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Your Ref:  
NYM/2020/0586/FL  
Our Ref:  
APP/W9500/W/20/3265041  
Date: 26 April 2021

Dear Sir/Madam

**Town and Country Planning Act 1990**  
**Appeal by Robert Walker**  
**Site Address: South Moor Farm, Langdale End, Scarborough**

I enclose a copy of our Inspector's decision on the above appeal(s).

If you have queries or feedback about the decision or the way we handled the appeal(s), you should submit them using our "Feedback" webpage at <https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure>.

If you do not have internet access please write to the Customer Quality Unit at the address above.

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The Planning Inspectorate cannot change or revoke the outcome in the attached decision. If you want to alter the outcome you should consider obtaining legal advice as only the High Court can quash this decision.

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Thank you in advance for taking the time to provide us with valuable feedback.

Yours sincerely

Deb Smith, Case Officer

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<https://www.gov.uk/appeal-planning-inspectorate>



## Appeal Decision

Site Visit made on 13 April 2021

**by A Caines BSc(Hons) MSc TP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 26 April 2021**

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**Appeal Ref: APP/W9500/W/20/3265041**

**South Moor Farm, Dalby Forest Drive, Ebberston, Scarborough YO13 0LW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Robert Walker (South Moor Farm) against the decision of North York Moors National Park Authority.
  - The application Ref NYM/2020/0586/FL, dated 16 August 2020, was refused by notice dated 16 November 2020.
  - The development proposed is described as revocation of Article 4 directive to allow use of existing airstrip for personal use by owner and emergency use.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are:
  - i) the effect of the proposal on protected bird species in the vicinity of the site; and
  - ii) whether the proposal would maintain and enhance the tranquillity of the surrounding area.

### Reasons

3. I am informed that there is an Article 4 Direction in force preventing use of the airstrip. The proposal before me seeks to use the airstrip for a single personal light aircraft for 52 flights a year, but also for emergency use if required. It is stated that takeoff and landing activity would last approximately 15 minutes each, so around 30 minutes of aircraft activity per flying day.

### *Protected Species*

4. Surveys carried out for the appellant indicate that goshawk and nightjar are present in the vicinity of the appeal site. Both bird species are protected under the Wildlife and Countryside Act 1981. Nightjar is also afforded protection by European Directive and is listed as a Species of Principal Importance for the conservation of biodiversity in England by the Natural Environment and Rural Communities Act 2006. The effect on a protected species is a material consideration in a proposal where there is a reasonable likelihood of the protected species being present and affected.
5. I have been presented with some evidence that birds, including goshawk, can co-exist with airfields. However, apart from updated surveys, much of this evidence appears to be similar to that which was before the previous

Inspector<sup>1</sup>, which I note was the fourth appeal relating to this airstrip. In that most recent appeal decision, the Inspector found that the circumstances at other airfields, which have again been highlighted in this case, were very different to the appeal site. I concur. Moreover, there is more than just anecdotal evidence that the same species of birds can react differently to the same stimulus at different locations, and also that birds are more likely to be disturbed by aircraft activity where it remains irregular or sporadic. Thus, it does not automatically follow that a particular bird species habituated at one location should be taken as substantive evidence that the same or other species would not be disturbed at another. This is particularly the case where a new and irregular source of disturbance is introduced, as it would be here. There is also a dearth of evidence in this regard concerning nightjar.

6. Furthermore, it is significant that the bird assessments provided by the appellant recommend that in order to minimise the potential for disturbance of goshawk and nightjar it would be necessary to limit flight activity in the vicinity of suitable breeding habitat and known nest sites, as well as to avoid circling and/or erratic flight activity. However, these are not factors which could be controlled by planning conditions, nor is it likely that the location of nesting sites of protected birds would always be known, or readily made available if they were known.
7. There is also a recommendation for a monitoring strategy, including installation of surveillance cameras which the appellant is willing to fund. However, creating disturbance in order to prove whether or not there is any harm to a protected species is not an appropriate course of action. The previous Inspector made similar comments in relation to a temporary permission, noting that if 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. Other wildlife enhancement proposals at the site would not specifically mitigate or compensate for any harm to the protected bird species.
8. I recognise that the current proposal is a significant reduction in the level of activity compared to all of the previous appeal schemes. Nonetheless, even if the number of flights were restricted to 52 per year, there would still be 104 potential disturbance events from takeoff and landing at this site, which could also take place at irregular intervals and at sensitive nesting times. Furthermore, it would not be possible to effectively monitor and enforce the duration of activity on those days.
9. Overall, there is insufficient substantive evidence that would enable me to conclude that the proposal would not cause unacceptable disturbance to goshawk and nightjar in the vicinity of the appeal site, particularly from takeoff and landing activity. The onus to demonstrate that the effects of the proposal would be acceptable rests firmly with the appellant. Paragraph 175 of the National Planning Policy Framework (the Framework) states that if significant harm to biodiversity resulting from development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
10. In the circumstances, I must take a precautionary approach and conclude that the proposal could lead to unacceptable disturbance to, and potential displacement or loss of protected species in the vicinity of the site. The

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<sup>1</sup> Appeal ref: APP/W9500/W/17/3178824

proposal therefore conflicts with the first statutory purpose of the National Park to conserve and enhance its natural beauty, wildlife, and cultural heritage. Thus, it is also contrary to Strategic Policy A of the North York Moors National Park Authority Local Plan 2020 (LP) in this regard. The proposal is also contrary to the conservation, restoration and enhancement of habitats, wildlife, and biodiversity requirements of Strategic Policy H of the LP.

### *Tranquillity*

11. Policy ENV2 of the LP specifically seeks to ensure that tranquillity in the National Park is maintained and enhanced. The Explanation to the Policy defines tranquillity as a state of peace and calm which is influenced by what people see, hear and experience around them. Tranquil places are rare and usually include natural elements and are likely to be quiet places with little traffic and a sense of stillness.
12. I note reference to recreational activities elsewhere within the National Park and the fleeting experience of overhead jet flights. I also acknowledge the presence of other airstrips in the National Park. Nonetheless, on the available evidence before me and my own observations, the appeal site is located in a tranquil part of the National Park and therefore makes a very strong contribution to the special quality of the National Park.
13. Whilst the proposal would have minimal visual intrusion and traffic generation, it would likely lead to a marked increase in noise and activity levels at the site, thereby resulting in a negative change to its tranquil character. Even taking account of the limitation on the number of flights and the duration of each activity, it could not reasonably be considered that the sense of peace and calm experienced at this location would be maintained and enhanced by the proposed use of the site for takeoff and landing of an aircraft.
14. In reaching my conclusion I have taken into account that other Inspectors have reached a different conclusion on this matter previously, but I have considered the proposal on its own merits and in the context of the current development plan and the definition of tranquillity therein.
15. I therefore conclude that the proposal would not maintain and enhance the tranquillity of the surrounding area. Hence, it would diminish one of the important qualities of the National Park and its general enjoyment in this regard. The proposal therefore conflicts with Policy ENV2 of the LP.
16. However, even if I were to conclude otherwise, it would not outweigh the harm to protected species and the conflict with statutory National Park purposes.

### **Other Matters**

17. The proposal would remove the appellant's need to travel to the location where the aircraft is currently kept, thereby minimising the number and length of journeys for this purpose, in accordance with the Framework. Nevertheless, this would not be sufficient to outweigh the harm I have identified and the proposal's conflict with the Framework as a whole.
18. The Framework also recognises the importance of maintaining a national network of general aviation airfields, but as the proposal would primarily be for the appellant's personal use I give this matter very limited weight. Whilst I note that the airstrip could be made available for emergency use, the evidence

- before me indicates that there are already other options in the area, and in any event, it would not serve to justify the appellant's personal use of the airstrip.
19. The appellant refers to other developments being granted by the local planning authority at Sutton Bank airfield, but no details are given. In any event, the circumstances at an established airfield are very unlikely to be directly comparable to the appeal proposal, which I have considered on its own merits.
  20. The appellant's offer to donate £100 per month to the Yorkshire Air Ambulance is laudable, but notwithstanding there is no mechanism to secure it, such a financial contribution would not comply with the relevant tests for planning obligations as set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and paragraph 56 of the Framework.
  21. Some people may get enjoyment from seeing light aircraft and I note that some neighbours have not objected. However, these factors are not determinative and would not justify the harm that would occur.
  22. Separate to the effect on protected species in the vicinity of the site, Natural England has advised that the proposal could have potential significant effects on nearby nationally (Site of Special Scientific Interest) and internationally (Special Protection Area and Special Area of Conservation) designated sites of nature conservation. The proposal was not accompanied by any assessment of the impact on these designated sites to ensure compliance with the Habitats Regulations. Had the proposal been acceptable in planning terms, it would have been necessary for me to have undertaken an appropriate assessment. However, as I intend to dismiss the appeal on other substantive grounds, this is not a matter which needs to be addressed any further here.
  23. Similarly, I have noted the representations from interested parties on matters not covered in the main issues, but as I am dismissing the appeal for other reasons it is not necessary to explore these matters any further as it would not alter the appeal outcome.

## **Conclusion**

24. For the reasons given, the proposal conflicts with the development plan and the Framework as a whole. It is also contrary to statutory National Park purposes. This provides a clear justification for finding the proposal to be unacceptable and therefore the appeal should be dismissed.

*A Caines*

INSPECTOR