

DELEGATION REPORT

REPORT OF THE CHIEF PLANNING OFFICER

WARD: Burmantofts & Richmond Hill **Application:** 24/01127/FU
Address: 46 Knowsthorpe Way **Applicant:** Skelton Ltd
Cross Green
Leeds
LS9 0SW

Proposal: Variation of Condition 2 (approved plans) to previously approved Planning Application 23/04970/FU (Partial demolition of existing workshop building; installation of combined heat and power plant) to allow the substitution of the approved list of drawings with a revised list of drawings

Application advertised by means of:

Site Notice	19 March 2024
Advert Posted	15 March 2024
Neighbour Notification letters posted	
Publicity Expires on	11 April 2024

INTRODUCTION:

This report relates to planning application ref. 24/01127/FU

Planning permission ref. 23/04970/FU was approved on 21.12.2023 for the partial demolition of an existing workshop building and the installation of combined heat and power plant on land off Knowsthorpe Way, Cross Green. The permission is subject to five planning conditions and the current planning application is submitted to vary the requirements of Condition 2.

The main powers relating to local planning authority use of conditions are in sections 70, 72, 73, 73A, and Schedule 5 of the Town and Country Planning Act 1990. The applicant is proposing a variation to the wording of condition 2 of planning consent 23/04970/FU via section 73 of the Town and Country Planning Act 1990, in order to substitute the approved list of drawings with a revised list of drawings.

This application is suitable to be determined under delegated powers. No third party representations have been received and no ward members have requested the application to be determined by the Plans Panel. The proposed development is not EIA development under Schedule 2 of the EIA Regulations 2017 (as amended).

PROPOSAL:

The proposal seeks a Variation of Condition 2 under S.73 to the previously approved scheme. Planning Permission was previously granted under ref. 23/04970/FU for the partial demolition of existing workshop building and installation of combined heat and power plant. Condition 2 requires that the development permitted shall be carried out in accordance with the approved plans listed in the Plans and Specifications.

The current application seeks the substitution of the approved list of drawings with a revised list of drawings. These show the combined heat and power plant located to a different part of the site.

SITE AND SURROUNDINGS:

The site comprises a rectangular piece of land which is presently occupied by the applicants existing waste management premises. The applicant operates a business which receives and processes waste materials, separating materials to remove as much recyclable material as possible from the waste stream. These materials are bulked up and transferred to other facilities for further processing. Material which cannot currently be recycled is manufactured into a high calorific value solid recovered fuel for sale to industry. Other materials which are not suitable for use in the manufacture of this fuel are exported from the site for either further processing, including use as a residual derived fuel in the generation of energy or for final disposal to landfill. This activity is carried on within a large steel portal framed building partially clad in vertically profiled sheets, plant and machinery. Offices and welfare facilities are also provided along with other essential infrastructure associated with the undertaking of waste management activities. The existing building measures approximately 110m x 25m and the total site area covers some 0.825 hectares.

The application site lies in an industrial location within the established Cross Green Industrial Estate, surrounded to the north, east and west by industrial and waste related uses which extend over a distance of around 2km both to the north and south of Pontefract Lane. The established industrial area is home to a variety of large scale industrial uses including waste water treatment works, concrete plants, energy from waste plants, metal recycling and other industrial uses requiring large buildings. Immediately to the west of the application site lies a vehicle dismantling business, beyond which lies a metal recycling site. Immediately to the east lies a Leeds City Council depot, to the north lies a timber recycling facility and to the south lies operational land associated with the adjacent waste water treatment works. The

southern boundary of the applicant's site is bounded by mature tree planting. Some 250m to the south of the site lies the River Aire, beyond which lies the Aire and Calder Navigation and the large industrial units situated at Stourton, between the M621 and M1 motorways. The closest residential properties are located over 1100m to the west of the application site at Sussex Gardens. The application site is not located in an area identified as being at risk of flooding, nor is it located in an area designated for its biodiversity, landscape or heritage importance. The closest listed buildings are found at the Thwaites Mill complex, approximately 250m south of the site, beyond the River Aire.

RELEVANT PLANNING HISTORY:

Planning Applications:

23/04970/FU Partial demolition of existing workshop building; installation of combined heat and power plant - Application Approved

06/01721/FU Variation to condition 1 of planning permission 21/36/01/MIN and condition 2 of planning permission 21/265/99/MIN - Application Approved

21/252/05/MIN Single storey extension to form enlarged covered screening unit to existing waste transfer station - Application Approved

21/36/01/MIN Variation of condition no 2 of application no 21/265/99/min – Application Approved

21/265/99/MIN Land-raising of site to form waste transfer aggregates recycling and skip hire centre with office and workshops – Application Approved

H21/12/91/ Tipping of material and landscaping to industrial estate – Application Approved

H21/187/90/ Laying out of road and drainage to industrial estate – Application Approved

H21/285/89/ Laying out of access and erection of workshop with offices and with 18 car parking spaces, to vacant site – Application Approved

H32/243/76/ Use of vacant site for open storage of tyres - Application Approved

Pre-Application Enquiries:

PREAPP/23/00081 - EIA Screening Request

Planning Enforcement Cases:

14/00042/NCP3 - Non-Compliance Appr Plans/Conds (3) Waste material is being stored outside of the permitted areas within the site. Case closed.

CONSULTATIONS:

Statutory Consultees:

Northern Gas Networks – no objection

Yorkshire Water - On the Statutory water main map, there is a 180mm diameter MDPE water main recorded to cross the site entrance. It is essential that the presence of this infrastructure is taken into account in the design of the scheme. This asset should be adequately protected from damage, vibration and loading from plant and machinery during construction.

HSE – no objection

EA – no objection

Coal Authority – no objection

Non-Statutory Consultees:

Contaminated Land Team - The proposed development is of low vulnerability, the overall land use will be continued, and the site appears to be being returned to hardstanding post development (i.e. that there will be no creation of soft landscaping). No objection to planning permission being granted, subject to conditions.

Flood Risk Management - The application site is located within Flood Zone 1 and there have been no records of any recent flooding within the property or adjacent areas. An initial review has also identified that there are no known flood risks which require specific mitigation and would impact on the proposed development. As the application involves only minor external modifications with no increase in impermeable area FRM have no objections to the proposed development as shown on the application and any building drainage modifications will be dealt with by the Building Inspector to ensure any drainage works comply with Part H of the Building Regulations.

The Lead Local Flood Authority have noted that the application has no change to drainage or flood risk. Following a review of the above information, the FRM team notes that no further information is required

District Heating Team - The Leeds PIPES team supports this proposal. As noted in the application, this plant is well placed to provide heat to customers directly, or link into an existing or planned heat network in the future.

Highways – no objection subject to conditions securing details of parking, laying out of vehicle areas, and provision for contractors during construction.

Environmental Health (Air Quality) - An Air Quality Assessment has been submitted on behalf of the applicant to quantify the impacts of emissions from the site and consider the location suitability for the proposed use. The potential air quality impacts were predicted using dispersion modelling and relevant data from a similar activity. This includes stack emission limits for various pollutants that would be required as part of an Environmental Permit for the activity to take place. It is stated this indicates that levels will be below the relevant air quality standards at all sensitive locations in the vicinity of the installation. As such, impacts associated with the operation of the incineration plant were predicted to be not significant at residential receptors beyond the development site and it is concluded that the proposed development will not result in any significant effects on local air quality. It is also claimed that

predicted impacts were based on a worst-case assessment scenario and the maximum anticipated level of each pollutant is considered in combination with emissions from other similar uses nearby and this assumption is likely to overestimate predicted results and impacts.

Environmental Health (Noise) - the application is supported by a noise assessment which provides a desk-top prediction of plant noise to the nearest sensitive receptors. This shows emissions to be in the region of 20-25dB(A). While no background data has been provided for comparison, overall it is considered that the site noise would be equal to or below existing background, given the industrial nature of the surroundings. The proposal would thereby meet the criteria for fixed plant and present a low risk of adverse impact. Based on our previous comments that determined a low risk of adverse impact from noise, we do not consider the proposed changes will alter that conclusion.

PUBLIC/LOCAL RESPONSE:

Parish Council:

None

General Comments:

None

Comments in Support:

None

Comments in Objection:

None

SITE VISIT(S):

19.03.2024.

RELEVANT PLANNING POLICY:

LOCAL PLANNING POLICY AND GUIDANCE

The Development Plan

As required by Section 38(6) of the Planning and Compulsory Purchase Act 2004 this application has to be determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan currently comprises the adopted Local Development Framework Core Strategy (2019), those policies saved from the Leeds Unitary Development Plan (Review 2006), the Site Allocations Plan (2019, as amended 2024), the Natural Resources and Waste Development Plan Document (2013, as amended 2015), the Aire Valley Leeds Area Action Plan (2017) and any made Neighbourhood Plan.

The following policies from the **Core Strategy** are considered to be of most relevance to this development proposal:

General Policy – Sustainable Development and the NPPF;
P10 – Design;
Spatial Policy 1- Location of development;
Spatial Policy 9 - Provision for offices, industry and warehouse employment land and premises;
EC3 - Safeguarding existing employment land and industrial areas;
G1 - Enhancing and extending green infrastructure;
G8 - Protection of important species and habitats;
G9 - Biodiversity improvements;
P11 - Conservation;
T2 - Accessibility requirements and new development.

The following saved policies from the **Unitary Development Plan** are considered to be of most relevance to this development proposal:

GP5 – Detailed Planning Considerations

The following policies from the **Site Allocations Plan** are considered to be of most relevance to this development proposal:

None

The following policies from the **Natural Resources and Waste Local DPD** are considered to be of most relevance to this development proposal:

Waste 1 - Self-sufficiency for future waste management in Leeds
Waste 2 - safeguarding existing waste management capacity
Waste 3 - A city wide network of waste management sites and facilities;
Waste 4 - Waste management facilities – permanent uses;
Waste 5 - Waste uses within existing industrial areas and exceptions;
Waste 9 - Waste management facilities - potential issues and impacts;
Energy 3 - Heat and power energy recovery
Water 6 - Flood Risk Assessments;
Water 7 - Surface water run-off;
Air 1 - Management of air quality through development;
Land 1 - Contaminated Land;
Minerals 3 - Mineral Safeguarding Area for Surface Coal.

The following policies from the **Aire Valley Leeds Area Action Plan** are considered to be of most relevance to this development proposal:

AVL2 - Identified sites for general employment use;
AVL13 - Aire Valley Leeds Green Infrastructure Network.

The following policies from any made Neighbourhood Plan:

No made Neighbourhood Plan relevant.

NATIONAL PLANNING POLICY AND GUIDANCE

National Planning Policy Framework

The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are expected to be applied. It sets out the Government's requirements for the planning system. The NPPF must be taken into account in the preparation of local and neighbourhood plans, and is a material consideration in planning decisions.

National Planning Practice Guidance

The National Planning Practice Guidance (NPPG) offers guidance in addition to the NPPF.

National Planning Policy for Waste

This document sets out detailed waste planning policies.

OTHER RELEVANT MATTERS:

Climate Change

The Council declared a climate change emergency on 27th of March 2019 in response to the UN's report on Climate Change.

The Planning Act 2008 alongside the Climate Change Act 2008 sets out that climate mitigation and adaptation are central principles of plan-making. The NPPF makes clear that the planning system should help to shape places in ways that contribute to radical reductions in greenhouse gas emissions in line with the objectives of the Climate Change Act 2008.

As part of the Council's Best City Ambition, the Council seeks to deliver a low-carbon and affordable transport network, as well as protecting nature and enhancing habitats for wildlife. The Council's Development Plan includes a number of planning policies which seek to meet this aim, as does the NPPF. These are material planning considerations in determining planning applications.

Public Sector Equality Duty

The Equality Act 2010 requires local authorities to comply with the Public Sector Equality Duty. Taking into account all known factors and considerations, the requirement to consider, and have due regard to, the needs of diverse groups to eliminate discrimination, advance equality of opportunity and access, and foster good relations between different groups in the community has been fully taken into account in the consideration of the planning application to date and at the time of making the recommendation in this report.

RELEVANT LEGISLATION AND LEGAL BACKGROUND:

Section 73 of the Town and Country Planning Act 1990 (as amended) provides for the determination of applications to develop land without compliance with conditions previously attached. Section 73 subsection 2 requires that Local Planning Authorities (LPA's), upon receipt of an application made under Section 73, shall only consider the question of the conditions which are the subject of the application and that the process is not to entail a complete reconsideration of the application.

In the High Court case of R v Coventry City Council, ex p Arrowcroft Group plc (2001) the Judge stated:

“It is true that the outcome of a successful application under s73 is a fresh planning permission, but in deciding whether or not to grant that fresh planning permission the local authority ‘... shall consider only the question of the conditions subject to which planning permission should be granted’... Thus the Council is able to impose different conditions upon a new planning permission, but only if they are conditions which the Council could lawfully have imposed upon the original planning permission in the sense that they do not amount to a fundamental alteration [Council’s emphasis] of the proposal put forward in the original application.”

The guiding principle established in this case is that a LPA does not have powers to grant approval for a Section 73 application where this represents a fundamental alteration to the proposal put forward under the original planning permission granted.

In the Court of Appeal case of Finney v Welsh Ministers and ORS (2019) EWCA Civ 1868 the judge held the distinction between the operative part of the grant of a planning permission in the relevant decision notice on one hand, and conditions attached to that planning permission on the other. In his decision the Judge states:

“It is clear that what Sullivan J meant by the “operative” part of the planning permission was the description of the development”, rather than the conditions”.

The Judge goes on to state:

“On receipt of [a section 73 application] section 73 (2) says that the planning authority must “consider only the question of conditions”. It must not, therefore, consider the description of the development to which the conditions are attached. The natural inference from that imperative is that the planning authority cannot use section 73 to change the description of the development.”

On 19th May 2020 the Supreme Court refused an application to appeal against the judgement, reaffirming the position of the Court of Appeal.

What the Finney case clarifies therefore is that it is outside of a LPA’s powers to grant approval for a Section 73 application where this would lead to a change in the description of the development – i.e. the amendment must only relate to conditions. Beyond this, there is no statutory limit on the degree of change permissible to conditions under the Section 73 application process, other than planning permission cannot be granted under Section 73 to extend the time limit within which a development must be started or an application for approval of reserved matters must be made.

Permission granted under Section 73 takes effect as a new, independent permission, sitting alongside the original permission, which remains intact and unamended. The time limit for implementation for a Section 73 permission must remain the same as the original permission.

In considering such an application, a LPA is required by Section 38(6) of the Planning and Compulsory Purchase Act 2004 to determine, in accordance with the Development Plan unless other material considerations indicate otherwise. In practice, an LPA must give weight to any changes in planning policy, guidance, site circumstances or any other relevant factors since the original grant of planning permission, alongside affording weight to the fallback position created from the original permission itself.

MAIN ISSUES:

1. Can the proposal be considered under a Section 73 application?
2. Consideration of material planning considerations.

APPRAISAL:

Can the proposal be considered under a Section 73 application?

Planning permission ref. 23/04970/FU was granted for the partial demolition of an existing workshop building and installation of a combined heat and power plant (CHP) at the applicant's site on 21st December 2023. Following the grant of planning permission the applicant has reviewed the proposed scheme and has determined that it would not now be feasible to locate the proposed plant as originally intended. It is therefore proposed to install the proposed plant further to the east, but still within the boundary of the application site.

This application therefore seeks to vary condition 2 of planning permission ref. 23/04970/FU to allow the substitution of the approved list of drawings with a revised list of approved drawings. The amendment of the approved drawings would allow the relocation of the proposed plant to the eastern boundary of the application site. The proposed relocation would remain within the red line boundary of the original planning application as shown on drawing no. 2023/79/137/1.

The proposal has been carefully considered and there appears to be no impediment to the Local Planning Authority in considering the proposal, as it is clear and appropriate under the procedural terms of Section 73. While the proposal would have the effect of substituting fresh plans and elevations showing the plant located to another part of the site than which has previously been approved, the description of development - the partial demolition of the existing building and the installation of combined heat and power plant - would remain as existing.

Consideration of material planning considerations

It is important to note that the relocation of the plant would not require the installation of any additional plant and equipment. The fuel hopper would be located within an existing covered storage area and fuel would be conveyed via an enclosed conveyor to the proposed plant. All fuel would continue to be manufactured and stored within the existing waste management facility prior to delivery to the fuel hopper.

Having regard to the comments made by consultee bodies, the proposed relocation of the plant to the eastern boundary of the site is not anticipated to bring about any material changes to the findings of the noise, air quality or contaminated land reports submitted alongside the original planning application.

Heat generated by the proposed operations would continue to be utilised on site in the drying of wastes to manufacture solid recovered fuel, manufactured to customer specification as a low carbon fuel for use as a substitute to fossil fuels and the disposal of waste to landfill. Heat would be delivered to the drying floor by a below ground pipeline installed within the applicant's existing site.

The principle of the installation and operation of a CHP plant has been established at the site through the grant of planning permission ref. 23/04970/FU. The relocation of the proposed plant from the originally proposed location to the eastern boundary of the application site as shown on the revised drawings would not give rise to any material changes to the impacts previously assessed, nor have there been any significant material changes in circumstances in planning policy and the site and surroundings since the original approval of planning permission was made. The proposed variation is therefore considered acceptable in these regards.

CONCLUSIONS:

Overall it is considered that the proposed variation of condition 2 would not result in a fundamentally different development to that previously approved such that the description of the development would change, nor would it result in any additional effects of significance - environmentally or otherwise.

The proposed variation would continue to provide for a combined heat and power plant of the same specifications and appearance as previously approved. The proposal solely relates to a relocation of the plant and as such is considered to be acceptable with regard to the submitted environmental information and all other submitted planning information and local circumstances.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that "where in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material consideration indicates otherwise".

The proposed variation has been carefully considered and on balance it is considered that the proposal remains compliant with planning policy based on the circumstances of the case and the extant approval.

BACKGROUND PAPERS:

Application file ref. 24/01127/FU.

RECOMMENDATION:

Approve subject to the following condition(s):-

- 1) The development hereby approved shall be lawfully implemented on or before 21.12.2026.

Imposed pursuant to the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004 and having regard to the remaining implementation period imposed by planning condition on planning permission ref. 23/04970/FU.

- 2) The development hereby permitted shall be carried out in accordance with the approved plans listed in the Plans and Specifications above.

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

- 3) All external wall cladding to enclose the building at the area of partial demolition shall be constructed in materials to match those of the existing building.

In the interests of visual amenity.

- 4) No construction works in the relevant area(s) of the site shall commence until measures to protect the public water supply infrastructure that is laid within the site boundary have been submitted to and approved in writing by the Local Planning Authority. The protection measures shall include but not be exclusive to the means of ensuring that access to the pipe, using an appropriate stand-off, for the purposes of repair and maintenance by the statutory undertaker shall be retained at all times. The approved measures shall be implemented thereafter.

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

- 5) The Local Planning Authority shall be notified in writing immediately where unexpected significant contamination is encountered during any development works and operations in the affected part of the site shall cease. The affected part of the site shall be agreed with the Local Planning Authority in writing.

Where remediation of unexpected significant contamination is considered by the Local Planning Authority to be necessary, a Remediation Strategy shall be submitted to and approved in writing by the Local Planning Authority prior to the recommencement of development on the affected part of the site. The Remediation Strategy shall include a programme for all remediation works and for the provision of verification information.

Remediation works shall be carried out in accordance with the approved Remediation Strategy. On completion of those works, the Verification Report(s) shall be submitted to the Local Planning Authority in accordance with the approved programme. The site or phase of a site shall not be brought into use until such time as all necessary verification information has been approved in writing by the Local Planning Authority.

In the event that no unexpected significant contamination is encountered, written confirmation shall be submitted to the Local Planning Authority prior to occupation of the site.

It is strongly recommended that all reports are prepared and approved by a suitably qualified and competent person.

To enable the Local Planning Authority to ensure that unexpected contamination at the site will be addressed appropriately and that the development will be 'suitable for use' with respect to land contamination.

For information:-

- 1) The Council engages with all applicants in a positive and proactive way through specific pre-application enquiries, the detailed advice available on the Council's website and further discussion where appropriate to produce an acceptable development. This particular proposal was clearly in accordance with the Development Plan and so permission could be granted without any further discussion.

This recommendation relates to the following Approved Plans

Plan Type	Plan Reference	Version	Received
Site Location Plan/Red Line/OS Plan	2023/79/137/1		14.08.2023
Block Plan/Layout Plan	2023/79/137/2	A	26.02.2024
Block Plan/Layout Plan	2023/79/137/4	B	26.02.2024
Proposed elevation(s)	C21038	D	26.02.2024
Proposed floor plan(s)	C21038	D	26.02.2024