

COMMITTEE REPORT

Date: 1 December 2022 **Ward:** Rural West York
Team: West Area **Parish:** Upper Poppleton Parish Council

Reference: 21/02444/FULM
Application at: Land To the West of Newlands Lane Upper Poppleton York
For: Extraction of clay and restoration of the site through the importation of inert wastes at land to the west of Newlands Lane
By: Mr D Brown
Application Type: Major Full Application
Target Date: 5 December 2022
Recommendation: Approve

1.0 PROPOSAL

1.1 Land west of Newlands Lane comprises an area of 6.8 hectares of scrubland incorporating a large water body to the south west of Upper Poppleton village. The water body was created through unauthorised clay extraction in 2007 and the site is accessed from Kettlewell Lane an unmade agricultural track of some antiquity. Planning permission is presently sought for the extraction of approximately 330,000 tonnes of puddling clay for use in flood defences, repairing canals and reservoirs and lining waste disposal sites. The proposal is subject to an Environmental Impact Assessment under Schedule 2 of the 2017 Town and Country Planning (Environmental Impact Assessment) Regulations and the site lies within the general extent of the York Green Belt.

1.2 Following extraction of the mineral it is proposed to restore the site with graded inert soils and plant the site with an oak based native woodland.

2.0 POLICY CONTEXT

2.1 The revised National Planning Policy Framework (NPPF) 2021 sets out the government's planning policies for England and how these are expected to be applied. It is a material consideration in the determination of this planning application.

2.2 Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise (section 38(6) Planning and Compulsory Purchase Act 2004).

2.3 The Statutory Development Plan for the City of York comprises the saved policies of the 2008 Yorkshire and Humberside Regional Strategy. These are policies YH9(C) and Y1 (C1 and C2) which relate to York's Green Belt and the key diagram insofar as it illustrates general extent of the Green Belt. The policies state that the detailed inner and the rest of the outer boundaries of the Green Belt around York should be defined to protect and enhance the nationally significant historical and environmental character of York, including its historic setting, views of the Minster and important open areas. Also the relevant policies of the York and North Yorkshire Minerals and Waste Local Plan (2022) Adopted April 2022, together with the relevant policies of the Upper and Nether Poppleton Neighbourhood Plan Adopted 2017.

2.4 North Yorkshire and York Minerals and Waste Local Plan (2022) Policies:

- M13 Continuity of Supply of Clay
- D02 Local Amenity and Cumulative Impacts
- D03 Transport of Minerals and Waste and Associated Traffic Impacts
- D05 Mineral and Waste Development in the Green Belt
- D06 Landscape
- D07 Biodiversity and Geodiversity
- D09 Water Environment
- D10 Reclamation and After use
- D12 Protection of Agricultural Land and Soils

2.5 Poppleton Neighbourhood Plan (2017) Policies:

- PNP1 Green Belt
- PNP12 Restoration of Land at Dutton's Farm

2.6 City of York Publication Draft Local Plan (2018) Policies:

- EC5 Rural Economy
- G12 Biodiversity and Access to Nature
- G14 Trees and Hedgerows
- GB1 Development in Green Belt
- ENV4 Flood Risk
- T1 Sustainable Access

2.7 York Development Control Draft Local Plan (2005) Policies:

- CYGP15a) Development and Flood Risk
- CYNE2 River and Stream Corridors, Ponds and Wetland Habitats
- CYGB1 Development in Green Belt
- CYMW3 Minerals Extraction
- CYMW4 After Use of Mineral Workings

3.0 CONSULTATIONS

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INTERNAL

Public Protection

3.1 Raise no objection to the proposal

Design ,Conservation and Sustainable Development (Archaeology)

3.2 Raise no objection to the proposal.

Design, Conservation and Sustainable Development (Landscape)

3.3 Raise no objection in principle to the proposal but feel that the development would have a lesser landscape impact if the proposed earthworks were slightly higher.

Design, Conservation and Sustainable Development (Ecology)

3.4 Raise concerns that the proposed after use involving deciduous woodland of native species is not in keeping with the development of the area and it is recommended that a restoration scheme more consistent with local landscape development such as a flood meadow be developed in conjunction with an ecologist. The submission of a draft LEMP(Landscape, Environmental Management Plan) is also sought prior to determination.

Lead Local Flood Authority

3.5 Raise no objection in principle to the proposal subject to the requirements of the Ainsty(2008) IDB and the authority's Ecologist being satisfied.

Highway Network Management

3.6 Raise no objection in principle to the proposal subject to any permission being conditioned in detail in respect of the access design and volume of vehicle movements.

Strategic Planning Policy

3.7 Raise no objections to the proposal subject to it being demonstrated as not harming the openness and purposes of designation of the Green Belt, with in the event of harms being demonstrated Very Special Circumstances being presented. The specific requirements of ecology, landscape, drainage and highways being properly addressed.

EXTERNAL

North Yorkshire County Council

3.8 Raise no objection to the proposal.

Ainsty (2008) Internal Drainage Board

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3.9 Raise no objection to the proposal subject to the detailed surface water management during operation and restoration being conditioned in detail as part of any permission.

Environment Agency

3.10 Raise no objection to the proposal subject to any permission being conditioned in detail in respect of pollution prevention and to secure the biodiversity value of the site.

Natural England

3.11 Raise no objection to the proposal.

Cross Country Pipelines

3.12 Raise no objection to the proposal.

Upper Poppleton Parish Council

3.13 Object to the proposal on the grounds that surrounding roads are not suitable for the volume and nature of associated traffic, parking within the site is insufficient for those working there, there is a need to secure high quality farmland and the impact of noise from continuous 24 hour working would adversely affect the residential amenity of neighbouring properties.

4.0 REPRESENTATIONS

4.1 The proposal was publicised by Site notice on 30th November 2021 and by Press Notice at the same time. Seven letters of objection have been received raising the following issues:

- Objection to the creation of new landfill sites
- Objection to the impact of HGVs accessing and egressing the site on pedestrian and cycle traffic in the locality
- Concern that the applicant may not be able to complete the restoration phase of the development
- Objection to the proposed restoration scheme which does not reflect local landscape history
- Objection to the impact of the proposal upon the residential amenity of the neighbouring farm house through noise
- Concern that the proposal is merely seeking to legitimise the previous unauthorised development
- Objection to the loss of trees and hedgerow surrounding the access to Newlands Lane to facilitate HGV access to the site
- Objection to pollution of surrounding water courses from leachate from the site
- Concern that vehicles from the site may access and egress via Upper or Nether Poppleton contrary to the weight restriction impacting upon the Lane.
- Concern that the increased noise and comings and goings to the site would harm the amenity of the wider area

- Concern that the junction of Newlands Lane with the A59 would become an accident black spot with the increase in traffic using the junction.
- Objection to the impact of the proposal upon local biodiversity

4.2 Coun Ann Hook objects to the proposal on the grounds of conflict between pedestrians, horse riders and cyclists using Newlands Lane and the HGVs accessing and egressing the site.

5.0 APPRAISAL

KEY CONSIDERATIONS

5.1 KEY CONSIDERATIONS INCLUDE:-

- Environmental Impact Assessment
- Principle of the Development
- Impact upon the Open Character and Purposes of Designation of the Green Belt
- Impact upon the Landscape
- Impact upon Local Biodiversity
- Impact upon the Safety and Convenience of Highway Users
- Hydrology and Flood Risk
- Impact upon the Residential Amenity of Nearby Properties

ENVIRONMENTAL IMPACT ASSESSMENT

5.2 The proposal is EIA development and falls to be assessed under Schedule 2 of the 2017 Town and Country Planning (Environmental Impact Assessment Regulations). A detailed Environmental Assessment has been submitted to support the application. The following potential impacts are itemised

- Air Quality
- Water Quality
- Flood Risk
- Noise
- Traffic
- Landscape and Visual Impacts

The environmental information submitted complies with the above Regulations and is sufficient to assess the environmental impact of the proposal.

PRINCIPLE OF THE DEVELOPMENT

5.3 Central Government Planning Policy as outlined in paragraph 211 of the NPPF indicates that great weight should be given to the benefits of mineral extraction including to the economy. In considering proposals for mineral extraction minerals planning authorities should ensure that there are no unacceptable adverse effects upon the natural or historic environment, human health, that any unavoidable noise or dust is controlled at source and provide for restoration and after care at

the earliest opportunity carried out to the highest standards. At the same time Policy M13 of the Minerals and Waste Local Plan identifies the site as allocated to secure the supply of clay for industrial purposes. Policy PNP 12 of the Upper and Nether Poppleton Neighbourhood Plan states that proposals for the restoration and reinstatement of land at Dutton Farm should respect its location within the general extent of the Green Belt.

5.4 In terms of the location of the site within the Green Belt paragraph 150 of the NPPF indicates that certain forms of development are not considered as being inappropriate development which includes mineral extraction providing, they preserve openness and do not conflict with the purposes of including land within it. This is paralleled in Policy D05 of the Minerals Plan indicates that proposals for Mineral extraction in the Green Belt will be supported where they are consistent with the purposes of Green Belt identified in National Policy, would preserve the openness of the Green Belt and would safeguard the historic character and setting of York. Restoration and after care of the site must similarly satisfy Green Belt objectives. The appropriateness or otherwise of the development in Green Belt terms is considered in detail below.

5.5 The application site comprises an unrestored site of unauthorised work for extraction of clays in the early 2000s. It has subsequently been allocated in the Minerals and Waste Plan as a site to assist in the securing of supplies of clays suitable for puddling for flood defence works, for repair of artificial water bodies, such, as canals reservoirs and docks and the lining of landfill sites. It is estimated that the site can yield approximately 180,000 cubic metres of puddling clay over six phases prior to restoration. Material would be extracted to a maximum depth of 9 metres AOD, approximately 4 to 6 metres below current maximum ground level at the site. Working would not be continuous and would take place on a contract basis to supply the needs of specific developments requiring use of the specialist clay and would take approximately 6 ½ years to run through all six phases. Restoration would be using 390,000 cubic metres of sifted and inert soils to create a woodland and wetland area.

5.6 The proposed working relates to the extraction of a specialist industrial puddling clay reserves of which in the wider area are limited and therefore require working where they occur. The detail of the proposed working fulfils the requirements of the allocation in Policy M13 of the Minerals Local Plan. The terms of the restoration, whilst not reflective of the landscape in the immediate area, provide a reference to the community woodland being developed a short distance to the south east beyond the A59.

IMPACT UPON THE OPEN CHARACTER AND PURPOSES OF DESIGNATION OF THE GREEN BELT

5.7 Paragraph 137 of the NPPF indicates that the fundamental aim of Green Belt Policy is to prevent urban sprawl by keeping land permanently open, the essential characteristics of Green Belt are their openness and permanence. Paragraphs 147 and 148 of the NPPF indicate that inappropriate development is by nature harmful to the Green Belt and should not be approved other than in very special circumstances. In considering any planning application for development within the Green Belt substantial weight should be afforded to the harm to the Green Belt.

5.8 Openness in terms of Green Belt Policy seeks to keep land permanently open by preventing urban sprawl as outlined in paragraph 137 of the Framework. The application site comprises an area of 6.8 hectares of scrub land with a water body centrally placed within it set within a wider area of open countryside. The proposal envisages the metalling of the access track to enable it to be used by conventional HGVs the formation of a formalised access into the site the construction of a retaining bund around the working area, the erection of a site office and weighbridge, formation of a parking area for vehicles and equipment and the formation of a stock piling area for the extracted clay. Taken in combination each of the elements of the development would lead to harm to the openness of the Green Belt in the vicinity of the application site.

5.9 It is a formerly worked area in terms of clay extraction albeit on an unauthorised basis situated in open countryside which has reverted to nature. The proposal re-commences working which will introduce for the temporary period before restoration, a highly industrial type appearance with a formalised road access, parking area and office with industrial type activities clearly taking place and noticeable over the surrounding area. The applicant has indicated a willingness to restrict the height and dimensions of the worked clay stockpile and to ensure that any processing takes place off site in order to minimise visual harm but there will still be significant visual harm from the associated engineering works and the development is therefore felt to be inappropriate in the Green Belt.

5.10 Paragraph 138 of the NPPF identifies five purposes for designation of the Green Belt. These include the safeguarding of the open countryside from encroachment and also the safeguarding of the setting of historic towns and cities. The proposal is not for an urbanising use and therefore would not be an encroachment in the open countryside with required minerals needing to be extracted where they occur. At the same time its location would not impact upon the setting of the Historic City. The proposal would not therefore impact upon the purposes of designation of the Green Belt. A case for “very special circumstances” in accordance with paragraphs 147 and 148 of the Framework is therefore required which will be considered further below in the context of the planning balance.

5.11 In terms of the restoration scheme the proposal envisages the progressive restoration of the site to a native broadleaf woodland with adjacent wetland habitat. Through its character involving the sensitive removal of natural interventions its positive contribution to the wider natural landscape it is felt that the scheme would preserve the openness of the Green Belt and secure the purposes of including the land within it.

IMPACT UPON THE LANDSCAPE OF EXTRACTION

5.11 Central Government Planning Policy as out in paragraph 174 of the NPPF indicates that planning decisions should protect and enhance valued landscapes as well as respecting the intrinsic character and beauty of the countryside. Policy D06 of the Minerals Local Plan indicates that proposals will only be permitted where there will be no unacceptable impact upon the quality and/or character of the landscape having taken account of any proposed mitigation measures.

5.11 The application site lies in an area of very gently rolling but generally low lying landscape to the west of the built up area of the City. Much of the surrounding farmland is cropped as arable

with mature hedge boundary treatment with isolated mature and veteran trees interspersed with wide farm tracks which Kettlewell Lane accessing the site is one example of. A Landscape and Visual Impact Assessment (LVIA) has been submitted as part of the formal Environmental Impact Assessment which indicates that the site is not readily visible in medium and longer distance views through the surrounding landscape.

5.12 During the extraction phase work is phased progressively around the site from east to west with extraction of each phase followed by a commencement of the restoration of that phase upon its completion. The extraction equipment and the traffic associated with it would be intermittently visible with extraction activities taking place below the existing landform. That would be mitigated to a degree by the planting of a native species hedge 6 metres inwards from the bank of the Foss dyke and substantial reinforcement of the existing hedgerow planting along Kettlewell Lane. The proposed site office and weighbridge would be located at the north western edge of the site in the area of least visibility from outside of the site. Some extracted clay would be stockpiled on site but any impact can be minimised by condition controlling the height and dimensions of that storage as part of any permission.

5.13 Taking account of the low lying nature of the site and the lack of any significant long distance views across it, combined with the proposed mitigation measures it is felt that the proposed extraction activity would not adversely impact upon the surrounding landscape.

IMPACT OF THE SCHEME UPON THE LANDSCAPE DURING RESTORATION

5.14 Restoration would take place on a phased basis directly following on from the completion of each phase of extraction. It will involve the importation of graded and sifted soils from development projects elsewhere which then, as restoration is progressively undertaken would infill the voids left from the previous extraction. There would inevitably be some stock piling of soils for a temporary period whilst the infilling work is being undertaken which would impact upon landscape views of the site from the immediate vicinity. The height and dimensions of such stockpiles may be controlled by condition on any planning permission.

5.15 In more general terms the restoration involves the raising of levels over much of the site above existing with planting of broadleaf woodland predominantly oak with a similar approach to that being undertaken with the White Rose Forest to the south east. Whilst the woodland is maturing the visual prominence of the site would increase. However, when fully mature the woodland would form a positive feature within the surrounding landscape. A detailed planting plan for the restoration has been submitted which forms one of the approved plans secured by condition. This is supplemented by a detailed landscape scheme also secured by condition.

IMPACT UPON LOCAL BIODIVERSITY DURING EXTRACTION

5.12 Central Government Planning Policy as outlined in paragraph 180 of the NPPF indicates that when determining planning applications if significant harm to biodiversity arising from a development cannot be avoided through locating to an alternative site with less harmful impacts, mitigated for or as a last resort compensated for, then planning permission should be refused. At

the same time Policy D07 of the Minerals Plan indicates that proposals will be permitted where it can be demonstrated that having taken account of proposed mitigation measures there will be no harm to biodiversity. Proposals must also consider cumulative impacts, being either multiple impacts from the same development or impacts from the development in combination with other development in the locality.

5.13 The submitted Ecological Impact Assessment establishes that there are no protected species present within the site although the hedge abutting the site along Kettlewell Lane to the north is of some antiquity. It is not however species rich and therefore not of the highest significance in terms of the Hedgerow Regulations. Several mature trees within the hedge have been identified as having potential for a bat roost although the bat survey associated with the Environmental Impact Assessment failed to identify bats as being present in the area. The extraction operation requires the removal of a 50 metre section of the boundary hedge in order to accommodate the access and turning area for the vehicles visiting the site. That would give rise to some short term harm to biodiversity however at the same time a hedge utilising appropriate native species would be planted 6 metres in bound of the bank of the Foss Dyke to the south and south west in order to mitigate impact upon landscape views across the site in that direction. That would additionally enhance the biodiversity of the site particularly in respect of its relationship with the adjacent watercourse. To provide further mitigation any planning permission may be conditioned to require the submission and prior approval of a detailed Landscape Environmental Management Plan (LEMP).

5.14 A second element of the extraction phase of the proposal in terms of biodiversity is the dewatering and ultimately infilling of the existing water body centrally within the site left over from the previous unauthorised clay extraction. That is not the nesting habitat of any significant bird species although it does provide a transient habitat for ducks, waders and swans travelling through area en route to other more significant water bodies near by. The remainder of the site is a poor quality scrub land habitat and local biodiversity would not be harmed through the extraction process. Impact upon the habitat of any nesting birds can be mitigated by means of a condition upon any planning permission restricting operations during the nesting season.

IMPACT UPON LOCAL BIODIVERSITY DURING RESTORATION

5.15 As part of the restoration scheme, it is proposed to reconstruct and reinforce the hedge bounding Kettlewell Lane with new planting utilising native species. With the restoration it is proposed to plant the majority of the site with deciduous broadleaf native woodland consisting mostly of oaks with a pond and reed bed at the south eastern edge of the site where it is at its most low lying to retain a wetland habitat that would continue to be a point of attraction for wetland birds travelling through the area. The balance of the site would retain the existing grassland/scrub vegetation. Concern has been expressed by a consultee that the use of a broadleaf woodland as the basis of the restoration of the site does not carry reference to the development of the local landscape history and an alternative should be developed based upon the local mix of vegetation and wildlife species. It is however felt that the addition of an area of woodland planting would enhance local biodiversity and be more characteristic of the wider landscape. A biodiversity net gain can at the same time be demonstrated by the standard methodology as required by the NPPF.

IMPACT UPON THE SAFETY AND CONVENIENCE OF HIGHWAY USERS

5.14 Central Government Planning Policy as outlined in paragraph 111 of the NPPF indicates that development should only be prevented or refused on highway grounds if there would be an unacceptable impact upon highway safety or the residual cumulative effects upon the road network would be severe. At the same time Policy D03 of the Minerals Plan indicates that where possible minerals operators should use alternatives to road transport. Where road transport is required there would need to be capacity within the existing network for the nature and level of traffic proposed which would not have an unacceptable impact upon local communities or other highway users. Access arrangements should be suitable for the nature and volume of traffic generated and there should be suitable arrangements for on-site loading/unloading and manoeuvring of vehicles.

5.15 Concern has been expressed by objectors in respect of the potential for conflict between users of the site and pedestrians, cyclists and horse riders on adjoining lanes together with the wider possibility of vehicles entering and leaving the site via Upper /Nether Poppleton village to access the surrounding strategic road network in contravention of a Traffic Regulation Order restricting flows of HGVs.

5.16 The scheme through the submitted Transport Statement within the EIA envisages that the site would be worked approximately 278 days per year with 20 two way HGV movements which would use 10 tonne vehicles. That would yield an average of two per hour. Staff would travel to the site in their own vehicles from the company's main site at Escrick in the morning and returning at the finishing of working in the evening with no one permanently based at the site.

5.17 Newlands Lane is a single track road with passing places, however it has wide verges and there is good visibility in a south westerly direction towards the A59. It varies in width from 2.9 to 3.2 metres widening further to 5.7 metres in the vicinity of the junction with the A59. There are four passing places between Kettlewell Lane and the A59 which are informal and of varying dimensions and surfacing. Only a single slight injury accident has been recorded at the junction of Newlands Lane and the A59 in the past five years. Accident risk is therefore relatively small. Subject to the passing places being improved to accommodate HGVs of the appropriate dimensions and the access detail from the site on to Kettlewell Lane and from Kettlewell Lane to Newlands Lane being approved by condition to any permission there is no objection to the proposal in highway terms. Suitable provision for wheel washing of HGVs to prevent spread of detritus on to the surrounding highway is also of particular importance.

5.18 North and north east of the site the lane is used for access to adjoining farms and by dog walkers coming from Nether and Upper Poppleton. In the direct vicinity of the application site the road is comparatively little used with the small number of pedestrians passing along Newlands Lane able to access the verges in the event of a vehicle passing. The applicant has indicated that the construction and operating traffic for the site would access from the A59 in a north easterly direction and return along the same route. It is envisaged by the applicant that the access configuration from Kettlewell Lane on to Newlands Lane would be such as to prevent a vehicle either turning from the north and Poppleton Village and turning out to the north towards the village.

This may be secured by condition as part of any planning permission. To travel further north into either Upper or Nether Poppleton would be to contravene the Traffic Regulation Order and be an offence under the Road Traffic Regulation Act 1984. Routing of traffic could further be secured by means of a condition for a Method of Works Statement attached to any planning permission. With the comparatively low level of existing usage and the level of additional vehicle usage the proposal is felt to be acceptable in highway terms subject to conditions covering improvements to the passing places, access details and wheel wash being appended to any permission

HYDROLOGY AND FLOOD RISK

5.16 Central Government Planning Policy as outlined in paragraph 185 of the NPPF indicates that planning decisions should ensure that development is appropriate for its location taking account of the effects including cumulative effects upon human health, living conditions and the natural environment including the potential sensitivity of the site and the wider area to the impacts of development. At the same time paragraph 188 indicates that planning decisions should be on whether the development is an acceptable use of land rather than control the processes or emissions (where these are subject to other control regimes). Planning decisions should assume that these regimes work effectively. Policy D09 of the Minerals Plan indicates that proposals for minerals and waste development will be permitted where it can be demonstrated that there would be no adverse impacts including any mitigation upon surface or groundwater quality or surface or ground water flows.

5.17 Concerns have been expressed by consultees and objectors in respect of the potential for contamination of ground water and local water courses arising from the extraction works and also the import of soils for use in the restoration of the site.

5.18 In order to maintain access to the two adjoining water courses which the Ainsty IDB are responsible for maintaining the Foss Dyke and the Northfield Beck a 6 metre easement has been agreed along the bank of the Foss Dyke which would be demarcated by a native osier hedge. It is envisaged that during dewatering of the existing pond a formal outfall would be created with a settlement area to allow for the water to be properly treated prior to discharge to ensure that clay particles do not discharge into the beck to cause pollution or silting further along its course.

During each phase of extraction, a settlement area within a bund will be created to allow for surface water to be discharged by means of a pump at a controlled rate of 1.4 litres per second. It is acknowledged that there may be potential for surcharging during periods of particularly heavy rain due to the impermeable nature of the material, in that circumstance extraction activities would cease along with pumping for the duration of the event. In order to address this provision can be made in respect of the requirement for a surface water drainage scheme conditioned as part of any planning permission. In order to minimise discharges no phase would cover more than 1 hectare at a time and the settling pond would incorporate a straw bale filter to ensure that the discharge of clay particles is minimised. This is considered to be acceptable in hydrological terms.

5.19 In terms of the restoration the agreed surface water discharge rate would remain identical. The proposed restoration material would be free draining graded inert soils recovered from other

building projects which provide minimal risk of pollution to the surrounding water environment. The quality of the material can be controlled by condition as part of any planning permission.

IMPACT UPON THE AMENITY OF THE SURROUNDING AREA

5.20 Central Government Planning Policy as outlined in paragraph 130f) of the NPPF indicates that planning decisions should create places with a high standard of amenity for all existing and future users. At the same time Policy D02 of the Minerals Plan indicates that minerals and waste planning developments including associated infrastructure will be permitted where it can be demonstrated that there would be no unacceptable impacts upon neighbouring residents, businesses or users of the public rights of way network arising from noise, dust, lighting, vibration or visual intrusion.

5.21 Concerns have been expressed by objectors in respect of issues of dust in the surrounding area and particular issues of noise, light and visual intrusion in respect of the occupants of the nearest residential properties to the south west. The development is subject to a parallel requirement for an Environmental Permit under the Environment Act in terms of its operation. Paragraph 188 of the NPPF indicates that planning decisions should be on whether a development is an appropriate use of land rather than control of processes or emissions (where subject to separate pollution control regimes). Where these regimes are in place it should be assumed that these regimes will operate effectively. This is of particular relevance in respect of the mode of extraction and subsequent restoration of the site.

5.22 In terms of lighting the submitted Environmental Statement indicates that there would be no fixed lighting. However, due to the remote nature of the site and the likely pattern of working there will likely be a requirement for mobile lighting which because of its nature may have an increased impact within localised areas of the site and at certain times of year. This gives rise to potential for the site to be visible over a greater distance within the surrounding landscape. There may also be some potential for impact in terms of any foraging birds or bats in the wider area. This may be mitigated by means of lighting scheme secured by condition to any planning permission.

5.23 In terms of dust arising from the development, the clay to be extracted has a high moisture content and so other than in very dry conditions dust would not arise as a significant issue during extraction. In that eventuality it is proposed to use a water bowser to dampen down the surface of the access track where the most significant dust risk would arise speeds of vehicles both within the site and on the access track would be kept to a maximum of 15mph again to minimise generation of dust. Excavation would also be undertaken by hydraulic means which ensures that the clay is extracted with much of the moisture still adhering to it. At the same time no processing activities would take place on the site and a wheel wash would be incorporated for vehicles entering and leaving with the storage areas and construction compound hard surfaced. Each of these mitigations can be secured by condition on any planning permission requiring approval of a detailed dust management plan.

5.24 In respect of visual impact the site is situated in open countryside in relatively flat terrain. From the north and from the east it is not readily visible, however there are two residential properties lying within 200 metres to the south west and clearly intervisible with the site. In terms

of fixed longer term structures, it is envisaged to lay out a storage area for extracted clay, and the soils to be used for restoration, a compound in which the HGVs visiting the site will be loaded and unloaded together with parking for staff and any visitors. These areas would be located at the north western edge of the site where the surrounding landform gives the greatest degree of shelter in terms of views from the neighbouring properties. Furthermore it is proposed to plant a quick growing native species hedge around the southern and south western boundary of the site giving a suitable distance for maintenance of the adjoining watercourse, at an early stage in phase 1 which when mature, would provide a high degree of shelter for nearby properties in views across the site. These mitigations are felt to be acceptable and may be secured as part of a condition on any planning permission.

5.25 With relation to noise issues the proposed method of extraction would be discontinuous and based upon the fulfilment of contracts with periods where the site will be dormant with no work being undertaken. The envisaged operating hours are from 07:00 am to 18:00 Monday to Friday and 08:00am to 13:00pm on Saturdays with no Sunday or Bank Holiday working. Staff would not be permanently allocated to the site and would travel in from the company's main site at Escrick. Taking account of the distance from the nearby properties and the proposed hedge planting which would take place at a very early stage and provide some mitigation, the proposed hours are felt to be acceptable and may be secured by condition attaching to any planning permission.

5.26 In other respects the material would be extracted, and restoration undertaken with a single excavator and two tracked bulldozers. A system of work is envisaged which will minimise reversing movements by the HGVs which can be a significant cause of noise nuisance. Noise may also be increased by the site being dry and it is envisaged to use a water bowser to treat operating areas during prolonged periods of dry weather. This may again be mitigated by means of a condition attaching to any planning permission.

PLANNING BALANCE AND CASE FOR VERY SPECIAL CIRCUMSTANCES

5.27 In order to address the requirements of paragraphs 147 and 148 of the NPPF and demonstrate a case for "very special circumstances" it is necessary to examine the functional need for and benefits of the proposal and how that balances against all the harms it may cause, when giving substantial weight to the Green Belt harms.

5.28 The proposed development is inappropriate in the Green Belt by virtue of the impact on the openness of the Green Belt of the formation of the associated storage area, compound, site office and the formalisation of the access road.

5.29 However, the site is allocated for the purposes of clay extraction in the Adopted Minerals and Waste Local Plan. Given the recent adoption of that plan, it is considered that the allocation carries full weight. Minerals may only self-evidently be worked where they occur which will include Green Belt locations. The application details identify the type of clay as being of a specialist quality because of its impermeability. It is used for for the specialist purpose of puddling and repairing waterways, building flood defences or lining waste sites. It is something for which there is a continuing significant need, and it occurs in very few locations particularly in the North of England and reserves are at a premium.

5.30 Because of the clear need for the clay and the relatively limited occurrence of reserves afford the proposal substantial weight. . The proposed extraction is for a limited period and would not be continuous. Harm by reason of inappropriateness should of itself be afforded substantial weight., The recent allocation in an adopted Plan should be afforded full weight. A continuing need for the mineral to be extracted which may not readily be obtained elsewhere should also be afforded substantial weight. In terms of paragraphs 147 and 148 and the test for “very special circumstances” it is felt that the need for the mineral and the fact that it may only be worked where it occurs is a consideration which clearly outweighs any harm by inappropriateness and any other harm. At the same time no harms maybe identified to the purposes of designation of the Green Belt. The test of paragraph 148 of the NPPF is met and “very special circumstances” can therefore be demonstrated to justify the development.

6.0 CONCLUSION

6.1 The proposal is for the extraction of approximately 330,000 tonnes of clay for use in flood defences, repairing canals and reservoirs and lining waste disposal sites remaining from the previous unauthorised extraction of clay for farm holding purposes in the early 2000s . The proposal is subject to an Environmental Impact Assessment under Schedule 2 of the 2017 Town and Country Planning (Environmental Impact Assessment) Regulations and the site lies within the general extent of the York Green Belt.

6.2 The clay is of a specialist nature which self-evidently may only be worked where it occurs and forms an allocation within the Adopted Minerals and Waste Local Plan. Restoration would be by means of tipping of sifted and inert soils to form a woodland native species habitat with a water body retained. The principle of the development is felt to be acceptable. The works to the access track, the laying out of the site compound and storage area and the erection of a site cabin and weighbridge are inappropriate development by reason of impact upon the openness of the Green Belt. The proposed restoration scheme would of itself not be inappropriate.

6.3 The impact of the proposed extraction upon the surrounding landscape would be modest taking account of the surrounding topography and the proposed hedge planting to the south and south west. At the same time the impact of the proposed restoration would be acceptable creating a new woodland habitat. In relation to biodiversity the site is not identified as the habitat of any protected species and the proposed restoration incorporates a retained wetland habitat with enhanced hedgerow planting and an additional woodland. The proposal is therefore felt to be acceptable in landscape and biodiversity terms.

6.4 In terms of highway impact the site would be accessed from a farm track from Newlands Lane a single track road joining the A59 subject to a TRO limiting the weight of vehicles travelling its length. The nature of the process would involve only modest vehicle movements per hour with no staff permanently based at the site. The passing places linking the site with the A59 would be upgraded to accommodate the vehicles used. The access track and its junction with Newlands Lane would also be upgraded to restrict access of vehicles in a northerly direction towards Upper Poppleton. The nature of visibility and the availability of wide verges for the remainder of Newlands Lane approaching the A59 is such as to minimise conflict with other road users. The proposal is therefore felt to be acceptable in highway terms.

6.5 The proposal lies directly adjacent to a watercourse maintained by the Ainsty IDB of significant importance to the local pattern of surface water drainage. The proposal has been accompanied by detailed supporting evidence indicating how the existing water body can be dewatered to enable clay extraction without pollution and without increasing flood risk elsewhere in the vicinity. The restored scheme also incorporates a retained water body which in addition to having a biodiversity benefit would help stabilise the local pattern of surface water drainage. The proposal is therefore felt to be acceptable in terms of hydrology and flood risk.

6.6 In terms of amenity impacts there would be no fixed lighting, but mobile lighting would be clearly required at certain times of year which would be acceptable if controlled by condition on any permission. In terms of dust there would not be any generalised impact because of the nature of the material and the nature of the extraction method. Any permission would however be conditioned to require dust management in the circumstances where it would arise. In terms of visual impact key activities such as the storage area and site compound would be located away from more visible areas and the vulnerable south and south west boundary would be planted with a native species hedge. The method of work is designed to minimise noise and may be subject to a condition on any planning permission.

6.7 Taken together and accounting for the various mitigations the proposal is felt to be acceptable, satisfying the test of very special circumstances in paragraph 148 of the NPPF and approval is recommended.

7.0 RECOMMENDATION: Approve

1 The development hereby authorised shall be undertaken within 10 years of the date of the this permission and the site shall be restored in accordance with the scheme outlined in accordance with Drawing ref: ES3.12, unless otherwise agreed in writing by the Local Planning Authority”.

Reason: To safeguard the openness of the Green Belt and secure compliance with Paragraph 137 of the NPPF

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

Drawing Refs: ES 3.2; ES 3.3; ES 3.4; ES 3.5; ES 3.6; ES 3.7; ES 3.8; ES 3.9 ; ES 3.10; ES 3.11; ES 3.12; ES 3.13; ES 3.14.

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

3 Vehicular access shall only be from Newlands Lane and details of the design of this access, together with associated sightlines, shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. Thereafter the access shall be

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constructed in accordance with the approved details.

Reason: In the interests of highway safety.

4 Prior to the development coming into use, the initial 10m of the vehicular access, measured from the back of the public highway, shall be surfaced, sealed and positively drained within the site. Elsewhere within the site all areas used by vehicles shall be surfaced and drained, in accordance with details which have been previously submitted to and approved in writing by the Local Planning Authority.

Reason: To prevent the egress of water and loose material onto the public highway.

5 No part of the site shall come into use until turning areas have been provided in accordance with details to be submitted to and approved in writing by the Local Planning Authority. Thereafter the turning areas shall be retained free of all obstructions and used solely for the intended purpose until completion of the restoration works.

Reason: To enable vehicles to enter and leave the site in a forward gear thereby ensuring the safe and free passage of traffic on the public highway.

6 No gate shall be fitted so as to open outwards over the adjacent public highway.

Reason: To prevent obstruction to other highway users.

7 The development hereby permitted shall not come into use until the following highway works (which definition shall include works associated with any Traffic Regulation Order required as a result of the development, signing, lighting, drainage and other related works) have been carried out in accordance with details which shall have been previously submitted to and approved in writing by the Local Planning Authority, or arrangements entered into which ensure the same.

Upgrading of passing places on Newlands Lane between its junction with the A59 and Kettlewell Lane

Reason: In the interests of the safe and free passage of highway users.

8 Prior to works starting on site a dilapidation survey of the highways adjoining the site shall be jointly undertaken with the Council and the results of which shall be agreed in writing with the Local Planning Authority.

Reason: In the interests of the safety and good management of the public highway the details of which must be recorded prior to the access to the site by any construction vehicle.

9 No works shall take place until a Construction Traffic Management Plan has been submitted to and approved in writing by the Local Planning Authority. Such plan shall include:

i) Details of routing of vehicles

ii) Form of construction of the upgraded Kettlewell Lane and its junction with Newlands Lane

including drainage and surfacing;

iii) Contact details of the site contractor in the event of complaint, and.

iv) Proposed method of reinstatement

v) Mechanism for review at the end of each extraction phase

vii) Wheel washing to prevent spread of detritus on to surrounding highway

viii) Measures to reduce noise from within the site

The development shall thereafter be carried out in accordance with the approved Construction Traffic Management Plan.

Reason: In the interests of the safe and free passage of highway users.

10 The hours of operation of this approved use shall be confined to 07:00 to 18:00 Mondays to Fridays, 08:00 to 13:00 Saturdays, and no working on Sundays and Bank Holidays.

Reason: To safeguard the amenities of adjoining occupants

11 LC4 Land contamination - unexpected contam

12 Prior to works being undertaken on site a detailed Dust Management Plan (DMP) for both extraction and restoration phases shall be submitted to and approved in writing by the Local Planning Authority. Such plan shall include details of appropriate mitigation measures, management training, monitoring and visual inspection. Thereafter the DMP as approved shall be implemented for the duration of the development.

Reason: To safeguard the amenity of neighbouring properties and to secure compliance with paragraph 130f) of the NPPF.

13 Within 2 months of completion of phase 1 to the clay extraction hereby authorised a detailed management plan, with timescales, in respect of the boundary and restoration landscape planting. including density of planting, mix of species and provision of replacement planting for anything that becomes diseased or dies for a minimum period of ten years from commencement of restoration, shall be submitted to the Local Planning Authority for approval in writing. The development and restoration shall thenceforth be undertaken in strict accordance with the details thereby approved.

Reason: To safeguard the character of the local landscape and secure compliance with Policy D06 of the Minerals and Waste Local Plan..

14 The development hereby authorised shall not be commenced until a detailed Pollution Prevention Plan has been submitted to and approved in writing by the Local Planning Authority. Thereafter the plan as approved shall be implemented for the duration of the development This plan shall include:

- A review of the Environmental Management System, the Pollution Prevention and Incident Plan and the site specific Environmental Work practices as outlined in Appendix 7.1 to the

Environmental Statement.

- A detailed Management Plan outlining how the pond will be dewatered and what measures will be put in place to prevent pollution of the water course particularly from silts arising from the bottom of the pond.
- A management plan for water run off during the clay extraction operations phase and during the subsequent restoration phase . Specific measures will be set out as to how water containing sediments will be prevented from entering the watercourse. Soil stock piles will be located at a suitable distance from the water course and there shall be no discharge of contaminated site drainage into either surface or ground water.
- Detailed provision for the storage of excavated clay prior to transport from site.
 - Detailed method of work for extraction of clay and preparation for off-site transport
 - Detailed method of work for deposit and compaction of imported soils during restoration

Reason:- To comply with paragraph 174 of the NPPF

15 No development shall take place until a Landscape and Ecological Management Plan (LEMP) including long term restoration objectives has been submitted to and approved in writing by the Local Planning Authority. The LEMP shall include long term restoration objectives, management responsibilities, maintenance schedules and timescales. The LEMP shall be carried out as approved for the duration of the development and the restoration, with any variation first approved in writing by the Local Planning Authority. The LEMP shall incorporate but not be limited to:

- Details of any new habitat created on site including the two new water bodies
- Details of the Proposed Aquatic and woodland/hedgerow planting
- Details of on-going maintenance regimes
- Details of on-going management responsibilities

Reason: To ensure the protection and support of wildlife and supporting habitat and to secure opportunities to enhance the site's nature conservation value in line with Policy G12 of the Publication Draft City of York Local Plan (2018)

16 There shall be no raising of land levels within that part of the site that is within Flood Zone 3.

Reason:- To ensure that there is no loss of flood storage and to ensure that flood waters are not directed on to others.

17 Throughout the entirety of the development no vegetation clearance works shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check of suitable habitat for active birds' nests immediately before the works 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 shall be submitted to the local planning authority.

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

18 A biodiversity enhancement plan, with timescales, shall be submitted to, and be approved in writing by, the local planning authority prior to the commencement of works. The content of the plan shall include, but shall not be limited to, the recommendation set-out in the Ecological Impact Assessment, BSG Ecology (August 2021). The development shall take place in accordance with the approved plan.

Reason: To take account of and enhance the biodiversity and wildlife interest of the area, and to be in accordance with Paragraph 174 d) of the NPPF (2021) to contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures

19 No development shall take place (including ground works and vegetation removal) until a construction environmental management plan, with timescales, (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The development shall thereafter take place in accordance with the approved CEMP: Biodiversity. The CEMP: Biodiversity shall include the following:

- a) Risk assessment of potentially damaging construction activities
- b) Identification of 'biodiversity protection zones'
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements)
- d) The location and timing of sensitive works to avoid harm to biodiversity features
- e) The times during construction when specialist ecologists need to be present on site to oversee works
- f) Responsible persons and lines of communication
- g) The roles and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person
- h) Use of protective fences, exclusion barriers and warning signs

Reason: To facilitate the protection of notable/sensitive habitats within the local area.

20 Prior to the installation of any new external lighting, a 'lighting design strategy for biodiversity' for the entire development site shall be submitted to and approved in writing by the local planning authority. The strategy shall:

- a) Demonstrate that it has taken account of the recommendation set-out in section 5.11 (Reduction of biodiversity effects by lighting) of Ecological Impact Assessment, BSG Ecology, August 2021.
- b) Show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications), with timescales, so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats accessing their roost sites or using their territory.

Thereafter the approved strategy shall be implemented for the duration of the development.

Reason: To maintain the favourable conservation status of bats by safeguarding connectivity between habitats and retaining suitable foraging habitat.

21 No development approved by this permission shall take place until the Local Planning Authority has approved a scheme for the disposal of surface water during the extraction process. The scheme as approved shall be implemented to the reasonable satisfaction of the Local Planning Authority before the development is first brought into use.

- The approved discharge rate shall not exceed 1.4 litres per second
- Full details of the proposed filtration system shall be provided and approved
- Storage Volume shall allow for a 1:100 year storm event with an allowance of 30% for climate change

Reason : To ensure that the development is provided with a satisfactory means of surface water drainage

22 No development the subject of this permission shall take place until a scheme for surface water drainage for the site during and following restoration has been submitted to and approved in writing by the Local Planning Authority. The scheme as approved shall be implemented to the reasonable satisfaction of the Local Planning Authority within 28 days of cessation of working of the site.

- Discharge rate shall not exceed 1.4 litres per second per hectare
- Storage volumes shall accommodate waters arising from a 1 :100 year storm event without surface flooding
- In the event of waters exceeding a modelled 1 in 100 year event then all extraction and pumping activities shall temporarily cease for the duration of that event

Reason : To ensure that the site is provided with a satisfactory means of surface water drainage upon restoration of the site.

23 A strip of land six metres wide adjacent to the top of the bank of the water course known as the Small Foss shall be kept clear of buildings , structures, fencing , trees, planting and plant over hang for the duration of the development. Ground levels shall also not be raised within this area.

Reason: To enable reasonable maintenance of the water course to take place.

24 Prior to extraction activities commencing full details of the proposed clay storage area including overall height and dimensions shall be submitted to and agreed in writing by the Local Planning Authority. The development shall thenceforth be undertaken in strict accordance with the details thereby approved.

Reason: To safeguard the open character of the Green Belt

25 Prior to extraction activities commencing full details of the proposed imported soil storage area including overall height and dimensions shall be submitted to and agreed in writing by the Local Planning Authority. The development shall thenceforth be undertaken in strict accordance with the

details thereby approved.

Reason: To safeguard the open character of the Green Belt

8.0 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 amendment of the proposals for dewatering the existing pond and to provide surface water drainage to minimise flood risk and pollution to adjoining water courses.

2. HIGHWAY WORKS:

You are advised that prior to starting on site consent will be required from the Highway Authority for the works being proposed, under the Highways Act 1980 (unless alternatively specified under the legislation or Regulations listed below). For further information please contact the officer named:

Works in the highway - Section 171 - streetworks@york.gov.uk

Agreement as to execution of works (Section 278) development.adoption@york.gov.uk

3. AVOIDING DAMAGE TO THE HIGHWAY GRASS VERGE

Applicants/Developers are reminded that great care should be taken to ensure that no damage to the surface or structure of the public highway is caused, by activities relating directly to the approved development (e.g. delivery of building materials via HGV's). The Council is particularly concerned at the increasing impacts and damage occurring to grass verges. This is detrimental to residential amenity, can present safety issues and places an unreasonable financial burden on the Council, if repairs are subsequently deemed necessary. Therefore, applicants/developers are strongly advised to work proactively with their appointed contractors and delivery companies to ensure that their vehicles avoid both parking and manoeuvring on areas of the public highway (grass verges) which are susceptible to damage. The council wishes to remind applicants that legislation (Highways Act 1980) is available to the authority to recover any costs (incurred in making good damage) from persons who can be shown to have damaged the highway, including verges. If the development is likely to require the temporary storage of building materials on the highway, then it is necessary to apply for a licence to do so. In the first instance please email highway.regulation@york.gov.uk, with details of the site location, planning application reference, anticipated materials, timelines and volume. Please refer to the Council website for further details, associated fees and the application form.

4. NESTING BIRDS

The applicant is reminded that, under the Wildlife and Countryside Act 1981, as amended (section 1), it is an offence to remove, damage or destroy the nest of any wild bird while that nest is in use

or being built. Planning consent for a development does not provide a defence against prosecution under this act. Trees, scrub and buildings are likely to contain nesting birds between 1st March and 31st August inclusive. As suitable habitat is present on the application site and are to be assumed to contain nesting birds between the above dates, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period and has shown it is absolutely certain that nesting birds are not present.

5. MAINTENANCE RESPONSIBILITY FOR THE SMALL FOSS

The water course which lies adjacent to the development lies within the area of the Ainsty(2008) Internal Drainage Board. The Board has powers under the 1991 Land Drainage Act to secure its maintenance.

6. CONSENT FOR DISCHARGE

Under the Board's By Laws the written consent of the Board is required for any discharge or increase in discharge to any water course directly or indirectly in the Board's Area.

Contact details:

Case Officer: Erik Matthews

Tel No: 01904 551416