



# The Planning Inspectorate

3/E  
Temple Quay House  
2 The Square  
Bristol  
BS1 6PN

Direct Line: 0303 444 5399  
Customer Services:  
0303 444 5000

Email: [WEST3@planninginspectorate.gov.uk](mailto:WEST3@planninginspectorate.gov.uk)  
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Your Ref: NYM/2021/0351/OU  
Our Ref: APP/W9500/W/22/3301450

Mrs Wendy Strangeway  
North York Moors National Park Authority  
Development Control Support Officer  
The Old Vicarage  
Bondgate  
Helmsley  
York  
YO62 5BP

07 October 2022

Dear Mrs Strangeway,

Town and Country Planning Act 1990  
Appeal by SIW Properties  
Site Address: Land west of Highfield, Sled Gates, Fylingthorpe, North Yorkshire,  
YO22 4TZ

I enclose third party correspondence relating to the above appeal.

If you have any comments on the points raised, please send them to me no later than 21 October 2022.

You should comment solely on the representations enclosed with this letter.

You cannot introduce new material or put forward arguments that should have been included in your earlier full statement of case. If you do, your comments will not be accepted and will be returned to you.

Comments submitted after the above deadline will not be seen by the Inspector unless there are extraordinary circumstances for the late submission.

Yours sincerely,

***Tina Gozra***  
Tina Gozra

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Where applicable, you can use the internet to submit documents, to see information and to check the progress of cases through the Planning Portal. The address of our search page is - [www.planningportal.gov.uk/planning/appeals/online/search](http://www.planningportal.gov.uk/planning/appeals/online/search)

**From:**  
**To:** [Planning](#)  
**Subject:** RE: Application for outline application for up to 5 no. principal residence dwellings etc. Land west of Highfield, Sled Gates, Fylingthorpe NYM/2021/0351/OU  
**Date:** 07 September 2022 10:31:55

---

Good morning

**Appeal Application for outline application for up to 5 no. principal residence dwellings etc. Land west of Highfield, Sled Gates, Fylingthorpe NYM/2021/0351/OU**

I refer to your e-mail of the 2<sup>nd</sup> September 2022 in respect of the appeal application. I hereby confirm that I have no additional comments on the proposals.

Kind regards

**Mark Baxter.**

Mark Baxter BSc (Hons) MCIEH  
Environmental Health Officer,  
Residential Regulation Team,  
Scarborough Borough Council,  
e-mail: [mark.baxter@scarborough.gov.uk](mailto:mark.baxter@scarborough.gov.uk) tel: 01723 232524 fax: 01723 365280  
web: [www.scarborough.gov.uk](http://www.scarborough.gov.uk)



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**From:** Steve Reynolds  
**Sent:** 18 November 2021 12:17  
**To:** '  
**Subject:** Application for outline application for up to 5 no. principal residence dwellings etc. Land west of Highfield, Sled Gates, Fylingthorpe NYM/2021/0351/OU

FAO Mrs Hilary Saunders

**Application for outline application for up to 5 no. principal residence dwellings etc. Land west of Highfield, Sled Gates, Fylingthorpe NYM/2021/0351/OU**

I refer to your e-mail of the 18<sup>th</sup> November 2021 in respect of the above amended application. I hereby confirm that I have no additional comments on the proposals.

Thanks

Steve

Steve Reynolds DipAc, DipEH, BSc, DMS, MSc(ENG), MCIEH, CEnvH, CMIWM

## The Planning Inspectorate

### COMMENTS ON CASE (Online Version)

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**Appeal Reference: APP/W9500/W/22/3301450**

#### DETAILS OF THE CASE

Appeal Reference APP/W9500/W/22/3301450

Appeal By MR SIW PROPERTIES

Site Address  
Land west of Highfield  
Sled Gates  
Fylingthorpe  
North Yorkshire  
YO22 4TZ

#### SENDER DETAILS

Name MRS CLAIRE HARRISON

Address  
Moorland Rise Sled Gates  
Fylingthorpe  
WHITBY  
YO22 4TZ

#### ABOUT YOUR COMMENTS

In what capacity do you wish to make representations on this case?

- Appellant
- Agent
- Interested Party / Person
- Land Owner
- Rule 6 (6)

What kind of representation are you making?

- Final Comments
- Proof of Evidence
- Statement
- Statement of Common Ground
- Interested Party/Person Correspondence
- Other

**COMMENT DOCUMENTS**

**The documents listed below were uploaded with this form:**

**Relates to Section:** REPRESENTATION  
**Document Description:** Your comments on the appeal.  
**File name:** Appeals' Inspectorate.docx  
**File name:** cars.jpg  
**File name:** cars2.jpg  
**File name:** cars3.jpg  
**File name:** cars4.jpg  
**File name:** cars5.jpg  
**File name:** cars 6.jpg

**PLEASE ENSURE THAT A COPY OF THIS SHEET IS ENCLOSED WHEN POSTING THE ABOVE DOCUMENTS TO US**

Moorland Rise  
Sledgates  
Fylingthorpe  
Wgitby  
YO224TZ  
10<sup>th</sup> October 2022

Land at: Land west of Highfield, SledGates, Fylingthorpe  
Appeal reference(s): APP/W9500/W/22/3301450  
Proposed development: outline application for construction of up to 5 no. principal residence dwellings with associated access (matters reserved: appearance, landscaping, layout and scale)  
Appeal starting date: 31/08/2022  
Appellant(s) name: SIW Properties

Any comments made by myself to the North Yorkshire Moors' Planning Authority or Appeals' Inspectorate about the numerous proposals for development of this piece of land, over the last two decades, still stand.

The latest proposal differs only from those that have preceded it, in that it reveals more transparently the nature of the almost obsessive resolve to acquire permission to develop this land, no matter the cost.

My suspicion has always been that this and all the other applications, have never been about a modest development, but have always been about maximising profit with the further, future development of the field adjoining the proposed site. No matter the cost.

The most recent suggestion, the translocation of 120m of ancient hedge demonstrates this determination, no matter the cost.

The cost, in this instance is only financial but it would be significant.

The data submitted by the Appellant during the last round of planning application, seemed to me at the time to be easily discredited, given that much of it was collected during a time of national lockdown, which by any standard could hardly be regarded as representative of normal life or normal traffic conditions. However, the data's credibility was completely destroyed when I learned that the calculations used to interpret it, were in error.

As far as I can ascertain from pages submitted to the Appeals' Inspectorate, the Appellant has made no effort whatsoever to address the errors, present accurate calculations or address the consequences for the proposed development based on an accurate assimilation of the facts.

The erroneous data continues to be presented as fact. It is not. It is incorrect.

Perhaps this is an oversight on the part of the Appellant or those working for him?

The cost, in this instance, is a clear compromise to highway safety.

It is worthy of note, and easily verifiable on location that the proposed development's access area is a 'pinch point' in the road of Sledgates. Traffic entering the village has never been able to

maintain road position coming down hill on the approach to the village. Cars and other vehicles belonging to the residents of the properties opposite the proposed site entrance are parked naturally, outside of homes making it necessary for ALL downhill traffic approaching the village and the proposed site access, to cross the centre line to allow safe distance when passing the parked vehicles. This is not a rare phenomenon, it can be witnessed on any day, of any week, of any month of the year.

Please find attached photographs, taken within a ten-minute time frame on Saturday 10<sup>th</sup> September. This day and time were picked randomly.

I feel sure that the Appeals' Inspectorate will come to the same conclusion as their predecessors and refuse this application.....the cost is too great.

Kind regards,  
Claire Harrison















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**Appeal Reference: APP/W9500/W/22/3301450**

#### DETAILS OF THE CASE

Appeal Reference

APP/W9500/W/22/3301450

Appeal By

MR SIW PROPERTIES

Site Address

Land west of Highfield  
Sled Gates  
Fylingthorpe  
North Yorkshire  
YO22 4TZ

#### SENDER DETAILS

Name

MR ROBERT MCGOVERN

Address

Middlethorpe, Sledgate Farm  
Sled Gates  
Fylingthorpe, Whitby  
YO22 4TZ

#### ABOUT YOUR COMMENTS

In what capacity do you wish to make representations on this case?

- Appellant
- Agent
- Interested Party / Person
- Land Owner
- Rule 6 (6)

What kind of representation are you making?

- Final Comments
- Proof of Evidence
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- Statement of Common Ground
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- Other

**COMMENT DOCUMENTS**

**The documents listed below were uploaded with this form:**

**Relates to Section:** REPRESENTATION

**Document Description:** Your comments on the appeal.

**File name:** Representation to Planning Inspector APPW9500W223301450.docx

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**Middlethorpe, Sledgate Farm  
Sled Gates  
Fylingthorpe  
Whitby  
YO22 4TZ**

24 September 2022

**Land at:** Land west of Highfield, SledGates, Fylingthorpe  
**Appeal reference(s):** APP/W9500/W/22/3301450

**Proposed development:** outline application for construction of up to 5 no. principal residence dwellings with associated access (matters reserved: appearance, landscaping, layout and scale)

**Appeal starting date:** 31/08/2022

**Appellant(s) name:** SIW Properties

In addition to the comments in my letters to the NYMNP dated 13 May, 5 July, 6 August and 3 December and 30 December 2021 which still stand, I have taken the time to read the latest material from the Appellant's agent and FCPR and I have come to the same conclusion as the Highways Authority (13/12/21) that the proposed development would be likely to create conditions prejudicial to highway safety. The Appellant's view is that despite numerous previously rejected applications to develop this site and a Planning Inspector's view (2008) that it would be prejudicial to highway safety, they can overcome existing problems to accommodate splays. But, as I and others have pointed out in our numerous responses, it is based on an incorrect splay estimate at ATC02 and, as has been determined by the LHA, an unachievable uphill splay.

The latest AMA report to the Planning Inspector makes no attempt to refute the veracity of the concerns raised in letters by members of the community pointing out that the Appellant was wrong in their estimation of splay distances, and it wrongly infers that because not all the refusals were on highways grounds and the pre-planning advice from Highways was favourable, this should in some way be in their favour. I would point out that the pre-planning advice was appropriately caveated, expecting the Appellant to make the case, and the fact that several applications were rejected without Highways issues may simply be because they failed at the first hurdle on NYMNP planning grounds. I would like to also draw your attention to the fact that the claimed hedge translocation is on the northern end of the site and does nothing to address the fundamental problems with the views that cannot be achieved on the southern side - as Highways has noted.

I have continued concerns regarding the accuracy and validity of the Appellant's data in the report by AMA and would point out that the current report does nothing to address them:

1. The proposal to transposition the hedge has based its assumptions on false premises: that the splays required are **68.2m** to the west and **47.4m** to the east (total splays =115.6m), with a minimum 8.5m entrance; a total of **124.1m to accommodate**. But the **Highways Authority did not accept the claim that visibility could be measured at 0.9m into the road**. It stated the visible distance was 48m- leaving 20m unaccounted for. As a result, achieving the splays becomes more difficult.

2. As I pointed out in my letter of 03 December, in estimating splay distances, the traffic report submitted by **the applicant failed to apply the correct calculation for the downhill speeds (ATC02) due to omitting to use the formula for speeds >60kph.** Corrected splay calculations for the downhill speeds at ATC02 give a revised splay distance of 119.89m + 2.4m of **122.9m, not 68.2m. That is a difference of 54.7m.** Adding the lower splay of 47.4m, and a minimum of 8.5m for an entrance, then the corrected total splays to be accommodated are 122.9m to the south + 47.4m to the north of an 8.5m opening: **a minimum of 170.3m of splays alone +8.5m opening = 178.8m to fit in – not 124.1m.** This cannot be done within the boundary of the land owned by the applicant, or without maintaining the hedges of neighbouring properties so as “they do not overhang existing highway extents” (Highways report 13/12/21).
3. The Highways report also noted that the **previous 68.2m** splays suggested by the applicant **could not be met in the southerly direction.** The report stated that the achievable distance at the kerb line was around 48m. **Adding another 54.7m to the 68.2m makes that totally impossible,** regardless of what might be done to translocate the hedge.
4. Although the Local Highways Authority has accepted the applicant’s view that Section 7.7.7 of MfS allows for the adjustment to 2 metres for lightly trafficked roads, it can be seen from the AMA traffic data that this road could hardly be described as “lightly trafficked”. It is the main route into Robin Hood’s Bay from the south and west and has at least two buses in each direction every hour, delivery and farm vehicles. The AMA data shows that high speeds are common and, indeed, average speeds both up and down hill are in excess of 30mph. Vehicles commonly have to cross the centre-line of the road due to cars parked outside the houses opposite (see photographs taken in a 20 minute time period on 10/09/2022 on pages 4,5 & 6 below).
5. In addition, as **the entrance to the site will be used by agricultural and domestic vehicles** (the applicant’s diagrams show that an entrance at the rear of the site leads into a field) the guidance would suggest that the setback should be at least 2.4m, not 2m- further affecting the southern and northern splays. This would accord with the Planning Inspector’s view in 2008:

paragraph 10 of the Planning Inspector’s report 14/01/2008:

*“...measured to the centre line of the road, the splay would be substantially better (2.4 x40 or 2 x 60.7), but MfS is clear that the centre line measurements should only apply where there is a special circumstance such as a physical barrier to prevent cars crossing into the other lane. In this case there is informal paving for cars to park along the roadside in front of the houses opposite ..... I saw that, despite generous overall road width at this point and centre-line marking, these parked cars oblige vehicles to approaching the site from the southwest to pull out, partly across the centre-line of the road. I, therefore, consider this alternative measurement inappropriate in the case.”*

It should also be noted that this a busy pedestrian footpath. It used by local people and students attending Fyling Hall School.

## Conclusion

Given the impossibility of achieving the splay, translocation of the hedge will make no difference, and the Appellant’s report does nothing to change this. The traffic data continues



to be used selectively by AMA to justify the appeal, but repeating assertions does not justify them or make them factually correct. There is no doubt that the traffic data contains miscalculations that (as pointed out in numerous earlier letters by local people) once recalculated make achieving the splays impossible.

It is hardly worth reflecting on the merits or otherwise of the proposal to translocate the hedge in the face of such overwhelming and long-standing evidence that any development of this site is prejudicial to highway safety. I am nevertheless concerned about any break in the visual continuity of the hedge and wall, and in the likely survival rate of species when there is nothing other than warm assurances from the Appellant's ecologist to say that such works would be successful.

I am sure that the Planning Inspector will come to the same conclusion and refuse this application.

If the Planning Inspector intends to make a site visit, can I request that members of the community are invited to attend. I look forward to hearing from you.

Kind regards,

Bob McGovern

Planning Inspectorate,  
Temple Quay House,  
2 The Square,  
Temple Quay,  
Bristol,  
BS1 6PN

Uploaded to the Appeals Portal

Photographs of usual traffic flows within a 30 minute period below:







## The Planning Inspectorate

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**Appeal Reference: APP/W9500/W/22/3301450**

#### DETAILS OF THE CASE

Appeal Reference

Appeal By

Site Address

#### SENDER DETAILS

Name

Address

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- Rule 6 (6)

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- Statement of Common Ground
- Interested Party/Person Correspondence
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**COMMENT DOCUMENTS**

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**Document Description:** Your comments on the appeal.

**File name:** dr tim reed appeal land nr Highfield Fylingthorpe.doc

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## **Comments on issues in the Appeal Documents for Appeal Reference APP/W9500/W/22/3301450**

**Land west of Highfield, Sledgates, Fylingthorpe, North Yorkshire**

**By Dr Timothy Reed BA, MA, DPhil, C. Biol, FCIEEM**

### **1. Introduction**

#### **Qualifications**

My name is Dr Timothy Reed, and I hold BA and MA degrees from Cambridge University and a D.Phil. from Oxford University. I am a Fellow of the Chartered Institute of Ecology and Environmental Management, and a Chartered Biologist.

I have worked, and continue to work, across the UK and the world advising clients on development and planning issues relating to biodiversity and impact assessment.

My comments here are as private individual, but were prepared in line with the standards expected by my professional body.

#### **Statement of Scope and Structure**

The comments that follow relate to a review of the Appeal Documents submitted by Mr A Flatman on behalf of SIW properties: the Appellant. These comments are in addition to those made in 2021 on the original proposal, which still stand. I recommend refusal.

I have focused on the Appeal Document produced by AMA, which is the core of the Appellant's case. In addition, I have reviewed the Statement of Case produced by Dr Suzanne Mansfield relating to ecological matters.

### **2. The Appeal: inconsistencies and Grounds for Refusal.**

The Application for development of land in the village of Fylingthorpe is the most recent of a number of applications for the same plot. To date, all have been turned down, and that which went to Appeal in 2008 was refused on Highways Grounds.

The current application, of which this is the Appeal, was refused on 2 grounds on 12.1.2022:

- 1 The Planning Authority considers that clear visibility of 68.2metres cannot be achieved along the public highway in a southern direction from a point 2 metres from the carriageway edge measured down the centre line of the access road and consequently traffic generated by the proposed development would be likely to create conditions prejudicial to highway safety. The proposal is therefore contrary to Policy CO2 and CO7 of the North York Moors Local Plan which only permits new development where it is of a scale which the adjacent road network has the capacity to serve without detriment to highway safety.
- 2 The existing roadside hedgerow classifies as being a habitat of importance (under the NERC Act) and therefore its proposed removal would result in habitat loss, contrary to the National Parks Statutory Purposes as set out in Strategic Policy A and Policy ENV1 of the NYM Local Plan, which states that there will be a presumption in favour of the retention and enhancement of existing hedgerows of value on all developments.

I will indicate to the Inspector that whilst the visibility problem remains, the Appellant was wrong in their estimation of splay distances by a serious degree. This was noted in my comments to the Planning Authority on the planning application, and are repeated here as the Appellant has continued to promote an incorrect calculation, and method, that is not in line with MfS2 (CIHT 2010) given the 85<sup>th</sup> percentile recorded speed noted by the Appellant's counters. As it exceeded 60pkh, different parameters- stated by MfS- should have been applied. They were not, and have not been used in the Appeal documents by the Appellant.

In addition, in the Appeal documents the Appellant is over-selective in its use of data, and makes several errors in directions relating to the data sets that muddy the waters significantly.

In addition, a number of unfounded assertions are made, for which there is no evidence. These are important for the determination of the Appeal, which should be factually based.

The second reason for refusal was the status of the front hedge – referred to throughout the Appeal documents as Hedge 1. Although the Appellant's ecological adviser has now accepted that the hedge is covered by the 1997 Hedgerow Regulations, the proposal is still to alter its location. This depends on the veracity of the splay calculations. I will show the Inspector that moving a 1997 Regulations Hedge is not plausible, given the scale of splays needed; they cannot be accommodated at the site. Also, the 2022 surveys took place outside of the time recommended by their methodological guide (JNCC 2010), by persons unknown, and they have placed undue reliance on Local Record Centre Data sets – contrary to the guidance in Government's Standing Advice for Protected Species (e.g. <https://www.gov.uk/guidance/bats-advice-for-making-planning-decisions>) and the limitations of those data.

**Pagination.** The document provided to the public is 137 pages long, and broken into a plethora of sub sections. For that reason, I will refer to the PDF page number, as well as the report Section page and paragraph number.

It should be noted that I had to ask for a number of documents to be provided by the Appellant that were referred to, but not included, in the 137-page PDF. I am advised by the Planning Officer at N York Moors NP that these will be added to the case files available to the Inspector.



## Document 1: Highways Appeal Statement by Andrew Moseley, dated 15<sup>th</sup> June 2022

This document is found on PDF page 26, and is Appendix 5.

On PDF pages 28 and 29 (p3 & 4). Andrew Moseley Associates (AMA) note that the 2006 application was refused on visibility grounds. That of 2007 was also refused on similar grounds, including at Appeal.

PDF page 30 (p5). AMA states:

Sled Gates is subject to a 30mph speed restriction within a built-up residential settlement of Flyingthorpe, Therefore in accordance with NYCCs own Highway Design standards, visibility should be sought at 2m x 45m for a 30mph speed limit for any development less than 6 units. This is similar to the Manual for Streets (MfS) design standard which seeks splays at a 43m length and as such is considered an acceptable standard to adopt in this location.

It is assumed that the NYCC guidance is the NYCC Residential Design Guide, 2<sup>nd</sup> edition of October 1998. This states (p90) that the set back is 2.4m for 5 or more dwellings, not 2m.

As AMA noted (PDF 30, p5 para 4) they were required to collect traffic data flows, so that more accurate splay calculations could be made. As AMA noted also on p5, NYCC Highways required the initial December 2020 data sets to be rerun in 2021.

On PDF pages 31 and 32 (p6 & 7) AMA presents its case for its erroneous splay calculations and is selective in its use of its 2021 data set. I will show why fundamental errors make the splay calculations unsafe, and make any concerns over the 1997 Hedgerow Regulations Hedge H1 academic; as the splays cannot be fitted on the property. As a result, road safety is compromised.

On PDF p31 (p6) para 1, AMA noted that the traffic counting was split into two locations : ATC01 and ATC02. ATC 02 was above the site on the slope and was labelled as the SW splay (p7). The NE located ATC01 was further down the slope, and below the proposed site access point. Both are within the existing 30 mph speed zone, and would be expected to have all vehicles passing through them at or below 30 mph.

In para 3 PDF p31 (p6) AMA noted that:

*The findings from the seven-day ATC surveys recorded 85<sup>th</sup> percentile speeds for eastbound traffic travelling at 32.7mph and for westbound traffic at 38.4mph.*

AMA neglected to say that these were **52.63 kph** for ATC01 and **61.8 kph** for ATC02. The latter is especially important, as under MsF2 (CIHT 2010) para 10.1.3 where speeds exceed 60kph, parameters used in the calculation of splays are changed- something AMA failed to do on PDF p32 (p7 Southwestern Splay Table). It is the kph figures that are used in MfS calculations, **not** mph.

In para 3, AMA **reversed** the directions by mistake. It was **westbound** (uphill) traffic recorded at ATC01 that had 85<sup>th</sup> percentile speeds of 32.7 mph/ 52.53 kph. It was **eastbound** (downhill) traffic that had 85<sup>th</sup> percentile speeds of 38.4 mph / 61.8 kph. For clarity, the rough location of each is shown in Figure 1 below:

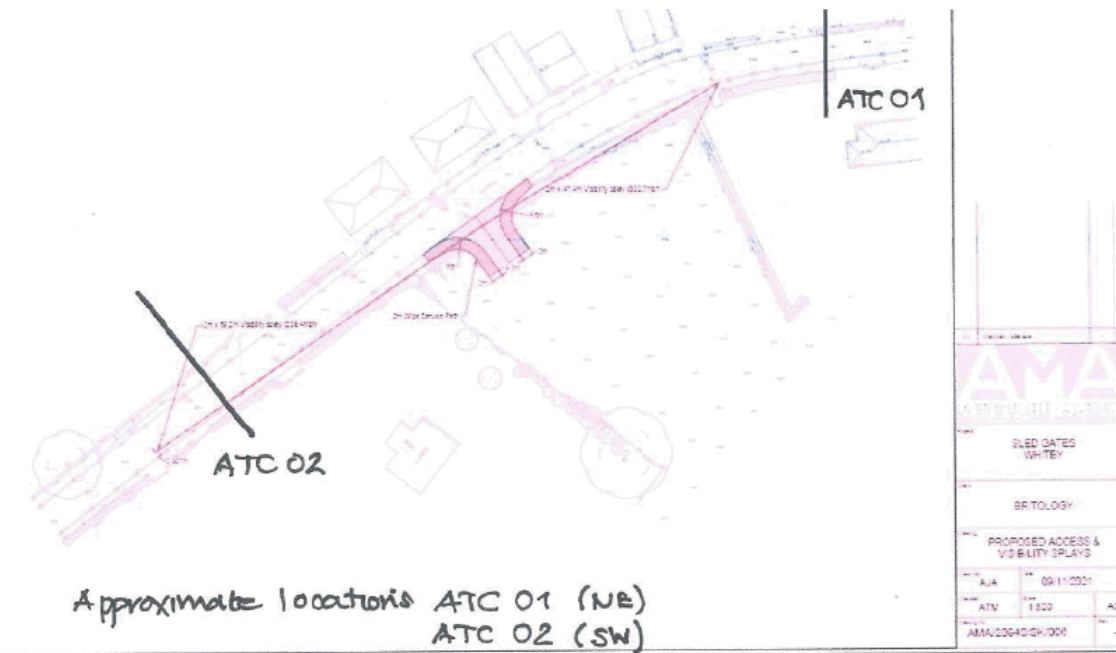


Figure 1. Approximate locations of ATC01 (NE splay) and ATC02 (SW splay) for illustrative purposes only.

In para 3 quoted above, it is clear that the majority of cars going up and downhill were speeding in both directions. It may help to show the scale of speeding, using the Appellant’s data set.

Table 1 shows the traffic at ATC01. This is the lower of the two sites (to the NE of the site), and the nearside traffic is going uphill. Table 1 covers the period 1-7.10.2021. Note that the location of ATC01 was well within a 30mph zone and approached from the heart of the village up a hill.

	No cars left hand (s)side	No cars N&S	No cars >30mph on S side	No cars >30 mph N&S
Total over 7 days	4347	8813	616	1036
Per day	621	1259	88	148

Table 1. Data for cars passing and > 30 mph at ATC01 1-7.10 2021

Table 1 indicates that over a 7-day period there was a heavy volume of traffic (4347 vehicles moving S, 4466 moving N) at ATC01.

At a point c 70m below the planned egress point for the proposed development, coming from within a 30mph zone, **well over 600 cars were speeding >30 mph** around a corner approaching the entrance. Note that cars are normally parked (Fig 2) on the other side of the road, making this a dangerous pinch point. **Speeding cars passing both ways were in excess of 1000 during that week.**

AMA (PDF p31 para 5) p6 states that it applied Mfs2 calculations for both ATC01 and ATC02:

Visibility splays have been assessed using the Mfs2 calculations for the recorded speeds, as set out within the AMA Highways Technical Note prepared on the 9<sup>th</sup> November 2021. For ease of reference the calculations applied are set out below for the north-eastern and south-western splays.

MfS2 para 10.1.3 ( CIHT 2010) stated:

*“This section provides guidance on SSDs where the 85<sup>th</sup> percentile speeds are up to 60 kph”*

Data in MfS2 (CIHT 2010) allow recalculation of speeds using Table 10.1 in Section 10.1.13. Values of parameters used in the calculation of splays alter beyond 60kph.

The values that are entered in depend on the speed recorded (MfS2). **Beyond 60kph** values for driver perception reaction time rise to 2 seconds from 1.5, and deceleration drops to 2.45 m/s<sup>2</sup> from 4.41 (MfS2 Table 10.1). These affect the calculations, and with it the splay estimates.

**10.1.13** In summary, recommended values for reaction times and deceleration rates for SSD calculations are given in **Table 10.1** below and the resulting SSD values for initial speeds of up to 120kph are shown on the graph beneath.

Design Speed	Vehicle Type	Reaction Time	Deceleration Rate	Comments
60kph and below	Light vehicles	1.5s	0.45g	
	HGVs	1.5s	0.375g	See 10.1.9
	Buses	1.5s	0.375g	See 10.1.10
Above 60kph	All vehicles	2s	0.375g (Absolute Min SSD)	As TD 9/93
	All vehicles	2s	0.25g (Desirable Min SSD)	As TD 9/93

**Table 10.1:** Summary of Recommended SSD Criteria

AMA then noted:

MfS2 calculations are considered appropriate for these ATC speed survey locations based on the residential nature of Fylingthorpe and the built-up urban characteristics of Sled Gate fronting the application site. Sled Gates is also subject to a 30mph speed limit and therefore MfS design guidance is considered to be acceptable.

That is disingenuous. It is clear that speeding is commonplace, that MfS2 provides guidance not just for 30 mph (48.3 kph) , but also where speeds exceed 60kph. If the latter occurs, then adjustments are needed.

AMA (PDF p31 para 8) p6 states that the splay for the bottom splay- based on ATC01 was 47.4m.

On (PDF p32 para 1) p7 AMA shows its workings for the downhill flowing ATC02 data. AMA suggested a splay distance of 68. 2m. In calculating this, AMA did not adjust its calculations for the 85<sup>th</sup> percentile exceeding 60 kph, as required by MfS2 (CIHT 2010).

Adjusting the input to meet MfS2 (CIHT 2010) requirements produces a different splay estimate, significantly larger than that promoted by AMA.

AMA calcs	V (km)	V as m/s	t>60 kph	d (m/s <sup>2</sup> ) if >60 kph	a	0.1a
AMA figures	61.8	17.17	AMA used 1.5 s	4.41	-7.27	-0.727
Correct figures per mfs2	61.8	17.17	2s	2.45	-7.27	-0.727

T is required to be 2s not 1.5s

D is required to be 2.45 not 4.41

This means that as T is bigger, and D is now smaller, there are likely to be large changes in the SSD estimate- as T is now c30% larger, and D is now c 55% smaller than before.

SSD entry	AMA	Corrected data per MfS2
V	17.17	17.17
T	1.5	2
Vt	25.76	34.34
V <sup>2</sup>	294.81	294.81
d	4.41	2.45
D+ 0.1a	3.68	1.72
2(d+0.1a)	7.36	3.446

Also, the equation as set out by AMA is in error. A bracket has been omitted. It should read :

$$SSD=vt+(v^2/2(d=0.1a))$$

Running the correct data entries for ATC02 produces the following:

VT= 34.34 **not 25.76**

D= 2.45 **not 4.41**

These affect the results of the correctly expressed SSD equation.

$$34.34 + (294.81/3.446) = 34.34 + 85.55$$

**SSD is now 119.89m + 2.4= 122.29m**

**That means the splay cited by AMA of 68.2m, if correctly calculated, is now at 122.29m. This is wider than the width of the property; to be achieved it would have to remove other privately owned local hedges. That may not be acceptable. In addition, there is the splay linked to ATC01 to accommodate, making splays totalling c 169m.**

On (PDF p32 para 1) p7 para 1-3 AMA notes the incorrect splay distances, which it used to draw splays. It also (as noted above) used the set back of 2m in para 4. That is not compliant with NYCC (1998) which requires 2.4m. Even were 2m to be used (see Refusal Item 1), according to NYCC Highways a splay of 68.2m could not be met. If that could not, then 122.29m certainly could not.

Apparently unaware of the scale of error linked to the >60kph issue and splay dimensions, which were stated in representations to the planning submission in December 2021, AMA states:

The main reason for NYM's planning refusal relates to the need for the splay at 68.2m to be offset 0.9m from the nearside kerb.

It is AMA's professional opinion that the 0.9m offset does not give rise to any adverse road safety impacts for a number of reasons as detailed below and this should not warrant a reason or justification for refusal on highways safety grounds.

The south-western splay is not facing into oncoming vehicular traffic and is the offside lane, therefore, vehicles would be highly unlikely to be in the oncoming lane towards the access. This would be a highly rare occurrence and would be overtaking vehicles, which is not considered likely given the residential 30mph area and low vehicle speeds.

In the first two of the paragraphs, AMA cavils with 0.9m. No reason is given, other than unsubstantiated opinion. No peer-reviewed or other sources are given as support. PDF p 14 shows that NYCC LHA did not accept the validity of AMA's 0.9m claim.

Had AMA provided examples, or references, that would have helped. Here, and elsewhere, assertions are made without substantiation; that is not acceptable.

It was shown above (using AMA data) that there were thousands of vehicles passing the immediate opening according to ATC01 and ATC02. Above, AMA seeks to underplay the possibility of cars or other vehicles being pushed towards the centre of the road- or beyond. There is no basis for the "Highly rare occurrence"; NYCC LHA PDF p14 noted the problems of vehicles being pushed across the centre line.

Nor is it correct to suggest low vehicle speeds. Table 2- using AMA data – shows the scale of speeding and the traffic volume. 1939 were >30 mph coming down the hill, and

	No cars left hand (N) side	No cars N&S	No cars >30mph on N side	No cars >30 mph N&S
Total over 7 days	4340	8897	1939	2863
Per day	620	1271	277	409

**Table 2. Data for vehicles and > 30 mph at ATC02 12-18.10.2021**

Neither the volume of traffic, not the high speeds are what MfS2 (CITH 2010) would call a

*"slow speed situation " or "a lightly-trafficked rural lane"*

The very fact that the splay calculation parameters for ATC02 data had to be altered for excess speed averaging > 60 kph confirms this.

This also means, that with such a large volume of fast vehicles, and the need for splays larger than can be accommodated, there is a significant risk of incidents if a new opening is provided. This is exacerbated by the presence of parked cars overnight, and during the day on the downhill section of the road opposite the field, when cars are forced across into the upcoming lane. That would be the equivalent of overtaking as AMA (PDF p 33, p6 para 1) states:

*On the highly rare occurrence that a vehicle would be in the nearside lane overtaking, it would also be clearly visible from the junction at a 0.9m offset from the nearside kerb at the splay of 68.2m.*

The NYCC LHA (PDF p14 para 9) also does not accept the 0.9m offset. They also noted that parked cars push vehicles into the oncoming uphill lane. This formed part of their refusal.



Figure 2. Parking opposite the proposed site 06.31 4.8.2021

With cars parked across the day, that is not a rare event- for which AMA had provided no data to support its claim. Photos submitted separately by R McGovern show the frequency of these common event. On (PDF p33 ) p8 para 4 AMA states- with no evidence:

*In addition, due to the curvature of the carriageway, vehicles traveling north-eastbound would not be overtaking at this point of the carriageway.*

Avoiding parked cars has the same effect as overtaking.

AMA then states in Para 5:

*It is therefore considered that the achievable visibility splays in both directions are appropriate in relation to operation and highway safety.*

As the splay estimates are in significant error, and, if corrected, far exceed the width of the property frontage, there is no basis for para 5 in Fact.

The Inspector is referred to Tables 1 and 2 above before considering the claims of AMA in para 6, as hundreds of cars exceed the 30mph limit. The errors in the splay preclude the claims. Splays use kph, not mph.

*Further to the 85<sup>th</sup> percentile speeds, a review of the raw ATC data identifies that when considering the average speed along Sled Gates the following speeds were recorded for north-eastbound traffic is 30.2mph and for south-westbound traffic is 25.6mph for which the proposed splays more than accommodate.*

AMA's data sets show a minimum of c 4350 vehicle passes per week. In (PDF p33 ) p8 para 7 AMA makes a series of claims without comparators to provide context.

*The data also identifies a relatively low level of traffic travelling along Sled Gates through the residential settlement of Fylingthorpe, the ATC data recorded a weekday average of 1,271 two-way vehicular trips across a 24hr period. When reviewing the average weekday movements for the worst case time period of 07:00 to 19:00, when it is generally accepted that the majority of vehicle based trips are undertaken, a total of 1,171 two-way trips were recorded, equating to approximately 100 two-way trips in any hour.*

There are problems here. As noted, no comparators/ references are provided. The assertions of low levels of traffic are also simplistic. Looking at AMA's tables for ATC01, there is very little variation in flows between days, with only 20 vehicles fewer on weekends. Using a 5-day model is misleading. All days are similar.

Channels 1+2 - Northbound & Southbound

	01/10/2021 Friday	02/10/2021 Saturday	03/10/2021 Sunday	04/10/2021 Monday	05/10/2021 Tuesday	06/10/2021 Wednesday	07/10/2021 Thursday	5-DAY MEAN	7-DAY MEAN
0000-2400 Vehicle Flow	1397	1146	1271	1288	1078	1249	1384	1279	1259
Mean Speed	25.3	25.2	25.4	25.8	25.1	24.8	25.2	25.1	25.2
85%ile Speed	31.3	30.7	30.7	31.1	30.7	28.3	31.1	30.5	30.6
No. Vehicles > 30 MPH Limit	168	135	152	189	124	109	158	150	148
% Vehicles > 30 MPH Limit	12.0	11.8	12.0	14.7	11.5	8.7	11.4	11.7	11.7
No. Vehicles > 45 MPH	6	2	4	0	3	0	1	2	2
% Vehicles > 45 MPH	0.4	0.2	0.3	0.0	0.3	0.0	0.1	0.2	0.2

**Amalgamated ATC01 data from PDF p 79**

And for ATC02 the picture was very similar, with weekends exceeding several weekdays- as would be expected from the tourist flow to Robin Hood's Bay.

Channels 1+2 - Northbound & Southbound

	12/10/2021 Tuesday	13/10/2021 Wednesday	14/10/2021 Thursday	15/10/2021 Friday	16/10/2021 Saturday	17/10/2021 Sunday	18/10/2021 Monday	5-DAY MEAN	7-DAY MEAN
0000-2400 Vehicle Flow	1221	1356	1278	1319	1246	1255	1225	1280	1271
Mean Speed	28.6	28.5	28.4	28.6	28.5	28.1	28.4	28.5	28.4
85%ile Speed	35.8	35.9	36.3	35.5	36.1	35.8	35.8	35.9	35.9
No. Vehicles > 30 MPH Limit	396	444	439	423	388	381	392	419	409
% Vehicles > 30 MPH Limit	32.4	32.7	34.4	32.1	31.1	30.4	32.0	32.7	32.2
No. Vehicles > 45 MPH	11	16	17	16	7	9	16	15	13
% Vehicles > 45 MPH	0.9	1.2	1.3	1.2	0.6	0.7	1.3	1.2	1.0

**Amalgamated data for ATC02 from PDF p80**

In para 7, AMA makes no comments on the speeds across the period 07.00- 19.00. On data sought from the developer via the Park, it is clear that speeds are highly variable during that period , and often above 30mph during 07-19.00.

	Channel 1 -	Northbound			Average Speed		Week 1
	12/10/2021	13/10/2021	14/10/2021	15/10/2021	16/10/2021	17/10/2021	18/10/2021
Hr Ending	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Monday
1	-	40.5	33.0	35.5	38.0	30.5	-
2	-	-	33.0	23.0	-	33.0	-
3	-	-	-	33.0	-	-	38.0
4	-	33.0	33.0	30.5	33.0	33.0	-
5	-	-	28.0	-	-	-	-
6	-	35.5	33.0	33.0	38.0	-	33.0
7	36.3	38.5	29.1	35.9	33.0	-	35.3
8	35.2	35.0	38.1	33.8	31.0	33.8	34.7
9	32.6	33.9	31.4	31.1	31.2	33.3	33.6
10	30.8	30.1	31.6	29.5	28.5	30.6	31.0
11	29.4	29.4	28.8	29.1	30.1	29.3	28.6
12	29.0	27.6	29.6	28.3	27.0	28.7	27.5
13	30.7	29.9	27.1	29.2	31.0	30.7	29.6
14	29.3	30.5	27.6	28.5	29.8	31.3	29.5

15	29.9	28.0	31.5	28.4	30.2	29.2	28.7
16	29.0	29.8	30.8	29.3	29.4	28.0	29.0
17	30.3	30.5	29.3	28.2	30.9	30.0	31.4
18	30.1	31.5	30.2	30.0	31.1	31.6	30.4
19	31.2	29.5	30.5	31.3	28.6	31.4	31.9
20	31.8	29.4	33.7	32.5	30.4	32.4	32.5
21	28.0	33.0	31.6	32.3	30.6	34.8	29.2
22	33.4	36.3	30.5	35.5	30.5	33.0	38.0
23	35.5	34.2	35.5	31.8	32.3	33.0	30.5
24	30.5	35.5	-	46.3	35.5	55.5	-
10-12	29.2	28.5	29.2	28.7	28.6	29.1	28.0
14-16	29.5	28.8	31.2	28.8	29.8	28.5	28.8
0-24	30.5	30.3	30.2	29.6	30.1	30.2	30.2

Source: AMA XL sheet 'copy of client results 9142 Whitby ATC02 Yellow= periods when mean >30mph 07- 19.00 Grey = periods outside of AMA claims

In PDF p 33, p6 para 8 , AMA states, with no evidence or references:

Based on the relatively low observed base flows present along Sled Gates, it is considered that the visibility splays achieved by the proposed residential development would result in minimal conflicts for north-eastbound traffic travelling past the application site and an even lower occurrence of any overtaking approaching or passing the site.

As has been established, the splay measurement for the southern ATC02 splay is in serious error, so that there is no basis for AMA's claim. Nor are baseflows demonstrably low in the absence of data/ references. Nor is crossing the white line a rare event.

In Para 9 AMA concludes- contrary to NYCC LHA's earlier statement that:

Consequently the offset of 0.9m from the nearside kerb for the south-western visibility splay is not considered to pose a highways safety concern and is considered acceptable.

To repeat an unsupported assertion is not to validate it.

On PDF p35, AMA p10, AMA made a number of bulleted points that were refuted earlier in this review. These include:

- ▶ The only objection from NYM Local Planning Authority in relation to road was that the south-western visibility splay encroaches slightly into the offside lane by 0.9m from the nearside kerb;

NYMLPA stated in its refusal letter of 12. 1 2022 (PDF p 24):

- 1 The Planning Authority considers that clear visibility of 68.2metres cannot be achieved along the public highway in a southern direction from a point 2 metres from the carriageway edge measured down the centre line of the access road and consequently traffic generated by the proposed development would be likely to create conditions prejudicial to highway safety. The proposal is therefore contrary to Policy CO2 and CO7 of the North York Moors Local Plan which only permits new development where it is of a scale which the adjacent road network has the capacity to serve without detriment to highway safety.



AMA stated that:

- ▶ In accordance with the MfS2 design standards, visibility splays for the recorded speeds have been achieved for the north-eastern visibility splay onto oncoming traffic. The south-western visibility splay however can only be achieved by a slight offset into the carriageway by 0.9m.

Due to failure to use the correct >60kph MfS2 model for splay estimation, the splay claims are seriously at error, and NYCC LHA did not accede to the 0.9m assertion. Splays cannot be accommodated on site.

AMA stated that:

- ▶ The south-western splay is considered acceptable as this does not face into oncoming vehicular traffic and is the offside lane, therefore, vehicles would be highly unlikely to be in the oncoming lane towards the access. This would be a highly rare occurrence and would be overtaking vehicles, which is not considered likely given the residential 30mph area and low vehicle speeds.

That was not accepted by NYCC LHA, nor by the presence of parked cars throughout the day. Speed claims are not matched by the data provided. Cars and other vehicles do regularly cross the line.

AMA stated that:

- ▶ On the highly rare occurrence that a vehicle would be in the nearside lane overtaking, it would also be clearly visible from the junction at a 0.9m offset from the nearside kerb at the splay of 68.2m.

No evidence was provided, and with an error in the splay of an additional 54.08m, that is unlikely.

AMA stated that:

- ▶ The proposals are for five dwellings which would equate to 4 additional two-way vehicle trip occurring on Sled Gates and the Local Highway Network during the AM and PM network peak periods respectively. These are considered to be immaterial and as such cannot be considered detrimental to the operation of Sled Gates in highways safety or capacity terms;

No evidence is provided for the number of 2-way trips, especially as two-car professional households are not uncommon. In addition, there would be visits/ shopping and other uses of cars at the weekends, which are equally as busy, as AMA data showed. As vehicle use along Sledgates is spread across the period 7-19.00, rather than in a tight slot, AMA's assertions are unfounded and untestable.

AMA's proof ended:

Based on the information contained in this Highways Appeal Statement and key findings in the conclusion, it is considered that the proposals would not result in an unacceptable impact on highway safety, or that the residual cumulative impacts on the road network would be severe in line with the requirements of NPPF Paragraph 111.

Given the scale of error in splays, and unsupported assertions, the Inspector is unable to mirror the hopes of AMA. The Appeal cannot be supported on Highways Grounds.

## Document 2. ECOLOGICAL MATTERS

The second basis for refusal of planning permission for the site (PDF p 24) was stated as:

- 2 The existing roadside hedgerow classifies as being a habitat of importance (under the NERC Act) and therefore its proposed removal would result in habitat loss, contrary to the National Parks Statutory Purposes as set out in Strategic Policy A and Policy ENV1 of the NYM Local Plan, which states that there will be a presumption in favour of the retention and enhancement of existing hedgerows of value on all developments.

The developer commissioned a report by Dr Suzanne Mansfield of FPCR. Her Statement of Case occurs at PDF p85 onwards. An Ecological Report, referred to as an Ecological Appraisal, was not included within the submitted Appeal documents, but was sought from the developer, through the Park, after being cited in the text.

In the following notes I will draw attention to some of the statements made by Dr Mansfield, and some of the issues of which the Inspector should be aware.

Pagination will refer to the PDF and also to the Statement of Case page numbers as FPCR px.

### 1. Statement of Case

Note that both the Ecological Appraisal (2022) and Hedgerow Translocation Method Statement (2021) were written as first drafts by 'SH'. It is uncertain if Dr Mansfield has visited the site, or who SH is, and their qualifications.

Mansfield presents a summary of basic background. On PDF p90 FPCR p7 para 2.5 reference is made to the suggestions that the hedge meets the criteria for protection under the 1997 Hedgerow Regulations. This formed the basis of a survey in March 2022 PDF p 90 FPCR p7 para 2.7. Comments on this are provided in a separate review of the Ecological Appraisal document.

In para 2.15 of FPCR p8 PDF p 91, Mansfield agrees that the hedge met the 1997 Regulations Criteria. In para 2.19 on FPCR p9 it was also confirmed that the hedge met criteria of Hedgerow of Principal Importance as listed within Section 41 of the NERC Act 2006.

Reference was made to protected species- drawing on desk search data. No comments were made on the limitations associated with such data, and the problems linked to this is determining site status.

Mansfield (FPCR p10, PDF p93) concluded:

- 2.31 The sites hedges have greater value, H1 is important under the Hedgerow Regulation 1997, and along with H2 are hedgerow Habitats of Principal Importance under Section 41 of the NERC Act.

Note that this is at odds with the 2021 FPCR Method Statement (FPCR 2021) for hedgerow translocation which was undertaken and written by other FPCR staff in advance of the March 2022 visit. However, as 'SH' wrote the first draft, and no name of the surveyor is given, it is uncertain who did the work and who visited the site. As the site is at conjecture, it would appear odd that Dr Mansfield did not see the site, and wrote the report site-unseen.

In Section 3 (PDF 93, FPCR p 10) Mansfield concluded that whilst hedge H2 (which flanks a field) would be retained, the front hedge (Hedge 1) would need to be translocated to survive, to allow visibility.

The Inspector should be reminded that the splay error in AMA's calculations requires an additional 58m, which would not be readily met by hedgerow articulation of even a large degree. On that basis, the FPCR proposals are largely academic. They will be reviewed in that light.

In paras 3.9- 3.14 of FPCR p 11-12 PDF p94-95, Mansfield set out the basic case for moving the hedge. Unsupported claims of success for hedgerow translocation are made, with no reference to success rates, species losses and gains and other basic material that would be needed to confirm the ecological robustness of the approach. That there is no clear peer review literature on the technique using word searches for hedgerow translocation, success rates, failure rates, species gain, species loss is not encouraging. As Hedge 1 is a 1997 Regulations Hedge on the basis of its botanical (shrub and ground flora) composition, this is critical. The absence of cited peer-reviewed literature is of concern.

In Section 4, FPCR p13-14 PDF p96-97, Mansfield determines that the Regulations status of the hedge is superseded by planning considerations, and that, if lost, the Park's ecologist would just require mixed planting by way of mitigation. That is conjectural, and lacks much ecological detail, as in order to qualify as a 1997 hedge, it is more than the sum of its shrubby species list.

In 4.15, FPCR p14 PDF 97, Mansfield proposes that translocation achieves more than a new planting.

Given the scale of movement that would be needed to begin to meet the Splay needs, the discussion is largely rhetorical.

In Section 5: Summary and Conclusions PDF 98, FPCR 15, Mansfield offers translocation as being better than destruction.

### **Conclusion:**

1. The hedge is acknowledged as meeting the 1997 Hedgerow Relations Criteria
2. Translocation is being advocated as preventing destruction ; no evidence is provided

### **2. FPCR Ecological Appraisal March 2022. Appendix 1 of Ecological Statement of Case.**

The FPCR Ecological Appraisal (EA) was cited in the Appeal PDF documents, but omitted.

Page and paragraph numbers used in the EA will be cited as used.

Like the Hedgerow Method Statement (2021), the authorship is cited as SH, suggesting that Dr Mansfield did not visit the site. Given the problems related to the site, that is surprising. Details and qualifications of the site visitor would normally be expected as a matter of course. No name is stated. Their omission is unexpected and out of step with CIEEM norms.

The document covers two facets of the site:

A) a desk study

B) an Extended Phase One study

P2 para 2.1- 2.3. FPCR outlines the search criteria of that data centre request. No date threshold was used. As data beyond 2 years are deemed out of date (CIEEM 2019; NE protected species guidance 2022) that is of concern.

P2-3 para 2.4- 2.6 notes that an extended Phase 1 habitat survey was used. This took place on 4 March 2022. According to the cited reference (JNCC 2010), that is an unsuitable time for northern England (JNCC p10), and may miss important species.

The field season should be considered as starting in late March/early April in the south and late April/early May in the north of England. The season ends about mid October.

FPCR failed to recognise this basic limitation in its data collection: floral or faunal. CIEEM requires its members to follow its clear guidance on surveys and to follow BS 42020 (2013)-The Biodiversity Standard. The latter sets out expectations of data collection and analysis, including the assessment of limitations and methodological limits (see Appendix 1 below). The Natural England / DEFRA protected species guidance expects that all consultants working on planning applications will apply BS 42020. This was not done in the EA. And, as a result, the limits of the data collected are unknown. BS 42020 6.7.2 notes:

*NOTE Failure to report limitations might be considered as misrepresenting the facts, and/or making erroneous, exaggerated or unwarranted statements and therefore in breach of an individual's code of conduct (see Clause 4).*

The omission may be an oversight, but does not imply robustness in the FPCR approach.

#### **P 3-4 Results: Desk Study Para 3.1- 3.6**

No quantification or age is provided for species lists, nor their reliability discussed. Few appear to be contemporary- based on personal knowledge of the area, and records for summer 2022 recently lodged with NEYEDC.

#### **P 5-7 para 3.7- 3.10 Habitats**

Given the time of year (4 March 2022), only a limited proportion of the species associated with the site would have been apparent, even to a skilled botanist. This was noted by Reed (2021) in a series of external visits limited to the roadside side of the main hedge over the course of the spring/ summer (see Park planning application documentation). Species recorded changed over the seasons. As a result, in line with JNCC (2010) p 10, the FPCR list cannot be categorical.

#### **P7-8 para 3.11- 3.18 Fauna**

FPCR dismissed the site as being of limited value, supported by the poorly qualified desk search data. That limitation also applies to a single visit of unknown duration in unknown weather out of JNCC (2010) recognised times for northern England.

#### **4. Discussion**

P9 Para 4.9 correctly identified the front hedge H1 as qualifying for protection under the 1997 Hedgerow Regulations and Section 41 of the NERC Act 2006.

Under Fauna para 4.11- 4.26 cursory discussions were undertaken, and failed to discuss most of the species with any credibility, not questioning an outright reliance on the limited data set from NEYEDC. Government protected species planning guidance (Govt 2022) warns of limitation in such data. Comments made under birds were indicative of a poor understanding of this group. Failure to notice a daily-used badger track crossing the road and through the northern road hedge 35m up from the site was surprising, as it would be expected that a search radius of at least 100m would have been used (NE/DEFRA protected species guidance). FPCR correctly noted there was no evidence of a badger sett on the site.

#### **Conclusion for Ecological Appraisal**

The EA correctly determined the status of the Hedge No 1. By visiting for a brief (no duration or conditions were recorded) time on 4<sup>th</sup> of March 2022- by a person unknown, FPCR necessarily under-recorded species. FPCR also failed to address the limitations of either its desk or field data, calling both into question. The structure of BS 42020 was not followed. The qualifications and name of the site visitor are unknown; that is of concern and is irregular. The Inspector is invited to refer to Appendix 1.

#### **CONCLUSIONS ON ECOLOGICAL MATTERS**

1. The Ecological Appraisal has a number of significant problems, stemming from the timing of the Phase 1 Survey (out of JNCC's approved seasons) and an unwarranted reliance on highly limited desk search data. FPCR totally failed to recognise any limitations in either its approach or data sets. It is unknown who carried out the work; that is irregular. That also applies to the Hedgerow Method Statement.

On a positive side, it did recognise the value of the front hedge under both Section 41 of the NERC Act 2006, and the 1997 Hedgerow Regulations.

2. The Statement of Case did recognise the value of the hedge under both Section 41 of the NERC Act 2006, and the 1997 Hedgerow Regulations.

It promoted the use of an unsupported and unreferenced translocation as the means of saving the front hedge.

Given the problems of incorrect Splay calculations, any attempt to translocate the hedge would be inadequate in practical terms as too much land- on other private holdings- would need to be involved to begin to provide enough vision lines.

#### **SUMMARY**

1. The Appellant's case rests on attempting to claim that the splays associated with the site are adequate, and would have no road safety implications.

2. The Appellant failed to address errors associated with its splay calculations. These were stated in my earlier comments on the planning application in late 2021.

3. The Appellant failed to recognise that where the 85<sup>th</sup> percentile speed is >60 kph, new values are needed in some of the components of the formula in MfS2 that the Appellant stated it had used.
4. Correctly calculated, the downhill speed data indicate a splay of 122.29m. If a splay of 68.21m was too far, then adding another 58m will be also too far, and should see the Appeal failed on highways safety grounds.
5. Claims made by the Appellant are not supported by their data, and assertions are made without evidence or supporting references.
6. There are concerns on some of the procedural approaches used by the Ecological advisers, in methods, data quality, and personnel, although I agree that the front hedge H1 is covered by the 1997 Hedgerow Regulations , and is covered by S41 of the NERC Act 2006.
7. There is no need to translocate the front hedge, as the failure of the splay estimates would make a pair of splays so large that other properties would need to be involved to begin to accommodate hoped-for changes. The Appellant provides no proofs of the efficacy and long-term robustness of the method in any of its submissions. Peer-reviewed support would normally be expected. None was cited.
8. The Inspector is invited to consider the points raised above and to reject the Appeal.

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**6.3.8** To achieve full scientific disclosure (see 6.10), where the use of guidance is only relevant in part, is not followed, or if only parts of it are followed:

- a) this should be fully justified in accordance with Clause 4; and
- b) both the benefits and limitations (see 6.7) arising from any partial use or departure from good practice should be reported in full.

*NOTE To claim compliance with good practice, and then not to disclose any omission or departures from such good practice, might be interpreted as a misrepresentation of the facts and could be in breach of an individual's code of professional conduct (see Clause 4).*

## 6.7 Identifying limitations

**6.7.1** To reduce uncertainty, and to achieve full scientific disclosure, those undertaking surveys and preparing ecological advice and reports should identify all relevant limitations relating to:

- a) the methods used, including:
  - 1) personal competence, i.e. qualifications, training, skills, understanding, experience;
  - 2) inadequate resources (equipment and/or personnel);
  - 3) inadequate time spent surveying;
  - 4) inadequate data (e.g. arising from incomplete or inappropriate surveys) giving rise to lack of statistical robustness and higher uncertainties;
  - 5) use of old and out of date data;
  - 6) timing or seasonal constraints and suboptimal survey periods; and
  - 7) partial use of and/or departures from good practice guidelines; and
- b) site conditions and other factors, including:
  - 1) adverse weather conditions;
  - 2) restricted access to a site or part of a site;
  - 3) unrealistic deadlines; and
  - 4) unproven or untested measures for mitigation and compensation.

**6.7.2** Any limitations associated with work should be stated, with an explanation of their significance and any attempt made to overcome them. The consequences of any such limitations on the soundness of the main findings and recommendations in the report should be made clear.

*NOTE Failure to report limitations might be considered as misrepresenting the facts, and/or making erroneous, exaggerated or unwarranted statements and therefore in breach of an individual's code of conduct (see Clause 4).*

## Ecological surveys and reporting

### Survey information

To ensure that substantive evidence on the biodiversity potentially affected by a development proposal is made available to the decision-maker, ecological survey information submitted with the application may include:

- a) an non-technical summary of main findings (see 6.5);
- b) introduction, including:
  - 1) description of the proposed development and details of the client;
  - 2) brief summary of statutory provisions for biodiversity conservation relevant to the features identified in the survey (with substantial details included in an appendix); and
  - 3) scale plan or map and 6 or 8 figure grid reference;
- c) purpose and objectives of preliminary ecological appraisal or detailed full-scale surveys;
- d) qualifications and experience/competence/accreditation of surveyor(s) (see Section 1);
- e) date(s) when survey(s) were carried out and when the survey report was prepared;
- f) exact areas of land and buildings covered by the surveys (e.g. shown on plan);
- g) results of desk-top data trawl, e.g. information sought and obtained from local records centre and other relevant local nature conservation organizations and analysis and application of these data to survey and assessment;
- h) conclusions of preliminary ecological appraisals (sometimes called walkover surveys);
- i) field survey methods (see 6.3.4 and 6.3.5) based on published good practice guidelines (see Bibliography);
- j) survey results, including text, tables, photos, maps, illustrations, plans (with raw data appended where appropriate or available on request);
- k) details of habitat, species and features present (including non-native invasive species), showing current condition, distribution and abundance;
- l) analysis and interpretation of results (see 6.6);
- m) identification of limitations on the survey and how these affect the survey results (see 6.7); and
- n) identification of any further survey work needed to provide all of the information required to describe adequately the biodiversity characteristics of a site or area.

*NOTE 1 Desk-top data trawls may include access to information provided by local record centres (LRCs), the National Biodiversity Network, local wildlife trusts and other specialist naturalist groups (e.g. local bat and mammal groups, etc.).*

*NOTE 2 In relation to item n), under normal circumstances all surveys need to be complete prior to determination, and preferably by the time the application is registered. However, there are occasionally situations where further surveys are recommended (see 6.4.5).*