

# COMMITTEE REPORT

**Date:** 17 January 2024      **Ward:** Fulford And Heslington  
**Team:** East Area      **Parish:** Fulford Parish Council

**Reference:** 23/00283/FUL  
**Application at:** Fulford Flood Alleviation Scheme Pt Fulford Ings And Pt Playing Fields Selby Road York  
**For:** Flood alleviation scheme comprising a pumping station and associated inlet structure, control kiosk, access track and parking area; culvert under Selby Road; outfall structure and floodwall alignment and penstock across Germany Beck; two earth flood embankments, and a temporary construction compound and tree works within the Fulford Conservation Area  
**By:** City Of York Council  
**Application Type:** Full Application  
**Target Date:** 15 December 2023  
**Recommendation:** Approve

## 1.0 PROPOSAL

### Site

1.1 The application site includes land either side of the A19 (Selby Road), to the immediate south of the village of Fulford. The land within the red line to the east side of the A19 includes the north end of Fordlands Road Play Area (allocated as existing open space within the Draft Local Plan). This local park has a playground for younger children, outdoor gym, basketball hoop and hardstanding and a small informal football pitch with timber goals. It is bounded by mature trees on its southern and west boundary with the A19.

1.2 Germany Beck runs east to west along the north boundary of the play area, set approximately 4m below the level of the playing field, with steep embankments down to a flat bottomed valley, before dropping further to the Beck itself. The embankments comprise scrub habitat with willow, hawthorn and alder. The Beck then flows through a stone opening, 'Stone Bridge', through a culvert under the A19 towards Fulford Ings to the east and the River Ouse beyond. The junction of the A19 with the new access into Germany Beck Residential Development, 'Thornton Road', is raised high above the Beck and is bounded by

substantial brick stone capped floodwalls on either side of the A19 and along the south side of Thornton Road.

1.3 Land within the northern part of the red line boundary falls within Fulford Village Conservation Area (the stone bridge and land to the north of the watercourse). The land forming the eastern extent of the application site is within Fulford Ings Site of Special Scientific Interest. The floodwalls sit high above the level of the land below. Here the Beck flows through low lying land, in a channel circa 1m deep. Landing Lane provides vehicular access towards the river and the site boundary extends south, into rough grass farmland with individual trees and hedgerows.

1.4 The site is within Flood Zone 2 and 3 and lies within the defined Green Belt (as amended 2022). The site is not in the formal CYC designated areas of archaeological importance, nor relate to any scheduled monuments. However the general area along Germany Beck from East Moor to Middlethorpe Ings has long been assumed to be the site of the Battle of Fulford, between the Vikings and English army in 1066. However it is not currently a 'Registered Battlefield', designated by Historic England.

1.5 The development site area is 0.88ha, therefore the proposal falls outside Schedule 2, Section 10 (h) of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017, as the site area is less than 1 hectare. There is no requirement for an Environmental Impact Assessment and no requirement to undertake a scoping exercise.

## **Proposal**

1.6 Planning permission is sought by the City of York Council for flood alleviation works in the Germany Beck flood cell (an area where the flood risk can be addressed independently of areas up and downstream). The following works are proposed:

- A pumping station (10m x 10m) with trash screen, discharge chamber (3m x 5.8m) and control kiosk (2.6m x 4.4m). Vehicle access including a new dropped kerb access will be required and a new 110 m<sup>2</sup> area of levelled hardstanding will be created to the immediate south of the pumping station and a 45m<sup>2</sup> parking area with a 35m<sup>2</sup> turning head above the Tunnel Drain headwall, with grasscrete or similar material. Handrailing and access steps will be provided around the perimeter of the pumping station.

- Pumping station outfall structure constructed to the west of A19 Selby Road and south of the Germany Beck. The outfall structure will measure approximately 1.75m in height, 2.2m deep with a backwall width of 2m and apron width of 3.77m (excluding steps). The back wall of the structure will be 0.80m offset from the new sheet pile floodwall. Steps will be constructed from the level of the A19 Selby Road to the top of the headwall unit and then steps from the top of the headwall to the apron. The top of the headwall unit will be level with the bottom of the existing bank in the SSSI. The invert of the outfall will be at 5.89m Above Ordnance Datum (“AOD”), approximately 0.39 m higher than the existing Germany Beck bed level.
- Floodwall alignment across Germany Beck to the west of A19 Selby Road - A new 11m long sheet pile floodwall offset from the existing wall by approximately 4m and tying into the existing wall at either end. An actuated penstock will be fitted to the new flood wall within the Germany Beck channel, which will be closed when the levels rise above 7.50mAOD to prevent flooding in Fulford from the River Ouse via Germany Beck. The actuator will be housed on the platform between the new and existing flood walls.
- Flood embankment east of A19 Selby Road - A low level flood embankment will be constructed within the Playing Field to the east of A19 Selby Road. The embankment will tie into the proposed pumping station and natural high ground level in the playing field. The embankment will be approximately 31m long, 0.35m high, 4m wide crest and 6.4m wide at its base. The embankment will be constructed with cohesive earth fill and seeded topsoil. A surface water drain is diverted around the footprint of the pumping station and power cable will be diverted around the footprint of the embankment. A new headwall for the Tunnel Drain culvert outfall will be constructed immediately east of the proposed pumping station. The existing outfall is a concrete headwall with flap-valve arrangement and the new relocated structure will replicate this.
- Earth flood embankment south of Landing Lane and west of A19 Selby Road - A low level flood embankment will be constructed within the agricultural field to the south of Landing Lane. The embankment will tie into high ground associated with Landing Lane and natural high ground level in the field. The embankment will be approximately 20m long, with

a 4m wide crest and 1 in 4 slopes. The embankment will be constructed with cohesive earth fill and topsoil seeded with grass.

- Temporary construction compound and construction access - utilising a small area of existing playing field with access from Fulford Road.
- Tree works – removal of 21no. individual trees, 2no. full tree groups and 3no. part tree groups.

## **2.0 POLICY CONTEXT**

### **NATIONAL PLANNING POLICY FRAMEWORK**

2.1 The revised National Planning Policy Framework (NPPF) 2023 (“the NPPF”) sets out the Government's planning policies for England and how these are expected to be applied. The NPPF is a material planning consideration in the determination of this application. Key chapters and sections of the NPPF are as follows :

Chapter 2 – Achieving sustainable development

Chapter 4 – Decision making

Chapter 9 – Promoting sustainable transport

Chapter 11 – Making effective use of land

Chapter 12 – Achieving well-designed places

Chapter 13 – Protecting Green Belt land

Chapter 14 – Meeting the challenge of climate change, flooding and coastal change

Chapter 15 – Conserving and enhancing the natural environment

Chapter 16 – Conserving and enhancing the historic environment

### **DRAFT LOCAL PLAN (2018)**

2.2 The Draft Local Plan 2018 was submitted for examination on 25 May 2018. It has now been subject to full examination. Modifications were consulted on in February 2023 following full examination. It is expected the plan will be adopted in early 2024. The following policies are relevant;

DP2 – Sustainable Development

DP4 – Approach to Development Management

D1 – Placemaking

D2 – Landscape and Setting  
D4 – Conservation Areas  
D6 – Archaeology  
D7 – Non-Designated Heritage Assets  
GI1 – Green Infrastructure  
GI2 – Biodiversity and Access to Nature  
GI3 – Green Infrastructure Network  
GI4 – Trees and Hedgerows  
GI5 – Protection of Open Space and Playing Fields  
GB1 – Development in the Green Belt  
ENV2 – Managing Environmental Quality  
ENV3 – Land Contamination  
ENV4 – Flood Risk  
ENV5 – Sustainable Drainage  
T1 – Sustainable Access  
T8 – Demand Management

### **3.0 CONSULTATIONS**

3.1 The final received consultation responses are listed below;

#### INTERNAL CONSULTATIONS

##### Design Conservation and Sustainable Development (City Archaeologist)

3.2 Detailed advice (set out within the archaeology section) but recommend conditions with regards to a Written Scheme of Investigation, archaeological building recording and a scheme of interpretation for the Battle of Fulford.

##### Design Conservation and Sustainable Development (Ecologist)

3.3 No objections but recommend conditions with regards to a CEMP, invasive non-native species method statement and LEMP.

##### Design Conservation and Sustainable Development (Landscape Architect)

3.4 Result in significant loss of existing tree cover either side of Fulford Road. The loss is over a relatively short stretch, although one that is exposed to a busy main road into the city centre. The main amenity value of the trees is their contribution to the natural setting of Fulford village (and conservation area) and

the association with Fulford Ings. None of the trees are currently subject to a tree preservation order (TPO). All trees to the north of Germany beck are located within Fulford conservation area.

3.5 The removal of trees appears to be unavoidable, therefore in light of the apparent necessity to implement the flood alleviation scheme, the proposed development is likely to outweigh the harm resulting from the loss of the trees, with the provision of suitable mitigation.

3.6 The landscape proposals and planting schedule is appropriate, however if the Ash (T19) cannot be saved (due to underlying structures and drainage runs), a semi-mature specimen tree, of the parish council's choosing, should be included within the red line to the south of the vehicle route if easements allow, or elsewhere, if not.

3.7 There is also new tree planting by the Environment Agency which will mitigate the effects of loss as viewed from the recreation ground. Unfortunately, the location of the proposed structure excludes new roadside tree planting.

3.8 Any mitigation landscape works to the west of the A19 are agreed with Natural England and CYC Senior Ecologist and countryside officer, since the value of the SSSI is the overarching factor in that area.

#### Design Conservation and Sustainable Development (Conservation)

3.9 Development Management to assess.

#### CYC Forward Planning

3.9 Although the Publication Draft Local Plan showed the Recreation Field as being outside the Green Belt, consideration should be given to the Wedgewood Decision, in terms of its Green Belt status. Additionally, subsequent Modifications to the Local Plan, including the recent Main Modifications consultation shows the site as being within the Green Belt. Therefore, the application should be judged against paragraphs 149 & 150 of NPPF. Engineering operations are acceptable uses in the Green Belt, although the case officer must make a decision on whether the associated structures, such as the control kiosk would fall within the scope of engineering operations, in relation to this scheme.

#### Flood Risk Management Team

3.10 Following on from the submission of Revision 2 of the Flood Risk Assessment, from a flood risk and drainage point of view the Flood Risk Management Team has no objection to the proposed flood defence/resilience scheme.

3.11 Recommend conditions with regards to compliance with flood risk assessment, adoption and maintenance and easements.

#### Highways

3.12 No objection in principle to the proposed access / parking arrangement. The applicant may wish to provide a wider entrance to prevent damage to the vehicles and/or gateposts when entering or exiting the site.

#### Public Protection

3.13 Land Contamination - The applicant has submitted a Ground Investigation report. This report demonstrates that the condition of the land is suitable for the proposed use. Recommend an unforeseen land contamination condition.

3.14 The applicant has submitted a Construction Environmental Management Plan. Although this plan does have some controls in place for controlling noise and dust emissions there are insufficient details on the controls that will be put in place to minimise noise and vibration during piling works. Recommend a CEMP condition.

3.15 The proposal includes the installation of a pumping station on site therefore this department would recommend a condition with regards to noise.

#### Public Rights of Way Team

3.16 Providing the comments made by PROW in our original submission regarding accommodation of the public rights of way and any access impacts mitigated then we have no further comments.

Original comments: There are two recorded public footpaths running just outside of the proposed planning boundary known as Fulford 8 (5/8/10) and Fulford 23 (5/23/10). Although these rights of way are outside the planning boundary it seems the planned works could impact the access to them. Therefore, we would like to see them accommodated and any access impacts mitigated within the development plans. Further, if the works mean there is a need to temporarily close the public footpaths on

safety grounds. During and after construction the surface of the footpaths must not be affected for example by drainage across the path or unauthorised vehicle use. If the proposed development results in a deterioration of the current surface of the public footpaths, you will be expected to restore the surfaces to how they were (or improved) before construction started. Similarly, the development must not reduce the current width of the footpaths or interrupt access.

## EXTERNAL CONSULTATIONS

### Environment Agency

3.22 No objection to the works as long as the development is carried out in accordance with the submitted flood risk assessment.

3.23 The drawing referenced 60651369-ACM-XX-XX-C-DR-1006 shows an activate penstock, if designed electronically there will need to be a contingency plan in place in case of a power failure.

3.24 A Construction Environmental Management Plan, including an invasive non-native species management plan will be required to demonstrate how construction related impacts of the development will be avoided and what treatment measures and management will be implemented to eradicate INNS on the site.

3.25 Recommend a biodiversity net gain informative.

### Fulford Parish Council

3.26 Supports the objectives of the scheme to provide much needed flood protection to homes and roads in the vicinity of Germany Beck. Further comments;

- Loss of public open space – owned by the Parish Council and used as informal recreation of the past fifty years. Parish Council recommends further discussions are held with the Applicant in order to investigate whether compensatory land could be offered.
- Impact on green belt – cause some further loss of openness, particularly the pumping station kiosk and car park.
- Impact on heritage – If adequate planting is carried out, the harm to the Conservation Area and to its landscape setting would be less than



substantial. Parish Council agrees with response from Historic England in that the harm to the significance and appreciation of the battle site would be less than substantial, which should be weighed against the public benefits. The memorial stone will need to be relocated but this presents an opportunity to restore the stone and place it in a more accessible and suitable location.

- Landscaping/loss of trees – tree survey does not appear to be available. The loss of trees is regrettable but significant new planting is proposed to offset the landscape impact. Parish Council recommend larger specimen trees are planted rather than smaller saplings. Recommend the kiosk is screened. T19 is regrettable marked for removal and question whether it is necessary.
- Invasive Species – proposed treatment/management of Himalayan Balsam and Nutall's waterweed to provide a net benefit to biodiversity is welcome. Recommend HB eradication is extended further upstream.
- Significant benefits that should be weighed against the overall harm that will result from the scheme.

3.27 A further consultation response was received 11th December 2023. Fulford Parish Council supports the objectives of the proposal but highlights some points arising from the Committee Report. Photos are provided by the Parish Council.

- Parish Council disagrees with the assessment at 5.46 with regards to the replacement of public open space. The Parish Council state the topography doesn't mean that the space is unusable. The pathways around the bridge area are well used for recreation and the public is able to access both the lower lying areas as well as the areas on higher ground.
- The Parish Council state a footpath runs alongside Germany Beck linking the Fordlands Bridge area all the way to Tunnel Drain - and from there up the slope to the open space. These footpaths are accessible and very well used. Following development, the paths around Tunnel Drain will be lost and the link to the riverbank path will be broken; the path will come to a dead end, with walkers having to turn back when they start to approach the Tunnel Drain area.
- Whilst the wooded area adjacent to Tunnel Drain is somewhat less accessible, it provides a valuable visual amenity for the public, as does the area adjacent to the A19 where a new parking and turning area is proposed.

- The Parish Council states the replacement landscaping will not increase the recreational value and instead will mitigate against the loss of a large number of trees.
- The recreational use around the stone bridge will be lost all together.
- Although the area of development is small compared to the overall open space area, it is nevertheless an important recreational space. It would be helpful to know exactly how much land will be permanently closed to the public following development.
- The Parish Council considers that the reasons provided in the Report for not replacing the open space are flawed and are not sufficient to justify non-compliance with Policy G15 and NPPF 99.
- Future land ownership - the Parish Council may not lawfully dispose of its land or allow land to be appropriated without complying with Section 127(2) of the Local Government Act 1972.
- Typo at 5.83 contains a small typo: A main temporary construction compound will be located within the playing field to the east of A19 and will utilise the existing playing field access from Fulford Road'. This should read – Fordlands Road

### Historic England

3.27 No objection on heritage grounds. The application site is partially within the Fulford Village Conservation Area and within the area currently being reconsidered for designation as a Registered Battlefield, being the possible location of the Battle of Fulford, 1066 (further historical information provided in their consultation response). The site has undergone several phases of archaeological investigation, most recently through four geoarchaeological window samples at Germany Beck. Only one sample recorded waterlogged organic deposits, but has to be considered largely unrepresentative of the landscape at the time of the battle. A series of excavations undertaken by the Fulford Battlefield Society (FBS) has recovered a range of ferrous and non-ferrous objects potentially associated with the battle or the post-battle 'clean up' of the battlefield. However, these objects are still being investigated as part of a research project by Nottingham University and are awaiting publication and peer review.

3.28 There are a number of elements to the flood protection proposal, of varying degrees of impact on buried archaeological deposits and on the setting of both the Conservation Area and possible battlefield.

3.29 Excavation has demonstrated that the eleventh century ground surface is buried under one to three metres of medieval, post-medieval and early modern material across the Fulford Beck area, the implication being that the chief impact of the scheme is likely to be on the setting and legibility of the battlefield.

3.30 Historic England accepts the conclusion of the Heritage Impact Assessment that the impact of the proposal on the setting of the Conservation Area amounts to less than substantial harm.

3.31 Historic England has previously rejected an application for the designation of the Fulford Beck site as a Registered Battlefield, stating that 'While Germany Beck remains to be the most likely location for the Battle of Fulford, the documentary and archaeological evidence is insufficiently conclusive to make this a secure identification.' However, the discovery of a range of objects potentially related to the battle has led to a reconsideration of that application. This reconsideration of the new material is currently underway.

3.32 The Battle of Fulford may prove to be something of an exception as far as the recovery of artefacts is concerned.

3.33 The current landscape is a mixture of unmanaged riverside wetland, managed playing field and the outer edge of suburban Fulford, indicating that there has been change and modification of the landscape over time. The eleventh century landscape is at some depth below the modern ground surface.

3.34 Given these changes to the landscape and the likely depth of the eleventh century archaeological deposits, we consider that the introduction of the proposed flood defence features will not represent a dramatically negative modification.

3.35 If Fulford Beck is the location of the battle, the progress of the battle will remain legible in spite of the flood defence interventions, and therefore the impact can be considered to represent less than substantial harm to the significance of the non-designated heritage site.

3.36 However, given the recovery of possible battle-related artefacts, we strongly recommend that a comprehensive archaeological mitigation strategy is compiled by your authority, working with as many partners as possible, to specifically address the questions of the eleventh century landscape and the

battlefield. Furthermore, we would hope that the introduction of new earthwork features will be assessed to see how the new interventions can increase access to and understanding of the battlefield landscape.

#### Natural England

3.37 No objection subject to appropriate mitigation being secured. Natural England considers that without mitigation the application would damage or destroy the interest features for which Fulford Ings SSSI has been notified.

3.38 The ecology update report, botanical survey and aquatic ecology baseline survey satisfy the requests for further information and recommend the commitments within them contribute to an appropriate planning condition.

#### Northern Powergrid

3.39 No Comments received.

#### Ouse and Derwent Internal Drainage Board

3.40 Board removes the previous objection and is satisfied with the proposal based on the latest drawings. Recommend a condition with regards to a 4m strip from the top of the embankment and informatives regarding maintenance responsibility and consent requirements.

#### Sport England

3.41 Objection withdrawn. The Football Foundation is not aware of any existing affiliated football activity taking place at this site, so no impact on existing formal football is foreseen.

3.42 The proposed development results in a minor encroachment onto the playing field however having considered the nature of the playing field and its ability to accommodate a range of pitches, it is not considered that the development would reduce the sporting capability of the site. Sport England are of the view that the proposal broadly meets exception E3 of the Playing Fields Policy.

#### Yorkshire Water

3.43 Water supply – the existing mains in Selby Road will be directly affected by the installation of the culvert under Selby Road. These mains will need to be suitably protected during the construction of the culvert and any proposed method of installation signed off by Yorkshire Water Network Engineering prior to construction. The mains may require diversion if suitable clearance cannot be maintained to the new culvert.

3.44 Yorkshire Water endorse the means of surface water disposal to the watercourse.

## **4.0 REPRESENTATIONS**

4.1 The application was advertised via neighbour notification, press notice and a site notice.

### First Notification / Publicity

4.2 One letter of general comment received on the following grounds:

- Worked to ensure a flood protection scheme would minimise damage to the heritage value of the 1066 Battle site.
- The proposal fails to have sensitive design, siting and suitable mitigation.
- Several of the supporting documents are worthless.
- Recognise the need for the facility.
- Heritage and wildlife damage.
- Need for a public inquiry.
- Concerns regarding the justification for the location.
- Planners have ignored evidence this was an active water bowl habitat.
- Statutory consultees ignored available evidence.
- Breach of planning condition in relation to the Germany Beck Housing development (Battle of Fulford trail). Council agreed to discharge the condition without further consultation.
- Original plan resubmitted but may need updating to accommodate the pumping station.
- Site access road crosses a previously unrecognised Roman Road. Material should be taken from the line of this stone-paved Roman Road to create a route to the battle site.
- Flood risk to the access road should have been recognised earlier despite the many warnings and the lack of engineering logic.

- Ignoring evidence.

4.3 The letter also attached annexes with regards to a short history of the Fulford Battlefield, letter to YC from Fulford Parish Council (dated 2003), information submitted to the planning inquiry (2006), a published letter in the YEP (February 2008), submission for the reserved matters planning hearing (2012) and a letter written to the Flood Protection Officer (dated November 2021). A Battle of Fulford Visitor Trail proposal is also attached.

4.4 A further letter received by the same person with regards to the heritage desk based assessment and heritage impact assessment. The following concerns were raised;

- The quality is undermined by its failure to take note of the several heritage investigations undertaken in the immediate vicinity.
- Does not address the various published works about the Fulford Battle site location including the 2010 publication Finding Fulford nor any of the academic papers.
- Makes no reference to the Germany beck excavations which began in 2013.
- Over a sequence of 7 subsequent digs, the work revealed the presence of a well-constructed and embanked Roman Ford crossing whose identity was confirmed by local and national experts when they visited the site and was inspected by the previous York City archaeologist.
- It does not record the unique wood crossing which was repeatedly notified to the planning authorities when the care home was being proposed and this led to the destruction of the north end of this crossing because this information was ignored. (The survival of the wood in this crossing will be endangered once the periodic flooding is prevented by the pumping station).
- Dismiss the catalogue of metal as inconclusive suggests they have not studied the material.
- The identification of several hearth sites further along Germany Beck along with many part-made weapons have merited publication by the Royal Armouries among others and led to the formulation of the post-battle metal recycling hypothesis. A hypothesis cannot be termed inconclusive in this context where a partial quotation of the NPPF recognises that listed as well as unlisted sites should be protected. (The battle of Fulford is currently in the process of being assessed for designation and was at the time this report was in preparation and this fact should also have been included).
- Report must be rejected and a new assessment prepared

- Impact assessment tries to decide if the battle happened here, relying almost exclusively on outdated and often discredited assessments.
- Assessment relies on poor analysis that was presented 20 years ago on behalf of the developers.
- Under planning rules such important heritage can only be disturbed in exceptional circumstances.
- Note the civic necessity for a pumping station but this must be constructed in a way that does not impact the appreciation by future generations of this exceptional heritage.
- Conclusions that the pumping station will have minimal impact is not backed by analysis of the dynamic nature of this battle.
- The pumping station will significantly impact the heritage and only by a sympathetic location and design can this be minimised and some creative mitigations will also be needed.
- The report needs to be rewritten to include an analysis of lines of sight for visitors to the battlefield, the Roman ford crossing, which is currently covered by car parking for the proposed pumping station and the impact that the changed hydrology will have on the peat layer including the 5/6 Century wood crossing of the beck.

4.5 Former Ward Councillor Keith Aspden wrote a letter of support (dated 28 March 2023) whilst a member of the council:

- Need to see a permanent solution for the whole area including the A19, Fordland's Road and Fordland's Crescent.
- Work must be undertaken to put an end to the upheaval and disruption caused to lives.
- The applicants have considered various forms of mitigation to offset any harm that a new pumping station will cause.
- Hope for additional trees, landscaping and community gain (such as the provision of open space and community projects) will be considered. One example could be the removal and restoration of the Battle of Fulford Memorial Stone to a more suitable and improved location.
- The stress and worry of regular flooding must be taken into account.
- Must deliver a solution which will protect hundreds of properties in the area, finally ending the significant challenges that frequent floods have brought to the community.

4.6 One general comment (2 April 2023) was received in between the two consultation periods;

- Landowner not informed and only notified by Natural England. Remains neutral but would be useful to have a full methodology and mitigation strategy in place to minimise any disturbances to the SSSI area and making good afterwards.

### Second Notification

4.7 One general comment (24 April 2023) received during the second round of consultation on the following grounds;

- Much evidence that the terrain along the Germany Beck is the likely site of the battle.
- While the project is crucial for flood alleviation, implore all members of the council and development program to support the demands of the city Archaeologist. Please support her and use this project as an opportunity to locate further evidence as the likely site of the Battle of Fulford.
- Must have a strong commitment to conduct detailed archaeological surveys prior to work, including time to survey and excavate prior to development beginning and also document any evidence produced to support or abstain this as the site.

### Further representation

4.8 A letter was received following publication of the committee report in December 2023. The contents of the letter are summarised below:

- Concerns regarding the justification and heritage statement.
- Condition for Battle of Fulford Trail has not yet been discharged following the Germany Beck approval.
- Consultations recommended by Historic England (13.04.2023) has not taken place.
- Mitigations to limit the visual impact on the 1066 battlefield need to form part of the approval since they might impact the design or layout.
- No artist sketch of the latest pumping station has been provided to show how the landscape will look to residents and visitors. It is not possible to assess



the impact on the landscape until this has been produced and should be provided prior to approval.

- In such a sensitive location, details of the mitigations must be incorporated into any approved design to ensure that the inevitable damage to the visual integrity of the 1066 battlefield is minimised. Final details of the above-ground installations and their visual mitigation could have followed the recommended consultation, after which the visualisations could be prepared; so both logically precede approval.
- The pumping station at St George's Field often looks like a builder's yard with a prominent gantry. Conditions must be attached to ensure that the site will blend into the landscape so it does not look like an industrial dump. Logically, any limits that will be set once a pumping station is operational need to be discussed now so that provision can be included in any approved design for the maintenance of the facility that respects the sites heritage importance.
- The extent of the area that it is intended will be fenced to prevent public access is not specified, nor is the nature of any barriers. The area sacrificed should be minimal and conditions need to be attached.
- The design and location of the berms should have formed part of the missing consultations (#1) since these elevated areas could be employed as part of the visitor experience allowing them to appreciate the complex action of the battle. If the present design is followed they will be a serious visual impediment to this important heritage, rather than an enhancement. The design and location of berms need to be modified.
- The existence of the Roman road which will be crossed by the works access is noted in the application papers. The sections of this ancient road leading down to the beck are exceptionally well constructed and some test pits should be dug prior to any works access as the road might come much closer to the surface at the place currently suggested for the works access. Furthermore,
  - a. Access to the battlesite should not be fenced off during any construction.
  - b. The possibility of revealing this Roman Monument might form part of the mitigations and also provide spoil to help construct the berms.
- Those who understand the very special archaeology of battlesites, and the need for a WSI to be approved by CYC, are important and need to be attached as conditions.

## **5.0 APPRAISAL**

### **KEY ISSUES:**

- Green Belt
- Design and Impact on the character and appearance of the Conservation Area and Street Scene
- Archaeology
- Trees and Landscaping
- Open Space and Playing Field
- Ecology and Biodiversity
- Public Protection
- Flood Risk
- Highways and Road Safety
- Public Rights of Way
- Very Special Circumstances

## GREEN BELT

### Policy

5.1 Paragraph 152 of the NPPF states “inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances”. Paragraph 153 of the NPPF states “when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations”.

5.2 A local planning authority should regard the construction of new buildings in the Green Belt as inappropriate with exceptions to this set out at paragraph 154 of the NPPF. Certain other forms of development are also not inappropriate in the Green Belt under paragraph 155. This approach is repeated by policy GB1 of the Draft Local Plan (2018).

### Assessment

5.3 The application site lies within the Green Belt as set out within the amended Green Belt boundaries in the Draft Local Plan (2018). The Green Belt boundary in this particular case was amended in 2022 to include all of the application site. The proposed pumping station is considered to be a building but does not fall into any of the exceptions set out in paragraph 154. The associated

infrastructure is considered to be engineering works, therefore not inappropriate development within the Green Belt providing it preserves openness and does not conflict with the purposes of including land within it (paragraph 155(b) of the NPPF).

5.4 The above ground elements of the pumping station and earth embankments being physical structures, would harm openness, both visually and spatially, therefore very special circumstances would need to be demonstrated for these elements of the development. This is explored at the end of the assessment after consideration of all main issues. The below ground works, such as the flood wall and penstock, taking into account their siting and height, are considered to preserve the openness of the Green Belt, therefore is appropriate in this instance and meets Green Belt policy.

## DESIGN AND IMPACT ON THE CHARACTER AND APPEARANCE OF THE CONSERVATION AREA AND STREET SCENE

### Policy

5.5 Section 16 of the NPPF, conserving and enhancing the historic environment, states that LPAs should sustain and enhance the significance of heritage assets, giving great weight to the asset's conservation (and the more important the asset, the greater the weight should be). Any harm to, or loss of, the significance of a designated heritage assets (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of assets of the highest significance, which include registered battlefields, should be wholly exceptional.

5.6 Paragraph 208 of the NPPF states "where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal."

5.7 Section 72 of the Planning (Conservation Areas & Listed Buildings) Act requires that special attention shall be paid to the desirability of preserving or enhancing the character and appearance of a conservation area. This is supported by Policy D4 of the Draft Local Plan (2018) which seeks to protect Conservation Areas and its setting.

5.8 Policy D1 of the Draft Local Plan (2018) relates to placemaking. Development proposals should enhance and complement the character and appearance of landscape and open space. Proposals must take into account York's special qualities and should make a positive design contribution to the city.

### Assessment

5.9 Fulford Village Conservation Area is a 'designated heritage asset' which lies primarily north of the Application Site. To the west of the bridge, the Conservation Area boundary lies to the north of the watercourse. However to the east of the bridge, the Conservation Area boundary lies to the south of the watercourse. The bridge is included within the Conservation Area.

5.10. The proposed floodwall, platform and penstock to the west of the bridge lies within the Conservation Area. These elements are fairly shielded from public view and taking into account the existing infrastructure and setting, is not considered to be harmful to the significance of the Conservation Area. The majority of the development and infrastructure, including the above ground structures, are located outside of the Conservation Area boundary, therefore the main impact is on the setting of the Conservation Area and how the pumping station and other works will affect the character and appearance, in particular on entrance into the Conservation Area.

5.11 The proposed pumping station is set down in the topography and against the existing floodwall when viewed from the east, therefore reducing its visual prominence. From Selby Road, there will be glimpsed views of the top of the pumps, however the control kiosk will be most visible. The kiosk will be constructed in brick slip cladding and is of flat roof design. Its design is appropriate for its use and whilst visible, the materials blend with the appearance of the existing brick flood walls. A condition is recommended to view brick samples prior to construction to ensure they are a suitable match within this setting. The pumps will be painted in a moss green colour to help assimilate them within the landscape. The use of grasscrete for access is considered an acceptable material choice and will not appear unduly prominent in the setting. Its use is minimal and suitable for maintenance and emergency access.

5.12 It is considered the presence of an engineered structure such as this, within a fairly verdant and semi-rural setting, presents some harm to the setting and

entrance of Fulford Conservation Area, in particular when arriving from Selby Road. However the harm is assessed as less than substantial and there are significant public benefits arising from the development (reduced flood risk). The proposal therefore meets paragraph 208 of the NPPF and policy D4 of the Draft Local Plan (2018).

## ARCHAEOLOGY

### Policy

5.13 Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation (paragraph 200 of the NPPF). Footnote 68 of the NPPF, states that “non-designated heritage assets of archaeological interest, which are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets”.

5.14 Policy D6 of the Draft Local Plan (2018) states development proposals that affect archaeological features and deposits will be supported where:

- i. they are accompanied by an evidence-based heritage statement that describes the significance of the archaeological deposits affected and that includes a desk based assessment and, where necessary, reports on intrusive and non-intrusive surveys of the application site and its setting; including characterisation of waterlogged organic deposits, if present;
- ii. they will not result in harm to an element which contributes to the significance or setting of a Scheduled Monument or other nationally important remains, unless that harm is outweighed by the public benefits of the proposal. Substantial harm or total loss of a Scheduled Monument or other nationally important remains will be permitted only where it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss;
- iii. they are designed to enhance or better reveal the significances of an archaeological site or will help secure a sustainable future for an archaeological

site at risk; and

iv. the impact of the proposal is acceptable in principle and detailed mitigation measures have been agreed with City of York Council that include, where appropriate, provision for deposit monitoring, investigation, recording, analysis, publication, archive deposition and community involvement.

### Assessment

5.15 An archaeological desk-based assessment, a heritage impact assessment and a geoarchaeological borehole survey and palaeo-environmental assessment have been submitted as part of this application. These have been reviewed by the Council's Archaeologist. These pieces of investigation have been produced specifically in relation to all archaeological impacts and proposals of the Flood Alleviation Scheme. Previous investigations by Fulford Battlefield Society have been considered by the Council's Archaeologist.

### Battlefield

5.16 This area of Germany Beck has long been assumed the site of the Battle of Fulford (1066). The battle is of national significance and is likely to have taken place in the vicinity. However, previous attempts to closely define the battlefield site to have it designated and included on the Register of Historic Battlefields have failed. In light of new evidence, a revised, smaller battlefield area has been submitted to Historic England for designation review. This decision is still pending.

5.17 The Council's Archaeologist has discussed the application with Historic England and it is agreed the site is of high significance but that the proposals are highly unlikely to hinder any future designation decision. In terms of the battlefield, until designated, the site is a non-designated heritage asset of high importance. There are possibilities within this scheme to enhance the visibility and knowledge of the battle in terms of interpretation and for a degree of archaeological excavation to take place which may further provide further evidence for specialist assessment. The proposed infrastructure for this scheme is located within the heart of the assumed battlefield. The proposal will not significantly harm the setting or legibility of the battlefield site.

### Infrastructure location

5.18 Several other options for the pumping station were considered at conception stage. This scheme was identified as the preferred option. Alternative options have been set out in a Decision Summary document (AECOM March 2023). This document acknowledges potential harm to any surviving archaeological features or finds. However, overall, the preferred option scored low-medium in terms of adverse impact. Given, the other constraints to be considered and the actual adverse impact that this scheme would have on the legibility of the battlefield, the Council's Archaeologist does not object to the siting of the station in this area. The creation of the station in this location provides an opportunity for a focussed commercially funded archaeological excavation to take place on the assumed battlefield which may contribute to the evidence base and understanding of the site.

5.19 The above-ground impact of this scheme will not pose any threat to future designation of the battlefield by Historic England- currently under consideration based on Fulford Battlefield Society research and findings.

#### Archaeological potential

5.20 The submitted desk-based and heritage impact assessments summarise previous investigation in the area relating to Iron Age-Romano-British land use and the Battle of Fulford. The assessments describe the potential for battlefield archaeology to survive within this location as moderate. The area of the proposed pumping station is close to the location on the riverbank where the Fulford Battlefield Society found ferrous material between 2013-2019 likely related to the battlefield. This material is currently under assessment by various specialists. There is the potential to locate more of this material if it survives here during archaeological investigation ahead of construction.

5.21 The planning documents also highlight the stone arch bridge, concrete parapet bridge and the commemorative Battlefield stone as visible items of value which will be impacted upon by the proposed scheme.

5.22 Four window sample boreholes were undertaken to archaeologically assess the geology and palaeo-environmental potential in the areas of the deepest impacts of the proposed scheme. A consistent sequence of sands/gravels, organic deposits, alluvium and made/modern ground was observed across all four boreholes. Organic survival is restricted to the deeper parts of the sequence

which remains below the water table. Investigations by the Fulford Battlefield Society in 2018 suggest that a wooden feature, interpreted as a Roman ford crossing, was located within the organic layer.

5.23 A sequence from one of the locations (WS4 west side of A19) was considered good enough to sample. The results revealed a poorly humified sequence of wood peat which was radiocarbon dated and assessed for pollen. The period of sedimentation was assigned to a very specific period of early to mid-Iron-Age. The pollen was low in abundance and diversity.

5.24 The results of this survey showed a similar sequence to that noted by MAP to the north-east of the site and has also resulted in similar radiocarbon dates. It is considered that the site has low potential for the assessment of microfossil remains and no further work on the recovered samples is recommended. However, the area could be productive in terms of macrofossil analysis (plants and insects) should the opportunity to gather bulk samples be presented as part of archaeological mitigation strategy.

5.25 No layers dating to the period of the battle or archaeological finds were noted in the borehole survey. Initial proposals for evaluation trenching were removed from the pre-application investigations. These were due to take place in the area of proposed the bunds, however, due to landscaping and services within these areas this would not have been productive. While further assessment and analysis is required as part of an archaeological mitigation strategy there is sufficient information at this stage to determine the application.

### Archaeological Impact

5.26 The construction of the pumping station, trash screen, outfall structure, piled flood walls, and diversion of power cables and drainage have the potential to impact upon archaeological deposits. In particular, any further potential battlefield evidence, alluvial deposits which may contain archaeological features or former land surfaces and organic sediment of palaeoenvironmental interest.

5.27 Excavation for the main pumping station/kiosk structure will be to c.4.32m AOD, the tunnel drain runs alongside at a depth of 5.70m AOD while the highway drain will lie at 7m AOD. Works at these levels impact into layers of archaeological potential. It is anticipated that the creation of flood embankments, A19 car parking area and temporary works will have little to no archaeological



impact given the shallow nature of the groundworks required and the disturbed nature of the upper levels in these areas. This includes the creation of the temporary construction access route which crosses the projected line of a potential Roman (or earlier) crossing of Germany Beck observed by Fulford Battlefield Society during excavations between 2014-2019. Should the road survive beneath the playing field it is believed to be located some 2.5+m below current ground surface (which includes flood alleviation land raising) in the location of access road and will be preserved in-situ.

5.28 The construction of the pumping station, trash screen and headwall realignment will impact upon the visibility and setting of the pointed stone arch and concrete bridge parapet. The 1970s battlefield stone will also require repositioning.

#### Archaeological mitigation requirements

5.29 Ahead of construction bulk samples should be taken from the site to aid assessment of macrofossil remains. This may take place as part of the excavation or as a separate exercise. An archaeological excavation will be required utilising battlefield specific strategies in areas where and specialist advice required on any artefacts recorded. A metal detecting survey is also required in collaboration with battlefield specialists although it has been noted that some of the items retrieved so far have been heavily concreted which makes it difficult to locate by metal detector. The Council's Archaeologist would encourage the collaboration between the relevant commercial archaeological unit and Fulford Battlefield Society during the production of excavation strategy and during the fieldwork itself. Participation in fieldwork will be dependent on Health & Safety excavation guidelines which must be followed. A level 1 photographic recording will be required on the stone bridge arch prior to pumping station construction.

5.30 An interpretation scheme is required alongside the relocation of the 1970s commemoration stone at an appropriate vantage point to be agreed between Fulford Parish Council, Fulford Battlefield Society and City of York Council. It is envisaged that the interpretation scheme will comprise of 2-3 boards written by the Fulford Battlefield Society although the number is still to be decided. The location of these boards is still to be determined but should be in areas of highest footfall, meaningful points of interest and where landowner permissions allow. There is a proposal by the Fulford Battlefield Society for a longer trail which may

be something that can be addressed should designation be achieved. However it is not feasible or proportionate to include a trail on that scale as part of this application.

5.31 A watching brief will take place on levels thought to be modern/disturbed. The intensity of this may vary depending on location and impact. A comprehensive WSI covering all above and below-ground mitigation (photographic recording, metal detecting, sample extraction, excavation, watching brief and plans for interpretation) is required. Conditions can be added in respect of this to secure suitable mitigation in line with policy D6 of the Draft Local Plan (2018).

## TREES AND LANDSCAPING

### Policy

5.32 Section 15 of the NPPF seeks to conserve and enhance the natural environment. Planning decisions should protect and enhance valued landscapes and site of biodiversity and recognising the value of trees and woodland. Section 12 sets out the policy on good design, stating that development should add to the quality of the area and be visually attractive with appropriate landscaping. It highlights how trees make an important contribution to the character and quality of urban environments.

5.33 Policy D2 of the Draft Local Plan (2018) relates to landscape and setting. Development proposals will be encouraged and supported where they:

- i. demonstrate understanding through desk and field based evidence of the local and wider landscape character and landscape quality relative to the locality, and the value of its contribution to the setting and context of the city and surrounding villages, including natural and historic features and influences such as topography, vegetation, drainage patterns and historic land use;
- ii. protect and enhance landscape quality and character, and the public's experience of it and make a positive contribution to York's special qualities;
- iii. demonstrate a comprehensive understanding of the interrelationship between good landscape design, bio-diversity enhancement and water sensitive design;

iv. create or utilise opportunities to enhance the public use and enjoyment of existing and proposed streets and open spaces;

v. recognise the significance of landscape features such as mature trees, hedges, historic boundaries and other important character elements, and retain them in a respectful context where they can be suitably managed and sustained;

vi. take full account of issues and recommendations in the most up to date York Landscape Character Appraisal;

vii. include sustainable, practical, and high quality soft and hard landscape details

and planting proposals that are clearly evidence based and make a positive contribution to the character of streets, spaces and other landscapes;

viii. create a comfortable association between the built and natural environment and

attain an appropriate relationship of scale between building and adjacent open space, garden or street. In this respect consideration will also be given to function and other factors such as the size of mature trees; and

ix. avoid an adverse impact on intrinsically dark skies and landscapes, townscapes

and/or habitats that are sensitive to light pollution, keeping the visual appearance of light fixtures and finishes to a minimum and avoiding light spill.

5.34 Policy G14 of the Draft Local Plan (2018) Development will be permitted where it:

i. recognises the value of the existing tree cover and hedgerows, their biodiversity

value, the contribution they can make to the quality of a development, and its assimilation into the landscape context;

ii. provides protection for overall tree cover as well as for existing trees worthy of retention in the immediate and longer term and with conditions that would sustain the trees in good health in maturity;

iii. retains trees and hedgerows that make a positive contribution to the character or

setting of a conservation area or listed building, the setting of proposed development, are a significant element of a designed landscape, or value to the general public amenity, in terms of visual benefits, shading and screening.

iv. does not create conflict between existing trees to be retained and new buildings, their uses and occupants, whether the trees or buildings be within or adjacent to the site; and

v. supplements the city's tree stock with new tree planting where an integrated landscape scheme is required;

vi Provides suitable replacement planting where the loss of trees or hedgerows worthy of retention is justified

### Assessment

5.35 The application is accompanied by an Arboricultural Impact Assessment (dated December 2022) ("the AIA"). The AIA recorded 40 tree features, including 33 individual trees and 7 tree groups. The trees on site range from young to mature trees and in good or fair condition. Tree removal is required to facilitate the development, which includes removal of;

- 5no. Category B individual trees (3no. Ash and 2no. Sycamore)
- 2no. part Category B groups (Sycamore/Common Alder and Ash/Hawthorn)
- 15no. Category C individual trees (2no. Ash, 7no. Sycamore, 4no. Hawthorn, 2no. Field Maple)
- 2no. Category C groups (Hawthorn/Ash/Sycamore and Field Maple/Hawthorn/Sycamore/Horse Chestnut)
- 1 part Category C group (Sycamore).
- 1 Category U individual tree (Field Maple).

5.36 The Landscape Architect notes the proposed development would result in a significant loss of existing tree cover either side of Fulford Road. The loss is over a relatively short stretch, although one that is exposed to a busy main road into the city centre. The main amenity value of the trees is their contribution to the natural setting of Fulford village (and conservation area) and the association with Fulford Ings. None of the trees are currently subject to a tree preservation order

(TPO). All trees to the north of Germany beck are located within Fulford conservation area - two Sycamore trees (category B above) and one Hawthorn tree (category C above) and a small section of a group of trees (G30).

5.37 A proposed landscaping plan has been submitted to include the planting of 12no. individual trees and 2no. woodland mixes, alongside flowering meadows and species rich grasslands. The higher density woodland belt, approximately 480m<sup>2</sup>, is to be located to the east of the pumping station which will aid in screening from the playing field. The lower density woodland is to be sited along Germany Beck to increase tree cover at approximately 460m<sup>2</sup>.

5.38 The removal of the trees is necessary in order to implement the proposed flood alleviation scheme and the harm arising from the loss of the trees is outweighed by the public benefits and mitigation put forward. The Landscape Architect finds the landscape proposals appropriate and has requested a semi-mature specimen tree, of the Parish Council's choosing, should be included within the red line to the south of the vehicle route or elsewhere if this is not feasible. This can be conditioned.

5.39 To conclude on tree and landscaping matters, it is acknowledged the removal of trees is necessary to facilitate development, which is unfortunate, however the proposed development has wider public benefits and the replacement landscaping is considered appropriate and will screen the development from public viewpoints, particularly from the playing fields. Given the generally low-lying nature of the proposal, it is considered the mitigation would reduce the visual impact of the structures fairly quickly and sufficiently thereby meeting policies D2 and G14 of the Draft Local Plan (2018).

## OPEN SPACE AND PLAYING FIELD

### Policy

5.40 The land to the west of the A19 is designated as existing open space – Fulford Parish Councils 'Fordlands Road Playing Fields'. Policy GI1 seeks to protect and enhance existing recreational open space. Policy GI5 of the Draft Local Plan (2018) relates to the protection of open space and playing fields. This states:

5.41 Development proposals will not be permitted which would harm the character of, or lead to the loss of, open space of recreational importance unless the open space uses can be satisfactorily replaced in the area of benefit and in terms of quality, quantity and access with an equal or better standard than that which is proposed to be lost.

5.42 Where replacement open space is to be provided in an alternative location (within the area of benefit) the replacement site/facility must be fully available for use before the area of open space to be lost can be redeveloped.

5.43 Development proposals will be supported which:

- provide allotments and productive land, to encourage local food production, and its benefits to education and healthy living;
- protects playing pitch provision except where a local area of surplus is indicated in the most up to date Playing Pitch Strategy;
- improves the quality of existing pitches and ensure that any new pitches are designed and implemented to a high standard and fully reflect an understanding of the issues affecting community sport and;
- provide new pitches in a suitable location that meets an identified need.

5.44 The NPPF at paragraph 103 states that 'existing open space ... and land, including playing fields, should not be built on unless: (a) an assessment has been undertaken which clearly shows the land is surplus to requirements, or (b) the loss would be replaced by equivalent or better provision in a suitable location, or (c) the development is for alternative sports and recreational provision'.

### Assessment

5.45 There is a presumption against the loss of open space of recreational importance in both national and local policy. During construction there will be a temporary loss of playing field as it is proposed to utilise the existing playing field access from Fordlands Road. This is a short term arrangement and the land will be restored to open space/playing field after the pumping station is constructed.

5.46 The pumping station will be located on land which is currently open space – Fordlands Road Playing Field. Policy GI5 specifically relates to the loss of open space of recreational importance. The location of the development will result in a

small loss of amenity open space land, however when taking into account the existing topography and vegetation on site, it is not considered to be a particularly useable area of open space. Additionally the proportion of land is relatively small in relation to the wider Playing Field. Taking into account the proposed replacement landscaping, the proposal will aid in increasing the recreational value of the playing field. On planning balance and given the size, use and nature of the land it would be unreasonable to ask for replacement open space elsewhere.

5.47 With regards to the impact on the playing fields, Sport England note that the proposal adjacent to Selby Road is surrounded by trees and have the potential to meet exception E3 of Sport England's Playing Fields Policy in that the land is incapable of accommodating a pitch or part of a pitch. The Football Foundation states they are not aware of any existing affiliated football activity taking place at this site, so no impact on existing formal football is foreseen.

5.48 Sport England conclude the proposed development results in a minor encroachment onto the playing field however, having considered the nature of the playing field and its ability to accommodate a range of pitches, it is not considered that the development will reduce the sporting capability of the site and broadly meets exception E3. Sport England have withdrawn their objection to the scheme.

## ECOLOGY AND BIODIVERSITY

### Policy

5.49 Section 15 of the NPPF, 'Conserving and enhancing the natural environment', sets a presumption against development where there would be harm to biodiversity, or have a significant effect on a habitats site unless assessment demonstrates otherwise.

5.50 The NPPF, at paragraph 186, states when determining planning applications, local planning authorities should apply the following principles:

a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;

b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;

5.51 The site includes Germany Beck and land within the eastern extent of the Fulford Ings Site of Special Scientific Interest (SSSI).

5.52 Policy GI1 states that York's landscapes, geodiversity, biodiversity, and natural environment will be conserved and enhanced. Policy GI2 seeks to conserve and enhance biodiversity. Development should maintain and enhance rivers, banks and floodplains and other smaller waterways for their biodiversity, cultural and historic landscapes. Biodiversity mitigation and enhancement should be provided on site. Policy G14 'trees and hedgerows' recognises and protects the value to existing tree cover and hedgerows, their biodiversity value and assimilation of development into the landscape.

### Assessment

5.53 The Ecological Impact Assessment (EclA) (dated December 2022) identified key ecological receptors that require mitigation during the construction and operation phases of the development.

5.54 With regards to bats, two trees were found to have a low suitability to support a bat roost. One tree with Moderate-High suitability (T13) lies adjacent to the Site in a field south of Landing Lane, and one tree with Moderate suitability (T14) is adjacent to the Site within Fulford Ings SSSI and will not be affected by the proposed development. The arboriculture contractor undertaking the works must be made aware of the potential for roosting bats so that felling can be planned accordingly, and measures can be included in the CEMP.

5.55 In terms of birds (Schedule 1) there is no suitable roosting or nesting habitat within or adjacent to the Site boundary. Barn owl (*Tyto alba*) may forage in the hedgerow features along Landing Lane to the south of the Site. Woodland, scrub and hedgerow may support common species of nesting birds. Mitigation is



required to meet legal requirements for breeding birds during the proposed development construction clearance.

5.56 European eel (*Anguilla anguilla*) was found in the baseline fish surveys throughout Germany Beck. Germany Beck supports a population of yellow/adult eels with 13 individuals caught in summer 2021. Eel size ranges were from 100 mm – 410 mm. Construction of the pumping station may impact on the upstream migration of glass eels/elvers. In channel works likely to disturb sediments along with associated vibration and noise could impede the upstream movement of juvenile eels. The key migration window of 1st May to 31st July should be avoided to reduce any potential impacts.

5.57 Construction of the pumping station and outfall may impact water vole if they have colonised the area to be affected since previous surveys. No burrows were found within or immediately adjacent to the Site in previous surveys (the nearest water vole field sign was approximately 20 m away from the works), however water vole may have dug new burrows in the intervening period since the previous survey in 2020 if conditions along the beck remain suitable. A pre-construction water vole survey will be undertaken to confirm the continued absence of burrows within the site. If active water vole burrows are found to be present, an appropriate mitigation strategy will be designed and implemented for temporary impacts on water vole habitat.

5.58 Suitable habitat for reptiles is present within the site although significant populations are unlikely to be present given the habitat types and limited extent. The habitats within and adjacent the Site have some value for hedgehog and common toad and habitat will remain available in the wider area. This species group is included in the assessment due to the low risk of accidental killing and injury during vegetation clearance within the site, therefore mitigation measures to ensure legislative compliance will be adopted.

5.59 Specific mitigation measures are set out at 7.1 in the report, however to ensure the identified impacts can be managed to an appropriate level, as detailed within EclA, embedded and specific mitigation will primarily be provided via a finalised Construction Environmental Management Plan, to include appropriate engineering (i.e., fish-friendly pumps) and a programme of habitat mitigation and enhancement.

5.60 Although an outline CEMP has been provided in support of this application, a finalised document should be secured through a planning condition, as recommended by both the Council's Ecologist and the Environment Agency. It is recommended that the CEMP is viewed as a working document and is reviewed and updated throughout the construction programme to ensure its relevancy.

5.61 The site includes Germany Beck and land within the eastern extent of the Fulford Ings SSSI. The SSSI is described in AECOM's Botanical Survey of 'Compartment 7 of Fulford Ings Site of Special Scientific Interest' (July 2021) as 'an important example of flood plain mire and comprises four management units (4-7)'. The proposed works would be located in component 7.

5.62 The formal citation for the SSSI states that Fulford Ings is important for its sequence of plant communities which reflect the topography and hydrology, with alluvial grassland on higher ground, adjacent to the flood bank, a transitional zone of rich fen meadow, and swamp in the most low-lying areas furthest from the river. Such a sequence of plant communities is now uncommon as a result of the drainage and fragmentation of wetlands and the fact that it remains largely intact at Fulford Ings is of particular importance. This sequence of vegetation is represented within the SSSI as a whole, with the actual vegetation present varying unit by unit.

5.63 The SSSI is protected under the Wildlife and Countryside Act 1981. Statutory and public bodies have a general duty to take reasonable steps to further the conservation and enhancement of the special feature of SSSIs. The last condition assessment reported for Unit 7 of Fulford Ings SSSI was completed in 2011 (Natural England, 2021). This records that the unit is in 'unfavourable – declining condition'. The reasons given for this relate to colonisation by invasive plant species and unspecified inappropriate land management regimes. This indicates that both lack of grazing and overgrazing are management issues affecting the condition of some areas of the SSSI. Linked to this, the LBAP (Local Biodiversity Action Plan) also identifies an increase in species-poor reed sweet-grass swamp (one of the reasons for designation of the SSSI) in recent decades as a result of the reduced grazing of parts of the SSSI. Further, it is considered that certain notable communities and species will not recover until these significant management issues are addressed.

5.64 The report concludes that neither the proposed ground investigations or the wider proposed works are likely to adversely affect the botanical integrity of the wider Fulford Ings SSSI and adjacent land. Adverse impacts and effects on wetland vegetation communities beyond the immediate footprint of the proposed works are unlikely. The proposed works do not represent a significant threat to the nature

conservation importance and integrity of Fulford Ings SSSI. The affected S5 swamp

community is of inherently low botanical diversity and the community is of limited structural diversity and complexity. Its main value relates solely to the contribution it makes to the wider sequence of wetland habitats. Suitable mitigation is proposed including; gaining third party consent (outside of the planning process), ensuring suitable timing of the works, producing an invasive non-native species management plan and site reinstatement and monitoring.

5.65 To conclude on ecological matters, it is not considered that the works would represent a significant threat to the importance and integrity of the SSSI. The Ecologist and Environment Agency recommend an updated CEMP to be secured by condition. Additional conditions such as an invasive non-native species method statement and LEMP have also been added. The proposal is considered to meet paragraph 186 of the NPPF and policy G12 of the Draft Local Plan (2018) with regards to conserving and enhancing the natural environment.

## PUBLIC PROTECTION

### Policy

5.66 Paragraph 191 of the NPPF states that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects of pollution on health, living conditions and the natural environment, as well as the sensitivity of the site. Noise should be mitigated and potential adverse impacts kept to a minimum. This is supported by policy ENV2 of the Draft Local Plan (2018) which seeks to ensure development will not unacceptably harm the amenities of existing and future neighbours of the site including adverse noise, vibration and artificial light.

5.67 Policy ENV3 of the Draft Local Plan (2018) relates to land contamination. Planning applications must be accompanied by an appropriate contamination risk assessment.

## Assessment

5.68 The proposed pumping station has the ability to produce some noise during operation. As such the Public Protection Team recommend a condition to ensure noise emissions are controlled. This has been added.

5.69 With regards to construction noise and dust, the current Construction Environmental Management Plan dated 23/12/22, does have some controls in place for controlling noise and dust emissions however there are insufficient details on the controls that will be put in place to minimise noise and vibration during piling works. The Public Protection Team require a new CEMP via condition which has been added.

5.70 A ground investigation report accompanies the application (60615369-ACM-X-XX-RP-GT-4003) which demonstrates the land is suitable for the proposed use. A unexpected land contamination condition is therefore sufficient in this instance.

## FLOOD RISK AND DRAINAGE

### Policy

5.71 Policy ENV4 of the Draft Local Plan (2018) relates to flood risk. Development proposed in areas of flood risk must be informed by an acceptable site specific flood risk assessment, following the Sequential Test and, if required, the Exception Test.

5.72 Proposals located in areas known to be at risk from any form of flooding must demonstrate that:

- i. there is no direct or cumulative increase in flood risk locally or elsewhere in the catchment arising from the development; and,
- ii. The development will be safe during its lifetime with arrangements for the adoption, maintenance and management of any mitigation measures identified in a management and maintenance plan

5.73 Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future).

Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere (paragraph 165 of the NPPF). Development proposals must meet the sequential test and exception test in order to be granted (paragraph 167 and 170 of the NPPF).

5.74 Policy ENV5 relates to sustainable drainage and seeks to promote SuDS. The type of SuDS use should be appropriate to the site in question and should ensure that there is no pollution of the water environment including both ground and surface waters.

### Assessment

5.75 The red line application site boundary spans both Flood Zone 2 and 3. Part of the site is located within Flood Zone 3b, categorised as a functional floodplain, comprising land where water has to flow or be stored in times of flood. The development is designed to reduce flood risk, therefore its location is site specific and the sequential test is passed. It is not possible for the development to be located in an area with a lower risk of flooding. The pumping station and associated works is 'essential infrastructure' in Table 2: Flood Risk Vulnerability Classification set out in Annex 3 of the NPPF. Essential infrastructure in Flood Zone 3 must then pass the exception test.

5.76 The FRA suggests that during construction, the temporary construction compound will be located on higher ground in Flood Zone 2 within the playing field but some temporary construction activities must be undertaken in Fulford Ings (Flood Zone 3) due to the nature of flood control projects. It is recommended that contractors subscribe to the Environment Agency Flood Warning system in order to be alerted of potential floods and to stop work on site.

5.77 During operation, the pumping station will be operated automatically using water level sensors so that the penstock closes and first pump switches on when river levels reach 7.50m AOD. If the upstream level rises further to 8.00m AOD then the first of the larger pumps will switch on and above 8.42m AOD both larger pumps will run. Using telemetry will reduce the risk of delayed operation or operator error and reduce risk to operators during a flood event, although a manual override will enable flood response teams to override the telemetry if required. The telemetry system will alert flood response teams should any

element of the pumping station fail to operate as planned, at which point there will still be significant freeboard before a flood gate must be closed to complete the line of passive defence and protect the A19 (Flood Risk Assessment, revision 2, dated 17<sup>th</sup> October 2023 – page 8).

5.78 The road access via the A19, the parking area for the pumping station, the pumping station control kiosk and penstock actuator are all located behind the line of passive defence, should manual intervention be required during operation. The kiosk which houses the critical controls and any water-sensitive equipment additionally has a floor level of 10.54m AOD, which is the 0.1 % AEP 2039 CC flood level on the River Ouse, to protect the controls from extreme flooding beyond the design event. The roof and upper debris screen landing of the pumping station structure is 8.73m AOD, which is above the water level given the pumps shall maintain a level of 8.42m AOD; the roof and landing can therefore be accessed during a flood event to clear the debris screen if required. The lower landing is positioned at 7.42m AOD, which is below the level at which the penstock closes and low flow pump switches on, so must be maintained adequately preceding a flood event. (Flood Risk Assessment, revision 2, dated 17<sup>th</sup> October 2023 – page 9).

5.79 The Flood Risk Assessment states the new flood defences will improve the Standard of Protection to the 1% AEP 2039 Climate Change event in line with other flood cells delivered by the EA. Flood waters that previously flooded Fulford from the River Ouse will now be contained to a higher level. It is acknowledged that as a result of this proposal, the results showed that for the 1% present day, and the 1% AEP 2039 climate change event, the Germany Beck works would raise water levels in the River Ouse by 1mm beyond the impact of the works in other flood cells. As a result of this 1mm, one additional property in Cell B8 was now deemed at risk, however properties in the affected area have already received Property Level Resilience funding through the York FAS.

5.80 The Flood Risk Management Team recommend a condition requiring details of adoption and maintenance of the flood defence. It is believed discussions are ongoing with the IDB and CYC about maintenance and clearance of the debris screens to ensure there isn't a breach or failure of the flood defence. The condition has been added, alongside a drainage easement strip condition. Yorkshire Water recommend conditions to protect the public sewer network which have been added.

5.81 The development would provide wider sustainability benefits to the community and the development will be safe for its lifetime taking account of the vulnerability of its users and will reduce flood risk overall. Whilst it is acknowledged a dwelling in Cell B8 will be deemed at risk as a result, it is understood this property already benefits from flood defences. The proposal therefore passes the exception test and meets paragraph 170 and 171 of the NPPF and policy ENV4 of the Draft Local Plan (2018).

## HIGHWAYS AND ROAD SAFETY

### Policy

5.82 Policy T1 of the Draft Local Plan (2018) requires safe and appropriate access, layout and parking arrangements. Development will be supported where it is in compliance with the Council's up to date parking standards (policy T8). Paragraph 115 of the NPPF states development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

### Assessment

5.83 A main temporary construction compound will be located within the playing field to the east of A19 and will utilise the existing playing field access from Forlands Road. This is a temporary arrangement and likely to be short term. A further smaller temporary construction compound will be located off Landing Lane (utilising an existing access).

5.84 In terms of permanent features, the proposal seeks the creation of a new dropped kerb and access from Selby Road (A19) in order to reach the vehicular parking area. It is understood this will be used periodically for maintenance and emergency access for the pumping station.

5.85 The Highways Officer requested visibility splays appropriate to 40mph and pedestrian visibility splays. The vehicle swept path analysis for the largest expected vehicle to be used for operation and maintenance demonstrates that there is sufficient manoeuvring space in the parking area to provide exit and entry in a forward gear.

## PUBLIC RIGHTS OF WAY

### Policy

5.86 Policy GI3 of the Draft Local Plan (2018) seeks to protect and enhance the amenity, experience and surrounding biodiversity value of existing rights of way, national trails and open access land.

### Assessment

5.88 A public right of way (5/8/10) lies to the south west, but outside of the application site boundary. It is not considered that the proposed development would detrimentally impact the amenity or recreational value of the public right of way.

## VERY SPECIAL CIRCUMSTANCES

5.89 NPPF paragraph 153 states that “when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations”.

5.90 Very special circumstances need to be demonstrated for the above ground physical structures that would impact on the openness of the Green Belt. The following harm has been identified:

- The pumping station and earth embankments would harm the openness of the Green Belt, both visually and spatially.
- Felling of 21no. trees, 2no. groups and part of 3no. tree groups.
- Less than substantial harm to the setting of Fulford Conservation Area.
- One additional property (in cell B8) would be deemed at risk as a result of the proposal (although the property already benefits from flood defences as part of the wider FAS).
- Minor habitat loss



5.91 The following considerations and benefits are put forward to justify the proposal:

- Reduced flooding and improvements to accessibility into and out of Fulford, including the A19 (Selby Road), Fordland's Estate and the Cemetery.
- Increased protection for residential dwellings on the Fordland's Estate and Selby Road.
- Will provide a Standard of Protection (SoP) up to and including the 1% AEP 2039 climate change event in line with other flood cells delivered by the EA as part of the York Flood Alleviation Scheme.
- The archaeological investigation will provide additional information about the area in general.
- A scheme of interpretation for the Battle of Fulford.
- High quality landscaping scheme in the immediate area.
- Biodiversity enhancements including the treatment and management of invasive non-native species.
- Management of the habitat within the SSSI to seek to contribute to the restoration to a favourable condition (currently unfavourable).

5.92 Significant weight is attached to the wider public benefits of reducing flood risk in this area. The proposals for a flood alleviation scheme are clearly justified and necessary. It is a matter of planning judgement and even when attaching substantial weight to the harm to the Green Belt, cumulatively there are very special circumstances which, as is required by the NPPF, clearly outweigh the harm to the Green Belt. It is considered to be a ground for very special circumstances which justifies the development.

## **6.0 CONCLUSION**

6.1 The proposals for the flood alleviation scheme are clearly justified and necessary in this location. The development would provide wider sustainability benefits to the community and reduce flood risk overall, in particular around the A19 (Selby Road), Fordland's Estate and the Cemetery. Whilst it is acknowledged a dwelling in Cell B8 will be deemed at risk as a result, it is understood this property already benefits from flood defences. The proposal therefore passes the sequential and exception tests in relation to flood risk.

6.2 The site lies within the Green Belt. Whilst engineering operations are classed as appropriate in the Green Belt, they must still preserve the openness. It is considered the above-ground structures such as the kiosk, would harm the Green Belt visually and spatially. However very special circumstances have been identified to outweigh the harm to the openness arising from the above ground physical structures.

6.3 The overall design and material choice of the infrastructure is suitable for its use, including matching brick slips and moss green pipework. However it is considered the presence of an engineered structure, within a fairly verdant and semi-rural setting, presents some harm to the setting and entrance of Fulford Conservation Area, in particular when arriving from Selby Road. The harm is assessed as less than substantial and there are significant public benefits arising from the development.

6.4 With regards to archaeology, the proposed infrastructure will not significantly harm the setting or legibility of the battlefield site. The above ground impact will not pose any threat to future designation of the battlefield. The development has the potential to impact upon archaeological deposits and mitigation is therefore recommended which is secured by condition.

6.5 The development will be located on land currently designated as open space – Fordlands Road Playing Field, however taking into account existing topography and vegetation, the proportion of land to be used is small and currently not useable for recreational importance. The proposed replacement landscaping, will aid in increasing the recreational value of the playing field, on planning balance and given the size, use and nature of the land it would be unreasonable to ask for replacement open space elsewhere.

6.6 The removal of trees is necessary to facilitate the development, however the replacement landscaping is considered appropriate and will screen the development from public viewpoints, particularly from the playing fields. Public protection matters such as noise and dust can be controlled by condition. A new access from Selby Road is required for periodic maintenance and emergency access to enter a vehicle parking area for contractors. Members will be updated at committee with regards to the Highway Officers updated comments.

6.7 The Ecological Impact Assessment identified key ecological receptors that require mitigation during the construction and operation phases of the

development. Neither the proposed ground investigations or the wider proposed works are likely to adversely affect the botanical integrity of the wider Fulford Ings SSSI and adjacent land. The Ecologist and Environment Agency recommend an updated CEMP to be secured by condition. Additional conditions such as an invasive non-native species method statement and LEMP have also been added. The natural environment is therefore conserved and enhanced.

6.8 On planning balance and taking all matters into consideration, including attaching substantial weight to the public benefits arising from the development, the application accords with the provisions of national planning policy and policies within the Draft Local Plan (2018) and is therefore recommended for approval subject to conditions.

## **7.0 RECOMMENDATION:** Approve

1 TIME2 Development start within three years

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

Site location plan - Re: 60651369-ACM-XX-XX-DR-C-0011, revision P01, dated 02/12/2022.

General Arrangement - Pumping Station and Outfall - Re: 60651369-ACM-XX-XX-DR-C-1001 Revision P03 - dated 06/09/2023.

General Arrangement Site Plan - Re: 60651369-ACM-XX-XX-DR-C-1000, revision P01, dated 02/12/2022.

General Arrangement Landing Lane - Re: 60651369-ACM-XX-XX-DR-C-1002, revision P01, dated 02/12/2022.

Pumping Station Elevation Looking South from Germany Beck - Re: 60651369-ACM-XX-XX-C-DR-1004, revision P01, dated 08/12/2022.

Pumping Station Elevation Looking West from Playing Field - Re: 60651369-ACM-XX-XX-C-DR-1005, revision P01, dated 08/12/2022.

Pumping Station Elevation from A19; Re: 60651369-ACM-XX-XX-C-DR-1007, revision P01, dated 08/12/2022.

Pumping Station Elevation Looking North from Proposed Parking Area: Re:

60651369-ACM-XX-XX-C-DR-1010, revision P01, dated 16/02/2023.

Pumping Station Section towards Selby Road: Re: 60651369-ACM-XX-XX-C-DR-1008, revision P01, dated 08/12/2022.

Pumping Station Section looking East towards Field: Re: 60651369-ACM-XX-XX-C-DR-1009, revision P01, dated 08/12/2022.

Outfall Elevation: Re: 60651369-ACM-XX-XX-C-DR-1006, revision P01, dated 06/12/2022.

Playing Field - Earthworks Sheet 1 of 2 - Re: 60651369-ACM-XX-XX-DR-C-1504 Revision P03 - dated August 2023.

Playing Field - Earthworks Sheet 2 of 2 - Re: 60651369-ACM-XX-XX-DR-C-1505 Revision P01 - dated June 2023.

Landscape Layout Plan - Re: 60651369-ACM-ELS-S1-DR-LV-0001, revision P02, dated 19/12/2022.

Flood Risk Assessment - Re: 60651369 Revision 2 dated 17th October 2023.

Reason: For the avoidance of doubt and in the interests of proper planning.

3 No development shall take place until details of the means of operation, management, repair and maintenance of the flood defence/resilience works, and associated apparatus have been submitted to and approved by the Local Planning Authority. Details to include; plans and schedules showing the flood defence/resilience works and associated apparatus to be vested with the relevant Statutory Undertaker/s, land owner and highway authority with a clear understanding of who will operate, repair and maintain at their expense, and any other arrangements to secure the operation and maintenance of the approved scheme. The development shall be carried out in accordance with the approved details.

Reason: To prevent the increase risk of flooding and to ensure the future maintenance of the scheme throughout the lifetime of the development.

4 No development or archaeological investigation shall take place until a written scheme of investigation (WSI) for all outlined archaeological works has been submitted to and approved by the local planning authority in writing. For land that is included within the WSI, no development shall take place other than in accordance with the agreed WSI. The WSI should conform to standards set by LPA and the Chartered Institute for Archaeologists.

A programme of post-determination archaeological mitigation, specifically an archaeological watching brief, metal detecting survey and excavation is required on this site.

The archaeological scheme comprises 3 stages of work. Each stage shall be completed and agreed by the Local Planning Authority before it can be approved.

A) The site investigation and post-investigation assessment shall be completed in accordance with the programme set out in the approved Written Scheme of Investigation and the provision made for analysis, publication and dissemination of results and archive deposition will be secured. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the WSI.

B) A copy of a report (and evidence of publication if required) shall be deposited with City of York Historic Environment Record to allow public dissemination of results within 3 months of completion or such other period as may be agreed in writing with the Local Planning Authority.

Reason: The site is considered to be an area of archaeological interest. Therefore, the development may affect important archaeological deposits which must be recorded prior to destruction, in accordance with Section 16 of the NPPF.

5 A programme of archaeological building recording, specifically a written description and photographic recording of the stone arch bridge and any other historic bridge fabric to Historic England Level of Recording 1 is required for this application.

The archaeological scheme comprises 3 stages of work. Each stage shall be completed and agreed by the Local Planning Authority before it can be approved.

A) The programme of recording and reporting shall be completed in accordance with the programme set out in the approved Written Scheme of Investigation and the provision made for analysis, publication and dissemination of results will be secured. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the WSI.

B) A copy of a report and digital images shall be deposited with City of York Historic Environment Record to allow public dissemination of results within 3 months of completion or such other period as may be agreed in writing with the Local Planning Authority.

Reason: The buildings on this site are of archaeological interest and must be recorded prior to alteration or covering of fabric, in accordance with Section 16 of the NPPF and Policy D7 of the Draft Local Plan (2018).

6 A scheme of interpretation relating to the Battle of Fulford is required for this application. The scheme should be agreed between the LPA, Fulford Battlefield Society and any other interested parties, prior to implementation and submitted to and approved in writing by the Local Planning Authority. The scheme should be ready for installation no later than 4 months, unless agreed with the LPA, following the construction of the pumping station and associated infrastructure.

Reason: The site is considered to be an area of archaeological and historic interest, therefore in accordance with Section 12 and 16 of the NPPF, a scheme of interpretation is required.

## 7 CEMP - BIODIVERSITY

No development shall take place (including enabling works, ground works and vegetation removal) until a finalised CEMP has been submitted to and approved in writing by the local planning authority, in consultation with the Environment Agency. The construction environmental management plan shall be carried out as approved and any subsequent variations shall be agreed in writing by the local planning authority.

The CEMP shall include, but not be limited to, the following elements:

- 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.
- d) Specifications for root protection areas for retained trees and scrub, in accordance with BS5837:2012.
- e) Details of how the site will be remediated and built without affecting surrounding habitats.
- f) Use of directional/sensitive lighting during construction, to limit light spill on to Fulford Ings SSSI, Germany Beck and foraging and commuting bat habitat.
- g) The location and timing of sensitive works to avoid harm to biodiversity features, including nesting birds and European eels.
- h) Programme of pre-commencement checking surveys, including nesting birds, Water vole, otter and up-dating aerial tree inspections for bats.
- i) Measures to protect common amphibians, reptiles, hedgehogs, and nesting birds. Measures should also include protection for hedgehogs who may access the site for foraging and commuting purposes including and not limited to, precautionary working methods to prevent accidental harm or injury, removal of

tree or shrub cuttings from the site and the covering of trenches and capping of any open pipes.

j) Details of pollution prevention measures required to reduce sediment and other pollutants impacting Fulford Ings SSSI and Germany Beck.

k) Details of biosecurity measures to manage and/or remove invasive, non-native plant species (with full details provided in separate Biodiversity Management Plan).

l) Responsible persons and lines of communication.

m) The roles and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.

n) Use of protective fences, exclusion barriers and warning signs.

Reason: To facilitate the protection of notable/sensitive ecological features and habitats on the application site and within the local area. The protection of designated sites in line with Policy GI2 in the Publication Draft Local Plan (2018).

8 Prior to the commencement of development, an invasive non-native species protocol (Biodiversity Management Plan) shall be submitted to and approved by the local planning authority, detailing the containment, control and removal of Himalayan balsam and Nuttall's waterweed on site. The measures shall be carried out strictly in accordance with the approved scheme.

Reason: To ensure that an adequate means of eradicating or containing the spread of an invasive non-native species listed on Schedule 9 of The Wildlife and Countryside Act 1981 (as amended) and to prevent further spread of the plant which would have a negative impact on biodiversity and existing or proposed landscape features.

9 A landscape and ecological management plan (LEMP) shall be submitted to, and be approved in writing by, the local planning authority prior to the commencement of the development. The content of the LEMP shall include the following.

a) Description and evaluation of features to be managed, including all newly created habitat.

b) Ecological trends and constraints on site that might influence management.

c) Aims and objectives of management.

d) Appropriate management options for achieving aims and objectives.

e) Prescriptions for management actions, including reinstatement/enhancement of work areas, haulage/access roads and site compounds.

f) Preparation of a work schedule (including an annual work plan capable of being rolled forward).

g) Details of the body or organisation responsible for implementation of the plan.

h) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by

which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed, and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

Reason: To ensure wildlife mitigation, compensation and enhancements measure are managed and maintained appropriately. To take account of and enhance the biodiversity and wildlife interest of the area, and to be in accordance with Paragraph 180 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 establishing coherent ecological networks that are more resilient to current and future pressures.

10 Before the commencement of development, a comprehensive Arboricultural Method Statement and scheme of arboricultural supervision regarding protection measures for existing trees within and adjacent to the application site shown to be retained on the approved drawings, shall be submitted to and approved in writing by the Local Planning Authority in accordance with the recommendations contained within the Arboricultural Impact Assessment. The content of the approved document shall be strictly adhered to throughout development operations. A copy of the document shall be available for reference and inspection on site at all times.

Reason: To protect existing trees which are considered to make a significant contribution to the amenity of the area, and to prevent further loss of tree cover.

11 The approved Landscape Layout Plan (60651369-ACM-ELS-S1-DR-LV-0001, rev P02, dated 19/12/2022) shall be implemented within a period of six months of the practical completion of the development. Any trees or plants which within a period of ten years from the substantial completion of the planting and development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species, unless the Local Planning Authority agrees alternatives in writing.

Reason: The landscape scheme is integral to the amenity of the development and mitigation for lost trees.

12 Within six months of practical completion of the development hereby permitted, details shall be submitted to and approved in writing by the Local Planning Authority of an additional landscape plan showing the proposed location of an additional tree, alongside evidence of consultation and agreement with the Parish Council on the choice of tree. Once the details are approved, the



tree shall be planted within three months in strict accordance with the approved details. If the tree dies within a period of ten years from the substantial completion of the planting, or are removed or become seriously damaged or diseased, it shall be replaced in the next planting season with others of a similar size and species, unless the Local Planning Authority agrees alternatives in writing.

Reason: The landscape scheme is integral to the amenity of the development and mitigation for lost trees.

### 13 CEMP AMENITY

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.

Reason: To protect the amenity of the locality

14 Prior to the construction of any walls in the development hereby approved, a brick sample shall be deposited on site for the written approval of the Local Planning Authority. Once approved, the walls in the development hereby permitted shall be constructed out in strict accordance with the brick sample approved.

Reason: To ensure the materials assimilate with the setting in the interests of good design and the setting of the adjacent Conservation Area.

15 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 opens 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+ A1 2019, 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.

16 No development shall take place until a detailed mitigation strategy relating to Fulford Ings SSSI both during the construction period and post construction (with particular reference to bringing the SSSI into favourable condition), has been submitted to, and approved in writing by the Local Planning Authority, in consultation with Natural England. The mitigation strategy shall be carried out as approved and any subsequent variations shall be agreed in writing by the Local Planning Authority.

Reason: In order to protect the interest features of the Fulford Ings SSSI both before, during and after construction.

17 The recommendations as set out in the following reports shall be implemented and adhered too throughout all phases of development;

- Section 2.4, 3.3 and 4.4 of the Ecology Update Report - dated August 2021
- Section 5.2 of the Botanical Survey - dated July 2021
- Section 9 of the Aquatic Baseline Survey - dated 11 June 2021

Reason: To ensure wildlife mitigation, compensation and enhancements measure are managed and maintained appropriately. To take account of and enhance the biodiversity and wildlife interest of the area, and to be in accordance with Paragraph 180 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 establishing coherent ecological networks that are more resilient to current and future pressures.

18 No construction works in the relevant area(s) of the site shall commence until measures to protect the public water supply infrastructure that is laid within the site boundary have been implemented in full accordance with details that have been submitted to and approved by the Local Planning Authority. The details shall include but not be exclusive to the means of ensuring that access to the pipe for the purposes of repair and maintenance by the statutory undertaker shall be retained at all times.

Reason: In the interest of public health and maintaining the public water supply.

19 No piped discharge of surface water from the application site shall take place until works to provide a satisfactory outfall, other than the existing local

public sewerage, for surface water have been completed in accordance with details submitted to and approved by the Local Planning Authority.

Reason: To ensure that the site is properly drained and in order to prevent overloading, surface water is not discharged to the public sewer network.

20 No construction works in the relevant area(s) of the site shall commence until measures to protect the public sewerage infrastructure that is laid within the site boundary have been implemented in full accordance with details that have been submitted to and approved by the Local Planning Authority. The details shall include but not be exclusive to the means of ensuring that access to the pipe for the purposes of repair and maintenance by the statutory undertaker shall be retained at all times.

Reason: In the interest of public health and maintaining the public sewer network.

21 A strip of land 4 metres wide adjacent to the top of the embankment of the open watercourse known as Germany Beck (which is maintained by Ouse & Derwent Internal Drainage Board under the Land Drainage Act 1991) shall be kept clear of all new structures, walls, fencing and planting, unless agreed otherwise in writing with Ouse & Derwent Internal Drainage Board. Access arrangements should be agreed with Ouse & Derwent Internal Drainage Board.

Reason: To maintain access to the watercourse for maintenance or improvements.

22 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, if remediation is necessary, a remediation strategy must be prepared, which is subject to approval in writing by the Local Planning Authority. Following completion of measures identified in the approved remediation strategy, a verification report must be submitted to and approved by the Local Planning Authority. It is strongly recommended that all reports are prepared by a suitably qualified and competent person.

Reason: To ensure that the site is suitable for its proposed use taking account of ground conditions and any risks arising from land contamination.

## **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:

- Asked for correct ownership certificates
- Asked for updated reports and plans to satisfy consultee comments - Site Plan, Earthworks Sheet, Flood Risk Assessment, Ecological Survey, Aquatic Ecology Baseline Survey, Botanical Survey, Borehole Survey, Heritage Impact Assessment and Site Options Technical Note.
- Requested vehicle swept path analysis.

2. Environment Agency: The drawing shows an activate penstock, if designed electronically there will need to be a contingency plan in place in case of a power failure.

3. The Ouse & Derwent Internal Drainage Board's prior consent is required (outside and as well as planning permission) for any development including fences or planting within 9.00m of the bank top of any watercourse within or forming the boundary of the site. Any proposals to culvert, bridge, fill in or make a discharge (either directly or indirectly) to the watercourse will also require the Board's prior consent.

The proposed development is within the Board's area and is adjacent to Germany Beck, which at this location, is maintained by the Board under permissive powers within the Land Drainage Act 1991. However, the responsibility for maintenance of the watercourse and its banks rests ultimately with the riparian owner.

Under the Board's Byelaws, the written consent of the Board is required prior to any discharge, or increase in the rate of discharge, into any watercourse (directly or indirectly) within the Board's District, or for any culverting or diversion of any watercourse within the Board's district.

4. CEMP Information: 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.

For vibration details should be provided on any activities which may results in excessive vibration, e.g. piling, and details of monitoring to be carried out. Locations of monitoring positions should also be provided along with details of standards used for determining the acceptability of any vibration undertaken. In the event that excess vibration occurs then details should be provided on how the developer will deal with this, i.e. substitution of driven pile foundations with auger pile foundations. All monitoring results should be recorded and include what was found and mitigation measures employed (if any).

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](mailto:public.protection@york.gov.uk) and [planning.enforcement@york.gov.uk](mailto:planning.enforcement@york.gov.uk)

**Contact details:**

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