Yorkshire Wildlife Trust

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19th July 2021

Planning application: 9.7-hectare quarry extension (Area 8) eastward from the current working Area 7 to provide 4.9 million tonnes of magnesian limestone followed by restoration of the land with engineered fill from existing adjacent waste treatment facility.
Location: Went Edge Quarry, Went Edge Road, Kirk Smeaton, Selby,
Reference: NY/2019/0002/ENV

The Trust object to this planning application. We have serious concerns supported by Yorkshire's leading scientists and conservation experts that the dust from the quarry has the potential to cause significant irreversible harm to Brockadale. No evidence or suitable mitigation has been provided to discharge these concerns.

Context

Yorkshire Wildlife Trust is Yorkshire's largest charity dedicated to enhancing Yorkshire's natural environment, with nearly 50,000 members and 100 nature reserves across Yorkshire. The Trust's principal vision is to work for a Yorkshire rich in wildlife, valued and enjoyed by people.

As part of our work, the Trust constructively engages in the planning system to get the best outcomes for Yorkshire's nature and people.

We have a number of concerns with regards to the impacts the proposed quarry will have upon Brockadale Nature Reserve and Site of Special Scientific Importance (SSSI).

Brockadale is a source of Yorkshire pride, it is a jewel in the Yorkshire countryside, loved by thousands of residents and visitors alike. Supporting rare and threatened species, it's ancient woodland and grassland is irreplaceable.

Our concerns have been reiterated by the local community and those further afield who recognise Brockadale as a special place in Yorkshire which has provided a sanctuary for many over the pandemic. It is recognised as not only one of Yorkshires most important sites, but one of the country's most valuable ecological assets enjoying Government recognition as a Site of Special Scientific Interest (SSSI) designation.

As UK parliament have nationally declared a climate emergency, so is there a biodiversity emergency. Whilst woodlands and trees are often considered in terms of their carbon storage abilities, recent evidence

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describes grasslands as being more resilient carbon sinks than woodlands and forests[1]. Considering the wide range of natural capital assets and ecosystem services which are provided by mosaics of habitats, it is imperative that notable features within the local landscape, such as Brockadale SSSI, are protected from unnecessary human impacts.

The Trust would therefore, like to see the councillors of North Yorkshire **take this opportunity to save this local treasure by refusing planning permission,** following the current Government's bold lead on its recent ambitions to be a **world leader** in halting the decline of nature and restoring nature.

Below we have summarised our concerns for this site from an ecological perspective. You can find more information on the detail of impacts within Appendix 1 attached.

Why are we Objecting?

We believe that approval of the application will be contrary to the ***Precautionary Principle*** enshrined in international and national government policy.

This Precautionary Principle, outlined within the 1992 Rio Declaration, to which the UK is a signatory, is: '***taking action now to avoid possible environmental damage when the scientific evidence for acting is in-conclusive but the potential damage could be great'.***

We believe this principle should hold significant weight as the applicant has provided no evidence to demonstrate that impacts will not occur to the site. Whilst the applicant refers to a suite of ecological surveys, these are a mere snapshot in time, and are generalised ecological surveys, which do not consider detailed botanical implications. Nor do they provide monitoring of the sites condition and changing flora assemblages since the quarry has been active. In line with the Precautionary Principle '*the proponent of an activity, rather than the public, should bear the burden of proof',* it is therefore the responsibility of the applicant to demonstrate evidence of no impact, the current ecological surveys do not provide this evidence.

Given the **negative impacts of limestone quarries on limestone habitats** evidenced by Farmer (1993)[2] and the number of nationally regarded expert botanists who have raised concerns about this application, we believe that the **Precautionary Principle must be applied**, that **permission must be refused** and detailed ongoing **monitoring** of the site **must be undertaken** to better understand the impacts, prior to reconsidering any application going forward.

[1] https://climatechange.ucdavis.edu/news/grasslands-more-reliable-carbon-sink-than-trees/
[2] Farmer, A 1993. The Effects of Dust on Vegetation – A Review *Environmental Pollution* ***79*** *(63-75)*

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Case Law

The importance of the precautionary principle is highlighted by the 2019 refusal of the planning permission for housing adjacent to Askham Bog near York – a Nature Reserve and SSSI of equivalent significance to Brockadale. After being called into a planning inquiry, the Planning Inspectorate upheld the decision to refuse highlighting that:

'*The appellant has failed to demonstrate the benefits or wholly exceptional circumstances necessary to comply with NPPF paragraph 175. It follows that there is a real possibility of harm.* ***In order to protect irreplaceable habitat, the precautionary principle must apply and the appeal should be dismissed.'***[3]

The Draft Policy Statement of Environment Principles indicates it is appropriate to apply the precautionary principle when: '*there is a lack of scientific certainty of the severity and likelihood of plausible environmental damage'.* We believe that **the principle applies** in this instance and we ask that councillors follow this guidance and refuse this application.

Our records of both Askham Bog and Brockadale, demonstrate the increased prevalence of nationally rare, scarce and endangered species at Brockadale than are present at Askham Bog. Brockadale is therefore as valuable, if not more so, as Askham Bog for which this principle was applied.

Therefore, the presence of these species in irreplaceable habitats immediately adjacent to the reserve justifies the application of **the Precautionary Principle**, and until such time as expert botanists can agree there is no risk of impact following further study, the application **must be refused**. This is in line with NPPF, emerging Environmental Principles and Environment Bill, as well as decisions previously made by the inspectorate.

Material Considerations

We have outlined in Appendix 1 (attached) detail of the ecological principles for which we believe this application should be refused. These include:

- Unacceptable Impacts to a SSSI
    - Overview
    - Ancient Woodland
    - Ancient Grassland
- Inadequate Restoration Proposals

[3] TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78 APPEAL MADE BY BARWOOD STRATEGIC LAND II LLP LAND AT MOOR LANE, WOODTHORPE, YORK, YO24 2QR APPLICATION REF: 18/02687/OUTM Ministry of Housing, Communities and Local Government APP/C2741/W/19/3233973

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- Legal Documents
- Enforcement

Whilst the Trust focuses on the ecological aspects of this application, we are aware of a number of other considerations which the committee must take into account, and which will be further represented by others. In particular, we would like to highlight the unprecedented increase in number of visitors Brockadale has seen throughout the pandemic. The Government and healthcare professionals recognise the importance of access to greenspace for mental and physical health and wellbeing. Sites such as Brockadale are clearly of significant importance for the health of local communities and it should remain an undisturbed sanctuary for those communities to enjoy without the impact of vehicle noise and air quality degradation and loss of a peaceful refuge.

Other considerations which must be made include:

- The '*need*' for the quarry extension which remains unallocated and '*exceptional reasons'* for its presence
- The landscape impact of loss of arable farmland with open vistas and increased industrial usage
- The loss of greenbelt which means loss of openness, particularly with industrial usage
- The noise impact upon residents and visitors to Brockadale Nature Reserve and Kirk Smeaton village
- The quarry's current market status; with clarification needed on responsibilities of the S106 and restoration proposals, including ongoing funding
- The quarry agent has previously been subject to a number of enforcement issues undertaken by Natural England, one of which is still awaiting compensation for impacts to the SSSI to be accepted by Natural England.

We do not believe that evidence of overriding need or exceptional reasons for the scheme have been provided, nor has any compensation for potential impacts or previous damage to the site. Therefore, we are strongly of the opinion that this application **must be refused**, if the local authority is to remain in line with our local, national and international commitments.

Should the proposals be approved, there is a high likelihood there will be significant, irreversible and unacceptable impacts upon the SSSI and that ancient relics of our landscape, i.e. woodland and grassland, will be lost. Nor do we believe the proposals are in accordance with national or local policy (NPPF 174, 175; SP 18) with no overriding reasons of interest provided or any evidence of feasibility of restoration proposals.

Given the risks to this invaluable and irreplaceable site and in light of all of the considerations we've outlined above, we consider there is no option other than to object to the application based on the evidence available and we request that councillors do the same.

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"***If we want to see Yorkshire's nature thriving, it starts with protecting wild places like Brockadale. If the Council approve this application without appropriate mitigation, we risk losing Brockadale forever. That cannot be allowed to happen***."

– Danny Heptinstall, Director of Policy and Partnerships, Yorkshire Wildlife Trust

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Appendix 1

Unacceptable Impact to a SSSI

Overview

1. The application site lies immediately adjacent to the southern boundary of Brockadale Site of Special Scientific Interest (SSSI) and Yorkshire Wildlife Trust Nature Reserve.

2. It was a **government target that 95% of the total area of SSSIs should be in favourable condition by 2010, this target was not met**. Biodiversity 2020 set goals for 50% of all SSSIs to be in favourable condition, another target which is unlikely to be met[4].

3. These targets demonstrate that local and national government need to work harder to ensure our SSSI's are protected in perpetuity. As such, the sites designation in itself highlights its importance on a national scale, and the **need for the application** of the **Precautionary Principle**.

4. **Brockadale is a nationally recognised site of importance for ancient woodland and limestone grassland.**

5. The Trust has worked hard over a number of years to improve the condition of this site and we fear that approval of the application will undermine these years of hard work and determination.

6. Under NPPF para 174, the LPA has a duty to:

> '*safeguard local wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance of biodiversity; wildlife corridors and stepping stones that connect them*'.

7. This policy means that areas of land adjacent to designated sites, such as Brockadale, should be considered as areas to be *enhanced* for biodiversity with the intention to form coherent ecological networks across the landscape. This is in line with the emerging Environment Bill which will put a **requirement** on the Local Authority **to define Local Nature Recovery Networks** (LNRN). These networks will need to enhance and reconnect sites of importance, of which Brockadale will be the key location for these networks to be designed around. Approval of this application will severely

[4] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/829023/1_Protected_Sites_2019.pdf

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limit the ability of the Local Authority to meet their future requirements with regards to delivering LNRN.

8. Under para 175:

'when determining planning applications …

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

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

9. This is transposed into local policy SP 18 for Selby which states:

'The high quality and local distinctiveness of the natural and man-made environment will be sustained by:

*a. Safeguarding and, where possible, **enhancing** the historic and **natural environment** including the landscape character and setting of areas of acknowledged importance.*

b. Conserving those historic assets which contribute most to the distinct character of the District and realising the potential contribution that they can make towards economic regeneration, tourism, education and quality of life.

c. Promoting effective stewardship of the District's wildlife by:

***Safeguarding international, national and locally protected sites for nature conservation**, including SINCs, from inappropriate development.*

*a)Ensuring developments retain, **protect and enhance features of biological** and geological **interest** and provide appropriate management of these features and that unavoidable impacts are appropriately mitigated and compensated for, on or off-site.*

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b)Ensuring development seeks to produce a net gain in biodiversity by designing-in wildlife and retaining the natural interest of a site where appropriate.'

10. These policies reiterate the Precautionary Principle and indicate that if there is any doubt of any kind that an application may impact upon a nationally designated site, **then permission must be refused** unless there are exceptional reasons and agreed compensation. Whilst the 'need' is not for us to inform the Local Authority, we recognise that the site is not officially allocated as a minerals site, and we do not believe that mitigation and compensation is possible.

11. Natural England have produced a document which details activities that are expected to damage the special interest of Brockadale SSSI[5]. These include (but are not limited to):

- *Application of manure, fertilisers and lime*
- *Drainage*
- *The changing of water levels and tables and water utilisation (including irrigation, storage and abstraction from existing water bodies and through boreholes).*
- *Extraction of minerals, including sand and gravel, topsoil, subsoil and limestone*
- *Construction, removal or destruction of roads, tracks, walls, fences, hardstands, banks, ditches or other earthworks, or the laying, maintenance or removal of pipelines and cables, above or below ground.*
- *Modification of natural or man-made features (including cave entrances), clearance of boulders, large stones, loose rock or scree and battering, buttressing or grading rock-faces and cuttings, infilling of pits and quarries*
- *Removal of geological specimens, including rock samples, minerals and fossils*
- *Use of vehicles or craft*

12. Given the above are all included within the proposals, it would appear that there are a number of significant areas of concern for potential impact to the reserve.

Ancient Woodland

13. The woodland at Brockadale is ancient, hence it is considered irreplaceable under the NPPF, para 175.

[5] Operations likely to damage the special interest; Site Name: Brockadale, Selby, North Yorkshire O LD1001489

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14. Irreplaceable habitats refer to those that are technically very difficult (or take a very significant time) to restore, recreate or replace once destroyed; taking into account their age, uniqueness, species diversity or rarity.

15. As such, in line with Government guidance and that from Natural England, applications which impact directly or indirectly on ancient woodland should **only be permitted in exceptional circumstances.** When the application is considered to be exceptional, agreed mitigation and compensation must be agreed to avoid, minimise and compensate for any harm.

16. The Trust have requested from the outset that a 30m buffer be included surrounding Brockadale SSSI and its ancient woodlands, as this has been demonstrated as a feasible buffer by the quarry to other sensitive areas (i.e. Wentedge Road).

17. This buffer would **begin** to apply the precautionary approach, avoiding any potential hydrological issues.

18. With regards to dust impacts, the lack of evidence from the applicant is not sufficient to confirm there will not be any impacts, in line with the precautionary principle, as no ecological monitoring has been undertaken to address this question.

19. Additional compensation for these impacts upon woodland is therefore required and has not been provided to date.

Ancient Grassland

20. Ancient grassland can be defined as:

> *'Ancient grassland is a semi-natural plant community maintained as grassland since 1840, on a site with no history of arable management or agricultural improvement since 1840 in any of the currently available land use datasets.[6]'*

21. The Trust believe that the grassland areas at Brockadale meet this definition and thus also represent irreplaceable habitat.

[6] Redhead et al. 2014, The natural regeneration of calcareous grassland at a landscape scale: 150 years of plant community re-assembly on Salisbury Plain, UK; Applied Vegetation Science Vol 17, Issue 3 pgs. 408-418.

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22. Other statements have provided extensive detail on the rare plants present at Brockadale and the potential impacts which we are concerned about, hence we will not go into detail here. This information can be found by representations made by Wold Ecology (professional botanists), Alastair Fitter (a botanist recognised nationally for his expertise) and material produced by Brockadale Action Group.

23. The Air Quality report provided in support of the application refers to Institute of Air Quality Management (IAQM) Guidance on the Assessment of Mineral Dust Impacts for Planning (2016)[7]. We note that the report states, in line with this guidance, that professional judgment should be applied in assessing the impact of dust on ecological receptors and as such has considered Brockadale to be of low sensitivity. However, Step 3: Estimate Likely Magnitude of Effect of this guidance states that:

> *'For assessing the ecological effects resulting from the predicted dust impact, it may be necessary to consult an ecologist.'*

24. We have also noted that Box 5 (see below) of this guidance refers to SSSI's, as a Medium Sensitivity Receptor, with sites home to vascular plant species on the Red Data List for Great Britain being High Sensitivity Receptors. Brockadale meets both of these criteria and as such should be considered a High Sensitivity Receptor in line with this guidance.

Box 5. Sensitivities of Receptors to Ecological Effects

A Habitat Regulation Assessment of the site maybe required as part of the planning process, if the site lies close to an internationally designated site[a].

Professional judgement is required to identify where on the spectrum between high and low sensitivity a receptor lies, taking into account the likely effect and the value of the ecological asset. A habitat may be highly valuable but not sensitive, alternatively it may be less valuable but more sensitive to dust deposition. For the sensitivity of ecosystems to dust deposition the IAQM recommends that an ecologist is consulted to determine the potential effects on plant communities.

High sensitivity receptor
- locations with an international designation and the designated features may be affected by dust soiling
- locations where there is a community of a particularly dust sensitive species such as vascular species included in the Red Data List For Great Britain.
- an indicative example is a Special Area of Conservation (SAC) designated for acid heathlands adjacent to a minerals development releasing alkaline dusts.

Medium sensitivity receptor
- locations where there is a particularly important plant species, where its dust sensitivity is uncertain or unknown;
- nationally designated site and the designated features may be affected by dust deposition; or indicative examples include Sites of Special Scientific Interest (SSSIs) or a local wildlife sites with very specific sensitivities

Low sensitivity receptor
- locations with a local designation where the features may be affected by dust deposition.
- an indicative example is a local Nature Reserve with dust sensitive features.

[a] Special Conservation Areas (SAC) and Special Protection Areas (SPA) designated under the Habitats Directive (92/43/EEC) and RAMSAR sites
[b] Cheffing C. M. & Farrell L. (Editors) (2005), The Vascular Plant. Red Data List for Great Britain, Joint Nature Conservation Committee

Figure 1. Box 5 of IAQM Guidance on Assessment of Mineral Dust for Planning

[7] Institute of Air Quality Management (2016). Guidance on the Assessment of Mineral Dust Impacts for Planning (v1.1)

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25. We are therefore unsure why the Air Quality Report considers Brockadale as a Low Sensitivity Receptor, as no justification or clarification is provided within this report, nor does there appear to be expert ecological advice provided in the assessment process.

26. Given the statements made by experienced botanists highlighting concerns over this application, their professional judgement of these impacts should be taken into account when undertaking air quality assessments on the site.

27. Furthermore, it is widely accepted that particles less than 10 µm have the ability to impact upon plant species. Research undertaken into the impact of quarry dust, specifically limestone quarries, by Farmer in 1993 highlighted that composition of dust varies greatly, with particles between 0.01-5000µm, putting these dust particles into the feasible range of impacts.

28. No confidence has been provided that proposed mitigation is sufficient to protect this sensitive site from impacts, as it currently relates to damping down when *visible* particles are present (generally speaking the human eye can only detect particles above 60µm). This proposal is therefore inadequate to prevent the impact of dust on the habitats present at Brockadale.

29. Whilst a vegetated screening buffer may be proposed under condition, it should be remembered that this border will not always be in leaf and impacts will likely still occur for half the year when the vegetation is bare. It is therefore imperative that a screening buffer alone is not the sole mitigation implemented on the site.

30. Research published in 2013[1] on ancient grassland concluded that these habitats may take up to **150 years to recover** from impacts. However, we anticipate that impacts to Brockadale could be **irreversible**, no matter how long is given, due to the number of species present not found elsewhere.

31. As described by NERC (Natural Environment Research Council) in 1982:

> *'The presence and beauty of rare species are often used as an argument for conservation. Certainly, rare species provide an intriguing scientific problem because the reasons for the rarity of many of them are not understood. However, rare species are also perhaps the most specialised and fragile component of ancient semi natural communities. Such vegetation is of great scientific importance as it provides a historical record of the combined effects of natural processes and land use. It is also a vital part of our natural heritage, a relic, along with ancient buildings, of the landscape in which our ancestors lived.'*

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Inadequate Restoration Proposals

32. There is no confidence nor evidence provided by the applicant that restoration proposals are possible.

33. Such attempts as described in the current proposals to create limestone grassland have failed elsewhere. Such examples include Womersley Quarry which found the use of limestone fines to result in a substrate that was very difficult to seed and created numerous run-off complications resulting in a number of failed attempts to create this habitat. The current proposals to repeat this failed process at Went Edge Quarry are therefore concerning and unlikely to be successful based on the current information available. **We therefore strongly recommend that a decision to approve this application is not based on the restoration proposals.**

34. In accordance with NPPF and local policy, there is a requirement to demonstrate **measurable** biodiversity net gain for a site. This has not been demonstrated at this time and we fear will not be possible to achieve should impacts occur on the SSSI which cannot be mitigated. Even if demonstrated achievable, the restoration **cannot be considered as a Biodiversity Net Gain under current policy** due to the substantial time lag between before proposals will be enacted.

35. In line with emerging policy and legislation (Environment Bill) with regards to Biodiversity Net Gain, where it is not achieved within a proposal, **permission should only be granted in exceptional circumstances**.

36. The restoration proposals therefore require significant revision and should be led by an Ecological Management Group, with the quarry agent as a member, but not organiser.

Legal Documents

37. We have previously highlighted a number of concerns with regards to the legal agreements drafted.

38. These include:

- The responsible parties need clarification so that the scheme is enforceable, as the quarry is currently for sale, the new owners/operators will need to be made aware of their responsibilities to deliver such a scheme
- Clarity is required over responsibilities for delivery of restoration and ongoing management
- The current proposed funds are insufficient to cover any management of the site after restoration. Based on costing undertaken by the Trust a minimum of £220,000 is considered appropriate to effectively manage the site, in the proposed condition, for up to 25 years. Without this cost included within the S106, it is very unlikely there will be any ecological gains from the proposed restoration.

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Enforcement

39. The quarry agent has been subject to a number of enforcement cases from Natural England and a number of breaches of planning have been reported to NYCC. This includes an ongoing enforcement case from Natural England for damage to the SSSI by the quarry for which compensation is still to be agreed. Consideration must therefore be made to the appropriateness to determine this application while ongoing enforcement action is being undertaken.

40. These cases also demonstrate that there have been impacts to the SSSI from the quarry workings previously with no evidence to suggest this will change.

41. Given the quarry is up to sale, it is difficult to know the ability to enforce both planning conditions by the LPA and SSSI adherence by Natural England.