



Report of the Chief Planning Officer

NORTH AND EAST PLANS PANEL

Date: 9th August 2018

Subject: 19/02842/FU – Retrospective application for the housing of animals within a detached agricultural building at Swillington Organic Farm, Coach Road, Wakefield Road, Swillington, Leeds, LS26 8QA

APPLICANT

Prism Agriculture Ltd

DATE VALID

9th May 2019

TARGET DATE

4th July 2019

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 PERMISSION subject to the following condition:

1. The building for the accommodation of livestock shall only be permitted where:
 - the need to accommodate the livestock arises from quarantine requirements, or an emergency due to another building or structure in which the livestock could otherwise be accommodated being unavailable because it has been damaged or destroyed by fire, flood or storm;
 - or in the case of animals normally kept out of doors, they require temporary accommodation in a building or other structure because they are sick or giving birth or newly born, or to provide shelter against extreme weather conditions.

1.0 INTRODUCTION:

1.1 The application relates to an existing barn which was erected under agricultural permitted development (PD) rights in 2016. A retrospective application to allow the structure to be used for the permanent housing of animals was received in March of 2018 after it became apparent through enforcement investigations that the building had been used to house animals from March 2017.

1.2 This application was considered by North and East Plans Panel on 5th July 2018 and Members shared officer concerns relating to the unknown noise impacts of the structure on the nearby residential dwelling. As such a one year temporary permission granted as this would allow both the applicant to use the structure in accordance with their business needs, and also allow noise monitoring to be undertaken. The Panel resolved:

To grant planning permission in accordance with the recommendation (12 month temporary permission for the use of the building for the housing of animals). In addition Members requested that:

- Officers investigate whether the car parking area constitutes a breach of planning control, and
- Officers to give consideration, in the event that a permanent permission is recommended to be granted, whether a condition can be imposed removing some or all of the agricultural permitted development rights.

An application for the permanent use of the building for the housing of animals shall be reported to Panel for determination.

1.3 Permission was granted on 6th July with the following condition:

The use of the barn for the housing of animals shall cease on or before 6th July 2019.

In the interests of proper planning and residential amenity.

1.4 As this temporary period has now ended the applicant is seeking to allow the building to permanently house animals it is considered appropriate to report this application back to Plans Panel for determination. Furthermore 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, and as such a panel determination is appropriate.

1.5 With regard to the car park this matter was investigated (case reference: 18/00717/UCU3) by the Planning Compliance team. It was noted that available evidence showed that the area had been used as a car park for some period of time. The area had been extended over the last 10 years through the laying of hardcore over the land. The extent of works was considered to be 'de-minimis'. In light of these factors, and that the use remains ancillary to the farm's function, it was not considered expedient to take enforcement action. The investigation was closed in early September 2018. Ward Members were kept informed of the progress of the investigation.

1.6 Turning to the issue of imposing a condition removing permitted development rights the Planning Practice Guidance gives the following guidance:

“Conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances...” (Paragraph: 017 Reference ID: 21a-017-20140306)

- 1.7 In this case the application site forms part of a wider working agricultural unit. There are no apparent exceptional circumstances that would justify the removal of permitted development rights from across the farm. Accordingly it is not considered appropriate to impose a condition removing permitted development rights.

2.0 PROPOSAL:

- 2.1 The existing barn measures approximately 21m² 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 SURROUDNINGS

- 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).
- 3.2 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. The supporting statement also notes that the building is required to house animals over winter, in periods of bad weather, and as an isolation unit in order to meet animal welfare regulations.
- 3.3 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 18/01769/FU Retrospective application for the housing of animals within a detached agricultural building
Approved (temporary consent)

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 None

6.0 PUBLIC/LOCAL RESPONSE:

6.1 The site has been advertised by Site Notice and in the Yorkshire Evening Post.

6.2 No letters of objection or support have been received from the public.

6.3 Councillor Mark Dobson has expressed support for the proposal.

6.4 Swillington Parish Council raise no objection to the development.

7.0 CONSULTATIONS RESPONSES:

7.1	Highways	No objection
	Agricultural Surveyor	None
	Agricultural Surveyor (2018)	Noted that the size of the structure was reasonable for the needs of the holding and concluded that the noise and odour impacts were unlikely to be unreasonable.
	Environmental Health	Note that their previous comments are still applicable, that no noise complaints have been received this year and no noise monitoring has been undertaken; as such no conclusion can be reached on this issue.
	Environmental Health (2018)	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.
	Conservation	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), The Aire Valley Area Action Plan and any made Neighbourhood Plan.

Local Planning Policy

8.2 The following Core Strategy (Selective Review) policies are 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

Site Allocations Plan (SAP)

8.3 The SAP was adopted by full Council on 10th July 2019 and as such is now a material consideration with full weight.

8.4 There are no policies within the SAP relevant to this proposal

Core Strategy Selective Review

8.5 Hearing sessions relating to this selective review of the Core Strategy were completed at the end of February/beginning of March 2019 and the Inspector's Main Modifications were published on April 10th 2019. Executive Board recommended that these Modifications be subject to consultation at their meeting on 16th May and this expires at the end of July. The CSSR is anticipated to be adopted in September. The advanced nature of the CSSR is such that significant weight can be attached to the revised policies where relevant.

8.6 There are no policies within the SAP relevant to this proposal

Neighbourhood Planning

8.7 No draft or made neighbourhood plans are relevant to this application

National Planning Policy

- 8.8 The National Planning Policy Framework (2019) 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.
- 8.9 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.
- 8.10 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 for all applications determined after October 2018 any 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) Other Matters
- 6) Planning Balance

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 (GPDO), 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 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.

10.3 Furthermore as outlined within paragraph 145 of the Framework agricultural buildings are one of the noted exceptions, and this is without further qualification or caveat. Local Policy N33 also includes this exception, and as this element of the policy remains in full accordance with the Framework it can be given full weight in accordance with para 213 of the Framework.

10.4 As such the application is in accordance with the local plan and national policy in respect of protection of the Green Belt.

Rural Enterprise

10.5 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 expanded its available grazing areas last year 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.

10.6 When temporary permission to use the structure for animals was granted by Panel last year it was with the understanding that the structure would be used ordinarily in accordance with business needs, so that a full assessment of its impact upon near neighbours could be undertaken. The agent confirms that the structure has been used in this manner, and as outlined in paragraph 10.19 below the barn has not been used permanently to house animals. As such it is not considered that the need to permanently house animals in the barn has been demonstrated.

10.7 When a barn is erected under agricultural PD rights it cannot be used to house animals if it lies within 400m of a protected building (residential dwelling not associated with the farm), other than in two circumstances. These are:

- the need to accommodate the livestock arises from quarantine requirements, or an emergency due to another building or structure in which the livestock could otherwise be accommodated being unavailable because it has been damaged or destroyed by fire, flood or storm;
- or in the case of animals normally kept out of doors, they require temporary accommodation in a building or other structure because they are sick or giving birth or newly born, or to provide shelter against extreme weather conditions.

10.8 It is considered that replicating these conditions is appropriate, and in accordance with the legal test for the imposition of conditions to the full planning consent. As will be outlined below the noise impact of the proposal is still unquantified, however imposition of the conditions will protect amenity whilst also allowing the barn to be used flexibly as required by the needs of the business.

- 10.9 As such is considered that the proposal is in accordance with the development plan in respect of economic development, and that the imposition of the conditions outlined at the head of the report will not harm the business needs.

Design and Character / Visual Amenity

- 10.10 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.
- 10.11 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 formerly 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

- 10.12 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 previously raised concern about noise (in particular disturbed sleep) as well as odour. Site visits have previously been made by the case officer and the agricultural surveyor to the organic farm, and also by the case officer to Swillington House. A further site visit has been undertaken in relation to this application.

10.13 At the time of the case officer's previous site visit to the farm no significant odour was perceptible, nor any significant noise; similar observations were recorded by the agricultural surveyor. This situation was also the case during the more recent site visit; cattle were audible but not to a degree that would cause significant harm to residential amenity. During a site visit to Swillington House last year cattle were audible from within the property, including in upper floor bedrooms and this was of concern. Previously odour was perceptible from a field to the east where manure had been deposited in piles clearly over a number of weeks/months. When the application was last reported to Plans Panel members heard unconfirmed audio recordings of the cattle noise. Members thus resolved to accord with the officer recommendation to grant planning permission for twelve months to allow the situation to be monitored. It was expected that the barn would be used normally by the business and that should noise complaints be received that Environmental Health colleagues would monitor the situation and reach a view about the impact. Members also expressed concern relating to the deposit of manure piles close to the neighbouring dwelling and requested that these be moved. It was not possible at the recent site visit to ascertain whether these had been moved, however the agent has confirmed that this has been done.

Noise

10.14 It is clear from the neighbour's objection letters on the previous application that the noise and disturbance they experienced last year was related to the cattle which were housed / weaned within the building. The letters acknowledged that this was not a permanent source of noise, and that the problems were most acute during the winter months and during weaning.

10.15 There have been no noise complaints received during the course of the last year, nor have any objections been received in relation to the current planning application. As a consequence Environmental Health colleagues have had no reason to monitor the structure and its use. This therefore means that there is no additional evidence relating to the impact of the barn and its operation upon the amenity of near neighbours. The consultation response from Environmental Health reflects this situation, noting that there is the "potential for noise disturbance from the development [but they are] unable to confirm whether or not there is a statutory noise nuisance in this case".

10.16 This therefore potentially leaves both officers and members with the same situation as last year, namely that neighbours have raised significant concern in relation to the noise impacts of the building, and the levels of noise recorded by the neighbours (80dBb within bedrooms during night-time hours (11pm – 7am)) would breach the WHO night noise guidance levels of 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. However, as advised at the previous Panel meeting the weight that can be given to this measurement is limited, as the reading is unverified by any independent source. As no noise monitoring has been undertaken during the last twelve months there remains no evidence that can quantify the impact of the barn and thus allow a decision maker to reach a view about whether the impact on neighbours is acceptable, or conversely is harmful.

10.17 It would therefore be possible to re-impose a temporary permission for another twelve months in order to allow a further period of noise monitoring. However, whilst this is possible it should be recognised that the frequent renewal of temporary permissions is not generally recommended as this results in uncertainty

for all parties and also presents the business with the cost of a planning application each year.

- 10.18 It is therefore best if a solution can be found that allows the barn to be used in a manner that reflect the needs of the business whilst protecting the amenity of neighbours. Information has been sought from the agent in order to understand how the building has been used in the last year in the hope that this would help officers begin to quantify the impact of the barn.
- 10.19 The agent identified that twenty cattle were kept in the shed over winter from December to March / April and that ninety-six sheep were brought in for lambing in April. It was also noted that animals may need to be brought in for welfare purposes during bad weather conditions, or for isolation of sick animals. This use is actually considered to be of a relatively low intensity. For comparison it should be noted that whilst part 6 of the GPDO (under which the building was initially constructed) prevents buildings within 400m being used to housing animals, the Order does include exceptions. This allows a building to be used for housing livestock if there is no other suitable building 400m or more from the curtilage of a dwelling and:
- the need to accommodate livestock arises from quarantine requirements or an emergency due to another building or structure in which the livestock could otherwise be accommodated being unavailable because it has been damaged or destroyed by fire, flood or storm; or
 - in the case of animals normally kept out of doors, they require temporary accommodation in a building or other structure because they are sick or giving birth or newly born, or to provide shelter against extreme weather conditions.
- 10.20 The exceptions within the GPDO would therefore not prevent the activity that has been outlined by the agent, allowing the use of the building for lambing and all activities associated with welfare or isolation concerns. It is noted that the GPDO does not make any provision for the overwintering of cattle, however it is also clear that this is not how the barn has been used. The cattle are kept on the fields during the winter, and with a head of circa 170 it is clear that only a small portion of the cattle were within the barn during the winter months and thus any need to house some cattle would be covered by those caveats relating to welfare and weather. It is therefore proposed that the standard GPDO conditions be applied to a permanent permission and that this strikes the right balance between the needs of the business and the protection of neighbouring amenity. It should be noted that the imposition of such a condition does not prevent an application being made to amend, vary or remove the condition should the business needs change in the future.
- Odour*
- 10.21 As outlined above concern has previously been 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 previous 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. No odour was detectible on site at the most recent site visit, and it is understood from the agent that the manure pile has been moved. As such it is considered that this matter has been resolved in so far as it possible.

Overdominance and Overshadowing

- 10.22 Concern has previously 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

- 10.23 All material considerations raised through representations have been discussed above.

Planning Balance

- 10.24 The barn will help to support the growth of a rural business and substantial weight can be given to this matter, albeit only significant weight is given in this instance as the need to permanently house animals has not been demonstrated, nor has an overriding case been made as to the siting of the building in close proximity to the neighbouring dwelling. The barn has the potential to harm the amenity of neighbours through noise and odour and this matter is given substantial weight. The barn will not harm the protection of the Green Belt, the special landscape area, the setting of the adjacent listed building, nor highway safety. These matters are neutral and weigh neither for nor against the application.

11.0 CONCLUSION

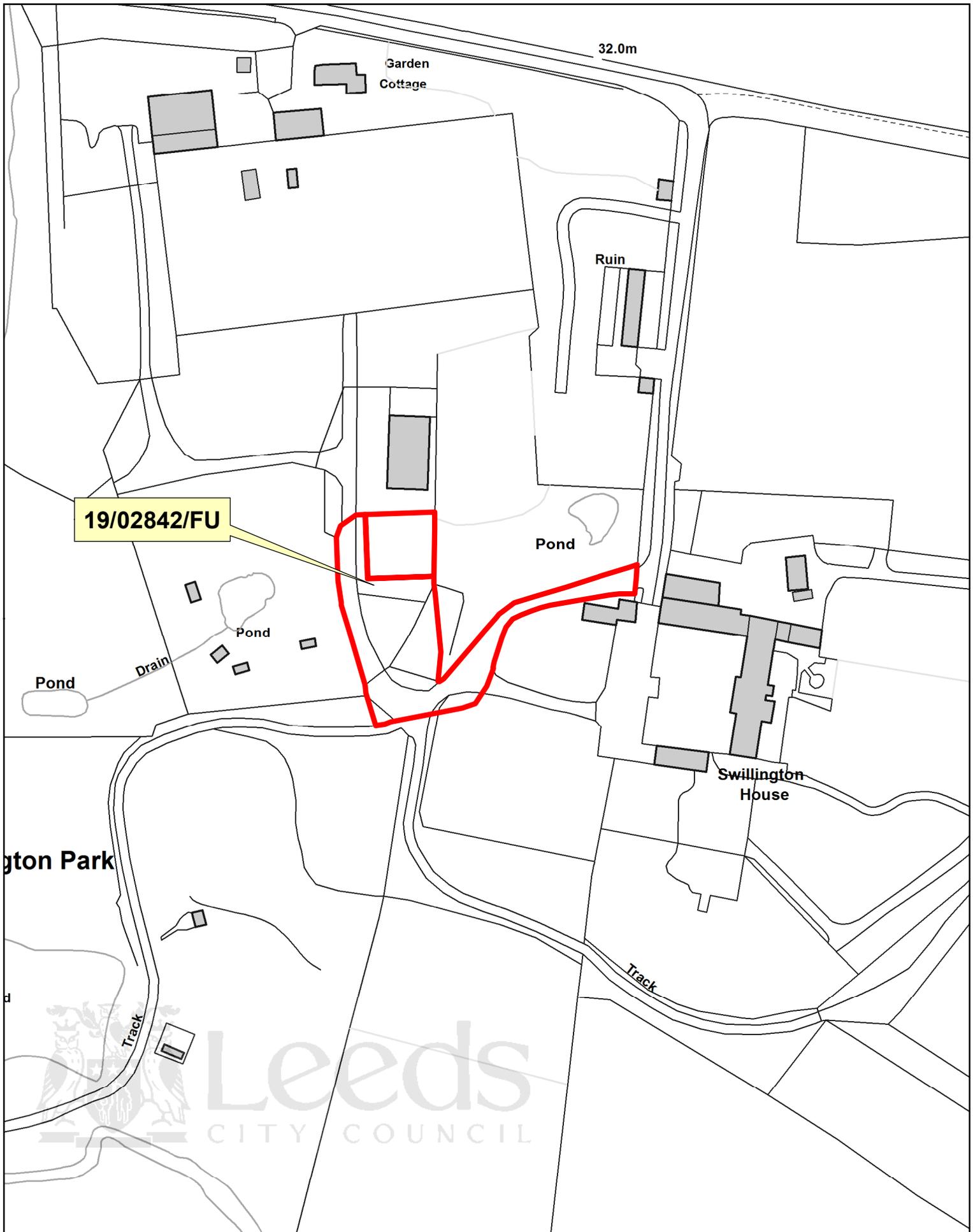
- 11.1 The application is therefore considered to be acceptable, subject to the imposition of conditions limiting the use of the barn to house animals to particular circumstances in order to protect the amenity of neighbours.

Background Papers:

Application files

19/02842/FU

Certificate of ownership: Certificate A signed by the agent



19/02842/FU

32.0m

Garden Cottage

Ruin

Pond

Pond

Drain

Pond

Swillington House

gton Park

Track

Track

Leeds
CITY COUNCIL

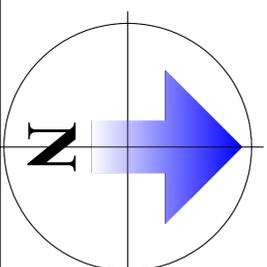
NORTH AND EAST PLANS PANEL

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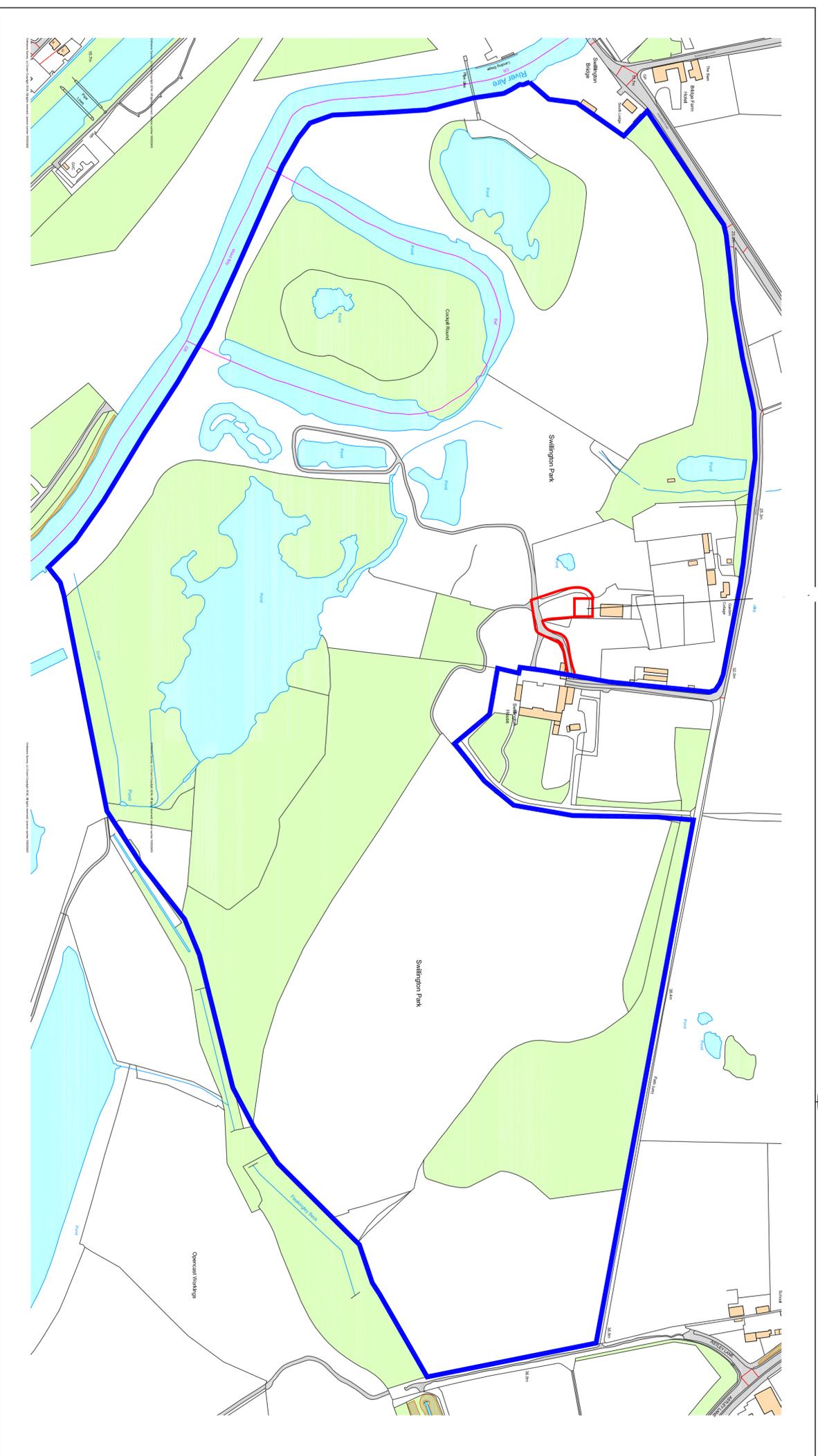
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Site location plan

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



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