

# North York Moors National Park Authority

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Parish: Eberston

App No. NYM/2020/0586/FL

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**Proposal:** use of land to form 1 no. grass runway for personal use by owner and emergency use together with erection of wind sock (revised scheme following dismissal at appeal of NYM/2016/0817/FL)

**Location:** South Moor Farm, Dalby Forest Drive, Eberston

**Applicant:** Mr Robert Walker  
South Moor Farm , Dalby Forest Drive, Langdale End, Scarborough, YO13 0LW

**Agent:**

**Date for Decision:** 16/11/2020

**Extended to:**

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## Director of Planning's Recommendation

**Refusal** for the following reason(s):

1. The Local Planning Authority considers that it cannot be satisfactorily demonstrated that protected bird species, notably Goshawk (Schedule 1, Wildlife & Countryside Act) and Nightjar (Section 41, NERC Act, Annex 1, EU Birds Directive) would not be adversely affected by the proposed development, or that it would not have a significant effect on the interest features of the North York Moors Special Protection Area (SPAs), because flights to and from the proposed airstrip could potentially cause disturbance to the species for which the special protection area is designated. The proposal is therefore contrary the statutory purposes of the National Park Authority where conservation of wildlife is explicit, and Strategic Policies A and H of the Local Plan. Furthermore, the failure to demonstrate that protected species would not be harmed runs contrary to national policy contained in the online National Planning Guidance and Chapter 11 of the NPPF which states that conservation of wildlife is important and that it is essential for the presence or otherwise of protected species, and the extent that they may be affected by a proposed development to be established before planning permission is granted.
2. The proposed development would be contrary to Policy ENV2 of the NYM Local Plan which seeks to ensure that development proposals do not have unacceptable impact on the tranquillity of the surrounding area in relation to visual intrusion; noise; activity levels; and traffic generation. The proposal would interfere with these qualities which are increasingly rare and are highly valued and is a very strong special quality of the National Park and would adversely affect enjoyment of the National Park.

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## **Consultations**

**Allerston and Wilton Parish Council** – 28 September 2020 - **Objects** on the grounds of the potential disturbance of the wildlife and protected species of birds which nest in the area. The councillors feel it is not the correct use of National Park land. There are plenty of other private airfields in the local area which could be used in an emergency.

If planning permission was to be granted the Council would request that the use of the airfield was monitored closely.

**Ebberston, Yedingham & Bickley Parish Council** - 24 September 2020 – **Object**. Our belief is that approval of the airstrip would disturb the peace and tranquillity of the residents, wildlife and birds in the Bickley, Langdale and Crosscliffe areas. It has been noticeable during the Covid 19 situation a significant increase in bird life in this area due to the lack of aircraft activity in general. It also presents health and safety issues in form of bird strikes and horses and riders which may be using the bridle path that follows the curtilage of the airstrip site. The applicant has shown a lack of understanding of the safety measures required under the CAA requirements with regard to aircraft safety and the well-being of avian species in the area.

There are other airstrips in the vicinity therefore why the need for more? Our concern would also be that whilst this application has advised it would be used for personal use only how would this be policed?

We also note the application contravenes the Sandford Principle.

**Hackness & Harwood Dale Group Parish Council** – 14 September 2020 - **No objections** providing any consent is conditioned so as to ensure the consent is personal to the applicant and there is no commercial use. It is suggested the planning authority outlines the definition of emergency use so as to ensure such use is genuine and not 'conveniently engineered' so that other private aircraft are using the runway for non-emergency purposes.

**Highways** – 28 September 2020 - No Highway Objections but it should be noted that the Highway Authority has concerns regarding the presence of an aircraft runway visible from the live carriageway, Dalby Forest Drive. As this will only be used occasionally it is felt that the distraction of an occasional light aircraft landing or taking off could distract drivers and be prejudicial to highway safety. Dalby Forest Drive is a private toll road and any warning signage should be agreed with The Forestry Commission.

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**Natural England** – 25 September 2020 - **Further information required** to determine impacts on designated sites. As submitted, the application could have potential significant effects on North York Moors SPA, SAC and SSSI. Natural England requires further information in order to determine the significance of these impacts and the scope for mitigation. A Habitats Regulations Assessment (HRA) and without this information, Natural England may need to object to the proposal.

In advising your authority on the requirements relating to Habitats Regulations Assessment, it is Natural England's advice that the proposal is not necessary for the management of the European site and it is unclear as to whether a significant effect can be ruled out at this stage. Please see below for the information required to carry out a HRA:

In Natural England's letter dated 31 January 2017 we requested further information on proposed direction of flights from the airstrip as part of application NYM/2016/0817/FL. We note information is provided within the Bird Assessment which details the sub-500ft flight path, however section 3.1 states "*raptor disturbance behaviours related to aircraft have been recorded in literature at distances out to 800-850m*". For this reason, we advise information detailing whether flight paths would be towards the North York Moors SPA is still required to undertake the HRA. This will determine whether there is potential for disturbance to the SPA site itself, or if assessment should focus on functionally linked land;

Natural England notes the inclusion of bird survey data within the submitted documents. The report advises that merlin were observed using the survey site. As the report is dated November 2016 the NYMNPA should ascertain whether the findings are still valid to inform the HRA;

Potential air quality impacts to the North York Moors Special Area of Conservation should also be assessed.

**Council for Protection of Rural England – North Yorkshire** – 5 October 2020 – **Object.** Detrimental impact on protected species cannot be ruled out given the lack of relevant up to date information submitted by the applicant, will impact on the nationally designated landscape and could distract users of the Dalby Forest Drive. Contrary to The Sandford Principle.

The addition of a permanent grassed runway and aircraft would alter this rural character and would not be at all in keeping with this landscape.

The proposed airstrip could potentially impact detrimentally on the forest and ecosystems within. The applicant alludes to noise monitoring but no assessment has been made as to

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how the proposal and aircraft will assimilate into the landscape at this location or impact on the surrounding forest.

A Habitats Regulations Assessment will be required as the site is in close proximity to North York Moors Special Protection Area (SPA) and North York Moors Special Area of Conservation (SAC) which are European protected sites. The sites are also designated nationally as North York Moors Sites for Special Scientific Interest (SSSI). The NPA will require sufficient detailed information to be provided by the applicant prior to planning permission being determined. The most recent bird survey was an update considering the likely impact on Goshawks and Honey Buzzard, both of which are protected species. However, no other survey updates were undertaken for other notable species present in the vicinity including “*a total of 13 red listed and seven amber listed bird species*” Those surveys were undertaken in spring/summer 2018 and as such are considered out of date for planning purposes. The NPA, therefore, cannot determine that that *will not* be a detrimental impact on birds listed within Schedule 1 of the Wildlife and Countryside Act and Section 41 of the Natural Environment and Rural Communities Act 2006.

Concerned that the location of the proposed airstrip is adjacent to Dalby Forest Drive, and as such there could be a danger to users of the Forest Drive in terms of being distracted.

Furthermore, cannot support the applicant’s assertion that a benefit of the proposal is a reduction in travel by road. The airstrip is proposed for private usage, the cessation of the applicant driving his car to Leven and return would be an advantage for the applicant rather than the NPA

In terms of emergency circumstances, the site could already be used in such cases.

**Forestry Commission –**

**North Yorkshire Moors Association – 14 October 2020 – Object.** Have objected to all previous applications which have been refused and dismissed at appeal and the National Park has imposed an Article 4 Directive which blocks the 28 day rule which permits flying on 28 days of the year from a private airfield such as a grass runway (Farm Strip).

The area around Langdale End and South Moor Farm is a delightful part of the National Park with a mixture of open landscape with distant views and extensive wooded areas. Its remoteness from any larger settlements means it is a particularly quiet area. The proximity to Dalby Forest and the Dalby Forest Trail makes it a well-used area for walkers, cyclists and horse riders.

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The elevated position of South Moor Farm and the exposure of the holding also mean that the proposal will make it unmistakably an airfield rather than a farm holding. Even though the proposed aircraft movement may be reduced from the previous applications the proposed level of activity on such a regular basis will change the location from an area in which visitors can enjoy peace and tranquillity, to one disturbed by aircraft noise, from low flying aircraft, particularly that of landing and taking off. Furthermore the risk of harm to protected wildlife is of great concern especially at a time when there is such a loss of biodiversity and the reduction in population of many bird species.

In dismissing the last appeal the inspector identified the main issues as (a) The likely effect of the proposed development on protected species in the vicinity of the site; (b) Whether the proposal would accord with the statutory purposes of the National Park; (c) The impact on landscape character.

Our objections are in accord with the main issues raised by the Inspector at the last appeal hearing.

The current proposal is for the personal recreational use of an aircraft and as a possible landing area for visiting flyers. We agree with the Inspector at the last appeal hearing regarding tranquillity and protected species.

Even though there is a reduced amount activity we feel there is likely to be sufficient aircraft movement to impact on the wildlife of the area and a threat to the protected species. We concur with the Inspectors view on tranquillity having regard to the special qualities of the National Park in the area of the airfield site.

We welcome the offer of the use of the airfield for emergency landings and other emergencies but this should not be used as a bargaining chip for wider recreational use by the applicant or others.

**Yorkshire Wildlife Trust** - 14 October 2020 – **Object.** YWT's mission is to create a Yorkshire rich in wildlife for the benefit of everyone with more wildlife, more wild places and more people having a strong connection to nature. Yorkshire needs a recovery of wildlife on land and sea. The application site is in close proximity to the North York Moors SPA and North York Moors SAC which are European sites, also designated as the North York Moors SSSI. Applications which may affect the designating or interest features of European sites should undergo a Habitats Regulation. It does not appear that sufficient evidence has been submitted to conclude that important bird species would not be adversely affected by the proposals. Based on the information available, disturbance to key species is of most concern:-turtle dove (Birds of Conservation Concern Red listed), honey buzzard (Birds of Conservation Concern Amber listed and Wildlife and Countryside Act 1981 Schedule1),

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nightjar (Birds of Conservation Concern Amber listed) and goshawk (Wildlife and Countryside Act 1981 Schedule 1). We support the comments of Scarborough Birders and Yorkshire Naturalists' Union with respect to the potential impacts of the proposed scheme.

**British Horse Society** – 13 October 2020 - **Object**. Despite being cut back in scale if it was given permission, it would be the start of an escalation in a project which is against National Park principles. No element of low flying aircraft should be entertained in the proximity of a bridleway and all-purpose road. Such aircraft are a danger to rider's safety and an intrusion of their enjoyment of quiet and solitude to be found in that area. The landing and take-off of low flying aircraft will not only affect the immediate surrounds of South Moor Farm but will blight a considerable distance around the farm, which is well served by bridleways and forest racks used by riders.

**Historic England** – 8 September 2020 - No comments.

**Ministry of Defence** – 17 September 2020 -No safeguarding objections

**NATS** – 15 September 2020 - No objection from a technical safeguarding aspect.

**Advertisement Expiry Date** - 14 October 2020

**Others**

Those listed below have written **objecting** to the application for some or all of the following reasons –

**Mr Andrew Wyatt, Deepdale Farm, Bickley, Langdale End**

**Mr David & Mrs Vivienne Parker, Spring Farm, Langdale End**

**M R Heap & J M Singleton, 2 Bickley Cottages, Langdale End**

**Mr G E Dixon, Bickley Heights, Bickley, Scarborough,**

**Mrs Dixon, Bickley Heights, Bickley, Scarborough,**

**Mrs J K Ramage, Northside Barn, Bickley,**

**Mr David Barry, 11 St Mary's Walk, Scarborough,**

**Mr David A Yates, 56 Cambridge Street, Scarborough,**

**Mr Nicholas Carter, Morningside, Sands Road, Hunmanby Gap, Filey**

**Trevor Jones, 164 Northfield Rd, Bournville, Birmingham,**

**Mr Andrew A Malley, Orchard Lodge, Outgang Lane, Pickering,**

**Dr Mark Hayes, White Lodge, Langdale End**

**Mr David M Armitage, 1A The Orchards, Westow**

**Mr Neil Duggan, 80 Bilbury CIs, Walkwood, Redditch**

**Mr Simon J Roddis, The Hollies, Station Road, Darley Dale, Matlock, Derbyshire, Mr**

**Phil Mountain, 2 Usher Lane, Haxby, York**

**Ms Annie O'Reilly, First Floor Flat, 8 Prince of Wales Terrace, Scarborough**

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**Mr Mark Rowbottom, 63 Skottowe Crescent, Great Ayton**  
**Mr Alan Gray, 10 Hotham Road, Cranswick, Driffield**  
**Mr Johannes Nobel, The Vicarage, 80 Osbaldwick Lane, York**  
**Geoffrey E Dobbs, 3 Low Farm Close, North Frodingham**  
**Mr Mark Fewster, 34 Lower Ebor Street, York**  
**Mr Derek Antropik, 24 Oak End Way, Chinnor**  
**Mr Keith Dancey, Equifax Limited, Flat 15 Quadrangle House, St Peters Road, Oxford**  
**Mr Julian Branscombe, Leswidden Farmhouse, St Just, Cornwall**  
**Mr John Cox, 6 High Meadow, Great Dunmow, Essex**  
**Mr Peter Cross, 39 Gainsborough Avenue, Burnley, Lancashire**  
**Mr John E Foskew, 16 Garrods, Capel, St Mary, Ipswich, Suffolk**  
**Mr Richard J Jennings, 55 East Street, Leven, Beverley**  
**Brian Turner & Joan Roberts, 1 Bickley Cottages, Langdale End, Scarborough**  
**Mr David D Phillips, 4 Leven Gardens, DL1 3TX**  
**Mr Michael Goodman, Flat 6, Emily Court, 102 Southbourne Road, Bournemouth**  
**Mr Anthony L Robinson, 36 New Road, Nafferton, Driffield**  
**Ms Christine Mackay, 11 St Mary's Walk, Scarborough**  
**Mrs Alison Fuller, 98 Outgang Road, Pickering**  
**Mr Bryn Parry, 19 Abbey Road, Sleaford**  
**Mr Robert M Mizon, 9 Coppergate Close, Nafferton, Driffield**  
**Mr Robert Dobson, 32a Factory Lane, Huddersfield**  
**Mr Roy Fussell, The Courtyard, Weston Jones, Newport, Shropshire**  
**Dr Nicola M Hall, Old School House, Lullington, Frome**  
**Ms Claire P Yarborough, 49 Walton Park, Pannal, Harrogate**  
**Dr Andy A Millard Yorkshire Naturalists' Union, 86 Bachelor Lane, Horsforth, Leeds**  
**Mr Mark Askew, 21 Oakley Close, Guisborough**  
**Mr Nick Addey, Scarborough Birders, 20 The Dene, Scarborough**  
**Mr Tim Pickles, 1 Main Street, Ellerker, Brough**  
**Mr Andrew N Taylor, 21 Lilling Avenue, York**  
**Margaret and William Farey, Fox Whin, Bickley, Langdale End**  
**Mr Alan H Prole, Thompson Rigg Farm, Crosscliff, Langdale End**  
**Mr P & Mrs J Fountain, School Farm, Crosscliffe**  
**Raylia Dugmore and William Young, High Farm, Crosscliffe, Langdale End**  
**Carstairs Countryside Trust, Clerk Richard Watson, Crombie Wilkinson Solicitors,**  
**19 Clifford Street, York,**

- Application has the potential to result in undue disturbance to displaying scarce breeding raptors in the local area.
- The air traffic will adversely affect the birdwatching tourism of the area, the Forestry commission in conjunction with local birdwatching groups have a very popular raptor viewpoint situated in the area.

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- To have an aircraft landing strip in the national park in a renowned area for threatened raptors is completely inappropriate and unnecessary as well as being extremely hazardous.
- Previous applications have been refused for every strong environmental/ecological reasons and this one should be refused as all previous objections remain in place.
- The applicant must be refused as in the past and his refusal to take no for an answer ought to have some negative consequences for him. He is wasting public money, the time of public servants and of local residents.
- As well as being refused planning permission the applicant should be charged and fined for his vexatious application.
- Disturbance of this nature will be detrimental to both Schedule 1 and Red listed birds. These forests are one of a few in the country to hold Honey Buzzard and Turtle Doves and are also a stronghold for Goshawk. Unfortunately birds of prey which display and soar on the thermals above Dalby, Troutsdale, Wykeham and Langdale would be affected by a light aircraft flying low in these areas.
- There are few places in the UK where this combination of birds can be witnessed.
- In addition to Honey Buzzards and Goshawk there are many other birds of prey which use or fly through this area; a good population of Common Buzzards, and the occasional Osprey, Hobby, Harrier, Red Kite etc.
- The environmental impact and disturbance remains the same and as it was dismissed previously. Planes will still fly at low levels in sensitive areas where endangered birds are protected.
- We came and stay here for one reason; our home lies deep within the tranquillity and environmental beauty of NYMNP.
- The suggestion that permission for “emergency” use is spurious – aircraft which need to land in an emergency either of its own or to attend an incident would just land. That is the nature of an emergency.
- The peace and tranquillity of the area are protected by statute.
- The noise of aircraft in the area disturbs all residents and visitors who come specifically to enjoy the peaceful environment and amazing wildlife.
- In the ten years since the closure of Langdale Quest off-road centre in the locality, there has been an increase in populations of rare birds and endangered land species with several sightings last year of a rare Great Grey Shrike evidencing that maintaining the peace and tranquillity of the area is key to supporting and developing the numbers of species at risk.
- For the applicant to admit to having “all 5 native owls and 22 red listed birds” at the application site and yet wish to increase aircraft activity on the site shows alarming ignorance of risk
- Welcomed the withdrawal of permitted development rights with issue of the GPDO Article 4 Direction in 2018.



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- The Bird Assessment was inadequate as the field survey was only on one day and only covered a 1km radius of the site. It was also conducted outside the main bird-breeding season so is meaningless
- The applicant's submission that Nightjars migrate and so are not in this area all year round is simplistic and ignorant.
- The National Park should be enjoyed for its biodiversity and natural beauty
- There is no economic benefit and a pilot would not normally expect or need to fly from their own home to enjoy their hobby.
- Most of these facilities are based in the Lower Dalby area. As a result of this wildlife, birds etc have moved more and more into this area to enjoy the peace and tranquillity it provides.
- The recent re-location of RAF training corps from RAF Linton on Ouse nr York to RAF Valley, Anglesey has removed the low flying aircraft meaning that our valleys, riggs and skies are much quieter which is enhancing the special qualities of the area.
- Several days this summer the applicants aircraft has flown over the area and during these days we do not observe the usual raptors.
- Bird strike of protected and rare species by an aircraft is a probability that cannot be contemplated.
- Health and safety risk from bird strike and also to horse riders.
- The applicant has demonstrated a lack of understanding of the basic principles of aerodrome wildlife management.
- The planet faces an environmental catastrophe so to use an aircraft to fly round in circles for fun is morally and environmentally unacceptable.

The following people have written in **support** of the application for some or all of the following reasons-

**Mr John Milner, Meadow House, Baunton, Cirencester**  
**Mr Neil Murgatroyd, 11A Park Close, West End, Esher**  
**Mr William Hall, Gutchpool Farm, Gillingham, Dorset**  
**Mr Clive J Watson, Aspen House, Wingfield Road, Syleham**  
**Mr Christopher C J Levings Design Cambridge, 115 Percy Green Place, Huntingdon**  
**Capt Mike Newall, The Old Poor House, Lund House Green, Harrogate**  
**Mr John Walker, 6 Orchard Close, The Beeches, Uppingham, Rutland**  
**Mr Michael Jennings, Managing Director, Lora Cottage, Hutton Buscel, Scarborough**  
**Mrs Helen Singleton, 50 Wingfield Way, Beverley**  
**Mr Paul Stephens, Flying Farmers Association, Moor Farm, West Heslerton, Malton**  
**Mr Jeremy Marflitt, Howden Farm, Langdale End, Scarborough**  
**Mr Tony Yarnold, 7 Sycamore Close, East Barnet, Herts**

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- The Wykeham Forest Raptor Viewing Point is some 2 miles east of the airstrip and some 500 feet in altitude below it. The proposed airstrip is surrounded by tall trees and any noise produced by aircraft will be negligible. The flight paths established do not pass over or near the Viewing Point.
- There is already aerial activity over the National Park some of which is conducted at low-level by military aircraft, none of which activity has deterred protected bird species from settling in the Park or visitors to it.
- Bird strikes are extremely rare
- The Sutton Bank bird viewing area is located just 500 metres west of the main grass runway at the adjacent airfield and 1,000 metres to the south of the Visitor Centre. The area is known to accommodate both Nightjars and Turtle Doves. The airfield site was first established in 1934 There are over 3,500 aero-tow glider launches and SLMG launches taking place each year from the airfield giving a weekly total average of 68 take-offs. The corresponding figure for the proposed airstrip is just one take-off.
- The factual evidence clearly indicates that human activity with particular regard to aviation is not detrimental to protected bird species. There can therefore be no tenable argument that the proposed airstrip has the potential to adversely affect these species.
- This is a farmer trying to enjoy his hobby in a quiet and respectful way.
- Any objections on the grounds of birds being disturbed is unfounded due to the numerous examples of birds on other farmland runways.
- If noise is a problem, then how can the National Parks allow Go Ape with people screaming through the trees, mountain bike trails, concerts in the Forest and all other sorts of activities?
- There are also a lot of people that get enjoyment out of watching light aircrafts in the sky and especially the chance to see one land and take off if we are enjoying a holiday at South Moor Farm. I don't see it a nuisance at all.
- This is one persons' hobby and enjoyment and will not result in hordes of aircrafts landing.
- Am a private pilot and have visited many airfields around the country, most of which are grass strips surrounded by farmland and open country, these airfields along with actual farmers' fields operating on the 28 day rule appear to operate in harmony with the local bird and general wildlife population.
- Dismayed by the inspectors totally unreasonable and in my opinion unfounded objections.
- Chairman of the Flying Farmers Association and have also found that such proposals attract objectors who are ill-informed and even bring out a sense of jealousy and introverted snobbery instead of genuine concerns.
- In the case of Mr Walker's activities, he is likely to take off and fly quickly out of the area. He is not an aerobatic pilot - he is a flying farmer and gets enjoyment out of travelling over the countryside at a reasonable altitude and minding his own business.
- Many objectors will cause more noise by mowing their lawn on a Sunday afternoon.
- There is no evidence that a light aircraft would disturb birds.

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- It is a good idea to have a runway for emergency purposes as there are very few suitable places to land aircraft in this area.
- The Park Authority has no jurisdiction over aircraft in flight and cannot prevent the overflight of the Moors by any civil or military aircraft.
- Very little is known about the protected birds in question and there is no authoritative, documentary evidence concerning the effects, if any, on these species arising from aviation activity.
- Factual evidence has been submitted of both Nightjars and Turtle Doves residing in sites next to Dalby Forest Drive, one of the few surfaced roads leading to settlements within the forest and frequented on a random basis by trekkers, horse-riders, cyclists and vehicles of all types.
- Birds have not been deterred by the aerial activity, in particular, the Moors are in military Low Flying Area 11.
- It is evident that there is a considerable amount of disturbance, particularly noise, arising from the military activities both ground-based. There is also notable human activity along Dalby Forest Drive. None of this activity has affected the protected bird species in question. The nature, intensity and duration of this noise is diverse consistent with its source and far eclipses anything that would come from the proposed limited operation of the South Moor airstrip.
- Since the sites host protected bird species in spite of their respective noisy environments there is no valid argument that the airstrip at South Moor Farm would have potentially harmful effects on these species.
- There are several other strips in the national park as well as Sutton Bank gliding centre which operate without obvious problems. I have never been able to see why this particular strip attracts opposition; there are no planning grounds for refusal that I have been able to discern. We know from wide experience on a range of airfields that flora and fauna find them a haven.

### **Background**

South Moor Farm is located on Dalby Forest Drive, approximately 1.5km to the south west of the Dalby Forest toll gate at Bickley and approximately 5.5km to the north east of the Dalby Forest Visitor Centre. The farm is situated within a sizable clearing within the forest on undulating land with the existing farm buildings visible from the Forest Drive. A Public Right of Way crosses the farm east-west.

The farm is run as a small agricultural business with 40 hectares of grazing land for sheep and cows and a Bed and Breakfast facility comprising four rooms (one twin, one double, one family and one single) operating from the main farmhouse. It also benefits from having a wind turbine.

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Planning permission was refused and then dismissed at appeal in 2014 to change the use of the agricultural land to provide a general aviation airstrip with two grass runways, a hangar building for the storage of up to ten aircraft and owner maintenance, and a small building which was to be used as a flight planning/reporting office. A bridleway runs adjacent to both the proposed runways and a public highway and public footpath cross over the auxiliary runway.

This application was refused on the grounds of unacceptable levels of noise and activity that would be detrimental to the amenities of local residents and the experience of visitors as well as harm to the tranquillity of the area, that the building would be substantial in size with poor quality materials and design and that the proposed development would have an adverse impact on the enjoyment of users of the Public Rights of Way. The proposal was dismissed at appeal, but the Planning Inspector found the greatest harm to be the size, design, material and location of the proposed hangar building and was of the view that disturbance to users of the rights of way network and noise disturbance was not unacceptable.

Consequently a second application was submitted later in 2014 for a revised scheme which differed from the previous scheme in terms of a smaller size, more agricultural design, materials and location of the proposed hangar building. All other aspects of the proposal remained the same as the previous proposal. This application was again refused by the Planning Committee and again dismissed at appeal, but only on the basis that the Planning Inspector found the greatest harm to again be the size, design, material and location of the proposed hangar building.

The second Inspector accepted the first Inspectors view that the proposal would not have a detrimental impact on tranquillity of this part of the National Park and awarded costs against the National Park Authority for refusing the application on the grounds of harm to tranquillity and the setting of the scheduled monuments.

A third application was then submitted for the change of use of land to form two grass runways and to construct a pilot/restroom building, but without any proposals for an aircraft hangar building. This application was again refused by the Planning Committee, for five reasons relating to harm to tranquillity, adverse impact on the enjoyment of users of the Public Rights of Way, impact of the visible presence of standing aircraft/aircraft movements/activity and noise; insufficient information to determine whether the proposal will have a likely significant effect on protected species; and impact on designated heritage assets.

The applicant appealed this decision and the appeal was heard in the form of a Hearing in July 2016 with several local residents present. The appeal was again dismissed.

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The third Inspector accepted the previous two Inspectors view that, in the absence of any new information relating to tranquillity the proposal would not have a detrimental impact on tranquillity; and although the appeal was dismissed, this was only on the basis of the potential impact on protected species. Consequently, costs were again awarded against the National Park Authority. The Inspector concluded as follows:

*“based on the information before me I cannot conclude that the proposal would not harm protected species. I take into account the conservation of wildlife is explicit in the statutory purposes of the National Park, and that having regard to the Sandford Principle, this harm must carry greater weight than the stated benefits.”*

The Inspector’s conclusion that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, must be established before any planning permission be granted, led to the applicant submitting a fourth application with bird species survey and mitigation information to try to address that reason for refusal.

This fourth application differed from the earlier applications in that the auxiliary runway as well as the hangar building were been omitted from the scheme and a Bird Assessment Report based on an ecological field survey which involved walking along the majority of paths, tracks and roads within the survey area, undertaken on 25 October 2016 and a desk-based study which was undertaken in October 2016 was submitted.

The report acknowledged that the survey was undertaken outside the main bird breeding season and it was therefore not possible to confirm the presence or absence of Nightjar or Goshawk as breeding species. It was also noted that many species records are not supplied to records centres due to various reasons including the threat of illegal egg-collecting particularly for the rarer raptors such as Goshawk.

This fourth application was again refused on the grounds that it could not be satisfactorily demonstrated that protected bird species, notably Goshawk (Schedule 1, Wildlife & Countryside Act) and Nightjar (Section 41, NERC Act, Annex 1, EU Birds Directive) would not be adversely affected by the proposed development, or that it would not have a significant effect on the interest features of the North York Moors Special Protection Area (SPAs), contrary the statutory purposes of the National Park Authority where conservation of wildlife is explicit and that failure to demonstrate that protected species would not be harmed ran contrary to national policy contained in the online National Planning Guidance and Chapter 11 of the NPPF which states that conservation of wildlife is important and that it is essential for the presence or otherwise of protected species, and the extent that they may be affected by a proposed development to be established before planning permission is granted.

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In addition to the refusal, Members agreed to the imposition of an Article 4 Direction to remove permitted development rights which would allow the use of the site as an airfield for 28 days in a calendar year, thus preventing any take-offs and landings from the site.

The applicant again appealed this decision and the appeal was heard in the form of a Hearing in January 2018. The appeal was again dismissed.

However, with this appeal decision the Inspector not only found that the proposed development would be likely to have a harmful impact upon protected species and conflict with the purposes of the National Park, he also disagreed with previous Inspectors judgements in relation to the impact on landscape character. The fourth Inspector found that:-

“There is conflict with the development plan, the NPPF and the circular. At the hearing it was suggested that the alternative to a permanent planning permission might be a temporary permission for 3 years, as a trial run. However, although temporary permissions may be acceptable in some circumstances it is my judgement that the use of such a mechanism here would be unacceptable and unreasonable. After all, if during the period of the temporary permission there was serious harm to protected species occupation of the area that might well be an irreversible situation which would fly in the face of the protection currently in place. Neither that nor any other condition would overcome the harm I have identified.”

The Inspector went on to state further that:-

“The appeal site is located in a tranquil part of the National Park... There is undoubtedly some activity hereabouts, such as walking and mountain biking, but those are unlikely to affect tranquillity to any degree. This section of the Dalby Forest Drive is described by local residents as being the least used. That seems to me to be logical given that it is the furthest point of access from A or B roads. It is far more likely that visitors would enter from the Thornton Dale direction, visit attractions such as Go Ape or The Bridestones, and return by the same route. Tranquillity in the vicinity of the appeal site is therefore likely to be more pronounced...what is proposed have the potential to alter the tranquillity of the locality...tranquillity is not just confined to noise...Hence I disagree with the judgement of the previous Inspector on this perceptual matter, and consider that the proposal would adversely impact on the tranquil character of this part of the Park. This would adversely affect enjoyment of the Park by some visitors.

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The applicant has now submitted a fifth application but this time for the sole use of his field for the taking off and landing of his light aircraft, a single engine aircraft, with the proposed usage would be for 30 minutes on 52 days per year. It is also proposed that the field may also be used by emergency services and in any emergency.

The details of the application are as follows:-

- Removal of the Article 4 directive and planning permission to be granted for sole use for the taking off and landing of one aircraft and parking when not in use.
- Taking off the field would be used for 15 minutes.
- Landing the field would be used for 15 minutes.
- Fly once per week on average so would like use for 52 days.
- Total use amounts to 26 hours approx 1 day per year.
- The facility could also be used by emergency services and disaster relief as required.
- The aircraft would be parked in the screened corner and covered in blue tarpaulin.

In support of the application, the applicant states the following:-

The field has been used by light aircraft in 2016 and 2017 but has not been used by aircraft since the Article 4 directive came into force on the 14th April 2018.

However I have regularly flown over my field, Dalby Forest, and the North York Moors National Park and the airstrip has been maintained for emergency use.

I believe planning authorities should look at the bigger picture not just their own interests. The area will be an enhanced site for birds and wildlife because of reduced farming Activity, my aircraft is currently located in a field near Leven a one and half hour journey there and a one and a half hour journey back by road. In the event of catastrophic flooding in the Vale of Pickering and the Vale of York light aircraft could be used to ferry supplies to people displaced from the lowlands.

If planning permission is granted the reduction in parking charges for the aircraft and reduction in road travelling costs amounts to £100 per month which I will donate to the Yorkshire Air Ambulance. i.e. £1200 per annum.

A bird survey was commissioned for the fourth application in 2016 looking at two species Goshawk and Nightjar which the planning authority had targeted. The survey concluded that although the habitat near the strip was suitable there was no evidence that the birds were affected by aircraft. A further bird survey was carried out in April 2017 which revealed that goshawks were flying near the strip but again concluded that there was no evidence of harm.

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## **Main Issues**

### **National Park Purposes and the Sandford Principle**

The Environment Act 1995 sets out the two following statutory purposes for National Parks in England and Wales as follows:

- Conserve and enhance the natural beauty, wildlife and cultural heritage; and
- Promote opportunities for the understanding and enjoyment of the special qualities of National Parks by the public.

When a National Parks carry out these purposes they also have the duty to:

- Seek to foster the economic and social well-being of local communities.

To help National Park Authorities make decisions between conservation and recreation, the National Parks Policy Review Committee made a recommendation in 1974, which is now known as the 'Sandford Principle'. This states that:

To help National Park Authorities make decisions where there may be conflict between these two purposes (conservation and recreation), the National Parks Policy Review Committee made a recommendation in 1974, which is now known as the 'Sandford Principle'. This states that:

**“Where irreconcilable conflicts exist between conservation and public enjoyment, then conservation interest should take priority”**

This principle was updated in the 1995 Environment Act, to say;

**"If it appears that there is a conflict between those purposes, the National Park Authority shall attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area"**

This means that if there is a conflict between protecting the environment and people enjoying the environment, that can't be resolved by management, then protecting the environment is more important. Although the flying of light aircraft is not considered to represent the public enjoyment of the special qualities of the National Park (in that it can be undertaken anywhere) it nevertheless demonstrates the legal pre-eminence afforded to the Conservation purpose of National Parks.



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**Policy Context****Local Plan**

**Strategic Policy A – National Park Purposes** – seeks to take a positive approach to new development, in line with the presumption in favour of sustainable development and where decisions are consistent with National Park statutory purposes:

1. To conserve and enhance the natural beauty, wildlife and cultural heritage of the National Park;
2. To promote opportunities for the understanding and enjoyment of the special qualities of the National Park by the public.

It goes on to state that where there is an irreconcilable conflict between the statutory purposes the Sandford Principle will be applied and greater weight will be attached to the first purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the National Park.

**Strategic Policy H - Habitats, Wildlife, Biodiversity and Geodiversity** - seeks to ensure the conservation, restoration and enhancement of habitats, wildlife, biodiversity and geodiversity in the North York Moors National Park is given great weight in decision making and goes on to state that development proposals that are likely to have a harmful impact on protected or valuable sites or species will only be permitted where it can be demonstrated that there are no alternatives, there are suitable mitigation measures, any residual harmful impacts have been offset through appropriate habitat enhancement and the wider sustainability benefits of the development outweigh the harm to the protected or valuable interest.

**Policy ENV2 - Tranquillity** – This Policy seeks to ensure tranquillity will be maintained and enhanced through only permitting development proposals where there is no unacceptable impact on the tranquillity of the surrounding area in relation to visual intrusion; noise; activity levels; and traffic generation.

It goes on to explain that tranquillity is a state of peace and calm which is influenced by what people see, hear and experience around them and can be places where the natural environment is experienced without the intrusion of human structures or activity; but that villages and groups of buildings can also be tranquil. Such places are increasingly recognised as being important to people's physical and mental health and well-being.

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Tranquil places are increasingly rare and are highly valued and the nature of the North York Moors landscape means that tranquillity is a very strong special quality of the National Park. It is also important to recognise that the whole of the National Park is tranquil in comparison with towns and cities outside the National Park and the Authority aims to conserve and enhance tranquillity throughout the whole of its area.

The policy sets out considerations that will be taken into account in assessing a development proposal's impact on the tranquillity of the surrounding area. Visual intrusion refers to the size and bulk of new structures and whether the development will blend harmoniously into the surrounding area. Noise and the type and frequency of activities associated with the proposed development are also important. In making the assessment, the Authority will consider the nature of the surrounding area and how vulnerable it is to a loss of tranquillity; this will include considering the impact of the development on natural habitats and historic assets in the locality in relation to how they contribute to tranquillity as well as the experience of users of any public rights of way or access land.

**National Planning Policy Framework**

The National Planning Policy Framework sets out that economic growth should be supported in rural areas to promote a strong rural economy, rural tourism and leisure developments that benefit businesses in rural areas, communities and visitors and which respect the character of the countryside. This however should be considered in the context of national policy relating to National Parks which requires great weight to be given to conserving landscape and scenic beauty and respecting their statutory purposes following designation.

Chapter 11 of the NPPF specifically sets out the aims for conserving and enhancing the natural environment. It states that the conservation of wildlife is important and promotes the preservation, restoration and re-creation of priority habitats, ecological networks and the protection and recovery of priority species populations, and that proposed development on land within or outside a Site of Special Scientific Interest, which are likely to have an adverse effect should not normally be permitted.

**8-Point Plan for England's National Parks, Department for Environment, Food & Rural Affairs, March 2016**

This document published by Defra sets out the Government's ambition to put National Parks at the heart of the way in which it thinks about the environment and how it is to be managed for future generations. Its ambition are to be delivered by the Government working closely with all ten National Park Authorities and National Parks England as part of its wider 25 year plan for the Environment. Point 2 of this 8 point plan seeks to "Create *thriving* natural

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environments". It acknowledges that National Parks are amazing natural assets which are havens for native plants and animals and that conserving and enhancing these precious areas, for the benefit of current and future generations, is a vital role of the National Park Authorities.

It states that the Government's ambition is that National Park Authorities, with the Environment Agency and Natural England, will champion integrated management of the natural environment, showcasing the benefits that designated landscapes can bring. This will mean National Park Authorities are at the vanguard of delivering the Government's new 25-Year Environment Plan, which includes seeking a cleaner, healthier environment, benefiting people and the economy, and a thriving rural economy, contributing to national prosperity and wellbeing.

Point 8 of the plan relates to health and wellbeing in National Parks. It states that there is growing evidence that green spaces have a vital role to play in better public health and that National Parks can make a central contribution to our national wellbeing and have an enormous benefit to the physical and mental health of local communities.

**National Planning Guidance** advises that "it is essential for the presence or otherwise of protected species, and the extent that they may be affected by a proposed development is established before planning permission is granted". It also sets out that all species of wild birds are protected within Great Britain under the provisions of the Wildlife and Countryside Act 1981 and that the breach of protected species legislation can often give rise to a criminal offence.

All European protected species are also separately protected under the Wildlife and Countryside Act 1981.

It also sets out that it is unlawful to deliberately disturb such protected species.

## **Material Considerations**

### **Protected Species in Britain**

Goshawks and Honey Buzzards are protected under Schedule 1 of the Wildlife and Countryside Act 1981. It is an offence to intentionally disturb any of these species during the breeding season without a valid license.

Nightjar and Turtle Doves are protected in the UK under the Wildlife and Countryside Act, 1981. Classified in the UK as a Red List species under the Birds of Conservation Concern review and as a Priority Species in the UK Biodiversity Action Plan.

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**Wildlife**

Dalby Forest is an important area for several bird species of conservation importance that are legally protected from or potentially sensitive to disturbance. The National Park's Ecologist has been consulted on the proposal and has advised that the main ecological concerns relate to the impact of the development on these bird species, as follows:

*Nearby internationally and nationally protected sites*

The breeding bird species for which the North York Moors Special Protection Area (SPA) was designated are merlin and golden plover.

The suite of breeding birds which supported the designation of the North York Moors Site of Special Scientific Interest (SSSI, same boundary as SPA) are Merlin, Peregrine, Hen Harrier, Golden Plover, Short-eared Owl, Red Grouse, Curlew, Redshank, Snipe, Whinchat, Wheatear, Ring Ouzel and Lapwing.

Natural England have advised that the Bird Assessment submitted is inadequate and it is therefore not possible to assess the impact of the application on the birds using this protected site and it is not possible to complete the required Habitats Regulations Assessment in relation to the SPA.

*Nearby protected species*

There are two bird species of particular concern breeding in the adjacent forest and either could be within that distance of the application boundary.

**Goshawk** is specially protected under Schedule 1 of the Wildlife and Countryside Act 1981 (as amended), and to avoid the risk of illegal persecution, Goshawk nest sites are kept confidential. It is an offence to intentionally or recklessly disturb this species while building a nest or in, on or near a nest containing eggs or young; or to disturb dependent young of this species. It is known to breed in local Forestry Commission forests, where it is judged to have a fairly stable population.

**Nightjar** is a bird species of European conservation concern and listed in Annex 1 of the EU 'Birds' Directive. It also receives general protection under Section 1 of the Wildlife and Countryside Act 1981 (as amended) which makes it an offence to intentionally kill, injure or take any wild bird or take, damage or destroy the nest (whilst being built or in use) or its

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eggs. Nightjar is listed on Section 41 of The Natural Environment and Rural Communities (NERC) Act 2006 as a Species of Principal Importance for the conservation of biodiversity in England. Important concentrations of this species breed in local forest clear-fell sites and young plantations and the North York Moors population is significant in a UK context.

Both could be very vulnerable to disturbance if nesting close by if aircraft subsequently fly close to their nests, such as when taking off or landing.

*Other species* that were not specifically addressed in the applicant's Bird Assessment could also be affected by this application. Honey Buzzard is also specially protected under Schedule 1 of the Wildlife & Countryside Act and has bred in the area. Turtle Dove is another species of European and British conservation concern, whose population is declining so dramatically throughout its range that it might soon be lost as a British breeding species. The local Forestry Commission forests are significant as a stronghold for these birds.

Natural England has advised that the Bird Assessment report submitted is inadequate to enable the required Habitats Regulations to be undertaken. Further information on proposed direction of flights from the airstrip as whilst information is provided within the Bird Assessment which details the sub-500ft flight path, section 3.1 states "*raptor disturbance behaviours related to aircraft have been recorded in literature at distances out to 800-850m*" and therefore information detailing whether flight paths would be towards the North York Moors SPA is still required to undertake the HRA. This will determine whether there is potential for disturbance to the SPA site itself, or if assessment should focus on functionally linked land.

Natural England have further commented that the inclusion of bird survey data within the submitted documents advises that merlin were observed using the survey site, but this is dated November 2016 so it needs to be ascertained if the findings are still valid to inform the HRA.

The likely impact on protected species would be that same regardless of the number of take-offs and landings, each event would cause disturbance.

Crucially, the most recent Planning Inspector found that whilst the proposal was at the lower end of activity there was nonetheless an expectation that the potential impact of the operation is well understood before planning permission can be safely granted and that this had not been demonstrated to anything like a suitable standard. He went on to state that the bird assessments barely scratched the surface of what would be necessary to truly capture the numbers and distribution of the protected species hereabouts and it would take several years to be properly robust and it would therefore be unsafe to grant planning permission.

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**Tranquillity**

Although the scale of this proposal has been reduced from the previously refused schemes, it is considered that the take-off and landing of an aircraft from this site would have a detrimental impact on the tranquillity of the locality for the reasons set out in the last Inspectors decision and in Policy ENV2 of the Local Plan. It is not considered that the reduction the frequency of these take-offs and landings would reduce this impact, which would continue to be detrimental to the special character of the area.

**Emergency Use**

The use of the open field for emergency purposes would not be resisted, as with any case, if an aircraft such as an air ambulance was required to land in an emergency, the Local Planning Authority would not require planning application for change of use and would not take any action.

**Conclusion**

On the basis of the bird report is again considered to be inadequate and there is no satisfactory evidence put forward that the proposal would not have a detrimental impact on protected species, and furthermore that the proposal would have an unnecessary detrimental impact on the important special quality of tranquillity within the National Park , it is **not** considered that the reasons for the dismissal of the previous appeal has been, or can be, overcome, and consequently refusal is recommended.

**North York Moors National Park Management Plan**

This sets out that one of the special qualities of the National Park are an abundance of forest and woodland which is rich in wildlife. The aim of the habitats and wildlife policies within the Management Plan are to continue to support a diverse range of priority species and habitats and to ensure land managers and visitors are aware of the necessary measures to protect habitat and wildlife.

**Explanation of how the Authority has Worked Positively with the Applicant/Agent****Refusal (No Amendments Requested/Departure from Development Plan)**

The Authority's Officers have appraised the scheme against the Development Plan and other material considerations and concluded that the scheme represents a form of development so far removed from the vision of the sustainable development supported in the Development Plan that no changes could be negotiated to render the scheme acceptable and thus no changes were requested.