



# Northumberland County Council

## Virtual Castle Morpeth Local Area Council 12th October 2020

<b>Application No:</b>	20/01752/COU		
<b>Proposal:</b>	Change of use from highway to agricultural grazing land		
<b>Site Address</b>	Land South East Of Manor House, Shilvington, Northumberland		
<b>Applicant/ Agent</b>	Mr. Peter Swift, Dunwoodie Architects, 16 Charlotte Square, 6-8 Charlotte Square, Newcastle upon Tyne, NE1 4XF		
<b>Ward</b>	Ponteland East And Stannington	<b>Parish</b>	Whalton
<b>Valid Date</b>	24th June 2020	<b>Expiry Date</b>	26th August 2020
<b>Case Officer Details</b>	Name: Mr. James Blythe Job Title: Planning Officer Tel No: 01670 625551 Email: james.blythe@northumberland.gov.uk		

**Recommendation:** That Members GRANT planning permission for the proposed development, subject to recommended conditions and informatives.

### 1. Introduction

- 1.1 Objections have been received from the Parish Council and a local resident raising concerns with the proposed development. Following referral to the Director of Planning, the Chair and Vice Chair of the Castle Morpeth Local Area Council under the current delegation scheme, it was agreed that this application raises sufficient interest within the wider community to be considered by Members of Committee.

### 2. Description of the Proposals

- 2.1 Planning permission is sought for a change of use of existing highway verge to agricultural grazing land at the junction between the C153 and the C361, on land to the South East of Manor House, Shilvington, Northumberland.
- 2.2 There are no existing footways or street lighting or immediate access to regular public transport services within the application site.

### 3. Planning History

N/A.

### 4. Consultee Responses

Whalton Parish Council	The Council objects to this application as: <ul style="list-style-type: none"><li>● It is a fundamental part of English Law that once a piece</li></ul>
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	<p>of land has become a highway, then it remains a highway unless there is some clear reason to formally remove that status.</p> <ul style="list-style-type: none"> <li>● The application contains NO evidence or justification to change that status.</li> <li>● The response from the local highway authority does not address the need for justification, merely stating that it "will not have a SEVERE impact on highway safety" (my emphasis). This must mean there will be an impact on safety. That impact is not quantified or addressed.</li> <li>● The Shilvington Road is increasingly used by cyclists and walkers and the Parish Council is concerned about the safety implications of conflicts between those users and the larger agricultural/commercial and 4x4 vehicles.</li> <li>● To remove vision splays at the junction with the road to Ponteland will increase the danger of such conflicts. The road to Ponteland is relatively straight approaching the junction and vehicles do travel at high speeds. Has there been any analysis of traffic speeds and movements at this junction please?</li> <li>● Given that there are fencing posts encroaching on the site at the present time, it is arguable, even if the local planning authority were to grant permission for the change of use, that an application under section 247 TCPA 1990 would not be successful as it would be retrospective.</li> <li>● The local highway authority has responded to the application (see 3 above) but the response contains no reference to consultation with the highway user groups. Would you please confirm that those groups have been consulted, in particular the groups representing walkers, cyclists and horse riders?</li> <li>● The local highway authority has not addressed its duty to assert and protect the highway under section 130 Highways Act 1980 in their response.</li> </ul>
<p>Local Highway Authority</p>	<p>The Local Highway Authority have confirmed that they consider the land to be unnecessary for highway purposes.</p> <p>The formal consultation response from the Local Highway Authority states:</p> <p><b>Road Safety:</b> The submitted application, including site layout and location plans, indicate that the change of use of highway verge to agricultural grazing land will be on the parcel of highway land at the junction between the C153 and the C361.</p> <p>These sections of adopted highway have a 60mph speed limit, no existing footway or street lighting, and provide access to the neighbouring farmsteads.</p> <p>Details of boundary treatments adjacent to the C153 and C361 will be required in order to maintain visibility at the junction, and these details will be secured by condition. It is</p>

considered that the provision of an appropriate boundary treatment will not obscure visibility splays at this junction.

It is considered that the proposed change of use of this land will not have an adverse impact on highway safety, subject to the compliance with conditions with regards to the Town and Country Planning Act and the Highways Act as detailed in this Response.

**Highway Works:**

As a result of this development the applicant will be required to enter into a S184 Agreement with the Highway Authority to provide a means of access to the enlarged or separate agricultural field, which shall be from the northern boundary only. The highway verge at the redundant access points on the eastern and northern boundary of the site will need to be additionally reinstated. Details of these works will be required, and can be secured by condition with the works being carried out prior to the change of use of the land being brought into first use.

**Highway Land and Property issues:**

Currently the parcel of land is classed as Public Maintainable Highway and will need to be stopped up under Section 247 of the Town and Country Planning Act. The stopping up will need to be confirmed prior to the change of use of this land, and this will be secured by condition. No obstructions of the existing highway can occur until such time the Stopping Up Order has been Made.

Further to the response indicates no objection subject to the imposition and implementation of a condition and informatives required to ensure acceptability.

The requested conditions relate to the stopping up of the public highway, details of reinstatement of highway, details of the proposed boundary treatments and details of means of vehicular access to be constructed. The requested informatives relate to the stopping up/diversion of the highway and alterations to vehicle crossing points that may require a Section 184 agreement.

Historic England	<p>We refer you to the following published advice which you may find helpful in determining the application.</p> <ul style="list-style-type: none"> <li>• Planning Practice Guidance: Historic Environment – MHCLG 2014; and</li> <li>• The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning: 3 (2nd Edition) – Historic England 2017.</li> </ul> <p>We also suggest that you seek the views of your specialist conservation and archaeological advisers, as relevant.</p> <p>Scheduled Monument Consent is not required but we advise that the applicant is made aware that it may be should any hedging or fencing along the monument boundary be considered.</p>
NCC Archaeology	<p>Based on the information submitted with the application, the proposed change of use is unlikely to materially harm the significance of any archaeological remains within the application site, including the contribution made by setting to that significance.</p> <p>The application does not identify any proposed landscaping or intrusive works within the application area. However, should any groundworks be proposed, these would potentially impact or destroy any surviving archaeological remains within the site. Since the site borders the scheduled monument to the west (Deserted Village at Shilvington, monument 1006505) any archaeological remains associated with the medieval village which extent into the site should be regarded as being of equivalent significance to those within the monument in line with footnote 63 of the NPPF. Should any earthworks, hard or soft landscaping be proposed, it may be necessary for a programme of archaeological mitigation to be undertaken.</p> <p>The applicant is also recommended to seek clarification from Historic England regarding the precise extent of the scheduled monument boundary before any work on site takes place.</p> <p>Based on the information submitted with the application, there are no objections to the proposed development on archaeological grounds. However, I recommend that a condition is attached to any grant of planning permission to secure a programme of archaeological monitoring during any intrusive earthworks undertaken as part of the change of use application, if applicable.</p>
NCC Building Conservation	<p>We have reviewed the submitted plan and note the following:</p> <ul style="list-style-type: none"> <li>• The site does not contain any listed buildings;</li> <li>• The site is not in proximity to any listed buildings whose setting may potentially be impacted by the development</li> <li>• The site is not located in or situated within proximity to a designated Conservation Area.</li> </ul> <p>Building Conservation has no comments to offer.</p>

The above is a summary of the consultee responses received. The full written text is available on our website at:

<https://publicaccess.northumberland.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=QBROFXQSGUL00>

## 5. Public Responses

### Neighbour Notification

Number of Neighbours Notified	2
Number of Objections	1
Number of Support	0
Number of General Comments	0

### Notices

No Site Notice required.

No Press Notice required.

### Summary of Responses:

One representation has been received as a result of publicity carried out on this application, raising objection to the proposal as follows:

- The area is a well-used layby at the side of the public highway. It should not be enclosed.
- When exiting the side road the fence posts are already erected (with or without permission of the Highway Authority?) cause a dangerous lack of vision of vehicles approaching the junction (often at speed) as the grass cannot be cut. The vision is also much reduced when the grass has not grown.
- I am surprised that the applicant has made an application to enclose property of the County Council which is part of a public highway.

## 6. Planning Policy

### 6.1 Development Plan Policy

Castle Morpeth District Local Plan (2003, saved policies 2007)(CMDLP):

C1 - Settlement boundaries;  
C16 - Green Belt;  
C17 - Green Belt; and  
WHC1 - Whalton Settlement Boundary.

### 6.2 National Planning Policy

National Planning Policy Framework (2019) (NPPF); and  
National Planning Practice Guidance (2019, as amended) (NPPG).

### 6.3 Other documents/strategies

Northumberland County and National Park Joint Structure Plan (February 2005):

S5 – Extension to the Green Belt.

Northumberland Local Plan Publication Draft Plan (Regulation 19) (NLPPD) and proposed minor modifications, submitted on 29 May 2019:

STP 1 - Spatial strategy;  
STP 2 - Presumption in favour of sustainable development;  
STP 3 - Sustainable development;  
STP 7 - Strategic approach to the Green Belt;  
STP 8 - Development in the Green Belt;  
QOP 1 - Design principles (Strategic Policy);  
QOP 2 - Good design and amenity;  
TRA 2 - The effects of development on the transport network; and  
TRA 4 - Parking provision in new development;  
ENV 1 - Approaches to assessing the impact of development on the natural, historic and built environment;  
ENV 2 - Biodiversity and Geodiversity; and  
ENV 7 - Historic environment and heritage assets.

## 7. Appraisal

7.1 The main issues for consideration in the determination of this application are:

- Principle of the development (including the impact upon the open countryside and the Green Belt);
- Design and visual impact;
- Impact on the amenity of neighbouring land users;
- Impact upon designated heritage assets and archaeology; and
- Highway safety and parking provision.

7.2 Paragraph 48 of the NPPF states that from the day of its publication, weight can be given to policies contained in emerging plans dependent upon the stage of preparation of the plan, level of unresolved objections to policies within the plan and its degree of consistency with the NPPF. The emerging Northumberland Local Plan was submitted to the Planning Inspectorate for examination in May 2019, along with a schedule of Minor Modifications (May 2019) following public consultation and is currently being Examined. The Authority are therefore affording appropriate weight to policies contained within the emerging plan which form a material consideration in determining planning applications alongside Development Plan Policies.

### **Principle of the Development (Including Impact upon the Open Countryside and Greenbelt)**

7.3 It is noted that response from the Parish Council raises concerns that no justification has been provided for the proposed change of use. The Agent of the application has since provided information to confirm that the applicant has had numerous problems with the area in question and wishes to change the use of the area and incorporate the land into neighbouring agricultural use to prevent future problems such as fly tipping and overnight travellers parking.

7.4 It is also acknowledged that the application site falls outside any identified settlement boundary. As such the site is considered to fall within the open countryside. Policies C1 and WHC1 of the CMDLP does not permit development beyond defined settlement boundaries.

7.5 The site also falls within the designated green belt under Policy S5 of the Northumberland County and National Park Joint Structure Plan. Local Plan Policies C16 and C17 and the NPPF also refer to the Green Belt.

7.6 In this instance, the proposal is in relation to a change of use from highway to agricultural grazing land and there is no built development proposed. Whilst the provisions of such can be appropriately assessed within later sections of the appraisal, the principle of development in regard to open countryside and Green Belt is considered acceptable and as the proposal would not conflict with Policy S5 of the Northumberland County and National Park Joint Structure Plan, Policies C1, C16, C17 and WHC1 of the CMDLP and the provisions of the NPPF. Furthermore, it is considered the proposal would accord to the principles of Policies STP 1, 2, 3, 7 and 8 of the emerging NLPPD in terms of the impact upon open countryside and the Green Belt.

### **Design and Visual Impact**

7.7 The proposal relates to a change of use from highway to agricultural grazing land. The proposal does not relate to any built development. It is considered that the proposal would be seen in context with the surrounding area and would complement the surrounding open countryside and agricultural uses. Therefore the design and visual impact of the proposal is considered acceptable and in accordance with the provisions of the NPPF. Furthermore, it is considered the proposal would accord to the principles of Policy QOP 1 of the emerging NLPPD in terms of design and visual impact.

### **Impact on Amenity of Neighbouring Land Users**

7.8 Due to the nature of the proposal (i.e. a change of use from highway to agricultural grazing land), the scale of development (i.e. no additional built development) and the separation distances to the nearest residential properties the proposal would not have a significant adverse impact in relation to loss of daylight/sunlight, visual outlook, overshadowing, overlooking or privacy. Taking the above into consideration, there would not be an adverse impact on residential amenity of any neighbouring property caused by the proposal and therefore the proposal accords with the provisions of the NPPF. Furthermore, it is considered the proposal would accord with the principles of Policies QOP 2 of the emerging NLPPD in terms of residential amenity.

### **Impact upon Designated Heritage Assets and Archaeology**

7.9 It is acknowledged that the application site borders the scheduled monument to the west ('Deserted Village at Shilvington, monument ref. 1006505). The application has been subject to consultation with Historic England, NCC Building Conservation and NCC Archaeology. The responses received raise no objection to the proposal subject to a condition relating to a programme of archaeological monitoring during any intrusive earthworks undertaken as part of the change of use application and an informative to ensure the applicant is made aware of that Scheduled Monument Consent is not required but it may be should any hedging or fencing along the monument boundary be considered. Therefore, subject to the recommended condition and informative, the proposal is considered acceptable and in accordance with the principles of the NPPF. Furthermore, it is considered the proposal

would accord to the principles of Policies ENV 1, ENV 2 and ENV 7 in terms of impact upon designated heritage assets and archaeology.

### **Highway Safety and Parking Provision**

- 7.10 It is acknowledged that representation received and the consultation response from the Parish Council raise concerns and objections in regard to the proposal and the impact upon highway safety. The application was subject to consultation with the Local Highway Authority and the response received raised no objection to the proposal subject to conditions relating to the stopping up of the public highway, details of reinstatement of highway, details of the proposed boundary treatments and details of means of vehicular access to be constructed. The response also requested the inclusion of informatives relating to the stopping up/diversion of the highway and alterations to vehicle crossing points that may require a Section 184 agreement. Therefore, subject to conditions and informatives, it is considered that the proposal would not have a significant adverse impact upon highway safety and is therefore considered to be acceptable in this regard. The proposal is therefore acceptable and in accordance with the principles of the NPPF. Furthermore, it is considered the proposal would accord to the principles of Policies TRA 2 and TRA 4 of the emerging NLPPD in regard to highway safety and parking provision.

### **Equality Duty**

- 7.11 The County Council has a duty to have regard to the impact of any proposal on those people with characteristics protected by the Equality Act. Officers have had due regard to Sec 149(1) (a) and (b) of the Equality Act 2010 and considered the information provided by the applicant, together with the responses from consultees and other parties, and determined that the proposal would have no material impact on individuals or identifiable groups with protected characteristics. Accordingly, no changes to the proposal were required to make it acceptable in this regard.

### **Crime and Disorder Act Implications**

- 7.12 These proposals have no implications in relation to crime and disorder.

### **Human Rights Act Implications**

- 7.13 The Human Rights Act requires the County Council to take into account the rights of the public under the European Convention on Human Rights and prevents the Council from acting in a manner which is incompatible with those rights. Article 8 of the Convention provides that there shall be respect for an individual's private life and home save for that interference which is in accordance with the law and necessary in a democratic society in the interests of (inter alia) public safety and the economic wellbeing of the country. Article 1 of protocol 1 provides that an individual's peaceful enjoyment of their property shall not be interfered with save as is necessary in the public interest.
- 7.14 For an interference with these rights to be justifiable the interference (and the means employed) needs to be proportionate to the aims sought to be

realised. The main body of this report identifies the extent to which there is any identifiable interference with these rights. The Planning Considerations identified are also relevant in deciding whether any interference is proportionate. Case law has been decided which indicates that certain development does interfere with an individual's rights under Human Rights legislation. This application has been considered in the light of statute and case law and the interference is not considered to be disproportionate.

- 7.15 Officers are also aware of Article 6, the focus of which (for the purpose of this decision) is the determination of an individual's civil rights and obligations. Article 6 provides that in the determination of these rights, an individual is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal. Article 6 has been subject to a great deal of case law. It has been decided that for planning matters the decision making process as a whole, which includes the right of review by the High Court, complied with Article 6.

## **8. Conclusion**

- 8.1 The main planning considerations in determining this application have been set out and considered above stating accordance with the relevant Development Plan Policy. The application has also been considered against the relevant sections within the NPPF and there is not considered to be any conflict between the local policies and the NPPF on the matters of relevance in this case.
- 8.2 The proposal has addressed the main considerations and would accord with relevant policy and is considered acceptable. The proposal is therefore recommended for approval.

## **9. Recommendation**

- 9.1 That this application be GRANTED permission subject to the following:

### Conditions/Reason

#### *Time Limit for Implementation*

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).

#### *Approved Document and Plan*

2. The development hereby permitted shall not be carried out otherwise than in complete accordance with the approved document and plan.

The approved document for this development is:-

1. Application Form, Dated 09th June 2020.

The approved plan for this development is:-

1. Site Location Plan, Drawing No. EW-90-9000, Rev. P02, Dated 15th May 2020 (1:1000).

Reason: To ensure that the approved development is carried out in complete accordance with the approved document and plan.

#### Programme of Archaeological Work

3. Prior to any earthworks, a programme of archaeological work is required in accordance with NCC Conservation Team (NCCCT) Standards for Archaeological Mitigation and Site Specific Requirements document. The archaeological scheme shall comprise three stages of work. Each stage shall be completed and approved in writing by the Local Planning Authority before it can be discharged.

a) No earthworks or archaeological mitigation shall commence on site until a written scheme of investigation based on NCCCT Standards and Site Specific Requirements documents has been submitted to and approved in writing by the Local Planning Authority.

b) The archaeological recording scheme required by NCCCT Standards and Site Specific Requirements documents must be completed in accordance with the approved written scheme of investigation.

c) The programme of analysis, reporting, publication and archiving if required by NCCCT Standards and Site Specific Requirements documents must be completed in accordance with the approved written scheme of investigation.

Reason: The site is of archaeological interest, in accordance with the National Planning Policy Framework (2019).

#### Stopping Up of Public Highway

4. No change of use shall occur on highway land at Land South of Manor House, Shilvington until that section of highway has been stopped-up by virtue of an Order made under Section 247 of the 1990 Town and Country Planning Act.

Reason: In the interests of highway safety and in order to prevent the private use of highway land, in accordance with the National Planning Policy Framework (2019).

#### Details of Reinstatement of Highway

5. The development shall not be brought into use until details of the reinstatement of the highway verge at the redundant access points have been submitted to and approved in writing by the Local Planning Authority, and implemented in accordance with the approved details. Thereafter, the highway verge shall be retained in accordance with the approved details.

Reason: In the interests of highway safety, in accordance with the National Planning Policy Framework (2019).

### Details of Boundary Treatment

6. The change of use of this land shall not be brought into first use until details of the proposed boundary treatment have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented before the change of use is brought into first use.

Reason: In the interests of visual amenity and highway safety, in accordance with the National Planning Policy Framework (2019).

### Details of Means of Vehicular Access to be Constructed

7. The change of use of this land shall not be brought into first use until details of a means of vehicular access to the parcel of land have been submitted to and approved in writing by the Local Planning Authority and implemented in accordance with the approved details. Thereafter, the vehicular access shall be retained in accordance with the approved details.

Reason: In the interests of highway safety, in accordance with the National Planning Policy Framework (2019).

### Restricted Use

8. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (or any other re-enacting or revoking Order with or without modification), the land subject to this permission shall only be used as an agricultural field, and for no other purpose.

Reason: To allow the Local Planning Authority to sufficiently control the development, in accordance with the National Planning Policy Framework (2019).

### Informatives

#### Stopping Up/Diversion of Highways

1. You are advised of the necessity to formally stop up or divert the highway(s) under the Town and Country Planning Act 1990 before the commencement of any works. You should contact the National Transport Casework Team on 0207 944 4310 or [nationalcasework@dft.gsi.gov.uk](mailto:nationalcasework@dft.gsi.gov.uk) at your earliest convenience. Further information on the process can be found at <https://www.gov.uk/government/publications/stopping-up-and-diversion-of-highways>.

#### Alterations to Vehicle Crossing Point(s) (S184)

2. You should note that alterations to the existing vehicle crossing point(s) are required. These works should be carried out before first use of the development. To arrange alterations to the existing vehicle crossing point(s) (and to make good any damage or other works to the existing footpath or verge) you should contact the Highways Area Office at: [centralareahighways@northumberland.gov.uk](mailto:centralareahighways@northumberland.gov.uk).

#### Reminder to not deposit mud/ debris/rubbish on the highway

3. In accordance with the Highways Act 1980 mud, debris or rubbish shall not be

deposited on the highway.

*Scheduled Monument Consent*

4. Scheduled Monument Consent is not required for the proposed change of use but we advise that the applicant is made aware that it may be should any hedging or fencing along the monument boundary be considered.

**Date of Report:** 25th September 2020

**Background Papers:** Planning application file(s) 20/01752/COU