



Report Reference Number: 2018/0818/EIA

To: Planning Committee
Date: 20 March 2019
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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		
COMMITTEE RESOLUTION 5/12/18	That consideration of the application is Deferred with Members minded to refuse the application for reasons that the Committee set out.		

This application has been brought back to Committee in the light of the resolution in December 2018 when the Committee was minded to refuse the application. Five potential reasons for refusal were given by Committee and officers were instructed to undertake further research and obtain more information in support of the suggested reasons, before bringing the matter back to Committee (Minute No. 37.2). The applicant has provided further information in response to the issues raised at Planning Committee and further representations have been received from other interested parties and consultees which need to be taken into account in coming to an overall decision on this application.

1. Background

- 1.1 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 in use as a rail related interchange. 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 proposed development on the agricultural land outside of the bunded former colliery.
- 1.2 The application is in outline for Environmental Impact Assessment (EIA) development. Details of access and landscaping have been submitted as part of the proposals. The other three reserved matters, 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 before the authority for approval at this time. Should outline planning permission be granted any reserved matters approvals will need to be in accordance with requirements of the Design Guidance Document and the Parameters Plan approved pursuant to this application.
- 1.3 The applicant states that the proposed development is intended to be a manufacturing led facility making use of the existing unique rail infrastructure opportunity.
- 1.4 The application had been recommended for approval subject to referral to the Secretary of State to give him the opportunity to 'call-it-in' for his own determination and subject to a schedule of thirty-six conditions and the satisfactory conclusion of a planning obligation. The full Committee minute on this item, approved at your meeting on 16 January 2019, is provided as **Appendix 1** to this Report and **Appendix 2** is the previous full Officer Committee report, without the schedule of recommended conditions but including the Officer Update Note tabled to Committee.
- 1.5 Since that Committee resolution, further research has been carried out by the applicants and including work in conjunction with the applicants for the hybrid outline application (Create Yorkshire) at the former Church Fenton airbase (Leeds East Airport). This is application 2018/0673/OUTM for the erection and change of use of buildings for creative, digital and media use and for the erection of a creative, digital and media industries employment park and film studios and was carried out in order to identify any cumulative highway impacts associated with the two applications.

Reasons for Refusal

- 1.6 The reasons for refusal identified by the Committee are as follows:
 1. The application went against the Council's Development Plan, namely policies SP2 and SP13

2. The use of open agricultural land for a large part of the development was felt to be excessive and was of concern to the Committee
 3. The cumulative impact of housing and development on the highways network, including the numbers of potential employees for Sherburn 2 and any potential development at Gascoigne Wood from outside of the District, would cause further pressure on the surrounding roads
 4. Insufficient information on ecology and biodiversity had been provided to Members, including inadequate consideration of comments from Yorkshire Ornithological Society about a red listed bird on site
 5. The impacts of the proposal on Sherburn Aero Club required further mitigation.
- 1.7 The applicant, the **Harworth Group plc** has provided further information and clarification in the light of the Committee's resolution and these have been assessed by officers to determine whether the further information would support the proposed reasons for refusal.
- 1.8 In addition the County Highway Authority has reconsidered its advice in the light of the Committee resolution and taking account of the joint work on cumulative highway impacts referred to at para 1.5 above. The full response from the Highway Authority is awaited but your officers have seen it in draft.

2. Further Representations

- 2.1 Prior to the December Committee meeting a reconsultation exercise had been commenced in the light of revised ecological information. The officer recommendation was amended by an Officer Update Note. That Update Note also referred to representations received after the completion of the principal report and is attached as part of **Appendix 2**. The additional information received from the applicant has not materially changed any environmental effects but has been the subject of further specific reconsultation with parties where appropriate.
- 2.2 Additional representations received as a result of this further publicity may be summarised as follows:
- 2.3 **The County Highway Authority** The updated response is awaited but it is understood to take into account the joint, cumulative assessment above and the role of the Wider Sherburn Growth and Infrastructure Delivery Plan that is underway.
- 2.4 **The Head of Economic Development and Regeneration** has considered the further evidence submitted by the applicant following Committee and sets out material considerations for why the application should be approved, referring to its fit with a range of adopted Council, Northern and national strategies and plans and the wider benefits it will deliver. The Council's Corporate Plan has as a top priority making Selby a Great Place 'to do business', the key focus of this work is through securing new investment in the district and improving employment opportunities with the Gascoigne Rail Freight Interchange specifically identified as a key strategic opportunity of regional significance.
- 2.5 The full text of the response is attached as **Appendix 3** to this Report but can be summarised below as:

- The Council's 2018 updated Corporate Plan emphasises the need to create the conditions for the current and future workforce to achieve higher levels of skills and qualifications. Amongst the things to focus on over the next two years in unlocking key transformational development sites, Gascoigne Wood is identified as having potential for a major new rail based manufacturing and logistics hub of regional significance
- The Selby Economic Development Framework (EDF), contains district targets including increased employment and increased productivity and the EDF identifies Gascoigne Interchange as one of 5 key development sites in the District, incorporating B1, B2 and B8 uses and regionally significant rail freight infrastructure. The Framework also specifies that the Council will work alongside key developers and landowners to attract investors and occupiers to Gascoigne Interchange
- The recent review of the EDF and its Delivery Plan identified the 4th highest of the 10 priorities that were agreed as '*Deliver Strategic Sites: Gascoigne Wood*'
- The response then sets out the advantages of the site including that a rail freight interchange at this site would be consistent with national and *Transport for the North* policy. It highlights that the site provides a unique opportunity for rail-related employment within the region. Detailed comparisons are given to eight other rail terminals in the region which are all, without exception limited in size, landlocked with little or no room for expansion and with restricted opportunities
- By comparison to other sites with some rail connection, the larger Gascoigne RFI application site is identified as having the ability to attract major inward investment and deliver supply to meet the projected demand arising from rail freight growth in the UK. This major inward investment opportunity is at least on par with Siemens (Goole) and the HS2 rail college development (Leeds)
- The Head of Economic Development continues with a summary of the significant local and regional economic benefits of this development and comments on the scale of the proposal, the employment benefits for local people and refers to the Infrastructure Delivery Plan for Sherburn which is underway to identify wider and longer term solutions which will take Gascoigne RFI into account and which is itself one of the priority actions in the EDF Delivery Plan

- 2.6 It is concluded that this application should be supported in order to enable the delivery of a rail freight interchange of regional significance at this site as an existing and key Council commitment.
- 2.7 **The Environment Agency** has no further comments to make and confirms that its August 2018 response in not objecting subject to conditions remains valid.
- 2.8 **County Council Rights of Way** confirms it has the same response as previously and requests, in not objecting, for an Informative on any approval.
- 2.9 **Shire Group of IDBs** confirms it has no further comments to make and that the original response in not objecting still applies.

- 2.10 **Natural England** says that it previously commented on this application; that it made no objection to the original proposal and that the proposed amendments to the original application are unlikely to have significantly different impacts on the natural environment than the original proposal.
- 2.11 **North Yorkshire Police Designing out Crime Officer** says that he has no further comments to make from previously when he commented that the indicative design and layout from a designing out crime perspective is to be commended. Comments were offered on aspects of the design, particularly on motorcycle/ moped ground anchor points.
- 2.12 **SDC Environmental Health** notes the noise conditions in the 5 December officer report.
- 2.13 **The Coal Authority** has no specific comments on the additional information and whilst considering the amendments to the overall site plan, their previous comments still stand (no objection).
- 2.14 **The County Landscape Architect** has further commented that the proposed scheme is now not satisfactory in its current form. This concern appears to be the same as the September 2018 response which led then to a series of negotiated revisions to the Design Guidance Document and Parameters Plan.
- 2.15 The concerns raised refer to a since superseded Parameters Plan and refer to points raised in the initial consultation response.

Officer Note: The December 2018 Report (**Appendix 2**) at paras 4.59 to 4.67 (for example) set out the sequence of matters that had been addressed through negotiation and include a short list of matters that the Landscape Architect had identified (para 4.60) would remove any objection provided these matters were addressed.

Your officer's conclusion was that it had been understood that the applicants' revisions and further information had addressed the concerns. The recommended conditions based upon the content of the revised Parameters Plan and the Design Guidance Document, since this is an outline planning application, were to be the manner, together with any 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 would reflect this.

It had been understood that the Architect's earlier concerns had thus been addressed.

- 2.16 **The County Ecologist** has replied in detail to the further ecological information and is pleased that the applicants have provided additional information to address some of the concerns.
- 2.17 Under specific headings, the Ecologist concludes:

Bats

That she is pleased that the two trees identified can be retained; that further assessment has been provided that bat roosting and foraging habitat can be protected from lighting impacts by adherence to guidelines; the landscape buffer to Lennerton Farm needs to incorporate native species to protect bat foraging and asks how adherence to the dark corridor guidelines can be secured through any permission.

Water vole

Requested a revised site masterplan and design guide prior to determination to reflect the applicants' agreement to the recommendations and more information is needed on long term watercourse management. **Officer Note:** This has been provided in plan form with a statement of intent

Birds

The ecologist requests that the blue land to the east of the application site is used to secure the required enhancement and compensation measures. This, she concludes, provides an excellent opportunity to provide essential compensation and secure the net gains for biodiversity advocated by national policy.

Management

In respect of bringing the blue land into the proposal as mitigation and enhancement for the on-site effects, it is recommended that prior to determination the applicant needs to commit to managing the blue land and provide high level targets/objectives which are appropriate to the species which require compensation. This should include the area of land proposed for management, the habitats to be retained or created, the period of time over which management will take place and how success will be monitored. The actual detail relating to the timeframe for creation, specific planting/seeding mixes and management prescriptions can then be provided within a detailed management plan secured by condition and/or legal agreement.

Officer Note The applicant did confirm (5/12/18) that the land within the applicant's ownership, edged in blue, can be used for compensation for the ground nesting birds. This area of land will be managed and maintained in a suitable way for 25 years, the details of which will be set out within the Section 106 agreement. The addressing of the dark corridor issue will be via final layout and the ecology and biodiversity management plan that had been sought by condition.

- 2.18 By way of final clarification and summarising the County Ecologist's position (6 March), the consultee remains disappointed that further off site enhancement measures for birds has not been able to be committed to at this time. However the applicant's proposals to include additional offsite enhancement measures for water voles are, it is confirmed welcomed. These measures in addition to the recommendations for protection, mitigation, compensation and enhancement set out in the original ecological reports and the subsequent ecological submissions are considered sufficient for this outline proposal to meet current national and local policy.
- 2.19 As such, she concludes, there is no reason for the proposal to be refused on ecological grounds.

- 2.20 **The Yorkshire Wildlife Trust** acknowledges that there are a number of positive approaches to mitigating the impacts of the development as proposed by the applicants but wishes to maintain a holding objection to the application. Detailed comments may be summarised as:
- A number of bird species and breeding birds, including red and amber list birds will be negatively impacted and displaced by the development and the breeding bird survey shows how important the applicants' land to the east is for many species
 - The eventual improvement in habitat and possible net gain in biodiversity will only be confirmed as the site is built out gradually. There is no confirmation without a staging plan and Construction Environmental Management Plan – which will be essential to provide certainty - that replacement habitat will be in place before habitat is lost and also for long term monitoring
 - There are comments upon the ability of spaces between buildings to support breeding lapwing and that there will be disturbance during construction
 - Long term ecological management of the site will be essential and the Trust would wish for conditions to ensure that this will be fully funded and in place before full planning permission is given. The suggested mitigation habitats could be valuable but will depend on appropriate management.
- 2.21 In commenting on the more recently revised proposals, the Trust welcomes the water vole added mitigation and further mitigation for breeding birds. It still considers that off-site habitat is required and, if not the suggested on-site habitat creation will need to be successful. It supports long term management and monitoring suggested by the County Ecologist – who has not objected- and the use of conditions to take steps if mitigation is not successful.
- 2.22 **North Yorkshire Fire and Rescue Service** confirm it has no objection/observation to the proposed development.
- 2.23 **The County Archaeologist** confirms the previous comments of no objections remain valid and that he has no additional observations to a make on the amendments.
- 2.24 **Mr B Bartle** who made representations on behalf of Messrs Stoker (who are the agricultural tenants of the farmed parts of the site) asked if the supplementary consultation was overtaken by events at Committee but is otherwise instructed by the Airfield owners (as a separate party to the Club) to sustain and add to their objection.
- 2.25 **Cunnane Town Planning** on behalf of Samuel Smith Old Brewery has followed up the representation reported in the December Update Note with further correspondence. The objectors' specific reply to the applicants' further information following December Committee can be summarised as:
- On the principle of development, the applicants' acknowledge the proposal does not accord with the development plan and the objector asserts that the existence of rail infrastructure is not sufficient to outweigh the direct conflict with the Core Strategy
 - The 12.5% non-rail related condition, it is suggested, is unenforceable over the lifetime of development

- On the applicants' assertion that the entire site is necessary to create a 'campus', the representation says that this does not justify the extent of the land take; development plan policies seek to curtail development in the countryside and there is no evidence that a campus is required
- On the applicants' assertion that the returns from the brownfield redevelopment alone are insufficient to justify bringing the rail infrastructure into use, the representation says that there is no viability or financial information to support this
- No evidence has been presented to support the statement that the development of the entire site would foster links with and potentially wider use of the rail infrastructure
- There are no meaningful attempts to join the site to other areas or take design cues from the environs of the site
- No new evidence is presented to support the assertion that end users could be motor manufacturers who could export to the UK and beyond using the rail network

2.26 In conclusion, the objector says no new evidence has been presented that can attract weight in balancing the harm to the development plan, the principal remains unacceptable and the Council should maintain its adopted position of refusal.

3. Further Research and more information

3.1 Officers have considered the information provided in response to the proposed reasons for refusal identified by the Committee and have set this out below:

3.2 The order of assessment which follows is based upon the draft reasons for refusal:

1. Contrary to development plan policies SP2 and SP13
2. Excessive use of open agricultural land
3. Cumulative impacts of housing and employment development on the highways network
4. Insufficient information on ecology and biodiversity, red listed specie
5. Impacts upon Sherburn Aero Club

1. Contrary to 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.

3.4 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.

- 3.5 Thus the first part of the December Report considered whether the application accords with the development plan. It was concluded by officers and identified by Committee that there is conflict with Policies SP2 and SP13 (para 4.9 of the December Report).

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.

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; 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.

- 3.6 Policy SP13 does not describe the allocation as a maximum but the commentary (at 6.13) does provide an indicative employment land distribution and apportions 5-10 ha as a land requirement for Sherburn in Elmet, the precise scale and location determined through a Site Allocations Local Plan. The gross or net figures have already been far exceeded but it does continue to enable a variety, choice and options of sites as part of being able to realise growth through developing and revitalising local economies. Therefore, due to the indicative distribution it must be considered nevertheless that this application is contrary to this Policy.
- 3.7 The commentary to Policy SP13 also states, at 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 so it does not have the same weight. Whilst it is likely that the redevelopment of the existing bunded former colliery site in isolation would today accord with policy subject to compliance with normal development management criteria, this is not the proposal that is in front of the authority.

Saved SDLP Policy EMP2: The Location of Economic Development specifies that 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.

SDLP Policy EMP9: Expansion of Existing Employment Uses. This Policy would support expansion or redevelopment of existing uses outside of development limits or outside of established employment areas subject to criteria. The support in Subs 4) is provided that 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.

- 3.8 It is considered that whilst the scheme is contrary to EMP2, the positive, and criteria based Policy EMP9 could be addressed with the previously recommended

conditions and obligations. The Committee view was that the loss of, incursion into agricultural land was contrary to policy and thus, since agricultural land would be taken as a matter of fact, there would be conflict with EMP9.

- 3.9 It should be noted (see para 3.4 above) that the determination must be made in accordance with the plan unless material considerations indicate otherwise. The fit with Council, Northern and national plans and the wider benefits identified by the Head of Economic Development (see paras 2.4-2.6 and **Appendix 3**) are other material considerations that the Committee should take into account in deciding whether they outweigh the requirement to determine in accordance with the development plan or not.
- 3.10 If having reflected on the wider information submitted by the applicant and the further representations outlined in this report the Committee is still minded to refuse this application then any reason for refusal on the 'development plan point' could read:
1. The development of approximately 43ha of unallocated agricultural land unrelated to any existing settlement and without any present relationship or connections to the existing rail freight infrastructure and poorly served by public transport would constitute development in the open countryside that would be of a form, location and of a scale that is contrary to Policies SP2 and SP13 of the Selby District Core Strategy Local Plan and saved Policies EMP2 and EMP9 of the Selby District Local Plan.

2. Excessive use of open agricultural land

- 3.11 The applicants have provided a new report and assessment on the need for the development and have sought to address with an explanation of why the agricultural land is necessary in order to provide choice and flexibility in a viable development. This approach has been considered by and is supported by the response from the Head of Economic Development and Regeneration.
- 3.12 These reports have been assessed and the applicants refer to the previously commissioned Agricultural Land Classification requested by Natural England that had not been the subject of any objection from Natural England. This had confirmed that a part of the site was Grade 3a (best and most versatile land)(bmv)(36% of the agricultural land is Good grade) and the site did not contain any 'Excellent' or 'Very Good' (Grades 1 & 2).
- 3.13 Whilst the core rail infrastructure is in place, the work, the applicants say is needed to upgrade in terms of re-signalling, container storage and the sidings could not be justified by development of just the existing brownfield site alone. Additionally, the brownfield redevelopment would merely maintain the status quo and the green field development would enable the fostering of closer links with the existing business parks and thus to ensure the site and the infrastructure is utilised to the fullest, the applicants conclude that the whole application site is required.
- 3.14 The concept behind the proposals at Gascoigne Wood, the applicants conclude, is to create a rail-connected manufacturing/assembly hub and it therefore needs to be of a sufficient scale to attract international investors and be large enough to create a 'campus'. The loss of agricultural land, the applicants conclude, is outweighed by the benefits of delivering such a scheme as is proposed.

- 3.15 The loss of agricultural land (43 ha) is a dis-benefit, although only 36% is in any of the 'best and most versatile' category. Of the five fields affected, two are in permanent pasture and some of the Grade 3a is to be incorporated into the open space/ accessible landscaped areas along the western flanks.
- 3.16 Development Plan policy seeks promotion of stewardship of wildlife by steering development to areas of least (environmental) and agricultural quality. The development of the agricultural land has not been the subject of objection from Natural England who concluded that, due to the areas involved, it fell outside of the need for formal consultation. On the Natural England Regional ALC maps the grade in this site appears the same as, for example, the S2 site which has consent for development of 35 acres of former agricultural land.
- 3.17 In view of the mixed quality of the 43ha, it would be unusual to refuse this application on loss of agricultural land reasons alone and your officers would advise that this could be difficult to substantiate in view of the irregular occurrence of best and most versatile land across the site and the lack of any Natural England objection. The fact of taking bmv land nevertheless makes it contrary to Policy EMP9 and this is already addressed in any possible 'development plan' reason for refusal at para 3.10 above.

3. Cumulative impacts of housing and employment development on the highways network

- 3.18 In response to the concerns raised by the Committee about the likelihood of future employees commuting in from outside the District and the cumulative impact on surrounding highways that would result, the **Highway Authority** has been preparing further advice for Committee and this will be available before your meeting. It is understood that the Highway Authority is of the view that a refusal on highways grounds cannot be sustained since any impacts are not 'severe' in the NPPF sense.
- 3.19 The application and Environmental Statement sought to address the impacts of traffic generated as a result of the application on the network. The matters that are required to be taken into account include 'other committed development that is either consented or allocated where there is a reasonable degree of certainty it will proceed within the next three years' (Planning Practice Guidance 014 Reference ID: 42-014-20140306).
- 3.20 Eleven junctions were modelled in the TA and three showed potential capacity issues, the detailed analyses were summarised in paragraphs 4.27 to 4.37 of the December Report.
- 3.21 The work by the applicants in collaboration with the applicants of the Create Yorkshire proposal at Church Fenton has factored in the agreed TAs from both of these applications and this work is being assessed by the Highway Authority at length. Part of the solution proposed by the Highway Authority would appear to be the Infrastructure Delivery Plan for the Sherburn area as the first stage of a district-wide Strategic Plan for Growth & Infrastructure Delivery, being produced with the Better Together partnership with NYCC. This has been agreed by the Executive

(January 2019) as one of 10 priority actions in the EDF Delivery Plan for 2019 to 2020.

- 3.22 The Infrastructure Plan will assess existing infrastructure and connectivity focused on Sherburn in Elmet and Church Fenton, taking account of existing and approved growth. There will be a large area of study stretching from the A64 at Tadcaster in the north to the A63 close to South Milford in the south and as far west as the A1 in order to include connectivity with the strategic road network and rail stations. The Plan will then focus on how to address issues identified in the gap analysis and identify proactive methods to improve connectivity and accommodate future growth in this part of the District. The Plan is expected to take 6 months to complete, with an August / September 2019 sign-off. The concept behind the likely Highway Authority recommendation is understood to be that this wider Study would identify works to be undertaken in one action rather than incrementally in response to particular development projects.
- 3.23 Thus, it is understood, in order to pool contributions towards a series of measures that can be implemented in one go it is recommended that development up to a certain level can be accommodated before the necessary mitigation measures are required – and by then the Sherburn Infrastructure Plan will be approved .
- 3.24 Thus the commencement of a certain quantum of development has already been agreed by the Highway Authority since the TAs were based on worst case and triggers were reflected in the previously recommended conditions, before any off site works were required (except the New Lennerton Lane / B1222 junction). In this way, following any approval, development may proceed up to a defined limit before off site highway works are required.
- 3.25 The outcome of the Infrastructure Plan would, the Highway Authority will likely advise, identify Sherburn wide solutions that do not all fall to be addressed by individual applicants or as a result of application specific impacts. Any obligation would be structured to enable either the application specific impacts to be addressed or, upon the outcome of the Infrastructure Plan, the same monies go into any larger schedules of works.
- 3.26 The Highway Authority response is expected shortly and will be circulated to Members upon its receipt. It is understood at the time of writing that the Highway Authority will advise that a refusal on highway grounds cannot be sustained.

4. Ecology: Insufficient information on ecology and biodiversity, red listed species

- 3.27 The applicant's further explanation and additional information on Ecological mitigation and enhancement clarifies the context and methodology behind the bird surveys. Mitigation is proposed through both habitat creation, maintenance and, in the blue land in the applicants' ownership, further mitigation and enhancement.
- 3.28 In addition the York Ornithological Club's criticism of the breeding bird survey; namely that it was carried out on just four dates, and that it was timed to avoid the peak in bird activity is answered by the applicants. The applicants explain that surveyors visited the site on more than 24 separate occasions and the standard guidance on undertaking breeding bird surveys is that 'survey visits should be timed

to avoid the period of peak bird activity before dawn'. This is since at this time bird activity peaks very markedly so there is a risk that the first part of a plot covered will produce more records. The period of uniform activity is from about sunrise to midday.

- 3.29 The Club's suggestion that curlew breeds close by to the site has also been responded to. The applicants have confirmed that they have not recorded curlew in any of the surveys of the site (in visits on 24 separate occasions to the site).
- 3.30 Following the applicants holding additional discussions with the County Ecologist, further proposals have been advanced together with the measures to be incorporated in a planning obligation. The application now includes firm commitments that the land in the applicants' control outside of the application site (the blue land) will have areas managed and enhanced for water vole and otter habitat. In total there would be a 1.2km length and 15m wide corridor of management of the Carr Dike Channel and other field drains outside of the application site (in addition to the management of 1.1km of drain length within the application site). That curlew were not recorded in the applicants' surveys is the only evidence the Council has and without being able to challenge it with alternative evidence means that this cannot be used as a reason to resist the application. The Club has not replied to the re-consultation.
- 3.31 In summary, the County Ecologist, although noting that more mitigation could be sought, does acknowledge that the applicants have made significant progress in defining and mitigating impacts for an outline proposal.
- 3.32 The site is not a protected European site, a Nationally Designated site or a site identified in the Local Plan. The County Ecologist is not recommending refusal. The applicants have gone to very considerable lengths to define impacts and propose mitigation and thus the balance has to be whether potential effects upon ground nesting birds is sufficient to seek to resist the application on this ground. The County Ecologist does not consider that this is the case and Natural England similarly has not objected.
- 3.33 Your officers would thus conclude that significant additional information and proposals have been submitted which were not before Committee in December and the consultee does not recommend refusal. The comments from the YWT may not be fully addressed but the achievement of off-site mitigation and the commitment to future maintenance and management is sufficient to satisfy the County Ecologist.
- 3.34 Thus subject to the conclusion of a planning obligation and conditions, as a result of the further proposals and revisions, it is not considered that Ecology is a robust reason for refusal.

5. Impacts upon Sherburn Aero Club

- 3.35 The applicants have held further discussions with the Aero Club and it was understood that the latter are to appoint a planning consultant. It is also anticipated that a joint statement or letter of progress between the parties is being prepared. This is not currently available to the planning authority but will be shared at Committee should it become available.

- 3.36 The legal advice taken into account in the report to Committee in December had been that any impacts upon the Aero Club could be dealt with at any reserved matters stage, particularly in the light of the 'no objection' from the Civil Aviation Authority (paras 4.50 to 4.54 **Appendix 2**).
- 3.37 The Committee discussion had referred to noise from the Airfield and its effects upon the development but this has not been raised by Environmental Health nor by the applicants; the latter had suggested that the majority B2 and B8 floorspace uses means that it is mostly unlikely that the development would be affected by aircraft noise.
- 3.38 The present situation is understood to be that the draft planning obligation could include Terms that have been drafted specific to the Club's earlier objection to ensure that:
- An area within which the Club have objected to any development will be defined at outline stage on the Masterplan and in the obligation as a 'Flight Path Area'
 - There will be no development within the Flight Path Area until any such development has been specifically approved as part of any reserved matters application, and a specification of Mitigation has been agreed with the local planning authority together with a timescale for its implementation
 - The Mitigation will have been agreed within the obligation in advance and could be upgrades to Runway 09/24 as specific compensation for the loss of runways 10/28 and 10G/28G to have been agreed with the Aero Club and the planning authority
- 3.39 There is however presently no draft agreement or anything presented to your officers that the Club is in agreement with at present and your officers will report further on the current situation to your meeting.
- 3.40 If the Club withdraws its objection then that would aid in assessing the robustness of or remove any refusal on this point since there is no CAA objection. If the objection is sustained, and bearing in mind the objection from the co-owners of the airfield separate to the Club, like any on-the-face-of-it unacceptable development, the authority is required and it is good practice in respect of costs to consider whether otherwise unacceptable development could be made acceptable through the use of conditions or obligations.
- 3.41 Although there is not presently any agreed way forward since nothing has changed in terms of actual proposals, similarly, nothing has changed since the legal advice that this could be dealt with at the reserved matters stage. Thus, other than the doubt or uncertainty about the prospects of some development abutting the airfield limits, having considered the advice, it is not considered that effects upon the Aero Club can be sustained as a reasonable reason for refusal.

4. Conclusion

- 4.1 In line with Committee's instructions, your officers have undertaken further research and sought more information to strengthen the reasons for refusal. This has included assessing the additional explanations supplied by the applicants including their further proposals, the additional explanation and draft consultation response

from the County Highway Authority which itself has considered the joint piece of work on highways impacts by the Gascoigne Wood and Create Yorkshire applicants, the commissioning of the Sherburn Infrastructure Study and the further consultation responses through statutory publicity.

- 4.2 S.38 (6) of 2004 Act 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". An authority is not bound to follow the development plan since s.38 (6) confirms and it is paraphrased in the NPPF that "local planning authorities may take decisions that depart from an up-to date development plan, but only if material considerations in a particular case indicate that the plan should not be followed" (NPPF para 12).
- 4.3 The Committee did not consider in December that there were material considerations that could suggest a determination other than in accordance with the development plan.
- 4.4 The assessment of the further information and research that were not in front of Committee in December has led to the officer consideration that the Committee's Highways, Ecology, Aero Club and loss of agricultural land draft reasons for refusal, given the extra information and consultation responses, cannot be robustly defended without risks to the interests of the Council.
- 4.5 Therefore the worked up reason for refusal from paras 3.10 is:
 1. The development of approximately 43ha of unallocated agricultural land unrelated to any existing settlement and without any present relationship or connections to the existing rail freight infrastructure and poorly served by public transport would constitute development in the open countryside that would be of a form, location and of a scale that is contrary to Policies SP2 and SP13 of the Selby District Core Strategy Local Plan and saved Policies EMP2 and EMP9 of the Selby District Local Plan.
- 4.6 If Committee wishes to confirm its wish to refuse this application then this is the recommended reason for refusal.
- 4.7 In considering whether or not a single reason or reasons for refusal can be outweighed by material considerations it is a matter of balancing the advantages against the disadvantages. The Infrastructure Plan for Sherburn has a clear project plan and timescale for delivery and both the Head of Economic Development and, it is understood, the Highway Authority believe that a longer term solution can be achieved across the wider area and that this decision does not need to wait for its outcome given the mechanisms proposed. The earlier recommendation had a comprehensive set of highways and transport measures agreed with the Highway Authority and it is understood that it will again conclude that a refusal on highways grounds cannot be sustained.
- 4.8 The EDF has recently (January 2019) been reviewed and updated with a Delivery Plan which is adopted Council Policy. The EDF, your officers can confirm, does not have the weight of the development plan attached to it for decision-making but it is clearly a material consideration that deserves weight in the decision making

process and which was not in front of Committee in December. The Head of Economic Development, in the detailed response, places great weight on the importance and direction of the document as well as the Council's adopted Corporate Plan and recent 2018 refresh, as defining the Council's economic development goals. These goals specifically refer to the opportunities at the Gascoigne Rail Freight Interchange to create a major new rail-based manufacturing and logistics hub of regional significance, and your officers agree that this is a significant consideration.

4.9 Thus, Committee needs to consider whether the weight that should be given to these new material considerations, which were not in front of Committee in December, is sufficient to outweigh the harm to Policies.

5. Recommendation

5.1 The Committee is requested to fully consider the additional information provided by the applicants, the further representations received and your officer's analysis of the five reasons for refusal identified by the Committee. In the light of the above, your instructions are requested in respect of whether to :

A: Refuse the application in line with the reason at paragraph 4.5 above, or

B: Indicate that it is Minded to Approve the application in the light of the further evidence provided by the applicant and in further representations received by the Head of Economic Development on the wider benefits of the development and its fit with other Local, Regional and national plans and strategies.

Case Officer:

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Appendices (see separate document pack):

Appendix 1: Minute Extract – Planning Committee 5 December 2018 - Minute 37.2

Appendix 2: Officer Report: 5 December 2018 and Officer Update Note 5 December 2018

Appendix 3: Consultation response from the Head of Economic Development and Regeneration