

## PLANNING & LICENSING COMMITTEE

26 SEPTEMBER 2022

### ADDENDUM REPORT

Report no.	Item no.	Application no.	Applicant	Parish
150/2022	1	2020/0297/MIN	MICK GEORGE LTD	GREETHAM

#### Consultee comments:

Highways /LLFA

All LHA and LLFA points are adequately covered on all 3 applications that are going to committee. The only point I will make is that Appendix 2 Access Plan on page 107 is not correct for application 2021/0107/MAO and could be misleading. I am not sure if it is an 'order' / in the wrong position on the document maybe, as it appears to relate to the last application being heard.

#### Additional Comments:

Additional comments have been received from several residents since the date of the meeting was confirmed. These re-iterate the previous objections that are outlined in the main report.

One residents suggests that the application should be refused because the environmental harm has not been properly considered.

The Environmental Protection Officer states that:

*The background data has shown that our concerns about elevated levels of particulates from the poultry sheds and particular topographical features coupled to modelled data are in reality not of concern by the data. The level is so far below the action level that previous studies have shown the trigger level would not be met.*

*The monitored levels are so low that the likelihood the PM10 levels would be breached would not happen. This is based on existing quarries where the maximum levels recorded meant the trigger level for further assessment was set at 17ug/m3. The levels are 10ug/m3 less than that.*

*The continual monitoring of particulates would allow us to know if there was excessive release of PM10 and alter and improve the management to improve them however unlikely they are to breach the limits. As the site will be monitored we will be able to assure the public their health is protected.*

*We have set the 103mg/m3/day to ensure a good amenity from nuisance dust and the monitoring will allow us to improve management at the site should the levels rise. This is coupled to weather data and CCTV to show the site will be managed.*

Amendments will be made to conditions to remove reference to 'or as otherwise agreed in writing' to refer to the correct procedures, i.e. Non-material amendment or a s73 application to vary conditions. (See Parish concerns below). This is old wording and needs generally updating.

A Unilateral Undertaking under s106 signed by the applicant has been submitted to deal with the routing of HGV's on the site towards the A1, other than for specified local deliveries. This is subject to final checking by RCC Legal team.

Members sought clarification whether Phase 1 (on top of Phase 5) could be worked as part of phase 5 to retain as high a bund as its practicable for the housing development if approved. The applicant has said that this is possible if members wish to condition it.

**Additional Condition** if required:

Notwithstanding the approved phasing plans, Phase 1 shall be retained on site and only worked out with Phase 5.

Reason: To retain an efficient acoustic bund to the housing site in the former quarry, in the interests of residential amenity.

The Environmental Protection Officer considers that this would provide additional noise attenuation for the new housing if approved.

### Ecology

An **additional condition** is recommended to ensure that the invasive weed Piri Piri Burr is eradicated before development commences (as per Condition 11 on 2021/0170):

*No development shall commence until the invasive weed Piri-Piri Burr has been eradicated from the adjacent site, which shall have been confirmed in writing by a suitably qualified Ecologist.*

*Reason: To ensure that the invasive weed does not spread further as a result of development traffic and movement.*

### 2 Further submissions have been received from the Parish Council.

21 September

Greatham Parish Council (GPC) would thank Rutland Planning Authority for the opportunity to comment on the draft planning conditions for the above application. The comments are as follows:

#### General

GPC would ask for confirmation that the proposed conditions have been subject to qualified legal opinion regarding the enforceability of the conditions, particularly relating to pollution control and amenity impact.

It is considered the wording of several conditions is too general and does not provide assurance they are indeed enforceable, either at a local planning level or in a court of law.

Condition 2. states, 'Unless otherwise agreed in writing by the Mineral Planning Authority and except as.....'

GPC has been advised this condition, along with several other conditions with similar wording, is illegal and not actually permitted.

Should the applicant seek to modify any aspect of an approved. planning consent, it must be through the correct consultative procedures required by a section 73 application.

The Mineral Planning Authority does not have the authority to agree changes without first having ensured any affected parties have been duly consulted.

This point has been tested on many different occasions with now well established case law.

**(Officer Note – See agreement above)**

Condition 41. In the event that there is an exceedance of the dust trigger limits (identified in Condition 40), or a complaint regarding dust is received by the operator and thereafter notified, within two days of receipt of the complaint, to the Mineral Planning Authority (or vice versa), an assessment of the complaint shall be undertaken by the operator.....

Comment:

The Mineral Industry Research Organisations 2011 Guidance report, 'Good practice guide: control and measurement of nuisance dust and PM10' states the following:

Para 6.3.2 Dust Action Plan:

A Dust Action Plan (DAP) is a protocol within the DMP for the control and reporting of the effects of specific dust events, e.g., wind-blown dust during times of strong winds and/or dry conditions, or receipt of dust complaints.

The aim is to break the source-pathway-receptor linkage under these circumstances.

In the event of high dust concentration or the receipt of more than a specified number of complaints, the responsible person should implement the DAP to reduce dust levels.

The responsible person should respond in as timely fashion as practicably achievable.

Once normal conditions have been restored, the responsible person can stop

implementation of the DAP and take any steps necessary to minimise the risk of recurrence.

To require the operator only to carry out an assessment into the causes of the complaint within 2 days seems far too lax.

**Officer Note – The 2 days is to notify the MPA. It is assumed investigations will commence immediately.**

Any assessment should be carried out immediately upon receipt of complaint. This is because the complaint would stem from activities being undertaken at the time of the complaint.

To allow the operator 2 days to investigate will serve only to miss the reason for the complaint and therefore not provide the necessary improvements to prevent a similar complaint arising.

The guidance clearly states the aim is to break the source-pathway-receptor linkage, which can only be achieved at the time of the activity giving rise to the complaint.

To require the operator to immediately carry out investigations at the time of the complaint is a common condition within the framework of other regulatory regimes, Environmental Permits for example.

It should therefore be applied here also.

This is similar for Condition 36 relating to Noise complaints.

Condition 41 also states:

A report on the findings, with proposals for removing, reducing, or mitigating identified adverse effects resulting from the operation, and a programme for the implementation of remedial measures (if necessary) to be undertaken shall be submitted to the Mineral Planning Authority no later than five working days from notification of the complaint to the operator, unless a later date is otherwise agreed in writing by the Mineral Planning Authority.

Although this condition requires the operator to report on their findings and proposals within 5 working days along with a programme for the implementation, there is no specific requirement for the operator to carry out the remedial works within an acceptable timeframe. The wording of the condition does not prevent the operator from choosing a programme which starts several months after the complaint has been received.

They would have complied with the wording of the condition thus making it difficult for the MPA to enforce good practice.

It must be borne in mind we have seen poor practice from this operator. They also have a very poor track record of compliance.

Therefore the wording of conditions must be rigorous and enforceable to ensure

adequate protection to the local villagers and their environment.

This is the same for condition 36 relating to noise complaints.

23 September

With reference to the above application Greetham Parish Council (GPC) recognise that all quarrying activities have the potential to release harmful particles into the air, thereby severely reducing air quality within the local environment.

Therefore, any quarry application must provide robust evidence the proposals will not reduce air quality before any consent can be considered.

This is the basis of the Precautionary Principle, which is enshrined throughout legislation, and requires regulatory (including Planning) authorities to fully understand the potential risks and be satisfied the proposed mitigation will be successful before consenting any application.

While there is no single version of the Precautionary Principle, the European Environment Agency has provided a useful working definition in its second 'Late Lessons from Early Warnings' report:

The precautionary principle provides justification for public policy and other actions in situations of scientific complexity, uncertainty and ignorance, where there may be a need to act in order to avoid, or reduce, potentially serious or irreversible threats to health and/or the environment, using an appropriate strength of scientific evidence, and taking into account the pros and cons of action and inaction and their distribution.

It follows therefore that if there is any doubt regarding the control of any potential environmental risks from the proposed activity, the Planning Authority must apply the legislative requirements of the Precautionary principle and not consent the application.

GPC has sought independent advice from professional environmental consultants, WSP and Ricardo Environment and Energy. The latter, Ricardo Environment and Energy are the selected Government advisors on drafting air quality legislation and guidance.

From their advice, GPC are strongly of the opinion MGL has failed to assess the potential risks posed to the nearby village and residents and therefore their proposed mitigation cannot be proven.

The results of a continuous air monitoring exercise undertaken by Mick George Ltd (MGL) dated 13 June 2022 to understand background air quality for PM 10 levels in Greetham has been assessed as very good at 7.5ug/m3.

MGL believe they can reduce the current air quality from the current level of 8ug/m3 to national Government targets of 40ug/m3.

Government advisors, Ricardo Environment and Energy, has advised GPC that this is not permitted and that MGL's proposal is contrary to Current Government policy.

The Government's Air Quality Strategy of 2019 is seeking for continual improvement in air quality and set improvement targets up to 2030.

Despite this, MGL has based risk assessments and proposed mitigation with assumed levels of 40ug/m<sup>3</sup>, rather than the actual background level of 7.5ug/m<sup>3</sup>.

They are seeking a permit allowing a derogation of air quality of up to 5 times current levels.

The possible health impacts from quarrying activities located within such close proximity to the village will not be immediate.

Medical evidence clearly shows that emissions of particulate matter PM 2.5 and PM 10 to give rise to long term impacts of respiratory diseases in particular.

These diseases are akin to asbestosis and miners lung of old.

Based on modern day scientific evidence, The World Health Organisation (WHO) has recently advised Governments that levels particulate matter in air should be reduced to 25% of current national targets.

The Mineral Industry Research Organisation (MIRO) published findings in February 2011 that hard rock quarries are very likely to record levels of PM 10 up to 400m from site.

The real impacts of particulate emissions from this quarry proposal located within such close proximity to our village is a serious concern.

The MGL proposal bring quarrying operations within 50m of the village. According to the MIRO report levels of PM 10 are likely to be encountered within the village. The actual levels being dependent on the quality and competency of management controls at site.

As yet, we believe MGL has not assessed the actual impacts of emissions on the village and residents and the effectiveness of proposed mitigation.

Nationally Limestone is an important aggregate and the area East of Rutland is one area where this mineral outcrops.

Currently there are several other options available around the area for such limestone.

Bullimore's site at Stretton Road, Greetham which is located further from the village and would meet the need of future demands. There is also the British Steel / Johnson recent proposal for a large scale quarry at Hooby Lane, Stretton, again located further from the village and thus not posing any significant risk from their operations.

It is noteworthy that a Bill currently before Parliament (now in its 2nd reading) is seeking to introduce a presumption for planning decision-making against approving quarry development located in close proximity to settlements.

GPC therefore oppose this application on the grounds MGL has failed to demonstrate understanding of the risks posed, or whether the proposed mitigation measures will control the risks.

GPC would urge the County Council to consider applying the legislative requirements of the Precautionary principle and reject this application.

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#### Consultee comments:

Highways /LLFA

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#### Additional Comments:

Additional comments have been received from several residents since the date of the meeting was confirmed. These re-iterate the previous objections that are outlined in the main report.

The comments from Highways are noted and the correct plan will be referenced and shown in the committee presentation.



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#### Additional Comments:

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#### Consultees

Highways /LLFA

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#### Conservation Officer

Unfortunately the Conservation Officer comments were not included in the full report, although they are reproduced in the accompanying application 2021/0170. For completeness they are reproduced again here:

The quarry subject of this and the accompanying application for the erection of industrial units is adjacent to the north-east edge of Greetham village, alongside the B668, the principal approach road from the east.

Aside from mud deposits on the road and the HGV traffic moving to and from the quarry, the sizable area that has been the subject of limestone extraction is, subject seasonal variations, largely concealed from view by mature vegetation on the site perimeter.

A succinct description of the historic pattern of development of Greetham can be found in the adopted Neighbourhood Plan (2016 - 2036):

"The pattern of building in the village is typical of the northern part of Rutland. Greetham is a linear village, running roughly east / west along the course of the North Brook stream, with a series of lanes running mainly northwards from Main Street. The older houses are mainly built from local limestone and have either Collyweston slate or thatched roofs. Later, as with all villages in Rutland, orange and red pantiles, blue Welsh slate, and various shades of brickwork started to be used. Greetham has a number of interesting buildings of varied types and ages which are listed for their architectural and historic importance including, among others, the church, the Manor House on Little Lane, the old stonemason's shop on Great Lane, and Jacobs (sic) Well on Church Lane."

As Historic England's 2017 publication Historic Environment Good Practice Advice in Planning: 3 (2nd Edition) explains:

"The extent and importance of setting is often expressed by reference to visual considerations. Although views of or from an asset will play an important part, the way in which we experience an asset in its setting is also influenced by other environmental factors such as noise, dust and vibration from other land uses in the vicinity, and by our understanding of the historic relationship between places."

Obviously, the present authorised use of the site as a quarry for the extraction of Limestone results in issues of noise and dust, although these problems are mitigated to an extent by the quarry's location on the north east of the village where the prevailing wind carries noise and dust away from the village.

Whilst there would be no direct harm to heritage assets, my concerns lie with the potential indirect impacts. The traffic likely to be generated by the proposed development will add significantly to the number of vehicles traversing the village's narrow Main Street onto which most of the settlement's designated and non-designated heritage assets front, in some instances in very close proximity to the road. Also, there are significant lengths where there is no footpath on the south side of Main Street.

Main Street is effectively a single-track road for much of its length and there are several unsightly but necessary traffic management measures that have been put in place to address this problem. Nonetheless, a building immediately to the east of the Village Shop was the subject of a vehicle impact a couple of years ago necessitating significant rebuilding. The proposal may result in the need to introduce additional traffic management measures that would further harm the character of the historic core of the village resulting in a more urban appearance.

Paragraph 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires local planning authorities, when considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Similarly, when considering the impact of development on a Conservation Area, Section 72 of the 1990 Act requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of that area.

The NPPF (2019) sets out central Government policy in relation to the Conserving and Enhancing the Historic Environment. Paragraph 193 states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

Paragraph 194 goes on to require that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.

In instances where it is concluded that there would be less than substantial harm to the historic environment, paragraph 196 of the NPPF requires that harm be weighed against the public benefits of the proposal. This is a matter for the decision maker to come to a judgement on having regard to all the relevant issues.

Policy CS22 of the Core Strategy requires that all developments protect and where possible enhance historic assets and their settings, maintain local distinctiveness and the character of identified features.

Policy SP20 of the Site Allocations and Policies Development Plan Document (Adopted October 2014) seeks to safeguard the character and appearance of conservation areas from development that would be harmful to their character or appearance.

Whilst the actual built development on the site would not of itself impact directly on any designated heritage assets, there would be an increased likelihood of both physical damage to heritage assets from vehicle impacts as a result of increased traffic negotiating the narrow, Main Street, the principle thoroughfare through the village and harm arising from further traffic management measures.

The submitted Transport Assessment acknowledges at Paragraph 8.1 that "a key issue in relation to the planning application will be the impact of additional traffic on the B668 through Greetham Village. The key areas of concern being the speed of traffic and the width constraint of the B668 at the location of entering the built up area of the village from the east."

It is stated that measures will be put in place to prevent H.G.V.s from travelling through the village. In my opinion the proposed development would result in less than substantial harm to the Greetham Conservation Area as it would significantly increase the amount of traffic negotiating the narrow, main thoroughfare through the village and consequently harming the character and appearance of this part of the designated Area through both increased noise and disturbance and potential harm to buildings, many of which are Listed, as the result of vibrations and impacts from passing heavy goods vehicles.

It is for the decision maker to come to a conclusion as to whether the public benefits of the proposal outweigh any harm to the historic environment. I would only re-emphasise what paragraph 193 of the NPPF says about great weight being attached to a heritage assets conservation when coming to a decision.

**Reason for refusal**

The Greetham Neighbourhood Plan is part of the Development Plan and reference to Policy CH1 should be included in the reasons.

The policy states:

*Built Form Development within the Parish should be of a scale and density in keeping with the built form of the character area within which it is located, taking account of surrounding buildings, streets and spaces. Development should integrate with the street scene, through particular attention to boundary treatments; and where appropriate, conserve the character and appearance of the Conservation Area and its setting*