, the applicant has signed certificate A to state that they own all the land relating to the application (ie the land on which the barn sits). Any disputes that relate to the wider landholding are ultimately a matter between the relevant parties which must be resolved outside the planning process. The concerns relating to the prior approval process are noted and it is understood that this matter is being pursued through the council's complaints procedure and the Local Government Ombudsman.

## **11.0 CONCLUSION**



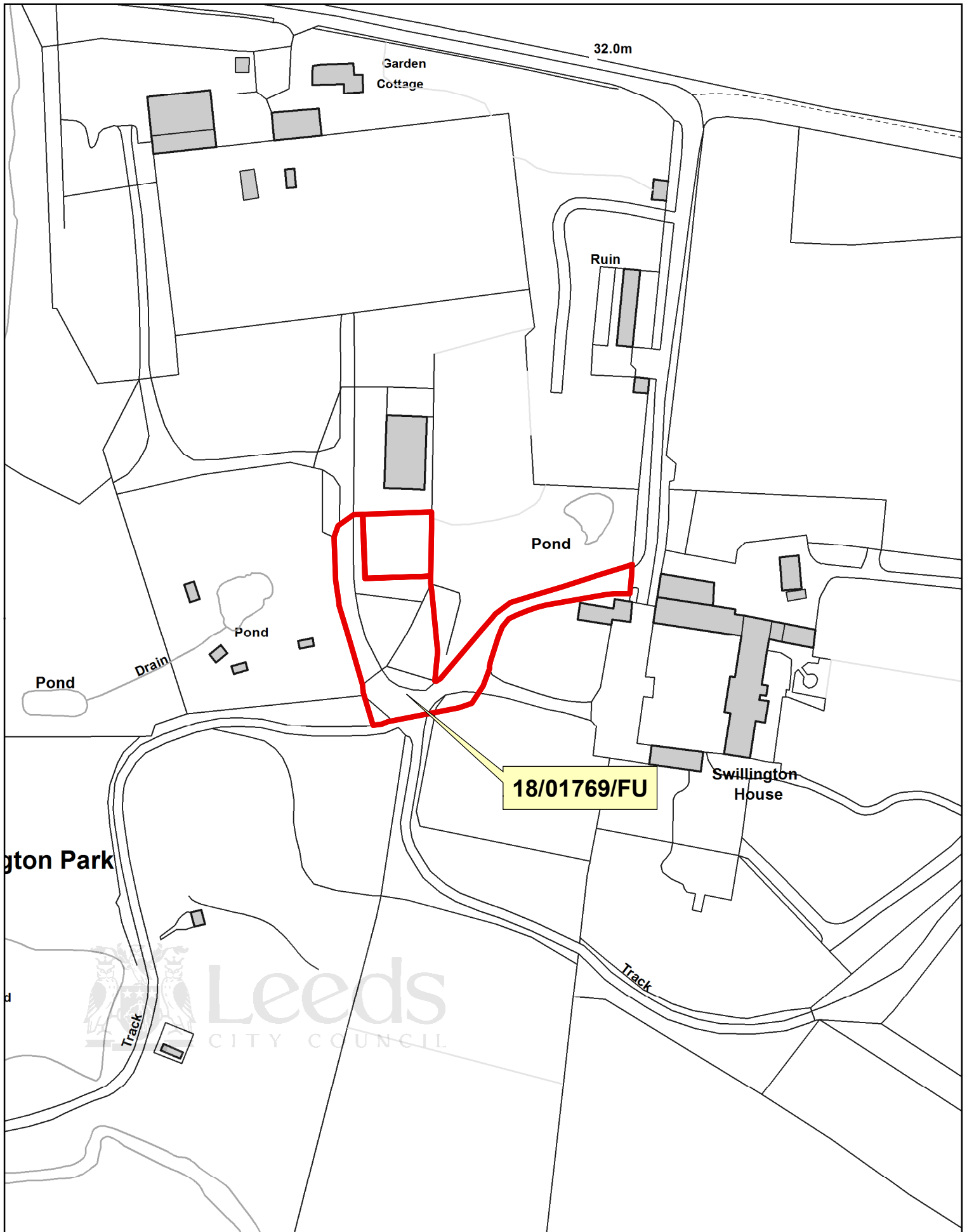
11.1 The application is therefore considered to be acceptable. The barn is considered to be an appropriate structure within a working agricultural landscape that will not harm the character of the listed building, special landscape nor the wider area. At the present time the full impact in respect of neighbouring amenity cannot be fully assessed and thus a temporary permission is recommended to allow for the impact to be monitored.

**Background Papers:**

Application files

18/01769/FU

Certificate of ownership: Certificate A signed by the agent



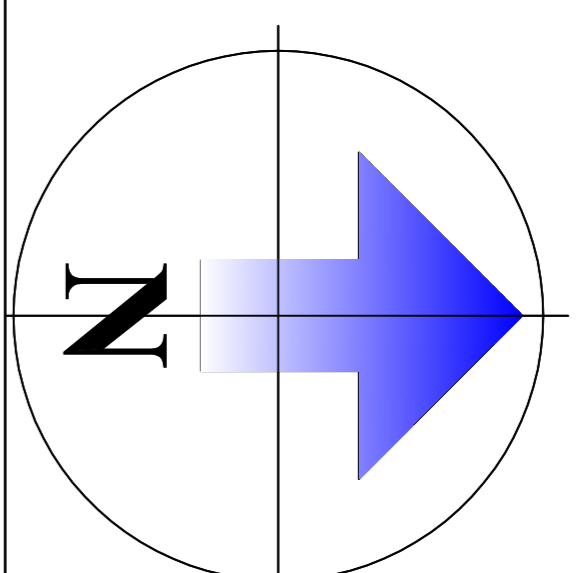
# NORTH AND EAST PLANS PANEL

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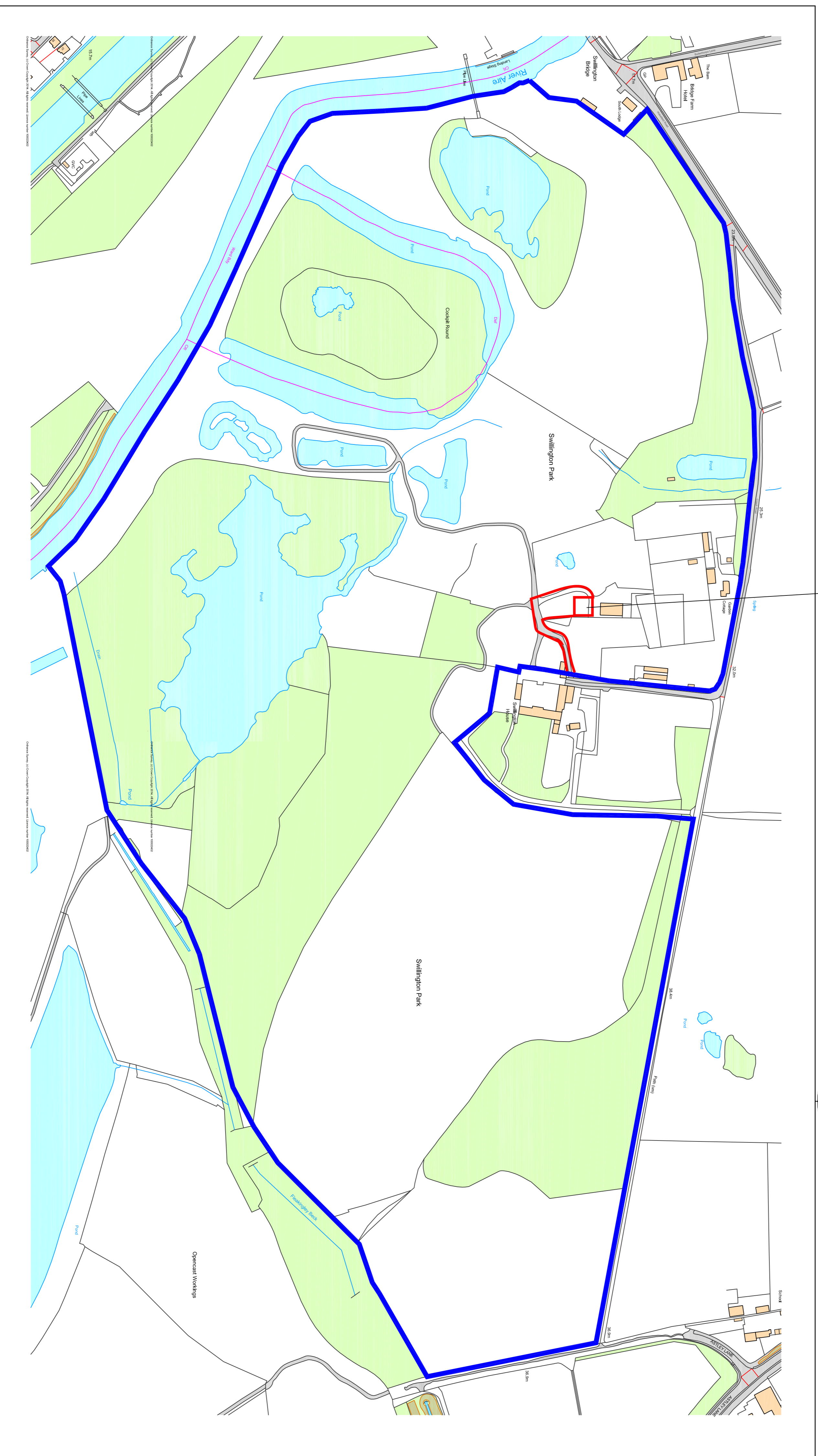
PRODUCED BY CITY DEVELOPMENT, GIS MAPPING & DATA TEAM, LEEDS CITY COUNCIL

SCALE : 1/1500





Proposed agricultural barn



Site location plan

Swillington Organic Farm  
Garden Cottage  
Coach Road  
Swillington  
Leeds  
LS26 8QA

SCALE  
1:2500