



**Report Reference Number 2020/0514/S73**

**To: Planning Committee**  
**Date: 10 March 2021**  
**Author: Gareth Stent (Principal Planning Officer)**  
**Lead Officer: Ruth Hardingham (Planning Development Manager)**

APPLICATION NUMBER:	2020/0514/S73	PARISH:	Heck Parish Council
APPLICANT:	Brocklesby Building Products Limited	VALID DATE: EXPIRY DATE:	4th June 2020 3rd September 2020
PROPOSAL:	Section 73 application to remove condition 06 (HGV Traffic Routes) of approval 2019/1340/FULM Proposed change of use of existing maintenance and vehicle processing building to include block cutting and processing, erection of 6m high cctv pole, erection of replacement dry dust silo, erect new gates, change existing fencing to concrete fencing and improve HGV parking on site by increasing the areas in which they can park on the existing site granted on 16 April 2020		
LOCATION:	Brocklesby Building Products Ltd Unit 1 Long Lane Great Heck Goole East Yorkshire DN14 0BT		
RECOMMENDATION:	Approve		

This application has been brought before Planning Committee as the original decision to impose condition 6 was made via an Urgent Decision Session on the 8<sup>th</sup> April 2020, where the Chief Executive Officer determined to grant the consent. Also 13 letters of representation have been received, which raise material planning considerations in objection to the scheme and officers would otherwise determine the application contrary to these representations.

## 1. INTRODUCTION AND BACKGROUND

### Site and Context

- 1.1 The site is located north of Green Lane, east of Long Lane and is close to the M62 motorway, which lies to the north. The nearest residential village is Great Heck, which lies around 500m to the south/south west of the application site. The site is surrounded by a mixture of agricultural land and pepper potted large industrial sites, such as block manufacturers Plasmor and H&H Celcon to the south east. A similar block manufacture and processing plant exists opposite the site known as Sellite Blocks Ltd. This business currently has a major planning application with the Council (2020/0149/FULM), for the construction of a foamed glass manufacturing facility including hard surfacing for material storage, which is pending consideration.
- 1.2 The area has historically become a 'hot spot' for concrete block manufacturing given pulverised ash from the coal fired power stations was in local supply. Indeed, there is also a current application being considered by North Yorkshire County Council for the partial excavation of Pulverised Fuel Ash at the Gale Common disposal site.
- 1.3 The site is approximately 1.6 ha and comprises a predominantly hard surfaced yard with a portal framed building with offices in the centre of the site, HGV parking to the south and a smaller portal framed building in the north eastern corner of the site. Access is taken from Long Lane via a large, gated entrance.
- 1.4 The application site is operated by Brocklesby Building Products Ltd, which are a company specialising in the cutting, processing and distribution of concrete blocks with ancillary haulage yard. This is a subsidiary spin off business from the wider block manufacturing that occurs locally. Brocklesby Building Products rely on stock from adjoining block manufacturing sites for their business needs.
- 1.5 The site was effectively split by a planning permission in 2011, where half of the western side of the central building, along with the haulage yard were classed as Unit 1. The building in the north western corner and eastern side of the central building and all the yard to the east was Unit 2. The building in the north western corner of the site is rented out and is used for HGV maintenance. The applicant also owns the field to the north, which borders the west bound side of the M62.
- 1.6 The haulage yard is used by the current block cutting company and is rented to other HGV operators, who use the site as a haulage base in association with the historical use of the site and the certificate of lawfulness issued in 2018 at appeal.

### **The Proposal**

- 1.7 This Section 73 application is to remove condition No.6 relating to the need to agree HGV traffic routes before the development approved by 2019/1340/FULM comes into use. This will enable HGV traffic to turn left out of Brocklesby's yard via Long Lane and then on to Heck and Pollington Lane, without restriction.
- 1.8 The 2019/1340/FUL approval was for the expansion of the block cutting facility through the change of use of the existing maintenance and vehicle processing building, to include block cutting and processing. Other more minor changes also gained permission, including the erection of 6m high cctv pole, erection of replacement dry dust silo, erection of new gates, change existing fencing to concrete fencing and improve HGV parking on site by increasing the areas in which

they can park on the existing site. This permission was granted on 16th April 2020 at a CEO Urgent Decisions session.

- 1.9 The applicant has started to use building G (as labelled on the approved plan), which was for the change of use for block cutting to keep the premises Covid safe for his employees but has not implemented any other element permitted by the 2019/1340/FULM consent.

### **Relevant Planning History**

- 1.10 The site has an extensive history with the original buildings being given permission in the 1990's for a transport depot and storage building. A series of permissions then followed for new buildings and recycling uses and the buildings/site were split into Unit 1 and Unit 2.
- 1.11 A certificate of lawfulness was granted in July 2018 for the existing use of Unit 1 as a sui generis mixed use of a haulage yard and the handling, cutting, processing and distribution of concrete blocks. This was for a much-reduced site area than the current application site.
- 1.12 2004/0778 - In 2004 permission was granted for a dual use of the building: a vehicle recycling depot including the storage of cars (Unit 2) and continued use as a haulage depot (Unit 1).
- 1.13 2005/1465/TEL - Application for the erection of a 20m telecommunications pole with 3 No. antennas, transmission Dish and 6 No. equipment cabinets at Brocklesby Haulage, Approved 27-JAN-06.
- 1.14 2011/0328/FUL - Construction of a steel segmental arch building for use as maintenance workshop, Approved 02-JUN-11. Positioned against the southern boundary and never implemented.
- 1.15 2011/0677/FUL - Erection of a general-purpose commercial building, Brocklesby, Unit 1 Approved 22-AUG-11. Resubmission of 2011/0328/FUL on the south of the site and again never implemented.
- 1.16 2011/1016/COU - Change of use from a vehicle recycling depot to a recyclates and vehicle recycling depot, Unit 2, Approved, Decision Date: 14-JUN-12. This was all the site which excluded Unit 1 referred to in the 2017 certificate of lawfulness 2017/0146/CPE.
- 1.17 2015/1278/FUL - Proposed change of use of land to facilitate the expansion of existing commercial uses, to include the construction of an industrial building and creation of on-site hardstanding/parking facilities, Refused 05-FEB-16 due to visual impact concerns. This was on the field to the north adjoining the M62.
- 1.18 2017/0146/CPE - Application for a lawful development certificate for the existing use of the site as B2 (General Industrial) and B8 (Storage & Distribution) for the handling, cutting, packaging and distribution of concrete blocks, Unit 1, Long Lane, Great Heck, Goole, East Yorkshire, DN14 0BT, Decision: Non-determination. Allowed at appeal APP/N2739/X/17/3182568 issued July 2018.

“No enforcement action could be taken in respect of it because the time for taking enforcement action had expired – a material change of use of part of the appeal site to a mixed use of a haulage yard and the handling, cutting, processing and distribution of concrete blocks occurred more than 10 years ago, the mixed use continued thereafter, and there is nothing to show that the use was subsequently superseded or abandoned.

(Officer note: this related to only part of the site.)

- 1.19 2019/0314/FULM - Proposed change of use of existing maintenance building to include block cutting and processing, erection of cctv pole, erection of replacement dry dust silo, erect new gates, change existing fencing to concrete fencing and improve HGV parking on site by increasing the areas in which they can park on the existing site: Withdrawn.
- 1.20 2019/1340/FULM - Proposed change of use of existing maintenance and vehicle processing building to include block cutting and processing, erection of 6m high cctv pole, erection of replacement dry dust silo, erect new gates, change existing fencing to concrete fencing and improve HGV parking on site by increasing the areas in which they can park on the existing site. Granted 16.4.2020 CEO Urgent Decision session.

## **2. CONSULTATION AND PUBLICITY**

- 2.1 Parish Council – No response received.
- 2.2 NYCC Highways Canal Rd - Condition 6 was requested by the Highway Authority due to the problems currently encountered in Great Heck with HGV's. The main concern is centred around the Main Street and not Long Lane. Whilst ideally a condition should be attached to the planning permission restricting access through Main Street, Great Heck, it is appreciated from the information supplied that the applicants intentions are to turn left from the site and proceed along Heck and Pollington Lane to Celcon. It is also noted that the applicant has in their supporting statement advised that some vehicles cannot proceed along the A645 due to the low bridge. Therefore, the Highway Authority would not object to the removal of this condition.
- 2.3 Environmental Health – (12<sup>th</sup> June 2020 first response) - I have noted the contents of the letter submitted in support of this application and the reference to the route taken between the site and Celcon Blocks. It should be noted that Environmental Health have received complaints in relation to HGV traffic passing through the village of Great Heck and the impact on air quality. Whilst no direct monitoring of air quality has been undertaken by Selby District Council in this area regard has been given to the Defra Air Information Resource and we have no concerns relating to air quality in this area.
- 2.4 Environmental Health – (7<sup>th</sup> July 2020) -Further to the material provided by Cunnane Town Planning in the form of an Environmental Noise Assessment carried out by The Yes Consultancy in 2016, a letter from H&H Celcon to NYCC regarding the extraction of PFA from Gale Common dated 28 November 2019 and a letter to SDC from Cunnane Town Planning LLP.

Air Quality:

- 2.5 I have considered the information in section 5 of the letter from Cunnane Town Planning and would advise you of the following: The letter states that the area is too small to justify the creation of an Air Quality Action Area. I am not sure what is referred to by the term Air Quality Action Area, but it is not too small to be declared an Air Quality Management Area (AQMA) as can be seen in the district as the AQMA in Selby Town Centre consists of short length of street including the properties fronting the street at both sides.
- 2.6 As I have previously alluded to SDC must consider the air quality in its area to determine if the National Air Quality Strategy Objectives (AQSO) are being exceeded at a relevant receptor location. In doing this the authority may carry out monitoring, refer to information provided by Defra and guidance again provided by Defra. This information has been considered in detail for the 1km grid square referred to in the Cunnane Town Planning letter. The National Air Quality Strategy Objectives gives levels for various pollutants including particulate matter, Nitrogen Dioxide and Carbon Monoxide but not Hydrocarbons as a whole.
- 2.7 The impact of the HGV traffic on immediate air quality adjacent to the bridge in the village of Great Heck has also been considered to determine if it warrants further investigation or monitoring. In 2018 I was provided with a traffic count by local people who indicated that 449 vehicles in a 24 hr period. The level at which a local authority is expected to carry out further investigation is a count of 2,500 HDV's/day and have relevant exposure within 10m of the kerb. This situation, therefore, did not warrant further investigation.
- 2.8 I would also point out that if the HGV traffic from this site is to be directed to use the M62 to gain access to the H&H Celcon site that the impact on the air quality in this particular grid square is unlikely to change significantly but the overall emissions will be greater.

Noise:

- 2.9 I have considered the information provided in the Environmental Noise Assessment and have noted that the assessment consisted of an attended period of time from 4.45am to 8.45am outside the property and unattended monitoring for 2 days plus. The assessment concluded that the occupants of the front bedrooms of the property were exposed to noise levels which are likely to affect the quality of sleep and exceeded recommended levels.
- 2.10 This situation has now changed with the introduction of the restriction of HCV movements over the railway bridge between 11pm and 6.30 am, although the initial restrictions were imposed for an 18 month period and last until September 2020.
- 2.11 The assessment also concluded that internal levels and daytime external levels exceeded recommended limits, with a qualification that the external levels in a space where residents would be expected to enjoy the garden would not be exceeded.
- 2.12 The applicant has advised that the business operations amount to 5 loads per day to H&H Celcon, and that they observe the night time restrictions and rarely travel after 6pm. Hence, they will not be adding to a sleep disturbance issue or impact on the use of gardens during the evening period.

- 2.13 Considering the 10 daytime vehicle movements compared to the 449 HGV noted during a traffic count the impact of these vehicle movements would be insignificant. I do not object to this application on noise or air quality grounds but would recommend the vehicle movements are restricted to day time hours.
- 2.15 North Yorkshire Bat Group – No response received.
- 2.16 County Ecologist – No objections.
- 2.17 Yorkshire & Humber Drainage Boards – No response received.
- 2.18 SuDS and Development Control Officer – No response received.
- 2.19 Highways England – No objection.

### **Neighbour Summary**

- 2.20 The proposal was publicised by a site notice, Press Notice (18.6.20) and direct neighbour notification of 2 residents. 13 letters of objection were received (3 representations from the same person raising different issues). 1 letter of support was received from H+H Celcon.
- 2.21 Complaints were received that the original consultation was insufficient and all those residents that commented on the 2019/1340/FULM application should have been notified. On this basis, these were all sent notification letters on the 8.2.2021 and 3 additional site notices were displayed south east of the site along Long Lane near the bridge and near the right turn to the Heck village to give wider publicity to the application.
- 2.22 The concerns raised were as follows:

#### Residential Amenity – Noise, Dust, Air Pollution

- The proposal will add to the horrendous dust, noise and air pollution already in the village. Residents request companies to be monitored but unfortunately the planning and environmental department always come up with no objections to these plans even to the point of saying there is no air quality problem in the areas of development.
- Please consider our objections we have after all to live with these issues' HGV traffic being one of the big problems, we can no longer walk or enjoy Long Lane or Heck and Pollington Lane due to the high volume of HGV traffic.
- Children cannot use the local play area or cycle on the roads they should feel confident and safe in the environment they live in.
- Constant noise affecting sleep patterns, exhaustion due to sleep deprivation as well as the inhalation of excessive dust causing various bronchial health issues.
- Dust created due to industrialisation preventing the use of personal space gardens external areas and constant cleaning of cars and window ledges, this has a huge effect on residents health and well being.

- A noise assessment was submitted from a residential property undertaken in 2016 (close to the railway bridge) which showed base line conditions to be exceeded and noise to be a significant impact on the living conditions of surrounding residents. Traffic levels has increased since 2016.
- In terms of air pollution, the National Atmospheric Emissions Inventory identifies a hot spot of air pollution within the grid square associated with Long Lane road/rail crossing. Whilst the location is too small to justify the creation of an air quality action area, it is clear that the level of pollutants has breached international limits. The additional HGV movements over the bridge will add to an already unacceptable level of noise and air pollution thus contrary with Local plan policies ENV 1 (1 and 2), ENV 2 (A) and EMP 9 (1).

### Highways

- The amendment will only add to the congested HGV traffic within the village turning it into an industrial estate. Bottlenecks are created at the bridge and this is an accident waiting to happen. HGVs regularly mount the pavement to pass which represents a safety concern for pedestrians.
- The Parish Council did an HGV count last year with an average of 550 HGVs passing residential properties every day. Long Lane is already extremely congested with hundreds of HGV movements daily, if this condition were to be removed the traffic situation would deteriorate further.
- In terms of the applicants supporting letter: Very few HGV's cannot pass under the bridge in question, and as for an extra £100 per vehicle a day to take the alternate route to Pollington is that more important than local residents' lives being made unbearable with the amount of traffic on this road.
- Brocklesby Building Products Ltd have a large amount of other companies vehicles parking up at the yard (renting parking areas) this combined with his own vehicles amounts to a large fleet of HGV's which if this condition were to be removed would worsen the traffic situation.
- Condition 06 is at this moment in time being flouted as Brocklesby HGV's have regularly been seen by residents turning left out of the Brocklesby yard unit 1 Long Lane.
- The proposal will increase traffic movements which will increase chances of speeding, accidents, damaged roads and roadsides. Residents have no respite at all from HGVs. The 'C' Road is unable to cope with current traffic.
- It is very unfortunate that Great Heck suffers from being on the border of Selby DC, East Yorkshire and North Yorkshire. Several large companies have been granted planning permission, which use large numbers of HGVs, on a piecemeal basis over the years without considering the residents who live on the lorry routes. If these industries are to continue and expand as they are, then an alternative access for the benefit of the residents in North and East Yorkshire is urgently needed.

### Cumulative impact

Right now, there are planning applications which will have direct detrimental impact on Heck from:

- Sellite - a new foam glass plant (SDC Planning Ref: 2020/0149/FULM) to erect a 26.5m building in the middle of our village, operating 24/7. This will increase the traffic on the road.
- Gale Common - the partial excavation of the country's largest stockpile of PFAs. Celcon have officered a letter of support for this scheme and its understood that Celcon is one of the main destinations for this material with order is 400k tonnes a year out of the expected 1million tonnes;
- The whole area is being eroded by piecemeal development. Both the above proposals have the potential to increase HGV movements along the Long Lane route.

### Great Stink

- It was stated by the company on the last application that if the plans were to be passed in relation to block processing it would generate funds to enable the stinking rubbish still on the site to be removed. This has still not been resolved and the waste remains.

### Notification & other planning comments

- Residents were concerned about the lack of notification particularly of residents that live on Long lane, and those that objected to the scheme previously. This is unsatisfactory and contrary to the council's adopted Statement of Community Involvement. The 2 properties that were notified had no involvement in the previous application, and members of the public that did have involvement never received additional notification of this Section 73 application. *(officers note this has been remedied by the latest consultation)*
- The removal is unjustified and there have been no 'material change' in circumstances since the condition was originally imposed. The Local Planning policies remain the same, the physical surroundings remain the same i.e. same location and number of dwellings, same road conditions, same bottlenecks created on the route from the application site to Celon and Pollington, as the road passes over the railway bridge.
- Other comments stated that the development is contrary to Green Belt policy, *(officer note - the site is not within the Green Belt)*.
- The decision makers on the 2019 application recognised the need for the condition and that it met the six tests of reasonableness within paragraph 55 of the NPPF. Also prior to its imposition the applicant must have considered it reasonable give that it was a pre commencement condition. The condition remains necessary, relevant to planning and to the development, enforceable, precise and reasonable in all respects.
- The appellants case for deletion that it would cost £100 per day by going an alternative route adds 6km between the two sites is unsubstantiated. Secondly the claim that the 'hook loader' vehicle used by Brocklesby Building Products Limited

cannot go under the bridge on Broach Lane is unsubstantiated given it accommodates most HGV and has a height of 14'3" clearance. The applicants claim that an alternative route would mean more residential dwellings were passed is irrelevant, as is the issue concerning business rates, the length of time the applicant has previously used a particular route.

- There is no other solution or way in which the condition can be varied to meet the objective of condition 6 i.e. highway safety and general amenity.

2.23 Support – 1 letter of support was received from H+H Celcon and explains that Brocklesby Building products currently cut waste product from H+H Celcon into coursing blocks. No increase in current consumption forecasted for 2021 and therefore no increase in HGV traffic through the village of Great Heck. The changes proposed to the current buildings are to increase the extraction capacity of the machines.

### **3 SITE CONSTRAINTS**

#### **Constraints**

3.1 The site lies within open countryside and within Flood Zone 1.

### **4 POLICY CONSIDERATIONS**

4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states "if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise". This is recognised in paragraph 11 of the NPPF, with paragraph 12 stating that the framework does not change the statutory status of the development plan as the starting point for decision making.

4.2 The development plan for the Selby District comprises the Selby District Core Strategy Local Plan (adopted 22nd October 2013) and those policies in the Selby District Local Plan (adopted on 8 February 2005) which were saved by the direction of the Secretary of State and which have not been superseded by the Core Strategy.

4.3 On 17 September 2019 the Council agreed to prepare a new Local Plan. The timetable set out in the updated Local Development Scheme envisages adoption of a new Local Plan in 2023. Consultation on issues and options took place early in 2020. Consultation on preferred options took place in early 2021. There are therefore no emerging policies at this stage so no weight can be attached to emerging local plan policies.

4.4 The National Planning Policy Framework (February 2019) (NPPF) replaced the July 2018 NPPF, first published in March 2012. The NPPF does not change the status of an up to date development plan and where a planning application conflicts with such a plan, permission should not usually be granted unless material considerations indicate otherwise (paragraph 12). This application has been considered against the 2019 NPPF.

4.5 Annex 1 of the National Planning Policy Framework (NPPF) outlines the implementation of the Framework -

*“213. ....existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).”*

### **Selby District Core Strategy Local Plan**

4.6 The relevant Core Strategy Policies are:

SP1- Presumption in Favour of Sustainable Development  
SP2 - Spatial Development Strategy  
SP13 - Scale and Distribution of Economic Growth  
SP15 - Sustainable Development and Climate Change  
SP18 - Protecting and Enhancing the Environment  
SP19 - Design Quality

### **Selby District Local Plan**

4.7 The relevant Selby District Local Plan Policies are:

ENV1 - Control of Development  
ENV2 - Environmental Pollution and Contaminated Land  
T1 - Development in Relation to Highway  
T2 - Access to Roads  
EMP9 - Expansion of Existing Employment Uses  
EMP2 - Location of Economic Development

## **5 APPRAISAL**

5.1 The main issues to be taken into account when assessing this application are:

- The Principle of Development
- Conditions Test
- Material changes in circumstances
- Applicant case in support of the condition removal
- Impact on Residential Amenity & Highway Safety

### Principle of Development

5.2 The Town and Country Planning Act 1990 Section 73 allows for applications to be made to undertake development without complying with conditions attached to such an approval. Paragraph (2) of Section 73 states *“On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and —*

*(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and*

*(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.”*

- 5.3 As such, the only consideration of this application is in relation to the condition of the approval and the impact the proposed removal would have. Therefore, key to the determination of this application is whether a new planning consent for the development with the proposed removal of Condition 06 (HGV routes) of planning permission reference 2019/1340/FULM, would be contrary to the provisions within the development plan, or whether there are reasonable grounds for refusal if this condition was retained in its present form.
- 5.4 The 2019/1340/FULM planning permission included the expansion of the block cutting element into another adjoining building and the improvement of the concrete hard surfacing areas for HGV parking on site and block storage. These were the elements, which potentially increased the sites operating capacity/output and generated the need for the additional controls on vehicle movements to be considered. The applicant, however considered this more a consolidation of the business, rather than expansion as the output and vehicle movements from the site will remain the same. The moving of the cutting saw between the internal partitions of the building, simply gives the workers more room for loading and unloading blocks via the forklift and more space to work within. This has now occurred and was necessary to enable more space for workers due to COVID-19.
- 5.5 The application also included other more minor elements i.e. the erection of a 6m high cctv pole, erection of replacement dry dust silo, new gates and concrete fencing. These elements were more to enhance the site operations and security and would not have necessarily increased the capacity at the site or led to the need for the condition in question. These works have yet to be implemented.
- 5.6 This was considered acceptable under planning permission reference (2019/1340/FULM), subject to conditions, and in accordance with the relevant policies contained within the Selby District Core Strategy, Selby District Local Plan and the National Planning Policy Framework.
- 5.7 Condition 6 was suggested by North Yorkshire County Highway Authority and states;

*No part of the development shall come in to use until details of the routes to be used by HCV traffic have been submitted to, and approved in writing by, the Local Planning Authority in consultation with the Highway Authority. Thereafter the approved routes shall be used by all vehicles connected with the site.*

#### *Reason*

*In accordance with policies ENV1(2), EMP9 (1), T1 and T2 of the Selby District Local Plan and in the interests of highway safety and the general amenity.*

- 5.8 In terms of the reasoning, policy ENV1 seeks to ensure good quality development and (2) indicates the District Council will take account of the relationship of the proposal to the highway network, the proposed means of access, the need for road/junction improvements in the vicinity of the site, and the arrangements made for car parking.
- 5.9 Policy EMP9 (1) deals with the expansion or redevelopment of existing industrial and business uses outside development limits and established employment area. Its states 'proposals will be permitted where is would not create conditions prejudicial to highway safety or which would have a significant adverse effect on local amenity.'
- 5.10 Finally T1 & T2 of the Local Plan relates to development in relation to the highway network. T1 states 'Development proposals should be well related to the existing highways network and will only be permitted where existing roads have adequate capacity and can safely serve the development, unless appropriate off-site highway improvements are undertaken by the developer.' Policy T2 states development proposals which would result in the creation of a new access or the intensification of the use of an existing access will be permitted provided:
- 1) There would be no detriment to highway safety.
- 5.11 The suggested condition was advised to the agents prior to decision being taken and debated at the CEO session April 2020 in light of the third party comments received on traffic related issues. Concern over its content arose post decision, when the applicant registered his concerns with the planning agent. The decision was therefore taken to apply for its removal as opposed applying to discharge the condition.

#### Conditions test

- 5.12 When imposing planning conditions, it is necessary to ensure they accord with the 6 test and those outlined in Paragraph 55 of the NPPF i.e., that they are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
- 5.13 The condition was suggested by the highway authority as its clear from the representations that a problem of HGV's using rural roads exists in the locality and highways wanted to ensure this new proposal wouldn't unnecessarily add to this existing problem. The issue therefore centres around whether it is reasonably necessary given the scale of development proposed. Also, whether it was enforceable and precise and reasonable in all other respects.
- 5.14 In terms of reasonableness, it is important to note that the condition would only have been able to control the matters that were the subject of the 2019/1340/FULM application, as the routing agreement could not have been retrospectively applied to the existing site operations or HGV's that historically operate from the site. To make the operator comply with a routing agreement retrospectively would have been unreasonable.
- 5.15 It is therefore important to assess if this condition was reasonably necessary. As discussed in the introduction, the applicants regard this proposal as a consolidation of the business, rather than expansion. It is obvious that the new fencing,

extraction system and cctv would not have warranted the need for the condition, so it falls to the change in the use of a building, which increases the block cutting capabilities of the site, which may increase production and may increase vehicle movements. The applicants the view that all the expansion into the adjoining building has done, is enable the large block cutting saw to be turned so it spans two buildings allowing more space for employees and provides a safer working environment. Production hasn't increased and the amount of lorry loads has not increased either. Having viewed the reconfigured building officers agree that even if it increased production marginally, this would be regarded as a significant extension in capacity to warrant the condition.

- 5.16 In terms of enforceability, given the condition could only control vehicle movements associated with the development proposed, i.e. the change of use of the building to block cutting, this would be very difficult to enforce, as its one complete operation operated by the same vehicles and from the same building. Therefore, it would not have been possible to establish if the movement of a lorry turning left was from the lawful element of the business or a journey generated from the new expanded part of the business.
- 5.17 In terms of whether the condition was precise, again concern exists over this particularly as its states '*No part of the development shall come in to use until*'. There were several elements of development occurring some of which would not have warranted the need for the condition. On reflection the condition could have been more precise to tackle the specific matters in hand.

#### Material Change in Circumstances

- 5.18 It is also necessary consider if there has been any change in circumstances since the condition was originally imposed. In terms of national and local policy considerations these remain the same. In terms of the physical layout of the premises, number of residential properties affected and general road conditions, these also remain the same. 2 new planning permissions have been submitted as alluded to in the introduction and representations i.e. a new glass block manufacturing application at Sellite and a North Yorkshire County Council application for the extraction of pulverised ash from Gale Common. Neither of these have permission, however if approved will naturally have the potential to increase vehicle movements in the locality or help sustain existing local businesses with raw material, such a Celcon.
- 5.19 Therefore there have been no physical changes to the site or surrounding area since the condition was imposed. It therefore is necessary to establish the additional justification presented post decision and within the supporting submissions to see if they warrant a relaxation of the condition.

#### Applicant case in support of the condition removal

- 5.20 Concerns were first raised by the applicant over the condition following the approval in spring 2020. These are stated below and were explained within the supporting letter received with this section 73 application.
- 5.21 Current movements: - The applicants make the point that they have been turning left out of the site to Celcon for 15 years without restriction as visits to Celcon are essential for their business. "This unrestricted access is also the same for many

other local businesses in the area and from those outside the area. It would be uncompetitive and unjust for Brocklesby Building Products (BBPL) to now be restricted have used this route since 2005. There is also a restriction put in place so that HGV don't travel through Heck between 11pm and 6:30am which they are abiding by. The supporting letter states it is on exceedingly rare occasions that BBPL travel through after 6 pm."

- 5.21 Alternative route: - "BBPL can confirm that alternative routes available have been tried, however, this adds approximately 6 km additional distance each way totalling 12 km per load. 5 loads per day is the average which amounts to an additional 60 km every day at a cost of approximately £100 per day. The financial implications and the environmental issues that arise from this are not sustainable for the company."
- 5.22 "Additionally, this route is through Pollington camp who already complain about the traffic travelling through, there are also more houses to pass using that route than through Great Heck Village and BBPL do not see the benefits of using a longer route creating more pollution and reducing the efficiency of the business, which actually passes more properties."
- 5.23 "It is also of great concern to BBPL that the alternative route suggested by the Highways Authority has a low bridge and the company's 'Hookloader' which takes the waste back are unable to use this route as the plant is too high for the bridge. BBPL would like to reiterate that this planning application is not to expand the business but to make a better use of the yard to make a safer and better working environment for the workforce, the owner and his sons."
- 5.24 "There would be no increase in throughput of the product as BBPL already take all the rejected product Celcon produce, bring it to their depot/yard, cut it into a usable product and take it back to them. It is critical that BBPL is allowed to continue to run the business in the most effective and efficient manner possible." Also not all the product is from Celcon, some comes via other companies and arrives via the M62 and then gets exported from the site with lorries turning right and heading for the M62.
- 5.25 "With regards to the future, there are 6 companies who park trucks in BBPL's yard, none of these companies use Great Heck as a through route apart from the time when they need to have essential six weekly inspections carried out by a local company who carry these out as part of their licensing obligations, this route is only used as they cannot get under the low bridge. Nobody has at the moment asked to park extra vehicles at their depot but if this should arise in the future BBPL would be more than happy to agree that they only access the premises from the M62 side and not from Great Heck."
- 5.26 Other issues were raised about the waste issue that remains on site, however this is not relevant to this decision.
- 5.27 It is clear from the above that the applicant considers he would potentially lose all of his current rights if he agreed to a routing agreement under condition 6. The condition would have allowed some discussions over volumes and timings over routes, however the applicant chose to apply for its removal.
- 5.28 Therefore the key test is how reasonable was it to impose such a condition, given the current unregulated and historical permissions that exist at this site, combined

with the enforceability of the condition and the level of development proposed. The third party representations received clearly explain in significant detail the impact that HGV's have in the area, and this is not to be underestimated, however the situation is an existing one that would be largely unaffected by this current permission. The objections also examine the supporting statement and cast doubt over its validity and the claims made. It is however obvious that turning right out of the site would incur extra mileage and extra cost to the company, when vehicle movements have been previously unrestricted.

#### Impact on Residential Amenity & Highway Safety

- 5.29 The condition was imposed in order to protect the living conditions of nearby residential properties in the village of Heck and to control the amount of HGV's on this part of the highway in the interests of highway safety.
- 5.30 North Yorkshire County Highway Authority has reviewed the supporting information submitted by the applicant and now appreciates the need for the operator to turn left from the site and proceed along Heck and Pollington Lane to Celcon where it gets its raw materials from. It is also noted that the applicant has in their supporting statement advised that some vehicles cannot proceed along the A645 due to the low bridge. Therefore, whilst this issue concerning the truck heights has not been examined in detail, the Highway Authority has stated that they would not object to the removal of this condition.
- 5.31 Therefore whilst the intention of the condition was fair, its implementation and reasonableness given the additional information provided cannot be sustained, particularly if no support exists from the highway authority. The use of the road by HGV at night can be controlled by other means i.e. the traffic regulation orders and it is not thought that the additional capacity created by this permission warrants the routing agreement condition in its current form.
- 5.32 In terms of residential amenity, it is clear that Long Lane and Great Heck residents suffer from an existing problem of HGV traffic. These representations suggest this causes, noise, sleep deprivation, fumes, air pollution, litter and dust. These are obviously existing problems without or without the implementation of 2019/1340/FULM and this condition would not significantly improve this situation or be made worse by its deletion.
- 5.33 The third party representations discuss air pollution in detail, however this matter has been previously considered by the Environmental Health team who did not regard the area warranted designation as an Air Quality Management Area (AQMA).
- 5.34 Likewise this issue of noise was considered by the Environmental Health Officer, who examined a noise assessment submitted with an objection from 2016 that showed that a nearby resident was exposed to noise disturbance from HGV's during the night. The Environmental Health Officer recognised the restrictions-imposed movements over the railway bridge between 11pm and 6.30 am which controlled this issue and also the statement of the applicant that only 5 loads per day move between the site and H&H Celcon. Considering the 10 daytime vehicle movements compared to the 449 HGV noted during a traffic count the impact of these vehicle movements would be insignificant.

- 5.35 On this basis no objections were raised. The Environmental Health Officer did suggest vehicle movements are restricted to day time hours, however this isn't a matter for consideration, as the timing and ability to control movements isn't being applied for. This would again be hard to enforce and control and would be more appropriately left to the traffic regulation orders to control.

## **6 CONCLUSION**

- 6.1 The applicant seeks to remove the need to agree a HGV routing agreement prior to the 2019/1340/FULM permission commencing. The applicant explains that they need to turn left out of the site onto Long Lane to visit Celcon to collect and deliver the reprocessed damage blocks, which is the mainstay of their block cutting business. The applicant feels trying to control the use of the entire site is unreasonable especially given the unrestricted access over many years. A rerouting of vehicles would also have cost implications and concern is raised over the height of the bridges on the alternative route suggested. The highway authority who originally requested this condition have since agreed that, due to the operational needs of the applicant, a routing agreement would be unreasonable.
- 6.2 Officers have also raised concern over its reasonableness given the unrestricted historical use of the site, its precision and enforceability.
- 6.3 The removal has been met with strong opposition, particularly given the problems with HGV's using local roads in the area and all the nuisance and highway safety concerns this causes. However, Environmental Health officers have raised no objection to the removal, particularly given the scale of the development and the measures already in place to control night time HGV movements.
- 6.4 In terms of the existing conditions on the 2019 permission, the time limit is no longer needed as part of the permission has been implemented. The remaining conditions i.e. (2) approved plans list, (3) Dust silo details, (4) Ecology mitigation and (5) stacking height of blocks are reiterated with the exception of condition No.6 which is deleted.
- 6.5 Therefore in the absence of any firm grounds to retain the condition, its removal is recommended.

## **7 RECOMMENDATION**

This application is recommended to be Granted subject to the following conditions:

01. The development hereby permitted shall not be carried out otherwise in complete accordance with the approved plans and specifications.

Existing Site Plan LIGH 017  
Existing Floor Plan LIGH 021  
Proposed site plan LIGH 027 (Amended - dated March 2020)  
Proposed elevations LIGH 026  
Existing Elevations LIGH 019  
Drainage Statement Dec 2019  
Fence and Gate Elevations LIGH 029  
Extraction system layout QN-3164-001 - Rev A- 23.1.20  
CCTV details - HIK Vision system (Pole mounted 4m Max height)

Reason:

To ensure that no departure is made from the details approved and that the whole of the development is carried out, in order to ensure the development accords with Policy ENV1.

02. The dust silo hereby permitted shall operate in the following ways as per the details supplied:

1) The dust silo shall feed to an enclosed screw conveyor feeding to an enclosed skip. Once full the skip shall be sealed before movement either on or off site.

2) The dust silo and attached screw conveyor shall be fitted with high level alarms and an automatic cut off to prevent overfilling.

3) The air filtration system shall ensure that the dust level in the emitted air is less than 10mg/m<sup>3</sup> of dust.

4) The extraction system shall ensure that fugitive dust emissions are removed from the air inside the shed.

Reason:

In the interests of maintaining the air quality for the workforce and maintaining the amenities of surrounding land uses with regards to air pollutants leaving the site.

03. The development hereby approved shall be carried out in accordance with method statement contained in Appendix C of the EclA report (LM Ecology, April 2019), which covers removal of waste piles and vegetation clearance.

Reason:

To ensure compliance with the Wildlife & Countryside Act 1981 and policies ENV1(5) of the Selby District Local Plan, Policy SP18 of the Core Strategy.

04. Any outside storage of blocks shall not be stacked or deposited on the site above a height of 4 metres measured from ground level.

Reason:

In the interests preserving the character and appearance of the area in accordance with Policies ENV1 (1), (4) and EMP9 (1) of the Selby District Local Plan, Policy SP13 of the Core Strategy (2013).

## 8 Legal Issues

### 8.1 Planning Acts

This application has been determined in accordance with the relevant planning acts.

### 8.2 Human Rights Act 1998

It is considered that a decision made in accordance with this recommendation would not result in any breach of convention rights.

### 8.3 Equality Act 2010

This application has been determined with regard to the Council's duties and obligations under the Equality Act 2010. However it is considered that the recommendation made in this report is proportionate taking into account the conflicting matters of the public and private interest so that there is no violation of those rights.

**9 Financial Issues**

Financial issues are not material to the determination of this application.

**10 Background Documents**

Planning Application file reference 2020/0514/S73 and associated documents.

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**Appendices:** None