



**Report Reference Number:** 2020/0225/FULM

**To:** Planning Committee  
**Date:** 30<sup>th</sup> June 2021  
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APPLICATION NUMBER:	2020/0225/FULM	PARISH:	Church Fenton Parish Council
APPLICANT:	Busk Lane Outdoor	VALID DATE: EXPIRY DATE:	1st April 2020 1st July 2020
PROPOSAL:	Proposed change of use from grazing agricultural land to BMX cycle track with toilet block, picnic area and car park		
LOCATION:	Land South of Gloster Close Busk Lane Church Fenton Tadcaster North Yorkshire		
RECOMMENDATION:	APPROVE		

This application has been brought before Planning Committee due to the significant number of representations both in support and opposition to the application, which raise material planning considerations and that Officers would otherwise determine the application contrary to some of these representations.

## 1. INTRODUCTION AND BACKGROUND

### Site and Context

- 1.1 The application site area covers approximately 1.6 hectares of agricultural grazing land to the west of Busk Lane, opposite the east-west runway of Leeds East Airport. The site is roughly rectangular in shape and is relatively open being bounded by a variety of small unmanaged mounds (primarily to the road frontage), post and wire mesh or post and rail fencing. Beyond the site to the north is an unmade access track running in front of the rear garden boundary fencing of a recent housing development. A number of mature trees sit alongside the fencing.

- 1.2 The site is accessed through a metal gate and an unmade agricultural access track leading off Busk Lane.
- 1.3 The site lies outside but adjacent to the development Limits of Church Fenton Airbase and is therefore classed as open countryside.

### **The Proposal**

- 1.2 The application seeks permission for the change of use from grazing agricultural land to BMX cycle track with toilet block, picnic area and car park. The proposal is being promoted as a community facility that will be managed by the landowner who lives locally. The site will be accessed from the existing access at the southern end of the site from Busk Lane. Key elements of the proposal include;
  - BMX Track and associated jumps made from soil
  - Associated access works and parking and cycle parking area
  - Boundary treatment and Landscaping
  - Small toilet block

### **Relevant Planning History**

- 1.3 The following historical application is considered to be relevant to the determination of this application.

2017/0833/DOC: Discharge of conditions 10 (Highways), 11 (Access) and 15 (Travel plan) of approval 2015/0318/FUL Erection of 39 dwellings, construction of access roads and associated recreation open space: Busk Lane, Church Fenton, North Yorkshire, LS24 9SE: COND, 28-SEP-17

2017/0832/MAN2: Nonmaterial amendment of approval 2015/0318/FUL for erection of 39 dwellings, construction of access roads and associated recreation open space: Busk Lane, Church Fenton, North Yorkshire, LS24 9SE: PER, 13-OCT-17

2017/0591/DOC: Discharge of conditions 02 (materials), 03 (landscape), 06 (surface water), 07 (foul and surface water drainage), 20 (surface water watercourse), 09 (ground works engineering), 12 (groundworks), 14 (construction method), 16 (site clearance), 17 (flood risk assessment), 18 (energy renewal), 19 (noise) and 22 (lighting) of approval 2015/0318/FUL for erection of 39 dwellings, construction of access roads and associated recreation open space: Busk Lane, Church Fenton, North Yorkshire: COND, 28-SEP-17

2016/0444/FUL: Proposed erection of an accommodation block in connection with an outdoor pursuits activity centre on land west of Busk Lane, Church Fenton, North Yorkshire: REF, 15-SEP-16

2015/0846/FUL: Creation of new field access off Busk Lane, Church Fenton, North Yorkshire: PER, 19-NOV-15

2015/0318/FUL: Erection of 39 dwellings, construction of access roads and associated recreation open space: RAF Church Fenton, Busk Lane, Church Fenton, North Yorkshire, LS24 9SE: PER, 21-DEC-15

2013/0285/FUL: Formation of a caravan and camping site in conjunction with existing fishing lake including construction of amenity block: Land off Busk Lane, Church Fenton, North Yorkshire: REF, 25-JUL-13

2012/1103/FUL: Construction of 28 dwellings, associated access road and landscaped areas on land at the former Officers Mess: RAF Church Fenton, Busk Lane, Church Fenton, North Yorkshire, LS24 9SE: PER, 02-OCT-14

2010/0528/FUL: Erection of 9 live/work units and 4 affordable houses and associated access road and landscaped areas on land at the former officers' mess: RAF Church Fenton, Busk Lane, Church Fenton, North Yorkshire: PER, 18-FEB-11

## 2. CONSULTATION AND PUBLICITY

- 2.1 **NYCC Highways** - initially considered that the information provided was not sufficient to fully assess the planning application in terms of the highway impact and sought a Transport Assessment giving details of likely vehicle trips to and from the site and accidents within the area in the last 5 years. It was noted that 102 car parking spaces were proposed and therefore it was anticipated that significant vehicle movements would be created. The existing access is deteriorating and should be brought up to NYCC's specification and, as the site is located within the 40mph speed limit, visibility splays of 2.4m x 120m are required.

Following the submission of further information and a reduction in the number of proposed parking spaces to 30, the Highway Authority has confirmed that it has no objections subject to a number of conditions in respect of improvements to the access, the provision of visibility splays and a Construction Management Plan.

- 2.2 **Yorkshire Water Services Ltd** - no comments to make.

- 2.3 **Selby Area Internal Drainage Board** - give the following comments and recommendations:

If the surface water were to be disposed of via a soakaway system, the IDB would have no objection in principle but would advise that the ground conditions in this area may not be suitable for soakaway drainage. It is therefore essential that percolation tests are undertaken to establish if the ground conditions are suitable for soakaway drainage throughout the year. If surface water is to be directed to a mains sewer system the IDB would again have no objection in principle, providing that the Water Authority are satisfied that the existing system will accept this additional flow. If the surface water is to be discharged to any ordinary watercourse within the Drainage District, Consent from the IDB would be required in addition to planning permission and would be restricted to 1.4 litres per second per hectare or greenfield runoff. No obstructions within 7 metres of the edge of an ordinary watercourse are permitted without Consent from the IDB.

Following receipt of further information and re-consultation, no comments have been received from the IDB.

- 2.4 **Local Lead Flood Authority** – initially commented that the submitted documents were limited and failed to acknowledge paragraph 165 of the NPPF which states that "Major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. It was also noted that the

submitted drainage statement stated: "Due to the nature of the proposed development a detailed drainage scheme is not proposed at this stage as it would cost a significant amount of money for what is at this stage essentially a community project. Notwithstanding this it is indicatively proposed to provide permeable surfacing of access and parking areas and with a proposed landscape and boundary treatment scheme more vegetation will be added to aid in water retention. We would be happy to enter into an appropriate condition if needed as at this point in the process we could commit to more financial expense." In the absence of any form of assessment of the baseline site conditions, or any proposed means of disposing of the site runoff, the LLFA felt unable to provide any meaningful comments and could not be satisfied that any condition attached could be discharged. As a minimum, it was suggested that the applicant should determine where and how surface water would be disposed of as the proposal will involve a significant amount of bare soil which can result in significant uncontrolled runoff from the site unless carefully managed. The LLFA recommended that the applicant provide further information.

Following receipt of further information and re-consultation, no comments have been received from the LLFA.

- 2.5 **Environmental Health** - is aware nearby residents have raised concerns over the potential impact of development on the residential amenity of the area, including impacts due to noise emissions. Alternative legislative regimes do exist in relation to noise recreational land use, mainly noise nuisance as defined by the Environmental Protection Act 1990. It is worth noting that Nuisance is broadly defined as an unlawful and/or unreasonable interference with the enjoyment of land whereas the Planning regime seeks to protect residential amenity in terms of observable effect level. In view of the differences between the regimes, it is recommended that the alternative regime should not be relied upon to achieve Planning objectives. Consequently, the applicant is required to consider the proposals with respect to noise impact in terms of the NPPF, PPG and relevant local policies and submit further information to demonstrate compliance with the relevant policies including an assessment of the likely impact together with any proposals for mitigation.

In considering the subsequently submitted Environmental Noise Assessment, which recognises that the proposed development does have the potential to have a negative impact on residential receptors, it is agreed that there is no guidance available which specifically deals with the case at hand, and it is difficult to carry out an assessment. The assessment proposes three planning conditions designed to mitigate the impacts of the development. The first condition seeks to ensure that the track is only used by bicycles and that motorcycles must not use the track which is agreed. The second condition seeks to restrict the hours of operation between 0800 and 2200 based on the assumptions contained within the assessment, mainly that operational noise is below the proposed 50dB<sub>L</sub>A<sub>eq</sub> criterion. The assessment states that "Given the community owned nature of the development it is probably not appropriate to set noise limits within a planning condition since there is no business owner who can be held responsible for the site and is therefore not really enforceable". The condition proposed therefore is based on a number of assumptions, should those assumptions prove to be an underestimate of the noise emissions then the criteria could be exceeded with no means to exercise control. This gives rise to the potential for an unacceptable impact on residential amenity in terms of noise, particularly in the evening time. It is therefore recommended that the applicant is asked to consider restricting the opening times in the evening to protect the residential amenity of the area, alternatively it may be necessary to impose a

suitably worded condition that does achieve the boundary level derived in the assessment. The third condition seeks to restrict motorised earth moving equipment between the hours of 0800 and 2200. It is questioned whether it is really necessary to use earthmoving equipment in the evening and it is recommended that the hours are restricted to between 0800 and 1800 by way of a suitably worded condition.

Further consultation with EHO

If there is no control over the operator being community-owned then Recommends use restricted to hours of 0800 to 1800 similar to non-motorised uses.

2.6 **Natural England** - has no comments to make.

2.7 **North Yorkshire Bat Group** – no comments received.

2.8 **Yorkshire Wildlife Trust** - noted that the application is supported by a Preliminary Ecological Appraisal (PEA) and that the ecologist has recommended surveys for protected species, specifically that great crested newt surveys of the four ponds close to the site should be undertaken. Given the proximity of ponds to the application site, and the presence of records in the area, The Trust considered it likely that great crested newts could be present on the site. Full landscape proposals, to allow sufficient assessment and recommendations for impacts upon habitats to be made, were also suggested. The Preliminary Ecological Appraisal states that the site offers potential habitat for ground nesting birds and brown hare, but no mitigation is proposed. The planning statement says the development will provide a significant amount of net gain which is encouraging, and any new planting should use a mix of native species appropriate to the area.

Having reviewed additional information submitted by the applicant, specifically the Drainage Technical Note and Environmental Noise Assessment, the Trust noted it is intended that runoff generated by the development will ultimately be discharge to Carr Dike via the existing drainage ditch just outside the site's southern boundary and any potential ecological implications (including to protected species) of the drainage strategy will need to be explored prior to determination. The revised plans incorporate a smaller car park area, resulting in an area which is now labelled as an amenity/picnic area which seems an ideal location for habitat creation, for example a wildflower grassland. The Trust also considered that areas between the tracks could be developed as wildflower grassland and the proposed willow planting could be replaced with a native species rich hedgerow, if appropriate to the local area. In its current form there are missed opportunities to incorporate habitat for wildlife into the design, which would enrich the environment for visitors, particularly children.

2.9 **County Ecologist**

First response-7 Sept 2020

No GCN detected. Would like to see PEA updated to reflect the details of the planning application and clarifies what the applicant is undertaking in terms of ecological enhancement.

Second response- 30 Sept 20

Further ponds identified by local resident need to be considered. But we consider it unreasonable to delay determination until next spring for these to be surveyed because:

(i) the site is poor habitat so if GCN's are present in these other ponds they would not be dependent on the application site. Therefore, in terms of the Habitat and species Regs 2017 the proposed development would not be detrimental to the conservation status of the GCN,

(ii) reasonable avoidance measure could reduce the risks but need to be set out in the Ecological Impact Assessment.

(iii) One of the three ponds contained large numbers of 3-spined sticklebacks and GCN rarely breed near these.

Adjoining habitat- land to the south contains fen and appears to be a remnant of the once extensive tract know as Fenton Trans. It could qualify for a SINC and should be considered to be of county wide value for biodiversity. The applicants ecological survey did not identify this. It could be damaged by any alteration to its current hydrology. SDC must therefore ensure any drainage arrangements do not impact upon it. Drainage requirements - same applies for toilet block.

Third Response - 11<sup>th</sup> Jan 2021

Comments on the new PEA:

- The ecological enhancements in the new PEA include planting native species trees and a species rich hedge with a wildflower area and bird nest boxes – these offer net gains for Biodiversity.
- The PEA does not include reasonable Avoidance Measures for GCN's
- More detailed spec on the meadow area needed.

Final response- 23 Feb 21-Re-consultation -The PEA has now been revised to include Reasonable Avoidance Measures to minimise risks of accidental harm to amphibians and other small wildlife during construction. As such a condition is recommended requiring adherence to the ecological mitigation and enhancement measures set out in section 4.2 (Recommendations) and Appendix 3, Figure 2 (Ecological Enhancement Plan) of the PEA report (*land off Busk Lane, Church Fenton, North Yorkshire- Preliminary Ecological Appraisal, January 2021 by Quants Environmental*)

2.10 **Designing Out Crime Officer** - the overall design and layout of the proposed scheme is considered acceptable. The Revised National Planning Policy Framework states that planning policies and decisions should aim to ensure that developments create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience. The most significant crime issues that could affect this development are auto crime and cycle theft. It is noted that no lighting is proposed for the site and that the opening hours will be based around natural daylight. However, with no opening hours being stipulated there is the potential for the site to be used well into the night during the summer, which could be to the detriment of residential amenity in the area. Consequently, it is recommended that opening hours are set to manage the impact the proposal may have on residential amenity. It is also noted that it is proposed to have three part time staff employed at the site. This is to be commended as it will provide capable guardianship at the site and help prevent crime and disorder.

2.11 **North Yorkshire Fire & Rescue Service** - the North Yorkshire Police, Fire and Crime Commissioner Fire and Rescue Authority have no objection/observation to the proposed development.

- 2.12 **Public Rights of Way Officer** - no comments received.
- 2.13 **HER Officer** - there are no known archaeological sites in the area indicated or within the immediate vicinity and there are no objections to the proposal.
- 2.14 **Waste and Recycling Officer** - no comments received.
- 2.15 **Ulleskelf Parish Council** - have considered the re-consultation of the application and, as the proposed development is on the opposite side of the road to the majority of the residential properties on Busk Lane, the Parish Council would like to request that a pedestrian crossing is installed along Busk Lane to allow residents to safely cross the road to the facility.
- 2.16 **Church Fenton Parish Council** - the application was discussed at the ordinary Parish Council meeting on 16 April 2020 and the Council are in favour of supporting the application.

18 Feb 2021 - Observations made:

- Improvement to plans acknowledged.
- Urbanisation should be kept to a minimum in line with the ethos of the River Wharfe Regional Corridor within which it is identified in NDP as falling within.
- Welcome the reduction in scale of facility, size of track, amount of car parking and additional landscaping which will help it remain a more local facility.
- Equal number of positive and negative responses within the community. Negative ones are mostly from those most directly affected.
- Newly designated SINC should be taken into consideration.

## 2.17 **Representation**

- 2.18 The application has been statutorily advertised by site and press notice and by letter to adjoining properties.
- 2.19 Letters of objection have been received from 28 individuals and one Business on the following summarised grounds:

### General

- Conflicts with Green Belt Policy
- Contrary to the Local Plan Policy
- Planning site notices not seen
- Lack of professional application details
- Site may be contaminated and an assessment should be undertaken
- Site is a gift from a recent local resident and this use is a minority activity which benefits only a small number in this community
- Reference made to the applicants use of other sites and lack of regard for the impact of schemes on the locality
- Work has already commenced and is causing noise and disturbance.

### Ecology

- Revised plans and details don't overcome previous concerns

- Latest ecology statement incorrect- re SINC now designated,
- Ecology statement -Number of ponds incorrect- at least one has been omitted.
- Newt survey incorrect, species list
- Ecology statement – not clear if Ditch 1 and Carr Dyke are one and the same
- Harm to wildlife from the development and the subsequent use.
- Lack of features to promote wildlife
- No consideration of how it might affect protected species.

#### Impact on Locality/management

- Adverse Impact on character and visual amenity of quiet rural countryside
- No information on the height of the jumps
- Additional vehicular traffic on an overburdened road.
- Noise and Disturbance
- Lack of noise impact assessment
- Query whether speaker systems would be installed or required
- Question the viability and need for the facility
- If it fails the land should be re-instated to former condition so it's not a lasting eyesore
- No details of proper community engagement.
- The village already has enough recreational facilities- and other facilities in the larger settlements are within easy distance.
- Focal point for antisocial behaviour
- No clarification on insurance and liability
- Permeable surfaces are stated but the site is not suitable and has been under water
- Management – the resolve for proper operation, maintenance, security and sympathetic integration with community and environment cannot be relied upon
- Reference to a community owned or community facility is not correct as the PC are not involved in the maintenance or management. Suggest planning condition to ensure community use only.
- This is not a beginners track and is unsuitable for children
- Concerns over the hours of opening and the hours when excavators can work
- Query whether the track will be lit during the evenings
- No reception or facilities which may subsequently be required
- Concerns over potential injuries and whether first aid skills are readily available
- Disproportionate for small village. It is larger than others provided for settlements the size of Selby or larger.
- other comparable sites offer less parking. The 30 parking spaces is inappropriate and excessive to the size of this site. Should be reduced to 10 or less.
- This will quickly turn into a crime hotspot for quad and off-road motorbikes adding to noise and adverse effect on quality of life for the residents
- Inadequate security
- The track design is well in excess of Olympic Standards according to the BMX Track Design Guide and is therefore excessive for a village facility.
- Current skate park in the village is underutilised and suggests there will be few interested in this facility
- Footpath which purports to link the site to the settlement is narrower than the stated 2m and is substandard
- No information on the toilet block
- No information on future maintenance



- Entrance is close to the emergency services access for Church Fenton Airfield
- Lack of economic benefit and no information on whether residents would be charged to use the facility
- Reference to a refused application 2016/0444/FUL (accommodation block and outdoor pursuits activity centre at an existing fishing lake)
- Could be used for competitions and events.

#### Landscaping

- Query whether the proposed planting on the N & E boundaries is in addition to the existing row of long willows and the newly planted ones?
- Bund purpose is unclear
- Planting which has occurred so far amounts to a few twigs only and is inadequate.

#### Drainage Issues

- Drainage is preliminary and there is a Lack of appropriate drainage investigation and planning
- Object to drainage in southern end of the site.
- Manhole cover exists in vicinity of proposed trees. Planting may have adverse effect and increase risk of flooding.
- Structures or ramps could channel and force water towards the Rowley Fields Development.

2.20 Letters of support have been received from 40 individuals on the following summarized grounds:

- An easily accessible outdoor exercise facility for the local community
- Reduced parking supported as most visitors will be local on foot.
- Support but the scale is too big
- Good to see this rather than more housing
- Suggest change 40mph to 30mph in the vicinity
- Nothing the objectors say give cause for concern, all impacts are far less than housing
- Its not designed as an Olympic BMX, rather an open space for children to learn to cycle in safety
- Better to have more car parking than not enough
- Suggest another activity such as roller skating is included
- Picnic area great for families
- Health and social Benefits to children.

2.21 Many of these comments were received prior to the revised scheme which took into account many of the issues raised.

### **3 SITE CONSTRAINTS**

3.1 The application site lies within Flood Zone 2, which has a medium probability of flooding. The site does not contain any protected trees and there are no statutory or local landscape or heritage designations. A recently designated Site of Importance for Nature Conservation (SINC), known as Fenton Trans, lies immediately south of the application site and features species rich wetland.

## 4 POLICY CONSIDERATIONS

- 4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states "if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise". This is recognised in paragraph 11 of the NPPF, with paragraph 12 stating that the framework does not change the statutory status of the development plan as the starting point for decision making.
- 4.2 The development plan for the Selby District comprises the Selby District Core Strategy Local Plan (adopted 22nd October 2013) and those policies in the Selby District Local Plan (adopted on 8 February 2005) which were saved by the direction of the Secretary of State, and which have not been superseded by the Core Strategy.
- 4.3 On 17 September 2019 the Council agreed to prepare a new Local Plan. The timetable set out in the updated Local Development Scheme envisages adoption of a new Local Plan in 2023. Consultation on issues and options took place early in 2020. Consultation on preferred options took place in early 2021. There are therefore no emerging policies at this stage so no weight can be attached to emerging local plan policies.
- 4.4 The National Planning Policy Framework (February 2019) (NPPF) replaced the July 2018 NPPF, first published in March 2012. The NPPF does not change the status of an up-to-date development plan and where a planning application conflicts with such a plan, permission should not usually be granted unless material considerations indicate otherwise (paragraph 12). This application has been considered against the 2019 NPPF.
- 4.5 Annex 1 of the National Planning Policy Framework (NPPF) outlines the implementation of the Framework -

*"213...existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)."*

### **Selby District Core Strategy Local Plan (CS)**

- 4.6 The relevant CS Policies are:

SP1 - Presumption in Favour of Sustainable Development  
SP2 - Spatial Development Strategy  
SP15 - Sustainable Development and Climate Change  
SP18 - Protecting and Enhancing the Environment  
SP19 - Design Quality

### **Selby District Local Plan (SDLP)**

- 4.7 The relevant SDLP Policies are:

ENV1 - Control of Development

ENV2 - Environmental Pollution and Contaminated Land  
RT3 - Formal Sport and Recreational Facilities  
T1 - Development in Relation to the Highway Network  
T2 - Access to Roads

## **Church Fenton Village Design Statement (VDS)**

### **5 APPRAISAL**

5.1 The main issues to be taken into account when assessing this application are:

- The Principle of the Development
- Design and Impact on the Appearance of the Area
- Impact on Highway Safety
- Impact on Residential Amenity
- Flood Risk and Drainage
- Ecology

#### **The Principle of the Development**

5.2 CS Policy SP1 states that when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. Paragraph 12 of the NPPF re-emphasises that the Development Plan is the statutory starting point for decision making, adding that where a planning application conflicts with an up-to-date Development Plan permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.

5.3 The site is outside the redeveloped Church Fenton airbase site on land that for planning purposes is open countryside. CS Policy SP2 states that the majority of new development will be directed to the towns and more sustainable villages with development in the countryside being limited to “the replacement or extension of existing buildings, the re-use of buildings preferably for employment purposes, and well-designed new buildings of an appropriate scale, which would contribute towards and improve the local economy and where it will enhance or maintain the vitality of rural communities, in accordance with Policy SP13; or meet rural affordable housing need (which meets the provisions of Policy SP10), or other special circumstances”. The proposal is not considered to fall into any of the listed forms of development. However, in terms of SP2, the development is the use of the land with minimal development in the way of structures other than the toilet block. The development comprises mainly the track and the car park. It is considered that the use will contribute to the local economy and the vitality of the community given its recreation use. Moreover, given the nature of the proposal, it is appropriate to consider the Development Plan as a whole and particularly those policies dealing specifically with sport and recreational uses. The VDS for Church Fenton was adopted as Supplementary Planning Guidance in 2012 and provides useful contextual information for Church Fenton but no policies directly relevant to the consideration of this proposal.

5.4 SDLP Policy RT3 states that “Proposals for sport and recreation development will be permitted, provided:

- 1) The proposal would not be so intrusive as to seriously detract from the character of the area by virtue of its appearance or associated noise;
- 2) The proposal would not create conditions prejudicial to highway safety or which would have a significant adverse effect on local amenity;
- 3) New buildings or structures would be well designed and appropriately landscaped; and
- 4) The facilities are designed in such a way as to allow easy access and active participation by disabled people in sport.

- 5.5 The NPPF at para 83 and 84 accepts that sites may have to be found adjacent or beyond settlements sets out that Planning decisions should enable sustainable rural tourism and leisure developments which respect the character of the countryside. However, it states that it is important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on roads and exploits any opportunities to make a location more sustainable. The use of sites that are well related to existing settlements should be encouraged where suitable opportunities exist.
- 5.6 Overall it is recognised that, by their very nature, some forms of organized sport and recreation require extensive amounts of land and may need to be accommodated outside towns and villages in the countryside. As such this proposal which is a large site but is adjacent to and adjoining the Church Fenton Airbase settlement is acceptable in principle provided that it is not intrusive, doesn't affect sensitive landscapes, amenity or ecological interests. These aspects are considered in other sections of this report.

### **Design and Impact on the Appearance of the Area**

- 5.7 SDLP Policy ENV1 requires the effect of new development on the character of the area and the standard of design in relation to the site and its surroundings to be taken into account when considering proposals for new development. Similarly, CS Policy SP19 expects new development to have regard to the local character, identity and context of its surroundings. Paragraph 127 of the NPPF states that planning decisions should ensure that developments; are visually attractive as a result of layout and landscaping; sympathetic to local character, while not preventing change, and; establish a sense of place. RT2 requires proposals for sport and recreation not to be so intrusive as to seriously detract from the character of the area due to appearance or noise.
- 5.8 This scheme comprises 1.6 hectares of land on the edge of Church Fenton Airbase which has been largely redeveloped for housing. The site is currently an open grass field. The extent of the BMX track and parking area have been significantly reduced since the original submission so that a robust landscaping scheme can take place and to take account of ecological interests. The track itself comprises earth mounds around which the green appearance of the site will be maintained. Landscaping is proposed with areas of native trees and hedgerow along the northern and eastern boundaries. On the west boundary a native species hedgerow would be provided and a small copse of native trees in the southwest corner of the BMX track and another southwest of the car parking. In addition, trees would be planted around the car park. The access into the site is proposed to be re-surfaced in crushed hardcore/ aggregate rather than tarmac to avoid an urban appearance. However, the Highway Authority do require the visibilities splay to required standards and the 1st 20 metres into the site to be made up in accordance with a highway specification. Notwithstanding this the overall appearance of the site

subject to the landscaping being implemented will retain a rural and undeveloped appearance.

- 5.9 Overall, the impact of the development on the landscape and visual amenity of the area would be acceptable and meets the requirements of ENV1, SP19 and RT2 in these respects.

### **Impact on Highway Safety**

- 5.10 SDLP Policy T1 requires new development to be well related to the existing highway network and Policy T2 states that development resulting in the intensification of the use of an existing access will be supported provided there would be no detriment to highway safety. The NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 5.11 Amended plans have now been received which satisfy the highway requirements in terms of the access standards and parking. The amended scheme includes a number of measures and reduces the car parking area and provides cycle parking hoops. Subject to conditions to secure that these are implemented to the required standards, the development is acceptable in these respects. In addition, due to the nature of the road network in the vicinity of the site, it is advised that a construction management plan be submitted with details of any temporary access, wheel washing facilities, parking of contractors and visitors' vehicles, storage of plant and materials and details of a responsible site manager.
- 5.12 It is noted that the PC request a pedestrian crossing due to the majority of dwellings being on the other side of the road. The Highways Authority have made a request for a pedestrian assessment to determine whether a crossing facility is required in the area. However, the Traffic Engineer has indicated that a full assessment is not possible given the anticipated pedestrian flows are not known. Given that the speed limit is to remain as a 40MPH speed limit and would not meet the criteria for reducing to a 30MPH limit, a zebra crossing is concluded to be unsuitable. This is also backed up by the fact that the BMX facility will be limited to certain opening times, a Zebra or Signal-controlled crossing would be therefore used infrequently. Caution should be exercised where pedestrian flows are generally light, or light for long periods of the day, as would occur at this location. Motorists who become accustomed to not being stopped at the crossing may begin to ignore its existence, with dangerous consequences. Given the limited information provided on vehicle trips in the Highway Statement and the level of car parking proposed on site, it is anticipated that that vehicle flows will be relatively light, and so people should be able to cross when there are gaps in the flow. Low pedestrian and vehicle flow really rule out the installation of a signal-controlled crossing. Subject to adherence to the above-mentioned conditions, it is considered that an acceptable scheme can be achieved in terms of road safety requirements and would be compliant with LP Policies ENV1, RT3,T1 and T2.

### **Impact on Residential Amenity**

- 5.13 SDLP saved Policy ENV1 requires a good standard of layout and design and that the effect of new development upon the amenity of adjoining occupiers to be taken into account. Paragraph 127 of the NPPF similarly seeks to ensure that developments create places that are safe, with a high standard of amenity for

existing and future users. It advocates early discussion between the community to clarify expectations and reconcile local and commercial interests. Criteria 1) and 2) of Policy RT3 seek to ensure that proposals would not be so intrusive as to seriously detract from the character of the area by virtue of its appearance or associated noise; and would not have a significant adverse effect on local amenity.

- 5.14 The applicant has in this case undertaken various community engagement with residents to gauge local opinion including a presentation in consultation with the parish council. The level of responses to this scheme suggests both positive and negative response. Many of the points raised have been taken into account in discussing a revised scheme which reduces the scale of the facility, reduces the car parking provision and increased the landscaping and biodiversity.
- 5.15 The site is located adjacent to a number of residential dwellings and has the potential to have significant impacts on the current amenity enjoyed by the occupants in terms of noise and disturbance. In particular the nearest dwelling affected will be those seven on Gloster Close whose rear gardens back on to a track running along the northern boundary of the site.
- 5.16 The layout of the proposal has been designed to minimize the impact on adjacent dwellings. The access and parking area is to the south of the site so that vehicle movements are well away from domestic curtilages. The size of the BMX track has been reduced and pulled further south into the site away from the dwellings. A belt of tree and hedge planting is to be provided along the north and east boundaries which will, in the longer term, provide both visual as well as and some acoustic screening.
- 5.17 The submitted Environmental Noise Assessment (ENA) recognises that the proposed development does have the potential to have a negative impact on residential receptors, although it is agreed that there is no guidance available which specifically deals with the case at hand, and it is difficult to carry out an assessment. To mitigate against potential noise nuisance three planning conditions are suggested. The first condition seeks to ensure that the track is only used by bicycles and that motorcycles must not use the track. The second condition suggests restricting the hours of operation between 0800 and 2200 based on the assumptions contained within the assessment, mainly that operational noise is below the proposed 50dBLAeq criterion. However, this is based on the assumption within the ENA that "given the community owned nature of the development it is probably not appropriate to set noise limits within a planning condition since there is no business owner who can be held responsible for the site and is therefore not really enforceable". The condition proposed therefore is based on a number of assumptions, should those assumptions prove to be an underestimate of the noise emissions then the criteria could be exceeded with no means to exercise control. This gives rise to the potential for an unacceptable impact on residential amenity in terms of noise, particularly in the evening time. Moreover, since a planning permission runs with the land not a particular owner, safeguards need to be in place. It is therefore recommended that the opening times are restricted in the evening to protect the residential amenity of the area. Such a condition would be reasonable, enforceable, and necessary to adequately ensure the amenity of nearby residents is not harmed from noise in the evenings when it is generally quieter in the neighbourhood. As such it is recommended that the use of the facility be restricted to 0800 to 20:00 hours only. This would still allow early evening use in the summer months whilst stopping later evening noise after 8pm when the general ambient noise levels are low, and families require more peace and quiet enjoyment

of their homes. The third condition seeks to restrict motorised earth moving equipment between the hours of 0800 and 2200. The EHO questions whether it is necessary to use earthmoving equipment in the evening and it is recommended that the hours are restricted to between 0800 and 1800 by way of a suitably worded condition in line with the opening hours.

- 5.18 Subject to the above conditions it is not considered that the proposed development would adversely affect the amenity of nearby residents and therefore the scheme complies with SDLP saved policies ENV1, RT3 and with the NPPF.

### **Flood Risk and Drainage**

- 5.19 SDLP Policy ENV1 requires account to be taken of the capacity of local services and infrastructure and CS Policy SP19 seeks to prevent development from contributing to or being put at risk from water pollution.
- 5.20 The Environment Agency flood map for planning shows that the site is located within Flood Zone 2 and therefore has a medium risk of flooding from rivers.
- 5.21 Paragraph 158 of the NPPF states that “The aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. Paragraph 159 of the NPPF states that “If it is not possible for development to be located in zones with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test may have to be applied. The need for the exception test will depend on the potential vulnerability of the site and of the development proposed, in line with the Flood Risk Vulnerability Classification set out in national planning guidance”.
- 5.22 The application site lies within Flood Zone 2, which has a medium probability of flooding. Core Strategy Policy SP15, ‘Sustainable Development and Climate Change’ commits Selby District Council to:
- Ensure that development in areas of flood risk is avoided wherever possible through the application of the sequential test and exception test; and ensure that where development must be located within areas of flood risk that it can be made safe without increasing flood risk elsewhere.
  - Support sustainable flood management measures such as water storage areas and schemes promoted through local surface water management plans to provide protection from flooding, and biodiversity and amenity improvements.
- 5.23 Table 2 of the National Planning Policy Framework (NPPF) Flood Risk and Coastal Change Matrix outlines the flood risk vulnerability classification of land. These range from ‘highly vulnerable’ uses such as basement dwellings to ‘water compatible’ uses. Amenity open space and outdoor sports and recreation uses fall within this latter category. As such neither a sequential test nor an exceptions test is necessary. Given the appropriateness of the location of the site adjacent to an existing settlement and the lack of opportunity or availability of other sites for such uses, the proposed development of this facility within this site in Flood zone 2 is considered acceptable. Also due to the lack of infrastructure, buildings, or surfacing, it is not considered that this development will increase the risk of flooding elsewhere. Moreover, the proposed landscaping scheme will increase vegetation on the site and improve the sites overall water retention and biodiversity.

5.24 In terms of drainage, a condition can be imposed to meet the IDB's surface water requirements. It is noted that the County Ecologist has concerns to ensure sustainable drainage systems are in place to avoid harm to the hydrology of the Fen which is now a SINC. There is nothing to suggest these concerns cannot be addressed through the submission of a suitable scheme via a planning condition. As such the scheme is considered to be acceptable in terms of Flood Risk and Drainage and complaint with SDLP Policy ENV1, CS Policy SP19 and with the NPPF.

### **Ecology**

5.25 SDLP Policy ENV1 states that proposals should not harm acknowledged nature conservation interests and CS Policy SP18 seeks to safeguard the natural environment and increasing biodiversity. These policies are consistent with NPPF paragraphs 170 and 175 which seek to protect and enhance sites of biodiversity value. Policy SP15 of the CS promotes sustainable development and SP15B (c) seeks to ensure development incorporates water -efficient design and sustainable drainage systems. SP15B d) seeks to protect, enhance and create habitats to both improve biodiversity resilience to climate change and utilize biodiversity to contribute to climate change mitigation and adaption.

5.26 Following consultation, with the Yorkshire Wildlife Trust and the County Ecologist, an amended scheme and an updated new Preliminary Ecological Appraisal has been provided. This includes for the planting of native species trees and a species rich hedge with a wildflower area and bird nest boxes – these offer net gains for Biodiversity.

5.27 The PEA has also now been revised to include Reasonable Avoidance Measures to minimise risks of accidental harm to amphibians and other small wildlife during construction. As such a condition is recommended requiring adherence to the ecological mitigation and enhancement measures set out in section 4.2 (Recommendations) and Appendix 3, Figure 2 (Ecological Enhancement Plan) of the PEA report.

5.28 It has been noted that the adjoining habitat- land to the south contains fen and is a remnant of the once extensive tract known as Fenton-Trans. The site has now been ratified (November 2020) under the SINC guidelines for designation. The main feature is 'Rich-Fen' as in an area of species rich fenland (primarily wetland/marsh in character). Concerns were expressed by the NYCC Ecologist and Yorkshire Wildlife Trust that the applicants ecological survey didn't identify this. Further, it could be damaged by any alteration to its current hydrology and SDC must therefore ensure any drainage arrangements for the site as well as the toilet block do not impact upon it. The YW Trust also noted it is intended that runoff generated by the development will ultimately be discharge to Carr Dike via the existing drainage ditch just outside the site's southern boundary and comment that any potential ecological implications (including to protected species) of the drainage strategy will need to be explored. A revised drainage strategy has been submitted but no response has been received from the drainage Board. A further prompt has been sent at the time of writing this report and an update will be given.

5.29 Notwithstanding the submitted drainage details it is advised that a condition be imposed to ensure the full drainage details are agreed by both IDB and the NYCC



Ecologist to ensure no harm to the water course or Hydrology systems which might adversely affect the Fen.

- 5.30 Subject to the conditions mentioned above and subject to the development complying with the recommendations, mitigations and enhancements of the updated PEA the development is considered to be acceptable in terms of its ecological impact and complaint with SDLP Policies ENV1 and CS Policies SP15 and SP18.

## 6 CONCLUSION

- 6.1 Having had regard to the development plan, all other relevant local and national policy, consultation responses and all other material planning considerations, it is considered that the proposal, whilst being contrary in principle to CS Policy SP2 it is considered to be consistent with the aims of Policies RT3, the Development Plan as a whole and with the NPPF. The development is considered acceptable subject to conditions in terms of the impacts on Highway safety, the character and appearance of the area, Residential Amenity, Flood Risk, Drainage and Climate Change, Ecology and Biodiversity and is consistent with CS Policies SP1, SP15, SP18, and SP19 together with SDLP Policies ENV1, RT3, T1 & T2, the Church Fenton NDP and the NPPF.

## 7 RECOMMENDATION

- 7.1 This application is recommended to be **approved** subject to the following conditions:

01. The development for which permission is hereby granted shall be begun within a period of three years from the date of this permission.

Reason:

In order to comply with the provisions of Section 51 of the Planning and Compulsory Purchase Act 2004.

02. The development hereby permitted shall be carried out in complete accordance with the plans/drawings listed below: (to be inserted)

Reason:

For the avoidance of doubt.

03. The development must not be brought into use until the access to the site at Busk Lane has been set out and constructed in accordance with the 'Specification for Housing and Industrial Estate Roads and Private Street Works' published by the Local Highway Authority and the following requirements:

- (i) The access must be formed with 6 metres radius kerbs, to give a minimum carriageway width of 5.5 metres, and that part of the access road extending 20 metres into the site must be constructed in accordance with Standard Detail number A2 and the following requirements.
- (ii) Any gates or barriers must be erected a minimum distance of 10 metres back from the carriageway of the existing highway and must not be able to swing over the existing or proposed highway.

- (iii) Provision to prevent surface water from the site/plot discharging onto the existing or proposed highway and must be maintained thereafter to prevent such discharges.
- (iv) Measures to enable vehicles to enter and leave the site in a forward gear.

All works must accord with the approved details

Reason

To ensure a satisfactory means of access to the site from the public highway in the interests of highway safety and the convenience of all highway users.

INFORMATIVE

Notwithstanding any valid planning permission for works to amend the existing highway, you are advised that a separate licence will be required from North Yorkshire County Council as the Local Highway Authority in order to allow any works in the existing public highway to be carried out.

04. There must be no access or egress by any vehicles between the highway and the application site at Busk Lane until splays are provided giving clear visibility of 120 metres measured along both channel lines of the major road from a point measured 2.4 meters down the centre line of the access road. In measuring the splays, the eye height must be 1.05 metres and the object height must be 0.6 metres. Once created, these visibility splays must be maintained clear of any obstruction and retained for their intended purpose at all times. An explanation of the terms used in this condition is available from the Local Highway Authority.

Reason

In the interests of highway safety.

05. No development must commence until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. Construction of the permitted development must be undertaken in accordance with the approved plan. The Plan must include, but not be limited, to arrangements for the following in respect of each phase of the works:
- i) details of any temporary construction access to the site including measures for removal following completion of construction works;
  - ii) wheel washing facilities on site to ensure that mud and debris is not spread onto the adjacent public highway;
  - iii) the parking of contractors' site operatives and visitor's vehicles;
  - iv) areas for storage of plant and materials used in constructing the development clear of the highway;
  - v) contact details for the responsible person (site manager/office) who can be contacted in the event of any issue.

Reason

In the interest of public safety and amenity.

06. Prior to the commencement of the development full drainage plan shall be submitted for the written approval of the Local Planning Authority in consultation with the Drainage Board and the NYCC Ecologist and should provide for details of the surface water disposal in a manner which does not harm the nearby Fenton Trans. The details should include:

- Details of runoff destination
- Details of flow control
- Exceedance flow path
- Confirmation of responsibility for maintenance.

If the surface water were to be disposed of via a soakaway system percolation tests must be undertaken to establish if the ground conditions are suitable for soakaway drainage throughout the year. If surface water is to be directed to a mains sewer system, the Water Authority must be in agreement that the existing system will accept this additional flow. If the surface water is to be discharged to any ordinary watercourse within the Drainage District, Consent from the IDB would be required in addition to runoff being restricted to 1.4 litres per second per hectare or greenfield runoff.

Informative -There must be no obstructions within 7 metres of the edge of an ordinary watercourse without Consent from the IDB.

Reason

To ensure the site is acceptably drained and does not harm the Fenton Trans Site of Importance to Nature Conservation

07. The BMX track and facilities hereby approved shall only be used by non-motorised bicycles. There shall be no motocross bikes or any other motorised vehicle using the tracks at any time.

Reason

In the interests of residential amenity and to accord with Policies ENV1 and RT3 of the SDLP.

08. The track and the associated facilities shall only be used during daylight between the hours of 08:00 and 20:00 hours. Outside of these hours, access to the site will be restricted through locking the entrance gates shown on the approved plans.

Reason

In the interests of residential amenity and to accord with Policies ENV1 and RT3 of the SDLP.

09. Any maintenance to the track requiring motorised earth moving equipment will only be carried out during the hours of 08:00 to 18:00 hours.

Reason

In the interests of residential amenity and to accord with Policies ENV1 and RT3 of the SDLP.

10. The development shall be carried in full accordance with the recommendations, mitigation measures and enhancement measures set out in section 4.2 (Recommendations) and Appendix 3, Figure 2 (Ecological Enhancement Plan)

of the PEA report (*land off Busk Lane, Church Fenton, North Yorkshire- Preliminary Ecological Appraisal*, January 2021 by Quants Environmental) and shall thereafter be operated and maintained in accordance with the above report.

Reason

In the interests of ecology and biodiversity and to comply with Policies ENV1 & RT3 of the SDLP and Policies SP15, SP18 & SP19 of the CS.

11. There shall be no artificial, solar or electric lighting within the site.

Reason

In the interests of visual amenity, the character or the area and the Ecological interests of the site and to comply with Policy ENV1 of the SDLP.

12. Before any work starts on the construction of the BMX track, a fully detailed landscaping scheme in accordance with the landscaping indicated on Plan Ref BL001/P1/Revision H (Proposed Site Plan, Site Location and Level Information) which is consistent with the recommendations, mitigation measures and enhancement measures set out in section 4.2 (Recommendations) and Appendix 3, Figure 2 (Ecological Enhancement Plan) of the PEA report (*land off Busk Lane, Church Fenton, North Yorkshire- Preliminary Ecological Appraisal*, January 2021 by Quants Environmental), shall be submitted to and approved in writing by the local planning authority to include;

- Details of the species, location, planting density and stock size on planting of all trees and shrub and meadow planting
- Details of the measures for the management and maintenance of the approved landscaping.

The approved scheme shall be implemented in full before the BMX facility is brought into use or, if by agreement with the Local Planning Authority if the facility is ready to use outside the planting and seeding season, it shall be implemented in full in the first planting and seeding season thereafter. The approved implemented scheme shall be retained for the lifetime of the development.

Reason:

In the interests of visual amenity Ecology and to enhance the Biodiversity of the site and in order to comply with Policy ENV1 and RT3 of the SDLP and SP15, and SP19 of the CS.

13. Any trees, shrubs, plants or seeding implanted in accordance with condition 12 above which dies, fails to thrive, are removed or become seriously damaged or diseased within the first five years shall be replaced in the next planting season with others of similar size and species.

Reason

To ensure successful establishment of the approved landscaping scheme in the interests of visual amenity, Ecology and to enhance the Biodiversity of the site and to comply with Policy ENV1 and RT3 of the SDLP and SP15, and SP19 of the CS.

14. Before the facility is brought into use, details of the gates to be provided at the site entrances shall be submitted for the written approval of the local planning authority and shall be installed before the facility is brought into use and kept closed and locked outside of the hours of use as specified in condition 08 of this permission.

**Reason**

To safeguard the site and to prevent use outside of the operational hours in the interests of the amenity of the area and to comply with Policy ENV1 and RT3 of the SDLP.

15. Before the facilities are brought into use, the parking area and cycle parking facilities shall be installed and made available for use and shall thereafter be maintained for the lifetime of the development.

**Reason**

To ensure adequate parking facilities for car users and cyclists on site in the interests of amenity and road safety requirements and to comply with Policy ENV1 and RT3 of the SDLP.

## **8 Legal Issues**

### **8.1 Planning Acts**

This application has been determined in accordance with the relevant planning acts.

### **8.2 Human Rights Act 1998**

It is considered that a decision made in accordance with this recommendation would not result in any breach of convention rights.

### **8.3 Equality Act 2010**

This application has been determined with regard to the Council's duties and obligations under the Equality Act 2010. However, it is considered that the recommendation made in this report is proportionate taking into account the conflicting matters of the public and private interest so that there is no violation of those rights.

## **9 Financial Issues**

- 9.1 Financial issues are not material to the determination of this application.

## **10 Background Documents**

Planning Application file reference 2020/0225/FULM and associated documents.

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**Appendices:** None