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Mrs Wendy Strangeway

Your Ref: NYM/2016/0817/FL  
Our Ref: APP/W9500/W/17/3178824

05 February 2018

Dear Mrs Strangeway,



**Town and Country Planning Act 1990**  
**Appeal by Mr Robert Walker**  
**Site Address: South Moor Farm, Langdale End, Scarborough, YO13 0LW**

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>.

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

Yours sincerely,

***Anton Godfrey***  
Anton Godfrey

*Where applicable, you can use the internet to submit documents, to see information and to check the progress of cases through GOV.UK. The address of the search page is - <https://www.gov.uk/appeal-planning-inspectorate>*



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## Appeal Decision

Hearing Held on 31 January 2018

Site visit made on 17 October 2017

by **Philip Major BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5<sup>th</sup> February 2018



**Appeal Ref: APP/W9500/W/17/3178824**

**South Moor Farm, Langdale End, 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 R Walker against the decision of North York Moors National Park.
- The application Ref: NYM/2016/0817/FL, dated 21 November 2016, was refused by notice dated 17 February 2017.
- The development proposed is an airstrip including grass runway and pilot/restroom facility.

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### Preliminary Matters

1. This appeal was initially due to be determined following the written representations procedure. However, having visited the site and considered the matters being raised I decided to change procedure and subsequently held a hearing on the above date. A second site visit on the day of the hearing was not considered necessary by any party.
2. There have been 3 previous proposals at this site, all of which were considered on appeal, and all of which were dismissed. They differed in various ways from this proposal. I am familiar with those decisions, but of course took no part in those determinations. The previous decisions are material considerations to which I have regard in this appeal. As explained at the hearing this appeal is to be determined afresh and I therefore heard evidence on a range of matters.
3. I am aware that an Article 4 Direction is due to come into force in April 2018. This would have the effect of restricting permitted development rights so as to prevent the use of the land as an airfield for up to 28 days in a calendar year.

### Decision

4. The appeal is dismissed.

### Main Issue

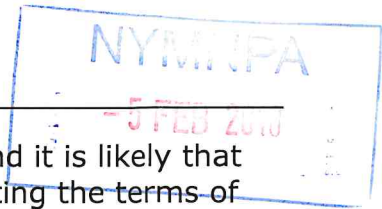
5. The main issues in the appeal are:
  - (a) The likely effect of the proposed development on protected species in the vicinity of the site;
  - (b) Whether the proposal would accord with the statutory purposes of the National Park;
  - (c) The impact on landscape character.

## Reasons

### **Impact on Protected Species**

6. The presence of protected species of birds in the vicinity of the proposed airstrip is not disputed. In particular I heard concerns in relation to goshawk, nightjar, turtle dove and honey buzzard. I have some limited survey information provided by the Bird Assessments submitted by the Appellant.
7. I am guided in my consideration of this matter by policies of the development plan, including the *North York Moors Core Strategy and Development Policies* of November 2008 (hereafter the CS). Key policies drawn to my attention are Core Policies A and C. I was told that a new local plan is in preparation but as yet can carry no weight in decision making. Further advice is available in the *National Planning Policy Framework (NPPF)* and ODPM Circular 06/2005 – *Biodiversity and Geological Conservation – Statutory Obligations and their Impact Within the Planning System* (the circular).
8. All the above species of birds benefit from protection under the Wildlife and Countryside Act 1981. That protection is enhanced in the case of goshawk and honey buzzard. Protection is also afforded by European Directive. In addition honey buzzard and turtle doves are listed as species of principal importance for the conservation of biodiversity in England by the Natural Environment and Rural Communities Act 2006. There is, therefore, a raft of national and international protection for these birds, all of which is geared towards either the avoidance of harm and/or the enhancement of habitat in which they exist.
9. Paragraph 99 of the circular is explicit in setting out what should be established before planning permission is granted. It states that *"It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed..."*. This is in tune with the policies of the NPPF which, amongst other things, seek to promote the protection and recovery of priority species populations. In a similar vein Core Policy A of the CS seeks to ensure that priority is given to maintaining and enhancing the natural environment and conditions for biodiversity, whilst Core Policy C requires maintenance and, where appropriate, enhancement of conditions for priority species. These policies also follow the thrust of the NPPF.
10. Whilst I acknowledge that the Appellant's proposal is at the lower end of activity that might be expected from the operation of a grass airfield, there is nonetheless an expectation (set out in the circular) that the potential impact of the operation is well understood before planning permission can be safely granted. It is my judgement that in this case the potential impact has not been demonstrated to anything like a suitable standard. This is for several reasons.
11. First, the bird assessments carried out seem to me to barely scratch the surface of what would be necessary to truly capture the numbers and distribution of the protected species hereabouts. There is acknowledgement from the Appellant that the species are present, and agreement that habitat is suitable to support them. There is also no disagreement about the importance of the populations here, especially as the general locality is at the margins of the range for some. I do recognise the difficulty in establishing sufficient data

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to enable decisions to be made in relation to likely impact, and it is likely that this would take several years to be properly robust. So meeting the terms of the expectations in the circular would be likely to be an onerous but necessary task. Without implying criticism of the work done on behalf of the Appellant, the task has not been completed to a robust standard.

12. Secondly, because of the dearth of reliable information, I do not have sufficient information to be able to make a definitive assessment of the likely impact on protected species. Without such an assessment what was described as 'the precautionary principle' at the hearing, is the correct approach. The onus is on the Appellant to show that the impacts of the development would be acceptable. I do not have such information and therefore it would be unsafe to grant planning permission.
13. Thirdly, I am in any event persuaded by the expert evidence brought by the Authority that the likelihood is that the species concerned would be significantly disturbed by the activities of the airfield. In this regard I was told that birds of the same species can react differently in given circumstances. Therefore, for example, European goshawks habituated to urban living are very different to goshawks which breed in the North York Moors. I accept that treetop nesting birds, which also soar to great heights, may well have a propensity to be disturbed by light aircraft.
14. Similarly nightjar, though nocturnal in activity, may well be disturbed by aircraft during their daytime resting period. There is a real risk that all the species considered in this appeal would be disturbed sufficiently to abandon breeding or even leave the area completely. I do not find the arguments that the activity proposed is at such a limited level that disturbance is unlikely is sufficiently persuasive or satisfactorily addresses the requirement to clearly demonstrate the impact of the development.
15. In that regard I do not discount the evidence from Stow Maries airfield but, from what I gleaned at the hearing, that is a very different locality with significantly different circumstances. So too is the situation at the Stanford Training Area in Breckland. Though somewhat counterintuitively slower aircraft such as those which would operate here, are said to be more likely to cause disturbance to wildlife than the noisier fast jets which sometimes fly over the North York Moors. My understanding is that slower aircraft are more likely to be perceived as predators.
16. Mention has been made of the Special Protection Area (SPA) which has been designated in accordance with the Birds Directive. The nearest point of the SPA is some distance from the appeal site and I have insufficient evidence to be able to conclude that the integrity of the SPA itself would be adversely affected by the proposal. The species for which the SPA was designated do not, of course, respect boundaries on the ground and it is the impact on the species which is crucial here.
17. Taking these matters together it is clear to me that the work done on behalf of the Appellant does not indicate that the proposed development could be carried out without undue risk of unacceptable disturbance to, and potential displacement or loss of, protected species. The credible evidence all points in the other direction. The proposal is therefore in conflict with CS Core Policies A and C, the NPPF and the requirements of the circular.

### **Purposes of the National Park**

18. The purposes of National Parks are:

- To conserve and enhance the natural beauty, wildlife and cultural heritage of the National Parks, and
- To promote opportunities for the understanding and enjoyment of the special qualities of the Parks by the public.

19. It must follow from my conclusion on the first main issue that the proposed development would be in conflict with the first purpose since it would fail to conserve and enhance wildlife within the National Park.

20. It is possible to argue that the provision of a facility to enable people to visit the National Park by light aircraft would enhance the enjoyment of the Park. That said, any such enjoyment could be achieved by the use of alternative means of transport, or the use of alternative established airfields.

21. Even were I to accept that the proposal meets the second purpose of the National park, there would remain conflict with the first purpose. Where there is such conflict the Sandford principle requires that the first purpose takes priority. As a result it is impossible for me to conclude that the development would be in accordance with statutory National Park purposes.

### **Landscape Character**

22. The Council did not contest the appeal on the grounds that it would be harmful to the character of the landscape of the National Park<sup>1</sup>, though local residents maintain that objection. The Appellant had the opportunity to address this matter at the hearing and largely relies on previous appeal decisions.

23. I have read the previous appeal decisions relating to this land which, in the case most closely related to this (APP/W9500/W16/3144478) did not find unacceptable harm to landscape character. I have noted the comments made by the Inspector which relate to the tranquillity of this part of the National Park, and the impact of the proposal on that tranquillity. There is reference in that decision to the use of the airfield by up to 5 aircraft at one time, which would not have a continuous presence on site. In the case before me it is suggested that a condition be imposed on any permission limiting use to a maximum of 10 aircraft at any one time. This is a material difference, but in any event it would be possible to control aircraft numbers and types, and I accept that on some occasions there would be none present (except the Appellant's).

24. Notwithstanding any difference in numbers of aircraft which might be on the airfield at any one time I respectfully disagree with the assessment of the previous Inspector. The appeal site is located in a tranquil part of the National Park. On that we agree. 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 and to a

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<sup>1</sup> A decision I understand was driven by previous appeal decisions and costs awards.

large extent this is established by the low background noise readings reported in the limited<sup>2</sup> noise survey of January 2014. LA90(1hour) background noise levels are no more than 36dB even with engines from one of the few car rallies which occurs in Dalby Forest.

25. What is proposed here would have the potential to alter the tranquillity of the locality. Albeit not on a continuous basis, there would be light aircraft approaching or taking off, possibly up to 10 in any one day, with no control over the gaps between them. Even if restricted to 5 aircraft per day, and assuming most activity during the months of better weather, there could well be hundreds of take offs and landings over a period of a few months. Light aircraft are not especially noisy machines, but in a quiet location multiple experiences of their comings and goings would be bound to affect the perception of tranquillity hereabouts.
26. Tranquillity is not just confined to noise. Though there is no common definition in use it must surely include other senses. Dictionary definitions includes the words 'serene', 'stillness' and 'undisturbed'. In my judgement the proposal would at times interfere with these qualities which are currently evident in this part of the National Park. That interference could be intense at times. Notwithstanding the occasional presence of fast jets in the area which are bound to have a fleeting impact, the effect of the light aircraft which would use the appeal site would be likely to be more pronounced because of their presence over greater time period. 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. Although the mown runway and small pilot building would have limited visual impact my finding on character militates against the grant of planning permission and leads to conflict with the purposes of National Parks and CS Core Policy A.
27. Even if I were to agree with the previous Inspector and find no harm to the character of the Park this would not outweigh the harm I have identified on the other main issues.

### **Other Matters**

28. Separately to the consideration of tranquillity some local residents have concerns in relation to the noise of aircraft affecting their living conditions. What is of importance here is not whether the aircraft using the appeal site would be noticeable, but whether they would cause such disturbance as to make the dwellings affected unacceptable places to live.
29. In this regard the number of flights would be limited, and the noise would be likely to be no more than a passing tractor or less. The character of the noise would be different (and would also be different between take offs and landings) and would not last long. As such, although it might cause occasional annoyance or mild disturbance, I cannot accept that the living conditions of any nearby dwelling would be made untenable. This does not weigh against the proposal.
30. There is a public bridleway close to the proposed grass runway. Concern has been expressed in regard to the possible startling of horses here. I do

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<sup>2</sup> Limited in time

understand that concern, but it would be possible to require the erection of signage on land under the control of the Appellant which would warn riders of the potential for disturbance by aircraft. I am satisfied that this would deal adequately with any risk.

31. As was discussed in previous appeal decisions the matter of the impact on heritage assets has been considered. Those schemes would have had a greater impact because they all included a second auxiliary runway which would require some burying of cables. There would be no such requirement in this case and, although the setting of nearby assets would be affected to a degree by flight activity, I am satisfied that there would be no material impact on those heritage assets or their settings.
32. I accept that any income from the proposed development may assist in diversifying the Appellant's small agricultural business. There may also be an improvement in occupation at his bed and breakfast establishment. Whilst agricultural diversification is supported in principle, the fundamental harm I have identified above means that this cannot outweigh that harm.

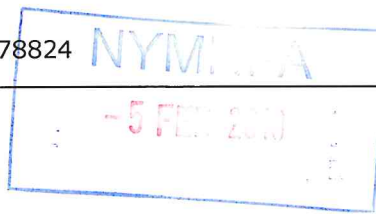
### **Overall Conclusions**

33. I have found that the proposed development would be likely to have a harmful impact upon protected species. There would also be conflict with the purposes of the National Park. Furthermore, for the reasons I explain above I disagree with previous judgements in relation to the impact on landscape character. 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.
34. For the reasons given above I conclude that the appeal should be dismissed.

*Philip Major*

INSPECTOR





**APPEARANCES**

**FOR THE APPELLANT:**

Mr B Barron BSc(Hons) MRICS	Acorus Rural Property Services Ltd
Ms L Gregory	Acorus Rural Property Services Ltd
Mr T Fisher	Quants Environmental Ltd
Mr R Savory	Stow Maries Airfield
Mr J Walker	Director, Aircraft Owners and Pilots Association
Mr R Walker	The Appellant

**FOR THE LOCAL PLANNING AUTHORITY:**

Mr C France	Director of Planning, North York Moors National Park Authority
Ms H Saunders	North York Moors National Park Authority
Mr B Fleming	Ecologist
Mr G Marchant	Ecologist/Ornithologist
Mr R Baines	North York Moors National Park Authority

**INTERESTED PERSONS:**

Mr G Dixon	Local Resident
Mrs J Dixon	Local Resident
Mr R Heap	Local Resident
Ms G Ludkin	Local Resident
Ms R Dugmore	Local Resident
Ms J Roberts	Local Resident
Mr B Turner	Local Resident
Mr A Wyatt	Local Resident
Ms C Cook	Local Resident
Mr A Prole	Local Resident
Ms C Bashforth	Forestry Commission

**DOCUMENTS HANDED IN AT THE HEARING**

- 1 Brief Statement of Common Ground
- 2 Article relating to goshawks on Stanford Training Area
- 3 Map of nightjar concentrations close to the appeal site
- 4 Maps of concentrations of turtle doves
- 5 Documents from Ms Cook on behalf of the British Horse Society
- 6 Map of flying zones around RAF Fylingdales
- 7 Maps of national low flying areas

