



Report to Planning Committee 5 October 2023

Business Manager Lead: Lisa Hughes – Planning Development

Lead Officer: Jamie Pegram, Planner, 01636 655326

Report Summary			
<b>Application Number</b>	23/00828/FUL		
<b>Proposal</b>	Installation of an outdoor Kazuba2 waterless toilet		
<b>Location</b>	Parish Church of All Saints, Front Street, Barnby In The Willows		
<b>Applicant</b>	Mrs Yvette Wellard	<b>Agent</b>	
<b>Web Link</b>	<a href="https://newark-sherwooddc.gov.uk/23/00828/FUL">23/00828/FUL   Installation of an outdoor Kazuba2 waterless toilet   Parish Church Of All Saints Front Street Barnby In The Willows (newark-sherwooddc.gov.uk)</a>		
<b>Registered</b>	15.05.2023	<b>Target Date</b>	28.08.2023
		<b>Extension of Time</b>	06.09.2023
<b>Recommendation</b>	That Planning Permission is REFUSED for the reason(s) detailed at Section 10.0		

**This application is before the Planning Committee for determination, in accordance with the Council’s scheme of delegation as the officer’s recommendation is contrary to that of the Parish Council and because the application has been called in by Councillor Oldham on grounds that there is a clear need for the community and support from the community, eco-friendly design, and support for the viability of the church.**

**1.0 The Site**

The site relates to a Grade I listed church in Barnby-in-the-Willows and falls within the Conservation Area. The Parish Church is a 13<sup>th</sup> Century building which has 15<sup>th</sup>, 17<sup>th</sup> and 19<sup>th</sup> Century phases. The church is an important building within the context of the conservation area and forms a group with the old vicarage to the northwest, church cottage and Barnby Hall. The site is next to open fields and is used to access public footpaths south of the site.

The site has the following constraints:

- Conservation Area
- Within the grounds of a (Grade I) Listed Building
- Public Right of Way through the Site
- Flood Zone 1 and 2 (Proposal is proposed to be sited in an area of the site which falls within flood zone 1)
- The site lies in an area of high archaeological potential.

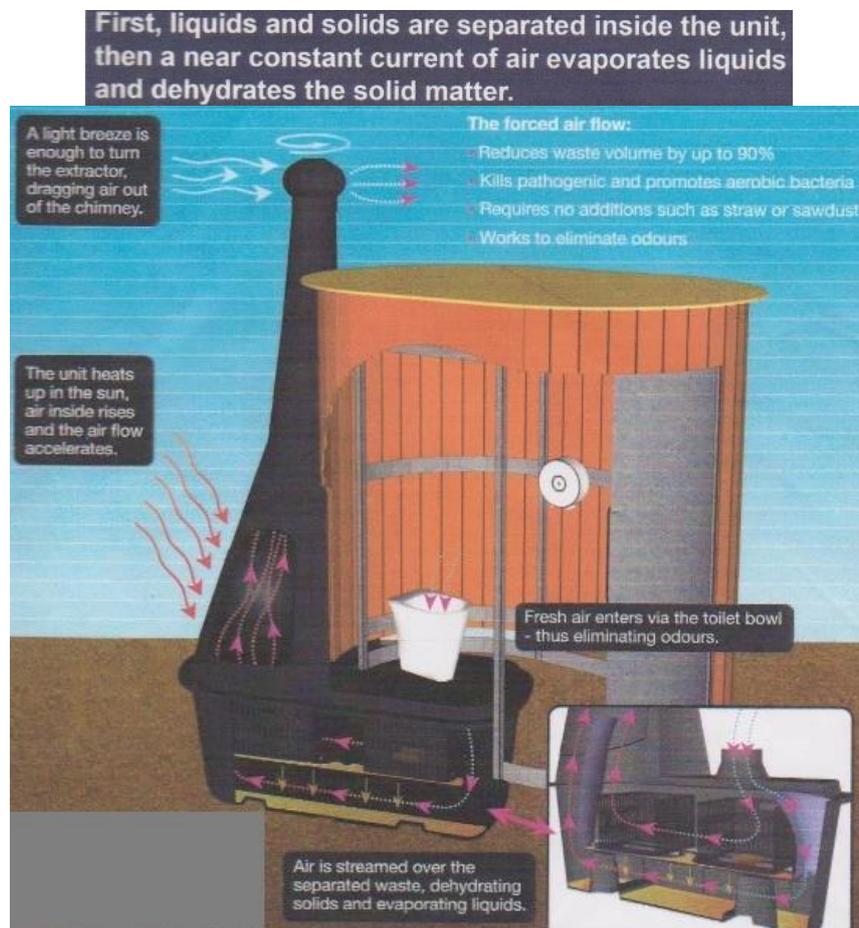
## 2.0 Relevant Planning History

14/02272/FUL Replacement of lead roof covering (Permitted 25.03.2015)

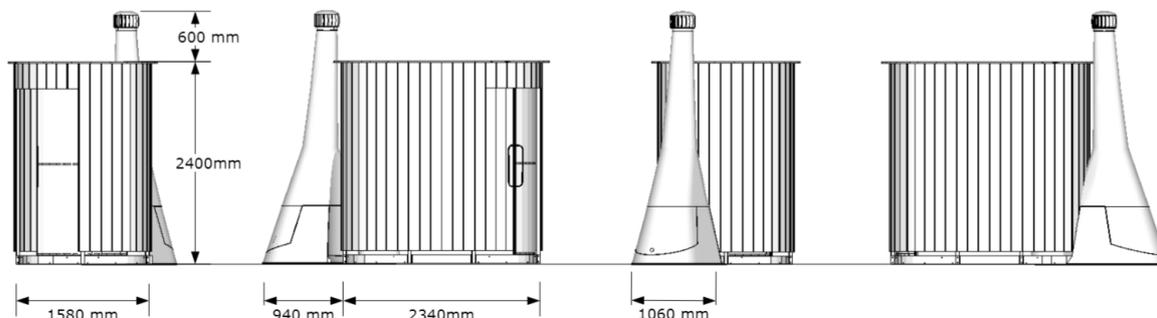
13/01397/FUL Erect a Broadband Signal Receiver Antenna to Church Roof (retrospective) (Permitted 08.08.2014)

## 3.0 The Proposal

The application seek permission for the erection of a proposed self-contained toilet. The toilet is an ECO toilet and does not require plumbing to mains water and uses natural breeze and solar gain using a sewage tank to operate (as explained in more detail in the diagram below). Excavation in the form of an 850mm deep pit for the installation of the sewage tank below ground would be required.



The self-contained unit would be of a contemporary design with a timber appearance with a metal door. The cubicle itself measures approximately 2.4m in height by 2.34m by 1.58m however when including the flue, the overall height would be 3.0m and the length would be 3.28m. The building would be clad with a black flue to the rear.



#### **4.0 Departure/Public Advertisement Procedure**

Occupiers of 9 properties have been individually notified by letter. A site notice has been posted near the site and an advert has been displayed in the press.

Site Visit undertaken: 10.07.2023

#### **5.0 Planning Policy Framework**

##### **The Development Plan**

##### **Newark and Sherwood Amended Core Strategy DPD (adopted March 2019)**

Spatial Policy 8 - Protecting and Promoting Leisure and Community Facilities

Core Policy 9 - Sustainable Design

Core Policy 13 – Landscape Character

Core Policy 14 – Historic Environment

Core Policy 10 – Climate Change

##### **Allocations & Development Management DPD (2013)**

DM5 – Design

DM12 – Presumption in Favour of Sustainable Development

DM9 – Protecting and Enhancing the Historic Environment

DM4 - Renewable and Low Carbon Energy Generation

##### **Other Material Planning Considerations**

National Planning Policy Framework 2023

Planning Practice Guidance

Householder Development Supplementary Planning Document 2014

Landscape Character Assessment Supplementary Planning Document 2013

## 6.0 Consultations

### (a) Statutory Consultations

**Historic England** – Do not wish to offer comments and instead advise advice is sought from the council's conservation specialists.

### (b) Town/Parish Council

**Barnby Parish Council** – Barnby in the Willows Parish Council have no objections to the proposal and feels that the facility will be an asset to the community, and the location on site is suitable given the advice that the church have been given to work to. It is understood and appreciated, that the facility will be accessible and that steps will be taken. (through considerate planting etc.) to ensure that the toilet is sensitively presented to be in keeping with the area and not an eyesore.

### (c) Representations/Non-Statutory Consultation

**NSDC Conservation Officer** – The application is for a composite toilet within the church yard. The toilet is a large oval building with a large flue. The exterior is timber clad. The proposed location is prominent and will be highly visible during the approach to the church.

The conservation team have concerns about the scale of the proposed toilet and its location given the site is very open and the site can be viewed from various places within the conservation area. It is understood that the proposed toilet is large to allow for disabled access and a reduction in size will limit its use for the community.

However, it is still considered that there are more suitable locations for the facility which would reduce its visual impact while still being able to gain sunlight and airflow to allow for it to function correctly. In addition, the applicant may want to consider screening to reduce its visual impact. The proposed development does not preserve the special interest of the listed building which is contrary to S66 and CP14 and DM9 of the council's LDF DPDs. The proposal also does not preserve and enhance the character and appearance of the conservation area.

**NSDC Archaeology Advisor** – The site lies in an area of high archaeological potential associated with the medieval, post-medieval and modern development of Barnby in the Willows. This relates primarily to the potential for inhumations and associated with All Saint's Church and the remains of the medieval settlement, some of which survives as visible earthworks in the adjacent field. The 850mm deep pit which will certainly impact any surviving archaeological remains if present.

The proposed location of the toilet is just inside a modern extension to the churchyard and the potential in this area for inhumations may well be lower than in the main Churchyard as defined on the first edition OS maps. However, it is entirely possible that the original medieval churchyard extended further or that the modern extension overlies part of the medieval settlement as noted above.

It should be further noted by the applicant that disturbing human remains without an appropriate Faculty from the Church or licence from the Ministry of Justice is prohibited under criminal law and all appropriate measures need to be taken where there is a known potential for inhumations. If permission is granted further archaeological work should be undertaken and conditions are recommended.

**NCC Rights of Way Officer** - No comments received.

**NSDC Environmental Health Officer** – No comment.

**Public Representations** – 6 letters have been received from neighbours/interested parties in support of the proposed toilet facility on the grounds that it will be a benefit to the church and community and being nearby a Right of Way walkers will also have access to the facility.

## **7.0 Comments of the Business Manager – Planning Development**

The key issues are:

1. Principle of Development
2. Impact upon Character of the Area including Heritage
3. Impact on Residential Amenity
4. Impact on Flood Risk
5. Archaeology

The National Planning Policy Framework (NPPF) promotes the principle of a presumption in favour of sustainable development and recognises the duty under the Planning Acts for planning applications to be determined in accordance with the development plan, unless material considerations indicate otherwise, in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004. The NPPF refers to the presumption in favour of sustainable development being at the heart of development and sees sustainable development as a golden thread running through both plan making and decision taking. This is confirmed at the development plan level under Policy DM12 of the Allocations and Development Management DPD. This policy states ‘A positive approach to considering development proposals will be taken that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. The Development Plan is the statutory starting point for decision making. Planning applications that accord with the policies in the Development Plan for Newark and Sherwood (including, where relevant, policies in Neighborhood Development Plans) will be approved without delay, unless material considerations indicate otherwise.’

### Principle of Development

Spatial Policy 8 (Protecting and Promoting Leisure and Community Facilities) seeks to protect and promote Leisure and Community Facilities. The proposal seeks permission to erect a self-contained public toilet within the ground of a Grade I listed church that currently does not have a toilet.

Policy DM4 states ‘In order to achieve the commitment to carbon reduction set out in Core Policy 10 (Climate Change), planning permission will be granted for renewable and low carbon

energy generation development, as both standalone projects and part of other development.'

The proposed toilet would be ECO friendly and would not require mains water supply, instead working using natural resources and a sewage tank. The design requires the toilet to be erected in relatively open space in order to function correctly. The proposed toilet uses both energy from the sun and wind to reduce waste volume and reduce odours that would be generated. The toilet would be both accessible to people going to the Church for events and functions and for general public use as the site connects public footpaths.

As the toilet would support the use of the Church, the proposal as a matter of principle is supported by Spatial Policy 8 and Core Policy 10 subject to consideration of the site-specific issues set out below.

#### Impact upon Character of the Area including Heritage.

Core Policy 9 (Sustainable Design) requires a high standard of sustainable design that protects and enhances the natural environment and contributes to and sustains the rich local distinctiveness of the District. Policy DM5 (Design) echoes this stating that the District's Landscape and character should be reflected in the scale, form, mass, layout, design, materials and detailing of proposals for new development. Core Policy 14 (Historic Environment) and DM9 (Protecting and Enhancing the Historic Environment), amongst other things, seek to protect the historic environment and ensure that heritage assets are managed in a way that best sustains their significance.

The importance of considering the impact of new development on the significance of designated heritage assets, furthermore, is expressed in section 16 of the National Planning Policy Framework (NPPF). Section 16 advises that the significance of designated heritage assets can be harmed or lost through alterations or development within their setting. Such harm or loss to significance requires clear and convincing justification. The NPPF also makes it clear that protecting and enhancing the historic environment is sustainable development. Local Planning Authorities should also look for opportunities to better reveal the significance of heritage assets when considering development in conservation areas.

The proposed waterless toilet by reason of its size, design, materials and siting would be prominent and highly visible on approach towards the church from its main entrance. It would be located adjacent to the public right of way which runs in a north-south direction through the Church grounds. Its detached contemporary design would be an alien feature which would distract from views of the Grade I Listed Church, compromising its setting which has been historically been experienced as sitting within an open graveyard area devoid of any other buildings.

Listed buildings come in three categories of 'significance'. Grade I for buildings of the highest significance. Grade II buildings these make up 92% of all listed buildings. As a Grade I Building, the Church is therefore regarded as being of exceptional national, architectural or historical importance.

The proposed installation would result in a less than substantial harmful impact to the setting of the listed building and the character and appearance of the Conservation Area contrary to

Sections 66 and 72 of the (Listed Buildings and Conservation Areas) Act 1990 ('The Act') as well as paragraph 200 of the NPPF. The Conservation Officer also objects to the proposed development as it would not preserve the special interest of the listed building and nor does it preserve and enhance the character and appearance of the conservation area.

Paragraph 202 of the NPPF states '*Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.*'

Public benefit identified includes the provision of public toilet facilities for the Church which currently has no other toilet facilities. The proposed provision means that a greater range of uses of the church would become more feasible as a consequent of such provision which could help to supplement the church's income. However, these benefits identified are not considered great enough to outweigh the harm to the high grade listed Church identified.

This is in part because it has not been demonstrated that there are no other potential less harmful forms of toilet provision or alternative locations on the site. Whilst the Applicant has been advised that alternative locations have been ruled out and a plan showing where these locations are, the applicant hasn't provided information of whether or not they have explored alternative toilet facilities that aren't of the eco variety and are of a more appropriate design in the context of the site.

Overall, the proposed development would be harmful to the setting of the setting of the listed building significance and the character and appearance of the Conservation Area and therefore contrary to the policies within the Development Plan and the relevant statutory duties contained within the 'Act' as well as the National Planning Policy Framework. There is no clear and convincing justification for the harm identified nor any public benefits or other material considerations that are sufficient enough to outweigh the level of identified harm.

### Impact on Archaeology

Core Policy 14 (Historic Environment) of the Core Strategy requires the continued preservation and enhancement of the District's heritage assets including archaeological sites. Policy DM9 (Protecting and Enhancing the Historic Environment) of the DPD states that where proposals are likely to affect sites of significant archaeological potential, the applicant is required to submit an appropriate desk-based assessment.

The site lies in a general area of archaeological potential associated medieval, post-medieval and modern development of Barnby in the Willows. The proposed location of the toilet is just inside a modern extension to the churchyard and the potential in this area for inhumations may well be lower than in the main Churchyard as defined on the first edition OS maps. However, it is entirely possible that the original medieval churchyard extended further or that the modern extension overlies part of the medieval settlement. Given the surrounding known archaeological activity, the size of the site and the engineering works required for the proposed development the Archaeology Officer recommends archaeological conditions for continuous archaeological monitoring through a mitigation strategy to effectively deal with the site to meet the requirements of paragraph 194 of the NPPF. Overall, the Archaeology

Officer raises no objection to the application subject to conditions if approved to enable any remaining archaeology that currently survives on this site to be recorded prior to its destruction in accordance with Policies CP14 and DM9.

### Impact on Residential Amenity

Policy DM5 'Design' of the Allocations & Development Management DPD States that 'The layout of development within sites and separation distances from neighbouring development should be sufficient to ensure that neither suffers from an unacceptable reduction in amenity including overbearing impacts, loss of light and privacy.'

The proposal would be sited on the southeast boundary of the church yard over 55m away from any residential development with open field situated to both the east and the south. With this in mind I don't consider the proposal would impact upon neighbour amenity.

On the basis of the above, I am satisfied that the proposal complies with Policy DM5 of the DPD.

### Impact on Flood Risk

Policy DM5 of the DPD states that the Council will aim to steer new development away from area at highest risk of flooding. In addition Core Policy 9 requires development proposals to include measures to proactively manage surface water wherever possible.

Paragraph 168 of the NPPF states that applications for minor developments and changes of use should not be subject to the sequential or exception tests but should still meet the requirements for site specific flood risk assessments.

Part of the site sits within Flood Zone 2 however the proposed location of the self-contained toilet would sit within Flood Zone 1. It is therefore considered that there would be no increased flood risk as a result of the proposed.

## **8.0 Implications**

In writing this report and in putting forward recommendation's officers have considered the following implications; Data Protection, Equality and Diversity, Financial, Human Rights, Legal, Safeguarding, Sustainability, and Crime and Disorder and where appropriate they have made reference to these implications and added suitable expert comment where appropriate.

## **9.0 Conclusion**

The proposed waterless toilet by virtue of its position, design, materials, scale and detailing would be harmful to the setting and significance of the Grade I listed Church and the character and appearance of the Conservation Area. It is acknowledged that its provision would provide facilities for the Church where there are currently none which would result in some degree of public benefit. However, it is not considered that the public benefit identified would outweigh the harm that has been identified.

## **10.0 Reason for refusal**

The proposed toilet by virtue of its position, design, materials, scale and detailing would be harmful to the setting and significance of the Grade I listed Church and the character and appearance of the Conservation Area. There is no clear and convincing justification for the harm identified nor any public benefits or other material considerations that are sufficient enough to outweigh the level of identified harm.

The proposal is therefore considered contrary to Core Policy 9 (Sustainable Development) and Core Policy 14 (Historic Environment) of the adopted Amended Newark and Sherwood Core Strategy (2019) and Policies DM5 (Design) and DM9 (Protecting and Enhancing the Historic Environment) of the allocations and Development Management Development Plan Document Development Plan Document (2013). The proposed development would also be contrary to the aims of the NPPF (2023) and the objective of preservation required under Section 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

### Informatives

01

Refused Plans:

- Proposed Block Plan Received 20th June 2023
- Site Location Plan Received 20th June 2023
- Proposed Elevation Drawing KL2prm Received 20th June 2023

02

The application is contrary to the Development Plan and other materials planning considerations as detailed in the above reason(s) for refusal. Working positively and proactively with the applicants would not have afforded the opportunity to overcome these problems, giving a false sense of hope and potentially incurring the applicants further unnecessary time and / or expense.

03

You are advised that as of 1st December 2011, the Newark and Sherwood Community Infrastructure Levy (CIL) Charging Schedule came into effect. Whilst the above application has been refused by the Local Planning Authority you are advised that CIL applies to all planning permissions granted on or after this date. Thus any successful appeal against this decision may therefore be subject to CIL (depending on the location and type of development proposed). Full details are available on the Council's website [www.newark-sherwooddc.gov.uk/cil/](http://www.newark-sherwooddc.gov.uk/cil/)

### BACKGROUND PAPERS

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Application case file.

Committee Plan - 23/00828/FUL

