

Officer Update Note – 5 December 2018

**Officer Update Note
Planning Committee 5 December 2018**

Item 6.3

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		

Additional representations

A written representation from the co-owners of Sherburn Aerodrome has been received. In summary it objects in the “strongest terms” and that the application would be detrimental to the aerodrome as an aerodrome, to the Club and its tenants, to aerodrome users and to General Aviation in the UK. In referring to air space, aerodromes and networks of aerodromes as valuable infrastructure, Sherburn is described as an important pilot training centre and given there is a world shortage of pilots.

In addition, the York Ornithological Club (YOC) has objected since it considers not enough has been done to minimise impacts on wildlife and provide net gains to biodiversity. Specifically it suggests that the Breeding Bird survey was not carried out over long enough periods, and it makes no mention of Curlew which breeds nearby, makes frequent use of the northern part of the application site and is Red listed as a species of conservation concern. The Club fully support the views of the YWT and endorse the comments of the County Ecologist that ‘much more consideration is needed in terms of mitigation, compensation and enhancement’.

Finally, Cunnane Town Planning has submitted a letter of representation on behalf of Samuel Smith Old Brewery (Tadcaster)(SSOBT). The letter of representation considers that the application should be refused and a detailed reasoning of this view is provided. After describing the Surroundings and the Site, and with a reference to the Aero Club itself coming forward for development of a similar nature which is not described, the representation may be summarised using the letter’s headings as:

Site History

There is reference to the history of the site and the Selby Coalfield in working the Barnsley Seam, both outline and reserved matters permissions for the mine were subject to restoration conditions. Permission for the retention and reuse was sought in June 2005 after production ceased in October 2004. That application was called in for the Secretary of State's determination.

SSOBT presented evidence to the Inquiry and permission was granted in August 2007 [‘the 2007 consent’]. Reference is made to para 10.66 of the Inspector's report who concluded that the proposals conflict with the development plan and Govt policy in that a new employment use would be in the open countryside that can only effectively be reached by the private car and it would thus conflict with one of the planks of sustainable development.

Condition 7 of the Decision letter [**Appendix 2**] is reproduced in full in the SSOBT letter and that the 2007 consent remains the overarching permission for the development currently on the site. Reference is then made to the original S2 consent for 117,000 sqm of floorspace granted in 2016, located to the north of this application site.

The Proposal

The application is described, using the existing New Lennerton lane access with improvements to the B1222 junction. A significant element of the scheme relies on the use of the existing rail infrastructure and the illustrative masterplan, DAS and design parameters would define subsequent reserved matters applications.

The proposal, the representation says, is entirely speculative and seeks to draw occupiers that would otherwise be attracted to other focuses of employment development.

The Marketing Report forecasts employment land uptake and would attract users from a very large catchment such that alternative, potentially more sustainable locations would be left undeveloped. Thus, it continues, the plan led benefits would not be realised in the most appropriate locations. This is especially the case since it hinges on the use of the railway infrastructure and without assurance that this critical component is deliverable the acceptability of this scheme is in considerable doubt.

Principle of Development

The application, it says raises three important issues of principle relating to compliance with the development plan; sustainability and the impact upon allocations in the plan.

Reference is made to the plan commentary (para 6.34); that the former mine is pdl but that the support is limited to the mine site and it is reasonable to interpret that higher standards of visual and environmental stands need to be met by any scheme. The importance of the chronology of development on the site is referred to in that the mine was only justified by the presence of minerals, the railhead was to efficiently extract then in the national interest and the retention of the buildings allowed in 2007 was justified by this rare transport infrastructure. Reference is made to a

development plan policy and the EiP Inspector's report that were prepared to ensure the best way to ensure these alien features were addressed.

The representation opines that the development is justified by the relationship to the rail head rather than an objective assessment of where it is best to deliver employment land. The use of the rail head is a forced departure from the Plan to attempt to justify wholly inappropriate development on greenfield land within open countryside.

Reference is made to Policy SP2 which clearly seeks to restrict development in the countryside; if granted large floorplate warehouse style buildings would result which are wholly inappropriate with respect to this policy. On Policy P13, which is seen as a key consideration to the proposals, the detailed examination of each of its parts leads to the conclusion over two pages of the letter that the application is contrary to every part of this policy. There is no new local provision of facilities for new employees during construction or upon completion and will thus have a knock-on effect on the existing service provision in Sherburn.

Railway infrastructure

The sustainability of the application, it asserts, rests mostly on the rail infrastructure; various technical studies see it as a good option and the Economic Development Strategy identifies the site to deliver related jobs. A range of potential operators are identified but the authority should consider not the likelihood of such industries seeking to occupy but how likely they are to utilise the railhead. There has been no proper assessment of the ability or capacity of the infrastructure to handle them, the Brewery opines. There is thus a serious question, the representation asserts, of what mechanism there is to ensure the rail head is used and how it will be enforced and the TA is based upon a worst case scenario that it relies solely on road transportation.

The masterplan casts further doubt since the pink and blue areas [Areas A and B], without doubt would not benefit from the rail infrastructure and would instead lend themselves to exclusive road transportation occupiers. Reference is made to para 10.70 of the 2007 consent, Inspector's report [reflected in para 18 of **Appendix 2**] but these applicants have not provided any information on current users as an indicator of potential users related to the sidings.

Sustainable transport

The purported likelihood of the use of the railhead to justify the scheme is, the writer suggests, misleading to the decision maker.

There is reference to both the Framework and the CS in promoting sustainable modes of transport and reducing the level of commuters. This application, it states, will create significant volumes of new journeys that would otherwise be directed to locations that have the correct infrastructure. Due to the lack of alternatives the predominant transport mode will be by private car and 72% single occupancy drivers with the estimated 1,761 to 4,646 full time workers required to drive to work. Bus stops and stations are remote and the present route does not represent a reasonable alternative and walking and cycling from the stations is unlikely.

It has thus not been properly considered in terms of sustainable transport; it contravenes the NPPF and will only serve to perpetuate the use of the private car.

Design

Both the Framework and the CS place an emphasis on high quality design. Although a reserved matter, the development will be out of scale and inappropriate to its setting. All broadly rectilinear buildings in plan and elevation, clad in painted metal, the representation continues, would have a significant adverse effect upon the character of the land in agricultural use. There is some comfort with the use of design guides but this does not detract from development of such a scale that would be inappropriate by its very nature.

Employment Land

The proposal is so large it will have a profound effect upon the District's employment land supply; it is not part of an adopted strategy and will thus be contrary to the development plan in this regard. The Economic Development Framework refers only to the pdl part of the site and there is no suggestion of any extension so there is no prospect that it can perform a positive role in the strategy for the District. The application is at odds with this given the agricultural land element and it will not give diverse, high value jobs which the Economic Strategy seeks to secure.

Ecology

The Council is reminded of Circular 6/2005 which states that it is essential 'that the presence or otherwise of protected species and the extent to which they may be affected is established before permission is granted'. The need to ensure surveys are carried out, it continues, should only be left to coverage under planning conditions in exceptional circumstances. The need for further surveys is identified by consultees who object in their absence.

In addition, consultees highlight the need for design measures to be included as part of any Ecological Management Plan and subsequent landscaping based upon found species and their requirements. Since landscaping is not a reserved matter this, evidently has not been carried out and no such information is available on the website. It is established case law that an lpa cannot grant permission until surveys which provide detailed evaluation (in this case on bats) of the interest and the significance of the impact has been established.

This section concludes with the belief that until this is carried out, the authority cannot reach a decision and that ecology has not been considered in the formulation of the landscaping. It follows therefore that until information is publically available any grant of permission conditional on further survey work would be unlawful and open to challenge.

Conclusion

The drawings and information, it concludes are fundamentally at odds with the development plan. The location, scale and type of development is inherently unsustainable. The application conflicts with up to date development plan policy and has the potential to affect European Protected Species.

The letter concludes that in the absence of any material considerations to outweigh conflict with plan, the application should be refused.

Response to representations

In reply to the additional representations, many of the points raised are addressed in the Officer Report.

It is acknowledged that the current Sherburn Aero Club objection, which is reflected by the airfield owner's letter, has not been removed. The importance of GA airfields is recognised at para 4.46 and it has been concluded that it is only when the precise nature, size, location and scale of specific buildings are proposed that mitigation and solutions can be sought.

The position in respect of ecology raised by both the YOC and the Brewery is addressed under a separate heading below.

The bulk of the Samuel Smith objection is predicated on conflict with the development plan and that, for instance, Policy SP13 is not satisfied. Paragraphs 4.2 to 4.9 set out why and conclude that the application is not in accordance with the development plan. Your officers agree that there is little or no support to the proposal from the development plan and that the scale envisaged here could never have been contemplated by, for example Policy SP13. The Officer Report accepts that the site is in an unsustainable location, there is an oversupply of employment floorspace and any policy support would only relate to the former mine site.

The Report outlines material considerations that beg in favour of a determination other than in accordance with the development plan but subject only to conditions that seek to ensure that the uses are genuinely rail related and in accordance with the stated nature of the application. There is a proposal for meaningful provision of a Travel Plan which would be monitored by the Highway Authority and which would be resourced and secured through a planning obligation. There is a contribution towards public transport enhancements and specific targeted improvements to junctions that would otherwise experience capacity difficulties if the worst case scenario floorspace came forward. This application is specifically proposing to take advantage of unique and significant existing Rail Freight Interchange facilities and the SSOBT letter fails to recognise that the floorspace demand and allocations are not floorspace type specific, make no provision for rail related type floorspace and this existing infrastructure is location specific. The application, it is agreed is contrary to the development plan but your officers conclude that material considerations nevertheless support the submission of this application to the Secretary of State with Committee's resolution to approve it.

Ecology

The site was surveyed in accordance with standard JNCC methodology (Extended Phase 1 Habitat Survey) by the applicants' consultants in February 2017 and throughout May and June 2018. Breeding bird surveys were ongoing at the time of application preparation and submission and continued throughout July 2018; bat detectors and transect surveys were carried out throughout May 2018. Historical and Magic website records were also consulted by the applicant's consultants.

Recommendations emerging out of this report submitted with the application saw the need for riparian mammal surveys at the appropriate times of year and these were planned to be submitted once completed and were highlighted as to also contain necessary mitigation recommendations.

The Phase 1 Report was updated in October 2018 and accompanied by particular reptile, bat, badger (confidential), otter and vole, GCN and Breeding Birds reports. The County Ecologist and YWT were re-consulted on these reports the same day of receipt – 26 October 2018.

- Detailed comments on the submitted surveys were received from the County Ecologist on 8 November 2018.
- The County Ecologist sought confirmation of the retention of two significant trees (potential bat roosts). If the identified trees were not to be retained, further surveys would need to be carried out prior to determination to confirm the presence or otherwise of bats.
- Improved habitat within the development area to compensate was noted but lighting plans are necessary to show impacts upon areas to be retained or enhanced.
- Buffer zones should be increased and management plans for water vole and their habitats/ and otter prepared.
- On breeding birds the principal concern was that there was inadequate mitigation/ compensation for loss of foraging areas and habitat. Proportionate off site compensation, mitigation and enhancement and in order to secure a net gain in biodiversity was sought.
- Whilst there was an acceptance that some measures could not be sought at an outline stage, the Ecologist remained concerned about a nett loss of biodiversity and conditions can only be imposed when impacts are assessed and necessary measures can be put in place
- An amended Landscape and Biodiversity Landscape Strategy and amended Green Infrastructure Parameter Plan were received on 20 November but the Ecologist felt that this did not add anything and a request was made for refusal
- An updated report and response was also received on 20 November from the Applicant.
- In responding the next day the County Ecologist saw the confirmation of the retention of the two trees identified previously, tree protection measures were requested; the lighting to follow BCT and ILE guidelines may be conditioned; the water vole corridors and alternative management of the water bodies was supported but it was requested to extend off-site to cover bodies further afield; whilst further mitigation was provided in respect of birds, off site mitigation and enhancement was requested; together with high level targets but this may be addressed, it was agreed, by condition.
- As a result of the information submitted by the Applicant on 20 November confirming the retention of the two trees identified by the County Ecologist, the County Ecologist was satisfied that no further surveys were required.
- The nature of high level targets, it was subsequently agreed with the Ecologist could be addressed as draft Heads of Terms in any obligation

- The nature of draft conditions was discussed and fundamentally agreed with the Ecologist
- The applicants have agreed to the Draft Heads of Terms at 4.82 of the Report which included management of 'blue land' and other off site enhancements the precise detail of which will be undertaken in the drafting
- The YWT have been advised of the progress made and their further comments were invited on 21 November. No responses other than queries on the timing of committee were received
- The County Ecologist is no longer objecting to the application is relevant since the information received on 21 November is the subject of reconsultation.
- The recommendation will thus be amended to seek a further level of delegation subject to no new issues that have not previously been considered by Committee being raised.
- If they are, and the application is not called-in, the application will be returned to Committee

Thus there has been progress and additional changes to the proposals negotiated with the applicant and the County Ecologist. The application or recommendation is not seeking determination prior to the necessary surveys being carried out, since they have been submitted.

The agreement for the entering into of an obligation for biodiversity enhancement plans, management proposals and off-site enhancements set out in paras 4.69 and 4.71 of the Officer Report and the Draft Heads in para 4.82 have addressed these comments as far as possible. The extent, presence and impacts upon protected species is known and it is now possible to secure mitigation, both on and off site by the range of recommended conditions and the obligation being negotiated.

The response and update of 20 November was not put on the website until this week so members of the public have not been able to see the full sequence of changes and negotiations. All parties have now been advised of the receipt of this document and it is now on the website. In view of this, and given the progress, the overall recommendation has been amended to reflect this, below.

Specific Report Update

Paragraph 4.72 and onwards of the Officer Report refers to Rail Safety and that further clarification was being sought from Network Rail following its requests for conditions/ a planning obligation to deal with the authority's initial concerns.

The result is that two further conditions are proposed which have been agreed with Network Rail and the applicants.

New Condition (15):

The Hagg Lane level crossing shall not be used for any form of vehicle access or vehicle connection to the site.

Reason: To define this permission for the avoidance of doubt and in the interests of the safety of the rail network.

New Condition (16):

The existing rail bridge linking Areas C and D shall not be first brought into use for rail related activities arising from this development until road vehicle incursion measures to protect the railway have been installed in accordance with details that have previously been submitted to and approved by the local planning authority.

Reason: This is a private rail bridge which is outside of the control of the Highway Authority or the Rail Authority and containment measures are necessary to protect the railway from accidental incursion by vehicles.

The other matters to do with signalling and any rail infrastructure, it has been explained, are within the control of Network Rail since freight movements on and off the main line require 'Form 1' and 'Form 3' processes and a specific Connection Agreement for such movements. There is this no reason for planning to seek to duplicate this control since such movements cannot happen without the necessary Network Rail approvals. Any physical change to lines are also approved by the regulator under Network Change consents

Other updates

The Proposed Overall Site Plan provided at p.55 of the Agenda is an Indicative layout and is not a part of any proposed layout which any outline approval would require to be adhered to.

The reference in the report at para 2.36 where **Noise** commences at para 4.36 should read para 4.38 and the reference in the report at Para 4.38 to Condition 31 should refer to Condition 32.

Recommended Condition 30. The second sentence to commence with 'Any' rather than 'The' and in that second sentence the reference to Condition 30 should be to Condition 29.

Amended Recommendation

Page 88 Part 6 of the Officer report

The consultation period on the revised ecological information received on 20 November 2018 will run for 21 days.

Thus the officer recommendation in 6.1a) of the officer report is subject to the amendment that "after the expiry of this 21-day period, officers may determine the application in accordance with the recommendation as set out unless there are new issues or matters raised that have not previously been addressed in this update note or considered by Members. In that situation the application will be returned to Committee for re-consideration, providing that the application has not been called-in."