

COMMITTEE REPORT

Date: 16 January 2020 **Ward:** Wheldrake
Team: Major and **Parish:** Naburn Parish Council
Commercial Team

Reference: 18/02552/FUL
Application at: Naburn Locks York Road Naburn York
For: Hydroelectric generation plant and associated infrastructure including turbine house, hydraulic channels, intake screen, crane pad and electrical substation
By: Ewan Campbell-Lendrum
Application Type: Full Application
Target Date: 1 October 2019
Recommendation: Approve

1.0 PROPOSAL

1.1 Naburn Lock is located on the River Ouse in a rural location to the south of Naburn village. The construction of the locks took place in 1757 and 1888 and has created an island upon which is located the workshops, stores and offices associated with the operation and maintenance of the lock. There was formerly a water mill on the island (constructed between 1813 and 1817) which fell out of use around 1955 and was demolished in 1958. The locks themselves are listed at Grade II (“Old and New Lock”). Directly to the east lies the Naburn Banqueting House, a vacant Grade II listed building, together with the lock keeper's house. Access to the site is along a single track road from Naburn Lane, which also serves the Naburn Lock caravan park, located to the east. Naburn Lock is accessible to members of the public and there is a car park and information board at the end of the access road.

1.2 Planning permission is sought for construction of a hydro electric generating plant together with associated infrastructure including a reconstructed weir on the western side of the island. The site forms a habitat for the ocean and river lamprey, both of which species are identified as being critically endangered species and forms a principal feeder area for the Humber Estuary Special Area of Conservation (SAC), Special Protection Area and RAMSAR site. Since submission the proposal has been amended in respect of the design of the proposed fish pass and the operation of the plant in order to address ecological concerns.

1.3 The proposal comprises two Archimedes screw turbines, a multi-species fish pass, a turbine house building, hydraulic channels, trash screening and access improvements. The scheme is expected to generate a peak power output of less than 500kW and an average annual energy production of 1.2 GWh. The applicant states that this is sufficient to power around 310 homes and provides an effective CO₂e saving of around 620 tonnes per year. The intake would be situated within the island

bank just upstream of the weir, with water passing through coarse trash screening before arriving at the sluice gates and turbine house. The screw turbines would discharge into an outfall channel that re-joins the main river just downstream of the weir. A new fish pass will be constructed along the left-hand side of the hydropower scheme.

1.4 Above ground, a powerhouse and substation would be erected with intake and outlet channels formed below ground level. The turbine house will consist of a building measuring 11 x 8.1 x 5.2 (maximum height) metres above bank level. A grid connection would be formed by a new length of buried cable from the turbine house to the nearest suitable connection pole. The cable will be buried in order to minimise visual impact. The applicant estimates that the hydro-electric generating station with the turbine and associated infrastructure, would have a minimum life of 40 years.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

City Boundary GMS Constraints: York City Boundary 0001

DC Area Teams GMS Constraints: East Area (1) 0003

Floodzone 2 GMS Constraints: Floodzone 2

Listed Buildings GMS Constraints: Grade 2; Old And New Lock, Naburn

2.2 Publication Draft Local Plan (2018):

CGP15A

Development and Flood Risk

CYGB1

Development within the Green Belt

CYHE4

Listed Buildings

CYNE6

Species protected by law

3.0 CONSULTATIONS

INTERNAL:-

PUBLIC PROTECTION

3.1 Public Protection raise no objection to the proposal subject to any permission being conditioned in terms of the provision of a Construction Environmental Management Plan, the provision of appropriate noise insulation and the remediation of any land contamination.

DESIGN, CONSERVATION AND SUSTAINABLE DEVELOPMENT (ECOLOGY)

3.2 The Council's Ecologist initially objected to the proposal by reason of the impact upon the habitat of the ocean and river lamprey, both of which species are critically endangered, with associated impacts on the Humber Estuary RAMSAR site. However, it is considered that the revised application details and Habitats Regulations Assessment are acceptable and that the habitat of other protected species within the wider area such as the Sand Martin and the Tansey Beetle would not be adversely affected by the proposal subject to any permission being satisfactorily conditioned to address the design of the proposed fish pass, the habitat of the sand martin and to provide for submission and approval of a biodiversity and habitat Construction Environmental Management Plan(CEMP).

EXTERNAL:-

NABURN PARISH COUNCIL

3.4 Naburn Parish Council do not object but make the following comments: The land on the island where the proposed plant is to be sited belongs to the Canal and River Trust, Naburn Parish Council assume the Trust are in negotiations with the applicant about their proposals.

According to the plans, the plant will cover a large part of the island up to the banks of the river and the Parish Council are concerned about safeguarding the lock and weir during construction and long term.

Although the proposed construction period is anticipated to be carried out during the summer (because of low river levels) the Parish Council are concerned about the through construction traffic effecting the caravan site. Summer is their busiest time and the safety of their visitors is paramount to their business.

CANAL AND RIVER TRUST

3.5 The Canal and River Trust object to the proposal on the grounds that the proposal would give rise to significant harm to the openness of the Green Belt and it may lead to land instability and pollution during the course of construction. Concern is also expressed in terms of the impact of the proposal upon setting of Naburn Banqueting House a Grade II Listed Building and the site of Naburn water mill, a Non Designated Heritage Asset.

ENVIRONMENT AGENCY

3.6 The Environment Agency initially objected to the proposal on the grounds that the proposed works lie within the functional flood plain of the River Ouse and the submitted Flood Risk Assessment fails to demonstrate that the proposal would not increase flood risk to other properties in the locality. The objection was subsequently withdrawn subject to any permission being satisfactorily conditioned.

OUSE AND DERWENT INTERNAL DRAINAGE BOARD

3.7 The Ouse and Derwent (2008) Internal Drainage Board raise no objection in principle to the proposal but express concerns in respect of the impact of the proposal on water flows upstream of the proposed apparatus and the potential for increases in flood risk to Naburn village.

NATURAL ENGLAND

3.8 Natural England initially objected to the proposal on the grounds that it could give rise to substantial harm to the habitat of the river and ocean lamprey both of which are critically endangered species by virtue of the engineering works themselves, alterations to the levels of dissolved oxygen in the river and the use of a fish pass design whose efficacy in these circumstances is untested. Following submission of further detailed information to address the issues the objection was withdrawn subject to any permission being conditioned to require monitoring of dissolved oxygen levels at critical points within the river within the environs of the scheme and to require that the scheme is closed down temporarily in the event that levels drop to unsafe levels.

4.0 REPRESENTATIONS

4.1 Six letters of objection have been received in respect of the proposal. The following is a summary of their contents:

- The adverse impact on the river Ouse system as a salmon fishery with far reaching effects on the rivers Ure and Swale - both short and long term disruption would occur.
- noise and vibration connected to the building works would result in fish building up down river and being predated by seals
- The scheme would channel all of the river flow during low water conditions resulting in salmon being more prone to predation, stress and infections
- No indication of how the facility would be connected to the National Grid
- There would be heavy construction traffic along a narrow access road and disruption to the caravan park
- Loss of parking to anglers during construction phase
- Flood water would reduce the operational window of the scheme
- Security fencing would be visually intrusive
- The turbines have no screens fitted to prevent fish and other wildlife being drawn into the system

- No cost benefit analysis to demonstrate that the project is worthwhile
- The impact of the scheme on anglers has not been assessed
- Concern that oxygen levels in the river will be reduced
- There has been little assessment of the impact on otters and other wildlife
- The consideration of the adjacent SSSI has not been suitable or sufficient
- Concerns are raised regarding the stability and maintenance of the island during construction works
- The time frame of six months for construction is optimistic – the installation of a single turbine at Linton Lock has taken two years
- Consultation with other interested parties (e.g. Yorkshire Dales River Trust), Ure Salmon Group and Salmon and Trout Association) should take place
- The negatives of the scheme do not outweigh the positives
- The proposed fish pass facilities are inadequate
- Loss of amenity and access to anglers
- Reduction in the area available for fishing resulting in loss of income from reduced membership and permits.

5.0 APPRAISAL

5.1 KEY ISSUES

- Assessment of harm to the Green Belt
- Whether the development is inappropriate development
- Impact on the openness of the Green Belt
- Impact on Green Belt purposes
- Impact on the visual amenity of the area
- Impact on the setting of Naburn Banqueting House, a Grade II listed building
- Impact on the habitat of species protected by law
- Impact on flood risk
- Impact on the functionality of the coarse fishery
- Impact on the amenity of neighbouring properties
- Consideration of very special circumstances

POLICY CONTEXT

National Planning Policy Framework (NPPF) (February 2019)

5.2 The revised National Planning Policy Framework (NPPF) (2019) was published on 19 February 2019 and sets out the Government's planning policies and how these are expected to be applied.

5.3 The NPPF states that the planning system should contribute to the achievement of sustainable development (Paragraph 7). To achieve sustainable development, the planning system has three overarching objectives; economic, social and environmental objectives. The NPPF sets out in paragraph 11 the presumption in

favour of sustainable development which applies unless the application of specific policies in the NPPF indicate development should be restricted.

Development Plan

5.4 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan for York mainly consists of the saved policies of the revoked Yorkshire and Humber Regional Spatial Strategy (RSS) relating to the general extent of the York Green Belt.

Saved Policies of the Yorkshire and Humber RSS

5.5 The Yorkshire and Humber RSS was revoked in 2013 with the exception of the policies relevant to the York Green Belt. Policy YH9(C) states that the detailed inner boundaries of the Green Belt around York should be defined in order to establish long term development limits that safeguard the special character and setting of the historic city. The boundaries must take account of the levels of growth set out in this RSS and must also endure beyond the Plan period. Policy Y1(C1) states that plans, strategies, investment decisions and programmes for the York sub area should in the City of York LDF, define the detailed boundaries of the outstanding sections of the outer boundary of the York Green Belt about 6 miles (10km) from York city centre and the inner boundary in line with policy YH9C. Figure 6.2 of the RSS illustrates the general extent of the Green Belt. The application site is located approximately 7km from the city centre and thus is considered to fall within the general extent of the Green Belt as shown on the Key Diagram of the RSS.

Publication Draft Local Plan (2018)

5.6 The Publication Draft City of York Local Plan 2018 ('2018 Draft Plan') was submitted to the Planning Inspectorate for examination on 25 May 2018. Phase 1 of the hearings into the examination of the Local Plan took place in December 2019. It is a material consideration in the determination of planning applications. In accordance with paragraph 48 of the NPPF the Draft Plan policies can be afforded weight according to:

- The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- The degree of consistency of the relevant policies in the emerging plan to the policies in the previous NPPF published in March 2012. (NB: Under transitional arrangements plans submitted for examination before 24 January 2019 will be assessed against the 2012 NPPF).

5.7 The evidence base underpinning the 2018 Draft Plan is capable of being a material consideration in the determination of planning applications.

Development Control Local Plan (2005)

5.8 The Development Control Local Plan (DCLP) was approved for development management purposes in April 2005. Whilst the DCLP does not form part of the statutory development plan, its policies are considered to be capable of being material considerations and can be afforded very little weight in the determination of planning applications where policies relevant to the application are consistent with those in the NPPF.

ENVIRONMENTAL IMPACT ASSESSMENT

5.9 Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 includes development for hydroelectric energy production and indicates that if the installation is designed to produce more than 0.5 megawatts, the proposal needs to be screened by the local planning authority to determine whether significant effects on the environment are likely and hence whether an Environmental Impact Assessment is required.

5.10 A separate application for a screening opinion as to whether an Environmental Impact Assessment would be required (application ref: 18/01606/EIASN), was submitted in July 2018. Such applications fall to be considered against the relevant criteria set out in the Regulations, which are the characteristics of the development, the location of the development and the characteristics of impacts of the proposed development, along with any cumulative impacts. The proposal envisages the construction of a turbine house containing two Archimedes Screws, a substation a moveable weir boom and associated supply channels within the existing alignment of the western channel of the River Ouse and within the western section of the island. The nature of the impact would be restricted to a localised area around the location of the existing weir. However, it was considered that the proposal, by virtue of its nature and design, would require formal Environmental Impact Assessment by virtue of potential impacts upon the ecology of the river system.

5.11 Subsequently, a revised application (Ref: 19/00029/EIASN) was submitted which sought to address concerns in respect of the potential biodiversity impacts. Having assessed the scheme against the relevant criteria set out in the Regulations, it was considered that the amended details were such that the previously identified concerns in respect of the design of the fish pass and the associated impact of the scheme upon the habitat of the ocean and river lamprey had been satisfactorily addressed, and that an Environmental Impact Assessment would not now be required.

PRINCIPLE OF DEVELOPMENT - ASSESSMENT OF HARM TO THE GREEN BELT

WHETHER THE DEVELOPMENT IS INAPPROPRIATE DEVELOPMENT

5.12 The application site lies within the general extent of the York Green Belt and therefore Section 13 (Protecting Green Belt Land) of the NPPF is applicable. Policy GB1 of the 2018 Draft Plan is also relevant.

5.13 Paragraph 143 of the NPPF states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Para 144 goes on to state 'substantial weight' should be given to any harm to the Green Belt. The construction of new buildings in the Green Belt should be regarded as inappropriate unless they fall within certain exceptions.

The exceptions are set in Paragraph 145 of the NPPF and are as follows:

- a) buildings for agriculture and forestry;
- b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;
- c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
- d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
- e) limited infilling in villages;
- f) limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and
- g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:
 - not have a greater impact on the openness of the Green Belt than the existing development; or
 - not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.

5.14 Paragraph 146 adds that certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These are:

- a) mineral extraction;
- b) engineering operations;
- c) local transport infrastructure which can demonstrate a requirement for a Green Belt location;
- d) the re-use of buildings provided that the buildings are of permanent and substantial construction;
- e) material changes in the use of land (such as changes of use for outdoor sport or

recreation, or for cemeteries and burial grounds); and
f) development brought forward under a Community Right to Build Order or Neighbourhood Development Order.

5.15 The proposal would involve the construction of a substantial concrete structure which would make a significant incursion into the western island, together with the erection of a single storey pitched roof brick building. The building would have a footprint of approximately 11 metres x 8.1 metres with an eaves height of 3.2 metres and a height to the ridge of 5.1 metres, and would house the generating equipment and switchgear associated with the scheme. As such, the proposal would consist of new built development together with engineering operations which in combination would not preserve openness, and thus would constitute inappropriate development which is, by definition, harmful to the Green Belt. It is necessary, therefore, to consider whether there are any very special circumstances that would outweigh the harm to the Green Belt.

IMPACT ON THE OPENNESS OF THE GREEN BELT

5.16 The NPPF advises that the essential characteristics of Green Belts are their openness and permanence. There is no definition of 'openness' in the NPPF, but it is commonly taken to mean the state of being free from development, the absence of buildings, and relates to the quantum and extent of development and its physical effect on the site.

5.17 Policy GB1 of the 2018 Draft Plan states that permission will only be granted for development in the Green Belt where:

- i. the scale, location and design of development would not detract from the openness of the Green Belt;
- ii. it would not conflict with the purposes of including land within the Green Belt; and
- iii. it would not prejudice or harm those elements which contribute to the special character and setting of York.

There are unresolved objections to Policy GB1 that will be considered through the examination in public of the Local Plan and therefore it should only be afforded limited weight in the decision making process for the purposes of this application.

5.18 The proposed development would reduce the openness of the Green Belt through the introduction of additional built development and associated engineering works into an area which largely retains its rural character. However, the proposed engineering works and the associated building housing the generating equipment and associated switchgear site are low level and, in the context of the riverside location, are not considered to be unduly intrusive from a visual amenity perspective. In addition, the immediate area is already characterised by man-made structures, engineering works and low rise buildings associated with Naburn Lock, thus the proposal would not be located within a wholly natural environment. Indeed, the island

itself is not a natural feature and was formed by the construction of the construction of the lock channels in 1757 and 1888. Clearly, the number of locations where such a facility could be located are limited and the proposed location adjacent to Naburn Weir, the associated island and Naburn Lock has a uniqueness which is not repeated elsewhere in the locality. As such, it is considered that the impact of the proposal on the openness of the Green Belt would be significantly mitigated by the characteristics of the locality and its setting adjacent to Naburn Lock.

IMPACT ON THE GREEN BELT PURPOSES

5.19 The proposed development would be inappropriate development in the Green Belt. It would lead to limited harm to the openness of the Green Belt. Paragraph 134 of the NPPF goes onto state that the Green Belt serves five purposes. These are:

- a) to check the unrestricted sprawl of large built-up areas;
- b) to prevent neighbouring towns merging into one another;
- c) to assist in safeguarding the countryside from encroachment;
- d) to preserve the setting and special character of historic towns; and
- e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

5.20 The primary purpose of the York Green Belt is to safeguard the special character and setting of the historic city as referred to in Policy YH9C of the RSS and Policy SS2 of the 2018 Draft Plan, although limited weight can only be attached to the latter. It is considered that the proposal would constitute a form of encroachment into the open countryside and thus would conflict with one of the purposes of the Green Belt as set out in the NPPF. However, the proposal would consist of relatively low level works along the already heavily engineered river bank, forming an incursion into the island which, by its nature, is isolated from the surrounding countryside by the river and water channels associated with Naburn Lock. Thus, once again, any harm arising from encroachment would be mitigated by the unique characteristics of the site and its setting. It is not considered that there would be any conflict with any of the other four purposes of including land in the Green Belt.

IMPACT ON THE VISUAL AMENITY OF THE AREA

5.21 The site is already characterised by significant engineering works including the buildings, man-made water channels, lock gates, bridges and walkways associated with Naburn Lock, in addition to the Naburn Banqueting House and Lock Keepers Cottage which front onto the river. The pitched roof building that would house the generating equipment would be functional in appearance and would have smaller footprint than the existing workshops, stores and offices which already occupy the island site. With an eaves height of 3.2 metres and an overall height of 5.1 metres, it is not considered that the building would appear unduly intrusive in relation to other buildings in the vicinity of the site. Having regard to the character of the surroundings,

it is considered that the building and associated engineering works would be absorbed into the landscape without appearing unduly incongruous or intrusive.

5.22 The site is visible from the public footpath which runs along the western bank of the river Ouse, to the south of Acaster Malbis. However, from this location, the visual impact, which would in part be mitigated by bankside vegetation, would be seen against the backcloth of the existing buildings which already occupy the island and the riverbank beyond. In the wider landscape, there is also significant tree cover which would provide screening from longer views of the site from the surrounding area. Given the characteristics of the locality, it is concluded that the impact of the proposal on the visual amenity of the area would be acceptable.

IMPACT UPON THE SETTING OF NABURN BANQUETING HOUSE

5.23 Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out a statutory duty for Local Planning Authorities to have special regard to the safeguarding of the setting of listed buildings. Paragraph 193 of the NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 194 adds that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. The NPPF goes on to state, in paragraph 195, that where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss. Paragraph 196 states that 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.

5.24 Naburn Banqueting House is listed at Grade II as an example of the work of the early 19th Century Greek Revival Architect J T Atkinson. It was built as a corporate entertainment venue for the Ouse Navigation Company in 1822 closely to the banks of the River Ouse with gently sloping well landscaped pasture fields to the rear. The locks themselves form a pair and are separately listed at Grade II. They were constructed in 1757 and 1887-89 with timber and cast-iron gates, bridges and winding gear. Each lock has ashlar sides with two pairs of plank gates surmounted by walkways. To each bank there is a cast-iron swing bridge.

5.25 The application site is removed from the Hall and separated from it by the buildings of Naburn Lock itself. Whilst the proposals envisage the construction of substantially engineered structures they are relatively low rise and do not readily

appear within the public view points of the Hall or its wider context. Likewise, the locks themselves are considered to be sufficiently separated from the proposed works for there to be no impact on their setting. In assessing the proposal, officers have considered the impact on the significance and setting of these heritage assets, as required by paragraph 193 of the NPPF, and have judged that there is no harm. As it is considered there is no harm, there is no requirement to weigh the proposal against the public benefits as outlined in paragraph 196 of the NPPF.

IMPACT UPON THE HABITAT OF A SPECIES PROTECTED BY LAW

5.26 Central Government Planning Policy as outlined in paragraph 175(b) of the NPPF indicates that development on land within or outside of a Site of Special Scientific Interest which is likely to have an adverse effect upon it either singly or in combination with others will not normally be approved except where the benefits of the development in that location would clearly outweigh both its likely impact upon the features of the site that make it of Special Scientific Interest along with the network of Sites of Special Scientific Interest more generally. Paragraph 177 of the Framework also makes clear that the presumption in favour of sustainable development does not apply where the project would have a significant effect upon a habitats site either alone or in combination unless an appropriate assessment has concluded that the project would not adversely affect the integrity of the habitats site. Policy G12 of the Publication Draft Local Plan (2018) indicates that in order to conserve York's biodiversity any development where appropriate should maintain and enhance the banks, flood plain and setting of the River Ouse for its biodiversity and historic landscape whilst maintaining water quality and protecting the aquatic environment.

5.27 The development relates to a feeder area for the Humber Estuary Special Area of Conservation (SAC), Special Protection Area, and RAMSAR site and forms a habitat for the ocean and river lamprey, species which have been identified as critically endangered and are internationally protected. The provisions of the 2018 Conservation of Habitats and Species Regulations therefore apply. The local planning authority is the duly competent authority within the terms of the Regulations to secure their effective implementation. The onus of the Regulations and associated case law further leads to a requirement that the applicant demonstrate an absence of harm from the development and not simply that the harm may be mitigated. The applicant has submitted a screening assessment of compliance for the proposed apparatus and notably the proposed lamprey pass in order to comply with the requirements of the Regulations. The submitted report contends that the existing eel/lamprey pass at Naburn Lock is sufficient to allow for both species of lamprey to pass up river to spawn and to forage. The applicant initially proposed the use of a lariner fish pass with lamprey tiles whose effectiveness in the current situation had not been established. The application details were subsequently amended to allow for the construction of a more traditional type of vertical slot fish pass for which data as to its effectiveness is readily available.

5.28 The precise details of the proposed lamprey pass have now been put forward

subject to final design adjustments to fit the precise location for the apparatus. Sufficient information has now been forthcoming for it to be judged that the revised design of fish pass would not lead to demonstrable harm to the lamprey habitat and that the requirements of the Habitats Regulations can be complied with. Further concerns also arose in respect of the impact of the proposed apparatus upon river flow and the associated volumes of dissolved oxygen. In common with other species significant falls in volumes of dissolved oxygen will cause harm to the river and ocean lamprey leading to them ceasing to use the area for spawning and foraging. The applicant has submitted further information in terms of dissolved oxygen levels. The operation of the apparatus can be tailored to ensure that if dissolved oxygen (DO) levels within the immediate area become critical then it can be shut down in order to allow levels to recover. However, a condition is not required in this respect as the Environment Agency have confirmed that impacts on DO levels will be addressed as part of a water abstraction/transfer licence.

IMPACT UPON FLOOD RISK IN THE LOCALITY

5.29 Central Government Planning Policy as outlined in paragraph 163 of the NPPF indicates that where determining planning applications for development, local planning authorities should ensure that flood risk is not increased elsewhere. At the same time Policy ENV5 of the Publication Draft Local Plan (2018) indicates that new development should not be subject to unacceptable flood risk and shall be designed in such a way that mitigates against present and future flooding events.

5.30 The application site lies within Flood Zone 3(a) being the functional flood plain of the River Ouse and is subject to flooding on a regular basis. Thus the proposal needs to be assessed against the Sequential and Exception tests as set out in paragraphs 158 – 161 of the NPPF. The aim of the Sequential test is to steer new development to areas with the lowest probability of flooding. However, as set out in National Planning Practice Guidance, it is considered that the proposed development falls within the category of “Essential utility infrastructure” (which includes electricity generating power stations), which has to be located in a flood risk area for operational reasons. Thus it is not considered necessary to carry out the Sequential test in this case. For the Exception test to be passed it must be demonstrated that the proposed development will provide wider sustainability benefits to the community that outweigh flood risk, and that it will be safe for its lifetime, without increasing flood risk elsewhere and where possible reduce flood risk overall.

5.31 It is considered that the proposal is a water compatible engineering project, which has wider sustainability benefits through the production of electricity from a sustainable source. The Environment Agency initially objected to the proposal on flood risk grounds but subsequently withdrew their objection following the submission of a revised Flood Risk Assessment which indicated that all waste materials and soils generated through the construction process would be removed from site. This would ensure that there is no displacement of flood flows downstream of the application site and thus should not increase flood risk elsewhere. In addition the power plant would

be located above 9.37 AOD with the surrounding building designed to withstand inundation. Thus it has been demonstrated that the proposal will be safe for its lifetime, without increasing flood risk elsewhere. These measures could be secured by condition attached to any planning permission. For these reasons, it is considered that the proposal passes the exemption test.

IMPACT UPON THE FUNCTIONALITY OF THE COURSE FISHERY:

5.32 Concerns have been raised by objectors in respect of the impact of the proposal upon the functionality of the coarse fishery operating from the environs of the site. The Environment Agency also initially objected to the proposal on the grounds that insufficient information was forthcoming in terms of the effectiveness of the proposed fish pass both on its own and in combination with the existing fish pass. Concerns were also expressed in terms of the impact of the proposed apparatus on water flows with consequent impacts upon fish health and viability. The objection has subsequently been withdrawn following on from agreement in respect of a minimum water flow through the apparatus and associated fish pass. Water flow rates through the apparatus and associated fish pass can then be controlled via the relevant section of the water resources licencing regulations.

IMPACT ON THE AMENITY OF NEIGHBOURING PROPERTIES:-

5.33 Central Government Planning Policy as set out in paragraph 127 f) of the NPPF indicates that planning policies and decisions should create places that give rise to a high standard of amenity for all existing and future users. Policy D1 (Place making) of the Publication Draft Local Plan 2018 indicates that planning decisions should make clear reference to securing the residential amenity of neighbouring properties.

5.34 Concerns have been expressed in respect of noise generated by the construction of the proposed development together with noise generated by the development in operation. The site is relatively remote from other residential properties, however the natural topography in the surrounding area could accentuate any impact from noise. Nevertheless, the level of noise generated subject to any permission being conditioned to secure best practise, would not be such as to give rise to any material harm to amenity. Similarly, the operations would largely be undertaken at or close to water level within a building and so any noise impact in respect of the active operation would be modest.

5.35 Concerns have also been expressed by neighbours in respect of the impact of the use of the access road to the adjacent caravan site by construction traffic and other vehicles associated with the development. However, the legal rights relating to the use of the road are a civil matter and not a material consideration in terms of determining the present application.

CONSIDERATION OF VERY SPECIAL CIRCUMSTANCES

5.36 Paragraph 147 of the NPPF states that when located in the Green Belt, elements of many renewable energy projects will comprise inappropriate development. In such cases developers will need to demonstrate very special circumstances if projects are to proceed. Such very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources. With specific reference to "Meeting the challenge of climate change", paragraph 154 of the NPPF states that local planning authorities should not require applicants to demonstrate the overall need for renewable or low carbon energy, and recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions, and approve the application if its impacts are (or can be made) acceptable. Policy CC1 of the Publication Draft Local Plan indicates that proposals for renewable energy developments will be supported and encouraged within the City providing they consider impacts upon nature conservation sites and features including those afforded statutory protection.

5.37 The applicant has submitted a detailed statement outlining that the proposed development would generate some 5MW of energy capacity which would be sufficient to generate sufficient power for around 310 houses over a period of one year. As such the proposal would make measurable contribute to the reduction of the UK's carbon energy use. Whilst the proposal represents a relatively small scale project, the potential contribution to energy supply at a local level is not insubstantial. Central Government guidance in the NPPF makes it clear that local planning authorities should recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions, and approve the application if its impacts are (or can be made) acceptable. With this in mind, and bearing in mind the nature of the location and characteristics of the application site and that no other harms have been identified arising from the proposal, it is considered that very special circumstances exist that clearly outweigh the harm to the Green Belt.

6.0 CONCLUSION

6.1 Naburn Lock is located on the River Ouse in a rural location to the south of Naburn village. The construction of the locks (in 1757 and 1888) has created an island upon which is located the workshops, stores and offices associated with the operation and maintenance of the lock. Directly to the east lies the Naburn Banqueting House, a Grade II listed building, together with the lock keeper's house. The locks themselves are separately listed at Grade II. Planning permission is sought for construction of a hydro electric generating plant together with associated infrastructure on the western bank of the island.

6.2 The proposal would constitute inappropriate development in the Green Belt which is by definition harmful to the Green Belt and should not be approved other than in very special circumstances. However, it is considered that the impact of the proposal on the openness of the Green Belt would be mitigated by the characteristics of the locality and its setting adjacent to Naburn Lock. Whilst the proposal represents a relatively small scale project, Central Government guidance in the NPPF makes it

clear that local planning authorities should recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions, and approve the application if its impacts are (or can be made) acceptable. With this in mind, and bearing in mind the nature of the location and characteristics of the application site, it is considered that very special circumstances exist that clearly outweigh the harm to the Green Belt. No other harms have been identified arising from the proposal.

6.3 In terms of the previously identified significant concerns relating to harm to local habitat and biodiversity the proposal has been amended in detail and additional information provided which allows for the previously identified harm to the habitat of the ocean and river lamprey to be effectively mitigated and harm to the habitat of the sand martin and tansy beetle avoided altogether subject to any permission being properly conditioned. Subject to conditions, no objections are raised by the Environment Agency or Natural England, or by the Council's Ecologist. In accordance with paragraph 154 of the NPPF relating to renewable energy projects, it is considered that the impacts of the proposal can be made acceptable through the imposition of appropriate conditions, and the application is recommended for approval.

7.0 RECOMMENDATION: Approve

1 The development shall be begun not later than the expiration of three years from the date of this permission.

Reason: To ensure compliance with Sections 91 to 93 and Section 56 of the Town and Country Planning Act 1990 as amended by section 51 of the Compulsory Purchase Act 2004.

2 The development hereby permitted shall be carried out in accordance with the following plans:-

Revised drawings received on 24 October 2019

2350002E - General layout

2350003E - Access and construction

2350006E - Ground plan and sections

2350007E - Elevations

Reason: For the avoidance of doubt and to ensure that the development is carried out only as approved by the Local Planning Authority.

3 Construction Environmental Management Plan (Construction)

Prior to commencement of the development, a Construction Environmental Management Plan (CEMP) for minimising the creation of noise, vibration and dust during the demolition, site preparation and construction phases of the development shall be submitted to and approved in writing by the Local Planning Authority. The CEMP must include a site specific risk assessment of dust impacts in line with the

guidance provided by IAQM (see <http://iaqm.co.uk/guidance/>) and include a package of mitigation measures commensurate with the risk identified in the assessment. All works on site shall be undertaken in accordance with the approved scheme, unless otherwise agreed in writing by the Local Planning Authority.

NOTE: For noise details on hours of construction, deliveries, types of machinery to be used, use of quieter/silenced machinery, use of acoustic barriers, prefabrication off site etc, should be detailed within the CEMP. Where particularly noisy activities are expected to take place then details should be provided on how they intend to lessen the impact i.e. by limiting especially noisy events to no more than 2 hours in duration. Details of any monitoring may also be required, in certain situation, including the location of positions, recording of results and identification of mitigation measures required.

With respect to dust mitigation, measures may include, but would not be restricted to, on site wheel washing, restrictions on use of unmade roads, agreement on the routes to be used by construction traffic, restriction of stockpile size (also covering or spraying them to reduce possible dust), targeting sweeping of roads, minimisation of evaporative emissions and prompt clean up of liquid spills, prohibition of intentional on-site fires and avoidance of accidental ones, control of construction equipment emissions and proactive monitoring of dust. Further information on suitable measures can be found in the dust guidance note produced by the Institute of Air Quality Management, see <http://iaqm.co.uk/guidance/>. The CEMP must include a site specific risk assessment of dust impacts in line with the IAQM guidance note and include mitigation commensurate with the scale of the risks identified.

For lighting details should be provided on artificial lighting to be provided on site, along with details of measures which will be used to minimise impact, such as restrictions in hours of operation, location and angling of lighting.

In addition to the above the CEMP should provide a complaints procedure, so that in the event of any complaint from a member of the public about noise, dust, vibration or lighting the site manager has a clear understanding of how to respond to complaints received. The procedure should detail how a contact number will be advertised to the public, what will happen once a complaint had been received (i.e. investigation), any monitoring to be carried out, how they intend to update the complainant, and what will happen in the event that the complaint is not resolved. Written records of any complaints received and actions taken should be kept and details forwarded to the Local Authority every month during construction works by email to the following addresses:

public.protection@york.gov.uk and planning.enforcement@york.gov.uk

4 Construction Environmental Management Plan (Biodiversity and Habitat)

No development shall take place (including ground works and vegetation clearance)

until a Construction Environmental Management Plan (CEMP) has been submitted to and approved by the local planning authority. The CEMP shall include (but not be limited to) the following;

- a) Risk assessment of potentially damaging construction activities,
- b) The location and timing of sensitive works to avoid harm to biodiversity features,
- c) Details of pollution prevention measures to avoid harm and potential mortality to fish species from pollution,
- d) Details of biosecurity measures to stop the spread of waterborne diseases and Invasive Non-Native Species,
- e) Details of methods of working to avoid the risk of harming fish species during dewatering.
- f) Responsible persons and lines of communications.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

Reason: In order to avoid an adverse impact on interest features (Lamprey) of the Humber Estuary SAC, and to protect the biodiversity of the river corridor in accordance with the aims of paragraph 175 of the National Planning Policy Framework 2019.

Reason: To protect the amenity of the locality

5 In the event that unexpected contamination is found at any time when carrying out the approved development, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

6 Details of all machinery, plant and equipment to be installed in or located on the premises, which is audible outside of the premises, shall be submitted to the local

planning authority for approval.

These details shall include average sound levels (LAeq), octave band noise levels and any proposed noise mitigation measures. The machinery, plant or equipment and any approved noise mitigation measures shall be fully implemented and operational before the proposed use first operates and shall be appropriately maintained thereafter.

Note: The combined rating level of any building service noise associated with plant or equipment at the site should not exceed the representative LA90 1 hour during the hours of 07:00 to 23:00 or representative LA90 15 minutes during the hours of 23:00 to 07:00 at 1 metre from the nearest noise sensitive facades when assessed in accordance with BS4142: 2014, inclusive of any acoustic feature corrections associated with tonal, impulsive, distinctive or intermittent characteristics.

Reason: To protect the amenity of nearby properties and the environmental qualities of the area.

7 Except in case of emergency no construction works or ancillary operations, including deliveries to and dispatch from the site which are audible beyond the boundary of the site shall take place on site other than between the hours of 08:00-18:00 Monday to Friday and between 09:00-13:00 on Saturdays.

Reason: To protect the amenity of nearby properties and the environmental qualities of the area.

8 No removal of hedgerows, trees or shrubs that may be used by breeding birds, or vertical river side bank that may be used by Sand Martins (southwest facing banks above the concrete capping and pressed metal piling), shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check of vegetation for active birds' nests immediately before the vegetation is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation should be submitted to the local planning authority.

Reason: To ensure that breeding birds are protected from harm during construction.

NOTE: All British birds, their nests and eggs (with certain limited exceptions) are protected by Section 1 of the Wildlife and Countryside Act 1981, as amended.

9 No development shall take place until an ecological design strategy (EDS) addressing Sand Martin (*Riparia riparia*) artificial nest creation has been submitted to and approved in writing by the local planning authority.

The EDS shall include the following.

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- a) Purpose and conservation objectives for the proposed works.
- b) Review of site potential and constraints.
- c) Detailed design(s) and/or working method(s) to achieve stated objectives.
- d) Extent and location/area of proposed works on appropriate scale maps and plans.
- e) Type and source of materials to be used where appropriate, e.g. native species of local provenance.
- f) Timetable for implementation demonstrating that works are aligned with the proposed phasing of development.
- g) Persons responsible for implementing the works.
- h) Details of initial aftercare and long-term maintenance.
- i) Details for monitoring and remedial measures.
- j) Details for disposal of any wastes arising from works.

The EDS shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter.

Reason: To take account of and enhance the biodiversity and wildlife interest of the area, and to be in accordance with Paragraph 175 of the National Planning Policy Framework (2019) to encourage the incorporation of biodiversity improvements in and around developments, especially where this can secure measurable net gains for biodiversity.

10 Operation of the approved development shall not commence unless a vertical slot fish pass for the benefit of Lamprey, of a design approved by the Environment Agency National Fish Pass Panel, is installed and functioning. The fish pass shall be retained and maintained thereafter for the lifetime of the Hydro-electric Plant.

Reason: To ensure that operation of the hydroelectric generation plant does not have an adverse impact on a qualifying feature (Lamprey) of the European Site in line with the Conservation of Habitats and Species Regulations 2017 (as amended).

11 Where it is intended to create or re-instate semi-natural habitats, all species used in the planting proposals shall be locally native species of local provenance unless otherwise agreed in writing with the local planning authority. Where stands of Tansy plant (*Tanacetum vulgare*) are to be disturbed or removed, replacement plug planting or seeding shall be undertaken.

Reason: To take account of and enhance the biodiversity and wildlife interest of the area, and to be in accordance with Paragraph 175 of the NPPF (2019) to encourage the incorporation of biodiversity improvements in and around developments, especially where this can secure measurable net gains for biodiversity.

12 The development shall be carried out in accordance with the submitted revised flood risk assessment (by Renewables First, dated February 2019) and the following mitigation measures it details; and also Drawing 'Ground Plan & Sections' (drawing number 23560006D, dated 03/2019):

- Electrical equipment is to be protected by being located above 9.37mAOD
- The powerhouse will be designed to flood and withstand inundation

These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

Reason: To reduce the impacts of flooding to the proposed development and future occupants

13 All spoil and arisings that are to be removed from the floodplain and disposed of so as to ensure that there is no loss of flood storage or raising of ground levels on site,

Reason: In order to ensure that there is no displacement of flood flows downstream of the application site.

7.0 INFORMATIVES: Notes to Applicant

1. STATEMENT OF THE COUNCIL`S POSITIVE AND PROACTIVE APPROACH

In considering the application, the Local Planning Authority has implemented the requirements set out within the National Planning Policy Framework (paragraph 38) in seeking solutions to problems identified during the processing of the application. The Local Planning Authority took the following steps in order to achieve a positive outcome:

- Sought submission of a detailed case for very special circumstances that would outweigh the harm caused by the proposal to the openness of the Green Belt.
- Sought clarification that the proposed lamprey pass design together with the volume of dissolved oxygen with the water arising from the operation of the plant would not harm the foraging and spawning habitat of the ocean and river lamprey a

critically endangered species of importance in securing the biodiversity of the Humber Wetlands SAC (Special Area of Conservation)

2. ENVIRONMENTAL PERMITTING

Advice to applicant from the Environment Agency

It is noted that the applicant is aware of the requirement to gain a Flood Risk Activity Permit. We are currently processing the flood risk activity permit application for the permanent works for this proposed development.

The applicant should not assume that a permit will automatically be forthcoming once planning permission has been granted, and we advise them to maintain consultation with us regarding this.

Contact details:

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