



PLANNING COMMITTEE: 16TH FEBRUARY 2023

Report of: Corporate Director of Place & Community

Contact for further information:

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SUBJECT: PLANNING APPLICATION REF. 2022/0769/FUL

PROPOSAL: Variation of Conditions No. 2, 3, 5, 6, 8 and 18 imposed on planning permission 2019/0747/FUL to amend the growing and incubation rooms from portal framed buildings to polytunnels and construction of temporary vehicular access to site (part retrospective).

APPLICANT: Smithy Mushrooms (VAR)

ADDRESS: Bungalow Farm, Heatons Bridge Road, Scarisbrick

REASON FOR CALL IN:

Councillor Fowler: To consider impact on greenbelt due to changes in buildings and impact the temporary new road will have on current highways and safety.

Councillor Marshall: The highway entrance has not got the correct access and the road is very narrow at this point. They have piled the area without permission. Poly tunnels may leak noxious gas and smells into the air. There is no main sewage in the Area and no septic tank on plans.

The application was deferred following the Committee Meeting of 24 November 2022 and deferred by the Applicant in January 2023. As such an update is provided at paragraphs 11.1-11.4 of the report.

Wards affected: Scarisbrick

1.0 PURPOSE OF THE REPORT

1.1 To advise Planning Committee on an application which seeks a variation to planning conditions 2, 3, 5, 6, 8 and 18 approved under application ref: 2019/0747/FUL.

2.0 RECOMMENDATION TO PLANNING COMMITTEE

2.1 That the application be GRANTED subject to conditions.

3.0 THE SITE

- 3.1 The application site is located to the south of the Leeds and Liverpool Canal, to the southeast of Heatons Bridge. Access to the site was formerly taken via a field access direct from Heatons Bridge Road however an area of hardstanding has been installed to create a temporary access. The site is currently open land, and is located in part to the rear of existing agricultural buildings.
- 3.2 The site is located on the edge of the settlement of Heatons Bridge, which is sited around Heatons Bridge Road and Smithy Lane, with the main residential area being on the west side. The settlement includes commercial uses including a vehicle repair garage, public house, holiday-park, and a cluster of light industrial units on Smithy Lane. Heatons Bridge Farm is a distributor centre for the export of farm produce to the catering trade.
- 3.3 There are residential properties to the south east, south west and west of the site. The site is located to the east of the detached residential properties at 61a and 79 Heatons Bridge Road.

4.0 PROPOSAL

- 4.1 The application is for the variation of Conditions No. 2, 3, 5, 6, 8 and 18 imposed on planning permission 2019/0747/FUL to amend the growing and incubation rooms from portal framed buildings to polytunnels and construction of temporary vehicular access to site. The application is partly retrospective in that the temporary access has already been constructed.
- 4.2 Members will be aware that planning application ref: 2019/0747/FUL was previously recommended for approval to the Committee in November 2020. That recommendation was overturned by Members and the application was refused. The applicant subsequently appealed to the Planning Inspectorate.
- 4.3 The decision by the Inspector was to allow the appeal subject to several conditions. Although similar in content, the conditions imposed by the Inspector do not numerically match those initially recommended by officers as part of the original report.

5.0 PREVIOUS RELEVANT DECISIONS

- 5.1 2022/0211/CON - Approval of details reserved by condition no's 6, 11, 12, 13, 18, 19, 21 and 23 of planning permission 2019/0747/FUL relating to; foul drainage; cycle and motorcycle parking; charging points; landscaping; lighting; biomass boiler details; an ornithological watching brief and a construction management plan - Details approved
- 5.2 2019/0747/FUL - Construction of a mushroom farm in conjunction with the agricultural business, Smithy Mushrooms Limited, to include portal frame

buildings, car parking, hardstanding and sustainable drainage system - Refused (Allowed at appeal)

6.0 OBSERVATION OF CONSULTEES

6.1 Natural England - 17/08/22

Natural England is not able to fully assess the potential impacts of this proposal on statutory nature conservation sites or protected landscapes or, provide detailed advice on the application.

6.2 Canal and River Trust - 22/08/22

General advice regarding the drainage strategy for the site. Would welcome clarification as to whether drainage ditches ultimately discharge into the canal. If this is the case we would be concerned about potential secondary discharge of foul waste into the canal.

6.3 Canal and River Trust - 29/08/22

Note the additional information which confirms that the ditches which cross the site would appear to ultimately discharge into the canal via third party ownership. As this would be secondary discharge no further consent would be required from the Canal and River Trust. It is noted that the foul water would go through various stages to be treated before being discharge. This is a matter for the Environment Agency to satisfy themselves as the regulatory body.

In conclusion provided the Environment Agency are satisfied with the foul and surface water discharge then the Trust would have to accept the arrangements and monitor any issues that may occur in the area in terms of water quality.

6.4 MEAS - 31/08/22

Condition 2 - Approved plans The applicant intends to alter the proposed design in relation to the incubation and growth rooms only, preferring the new proposal of polytunnels over the previously accepted steel frame design. Comparison of the size, scale and height of the two designs shows these variables will remain largely the same and as such there are no additional ecological or HRA impacts. I advise the variation of condition to be acceptable from an ecological perspective.

I advise the HRA does require updating to ensure the amended proposal is compliant with the Habitats Regulations.

Condition 3, 5, 6 and 7 - Both the original condition and this proposed variation have no ecological implications and no comment is required.

Condition 18 - Lighting scheme The majority of the previously accepted lighting scheme will remain unchanged, with only the area now proposed as housing polytunnels requiring approval. Comparison of the new and previously accepted lighting schemes show the lighting types have changed at the SE perimeter but that expected spills and other lighting impacts will not be significantly increased. I advise the variation of condition to be acceptable from an ecological perspective.

6.5 MEAS - 09/11/22

The applicant has submitted an updated shadow HRA in relation to the revised plans (*Smithy Mushrooms, Heatons Bridge Road, Scarisbrick, Shadow Habitats Regulations Assessment, TEP, 04/10/2022*). The shadow HRA includes the revised elements of the proposal and includes the same conclusions for Test Of Likely Significant Effects and Appropriate Assessment, including mitigation measures which have been secured by planning condition. I advise the shadow HRA is accepted and the application remains HRA compliant.

6.6 Environment Agency - 05/10/22

We have reviewed the updated drainage strategy report, prepared by The Environmental Protection Group (ref: EPG-8954-DS-RP-01, revision 5.0, dated 30 June 2022). We have no objection to the proposed variation of Conditions 6 (Foul drainage)

6.7 LCC Highways - 19/08/22

The variation of conditions relates to the amendment to the construction of the proposed growing and incubation rooms from portal framed buildings to polytunnels and does not alter the previously agreed highway access details therefore LCC Highways have no objection to the variation of these conditions.

It would appear that the temporary access is already in use by the applicant. Whilst LCC Highways has no objection to the construction of a temporary vehicular access at this location, the construction of the access must be carried out under an appropriate legal agreement with the Highway Authority under the Highway Act 1980.

I have contacted the officers dealing with both s184 agreements and s171 licences

and they can find no record of an application for a temporary access at this location.

LCC Highways has no objection in principle to the proposed residential development and is of the opinion that the proposed development should have a negligible impact on highway capacity within the immediate vicinity of the site.

6.8 Lead Local Flood Authority - 19/08/22

The Lead Local Flood Authority has no objection to the variation of conditions application. Recommend informative note.

6.9 Environmental Health Officer - 08/11/22

Lighting

I have reviewed the submitted lighting assessment which includes a detailed lighting contour.

The submitted lighting contours adequately demonstrate that the vertical illumination of neighbouring premises is in accordance with the recommendations of the 'Institution of Lighting Professionals in the 'Guidance Notes for the Reduction of Obtrusive Light'. The details submitted for approval shows measures which prevent glare and sky glow by correctly using, locating, aiming

and shielding luminaires. In light of this information I am satisfied that the wording of the condition has been satisfied and may be discharged.

Noise

From an Environmental Health perspective there is the potential for noise associated with the operation and use of the site to impact on the amenity of the area. A noise assessment has previously been provided by the applicant to support the previous application (2019/0747/FUL). The noise assessment titled "Smithy Mushroom Ltd, Heaton's Bridge Road, Scarisbrick, Ormskirk carried out by Miller Goodall Ltd, dated 17/7/2019, reference 101985_V03" is deemed to be relevant to the current application, given the operations, movements and plant and equipment supporting the site have not altered significantly since the previous assessment was made.

The noise assessment provides a full assessment of the current background conditions and an assessment of the noise generated by the operation of the site. The assessment was carried out in accordance with the requirements of BS4142, BS8233 and WHO guidelines. The assessment acknowledges the overall noise impact of the operations of the proposed use are low. The predicted noise levels at the nearest residential dwellings when assessed to BS4142 detail the Rating Level to be 8dB below the prevailing background level. This indicates that minimal noise impacts will be perceived by the residents of the nearest noise sensitive properties. Several conditions were previously suggested to control noise from the proposed use, and it is deemed acceptable that these should be reimposed on any permission granted.

Air Quality

There is the potential for air quality issues associated with the construction, operation and use of the site to impact on the locality. The operational phase of the proposed use details the need to install a biomass boiler for space heating. The operation of the boiler as well as other air quality/odour impacts associated with the proposed use are subject to review in an updated air quality assessment which has been submitted in support of this application. The air quality assessment titled "Smithy Mushroom Ltd, Heaton's Bridge Road, Scarisbrick, Ormskirk carried out by Miller Goodall Ltd, dated 4/7/22, reference 101986_V03" is relevant to the current application, and assesses the site in terms of the national standards and guidance relating to fugitive and point sources of emissions and odours. The air quality assessment provides a full updated assessment of the current background air quality conditions prevalent at the proposed development site and employs the correct methodology and assessment criteria when determining the potential impacts.

With respect to the construction phase the assessment details that with the implementation of mitigation measures, the dust impacts from the construction activity are not significant, when assessed in accordance with IAQM guidance. A condition requiring a construction environmental management plan is suggested to allow for the mitigation measures to be documented. The development shall be carried out in accordance with any detailed mitigation such as the inclusion of buffer zones etc.

Traffic emissions are reviewed in the assessment and are not expected to have a significant impact on local air quality when considered in accordance with IAQM Guidance. The odours associated with the development are reviewed in the assessment and again is not considered to have a significant impact on nearby residential receptors.

Target Emission Rates have been set for the proposed combustion (biomass) plant which will ensure that the risk of exceedance of the relevant air quality

objectives for PM10 and NO2 is unlikely. A condition requiring full details of the biomass plant is suggested to ensure once finalised these can be reviewed to ensure they meet with the set target emission rates specified in the assessment.

7.0 OTHER REPRESENTATIONS

7.1 Scarisbrick Parish Council - 18/01/23

Councillors unanimously rejected the retrospective application for a temporary construction access at the last meeting. This was a responsible decision based on considerations of road safety and their local knowledge of the B5242. Officers advised that this approach would be indefensible at any subsequent appeal because the access would be constructed to the same standards of safety required by the planning inspector at the previous appeal, a process that would be secured by condition. Your officers' intentions are understandable but we fear are based on a false hypothesis. The assumption they make is that the position of the access can be relocated along the site frontage whilst not impacting upon the standards of visibility splay and swept path radii considered appropriate by the planning inspector. We believe that this is not the case and the only location where the required splays and radii are possible is that which the planning inspector has approved but the applicant chooses not to develop. They are not possible elsewhere and this per se constitutes grounds for refusal and enforcement of the approved access. Please consider the following. Drawing SK.32.4: This is the only drawing of the temporary access that has been submitted with this application.

Please note: The position of the access approved by the planning inspector is shown in outline and labelled "site entrance location, etc". We henceforth refer to it as the definitive access. The position of the access for which retrospective permission is now sought is labelled "proposed temporary site entrance". This lies about 30m to the southeast of the currently undeveloped definitive access. The drawing shows a side-by-side comparison of the swept path radii of both accesses. Those of the definitive access are just about contained within the applicant's curtilage, particularly towards the south-east. It would not be possible to reproduce this arrangement for the temporary access; its position ensures there is insufficient land available within the applicant's curtilage. As a result, the applicant is advocating significantly reduced swept path radii of 6m. The drawing does not include visibility splays for the proposed access but the effect of shifting the access to the south-east is illustrated below. The diagram is for illustrative purposes only, showing how the visibility splay of 160m required by the inspector becomes foreshortened as the access shifts towards the adjacent boundary hedge. Estimating the degree of shortening requires the applicant to submit scaled drawings of the visibility splays which have not been supplied. However, as this is a retrospective application the access is already in situ and the visibility splay can be measured in reality. In response to residents' concerns we have measured it at an unacceptable 85m, which would already represent a breach of planning control under your officers' preferred approach.

Drawing VN81164-TR102: This forms part of the application you are now being asked to approve. Please note the following: The drawing was supplied by Vectos, the applicant's consultant. Vectos have illustrated the extent of the swept path radius necessary for an HGV to turn left out of the site without crossing the central white line and compromising road safety. The amount of land required to

accommodate the swept path radius significantly influences the final position of the access road within the applicant's curtilage. The drawing shows that this access road and this swept path radius can be accommodated within the applicant's curtilage. However, there is a significant problem. This is not a drawing of the proposed temporary access. It is, in fact, a drawing of the definitive access which was considered and approved at appeal but the applicant has chosen not to develop (in breach of planning control). VN81164-TR102 was submitted with the original application, not the current application. The applicant has NOT submitted drawings of visibility splays or swept path analysis of the proposed temporary access. The two will not be the same because the accesses are in completely different positions within the curtilage. What is achievable for one is not achievable for the other, we explain below. As we have seen from drawing SK.32.4, the proposal currently under consideration puts the access significantly to the RIGHT of that illustrated in VN81164-TR102. Such are the constraints of the curtilage that any movement at all in this direction would require adjacent third party land to accommodate the prescribed swept path radius. The developer's inability to supply the required swept path radius for the temporary access within his own curtilage is already causing exiting construction traffic to cross the central white line of Heatons Bridge Road (see below). As this is a retrospective application the access is already in situ and the inadequacy of the swept path radius can be assessed in reality. There is little point in your officer's applying conditions with which the applicant can't comply. What drawing VN81164-TR102 demonstrates beyond doubt is that the ONLY position where an access can provide adequate swept path radii is where the planning inspector has already given approval – nowhere else. The same applies to visibility splays as we have demonstrated above. (Your officers refer to drawing VN81 164-D104 as evidence that visibility splays can be achieved, but this is also a drawing of the access that has extant planning consent, not a drawing of the temporary access. It demonstrates that the only position in which visibility splays of 160m are possible is that which the inspector has given approval but the applicant chooses not to develop). We are aware that planning officers will dismiss our evidence on the basis that LCC Highways have expressed no objection. This is the reason expert opinion commissioned and submitted by Scarisbrick Parish Council was also summarily dismissed. It is therefore important to look at what LCC actually wrote (original document rather than your supplied summary). They talk about having no objection, in principle, provided that details of the temporary access are submitted prior to commencement. It is clear that they are also short on detail and have asked for it to be supplied by means of a planning condition (which planning officers have neglected to include). This is hardly an endorsement that would fill one with confidence, surely such detail should be considered prior to planning permission being granted and give everyone the opportunity to comment. Policy GN3 of the Local Plan makes establishment of safe access a planning issue. Responsibility lies with the local planning authority, not LCC Highways. It is not unreasonable to ask the developer to supply details of visibility splays and swept path radii before permission is granted. Indeed, as a retrospective application it is also possible for your officers to make this assessment on the ground. If the temporary access can be demonstrated to fulfil the planning inspector's stringent requirements then there is no issue. If it can't, then the access as originally approved should be enforced. To do otherwise invites a constant stream of enforcement action whilst an inadequate and unsafe access continues to be used. As you are aware, the developer has already demonstrated a complete disregard for statutory regulation, licensing, or planning

control. Finally, experience tells us that that the battle is won or lost on the opinion of LCC Highways. No other information is taken into account and once they have ruled their decision can never be challenged. The conditions that your officers apply to planning consent then become important as these will form the statement of standards to which the developer should comply, and the basis for enforcement when he can't (or won't). The planning inspector showed considerable foresight in applying planning conditions. He insisted that the access he approved should be constructed to at least base course level before any other development took place. Unfortunately this continues to be flouted by the developer but was nonetheless a sensible and pragmatic decision. Please compare this approach to that of your officers with particular reference to the access: 8. Prior to the first use of the hereby permitted development the access and road shall have been implemented in accordance with the Proposed Access Layout drawing numbers VN81 164-D104 (including visibility splays measuring 2.4m x 160m in both directions) and VN18 164-TR102 and constructed in accordance with the Lancashire County Council Specification for Construction of Estate Roads to at least base course level, and all construction vehicles shall enter and leave the site from the new site access. Reason: To safeguard the safety and interests of the users of the highway. SPC respectfully submits that this is a significant dilution of the inspector's intentions with regard to road safety which is not acceptable. It allows the developer to defer considerations of road safety (specifically, visibility splays and swept path radii) until the site is completed and producing mushrooms. It effectively gives permission for the entire construction phase to be completed before establishing safe access. We suggest replacing the underlined section with "No further development, other than works to implement the temporary access, shall commence until...". The inspector stated that his approach to conditions was to lend clarity and simplicity and the suggested wording closely follows his own in addressing the issue of road safety. It makes it completely clear that work has to halt until safe access is established, which was the inspector's intention in the first place.

7.2 Scarisbrick Parish Council - 04/09/22

This description does not correspond to the application that has been submitted. The applicant is applying for permission to vary conditions no. 2, 3, 5, 6, and 18 made in relation to the appeal decision notice (APP/P2365/W/21/3269788), not 2019/0747/FUL. No conditions were imposed in relation to "planning permission" 2019/0747/FUL because permission was refused, not granted.

This goes beyond pedantry. Whilst there is some overlap in the numbering system of conditions in the officer's report for 2019/0747/FUL and in APP/P2365/W/21/3269788 they are not identical. For instance, conditions 6 and 18 each refer to completely different topics depending on whether one chooses to read 2019/0747/FUL (as directed by the planning department) or APP/P2365/W/21/3269788 (which is, in fact, the extant planning consent to which the applicant refers). In addition, the applicant makes no reference to a change in condition 8. This is at best confusing and at worst misleading. I'm sure that the public would appreciate clarification as to precisely what is being considered in relation to this application because this will clearly influence any comments.

7.3 Scarisbrick Parish Council

Ongoing concerns with regard to the road safety implications of this development. We have commissioned a report by an independent expert on the retrospective application for a temporary construction access which should be read in conjunction with this objection. The report has been supplied by CBO Transport Ltd. Consider there to be a breach of planning control as works have begun in advance of the approved access being completed and the site continues to operate.

For reasons set out in the report by CBO Transport Ltd the Parish Council does not believe that the approved access can be delivered without third party land.

Raise concerns that the access would be substandard.

Seek reassurance that the required visibility splays can be achieved as required by the Inspectorate

Object to the temporary access. Unclear why it is needed. No reference is made to visibility splays and the swept path is inferior to the access that has planning permission.

Consider the temporary access to be inappropriate development in the Green Belt without very special circumstances

The applicant's drainage strategy has NOT been revised to take into account the use of polytunnels and this increases the risk of downstream flooding due to unattenuated rainwater run-off.

The diverting and partial culverting of an ordinary watercourse was implemented without the benefit of land drainage consent. This has the potential to increase the risk of upstream flooding and further illustrates the applicant's disregard for statutory regulation (Land Drainage Act 1991).

Proposals for foul-water drainage involve the use of a non-mains foul drainage system. National planning practice guidance (PPG ref ID 34-020- 20140306) advises that such applications should be supported by sufficient information to understand the potential implications for the water environment. No assessment of the risks of pollution to surface waters has been provided nor has a case been submitted for not connecting to the public sewer.

The air quality report utilises outdated data in assessing baseline air quality contrary to advice from DEFRA. It should therefore be regarded as unreliable.

The impact of trackout dust from the site has been significantly misjudged due to erroneous data which underestimates the number of HDV movements. This impacts on local air quality and therefore residential amenity.

The applicant's air quality consultants identify a medium risk from earthworks in the construction phase. Good practice mitigation measures have been recommended but continue to be ignored with significant impact on residential amenity.

7.4 Letters of representation have been received which can be summarised as follows:

- Concerns regarding access to the site and impact on highway and pedestrian safety. Consider the temporary access should be subject to the same visibility requirements as a permanent access. Access should be constructed first as per Inspector's decision. Road is not suitable for large HGVs. There are no warning signs along the road about lorries turning.
- The buildings need to be as per the original planning permission. Concerns that the building is not sealed. The poly tunnels will leak spores and are a danger to health. Concerns regarding respiratory allergies in the growing of exotic mushrooms and reduction in air quality.

- Concerns regarding impact on neighbour amenity as a result of lorry movements, noise levels of refrigerated trailers and lighting from the polytunnels.
 - No 79 Heaton's Bridge Road should not be referenced as the address of the site as it has not involvement with Smithy Mushrooms.
 - Concerns about loss of trees during nesting season
 - Conditions originally imposed in the appeal have been ignored. There is no guarantee that this would be adhered to in the future.
 - The development of this agricultural land to mass produce food is not appropriate in this residential location.
 - The application should be rescinded before everything is gone too far and the Green Belt is ruined forever.
 - The land was never appropriate for this development. The application should never have been approved.
 - Concern regarding drainage of foul water into the canal. Concerns about drainage into the ditch which is close to my home.
 - There is no screening to the NE and NW of the development.
 - Concerns regarding the construction methods of the sub base.
 - Concerns regarding the attenuation basin - its location and its impact on neighbouring land / potential for flooding. Consider the detention pond is on land outside the ownership of the applicant.
 - I would like to object to the draining system that is proposed for the Smithy Mushrooms development. It is causing problems on my site and measures the developers have taken have not resolved the problems.
 - I need assurances from yourselves that if you agree to pass this planning application that this flooding situation will not happen. You are quite aware of the serious flooding at Heaton's Bridge in the past. You have granted planning permission to take the water uphill to the canal. I am under the belief that they own all the land to the canal.
 - Drainage pumps were running day and night keeping myself and my wife awake at night until we complained to the environmental health department at WLBC. Concerns also regarding lighting being used at night
 - They still do not have the correct lines of sight at the entrance site and if passed it will create an increased danger to other road users. They do not own the land in the 160 metre sight lines either way
- I have no objections to the general principle of the application but ask that the Council address the potential drainage issues. I do not wish to see existing drainage issues exacerbated.

8.0 SUPPORTING INFORMATION

- 8.1 Air Quality Assessment
 Lighting Assessment
 Planning Statement
 Drainage Strategy
 Flood Risk Assessment
 Drainage Strategy Response Letter
 Shadow Habitats Regulations Assessment
 Copy of letter to applicant from LCC Highways regarding the temporary works

9.0 RELEVANT PLANNING POLICIES

9.1 The National Planning Policy Framework (NPPF) and the West Lancashire Local Plan 2012-2027 Development Plan Document provide the policy framework against which the development proposals will be assessed.

9.2 The site is located within the Green Belt as designated in the West Lancashire Local Plan 2012-2027 DPD.

9.3 **National Planning Policy Framework**
Promoting healthy and safe communities
Achieving well-designed places
Building a strong, competitive economy

9.4 **West Lancashire Local Plan Policies**
SP1 - A Sustainable Development Framework for West Lancashire
GN1 - Settlement Boundaries
GN3 - Criteria for Sustainable Development
EC2 - The Rural Economy
IF2 - Enhancing Sustainable Transport Choice
EN2 - Preserving and Enhancing West Lancashire's Natural Environment

Supplementary Planning Document - Design Guide (January 2008)

Supplementary Planning Document, Development in the Green Belt (October 2015)

10.0 OBSERVATIONS OF CORPORATE DIRECTOR OF PLACE AND COMMUNITY

Background / Principle of development

10.1 Smithy Mushrooms Limited (SML) has operated a mushroom farm at 229 Smithy Lane, Scarisbrick for over 25 years. SML specialises in the production of exotic mushrooms for the UK market, and is one of the leading producers of exotic mushrooms in the UK. SML currently supply large retailers, such as Marks and Spencer and Tesco, and the food service market across the UK through the major food service wholesalers and food processors/ready meal companies.

10.2 The principle of the development of this site has been accepted via the grant of planning application ref: 2019/0747/FUL at appeal on 22nd November 2021. This application seeks to make a variation to that application.

10.3 The variation sought now comprises the replacement of the portal frame buildings, that would have been used as growing and incubation rooms, with polytunnels structures. The other portal frame buildings as originally approved would remain. The layout of the site will remain as approved with landscaping, parking, turning access roads and attenuation tank remaining in the same positions.

10.4 The matters to be considered in this application therefore are:

- 1) whether the replacement of the portal framed building (growing and incubation rooms) with polytunnels is acceptable
- 2) if the creation of a temporary access to the site is acceptable.

Impact on the Green Belt

- 10.5 Policy GN1 of the West Lancashire Local Plan states that '*development proposals within the Green Belt will be assessed against national policy and any relevant Local Plan policies*'. Paragraph 149 in the National Planning Policy Framework states that '*a local planning authority should regard the construction of new buildings as inappropriate in Green Belt*'. There are 7 exceptions to this, including '*buildings for agriculture and forestry*'.
- 10.6 It has been accepted by the Planning Inspector that the process of growing mushrooms is considered to comprise agricultural development. The polytunnel structures that are proposed are required in connection with that use and have been justified as part of the current and previous submissions. On that basis the principle of the development to site polytunnels for mushroom growing on the land is considered to be acceptable.
- 10.7 The Council is not required to assess the impact of the development on the openness of the Green Belt. However in addition to the principle of development being acceptable, it is noted that the structures proposed have a lower roof height than the previously approved buildings and therefore the impact on the openness of the Green Belt would be less than that of the approved scheme.
- 10.8 In terms of the temporary access it is proposed this would remain in place until the approved access is fully constructed. The land on which the temporary access has been constructed forms part of the approved layout where landscaping is proposed. The temporary access would be removed and the land remediated in accordance with the approved scheme.
- 10.9 In accordance with paragraph 150 of the NPPF engineering operations are another form of development which is not inappropriate within the Green Belt provided they preserve openness and do not conflict with the purposes of including land in the Green Belt. The temporary access is considered to be an engineering operation and the principle of the development is therefore acceptable.
- 10.10 Due to the position of the access it will be visible within the streetscene however it is at ground level and is situated close to the location of the approved access. As the access proposed here is only temporary in nature and will be eventually removed once the approved access is fully constructed it is considered that there would be no additional impact on the openness of the Green Belt and the proposal would not conflict with any purpose of including land within the Green Belt.
- 10.11 It is therefore considered that the proposal complies with the requirements of the NPPF and with local plan policy GN1.

Design/Layout

- 10.12 Policy GN3 along with the Council's SPD Design Guide requires that new development should be of a scale, mass and built form, which responds to the characteristics of the site and its surroundings.
- 10.13 Polytunnels are considered to be an appropriate form of development for the proposed use. Such structures are widely seen across the borough and in many rural locations. The polytunnels will be located on the site in replacement of previously approved portal frame buildings and, due to their height and positioning within the site, it is considered that there would be no additional impact on the character of the landscape than the approved scheme. On that basis the proposal complies with the requirements of local plan policy GN3.

Residential Amenity

- 10.14 Policy GN3 of the Local Plan states that development should 'retain or create reasonable levels of privacy and amenity for occupiers of neighbouring and proposed properties.
- 10.15 Having regard to the existing approved scheme and the design, size and position of the proposed polytunnels it is considered that the development would not result in any additional harm to amenity of neighbouring properties as a result of overshadowing or loss of privacy.
- 10.16 A Noise Impact Assessment has been submitted with the application which has been considered by the Council's Environmental Health Officer. It is considered that conditions imposed by the Planning Inspector relating to noise limits and operation of the site remain relevant and are therefore recommended as part of this report.
- 10.17 An Air Quality Assessment has been submitted with the application which provides a review of existing air quality in the vicinity of the proposed development and an assessment of the impact of the proposed development on local air quality during both its construction and operation phases in terms of odour, road traffic emissions and operation of biomass plant. The AQA concludes that the impact on local air quality is considered to be insignificant. The Council's Environmental Health Officer has reviewed the information submitted and is satisfied that the methodology used is acceptable and agrees with the conclusion that the potential impact on air quality is low.
- 10.18 Concerns have been raised regarding the potential for lighting to have an impact on nearby residents. The Planning Inspector imposed a condition requiring details of lighting to be submitted for approval and the Applicant has submitted an external lighting layout with this submission. The Council's Environmental Health Officer considers the details provided are acceptable to discharge this condition.
- 10.19 I am satisfied that subject to the imposition of suitably worded planning conditions the development would not have any significant impact on neighbouring residents in accordance with Policy GN3 of the Local Plan.

Highways

- 10.20 Policy GN3 of the West Lancashire Local Plan 2012-2027 DPD states that development should incorporate suitable and safe access and road layout design in line with latest standards. Parking should be provided in accordance with policy IF2.
- 10.21 The proposal would not create a requirement for any additional parking above that already approved and would not have an impact on the approved parking layout. I have consulted the Highway Authority in respect of the proposal who have indicated there is no objection in principle to the proposed development and is of the opinion that the proposed development should have a negligible impact on highway capacity within the immediate vicinity of the site. The Highway Officer advises that works within the highway to enable the construction of the temporary access requires the applicant to enter into a legal agreement with the Highway Authority. I note that the applicant has now provided a copy of the agreement between themselves and the Highway Authority regarding the temporary works. Whilst it is noted the construction of the temporary access has already been undertaken unauthorised works within the highway are a matter for the Highway Authority to investigate. Subject to recommended conditions I am satisfied the development would comply with the requirements of local plan policy GN3.
- 10.22 Notwithstanding the above, discussion is ongoing with LCC in respect of the most recent objection lodged by Scarisbrick Parish Council and with regard to ongoing progress with the Section 278 Agreement and further information will be provided by way of late report.

Drainage

- 10.23 The NPPF advises that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere, and that major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate, and the systems used should take account of advice from the Lead Local Flood Authority(LLFA); have appropriate proposed minimum operational standards; have maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development; and, where possible, provide multifunctional benefits.
- 10.24 Policy GN3 of the Local Plan advises that the Council will ensure development does not result in unacceptable flood risk or drainage problems by requiring development to demonstrate that sustainable drainage systems have been explored alongside opportunities to remove surface water from existing sewers.
- 10.25 The site is located within Flood Zone 1, meaning that the site is least susceptible to flooding. The application is accompanied by both a Flood Risk Assessment and a Drainage Strategy Report.
- 10.26 The submission has been assessed by the LLFA, Canal and River Trust and the Environment Agency. The Canal and River Trust raised some concerns regarding the drainage of water to the canal but recognised that this is a matter for the Environment Agency as the relevant regulatory body. No objection to the scheme has been raised by either the LLFA or the Environment Agency. Development in accordance with the drainage proposals put forward will be

secured by planning condition and on that basis the proposal is considered to comply with the requirements of the NPPF and local plan policy GN3.

Other matters

- 10.27 Concerns have been raised in regard to the loss of trees that has previously occurred. Trees within the site are not protected by Tree Preservation Order and nor are they afforded protection by being located within a Conservation Area. In addition the Inspector did not impose a condition requiring trees to be retained on site. Accordingly, whilst the loss of trees is regrettable, their removal is outside the control of the planning regime. It is noted that the approved landscaping scheme includes the planting of a large number of new trees and other plants which will mitigate the loss of the trees which have been removed.
- 10.28 Concern has also been raised about the potential for exotic mushrooms to cause respiratory allergies. This is not a matter for the Local Planning Authority, and not a material factor that can be taken into account in the assessment of the proposals.
- 10.29 Representations are noted which refer to ownership of the land and potential implications for the drainage scheme. The applicant has confirmed that all the land within the red-line of the application site is within their ownership and that the outfall from the proposed 2m detention pond will run into the Applicant's ditch, which is in their ownership.

11. UPDATE FOLLOWING PREVIOUS PLANNING COMMITTEE MEETING

The section acts to provide an update to members following their deferral of the application at planning committee held 24th November 2022. The application was deferred from the January 2023 by the Applicant meeting to allow the them time to await further correspondence from LCC Highways. At the time of writing no additional supporting information has been received by the Council from the applicant. The assessment below remains as seen by Members at the previous meeting however additional representations have been received and included within the report. Members will recall that the application was deferred for further consideration of issues relating to the main (permanent) access, temporary access and highway safety.

As detailed below the Council consulted the Highway Authority in respect of the current application; no objections were raised to the proposed temporary access. The Highway Authority advised that it would be necessary for the developer to enter into a legal agreement with Lancashire County Council as Highway Authority. The applicant has previously provided a copy of the s171 highway agreement between themselves and the Highway Authority regarding the temporary works.

In respect of the main access proposed condition no. 8 is identical to that imposed by the Planning Inspector when appeal ref: APP/P2365/W/21/3269788 was determined. The plan referred to in condition 8 was assessed by the Highway Authority who stated "I am of the opinion that Visibility Splays of 2.4m x

160m as shown within drawing number VN81164-D109 Rev B are achievable. The splay falls within the applicants control and/or within the adopted highway.”

It is the opinion of Officers that the applicants have provided adequate evidence to demonstrate an appropriate and safe access to the site can be provided. This has been agreed by the Highway Authority and the Planning Inspector. If the application were to be refused on this basis it is likely that the Council would be open to a costs claim at appeal stage given the previous approval of the main access under ref: 2019/0747/FUL (appeal ref: APP/P2365/W/21/3269788).

12. CONCLUSION

- 12.1 It is considered that the principle of agricultural development of a mushroom farm has been accepted by the granted planning permission 2019/0747/FUL at appeal. The proposal comprising polytunnels to replace the approved portal framed buildings and a temporary access would not result in a detrimental impact upon the character of the area. It is considered that subject to relevant conditions the proposal would not adversely impact on residential amenity, drainage or highway safety in the area. On that basis the proposal is considered to be compliant with the NPPF and Policies SP1, EN2, EC2, GN1 and GN3 of the West Lancashire Local Plan 2012-2027 DPD and the application is therefore recommended for approval.

13. RECOMMENDATION

- 13.1 That the application should be APPROVED subject to the following conditions:

1. The development must be begun not later than the expiration of three years from 22nd November 2021.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby approved shall be carried out in accordance with details shown on the following plans:

Plan reference SK.32.3, SK.32.2F and SK.0.1G received by the Local Planning Authority on 12th July 2022

Plan reference SK.32.4 received on 15th July 2022

Plan reference Sk.0.2C received on 10th November 2022

Reason: For the avoidance of doubt and to ensure compliance with the provisions of Policy GN3 in the adopted West Lancashire Local Plan 2012-2027 Development Plan Document.

3. The materials to be used on the external surfaces of the hereby approved portal framed buildings (brickwork, cladding and roofing materials) along with materials used in any hard surface shall be as outlined on the planning application form submitted under reference 2019/0747/FUL.

Reason: To ensure that the external appearance of the buildings and wider site is satisfactory and that the development therefore complies with the provisions of Policy GN3 in the adopted West Lancashire Local Plan 2012-2027 Development Plan Document.

4. Foul and surface water shall be drained on separate systems.

Reason: To secure proper drainage and to manage the risk of flooding and pollution and to ensure that the development complies with the provisions of Policy GN3 in the adopted West Lancashire Local Plan 2012-2027 Development Plan Document.

5. Prior to the buildings hereby approved being brought into use, surface water drainage shall be carried out in accordance with the submitted FRA & Below Ground Drainage Strategy received on 13th July 2022. Thereafter the drainage scheme shall be managed and maintained in accordance with the maintenance measures identified.

Reason: To prevent increased risk of flooding by ensuring the satisfactory storage of and disposal of surface water from the site and to comply with Policy GN3 in the adopted West Lancashire Local Plan 2012-2027 Development Plan Document.

6. Foul water shall be drained in accordance with the scheme approved under planning reference 2022/0211/CON. The scheme shall be implemented as approved, prior to the buildings being brought into use.

Reason: To secure proper drainage and to manage the risk of flooding and pollution and to ensure that the development complies with the provisions of Policy GN3 in the adopted West Lancashire Local Plan 2012-2027 Development Plan Document.

7. The development shall be implemented fully in accordance with the mitigation strategies described in: Revised SHRA (Version 2, TEP, May 2020, ref: 8076.002); Badger Survey- Land at Smithy Mushrooms, Pennine Ecological, 27th April 2020; and Water Vole Survey- Land at Smithy Mushrooms, Pennine Ecological, 27th April 2020.

Reason: To safeguard protected species and so ensure that the development complies with the provisions of Policy EN2 in the West Lancashire Local Plan 2012-2027 Development Plan Document.

8. Prior to the first use of the hereby permitted development the access and road shall have been implemented in accordance with the Proposed Access Layout drawing numbers VN81 164-D104 (including visibility splays measuring 2.4m x 160m in both directions) and VN18 164-TR102 and constructed in accordance with the Lancashire County Council Specification for Construction of Estate Roads to at least base course level, and all construction vehicles shall enter and leave the site from the new site access.

Reason: To safeguard the safety and interests of the users of the highway and to ensure that the development complies with the provisions of Policy GN3 and IF2 in the adopted West Lancashire Local Plan 2012-2027 Development Plan Document.

9. The development hereby permitted shall not be brought into use until the areas for the movement, loading, unloading and parking of vehicles have been provided, constructed and surfaced in complete accordance with the approved plans. These areas shall be retained at all times thereafter.

Reason: In order that adequate on site loading/unloading facilities are provided in the interests of highway safety and to comply with the provisions of Policy GN3 and IF2 in the West Lancashire Local Plan 2012-2027 Development Plan Document.

10. The development hereby permitted shall not be brought into use until the land between the existing highway boundary and the visibility splays indicated on the submitted plan VN81 164-D104 (visibility splays measuring 2.4m x 160m in both directions) has been cleared of all obstructions exceeding 1 metre in height. The land shall be so maintained thereafter at all times that the development is in use/operation.

Reason: To safeguard the safety and interests of the users of the highway and to ensure that the development complies with the provisions of Policy GN3 and IF2 in the West Lancashire Local Plan 2012-2027 Development Plan Document.

11. The development hereby permitted shall not be brought into use until the scheme for cycle and motorcycle parking as approved in writing by the Local Planning Authority under application ref: 2022/0211/CON has been implemented in accordance with the agreed details. Thereafter parking shall be maintained and retained for the life of the development.

Reason: To ensure that adequate provision is made for parking cycles and motorcycles on the site in accordance with Policy GN3 in the West Lancashire Local Plan 2012-2027 Development Plan Document.

12. The development hereby permitted shall not be brought into use until the scheme for Electric Vehicle Charging Points as approved in writing by the Local Planning Authority under application ref: 2022/0211/CON has been implemented in accordance with the agreed details. Thereafter it shall be maintained and retained for the life of the development.

Reason: In the interests of sustainability and air quality in accordance with Policy IF2 in the West Lancashire Local Plan 2012-2027 Development Plan Document.

13. The development hereby permitted shall not be brought into use until the landscaping scheme as approved in writing by the Local Planning Authority under application ref: 2022/0211/CON has been implemented in accordance with the agreed details.

Any trees or shrubs planted or retained in accordance with this condition which are removed, uprooted, destroyed, die or become severely damaged or become

seriously diseased within 7 years of planting shall be replaced within the next planting season by trees or shrubs of similar size and species to those original required to be planted.

Reason: To ensure that the site is satisfactorily landscaped having regard to the character of the area and the nature of the proposed development and to comply with Policy GN3 and EN2 in the West Lancashire Local Plan 2012-2027 Development Plan Document.

14. The rating level of noise from deliveries, internal activities and plant/machinery shall not exceed 41dB LAeq at the boundary of any nearby residential premises between the hours of 0700hrs and 2300hrs and 24 dB LAeq, between the hours of 2300hrs and 0700hrs on any day. All measurements and assessments shall be done in accordance with BS4142:2014+A1:2019 Method for rating and assessing industrial and commercial sound.

Reason: To safeguard local residents from noise and disturbance and to comply with Policy GN3 in the West Lancashire Local Plan 2012-2027 Development Plan Document.

15. There shall be no diesel powered vehicle/trailer mounted refrigeration units operated on stationary vehicles. Vehicle/trailer mounted refrigeration units must be connected to an electrical supply if required to power the unit. There shall be no vehicle/trailer mounted refrigeration units operated outside the hours of 0600hrs to 1900hrs on any day, whether or not on an electrical supply.

Reason: To safeguard local residents from noise and disturbance and to comply with Policy GN3 in the West Lancashire Local Plan 2012-2027 Development Plan Document.

16. Any sound produced by reversing alarms or indicators on vehicles on the site (other than delivery vehicles) shall not be clearly distinguishable above background noise at the boundary of any nearby residential premises.

Reason: To safeguard local residents from noise and disturbance and to comply with Policy GN3 in the West Lancashire Local Plan 2012-2027 Development Plan Document.

17. Heavy Goods Vehicles shall not enter or leave the site outside the hours of 0600hrs to 1900hrs on any day.

Reason: To safeguard local residents from noise and disturbance and to comply with Policy GN3 in the West Lancashire Local Plan 2012-2027 Development Plan Document.

18. The development shall be carried out in accordance with drawing no 019.040.E016 rev P2 Proposed external lighting layouts and lux plots received by the Local Planning Authority on 12th July 2022.

No additional external lighting shall be installed on the land and buildings without the prior approval in writing from the local planning authority. The development

shall be carried out in accordance with any approved lighting scheme and retained as such thereafter.

Reason: To minimise the visual impact of light on nearby residential properties in accordance with Policy GN3 in the West Lancashire Local Plan 2012-2027 Development Plan Document.

19. The biomass boiler shall be installed in accordance with the scheme approved by the Local Planning Authority under planning reference 2022/0211/CON. The approved scheme shall be fully installed and operating prior to the development hereby permitted being first brought into use. It shall thereafter be retained, maintained and operated to the approved specification

Reason: To safeguard local residents from noise and disturbance, and to comply with Policy GN3 in the West Lancashire Local Plan 2012-2027 Development Plan Document.

20. No manure or other based substrate not detailed in the planning application shall be used for the growing of mushrooms unless and until, a further odour assessment has been first submitted to and approved by the Local Planning Authority.

Reason: To safeguard the amenities of neighbouring occupiers, in respect of odour and to comply with Policy GN3 in the West Lancashire Local Plan 2012-2027 Development Plan Document.

21. The development shall be implemented in accordance with the Ornithological Watching Brief submitted to and agreed in writing with the Local Planning Authority under planning reference 2022/0211/CON.

Reason: To safeguard protected species and so ensure that the development complies with the provisions of Policy EN2 in the West Lancashire Local Plan 2012-2027 Development Plan Document.

22. High disturbance works must be temporarily suspended if local temperatures (as recorded by nearest Met Office data and/or available site specific measurements) are below zero degrees centigrade for a period of 7 consecutive days, and remain suspended until temperatures reach above zero degrees centigrade for a period of 3 consecutive days. The relevant nature conservation bodies should be informed of when works are suspended and re-commenced.

Reason: In the interests of biodiversity conservation and to comply with Policies GN3 & EN2 in the adopted West Lancashire Local Plan 2012-2027 Development Plan Document.

23. The development shall be implemented in accordance with the Construction Management Plan submitted to and agreed in writing with the Local Planning Authority under planning reference 2022/0211/CON.

Reason: To safeguard the safety and interests of the users of the highway and to ensure that the development complies with the provisions of Policy GN3 in the West Lancashire Local Plan 2012-2027 Development Plan Document.

24. Only mushrooms grown at the application site hereby approved or at Smithy Mushrooms Limited, 229 Smithy Lane, Scarisbrick shall be packed on the application site.

Reason: To protect the amenity of adjacent residential properties and so comply with the provisions of Policy GN3 in the adopted West Lancashire Local Plan 2012-2027 Development Plan Document.

25. The development hereby permitted shall be carried out in accordance with the Air Quality Assessment (Miller Goodall Ltd report no. 101986V3) received by the Local Planning Authority on 12th July 2022.

Reason: To protect the amenity of adjacent residential properties and so comply with the provisions of Policy GN3 in the adopted West Lancashire Local Plan 2012-2027 Development Plan Document.

26. The use of the temporary access shall cease within six months of the date of this permission unless otherwise agreed in writing by the Local Planning Authority. Within one month of the final use of the temporary access the land shall be reinstated in accordance with the landscaping scheme approved under planning reference 2022/0211/CON.

Reason: In the interests of public & highway safety and the appearance & character of the streetscape and to ensure that the development complies with the provisions of Policy GN3 and EN2 in the West Lancashire Local Plan 2012-2027 Development Plan Document.

13. SUSTAINABILITY IMPLICATIONS

- 13.1 There are no significant sustainability impacts associated with this report and, in particular, no significant impact on crime and disorder.

14. FINANCIAL AND RESOURCE IMPLICATIONS

- 14.1 There are no significant financial or resource implications arising from this report.

15. RISK ASSESSMENT

- 15.1 The actions referred to in this report are covered by the scheme of delegation to officers and any necessary changes have been made in the relevant risk registers.

16. HEALTH AND WELLBEING IMPLICATIONS

- 16.1 There are no health and wellbeing implications arising from this report.

Background Documents

In accordance with Section 100D of the Local Government Act 1972 the background papers used in the compilation of reports relating to planning applications are listed

within the text of each report and are available for inspection in the Planning Division, except for such documents as contain exempt or confidential information defined in Schedule 12A of the Act.

Equality Impact Assessment

The decision does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore, no Equality Impact Assessment is required.

Human Rights

The relevant provisions of the Human Rights Act 1998 and the European Convention on Human Rights have been taken into account in the preparation of this report, particularly the implications arising from Article 8 (the right to respect for private and family life, home and correspondence) and Article 1 of Protocol 1 (the right of peaceful enjoyment of possessions and protection of property).

Appendices

None.