



Report Reference Number: 2018/0818/EIA

To: Planning Committee
Date: 5 December 2018
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APPLICATION NUMBER:	2018/0818/EIA	PARISH:	South Milford Parish Council
APPLICANT:	Harworth Group PLC	VALID DATE: EXPIRY DATE:	17 July 2018 2018 16 October 2018 Extension of time agreed through a PPA
PROPOSAL:	Outline planning application with all matters (scale, appearance and layout) except access and landscaping reserved for the demolition of existing colliery buildings and construction of up to 186,000 sq m (approx. 2,000,000 sq ft) of Class B2/B8 and associated Class B1 floor space with supporting container storage area and associated buildings, trackside facilities, access and landscaping.		
LOCATION:	Gascoigne Rail Freight Interchange Former Gascoigne Wood Mine New Lennerton Lane, Sherburn in Elmet		
RECOMMENDATION:	That Committee is: Minded to Approve this application and it is referred to the Secretary of State under the 2009 Consultation Direction, and Subject to the application not being called-in for determination by the Minister, authority is delegated to the Planning Development Manager to grant the application subject to the detail of this report and the full recommendation below.		

This application is to be considered by the Planning Committee since the scheme of delegation requires either Environmental Impact Assessment or Departure applications to come to Committee.

1. Introduction and Background

Procedural

- 1.1 This is an Environmental Impact Assessment outline planning application that is accompanied by an environmental statement under the provisions of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017. The Regulations transpose a European Directive which prohibits the granting of permission for development which is likely to have a significant effect upon the environment unless an environmental impact assessment (EIA) has been carried out. The process of environmental impact assessment includes the preparation of an environmental statement (ES); public consultation on the proposals; examination by the planning authority of all of the information including consultation responses; the authority coming to a reasoned conclusion of those significant effects and the integration of that reasoned conclusion into the decision on whether to grant consent.
- 1.2 A Screening Opinion was issued by this Council dated 19 March 2018 (2018/0228) which determined that this proposal would constitute EIA development. The issues of significance that the ES should address were identified as Transport and Access, Noise and Landscape / Visual impacts. The EIA Regulations also require both a description of the reasonable alternatives studied by the developer and reasons for the options chosen; together with a study of the cumulative effects from the development combined with other proposed or permitted schemes in the area to be considered which, acting together may generate elevated levels of effects.
- 1.3 An EIA application has specific publicity and consultation requirements and a minimum 16-week determination period. This application is the subject of a Planning Performance Agreement (PPA) which is an agreed process covering pre-application engagement, resourcing, project aims and timescales such that the determination period is, by agreement, taken out of the statutory 16-week period.
- 1.4 The Town and Country Planning (Consultation)(England) Direction 2009 in the otherwise now cancelled Circular 02/09 defines categories and sizes of application that, should the authority wish to approve, must be referred to the Secretary of State to give him the opportunity to 'call-it-in' for his own determination. Major development outside of town centres to which this Direction applies is for retail, leisure or office use in excess of 5,000 sq m and which is not in accordance with one or more provisions of the in force development plan. The Direction does not refer to Class B2 or B8 floorspace specifically but since the application is recommended for approval and includes some Class B1 office use in an out of town location, the application should be referred to the Minister if Committee are minded to approve it. The full recommendation below reflects this.
- 1.5 The Planning Act 2008 defines projects that are Nationally Significant Infrastructure Projects (NSIPs) and which go through a different development consent procedure defined in the 2008 Act since NSIPs do not require 'planning permission'. Applications proposing an NSIP are determined by the relevant Minister through a process operated by the Planning Inspectorate and generally types of NSIP fall into the categories of energy, transport, water, waste water and waste. Rail Freight Interchanges (RFI) are a specific category of NSIP and the **construction** (my emphasis) of an RFI – a facility for the transfer of goods between railway and road (or any other form of transport) – is an NSIP to which the 2008 Act applies if the land on which the RFI is situated is at least 60 ha in area or the effect of an

alteration is to increase by at least 60 ha the area of land on which the RFI is situated.

- 1.6 The application does not propose the construction of a RFI since the entire rail and transfer facilities are already in place. This application proposes 186,000 sq m of new floorspace which shall be linked to the RFI and thus since a RFI is not being constructed nor altered, it does not fall into the category of an NSIP.

The Site and Context

- 1.7 The application site extends to some 101.58 ha (251 acres) of which 43 ha (106 acres) is agricultural land to the north of and outside of the bunded former Gascoigne Wood colliery site. The site is accessed via a private colliery road (7.3m wide) with a 20mph speed limit from its junction with New Lennerton Lane 0.8km to the north of the existing site entrance. The adopted New Lennerton Lane then forms a T junction with the B1222 Bishopdyke Road a further 0.6km to the north. The private colliery road defines the eastern boundary of the northern parts of the site proposed on agricultural land outside of the bunded former colliery.
- 1.8 The centre of Sherburn in Elmet is approximately 2.4km to the west of the New Lennerton Lane junction and the B1222 on its way west to Sherburn passes both the Sherburn Enterprise Park (SEP) and its extension 'Sherburn 2' (S2) (under construction) on its south side before crossing the A162 bypass into Sherburn.
- 1.9 The Sherburn Aero Club lies generally between the application site and the SEP and S2 to the north west and north and there are industrial, residential properties and a YW water treatment works to the north of New Lennerton Lane. Beyond these is a part of the former airfield runway, known as the Proving Ground but which is now part of the S2 site. To the east and north east of the application site are the mounded mine spoil disposal areas that have been grassed and restored to semi woodland, rising approximately 43 m above the relatively flat agricultural land of the application site.
- 1.10 The Selby to Leeds double tracked railway line, which connects to the East Coast Main Line at Hambleton Junction passes through the southern parts of the site, beyond which to the south of the main line are a range of rail sidings, some open land and the southern mine complex bunds up to 15m high that were created at the time that Gascoigne Wood mine was developed. A bridge over the rail tracks owned by the applicants connects the southern sidings (up to 1.3km in length) with the main body of the site.
- 1.11 The main body of the former mine, similarly surrounded by planted bunds to the north and west between 12m and 20m high contains some former mine buildings. The principal retained building is the large covered stockyard (19,510 sq m) presently used by British Gypsum and there are some smaller former workshop and stores buildings (~1,800 sq m) along the southern access road and railway boundary. The enclosed bunded area extends to some 69 ha, of which 27 ha comprises of the landscape bunds.
- 1.12 There are no statutory national or local landscape or wildlife designations on the application site. The site does not contain any protected trees and there is no Conservation Area or nearby listed buildings that are affected. In Landscape Character terms the site is practically surrounded by modified landscapes. The majority of the site is within Flood Zone 1 or 2 with the central part of the agricultural

land either side of the line of the Carr Dyke which runs generally east to west across the site, in defended Zone 3. A public footpath follows the line of the site access road from New Lennerton Lane to the site entrance and then turns east around the southern flanks of the spoil heap and the eastern application site boundary to then become Hagg Lane, crossing the railway line at the Hagg Lane level crossing to then become Common Lane. Common Lane then strikes west, skirting the southern flanks of the southern bunds to then return to South Milford some 3km to the west.

The Proposal

- 1.13 This is an outline EIA application with details of 'access' and 'landscaping' submitted as part of the proposals. The other three reserved matters of 'scale', 'layout' and 'appearance' are reserved for future submission and approval. Thus the precise number, location, scale and appearance of units, up to a maximum floorspace of 186,000 sq m (2,000,000 sq ft) of principally B2 and B8 floorspace is not in front of the authority at this time. Any outline approval will enable future 'reserved matters' applications to provide this detail and to be controlled under the terms of any outline permission. The applicant states that it is intended to be a manufacturing led facility making use of the existing unique rail infrastructure opportunity.
- 1.14 Access is shown to be via the use of the existing mine access road serving the agricultural land off its west side whilst the former colliery site and the south side of the railway are also accessed using this existing road and site entrance. The ability to link the site to linkages being sought to the north -west to S2 over third party land cannot be by positive requirement but given the intention in the Design Guidance Document, the approved layouts at any reserved matters must not prejudice those future connections that are being pursued with relevant parties. Landscaping is in respect of the defined areas of strategic landscaping around the perimeters of and within the site in order to seek to achieve wider landscape impact mitigation.
- 1.15 The application is accompanied by the following documents:
- Environmental Statement
 - Design and Access Statement
 - Design Guidance Document
 - Statement of Community Involvement
 - Transport Assessment (TA)
 - Framework Travel Plan (FTP)
 - Rail Reports (in three volumes)
 - Industrial and Logistics Market Commentary
 - Economic Benefits Statement
 - Noise Impact Assessment
 - Phase 1 Habitat survey
 - Framework Landscape and Biodiversity Management Strategy
 - Arboricultural Assessment
 - Advanced Landscape Proposals Pre-Construction Plan
 - Coal Mining Risk Assessment
 - Aviation Safeguarding Review
 - Flood Risk Assessment (FRA)(inc updated Sequential test)
 - Preliminary geo-environmental risk assessment
 - Position Statement on Existing Planning Consents

and a series of accompanying plans, drawings and photomontages including:

Indicative layout (masterplan)
Parameters Plan
Block Plan
Surface water and drainage plan

- 1.16 Since the application is in outline the intention is that specified documents and drawings (particularly the Design Guidance Document and the Parameters Plan) will become a part of any approval so that certain design and floorspace principles are established. In this way, future reserved matters applications will be required, where relevant, to be in accordance with the agreed parameters.
- 1.17 In describing the site and setting out the varying outline proposals across it, the proposal is categorised over four areas, A, B, C and D.
- Area A extends to the northern extremities of the application site to Lennerton Lane and Lennerton Farm House. The western site boundary is the Sherburn Airfield boundary and to the south is the sinuous line of the Carr Dyke.
 - Area B is all that land to the south of the dyke, with the airfield boundary to the west and the private colliery road to the east. The southern boundary of Area B is the northern limit of the bunded former colliery site
 - Area C is the entire bunded site north of the railway line, and
 - Area D is all the application land south of the railway, including the sidings, a former signalling building and the flanks of the bunds to Common Lane.

Relevant Planning History

- 1.18 The land outside of the bunded former mine is ostensibly agricultural and there is no history of any relevant applications or approvals in that part of the site.
- 1.19 The Gascoigne Wood mine was the central hub of the Selby Coalfield developed in the 1980s which was, at that time, the largest deep coal mining project in the world. All of the coal from the mines came to the surface through two drifts at Gascoigne Wood where it was treated and then distributed via the rail network. At its peak 12 million tonnes of coal per year were distributed from Gascoigne Wood through 15 trains a day - until the closure of the coalfield and of this site in 2004.
- 1.20 Application 2005/0673 for the continued use of the site and sidings was made in June 2005. This application was called-in for the Secretary of State's decision and planning permission for the 'Retention and Reuse of Suitable Buildings, car parking and infrastructure and the continued use of the rail sidings' was granted by the Minister on 13 August 2007 following a Public Inquiry held between the 5 and 12 March 2007 ('the 2007 consent')(APP/N2739/V/06/1199354) (**Appendix 2** to this Report).
- 1.21 Conditions on the permission included identification of the buildings to be retained (Condition 1), and that the defined retained B2 and B8 buildings may only be used by occupiers using the existing rail facilities on the site and their main line connections (Conditions 2 -5). Condition 8 required defined rail facilities on the north and south sidings to be retained and not removed, and for periodic checks to be

made to ensure the facilities were maintained to industry standards. Condition 7 required the demolition, within six years, of any retained building if not used wholly or mainly for rail related uses by occupiers using the rail facilities on site within five years of the date of the permission.

- 1.22 In granting permission, the Secretary of State found that the proposal was not in accordance with the development plan as a whole but that it gained most support from development plan policies that encouraged distribution of freight by more sustainable means, including rail; make the best use of existing transport networks and seek to ensure that where railway land has the prospect of re-use, that prospect is not prejudiced (para 13 the 2007 consent). The then Minister concluded that the scheme was not sustainable but in considering other material considerations gave weight to the benefits of reusing a valuable asset in the form of the railway infrastructure and that there were significant benefits in bringing the site back into industrial or distribution uses that can make use of the rail connections and foster the movement of goods by more sustainable means. Weight was given to the planning obligation to assist in promoting more sustainable means of travel and that the risk of harm of leaving unoccupied buildings would be mitigated by the condition requiring their removal in the event that they were not brought into use (para 25).
- 1.23 The Minister continued in her conclusions that the proposal would be difficult to accommodate in an urban area and would make use of existing bunds that are recognised as a valuable feature in the landscape. Overall (para 27) she considered that the benefits outweighed the conflict with the development plan and national policy and in this particular case determined that permission should be granted.
- 1.24 Subsequently, application 2011/0579 approved in October 2011 granted consent for the change of use of the retained workshops and stores for tyre recycling. It was subject to a condition that it may only be used for Class B2 and B8 purposes and then only by occupiers using the existing rail facilities. The agreed Planning Position Statement accompanying the current application records that the use was implemented but ceased in 2014. This 2011 consent supersedes the 2007 consent and since there are no requirements to demolish them, the buildings have a lawful use for tyre recycling, connected to the rail facilities.
- 1.25 It is common ground with the applicants that the other retained building from the 2007 consent, the amenity block, was demolished in 2014. It is also common ground that the large covered stockyard building used by British Gypsum has been in use since 2011 and with the material being imported to the site by rail, is in accordance with the 2007 consent.
- 1.26 There are two more recent approvals within the current application site, one for a STOR (short term operating reserve) diesel powered generating facility (2014/0017) to the east of the covered stockyard which is nearing completion and, secondly 2015/0674 for a bio-fuelled STOR power generation plant adjacent to the northern colliery boundary on the site of the former amenity building whose implementation has not commenced on site. It is understood that these operations would be unaffected by and can co-exist with the application proposals.
- 1.27 In accordance with good practice, this application has been the subject of without prejudice pre-application discussion, community engagement and consultation prior to its submission in July 2018. A series of Steering and Project Groups were

established to identify and engage partners including, amongst others, Highways, Urban design and Landscape advisors; and in drawing up the PPA.

2. CONSULTATION AND PUBLICITY

2.1 The application has been statutorily advertised by site and press notice and by letters to all adjoining properties and businesses together with those residential properties further afield but identified as 'sensitive noise receptors' in the Noise Impact Assessment report.

2.2 **South Milford Parish Council (SMPC)** supports the application since it will 'largely improve the area and provide a large number of jobs'. This support is however subject to requesting SDC taking into account the following:

- The Council request sight of or preparation of a Transport Assessment [TA] which was not available to view and the need for an assessment of the increase in lorries and cars to and from the development. SMPC has concerns that there will be a marked increase in traffic particularly HGVs – this will damage roads, create air pollution and increase congestion.
- The Parish could not see any proposals to improve road infrastructure to increase capacity and would wish to see adverse consequences addressed.
- The Council could not see the specific proposals referred to in order to improve cycle and pedestrian infrastructure and connectivity and the target 5% decrease in single driver occupancy car trips in the FTP will not be achieved without such measures.

2.3 The SMPC has since accessed the TA with assistance from officers and has commented that there do not appear to be plans to build a cycle path to provide a safe cycling route between the site, Sherburn or South Milford train stations. Thus the Parish Council maintains its comment that the full application should include the development of pedestrian and cycle routes to access the site from the stations in order to increase the numbers of commuters cycling safely, healthy living and reducing air pollution and road congestion.

2.4 **Sherburn in Elmet Parish Council** objects to the application on the grounds that the Council has concerns about:

- The road and rail capacity, particularly vehicles at night, and;
- The information provided is inadequate on ecological grounds.

2.5 **Monk Fryston Parish Council** requested that their concerns should be registered about:

- The development adding to the continual growth of traffic both through Monk Fryston village and onto the A162/A63 roundabout. In a traffic survey commissioned by the PC at the end of last year the Council says that over the 14 day period of the survey, 140,000 vehicles entered the village of which 13,000 were heavy goods vehicles.
- This development if approved, the Parish Council continues, will only add to this already unsatisfactory situation and will be yet another addition to the cumulative effect arising from additional traffic generated by the building-out of planning consents already granted.

- 2.6 **The County Highway Authority** made a number of detailed comments and raised questions on the submitted TA. At that stage it was suggested that the following are undertaken:
- A Stage 1 Road Safety Audit for 'Junction 8' (the Bishopdyke B1222/New Lennerton Lane junction).
 - A reassessment of the visibility requirements and hence of the necessary mitigation at this junction.
 - Further information and validation of the modelling at this and some other junctions and clarification of statements.
- 2.7 On the Framework Travel Plan, there were detailed comments that needed addressing relating to modal shift targets, responsibilities of the TP coordinator compared to tenants, monitoring and review, funding and resourcing.
- 2.8 Detailed junction modelling has been concluded and the final Highway Authority response has now been received. The Authority comments that the applicants' TA, in modelling trip generation and distribution includes the trips generated by other major committed developments in the Sherburn area. Since the application is in outline, the number of trips the site can generate has been based upon a worst case scenario of 100% of the floorspace going to B2. In view of this, it has been agreed with the applicant that future traffic generation will be monitored by the development to ensure that it remains within the levels assessed. The monitoring regime is proposed in the FTP and can be controlled by condition on any approval. Measures in the FTP would then be triggered in order to reduce impacts.
- 2.9 Subject to the imposition of the conditions agreed with the Highway Authority as set out in the recommendation below and the entering into of a planning obligation, to which the Highway Authority would be a party reflected also in the terms below, there are no outstanding highways objections.
- 2.10 **The County Principal Archaeologist** initially replied that the south sidings and the agricultural land had archaeological potential and requested a desk based assessment followed by geophysical investigation. Following receipt of and his consideration of the requested assessments, the Archaeologist has confirmed that there are no objections and that he has no further comments to make.
- 2.11 **The County Public Rights of Way Officer** requests an Informative on any permission to protect PROWs adjacent to the site.
- 2.12 **County Fire and Rescue** has replied that it has no objections to the application at this stage. It will, it says, make further comment when it receives its statutory building regulations consultation.
- 2.13 **The County Principal Landscape Architect** expressed concern that the development would likely have significant landscape and visual effects. It is accepted that Areas C & D would be unlikely to be adversely affected given the existing landscape and presence of bunds, subject to protection and retention. The highly visible frontage from the railway needs a good landscaping scheme to screen and a control over the height of shipping container stacking.
- 2.14 On the northern parts of the site, Areas A and B outside of the bund, he opines that this is a significant extension into the open countryside which is moderately sensitive to development. Although the spoil mound screens the northern parts from

the east and south, this part is visible from close range and from the west. On the earlier Parameters Plan, he said that the massing and heights do not relate to context and these effects are not sufficiently reduced through mitigation.

- 2.15 A tree survey, assessment and protection plan is requested for those areas affected by development and, he continues, the Design Guidance Document is not clear enough to ensure good design or sufficient mitigation.
- 2.16 The Principal Landscape Architect concluded that it was not acceptable in its current form and requested that the Design Guidance is altered to provide sufficient stand-off, reduce building mass and height substantially; with a transition in height across the site and to incorporate planting to soften and integrate. Impacts on Lennerton Lane and on residential properties need to be carefully considered and more clarification is required on phasing, the timing and scope of advanced, strategic planting and landscaping works.
- 2.17 The Design Guidance Document has since been significantly further amended and updated to reflect officer comments and concerns and is now in a form that has officer support.
- 2.18 **The County Ecologist** noted initially that a number of further surveys were still awaited and the Framework Landscape and Biodiversity Management Strategy was incomplete until they had been received. This would then enable a fuller understanding of the presence of identified protected species, the impacts upon them and the ability to then develop measures to avoid, mitigate, compensate and enhance. Permission, she concluded, should not be granted until the outstanding matters and concerns had been addressed.
- 2.19 Revised surveys and further proposals were received on 26 October and 20 November and in seeking an overall site mitigation and compensation strategy, further comments may be summarised as:
- Further bat surveys are requested pre-determination if two trees are not to be retained and enhancement measures to become a part of the masterplan.
 - Additional lighting could cause effects upon protected species and a lighting plan and full assessment should be provided before determination.
 - The presence of water vole has been confirmed; need to develop a water vole mitigation and enhancement plan; maintain/manage water quality, maintaining buffer zones around features and to secure adequate separation from key habitat features.
 - Presence of otter has been confirmed and mitigation can sensibly be included in the water vole plan.
 - In respect of the assemblage of breeding birds on the site, there is concern that the provision of retained habitats in the central parts of the site and nest boxes cannot compensate for large areas of foraging that will be lost and no consideration of the temporary impacts of displacement.
 - Specifically, the Ecologist concluded with: *“No measures for birds have yet been incorporated into the Design Guide and the Masterplan for the site so once further work has been undertaken there will be a need for these measures to be incorporated into the plans so that they can be secured. Further information is requested with regards to the indirect impacts upon birds, wintering birds and opportunities for offsite compensation and enhancement through management of land outside of the red line boundary”*.

- In conclusion, more consideration is needed in terms of mitigation, compensation and enhancement with a focus on fully demonstrating how a net gain for biodiversity will be achieved in advance of determination of this application.

- 2.20 The subsequent updates and assessments have identified those matters that may now be addressed by condition and through a necessary planning obligation. Land outside of the application site but within the (blue line) applicants' control will be the subject of additional enhancement and mitigation and subject to the incorporation of these measures into the obligation; there are now no outstanding objections.
- 2.21 **Natural England** advised that there was insufficient information with the application to enable it to determine if the agricultural land was the 'best and most versatile' (land in Grades 1, 2 and 3a) and requested a detailed Agricultural Land Classification Survey (ALC) in order for it to provide a substantive response.
- 2.22 This was prepared by the applicant and provided to Natural England on 3 October. The consultee's response is that in considering the ALC Report, the development falls outside of the scope of the requirement to consult Natural England since there would not be a loss of more than 20ha of best and most versatile agricultural land.
- 2.23 **The Yorkshire Wildlife Trust** commented initially with a holding objection that surveys were required for riparian mammals in the dikes, a full breeding bird and winter farmland bird survey and more thorough bat and great crested newt surveys. As a result of further surveys appropriate mitigation in the form of an Ecological Management Plan (EMP), a sensitive landscape management plan, Construction Environmental Management Plan (CEMP) and sensitive lighting schemes would then need to be approved by the planning authority.
- 2.24 Revised surveys were received on 26 October and the Trust has replied further. Overall the YWT says that it agrees with the County Ecologist's comments and overall conclusions (para 2.19 above). Whilst a more detailed biodiversity plan and off-site compensation were requested, the County Ecologist's updated comments and the secured solutions have now resolved these requests.
- 2.25 **The Lead Local Flood Authority (NYCC)** recommends that the documents submitted represent a reasonable approach to the management of surface water. Conditions relating to prior percolation testing relevant to the proposed SuDS, a scheme to show how flows into the watercourse(s) will be accommodated and restrictions on the rate of development flow run off, details of a scheme for surface water run off passing through interceptors and details of the maintenance and management regime of the SuDS are requested.
- 2.26 **The Environment Agency** replied that it has no objection subject to conditions. It has no objections to the submitted FRA and requests conditions on any approval relating to details of compensatory storage, contaminated land remediation strategy, verification report of the remediation strategy, unforeseen contamination, surface water and piling. It has since been agreed that a number of these requests can be addressed through a requirement by condition to proceed with the development in accordance with the submitted FRA (Condition 4).
- 2.27 **Yorkshire Water** replies that the FRA is acceptable and requests conditions relating to separate systems of foul and surface, details of surface water systems, use of interceptors and bunding for any storage tanks.

- 2.28 **The Shire Group of IDBs** has replied with a standard response that the impermeable areas of the site may be increased so the applicants will have to satisfy themselves that any surface water systems have adequate capacity to take the increased surface water from the site.
- 2.29 **The Coal Authority** has considered the applicants' Coal Mining Risk Assessment and confirms that there are coal mining features and hazards within the application site and its environs that need to be considered. The locations of the two former entries to the mine are confirmed and the Authority advises to avoid building over or close to them. In view of the indicative proposals that show a container port, the Authority concludes that an appropriate assessment of risk has been provided and has no objection to the application. The Authority requests to be consulted on any reserved matters application or should the development change.
- 2.30 **Network Rail** advises that it has no objection in principle but advises that there are requirements that must be met in relation to protection of the railway. These are outlined as including but not being limited to:
- The Hagg Lane level crossing which must be closed for operational rail safety if the site is redeveloped.
 - Use of the existing bridge over the railway.
 - Detail of future rail traffic.
 - Resolution of key issues relating to existing rail connectivity - for example signalling issues.
 - Demolition of the old rail control building on the south side of the railway.
- 2.31 In addition, in recognising that this is an outline application there are matters listed that are more appropriate to any reserved matters applications but which could be referred to in any Informatives:
- Drainage and the locations of soakaways, SuDS ponds and flow control systems; protection of existing wayleaves and assets. Locations of excavations and earthworks.
 - Fail safe use of cranes and plant.
 - Security of boundaries and method statements.
 - Agreed method statements and consultation on demolition procedures, planting, lighting and access.
- 2.32 Further clarification has been sought with both the applicants and Network Rail, particularly in respect of those requirements identified by Network Rail in para 2.30 above. The Authority's further response can now be summarised as requesting conditions relating to:
- The closure of the Hagg Lane level crossing.
 - Introduction of road vehicle incursion measures onto the bridge.
 - Planning obligation or Grampian condition to ensure progression and phasing of signalling layout issues.
- 2.33 **Police Designing out Crime Officer** has commented that the indicative design and layout from a designing out crime perspective is to be commended. Comments are offered on aspects of the design, particularly on motorcycle/ moped ground anchor points.

- 2.34 **SDC Environmental Health** in considering the applicants' Noise Impact Assessment (NIA) sought information on the rating level for plant associated with buildings. On delivery/servicing noise, colleagues agree that levels during daytime hours are acceptable but that there are significant adverse impacts during the night; and that the car park noise assessment is acceptable. HGV movements to and from the site would give moderate and major impacts and noise from such movements in night time hours would also exceed World Health Organisation guidelines along New Lennerton Lane. The overall impact from rail noise, based on capacity and frequency is considered to be negligible.
- 2.35 In conclusion a condition was requested which would limit noise from plant and machinery to not exceed background and that the authority should consider the significant adverse noise impact from HGV movements along New Lennerton Lane and connected to rail freight handling.
- 2.36 In seeking to address the latter, an independent noise consultant has been appointed and has been in dialogue and negotiation with all parties to seek methods to address, particularly, the potential effects of rail freight/container handling. The solutions that have been suggested and that are addressed in the part of the Officer Report below at para 4.36 onwards in respect of **Noise** have the agreement of the Environmental Health authority.
- 2.37 **The Sherburn Aero Club** has met with officers and the applicants to discuss the Club's concerns. The Club has objected to the application following that meeting on grounds that it summarises as:
- Safety of occupants and visitors to the proposed buildings.
 - Aircraft and pilot safety.
 - Aircraft noise affecting the proposed site.
 - Business interruption to both the Club and its tenants.
 - Present and future curtailment of the growth of tenants.
- 2.38 Whilst the Club emphasis that it wishes to work with the developer to alleviate their concerns and risks, the application does not achieve this.
- 2.39 The Club describes itself as a vitally important General Aviation (GA) airfield, the busiest in the north of England and 98% of the 40,000 to 45,000 take-off and landings per year are single engine aircraft. It is concerned that any development in close proximity to the airfield on an extension of the flight lines to and from the runway would introduce significant safety issues. The attraction of the Club to members would deteriorate should the environment be compromised in respect of safety and the continued ability to use all of their runways is vital to the viability of the Club and other aviation related businesses on the airfield. The Club is in the process of building a new hangar to hold 25 aircraft and will soon be in a position to go live on GNSS Approaches which is a new satellite based instrument landing system for the runway affected by this development and these investments will be jeopardised. The latter was partly EU funded with a view to increasing safety.
- 2.40 The Directors and staff have spent significant time and effort to secure a new 20-year lease in the furtherance of the Club's vision and business plan, the fourth consecutive lease since 1964.

- 2.41 Sherburn, it continues is a pilot training centre of regional importance, including catering for university students and commercial pilots. Significant parts of training include solo flying and the application would increase risks. Specifically, it would render runways 28/10 grass and 28/10 tarmac redundant since three buildings (in the Masterplan/ Parameters Plan) are directly on the runway approach /departure butting up to the airfield; these buildings and possible heights cause an issue since safety requires a clearly defined approach and departure corridor with horizontal and vertical margins.
- 2.42 Aircraft in such close proximity to buildings create unacceptable safety risks and noise pollution; the ability to use all runways is essential to enable safe landing and departure for single engine aircraft which, unlike large commercial aircraft are unable to cope with crosswinds and buildings in the vicinity would cause turbulence and wind shear. This is difficult for inexperienced aviators and many light aircraft would need extra room to manoeuvre for margins and changes in wind speed and direction, the Club continues. The permissions that were granted at S2 are referred to since these do not infringe the CAA rules in the CAA publication CAP 168.
- 2.43 In conclusion, the Club says that it is a fully licensed airfield with full planning permission in place. They wish to safeguard their operations in the strongest words available to them and are to consult a specialist aviation planning advisor for further advice since it believes that the safe operation of the airfield will be compromised.
- 2.44 A series of meetings and discussions have taken place to seek to find a way forward and this is further addressed below under the **Air Safety** heading at Para 4.44 onwards. Presently the Aero Club objection remains but a recommended way forward to fully consider specific effects upon the Aero Club at the reserved matters stage is set out below.

Representations

- 2.45 A total of five letters of comment/objection have been received from residents of Common Lane, South Milford; Low Garth Road, Sherburn and Milford Junction.
- 2.46 The grounds of comment from three local residents may be summarised as:
- Had been originally concerned about noise generated during and following construction, impact on air quality and wildlife and the use of Common Lane to access the site. Have been comforted following attendance at the drop-in session but would object if they are not addressed.
 - Conflicts with Green Belt policy, is the Council going to ignore its own guidance.
 - Some of the area is outside of development limits.
 - Sherburn cannot cope with the traffic/ bypass is at a standstill/ and traffic from the mine was minimal whilst it was operational. HGVs are limiting the flow of traffic along the A63 from Monk Fryston.
 - Road improvement works should be investigated to provide greater flow/ and restrictions should be placed upon access times for commercial vehicles
 - There should be restrictions on overnight rail traffic.
- 2.47 A letter from the developer of the STOR plant within the site - Precision Diesel Enterprises – asks that the agreed noise levels from their own development are considered by the potential developer and measures required in respect of that development remain that developer's responsibility.

2.48 A local agent has made representations objecting on behalf of Messrs Stoker who live close to the site and who are agricultural tenants of the agricultural parts of the site. In summary the grounds of objection and that the Panning Statement has a number of inconsistencies are:

- The site is not represented by the former coal distribution complex but the greater part of the site will be centred upon virgin, open agricultural land.
- The special circumstances that allowed the development of the mine complex were entirely related to coal distribution and thus this is far from a sustainable location, poorly served, devoid of realistic public transport connections and remote from residential settlements. The offers of additional access appear contrived; it is fundamentally an unsustainable location.
- No indication is given of how the objective of securing rail connections can be achieved and a dearth of design or research to enable effective use with a poor history of and little uptake to date.
- There is adequate land identified for economic activity across the District.
- There is no support from Policies SP2 or SP13 for doubling the developable area beyond the confines of the existing previously developed land [pdl].
- No meaningful support from Policies SP18 and SP19 in terms of Protecting the Environment or achieving Design Quality.
- The 2007 Economic Land Review is of date and its requirement for 37-52 ha over the plan period would be met here and more.
- Concern that farm land will be taken first in favour of fully utilising the pdl.
- The private road from New Lennerton Lane needs significant upgrading to bring it up to adoptable standards to address its poor condition and the noise and vibration arising from it.
- The proposed alien bunding needs reducing and a greater stand-off between existing and proposed buildings.
- The application should be refused.
- If the authority is minded to grant, conditioning is needed to ensure development starts from the rail head end before extending beyond those boundaries and that appropriate provision is made to ensure highway improvements for the corridor to the A1 junction. Any draft planning obligation should be open to public scrutiny before the application is determined.

3. SITE CONSTRAINTS AND POLICY CONTEXT

The Development Plan

- 3.1 The site is located in open countryside as defined by the Local Plan, outside of the Green Belt and without specific allocation. The application has been advertised as a Departure from the development plan. The local and national policy that is prevailing now is different to when the Minister granted the consent for the retention and reuse of buildings in 2007. The implementation of that consent has brought about another change in circumstances since with its implementation the former colliery is now clearly within the definition of 'previously developed land'.
- 3.2 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. Thus the first part of the assessment is to determine if this application complies with the development plan.

- 3.3 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.

Selby District Core Strategy Local Plan

- 3.4 The relevant Core Strategy Policies are as follows:
- 3.5 SP1: Presumption in Favour of Sustainable Development. This reflects the positive approach in considering sustainable development proposals from para 11 of the NPPF. The Council, Policy SP1 says, will work proactively to find solutions so that proposals can be approved wherever possible and that improve the economic, social and environmental conditions in the area. This is linked to the three overarching objectives of planning.
- 3.6 SP2: Spatial Development Strategy. Development in the countryside will be limited to, of relevance here, the replacement or extension of existing buildings 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 local communities and in accordance with SP13; or other special circumstances.
- 3.7 SP12: Access to Services, Community Facilities and Infrastructure. The assumption behind this policy is that future development needs to be provided with the services, facilities or infrastructure that are needed by new communities to function or to make sure existing communities do not suffer as a result. Facilities implemented in connection with a development should be in place or provided in phase with development and where on site provision is not achievable or justifiable, off-site provision or a financial contribution will be sought. This includes joining up or creating Green infrastructure in addition to measures necessary to mitigate or minimise the consequences of development.
- 3.8 SP13: Scale and Distribution of Economic Growth. Policy SP2 refers to compliance with SP13 which gives support to developing and revitalising the local economy. The Policy provides for an additional 37 to 52 ha of employment land in the period up to 2027 – but it is not described as a maximum - and the precise scale and location of smaller sites...in rural areas will be informed, the Policy continues, by the Employment Land Availability Assessment and determined through a Site Allocation Local Plan.
- 3.9 To establish whether scale and type is appropriate within SP13, the SDC Authority Monitoring Report (AMR) May 2018 (period 2015-17) and the 2015 Draft Employment Land Review (ELR) provide relevant context; there is not a Site Allocations Local Plan at this time. The former shows that the Council has already granted planning permissions for employment that significantly exceeds the Core Strategy requirement of 37-52 ha (in large part due to significant employment developments at the Sherburn Industrial Estate) (total of 117ha consented since 2011).

- 3.10 The Draft ELR reaches the conclusion that the whole site (reference PS42, 115ha) is available and being actively marketed (para 3.126). However, the analysis of the market in the Sherburn functional economic area demonstrates that supply significantly exceeds identified demand and is more than adequate to meet future needs. The ELR does however caveat that the Gascoigne Wood site has the potential to meet the need for a specialist freight terminal (para 5.31). While the overall conclusions do not support the allocation of additional land in the Sherburn FEA, it recommends that a positive policy stance is taken to the regeneration of former mine sites.
- 3.11 Subs C to SP13 will support sustainable development in rural areas that brings sustainable economic growth through local employment opportunities. Whilst specific support is given to the redevelopment of existing and former employment sites (subs C.2) the application as a whole would not comply with this since part of the site is not previously developed and is open agricultural land. In all cases development should be sustainable, appropriate in scale and type to its location, not harm character and seek a good standard of amenity. The view was taken at the former Kellingley Colliery (2016/1343) that notwithstanding potential compliance with individual policies, as a whole that application was a Departure since that site is unallocated and of a significant scale in a rural location.
- 3.12 The commentary to Policy SP13 states (para 6.34) “The Council also supports the reuse of the former Gascoigne Wood mine, provided this is directly linked to the use of the existing rail infrastructure that exists at the site”. This is however not an adopted plan policy.
- 3.13 SP15: Sustainable Development and Climate Change. In order to contribute towards reducing carbon emissions and resilience to climate change, schemes as relevant here should incorporate sustainable design and construction techniques; sustainable drainage systems, protect and enhance habitats; include tree planting and minimise traffic growth through the use of, for example, Travel Plans and Transport Assessments, cycle lanes, pedestrian facilities and improved public transport.
- 3.14 SP18: Protecting and Enhancing the Environment. This Policy seeks to sustain high quality and local distinctiveness through, amongst other things, retaining and protecting features of natural interest, provide for their management and that impacts are mitigated or compensated for; produce a net gain in biodiversity, increase connectivity of Green infrastructure including networks of linked open spaces and opportunities for multi-functionality; and steer development to areas of least agricultural quality.
- 3.15 Policy SP19: Design Quality is the overarching requirement for good design as a key element to achieving sustainable development through having regard to local character, identity and context. A list of key requirements is given within the Policy which non-residential development should meet and that are reflected in other policies.

Selby District Local Plan

- 3.16 The relevant Selby District Local Plan Policies (SDLP) are:

- 3.17 ENV1: Control of Development. This is the permissive criteria based development management policy that takes account of general planning considerations in the control of development.
- 3.18 ENV2: Environmental Pollution and Contaminated Land. Seeks to prevent harm from noise, nuisance or contamination and to ensure previously contaminated sites are investigated and appropriately assessed.
- 3.19 ENV3: Light Pollution. Would permit lighting schemes were they are appropriately designed and do not detract from, for example highway safety, local amenity and character.
- 3.20 ENV12: River and Stream Corridors. The natural features of and access to river, stream or canal corridors will be protected from development.
- 3.21 EMP2: The Location of Economic Development. New development is to be concentrated in and around Eggborough, Selby, Sherburn and Tadcaster and this policy makes actual allocations in and around these and others settlements.
- 3.22 EMP9: Expansion of Existing Employment Uses. Proposals for expansion or redevelopment of existing uses outside of development limits or outside of established employment areas are supported by this policy subject to criteria. The support in Subs 4) is provided expansion onto agricultural land will not result in the loss of the best and most versatile agricultural land and that the site will be well related to existing and well screened or landscaped.
- 3.23 T1: Development in Relation to the Highway Network. Proposals are to be well related to the network and will only be permitted where it has adequate capacity and can safely serve the development, unless appropriate off-site improvements are undertaken.
- 3.24 T2: Access to Roads. The intensification of the use of an existing access would be permitted provided there is not detriment to highway safety.

4. APPRAISAL

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

- Assessment against the Development Plan.
- Other material considerations.
- Highway impact, accessibility and mitigation.
- Noise.
- Air safety.
- Loss of agricultural land.
- Landscape and visual impact/Biodiversity.
- Rail safety and operation.
- How to ensure development is truly rail related and the nature of conditions on any approval.
- Nature of any planning obligation.

Assessment against the Development Plan

- 4.2 The site is outside of settlement development limits and without allocation. There are no development plan policies specific to this site or the former colliery and the application has been advertised as a Departure.
- 4.3 In considering the development plan policies above, the extent of compliance with the Plan is a judgment of the sustainable credentials of the proposals and the extent to which the criteria in specific development management policies are met. This becomes potentially limited by the outline nature of the application since, for example, 'well designed buildings' can only be ascertained at reserved matters stage.
- 4.4 The applicants' Planning Statement identifies the key policies within the development plan affecting the application. It also notes the statement in the commentary to Policy SP13 giving support for the reuse of the Gascoigne Wood mine site for uses directly linked to the existing rail infrastructure that exists at the site (para 3.12 above).
- 4.5 Core Strategy Policies SP2 and SP13 appear to be the principal development plan policies against which to judge the principle of this application; SDLP Policy EMP9 gives similar criteria based support whilst EMP2 carries potentially less weight since these are allocations from 2008 that have generally been taken up and are superseded in age by the Core Strategy.
- 4.6 It is important to note when considering this application against policy that much of the extent of the expansion of the site is on land which does not form part of the former mine site (~43%) so, taken as a whole; the entire scheme does not fit within or comply totally with any one single policy.
- 4.7 It is considered that the relevant strand of Policy SP2 of '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 local communities and be in accordance with SP13', cannot apply to 2,000,000 sq ft of new commercial floorspace which is of a scale that is clearly unrelated to the local economy
- 4.8 Policy SP13 C supports sustainable development on greenfield sites in rural areas including the development of well-designed new buildings (also reflected in SP2). SP13 D requires that development in all cases is sustainable, appropriate in scale and type to the location, not harmful to the character of the area and to seek a good standard of amenity. The location of much of this site on agricultural land and in view of the overall scale in a countryside location is not the scale of development envisaged by this policy under a 'Rural Economy' heading so similarly this application does not comply with Policy SP13 overall.
- 4.9 Therefore when considering the development plan as a whole, the location, scale and intended use of this site is not related to the present rural economy and your officers consider that it was not the intention that Core Strategy Policies SP2 and SP13 could beg in favour of major new commercial floorspace in the open countryside. The other subject specific and relevant policies are criteria based in terms of whether, for example, a scheme can be made to be more sustainable but it must be concluded that the application is not in accordance with the development plan as a whole.

Other material considerations

4.10 S.38 (6) (para 3.2 above) says that determination shall be in accordance with the development plan unless material considerations indicate otherwise. Where an application conflicts with the plan, permission should not usually be granted and para 12 of the Framework refers to s.38(6) that local planning authorities may take decisions that depart from an up-to-date plan but only if material considerations in a particular case indicate as such.

A: The need for new floorspace

4.11 A consideration is the significant oversupply this application would represent against the identified and evidenced requirements.

4.12 The Core Strategy provision of 37-52 ha for new allocations for employment land includes 23ha at Olympia Park and the AMR shows that 117ha of employment land has already been permitted since 2011 (para 3.9 above). Thus the quantum of floorspace to be allocated in SP13 has already been exceeded and until the Site Allocations Plan can carry some weight, SP13 A is no aid (in terms of floorspace allocation) to this application since that figure has already been exceeded. However, this 37-52ha is not mooted as a maximum figure and there are no policies to do with resisting new employment proposals once that figure is exceeded. The large expansion to Sherburn Enterprise Park – S2 (1.25 million sq ft on 35ha), for example, was first granted within the current plan period (2013/0467) in the knowledge that it exceeded the anticipated employment land requirement but was seen as a natural extension to SEP and that there were no similar suitable sites available.

4.13 That the former colliery site (57% of the application site) has a valid, extant consent for employment use that is rail related is a material consideration and any consent here would rationalise the use and bring the employment land use more up to date with a more efficient and potentially more intensive use of land. The extension outside of the former colliery is a part of the package and any support for it must be on the basis that it must be rail related. Whilst the ELR says that supply in the Sherburn area significantly exceeds demand, that is a general employment land observation rather than specifically assessing rail freight related floorspace.

4.14 Thus although any consent here will see a permission on 101ha which will almost double the current over provision of sites with consent; over half of the site already has consent and the Policy makes no distinction between types of employment use. The choice provided by a consent here and which cannot be provided anywhere else – due to its rail connectivity- is a reason to grant consent for an expansion of the existing site linked to an existing and with the potential for a national and regional freight terminal of strategic significance and which could have a longer term role meeting specific requirements beyond the plan period. The ability to ensure it is genuinely rail related and any phasing controlled accordingly is a matter for the nature of any conditions or obligation.

B: Commentary in the Plan

4.15 There are no specific policies for the former mine sites in either the SDLP or the Core Strategy. The former predated the closure of the Selby mines and is not of any real assistance whilst the latter has the commentary support for the reuse of Gascoigne Wood provided that it is directly linked to use for the rail infrastructure. This 'support' is not adopted Plan Policy but it is however specific to Gascoigne

Wood and is a material consideration in that the Plan sought to provide supporting guidance without linking it to an allocation of land. Any reuse of Gascoigne Wood was always going to be at Gascoigne Wood and the commentary supports the reuse of the existing site, provided it is truly rail related.

- 4.16 Therefore, it is a matter of planning judgement, for example, as to the extent that the Council's expressed support for the reuse of Gascoigne Wood at paragraph 6.34 of the Plan should be given weight in this context.

C: Economic Development Framework

- 4.17 Although not a part of the Development Plan, the Council's adopted Economic Development Framework 2017-2022 identifies Gascoigne Interchange as a key development site with its regionally significant rail freight infrastructure.
- 4.18 The Council's approach and based upon that Framework has been that there are a number of key development sites, including those that are unallocated but that their release for employment will provide large scale sites in locations that can link into existing and allocated employment sites and centres of population. In this way providing a wide range and choice of sites with consent gives maximum flexibility and choice.

D: National Guidance and Policy – National Planning Policy Framework (NPPF), National Planning Practice Guide (NPPG)

- 4.19 The 2018 Framework replaces the first NPPF issued in March 2012.
- 4.20 There is a positive approach in considering sustainable development proposals in para 11 of the NPPF. This is linked to the three overarching objectives of planning although the new Framework does say that they are not criteria against which every decision can or should be judged (para 9). Decisions are to guide development towards sustainable solutions but in doing so should take local circumstances into account to reflect the character, needs and opportunities of each area.
- 4.21 Significant weight should be placed on the need to support economic growth and productivity (para 80); and be flexible to accommodate needs not anticipated in the plan (81) and recognise the specific location requirements of specific sectors (para 82). Para 83 reflects Plan Policies SP2 and SP13 by seeking expansion of all types of business growth in rural areas through...well designed new buildings. There should be recognition, the Framework continues, that sites to meet local business needs in rural areas may have to be found...beyond existing settlements and in locations that are not well served by public transport. In these circumstances (para 84), it is important to ensure development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits opportunities to make a location more sustainable. The use of pdl and sites well related to existing settlements should be encouraged where suitable opportunities exist.
- 4.22 Under the heading of promoting sustainable transport, significant development should be focused on locations which are or can be made sustainable through limiting the need to travel and offering genuine transport mode choices (para 103). Paragraph 104 emphasises the need for planning policies to provide for any large-scale transport facilities that need to be located in the area, and the infrastructure and wider development required to support their operation. Rail freight interchanges are specifically included within the definition of large scale transport facilities.

4.23 Under Habitats and Biodiversity, paragraph 175 says that when determining applications, the following principle, of relevance here, should be applied:

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

E: Other documents

4.24 The Transport for the North Enhanced Freight and Logistics Analysis Report (2018) identifies the application site as one of three in the North meeting the definition of a Strategic Rail Freight Interchange. Based upon analysis from the Northern Powerhouse Review the need for infrastructure to accommodate growth in the freight industry is demonstrated and based upon a strong multimodal freight capability. The historic northern rail freight activity was related to coal movements between ports and inland power stations and as these volumes fall there is an opportunity to utilise the released capacity to the benefit of other commodities. Growth is also expected to be driven by the movement of intermodal freight between the southern ports and the North of England. A key barrier to modal shift from road to rail for freight is a lack of intermodal terminals, and the expansion of the site would be expected to contribute to the required modal shift.

Highways impact, accessibility and mitigation

4.25 The Transport Assessment part of the ES identifies what measures will be taken to deal with anticipated impacts on the network and defines those improvements and initiatives to improve accessibility of the site to all modes of transport. Although indicative, the Masterplan confirms that layouts will take account of opportunities for pedestrian and public access into the site, particularly to the landscaped central area around the Carr Dyke as the boundary between Areas A and B and along the newly landscaped western boundary. Connections to the north, towards S2 and the committed enhancements to the public network as part of those consents can then be made at reserved matters stages. The important point is to ensure that layouts in this site do not preclude future connections.

4.26 The Highway Authority, following requests for further information and clarification, now does not raise any objections to the application and the measures proposed in both the planning obligation and the Schedule of conditions (**Appendix 1**) now have its support.

4.27 Eleven junctions within the vicinity of the application site have been surveyed, traffic count data obtained together with accident data and a survey of all existing pedestrian, cycle and public transport facilities. With the agreement of the Highway Authority and to allow flexibility of the site to react to market conditions, the ‘worst case’ Class B2 trip rate scenarios were modelled to deduce impacts on the network.

4.28 Each of the junctions was then modelled to determine their capacity and the point at which a certain quantum of floorspace on the site would trigger the need for junction improvements arising from any development, and taking account of growth from other committed developments.

- 4.29 The outcomes identified that three particular junctions would need improvement to assist capacity when certain stages of any development were reached and it is intended that these triggers are controlled by planning conditions on any approval. The three junctions are:
- The B1222/New Lennerton Lane junction (TA junction 8) with a new, east bound right turn ghost lane and visibility improvements (prior to first occupation)(Condition 10).
 - The B1222/Aviation Rd/Fenton Lane roundabout (TA junction 5) with widening on the western approach to the roundabout and roundabout widening and pedestrian refuge (prior to occupation of 15,000 sq m of B2 or equivalent B2/B8 mix)(Condition 11).
 - The B1222/A162 roundabout (TA junction 4). This is the bypass roundabout crossed by the B1222 and the principal designed mitigation is to have a major dedicated south bound lane off the roundabout so that it by-passes this junction and also incorporates a pedestrian refuge on the eastern approach. The timing for these works is to be controlled by Conditions 12 and 13.
- 4.30 This modelling takes account of the traffic growth from other developments and the improvement works to the A63/A162 Monk Fryston roundabout by others. The Highway Authority is content that this particular junction will operate within capacity as a result of this application with those improvements, so this application does not need to address that particular junction any further.

Travel Plan and Public Transport

- 4.31 In addition to the specific junction works that can be addressed on any approval by conditions which require the works to be carried out before those floorspace amounts are exceeded, the TA provides for a Framework Travel Plan (TP) to assist in reducing trips by single occupancy private car including:
- Promotion of walking, cycling and public transport.
 - Deliver target modal shift (reduction of 5%).
 - Incentivised public transport scheme.
 - Cycle to Work Scheme.
- 4.32 This would be delivered through allocation of resources and appointment of a Travel Plan Coordinator (TPC) and TP Steering Group. Funding would be provided by the applicant in the form of fees of the TPC at £10,000 per annum for the first seven years. It is best practice, and since it involves commitments to expenditure, to address Travel Plans through a planning obligation concluded before any approval.
- 4.33 There have also been ongoing discussions as to how to improve public transport connectivity to the site in the light of the wider Council aspiration to have a bus service in to Sherburn Enterprise Park and linking S2 and this application site. Options for shuttle buses from Leeds and Doncaster have also been mentioned in the TA and there is known to be a significant problem at Sherburn getting people from East Leeds in to the area.
- 4.34 In order that this application site does not act alone and since there are no planning obligations in relation to SEP or S2 to do with public transport improvements, the applicants have offered £200,000 towards public transport enhancements in the

form of a ring fenced pot. This roughly equates to estimates given to the Council to put on a bus service based around shift patterns for the existing Sherburn site and the actual mechanism and responsibilities will be the subject of ongoing negotiation and contained in any planning obligation.

Conclusions on Highways impact, accessibility and mitigation

- 4.35 The Framework advises that significant developments should be focused on locations that are or can be made sustainable (para 103). It also recognises that sites to meet local business needs (the locational restrictions of the existing rail freight interchange) may be in locations not well served by public transport.
- 4.36 Thus the Highway aspects of this application are seeking to improve accessibility and the capacity of the road network, provide opportunities for other means of access to the site and by taking advantage of other commitments nearby that link to the Bishopdyke Rd cycle network and beyond. The Travel Plan is a requirement for applications which generate significant amounts of movement.
- 4.37 Detailed Heads of Terms for a planning obligation are set out below and together with and subject to the Schedule of recommended conditions (**Appendix 1**), there would be no unacceptable impacts on highway safety and thus there are no highways reasons to resist this application.

Noise

- 4.38 The EHO comments (at paras 2.34 to 2.36 above) led to further discussions seeking to address their concern about significant noise impact associated with freight handling from the rail freight interchange. This was the only area outstanding since any noise from building plant and machinery may be dealt with by condition on any approval (recommended Condition 31). The applicants' submission of a Framework Noise Management Plan (FNMP) was to seek to deal with intermittent and impulsive container handling and stacking noise, and the likely unrestricted operation of potential freight handling from the existing sidings. This work has been the subject of assessment by an independent noise consultant and to seek and investigate ways forward.
- 4.39 SDLP Policy ENV2 would not permit proposals that give rise to unacceptable levels of noise unless satisfactory remedial or preventative measures are incorporated. The Framework advises that decisions should mitigate and reduce to a minimum potential adverse impacts. National policy is contained in the Noise Policy Statement for England (NPSE) and is centred around the aims of i) avoiding significant adverse effects upon health and quality of life and ii) mitigate and minimise adverse effects upon health and quality of life. All reasonable steps should be taken to mitigate and minimise adverse effects.
- 4.40 The outcome of further discussions and the production of the FNMP is that it is agreed that subject to compliance with that plan and the agreed conditions, any adverse impact can be minimised bearing in mind that this has to be balanced against the current operation of the rail freight interchange and the handling of goods to the site which is without restriction.
- 4.41 This mitigation has been achieved by referring to the applicants' proposed Areas A to D and the acoustic differences that will ensue between the broadly industrial Areas A and B and the reach stacker and freight handling movements that will

largely only take place in Areas C and D. Controls are proposed to ensure that cumulative impacts do not affect residential receptors as the development progresses. This is achieved by the use of strategic noise management such that each submission of incremental reserved matters proposals will be accompanied by noise data and impact assessment including development already in place or previous RMs approvals to demonstrate compliance with overall cumulative acoustic requirements.

- 4.42 It is accepted that noise in the freight handling area of intermodal container movement by reach stacker or other freight delivered by rail in this area is principally dependent upon management measures employed to reduce noise impact and the FNMP is considered critical for the effective operation of freight handling.
- 4.43 These measures are articulated in recommended conditions 28 to 31 and have been agreed with all parties.

Air safety

- 4.44 The Sherburn Aero Club (SiEAC) is a private member not for profit organisation that has been at Sherburn since 1964 on facilities that have their origins since before the First World War. The flight training school opened in 1970.
- 4.45 The NPPF makes short reference to General Aviation (GA) and on plan making says that policies should recognise the importance of maintaining a national network of GA airfields, taking account of their value in serving business, leisure, training and emergency service needs and the Government's GA Strategy.
- 4.46 The GA Strategy does not make specific reference to protecting GA airfields from neighbouring development but in the spirit that 'technology changes very quickly and in order to survive [aviation] businesses must adapt to reflect this progress - such as by improving hangar facilities or creating all-weather runways and that improvements to infrastructure at airfields are increasingly vital to their ability to survive' it appears implicit that the operational integrity and attractiveness of GA airfields should be taken into account.
- 4.47 The airfield is not a 'safeguarded aerodrome' under town planning legislation and thus there are no statutory consultation requirements with the Civil Aviation Authority (CAA) since the Direction in Circular 01/03 does not apply. There is therefore only a voluntary consultation procedure with local authorities and the operators of such aerodromes are expected to take steps to protect their locations from the possible adverse effects of development.
- 4.48 The busiest aerodromes have Public Safety Zones (PSZ's) administered by the CAA at the ends of runways where development is restricted so as to control the number of people on the ground at risk from injury in the event of an aircraft accident, Sherburn does not have PSZs.
- 4.49 The protected airspace around an airfield is represented at its lowest levels by Obstacle Limitation Surfaces. OLSs are complex sets of 3-dimensional surfaces which extend upwards and outwards from, and are more restrictive, at the ends of runways where the angle is generally 3 degrees. Developments are to be assessed to ensure that they do not infringe into any of the OLSs since this could endanger aircraft. Guidance is contained in the CAA publication known as CAP168.

- 4.50 Although the CAA has not been formally consulted, they have nevertheless been contacted and have confirmed that the Parameters Plan and the application appear to be CAP168 compliant. The lower surface of the OLS above the threshold for Runway 28/10 which points towards Area B is variously a minimum of 6m, 14m and 22m above the present indicative maximum height of 16m of the highest indicative buildings in Area B shown on the Parameters Plan. This is since the OLS inclines upwards away from the end of the runway at 75', 100' and 125' intervals. The Club has concerns that any wind shear or down drafts that may also be caused by the buildings themselves gives very little safety margins. At the 50' height from the threshold (15.24m) any subsequent buildings with a maximum 16m building height would be within only a few metres of the OLS.
- 4.51 Thus weight should be given to the Aero Club's concerns and discussions continued to seek a solution. The realignment of blocks within the Parameters Plan, for example, to align them parallel to the access road and further to the east so that there is a large service yard between buildings and the threshold at the end of the runway is being considered, this is however an outline application so it will be difficult thereafter to hold the applicants to any indicative solution.
- 4.52 Initially it was envisaged that a solution being worked up through a planning obligation was an upgrade of Runway 24 (not facing the development) at an estimated £300,000 paid for by the applicants. This would see installation of drainage and a more suitable surface (geo textile membrane) which would enable the function of 28 to be taken over by 24 which could then remove the Aero Club's objection and allow the Parameters Plan as submitted to become a part of any approval.
- 4.53 Upon legal advice it is now considered that any actual effects upon the Club cannot be properly quantified until the nature of future reserved matters proposals is known. This is since it will only be the actual presence and height of proposed buildings in particular locations which the Club will be able to specifically consider when the reserved matters are proposed in detail. Although maximum heights and areas for development are shown on the Parameters Plan, these are broad and maximum development principles and it is not known whether buildings will come forward up to the Parameters Plan limits; smaller buildings in different relationships or locations may for example not result in Aero Club objections at later stages. It would thus be wrong, and not 'reasonably related' to seek works which would remove the use of the runaway facing this development if, with the evolution of detailed building proposals they do not attract any relevant objections.
- 4.54 Thus, the offer of payment by the applicants to upgrade a runway to take over the role of the runway that may be affected by development if construction comes forward up to the maxima shown in the Parameters Plan is not necessary at this time. This is because the harm identified by the Club may not occur but would be a matter to revisit at the time of any future reserved matters negotiations and submissions.
- 4.55 Thus the Aero Club objection is still in place but it is concluded that this can properly be considered and addressed in full at the time of negotiation and submission of reserved matters application(s) in Area B.

Loss of agricultural land

- 4.56 There are 43 ha of agricultural land in Areas A and B outside of the bunded former colliery site. Policy SP18 seeks that the high quality and local distinctiveness of natural and manmade environments will be sustained by, amongst other things, steering development to areas of least environmental and agricultural quality. The NPPF advises that decisions should contribute to and enhance the natural environment by recognising the economic and other benefits of the best and most versatile land (bmv)(land in Grades 1, 2 and 3a). These grades are the most flexible, productive and efficient in response to inputs and which can best deliver future crops. Current estimates are that Grades 1 and 2 together make up ~21% of farmland in England.
- 4.57 The applicants ALC Report shows that the application site does not contain any Excellent or Very Good grades of land (Grades 1 and 2) and there is 15.6ha of Grade 3a land – about 36% of the site. The rest of the site is in Grades 3b and 4 with ~1 ha in woodland.
- 4.58 Therefore just over one third of the agricultural part of the site is Good agricultural land (the lowest of the three bmv grades) and whilst its distribution would not enable it to be protected, the bulk of the site is poorer quality which would be the preferred grades to enable development. Thus it is not considered that the loss of some best and most versatile agricultural land would be a reason for resisting this development.

Landscape, visual impact and biodiversity

- 4.59 In taking account of the Principal Landscape Architect's concerns, and addressing significant landscape and visual effects, the Parameters Plan and the Design Guidance Document have each gone through a number of revisions and reconsultation with Urban Design and County Heritage Services.
- 4.60 It is understood that the County Landscape Architect, and subject to achieving the last set of proposed revisions to the Parameters Plan and the Design Guidance Document will have no objection to the scheme provided that the following matters are addressed:
- Securing public access to those areas intended for wider public enjoyment and measures for long term maintenance and management.
 - Phasing and implementation of the advanced landscape framework works.
 - Similar phasing and implementation of the northern mitigation measures.
 - Soil management plan for the retention and reuse of top soil.
 - Detailed landscaping plans and adequate tree retention and protection measures for both the advanced planting and the plot by plot reserved matters.
 - Commitment to protect and retain the existing perimeter trees and woodland, much of which is outside of the red line but within the applicants' control (blue line).
 - Long term maintenance and management of landscaping and biodiversity.
- 4.61 The reserved matter of 'landscaping' being in front of the authority at this time was in order that strategic and mitigating planting could be designed and then controlled to be implemented earlier on in development than would normally take place. In this way and at defined triggers, the strategic landscaping and planting now designed to assist to mitigate and screen could be being implemented in advance of maybe some of the individual and incremental submissions of reserved matters that will

likely come in building by buildings or, at best, Area by Area. This would be controlled by condition. The landscaping associated with each building or plot will be required to be addressed specifically to that plot when its reserved matters are submitted.

- 4.62 The Parameters Plan has been further amended to confirm that the existing green areas outside of the application site, but in the applicants' control, will be retained.
- 4.63 Large parts of the site are screened from the east and northeast and, but for from the Selby to Leeds railway line where the bulk of new building(s) on Area C would be plain to see, also from the south by the existing bunding. The impacts to the residential neighbours to the north and north-west are to be addressed by the formation of planted bunds, acoustic fencing incorporated as part of them, sufficient planting widths stand off from the buildings and control over unit size, height and potential use. The recommended noise conditions deal with audible impacts.
- 4.64 The latest Parameters Plan breaks down the northern Area A into four smaller sub-areas with the potential for smaller unit size with fixed finished floor level and maximum building heights. Smaller unit sizes provides a mix of accommodation types to be more attractive to a wider range of potential tenants, reduces impacts on residential neighbours and gives greater space and separation between buildings by also providing a limit for the extent of buildings so that a clear separation distance is fixed. Whilst layout, scale or appearance is not in front of the authority, the Parameters Plan allows certain design criteria to be understood, controlled by condition and which any future reserved matters submission will be required to follow.
- 4.65 There is some tree clearance on the south side of the railway (Area D), to give greater handling and turning flexibility as part of the rail freight handling; the existing planted bund which mostly encloses the site beyond from the south is to be retained.
- 4.66 The final parameters for Area B will remain as proposed since matters of concern to the Club in terms of building locations, heights and orientations are not in front of this authority at this outline stage.
- 4.67 Area C, which is the site of the current covered stockyard and the bulk of the former mine site is visible from the railway line and will continue to be with a maximum building height set at 16m H. To its east is the proposed container port with maximum container heights at 15m and proposals for its screening from both the north (mine access road) and the south (rail line) are a part of the Parameters Plan and the Design Guidance Document. Any planting scheme, subject to Network Rail controls is intended to supplement the rail boundary to Area C, giving glimpses and framed views of a new building and activity behind rather than seeking to hide it away from public view since it is a major development site to act as an advertisement for economic growth.
- 4.68 The Framework Landscape and Biodiversity Management Strategy and the Arboricultural Assessment did not provide any specific landscape or biodiversity enhancement proposals prior to their revision, although the setting up of a management body through a planning obligation is referred to. The confirmed presence of European Protected Species on and in the vicinity of the site means that the application could not have been determined until the potential impact on those species and their habitats had been assessed and understood. From this an

appropriate level of mitigation, publicly accessible areas and landscape design can be progressed from a position of knowledge. Since some of the survey work was sensitive to specific times of the year, the outstanding surveys were produced after the initial objections from YWT and the County Ecologist.

- 4.69 The updated surveys include proposals for habitat creation, protection and mitigation as far as possible at this outline stage. There is recognition of the need for enhanced roost habitat for bats and a lighting strategy and reasonable avoidance measures for reptiles and amphibians are suggested to be controlled by condition. The three areas of flood mitigation along the line of the Carr Dyke are include with buffers and grassland/ wetland planting as part of the indicative masterplan; all of the watercourses are being retained and their management, it is recognised, needs to change to support water vole. Any vegetation clearance is recommended outside of the bird breeding season and there are specific references to in-built mitigation aimed at identified bird species and hedges and existing copses are to be retained where possible and subject to more detailed biodiversity enhancement proposals.
- 4.70 The Natural England and Defra guidance does suggest that planning permission may be granted subject to the imposition of conditions when the presence of protected species is known and that planning permission should have been achieved before applying for any necessary European species mitigation licence.
- 4.71 The recommended conditions based upon the content of the Parameters Plan and the Design Guidance Document, since this is an outline planning application, is the manner, together with the obligation in which advanced planting, quality landscape and design and longer term maintenance and management can be achieved. The Heads of Terms for any obligation reflect this.

Rail safety and operation

- 4.72 A number of the issues raised by Network Rail (2.31 above) can only be addressed at the time of submission of reserved matters. Those matters that the Authority indicated were 'requirements' and that should be met have been the subject of further discussions.
- 4.73 The upgrading of the railway between Manchester Victoria to Leeds and Selby/York relating to the Transpennine Route Upgrade (TRU) as part of the Great North Rail Project has already commenced with some early works underway prior to the main programme being announced by the DfT. Whilst the applicants are understood to be involved with negotiations and agreements with Network Rail unrelated to planning as part of the main programme, it had been understood that signalling and electrification was happening in any event and were not being triggered by or as a consequence of any existing or proposed use of the application site.
- 4.74 However, in seeking clarification of the nature of those relationships from Network Rail the conditions and an obligation requested by the Authority are the subject of ongoing discussion to decide if they can reasonably be controlled by any planning permission. Whilst a Grampian condition (prohibiting development authorised by the permission until a specified action has been taken by others - like the provision of infrastructure) may be imposed if there is a prospect that the actions in question will be performed within the time limit imposed by the permission, your officers do not wish to recommend unreasonable or unenforceable conditions without clear evidence that they are capable of being complied with.

- 7.75 This request for conditions/an obligation has come very late at the time of writing so the Committee will be updated on the conclusion of discussions.

How to ensure development is truly rail related and the nature of any conditions

- 4.76 The applicants are seeking as much flexibility as possible in any approval since presently this is a speculative application without any intended or known occupiers. In much the same way that the Secretary of State in 2007 concluded that although a rail related user may not be found quickly it did not mean that no user would be forthcoming, that situation is similar today as evidenced by the National Rail Freight Strategy (2016), the Northern Powerhouse Strategy (2016) and the Network Rail Freight Network Study (2016). This is an opportunity for existing infrastructure to be used to its fuller potential.
- 4.77 The development on open agricultural land is not compliant with policy in principle but in order to justify this scale of development in this location and in view of the oversupply in any event, the consent needs to be linked to the existing rail freight infrastructure in a similar way to the 2007 consent. This would ensure that any consent contributes to sustainable development. Although there is a justification for a fixed amount of non-rail related floorspace in order to address landscape, visual and amenity considerations, this is set at 12½% based upon the indicate layouts that address those concerns. There does however need to be a phasing control or methodology of preventing any non-rail related floorspace coming forward first since the ES suggests that development will commence from the north. This is likely to be more attractive to a potential developer or the applicant since there would be less constraint on green field development that could be more cost effective – rather than the brownfield parts of the site.
- 4.78 It is appropriate to vary the standard outline conditions to allow development to start in a defined phase (in this context 'Area') when the reserved matters for that phase have been approved and before other phases have come forward. The outline speculative nature of this application means that it would not be reasonable to require that development may only commence from the rail head (Area C or D) end since the order of reserved matters submissions will depend upon potential tenants or users coming forward based upon available floorspace. It is also not realistic, as might normally be the case, to seek by condition a Delivery Strategy and Phasing Plan which would then seek to specify the order of submission of reserved matters. This is not realistic since this could unduly restrict the marketing of the site or the ability of the developer to respond to specific floorspace or location requirements of potential tenants.
- 4.79 Thus the proposed conditions in the attached Schedule include a limit on non-rail related floorspace (Condition 6); that future reserved matters will be required to be in accordance with the Design Guidance Document and the Parameters Plan (Condition 5) and that non-rail related or associated Class B1 floorspace may not commence until a defined quanta (50,000 sq m) of rail related floorspace is committed to be developed and occupied (Condition 7). This will prevent non-rail related uses coming forward first and encourage true rail related uses in line with the overall spirit of the application.
- 4.80 Conditions may only be imposed on an approval if they satisfy the six tests of being necessary, related to planning, related to the development to be permitted, precise,

enforceable and reasonable in all other respects (Framework para 55). A number of the consultation responses have requested detailed information, revisions or payments in relation to, for example, lighting strategies, airfield enhancement / protection, additional drainage, flood risk or biodiversity and mitigation measures. However, until the details of the numbers, location size, shape and appearance of buildings becomes the subject of the reserved matters applications, it is not possible to foresee or require that level of detail. This is why the discussions in respect of payments to the Aero Club have been curtailed since they are rightly triggered at reserved matters. The Schedule of Conditions recommends those conditions that can reasonably be imposed on any approval.

Planning obligation

4.81 The applicants have agreed to enter into a planning obligation under s.106 of the Act to address and deal with matters that cannot reasonably be dealt with by planning condition on any approval. Parties to the agreement are identified as Harworth Estates Investments Ltd and Harworth Estates Agricultural Ltd, Sherburn Aero Club, this Council and North Yorkshire County Council. There are agricultural tenants on the land and the nature of their interest is being established to ascertain if they need to be a party to the obligation.

4.82 The current Heads of Terms are:

- Preparation and implementation of a Travel Plan as set out in the Framework Travel Plan with measures to promote sustainable travel, funding, appointment of a TPC, TP Steering Group and monitoring (£10,000 per year for the first seven years).
- Travel Plan Monitoring Contribution of £3,500 to be paid to the County Council.
- A sustainable travel enhancement contribution of £200,000 towards public transport enhancement.
- Biodiversity and enhancement plans in respect of water vole and otter extending into the applicants' 'blue land', management proposals and off site enhancement.
- Legal costs of drawing up the obligation up to £1,300.

4.83 Planning obligations may only be sought when they meet the tests set out in the 2010 CIL Regulations:

- Necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

4.84 Instructions have been given for the preparation of the obligation and the Committee will be updated on the progress of the first draft.

5. SUMMARY and CONCLUSIONS

5.1 The Act requires that applications are determined in accordance with the development plan unless material considerations indicate otherwise.

5.2 The application has been considered against the development plan as a whole and in view of the scale of the proposal - notwithstanding that over half the site has an authorised use for rail related Class B2 and B8 uses - the location in the open

countryside and the inherent unsustainable location divorced from major residential centres or well connected to employment centres, the application is considered to be not in accordance with the prevailing development plan. Whilst there are no policies which clearly presume against the development, there are similarly no adopted policies specific to this use in this location and the more general development management policies are criteria based and introduce a level of judgment. It is concluded that the application gains no support from Policies SP2 or SP13 since this scale of development in the countryside is not within the spirit of those policies.

- 5.3 Therefore the assessment has considered the nature of material considerations and the environmental information that might indicate a determination other than in accordance with the plan. The site is listed in the Council's Economic Development Framework as a key development site that has regionally significant rail infrastructure and there is commentary in the Core Strategy that the Council would wish to support the reuse of the former mine, provided it was rail related. This is echoed in the Framework where sites to meet local business needs may have to be found away from settlements and where they are not well served by public transport and it recognises that rail freight interchanges may need to be in a particular area. There is some support from SDLP Policy EMP9.
- 5.4 Highways and traffic impacts have been thoroughly modelled and assessed and the outcomes have the support of the Highway Authority (paras 4.25 to 4.27). Those junctions on the network that have been identified as needing improvement will be upgraded at defined triggers of completed floorspace and controlled by condition. In order to verify the accuracy of the modelling further monitoring will be put in place as the development proceeds which will determine the trigger for the B1222/A162 roundabout major improvements to take place (Conditions 12 & 13).
- 5.5 The financial contribution towards necessary public transport improvements of £200,000 is to be addressed by a planning obligation.
- 5.6 The likely significant effects in respect of noise have been addressed in the ES and considered through consultation and the use of an independent noise consultant. The areas of the development most likely to affect residential neighbours are in relation to freight/container handling noise off the southern sidings or in the container port. A recognition of the varied noise climates in different parts of the site from different operations has led to a combination of noise control conditions to achieve specific solutions. The management of how freight is handled is the subject of a Framework Noise Management Plan, the submission, approval and monitoring of which is also controlled by condition.
- 5.7 Paragraph 4.44 of the Report onwards discusses the fears of impact of the proposal upon Sherburn Aero Club and the GA airfield. The concern and perception that the development will reduce the attractiveness and viable use of the airfield is a material consideration. The applicants had agreed to include in the proposed planning obligation that a maximum £300,000 is provided in order to upgrade another runway at the airfield to a mechanism to be agreed. It is now considered, on legal advice, that since any quantifiable impacts cannot be defined until the time of reserved matters, that will be the time when the need or otherwise for any planning obligation of this nature will be negotiated.
- 5.8 The third part of the ES considered landscape and visual impact. The concluded Design Guidance Document and Parameters Plan provide in clear documentation

the nature of the proposals and the requirements that future reserved matters applications, upon any grant of outline permission, would have to follow. The extent of what is being applied for is contained within these two documents and the fixing of the maximum extents of built areas, finished floor levels and maximum building heights, for example, have been the mechanism that have enabled landscape and visual impact to be defined, assessed and mitigated. Subject to controls that future reserved matters do not exceed those parameters and specific design guidance effects upon visual, landscape and residential amenity are defined and controlled.

- 5.9 The previous concerns from the County Ecologist have been addressed and the combination of conditions and the planning obligation has those consultees support.
- 5.10 The assessment of the current oversupply of employment land has concluded that this particular application is linked to a specific use which is not reflected in the generality of the AMR or ELR and the Economic Development Framework and the supporting commentary in the Plan are further material considerations that support this application.
- 5.11 The former colliery site has rail infrastructure that is recognised at many levels as being a unique asset to the District and the recommended conditions and obligation are capable of improving the sustainable credentials and efficiency of use of this site. This is a location specific proposal which needs to be in this position adjacent to the existing rail freight terminal and associated uses which are previously developed land. The application would not be acceptable if it was not rail linked and the recommended conditions specifically address this.
- 5.12 Therefore, in recommending that the Committee are minded to approve this application, Committee is requested to consider that the application is not in accordance with the development plan. However the environmental information and the mitigation proposals in the application will make a significant contribution towards improving the sustainable credentials of the site. The nature and extent of those material considerations therefore indicate a consideration other than in accordance with the plan. This is including since the benefits and opportunities of using the existing rail freight infrastructure, at a time when Government guidance is seeking to further facilitate a shift of freight from road to rail, in a more efficient and beneficial way than at present can be in accordance with guidance. Thus, subject to the recommended conditions and the conclusion of the planning obligation as outlined, the material considerations as set out in this report outweigh the conflict with the development plan.

6. RECOMMENDATION

- 6.1 Subject to the satisfactory conclusion of those matters that are still the subject of negotiation with Network Rail there will be a recommendation that:
- a) Committee resolves that it has considered the environmental information and that it is Minded to Approve this application subject to the terms of the planning obligation and the schedule of conditions.
 - b) Authority is confirmed to officers to refer the application to the Secretary of State under the 2009 Consultation Direction with this Committee's resolution to support it.

- c) In the event that the application is not called-in by the Minister, authority is delegated to the Planning Development Manager to approve this application upon the conclusion of the planning obligation under s.106 of the Act under the terms set out in para 4.81 above and subject to the imposition of the attached schedule of conditions. That delegation to include the alteration, addition or removal of conditions from that Schedule if amendment becomes necessary as a result of continuing negotiations and advice and provided such condition(s) meet the six tests for the imposition of conditions and satisfactorily reflect the wishes of Committee.

- d) In the event that the application is called-in for the Minister's own determination, a further report will come to Committee.

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Appendices: Appendix 1: Schedule of recommended conditions
Appendix 2: S of S's Decision letter APP/N2739/V/06/1199354(Application 2005/0673) dated 13 August 2007