

## COMMITTEE REPORT

**Date:** 14 July 2016                      **Ward:** Huntington/New Earswick  
**Team:** Major and Commercial Team                      **Parish:** New Earswick Parish Council

**Reference:** 15/02446/FUL  
**Application at:** Sports Ground White Rose Avenue New Earswick York  
**For:** Construction of two all-weather tennis courts and an all-weather multi-use sports court with associated perimeter fencing and 10 no. 8 m floodlight columns  
**By:** Joseph Rowntree Housing Trust  
**Application Type:** Full Application  
**Target Date:** 14 July 2016  
**Recommendation:** Approve

### 1.0 PROPOSAL

1.1 The Sports Ground, White Rose Avenue, New Earswick comprises a substantial grass playing field with single storey existing brick built changing rooms, presently used for playing rugby, football and cricket on a site to the north west of New Earswick village. The site further lies within Flood Zone 2 and so is at a medium risk of flooding from riparian sources. The principal Scarborough to Leeds railway line lies to the North West. Planning permission is sought for the relocation of the existing tennis facilities comprising two formal tennis courts and an all weather multi-use sports court with ancillary ball protection fencing and flood lighting, to the site to facilitate the re-development of the Red Lodge Care Home site in the centre of New Earswick village. The scheme has been amended subsequent to submission to seek to achieve a design of ball fencing acceptable to Sport England, a statutory consultee.

### 2.0 POLICY CONTEXT

2.1 Paragraphs 4.2 to 4.8 below set out the local and national policy context relevant to this application.

### 3.0 CONSULTATIONS

INTERNAL:-

3.1 Public Protection raise no objection to the proposal.

3.2 Flood Risk Management Team has no objections to the development in principle and requests condition and an informative relating to surface water drainage.

## EXTERNAL:-

3.3 New Earswick Parish Council raise no objection to the proposal subject to the operating hours of the flood lights being strictly controlled by condition attached to any planning permission.

3.4 Network Rail raise no objection to the proposal subject to lighting of the tennis courts and works adjacent to the railway being strictly controlled by condition as part of any planning permission.

3.5 Sport England raise no objection to the scheme as amended subject to any permission being conditioned to secure the appropriate form of anti-ball netting.

3.6 New Earswick Tennis Club raise no objection to the proposal.

3.7 One letter of objection has been received in respect of the proposal expressing concern in relation to the separation distance between the facility and the village centre and the proximity of the site to the operational railway in respect of flood lighting.

## 4.0 APPRAISAL

### KEY CONSIDERATIONS:-

4.1 Key considerations include:-

- Planning Policy Context
- Impact upon the open character and purposes of designation of the Green Belt;
- Impact upon the operational railway;
- Suitability of the facilities as a replacement for the existing;
- Impact upon local flood risk.

### PLANNING POLICY CONTEXT

### STATUS OF THE YORK DEVELOPMENT CONTROL LOCAL PLAN (2005 4th SET OF CHANGES):-

4.2 The York Development Control Local Plan was approved for Development Control purposes in April 2005; its policies remain material considerations in respect of Development Management decisions although it is considered that any weight is very limited except where in accordance with the National Planning Policy Framework.

## STATUS OF THE EMERGING LOCAL PLAN:-

4.3 The (Emerging) Publication Draft York Local Plan (2014) is currently not progressing through its statutory consultation. At the present early stage in the statutory process the emerging Local Plan policies carry only very limited weight where relevant and in accordance with the terms of the National Planning Policy Framework. However, the evidence base that underpins the proposed emerging policies is capable of being a material consideration in the determination of the planning application.

## SAVED POLICIES OF RSS

4.4 The general extent of the York Green Belt is defined within saved Yorkshire and Humberside RSS Policies YH9C and YIC as such Central Government Policy in respect of Green Belts as outlined in the National Planning Policy Framework applies.

## NATIONAL PLANNING POLICY FRAMEWORK (NPPF)

4.5 The NPPF is the most up to date representation of key relevant policy issues and the proposal should principally be assessed against this Policy Framework.

4.6 GREEN BELT:- The general extent of the York Green Belt is defined within saved Yorkshire and Humberside RSS Policies YH9C and YIC as such Central Government Policy in respect of Green Belts as outlined in the National Planning Policy Framework applies. Central Government Planning Policy as outlined in paragraph 87 of the National Planning Policy Framework indicates that inappropriate development is by definition harmful to the Green Belt and should not therefore be approved other than in very special circumstances. Paragraph 89 sets out exceptions to definitional harm, including "provision of appropriate facilities for outdoor sport, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it." Paragraph 88 establishes that substantial weight must be given to any harm to the Green Belt. "Very Special Circumstances" will not be held to exist unless the potential harm by reason of inappropriateness and any other harm are clearly outweighed by other considerations. Policy GB1 of the (Emerging) Publication Draft Local Plan is also relevant in this respect.

## SUITABILITY OF THE REPLACEMENT FACILITIES:-

4.7 Central Government Planning Policy as outlined in paragraph 74 of the National Planning Policy Framework indicates that existing open space , sports and recreational buildings and land including playing fields should not be built upon unless the loss resulting from the proposed development would be replaced by equivalent provision in terms of quality and quantity in a suitable location or the

development is for alternative sports and recreational provision, the need for which would clearly outweigh the loss. Policies CF2 (Built Sports Facilities) and G15 (Protection of Open Space and Playing Pitches) from the emerging Publication Draft Local Plan are also relevant in this respect although any specific weight afforded may be limited.

#### IMPACT UPON THE OPEN CHARACTER AND PURPOSES OF DESIGNATION OF THE YORK GREEN BELT:-

4.8 Whilst Policy GB1 of the emerging Local Plan can only be given very limited weight, it echoes the green belt policy in the NPPF, by setting out a firm policy presumption that planning permission for development within the Green Belt should only be forthcoming where the scale, location and design of such development would not detract from the open character of the Green Belt, it would not conflict with the purposes of including land within the Green Belt and it is for one of a number of purposes identified as being appropriate within the Green Belt including agriculture and forestry. Central Government Policy as outlined in paragraph 79 of the National Planning Policy Framework establishes their fundamental characteristics as being their openness and permanence.

4.9 The proposal envisages the layout of two all weather tennis courts and a further all weather sports court suitable for use by 5 a side football and netball together with 3 metre high green powder coated steel boundary fencing, anti-strike cricket ball netting and 8 metre high floodlighting pylons. The facilities would be located within the New Earswick Sports Ground directly to the north east of the existing changing rooms used by the cricket and rugby clubs and directly to the north west of the cricket club practise area. The main York to Scarborough railway lies directly to the north. Paragraph 89 of the NPPF indicates that the provision of appropriate facilities for outdoor sport and recreation can be an exception to definitional harm to the Green Belt, providing that the openness of the Green Belt is preserved and there would not be a conflict with the purposes of including land within it.

4.10 The proposal is to accommodate the relocation of the New Earswick Tennis Club whose current premises are proposed to be incorporated into the wider Red Lodge Care Home re-development scheme in the centre of New Earswick village. The existing Club facilities are intensively used with players and teams competing in regional leagues. The proposed facilities would be of a standard comparable to that currently used by the club in the centre of New Earswick village although changing room facilities would have to be shared with the rugby/cricket clubs. As such the proposal is of a type that could fall within the exception outlined in paragraph 89 of the National Planning Policy Framework. However, the formalisation of the layout of the proposed courts together with the fencing and associated flood lighting would give rise to an impact upon the openness of the Green Belt in that area. But the elevated nature of the railway to the rear and the visual relationship with the changing room buildings would ensure that the impact is only of a modest nature

and the proposed fencing would be colour coated to enable it to blend in with the surrounding landscape over longer distance views This albeit modest harm to openness means that in policy terms, the proposal constitutes inappropriate development by definition in the Green Belt, and should be determined in line with paragraph 87 .

4.11 Very special circumstances are therefore required to be demonstrated that clearly outweigh the harm by reason of inappropriateness and modest harm to the openness of the Green Belt, and substantial weight should be given to the harm.. It is felt that the need to relocate a very well utilised tennis club that plays an important role in the development of the sport in the wider locality; in order to allow for the re-development of the Red Lodge site amounts to a viable case for very special circumstances that would override the harm arising to the Green Belt by reason of inappropriateness and modest harm to openness. The club are not a direct participant in the re-development process and are not a financial beneficiary. The alternative to the relocation would be a more long distance move out of the area or the closure of the club altogether both of which circumstances would be contrary to the requirements of paragraph 74 of the NPPF in respect of the re-development of existing sports facilities. A detailed and protracted site finding exercise has been undertaken in respect of the relocation and the requirements of the sport which has resulted in the current site being identified as the only viable location. The proposal is therefore felt to be acceptable in Green belt terms.

#### IMPACT UPON THE OPERATIONAL RAILWAY:-

4.12 The application site is located directly to the south east of the main York to Scarborough Railway and in view of the proposed provision of flood lighting gives rise to some concerns in terms of safety. The proposed columns would however be only some 8 metres high and would be of a lower strength than conventional street lights. The railway is elevated on an embankment as it passes the site of a comparable height to the columns and subject to any permission being conditioned to control the hours of operation and the direction of lighting any impact upon the functional operation of the railway should be acceptable.

#### SUITABILITY OF THE FACILITIES AS A REPLACEMENT FOR THE EXISTING:-

4.13 The New Earswick Tennis Club is to be relocated and the facilities re-provided to enable their existing site to be redeveloped as part of the wider Red Lodge Care Home re-development scheme a process which is wholly outside of their control and from which they derive no financial benefit. Paragraph 74 of the National Planning Policy Framework makes clear that such development should only be permitted where equivalent or better provision may be re-provided in terms of quality, quantity or location. The proposed scheme allows for co-location in association with other sports related facilities for the village in an easily accessible location. The courts that would be provided are to a more modern standard than the existing and following on

from a series of amendments to the design and layout to address concerns in terms of the relationship of the site to the adjacent sporting activities it is felt that the proposal would be acceptable in terms of the requirements of paragraph 74 of the National Planning Policy Framework.

#### IMPACT UPON FLOOD RISK IN THE LOCALITY:-

4.14 The application site lies partially within Flood Zone 2 and is therefore subject to a moderate risk of flooding as a consequence of a severe rainfall event. The proposed use is not however defined as being "more vulnerable" in terms of Environment Agency standing advice and it is complementary to the other activities presently taking place at the site. In order to effectively drain and to play to the required standard the playing surface must be fully permeable. At the same time there are no other properties or other uses in the direct vicinity that would be adversely affected by surface water run-off from the application site. Subject to any permission being subject to a detailed surface water drainage scheme the proposal is felt to be acceptable.

#### 5.0 CONCLUSION

5.1 Planning permission is sought for the relocation of the existing tennis facilities comprising two formal tennis courts and an all weather multi-use sports court with ancillary ball protection fencing and flood lighting, to the site. The wider benefits to the community of co-locating with other sports and the relocation to enable continued provision of a well used tennis facility in New Earswick are considered to amount to very special circumstances that clearly outweigh the harm to the Green Belt by reason of inappropriateness and modest harm to openness, even when affording substantial weight to that harm. The proposal therefore accords with Green Belt policies within the NPPF. At the same time the location of the facilities relative to the adjoining railway would not be such as to impact upon its operational effectiveness. The development is therefore felt to be acceptable in planning terms and approval is recommended.

#### 6.0 RECOMMENDATION: Approve

1 TIME2 Development start within three years

2 The development hereby permitted shall be carried out in accordance with the following plans:-

Drawing Refs:- BA5167PRO; BA5167TS; T12545-04-P02; T12545-01-P03; T12545-001P02GA; T12545-03P02; T12545-05P02; T12545-05-P03.

Reason: For the avoidance of doubt and to ensure that the development is carried out only as approved by the Local Planning Authority.

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3 The courts hereby authorised shall only be used with flood lighting operational between 09.00 and 23:00 hours.

Reason: To safeguard the amenities of adjoining occupants and the open character of the Green Belt.

4 Development of the tennis courts (as contained with the plan edge red drawing number AA4761 2000, dated Dec 2014) shall not commence until a scheme setting out the details of the replacement tennis courts has been submitted to and approved in writing by the Local Planning Authority after consultation with Sport England. The scheme shall include a timetable for implementation and completion of the replacement tennis courts. The approved scheme shall be implemented and complied with in full before the development upon the tennis courts is commenced.

Reason: To protect tennis courts from loss or availability of use and to accord with the paragraph 74 of the NPPF.

5 No development shall take place until there has been submitted and approved in writing by the Local Planning Authority a detailed landscaping scheme which shall illustrate the number, species, height and position of trees, shrubs and other planting. This scheme shall be implemented within a period of six months of the completion of the development. Any trees or plants which within a period of five years from the completion of the development die are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless alternatives are agreed in writing by the Local Planning Authority.

Reason: So that the Local Planning Authority may be satisfied with the variety, suitability and disposition of species within the site.

6 Trees shown as being retained on the approved plans shall be protected in accordance with BS: 5837 Trees in relation to construction.

Before the commencement of development beyond foundation level, including demolition, building operations, or the importing of materials and any excavations, a method statement regarding protection measures for the existing trees shown to be retained on the approved drawings shall be submitted to and approved in writing by the Local Planning Authority. This statement shall include details and locations of protective fencing; phasing of works; site access for demolition/construction and methodology; type of construction machinery/vehicles to be used (including delivery and collection lorries and arrangements for loading/off-loading); parking arrangements for site vehicles; locations for storage of materials; locations of utilities. Details of existing and proposed levels and surfaces shall also be included.

The protective fencing line shall be adhered to at all times during development to create exclusion zones. None of the following activities shall take place within the exclusion zones: excavation, raising of levels, storage of any materials or top soil, lighting of fires, mechanical cultivation or deep-digging, parking or manoeuvring of vehicles; there shall be no site huts, no mixing of cement, no disposing of washings, no stored fuel, no new trenches, or pipe runs for services or drains. The fencing shall remain secured in position throughout the construction process including the implementation of landscape works. A notice stating 'tree protection zone - do not remove' shall be attached to each section of fencing.

Reason: To ensure protection of existing trees before, during and after development which are covered by a Tree Preservation Order and/or make a significant contribution to the amenity of the area.

7 Prior to the commencement of the development hereby authorised beyond foundation level full details of all fencing including ball protection netting including colours, locations and methods of fixing shall be submitted to and approved in writing by the Local Planning Authority. The development shall thenceforth be undertaken in strict accordance with the details thereby approved and shall be retained thereafter.

Reason:- To safeguard the open character of the Green Belt.

8 No development shall take place until details of the proposed means of surface water drainage, including details of any balancing works and off site works, have been submitted to and approved by the Local Planning Authority. The development shall thereafter take place in accordance with the approved details.

Design considerations.

The developer's attention is drawn to Requirement H3 of the Building Regulations 2000 with regards to hierarchy for surface water dispersal and the use of Sustainable Drainage Systems (SuD's). Consideration should be given to discharge to soakaway, infiltration system and watercourse in that priority order. Surface water discharge to the existing public sewer network must only be as a last resort therefore sufficient evidence should be provided i.e. witnessed by CYC infiltration tests to BRE Digest 365 to discount the use of SuD's.

If the proposed method of surface water disposal is via soakaways, these should be shown to work through an appropriate assessment carried out under BRE Digest 365, (preferably carried out in winter), to prove that the ground has sufficient capacity to accept surface water discharge, and to prevent flooding of the surrounding land and the site itself.



City of York Council's Flood Risk Management Team should witness the BRE Digest 365 test.

If SuDs methods can be proven to be unsuitable then In accordance with City of York Councils Strategic Flood Risk Assessment and in agreement with the Environment Agency and the York Consortium of Internal Drainage Boards, peak run-off from Brownfield developments must be attenuated to 70% of the existing rate (based on 140 l/s/ha of proven by way of CCTV drainage survey connected impermeable areas). Storage volume calculations, using computer modelling, must accommodate a 1:30 year storm with no surface flooding, along with no internal flooding of buildings or surface run-off from the site in a 1:100 year storm. Proposed areas within the model must also include an additional 20% allowance for climate change. The modelling must use a range of storm durations, with both summer and winter profiles, to find the worst-case volume required.

If existing connected impermeable areas not proven then a Greenfield run-off rate based on 1.4 l/sec/ha shall be used for the above.

Surface water shall not be connected to any foul / combined sewer, if a suitable surface water sewer is available.

The applicant should provide a topographical survey showing the existing and proposed ground levels to ordnance datum for the site and adjacent properties. The development should not be raised above the level of the adjacent land, to prevent runoff from the site affecting nearby properties.

Reason: So that the Local Planning Authority may be satisfied with these details for the proper and sustainable drainage of the site.

## **7.0 INFORMATIVES: Notes to Applicant**

### **1. STATEMENT OF THE COUNCIL`S POSITIVE AND PROACTIVE APPROACH**

In considering the application, the Local Planning Authority has implemented the requirements set out within the National Planning Policy Framework (paragraphs 186 and 187) in seeking solutions to problems identified during the processing of the application. The Local Planning Authority took the following steps in order to achieve a positive outcome:

Sought clarification in respect of the design and location of the proposed protective ball netting.

## 2. CONTROL OF POLLUTION ACT 1974:-

The developer's attention is drawn to the various requirements for the control of noise on construction sites laid down in the Control of Pollution Act 1974. In order to ensure that residents are not adversely affected by air pollution and noise, the following guidance should be adhered to, failure to do so could result in formal action being taken under the Control of Pollution Act 1974:

(a) All demolition and construction works and ancillary operations, including deliveries to and despatch from the site shall be confined to the following hours:

Monday to Friday 08.00 to 18.00

Saturday 09.00 to 13.00

Not at all on Sundays and Bank Holidays.

(b) The work shall be carried out in such a manner so as to comply with the general recommendations of British Standards BS 5228: Part 1: 1997, a code of practice for "Noise and Vibration Control on Construction and Open Sites" and in particular Section 10 of Part 1 of the code entitled "Control of noise and vibration".

(c) All plant and machinery to be operated, sited and maintained in order to minimise disturbance. All items of machinery powered by internal combustion engines must be properly silenced and/or fitted with effective and well-maintained mufflers in accordance with manufacturer's instructions.

(d) The best practicable means, as defined by Section 72 of the Control of Pollution Act 1974, shall be employed at all times, in order to minimise noise emissions.

(e) All reasonable measures shall be employed in order to control and minimise dust emissions, including sheeting of vehicles and use of water for dust suppression.

(f) There shall be no bonfires on the site

## 3. NETWORK RAIL INFORMATIVE:-

By virtue of the proximity of the site to the railway line Network Rail have the following requirements:

### Drainage

All surface and foul water arising from the proposed works must be collected and diverted away from Network Rail property. In the absence of detailed plans all soak aways must be located so as to discharge away from the railway infrastructure.

## Fail Safe Use of Crane and Plant

All operations, including the use of cranes or other mechanical plant working adjacent to Network Rail's property, must at all times be carried out in a "fail safe" manner such that in the event of mishandling, collapse or failure, no materials or plant are capable of falling within 3.0m of the nearest rail of the adjacent railway line, or where the railway is electrified, within 3.0m of overhead electrical equipment or supports.

## Excavations/Earthworks

All excavations/ earthworks carried out in the vicinity of Network Rail property/ structures must be designed and executed such that no interference with the integrity of that property/ structure can occur. If temporary works compounds are to be located adjacent to the operational railway, these should be included in a method statement for approval by Network Rail. Prior to commencement of works, full details of excavations and earthworks to be carried out near the railway undertaker's boundary fence should be submitted for the approval of the Local Planning Authority acting in consultation with the railway undertaker and the works shall only be carried out in accordance with the approved details. Where development may affect the railway, consultation with the Asset Protection Engineer should be undertaken.

## Security of Mutual Boundary

Security of the railway boundary will need to be maintained at all times. If the works require temporary or permanent alterations to the mutual boundary the applicant must contact Network Rail's Asset Protection Engineer.

## Armco Safety Barriers

An Armco or similar barrier should be located in positions where vehicles may be in a position to drive into or roll onto the railway or damage the lineside fencing. Network Rail's existing fencing / wall must not be removed or damaged. Given the considerable number of vehicle movements likely provision should be made at each turning area/roadway/car parking area adjacent to the railway.

## Fencing

Because of the nature of the proposed developments we consider that there will be an increased risk of trespass onto the railway. The Developer must provide a suitable trespass proof fence adjacent to Network Rail's boundary (minimum approx. 1.8m high) and make provision for its future maintenance and renewal. Network Rail's existing fencing / wall must not be removed or damaged.

## Method Statements/Fail Safe/Possessions

Method statements may require to be submitted to Network Rail's Asset Protection Engineer at the below address for approval prior to works commencing on site. Where appropriate an asset protection agreement will have to be entered into. Where any works cannot be carried out in a "fail-safe" manner, it will be necessary to restrict those works to periods when the railway is closed to rail traffic i.e. "possession" which must be booked via Network Rail's Asset Protection Engineer and are subject to a minimum prior notice period for booking of 20 weeks. Generally if excavations/piling/buildings are to be located within 10m of the railway boundary a method statement should be submitted for NR approval.

## Two Metre Boundary

Consideration should be given to ensure that the construction and subsequent maintenance can be carried out to any proposed buildings or structures without adversely affecting the safety of, or encroaching upon Network Rail's adjacent land, and therefore all/any building should be situated at least 2 metres from Network Rail's boundary. This will allow construction and future maintenance to be carried out from the applicant's land, thus avoiding provision and costs of railway look-out protection, supervision and other facilities necessary when working from or on railway land.

## Trees/Shrubs/Landscaping

Where trees/shrubs are to be planted adjacent to the railway boundary these shrubs should be positioned at a minimum distance greater than their predicted mature height from the boundary. Certain broad leaf deciduous species should not be planted adjacent to the railway boundary. We would wish to be involved in the approval of any landscaping scheme adjacent to the railway. Where landscaping is proposed as part of an application adjacent to the railway it will be necessary for details of the landscaping to be known and approved to ensure it does not impact upon the railway infrastructure. Any hedge planted adjacent to Network Rail's boundary fencing for screening purposes should be so placed that when fully grown it does not damage the fencing or provide a means of scaling it. No hedge should prevent Network Rail from maintaining its boundary fencing. Lists of trees that are permitted and those that are not permitted are provided below and these should be added to any tree planting conditions:

Acceptable:

Birch (Betula), Crab Apple (Malus Sylvestris), Field Maple (Acer Campestre), Bird Cherry (Prunus Padus), Wild Pear (Pyrus Communis), Fir Trees - Pines (Pinus), Hawthorne (Cretaegus), Mountain Ash - Whitebeams (Sorbus), False Acacia (Robinia), Willow Shrubs (Shrubby Salix), Thuja Plicatata "Zebrina"

Not Acceptable:

Alder (*Alnus Glutinosa*), Aspen - Poplar (*Populus*), Beech (*Fagus Sylvatica*), Wild Cherry (*Prunus Avium*), Hornbeam (*Carpinus Betulus*), Small-leaved Lime (*Tilia Cordata*), Oak (*Quercus*), Willows (*Salix Willow*), Sycamore - Norway Maple (*Acer*), Horse Chestnut (*Aesculus Hippocastanum*), Sweet Chestnut (*Castanea Sativa*), London Plane (*Platanus Hispanica*).

A comprehensive list of permitted tree species is available upon request.

### Lighting

Where new lighting is to be erected adjacent to the operational railway the potential for train drivers to be dazzled must be eliminated. In addition the location and colour of lights must not give rise to the potential for confusion with the signalling arrangements on the railway. Detail of any external lighting should be provided as a condition if not already indicated on the application.

### Access to Railway

All roads, paths or ways providing access to any part of the railway undertaker's land shall be kept open at all times during and after the development.

### Children's Play Areas/Open Spaces/Amenities

Children's play areas, open spaces and amenity areas must be protected by a secure fence along the boundary of one of the following kinds, concrete post and panel, iron railings, steel palisade or such other fence approved by the Local Planning Authority acting in consultation with the railway undertaker to a minimum height of 2 metres and the fence should not be able to be climbed.

### DRAINAGE INFORMATIVE

- i) The public sewer network does not have capacity to accept an unrestricted discharge of surface water. Surface water discharge to the existing public sewer network must only be as a last resort, the developer is required to eliminate other means of surface water disposal.
- ii) The applicant should be advised that the Internal Drainage Board's prior consent is required for any development including fences or planting within 9.00m of the bank top of any watercourse within or forming the boundary of the site. Any proposals to culvert, bridge, fill in or make a discharge to the watercourse will also require the Board's prior consent.

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