



Date: 7th February 2023

To Members of the Planning Committee

TO PROVIDE AUTHORITY FOR THE RECOMMENDATION & REASON(S) FOR REFUSAL ASSOCIATED WITH NON DETERMINATION APPEAL - 22/00040/NONDET & 22/00250/OUTM

LOCATION - Land At Former Blaxton Quarry, Mosham Road, Auckley, Doncaster

PROPOSAL - Outline Planning Permission (including means of access only) for B2, B8 and Class E:(g) - Employment uses of 31,846 square metres for up to 52 units and parking

Relevant Cabinet Member(s)	Wards Affected	Key Decision?
Cllr Nigel Ball, Cabinet Member for Public Health, Leisure, Culture and Planning	Finningley	No

EXECUTIVE SUMMARY

1. This Report seeks a decision from Members of the Planning Committee to endorse the recommendation and reason for refusal associated with a live appeal against non-determination.

EXEMPT REPORT

2. This report is not exempt.

RECOMMENDATIONS

3. For the reasons set out through subsequent sections of this report, Members of the Planning Committee are requested to authorise the recommendation and reason for refusal, and to endorse the Council's position in an upcoming Public Inquiry.

WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?

4. Endorsing the recommendation and reason for refusal would support the Council in presenting its case at the upcoming Public Inquiry. The Council will therefore be able to present its case and provide comfort to the citizens of Doncaster that full consideration has been given to the material planning considerations associated with both the application and planning appeal.

BACKGROUND

5. On the 23rd February 2022 an outline application was validated for B2, B8 and Class E:(g) - Employment uses of 31,846 square metres for up to 52 units and parking with permission sought for access (planning reference 22/00250/OUTM). The application was submitted by Mr T. Waddington of Ernest V Waddington Ltd at Land at Former Blaxton Quarry, Mosham Road, Auckley, Doncaster.
6. The determination date of the application was 25th May 2022 however for reasons that will be outlined below, the Council were unable to support the application at the time of determination. The application was still under consideration when an appeal against non-determination was submitted by the applicant.
7. The principal issue of conflict is in relation to the ecological impact of the development weighed against the Local Plan policy allocation, job creation and fall-back position associated with the historic use of the site. These issues were unresolved at the time an appeal was made on the basis of non-determination. The appellant has, as part of this appeal, submitted a viability assessment, however this was not included as part of the application submission under planning reference 22/00250/OUTM.
8. The proposal seeks outline planning permission with access for determination. The determining issue raised is the impact of the development on the biodiversity of the site.
9. It is considered that whilst the proposal accords with the development plan allocation for employment use, it seeks to develop a greater area of the site than the supply envisaged as being delivered from this allocation for the purposes of employment land supply. The applicant/appellant has failed to address the requirements of Policy 30 of the adopted Local Plan pertaining to Biodiversity Net Gain. As a consequence, the proposal does not accord with the development plan when considered as a whole. Whilst the planning history of the site is an important material consideration, the other benefits of granting permission are not sufficient, on balance, to justify a decision not in accordance with the development plan.
10. On the 16th November 2022 a valid appeal against non-determination was received by the Council. The appeal has been scheduled as a Public Inquiry which is to take place between the 14th February – 17th February 2023. This report seeks support for the recommendation and the reason(s) for refusal which will be presented at the Inquiry.

Planning History

Reference	Date application received	Description	Status	Date of determination
06/02257/CPE	30.08.2006	Certificate of Lawful Use for existing use of quarry to include storage of oils, plant, vehicles, equipment, scrap metals and timber; vehicle repairs, repair of heavy goods vehicles, plant and equipment and retail sales of bitumen, gravel and minerals not extracted from the site	Application not determined	N/A
06/00110/NONDET App/F4410/X/06 /2030860.	09.11.2006	Certificate of Lawful Use for existing use of quarry to include storage of oils, plant, vehicles, equipment, scrap metals and timber; vehicle repairs, repair of heavy goods vehicles, plant and equipment and retail sales of bitumen, gravel and minerals not extracted from the site; processing of sand, gravel, clay tarmac and bricks	Appeal on non determination – appeal allowed	27.09.2007
09/01292/OUTM	01.06.2009	Outline application for Mixed Use Commercial and Industrial Development on approx 9.6 ha of land	Application granted subject to S106 agreement.	28.08.2009

14/00877/WCC	14.04.2014	Outline application for Mixed Use Commercial and Industrial Development on approx 9.6 ha of land (without compliance with condition 2 of planning application 09/01292/OUTM, granted on 28/08/09 - amendments requested to provide for an additional three years of time in which to apply for Reserved Matters).	Application granted subject to S106 agreement.	24.11.2017
19/02884/FULM	26.11.2019	Use of land as a commercial crane hire business including re profiling of ground levels, construction of a new office and welfare building, workshop, prep, blast and paint areas, crane tracks, car parking, landscaping and means of access.	Resolution from planning committee to grant planning permission subject to S106 agreement (13.10.2020). S106 agreement not signed and decision not issued.	N/A
21/00702/PREAPP	26.02.2021	Erection of 8 light industrial/warehouse buildings	Pre app response	22.04.2022
22/00250/OUTM	03.02.2022	Outline Planning Permission (including means of access only) for B2, B8 and Class E:(g) - Employment uses of 31,846 square metres for up to 52 units and parking	Current appeal	N/A
22/02574/OUTM	24.11.2022	Outline application for (including means	Application pending	N/A

		of access only) for B2, B8 and Class E:(g) - Employment uses of 31,846 square metres for up to 52 units and parking (being resubmission of application 22/00250/OUTM) - DRAFT	consideration.	
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The Statutory Development Plan

11. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires proposals to be determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory development plan for Doncaster comprises of the Doncaster Local Plan (DLP) (adopted 2021), and the Barnsley, Doncaster and Rotherham Joint Waste Plan (JWP) (adopted 2012).
12. The site is allocated for employment use and it has biodiversity interest. The following policies are the most important to the consideration of the proposal:

Local Plan Policy 3: Employment Allocations (Strategic Policy); and
Local Plan Policy 30: Valuing Biodiversity and Geodiversity (Strategic Policy)

13. The following policies are considered to be relevant to the proposal:

Doncaster Local Plan:

- Policy 2: Level of Growth (Strategic Policy)
- Policy 13: Promoting Sustainable Transport in New Developments (Strategic Policy)
- Policy 29: Ecological Networks (Strategic Policy)
- Policy 30: Valuing Biodiversity and Geodiversity (Strategic Policy)
- Policy 31: Local Wildlife and Geological Sites
- Policy 33: Woodlands, Trees and Hedgerows
- Policy 46: Design of Non-Residential, Commercial and Employment Developments (Strategic Policy)
- Policy 65: Developer Contributions (Strategic Policy)
- Policy 66: Development Viability (Strategic Policy)

Auckley Neighbourhood Plan:

14. The Localism Act 2011 (Schedule 9) introduced the ability of any qualifying body or community statutory powers to shape how their communities develop.
15. A neighbourhood plan attains the same legal status as a local plan (and other documents that form part of the statutory development plan) once it has been approved at a referendum. At this point it comes into force as part of the statutory development plan. Applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise (see section 38(6) of the Planning and Compulsory Purchase Act 2004). The following policies are considered to be pertinent to this appeal.
16. The Auckley Neighbourhood Plan is at regulation 16 stage and as such is considered to carry moderate weight. There are no representations objecting to policies or proposals which have implications for the proposal.
17. The following policies are considered to be applicable in consideration of this proposal:
 - Policy 6: Design Principles
 - Policy 9: Biodiversity and Nature Conservation

National Policy

18. The provisions of the National Planning Policy Framework will be addressed by the Council in its evidence. It will make particular reference to Chapter 6: Building a strong competitive economy and Chapter 15: Conserving and enhancing the natural environment.

Other Material Planning Considerations:

The Supplementary Planning Document (SPD) Biodiversity Net Gain (Sept 2022):

19. The SPD was adopted by the Council following a consultation period and provides further guidance for developers, applicants and ecological consultants on how planning applications can satisfy the requirement for delivering Biodiversity Net Gain (BNG) within Doncaster.
20. This SPD has been prepared by the Council to support Local Plan Policy 30: Valuing Biodiversity and Geodiversity. It provides further guidance for developers and ecological consultants on how planning applications can satisfy the requirement for delivering BNG within Doncaster. It sets out the type and format of information that should be submitted with planning applications, a local approach to BNG delivery, information on when projects will be considered strategically significant and the requirements for the monitoring of BNG delivery.

The Proposal

21. Outline planning permission is sought for B2, B8 and Class E:(g) - Employment uses of 31,846 square metres for up to 52 units and parking with permission for access sought. The site layout is indicated within Annex 2 of the report.
22. A Lawful Development Certificate (APP/F4410/X/06 /2030860 – referred to above in the history section) allowed permission for the use of the site as an existing quarry to include storage of oils, plant, vehicles, equipment, scrap metals and timber; vehicle repairs, repair of heavy goods vehicles, plant and equipment and retail sales of bitumen, gravel and minerals not extracted from the site; processing of sand, gravel, clay tarmac and bricks. The applicant/appellant advances the argument that this permission is still capable of being implemented and as a result carries considerable weight in favour of the application. It is claimed the site could be reused for its permitted use and if that happened the ecology on the site would be lost. This is referred to by the applicant/appellant as a fall-back position.
23. The planning history of the site is a material consideration. Whilst it is argued that the certificate of lawful use provides a fall-back and the biodiversity value of the site could be extinguished, the certificate is specific in terms of what uses are lawful in specific locations. The reuse of the site in accordance with the certificate would generate employment and is likely to have less impact on the biodiversity of the site than the current proposal. Whilst the certificate is an important material consideration it is not considered to be the determining factor.
24. The proposal benefits from the support of Local Plan Policy 3 which supports the use of designated employment sites for employment uses. The site is allocated with an assumption that 3ha of employment land will come forward during the plan period with respect to employment land supply and the application is for more than this. Also there is no urgent requirement for employment land to come forward in this location. It is recognised that there is an emphasis on encouraging economic development within the Local Plan and in National Policy. Clearly the development of an allocated employment site for its intended purpose and the creation of 700 jobs identified by the applicant would weigh in favour of the application.
25. Conversely, the appeal site has biodiversity value. The proposal is subject to Local Plan Policy 30 and NPPF paragraphs 174 & 180. Policy 30 sets out that proposals will only be supported which deliver a net gain for biodiversity and protect, create, maintain and enhance the Borough's ecological networks.
26. Paragraph 174 of the NPPF states:

Planning policies and decisions should contribute to and enhance the natural and local environment by:

(a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);

(d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;

27. Paragraph 180 of the NPPF states:

(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.

28. The site is on land which has been quarried for sand and gravel and used for other purposes which has been left and unused for some time. As a result the site has naturally regenerated. The previously developed nature of the site has resulted in a valuable and unique habitat being created described as Open Mosaic Habitat (OMH). Both national and local policy require the applicant to consider the mitigation hierarchy in relation to sites of biodiversity interest. The first and most important step in the mitigation hierarchy is the avoidance of significant harm. Policy 30 of the Local Plan (2021) and its supporting text sets out that the hierarchy is applied so that firstly harm is avoided wherever possible, then appropriate mitigation is provided to lessen the impact of any unavoidable harm, and as a last resort compensation is delivered to offset any residual damage to biodiversity.

29. During the consideration of the application there was no evidence that this mitigation hierarchy had been applied. In addition there was no evidence within the application of attempts to mitigate the significant harm identified through the loss of a priority OMH habitat, through thoughtful site design and reducing the scale of the development.

30 Since the submission of the appeal, a viability statement has been submitted by the appellant. It makes the claim that the site is unviable to provide any contributions in relation to BNG. This information is set to be tested in the upcoming Inquiry, however it is the Council's position that in the absence of a suitable mitigation scheme in relation to BNG, that the proposal is not in conformity with the development plan when read as a whole.

Conclusion

31. It is considered that the proposal would harm the biodiversity on the site and the applicant/appellant has not provided mitigation or compensation nor otherwise demonstrated that the proposal is acceptable in the terms of Policy 30. In light of this, the proposal is considered to be contrary to Policy 30 of the Doncaster Local Plan, Policy 9 of the emerging Auckley Neighbourhood Plan

and paragraph 180 of the NPPF. The proposal therefore fails to accord with the development plan when read as a whole.

32. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the proposal to be determined in accordance with the development plan unless material considerations indicate otherwise. It is considered that the proposal does not accord with the development plan and material considerations do not justify a decision other than the refusal of planning permission.
33. In weighing these considerations, we invite members of the Planning Committee to share these views and provide authorisation for a recommendation that the appeal be refused by the Secretary of State subject to the reason(s) set out below.

Reason for refusal:

- 1. The proposal does not deliver a net gain in biodiversity and has failed to satisfactorily compensate for the harm generated from the loss of biodiversity that would occur as a result of the development. This includes the loss of a Priority Habitat, Open Mosaic Habitat (OMH). The proposal is therefore contrary to Doncaster Local Plan Policy 30 (Parts A & B), The Council's Supplementary Planning Document (SPD) Biodiversity Net Gain, and paragraphs 174 and 180 of the National Planning Policy Framework (2021).*

OPTIONS CONSIDERED





34. At this final stage of the process there are only 2 options identified as being available, albeit Option 2 is not considered as being reasonable for the reasons detailed below:
- **Option 1 – (Recommended)** – To approve the reason for refusal or,
 - **Option 2 – (Not recommended)** – Not to approve the reason for refusal.





REASONS FOR RECOMMENDED OPTION

35. Option 1 is strongly recommended as being the only reasonable option to take. It will ensure that the Council and its representatives have the necessary authorisation to support its case and defend the appeal.
36. Option 2 is not recommended. Such a decision would effectively mean that the Council does not have the required authorisation to present the recommendation or reason to refusal to the Inspector. Such a decision would significantly undermine the Council's case.

IMPACT ON THE COUNCIL'S KEY OUTCOMES

37. The endorsement of the recommendation and reason for refusal is considered to impact on Doncaster Council's following key outcomes:

Great 8 Priority	Positive Overall	Mix of Positive & Negative	Trade-offs to consider – Negative overall	Neutral or No implications
 Tackling Climate Change	✓			
<p>Comments:</p> <p>By safeguarding the site and in the absence of a suitable mitigation package, the recommendation and reason for refusal would help to deliver the Environment and Sustainability 2030 Strategy and a City-wide effort to achieve 85% of Doncaster's net zero carbon target by 2030.</p>				
 Developing the skills to thrive in life and in work				✓
<p>Comments:</p> <p>Not relevant</p>				
 Making Doncaster the best place to do business and create good jobs			✓	
<p>Comments:</p> <p>The proposal would see significant job creation in the event that planning permission were granted. However as set out above, the creation of jobs is not the only material planning consideration associated with this proposal. Consideration has also been given to the environmental impact of the development of a priority habitat.</p>				
 Building opportunities for healthier, happier and longer lives for all				✓
<p>Comments:</p> <p>Not relevant</p>				

 Creating safer, stronger, greener and cleaner communities where everyone belongs				✓
Comments: Not relevant				
 Nurturing a child and family-friendly borough				✓
Comments: Not relevant				
 Building Transport and digital connections fit for the future				✓
Comments: Not relevant				
 Promoting the borough and its cultural, sporting, and heritage opportunities				✓
Comments: Not relevant				
Fair & Inclusive				✓
Comments: There are no equality implications in relation to this report.				

RISKS AND ASSUMPTIONS

38. The risk in not endorsing the recommended option is that the Council does not have the required authorisation to present its case in the upcoming Public Inquiry significantly undermining the Council's position.

LEGAL IMPLICATIONS [SC 26/01/23]

Under S78 Town and Country Planning Act 1990 an applicant may appeal to the

Secretary of State if the Local Planning Authority has failed to give notice of its decision on an application within the statutory determination period.

Given that the application would have been presented to members of the Planning Committee, had it been in a position to be determined, authority is now required for the Council's position taken on appeal to be endorsed by members. Members are also asked to approve the recommendation that the appeal scheme be refused by the Inspector at the Public Inquiry, for the reason set out in the report.

FINANCIAL IMPLICATIONS [BC 20/01/23]

There are no direct financial implications associated with the decision of this report to endorse the recommendation and reason for refusal associated with an appeal against non-determination.

The cost of the upcoming Public Inquiry is estimated to be around £65k and will be met from existing Planning Services budget.

HUMAN RESOURCES IMPLICATIONS [Kimberley Jackson 19/01/2023]

There are no HR implications associated with this report.

TECHNOLOGY IMPLICATIONS [PW 19/01/2023]

There are no technology implications in relation to this report.

BACKGROUND PAPERS

25. None

GLOSSARY OF ACRONYMS AND ABBREVIATIONS

None

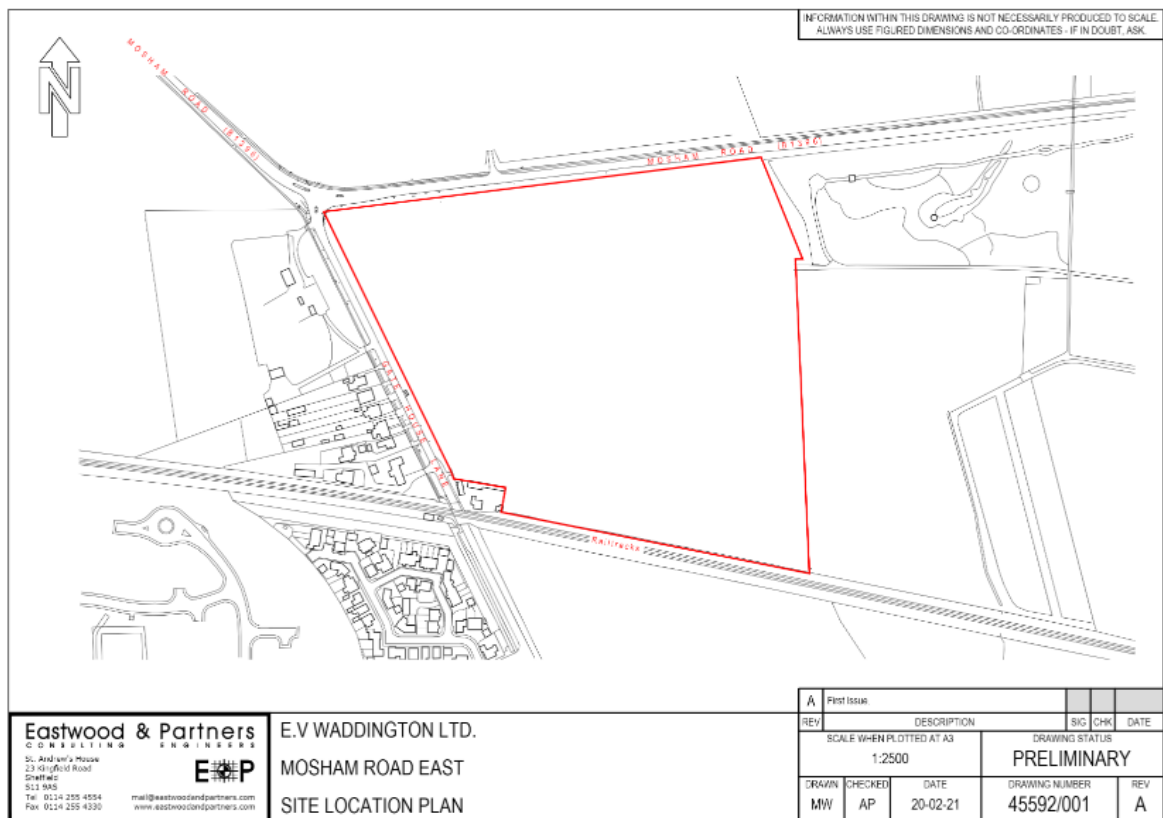
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Annex 1 – Site Location



Annex 2 – Indicative Site Layout

