



PLANNING COMMITTEE

Thursday 24 April 2014 at 6.00 pm

West Wing, Malton School, Middlecave Road, Malton

Agenda

7 Late Observations

(Pages 2 - 47)

Agenda Item 7

RYEDALE
DISTRICT
COUNCIL



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All Members of the Planning Committee
Council Solicitor
Head of Planning & Housing
Development Manager
Managing Development Team Leader

Ref: Agendas/Planning/2014/2015

17 April 2014

Dear Councillor

Meeting of the Planning Committee - 24 April 2014

With reference to the above meeting I enclose for your attention the late observations received since despatch of the agenda.

Yours sincerely



Mrs Karen Hood
Managing Development Team Leader

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Attached is a copy of Appeal decision for Malton Livestock Market, Malton

This document is referred to in the committee report for application 11/00927/MOUT paragraph 1.7 on page 6 of the agenda for 24th April Committee meeting



Appeal Decision

Inquiry opened on 11 September 2012

Site visit made on 18 September 2012

by David Wildsmith BSc(Hons) MSc CEng MICE FCIHT MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 29 October 2012

Appeal Ref: APP/Y2736/A/12/2174677

**Malton Livestock Market, Horsemarket Road, Malton, North Yorkshire,
YO17 7LZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Fitzwilliam (Malton) Estates against the decision of Ryedale District Council.
 - The application Ref 11/00412/MOUT, dated 10 May 2011, was refused by notice dated 12 April 2012.
 - The development proposed is the demolition of the existing livestock market including associated buildings and redevelopment of the site for retail with 3-storey car-parking and public square.
 - The inquiry sat for 5 days on 11-14 & 19 September 2012.
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Decision

1. The appeal is allowed and outline planning permission is granted for the demolition of the existing livestock market including associated buildings and redevelopment of the site for retail with 3-storey car-parking and public square at Malton Livestock Market, Horsemarket Road, Malton, North Yorkshire, YO17 0JN in accordance with the terms of the application, Ref 11/00412/MOUT, dated 10 May 2011, subject to the conditions set out in the Schedule at the end of this decision.

Application for costs

2. At the inquiry an application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Preliminary matters

3. The application was submitted in outline, with only access details to be determined at this stage.

Main issues

4. The main issues are:
 - i) whether the proposed development would accord with the sequential approach to town centre uses, and its effect on the vitality and viability of Malton town centre;
 - ii) whether development of the site should be dependent on the relocation of the existing livestock market;
 - iii) the effect of the proposed development on the character and appearance of the surrounding area, having regard to built form, urban grain, and

designated and undesignated heritage assets, including nearby listed buildings and conservation area; and

- iv) the effect of the proposed development on the living conditions of occupiers of properties on the eastern side of Victoria Road.

Site Description and relevant Planning History

5. The appeal site extends to some 0.9 hectares, adjoining the north-western boundary of the "Town Centre Commercial Limits" as defined on the Proposals Map of the Ryedale Local Plan, adopted in 2002. It is currently used as a livestock market (LM) for 2 days each week, with additional special events on other days throughout the year. Much of the site is laid to hardstanding, with open-air animal pens and informal vehicle parking areas. In addition there are two large commercial barns, one at the northern end of the site and one at the southern, together with a number of smaller buildings. The site is split by both Spital Street and The Shambles, with the eastern part of this latter road existing as a pedestrian link to Market Place and the wider town centre.
6. Terraced residential properties facing Victoria Road abut the north-western site boundary, whilst residential and commercial properties lie along Horsemarket Road, which forms much of the site's western boundary. Residential and commercial properties also lie along Spital Field Court and Newgate at the site's north-eastern boundary. The rears of listed buildings in commercial use line much of the site's eastern boundary, with these buildings also lying within the Malton Conservation Area which contains the town centre and also an area to the west of the site, centred on The Mount. Another listed building, "The Spotted Cow" public house, lies immediately outside the site's western boundary.
7. The appellant previously submitted an application in September 2007 for the demolition of existing buildings and redevelopment of the LM site to provide a mix of retail and residential uses. This application was withdrawn.
8. The current appeal proposal seeks to demolish all buildings on the site and construct four new retail units with a total combined gross external floorspace of 4,092 square metres (sqm), together with a 3-storey decked car park and a new public area, referred to as the "Livestock Square". The main retail unit would have a gross external floorspace of 2,360 sqm and is being promoted for a high quality foodstore. The gross internal area would be 2,220 sqm, with a retail area of some 1,590 sqm and 630 sqm for servicing. The three smaller units would provide a total of 1,732 sqm gross external floorspace, giving some 1,575 sqm of gross internal area.
9. The application was considered by the Planning Committee on 29 March 2012 with a recommendation for refusal. It was subsequently refused planning permission on 12 April for four reasons which have formed the basis of the main issues in this appeal, as detailed above. The same March Committee Meeting also considered an outline proposal for the erection of retail units (Use Class A1), offices (Use Class B1), petrol filling station, car park and associated landscaping on the Wentworth Street Car Park (WSCP), another edge-of-centre location, owned by the District Council. In light of Ryedale District Council's ownership of the WSCP site, both applications were managed by planning officers at East Riding of Yorkshire Council (ERYC).
10. Committee Members resolved to grant outline planning permission for this latter proposal, with conditions, subject to the Secretary of State not calling in the

application for his own determination, and subject to the completion of a planning obligation. At the time of the inquiry and the writing of this decision, no decision notice had been issued for the WSCP proposal.

Reasons

The sequential approach, vitality and viability

11. This first main issue draws on the Council's first and fourth reasons for refusal. In summary, these maintain that the appellant has not demonstrated compliance with the requirements of the sequential approach set out in the National Planning Policy Framework ("the Framework"); that the site is not currently available for the proposed development or suitable for the type/mix of retail development proposed; that the WSCP site is sequentially preferable to the appeal site; and that when taken in combination with the commitment to approve an application for a foodstore on the WSCP site the proposal would be likely to have a significant adverse impact on town centre vitality and viability.
12. I deal with these matters below, after summarising the retail needs of the area, but it is of note that the Council's position changed somewhat on certain of these points, and on other matters included in the reasons for refusal, as the inquiry progressed. Some aspects of the Council's case were clarified in a Statement of Common Ground (SoCG) agreed between the appellant and the Council, but as this was not submitted until the final day of the inquiry its content had not been able to influence the production and presentation of evidence. The SoCG does, however, indicate that the appeal site provides a redevelopment opportunity, well located adjacent to the existing town centre, with which it has strong pedestrian links.
13. Dealing first with the retail assessments for the District, the SoCG confirms that a Retail Capacity Study was undertaken by Roger Tym and Partners (RTP) in 2006, with RTP also carrying out updates in 2008 and 2011 and providing Supplementary Advice on Convenience Retail Provision in 2009. The most recent of these retail studies, the Ryedale Retail Capacity and Impact Assessment Update (RRCIAU) of July 2011, was prepared to inform the final draft of the Council's Core Strategy, now referred to as the Local Plan Strategy (LPS).
14. This RRCIAU identifies Malton as the main comparison shopping destination in the Overall Catchment Area (OCA), and considers it to be a generally busy, vital and viable centre. However, it also notes that some 70% of total comparison goods expenditure available within the OCA flows out of the District, principally to larger centres such as York and Scarborough. In particular it notes that despite being the District's principal centre, Malton only retains a very low market share of the available clothes and shoes expenditure, a key goods category. The low comparison sales densities are seen as reflecting the restricted quality of retail property available in the town centre and the study notes that in such circumstances the PPS4 Practice Guidance¹ suggests a qualitative need to improve the quality of existing stock or the performance of stores.
15. The RRCIAU comments that Malton town centre has a reasonably-sized convenience sector and provides a range of food and grocery outlets. These include a recently extended Morrisons store, a Sainsbury's Local store and a Netto supermarket (now trading as an Asda outlet), in addition to a number of smaller convenience shops. It is noted, however, that the extended Morrisons is at the lower end of the superstore size spectrum, with just over 2,500 sqm of sales floorspace, and that

¹ The Practice Guidance to Planning Policy Statement 4 (PPS4) "Planning for Sustainable Economic Growth", which is still extant, even though PPS4 itself has been superseded by the Framework

the majority of existing convenience operators in Malton tend towards the low or discount end of the market. Accordingly, the study concludes that there is scope to diversify the convenience offer through the provision of a higher-order supermarket or foodstore, in order to enhance consumer choice.

16. The RRCIAU's conclusions regarding the need for additional retail floorspace within the District are set out in a number of scenarios. For the comparison goods sector two scenarios have been considered, one assuming a "constant" expenditure retention rate and the other assuming a "rising" retention rate of up to a 40% by 2021, remaining at this level until 2026. Under the constant retention scenario the additional sales area requirements are shown as negative up to 2016: about 375 sqm by 2021 and about 1,620 sqm by 2026. In the rising retention scenario there is considered to be capacity for about an additional 5,700 sqm in the period to 2021 and around 7,700 sqm in the overall 2011-26 study period.
17. For the convenience goods sector three scenarios are considered: the first assumes a constant retention of expenditure within the catchment area; the second assumes a rate of expenditure retention which rises from about 66% in 2011 to 85% by 2021, remaining at this level thereafter; the third scenario also assumes a rising rate of expenditure retention, but also makes an allowance for the "over-trading" of additional foodstores in the catchment area (such as the Malton Morrisons) to be counted towards capacity. RTP do not advocate assuming a constant expenditure retention as this would simply perpetuate the already low retention rate. Instead, they consider it a sound policy aspiration for the Council to seek to increase the overall level of convenience expenditure retention in order to encourage food shopping to be undertaken on as localised basis as possible.
18. As such, there is considered to be scope for some 1,260 sqm of additional convenience sales area floorspace across Ryedale in the period to 2021 under Scenario 2, or about 1,500 sqm when an allowance for overtrading is made under Scenario 3. In the longer term period to 2026, the study considers that there is scope for between about 1,650 sqm and 1,900 sqm of additional convenience sales area floorspace under Scenarios 2 and 3, respectively.
19. It is in response to these retail assessments that the appellant has put the appeal proposal forward. By providing 1,590 sqm of convenience floorspace and 1,575 sqm of comparison floorspace the appellant argues that the appeal proposal would not only meet Malton's convenience and comparison floorspace needs up to 2021 and beyond, but would do so on a site which is functionally and physically located so as to boost the town's economy and promote the linked trips that are a central objective of planning policy for town centres.
20. The Council acknowledges that the LM is a key site for Malton, and points out that it is actively pursuing the site's redevelopment through the LPS. However it maintains that the failure to promote a comparison-led development means that the current proposal would not make the most of the site's location, would not properly fulfil the needs of Malton, but instead would represent a significant missed opportunity for the town.
21. I turn now to the sequential test, formerly set out in PPS4 and now carried forward into the Framework. Paragraph 24 of the Framework explains that local planning authorities should require applications for main town centre uses to be located in town centres, then in edge-of-centre locations and only if suitable sites are not available should out-of-centre sites be considered. It further notes that when considering edge-of-centre and out-of-centre proposals, preference should be given to accessible sites that are well connected to the town centre, and goes on to say

- that applicants and local planning authorities should demonstrate flexibility on issues such as format and scale.
22. The RTP retail assessments referred to above have consistently taken the view that the LM site represents the most sequentially preferable opportunity in Malton. However, in the LM report to Committee, Officers adopted what the Council referred to at the inquiry as a "novel" application of the sequential test. As a result, the Planning Committee was advised that the WSCP site was preferable to the appeal site in PPS4 terms. A reading of the Committee Report reveals that this advice was based on the Officers' view that the appeal site was not suitable for the development proposed; could not be considered as currently available for the proposed development; and that the development proposed had not been demonstrated to be viable.
23. However, at the inquiry the Council's planning witness acknowledged that there had been significant flaws in the way this matter had been approached. Firstly, there is nothing within the Framework, nor was there anything within PPS4, which requires a developer to apply tests of availability, suitability and viability to the site being promoted for development. The sequential approach is intended to establish whether or not there are any more sequentially preferable sites for the development proposed, than the site in question. In this case there is no dispute between the parties that the LM site could accommodate the appeal proposal.
24. Moreover, an assessment of the site provided to the Council by RTP in the RRCIAU comments that a retail-led scheme would be viable at the site and could form a natural extension of the existing town centre. It considers that the site would be an ideal location for a development providing a small number of unit shops to attract the type of "high street" comparison retail outlets presently missing from Malton's offer. It further suggests that such units could potentially form part of a mixed-use development, described as possibly including a basket foodstore and/or residential/office uses, although a supermarket-only scheme is not advocated. The study also comments that the WSCP site is located about 160m to the north-east of the Town Centre Commercial Limits and is more suited to convenience rather than comparison retail development.
25. A final point of note is that the LM report to Committee acknowledges that the LM site is not specifically allocated for comparison retail development at the present time. The report does indicate that the supporting text to policy SP7 of the LPS publication draft refers to the LM site as being particularly suitable for non-food retailing, but there is nothing to suggest that this need be to the exclusion of other uses. In any case, I understand that objections have been lodged to this policy and its supporting text, including from the appellant, and in these circumstances I can only give this emerging policy limited weight.
26. Taking the above points into account it is my view that the LM site is the sequentially preferable site to accommodate the development proposed and that its development for such uses would be in line with guidance in the Framework. Moreover, no firm evidence has been placed before me to suggest conflict with any adopted development plan policy in this regard.
27. As already noted, and as stressed by the appellant, the foregoing is all that is necessary in respect of a sequential assessment by a prospective developer. However, the Council maintained that notwithstanding these points, it needed to satisfy itself that the site in question is both suitable and available, and that the development proposed is viable. I share the appellant's view that whilst such matters are clearly appropriate for a Local Planning Authority to have regard to in

the development plan context, they are not appropriate matters for consideration in relation to development management.

28. Nevertheless, in terms of any assessments of suitability the correct approach is to consider whether the site is suitable for the development proposed, not for some alternative development which others may prefer to see on the site, as set out in the United Kingdom Supreme Court case of *Tesco Stores Limited v Dundee City Council*², referred to by the appellant. The Council's planning witness accepted that within the LM Committee Report the WSCP site should have been assessed for its ability to accommodate the appeal proposal. He further agreed that if such an assessment had been carried out, the WSCP site ought to have been considered unsuitable for comparison retail units in view of its separation from the town centre.
29. I acknowledge the point made in the LM Committee Report that the Framework, which was only in draft at that time, indicates that needs for retail and other main town centre uses should be met in full. However, as the amount of new floorspace needed is dependent on the strategy or scenario adopted by the Council, it is not possible to be definitive about this matter at the present time. It is the case, however, as noted above, that with some 1,590 sqm of convenience floorspace and 1,575 sqm of comparison floorspace the appeal proposal would fully meet Malton's convenience needs up to 2021 and beyond, and would appear to be well placed to make a significant contribution towards the comparison floorspace needs.
30. With regards to availability, although the LM Committee Report acknowledged that the appellant, as owner of the LM site, was likely to exercise its right, under a break clause, to terminate the lease for the LM, it then concluded that the site should not be seen as currently available for the proposed development. But all that the PPS4 Practice Guidance requires is that sites should either be available now, or "are likely to become available for development within a reasonable period of time". I have no doubt that in these circumstances the site should be considered as available.
31. As to the viability of the appeal proposal the Council clarified, in opening its case, that it does not seek to argue that the appeal scheme would be unviable if an operator could be found and if the rents set out in the appellant's evidence were to be generated. Rather, its concerns centred around its view that the design and location of the proposed development are likely to be much less attractive to an operator than the WSCP scheme which the Council has resolved to approve.
32. However, whilst it is common ground that the grant of planning permission for a larger store on the WSCP site would make it more difficult for an operator to be found for the appeal proposal, this underscores the need and purpose of the sequential approach in seeking to promote and strengthen town centres. Despite the Officers' conclusion in the LM Committee Report, the submitted evidence as a whole, leads me to conclude that the WSCP site is a sequentially less preferable edge-of-centre site than the appeal site. Moreover, having visited both sites as part of my inspection I consider that a development on the WSCP site would have poorer pedestrian links to the town centre than the LM site, notwithstanding the fact that enhancement works to the connecting route are proposed.
33. The second part of this first main issue flows from the Council's fourth reason for refusal, which maintained that when the appeal proposal is considered in combination with the WSCP scheme, it would be likely to have a significant adverse impact on town centre vitality and viability. In support of this view the Council argued, when closing its case, that the WSCP proposal should still be viewed as a

² *Tesco Stores Limited v Dundee City Council (Scotland)* [2012] UKSC 13 (21 March 2012)

commitment and that it would therefore be appropriate to assess the cumulative impact of both schemes in line with the PPS4 Practice Guidance.

34. However, I am mindful of the Council's acknowledgement that Members will have to re-assess their resolution to grant planning permission for the WSCP scheme in the light of the concession, made at the inquiry, that the nature and application of the sequential test was not properly spelled out in the LM Committee Report. In these circumstances I conclude that it would not be appropriate to regard the WSCP scheme as a commitment. On this basis the cumulative impact referred to by the Council would not arise, although for completeness I do return to this matter later.
35. Taken in isolation the SoCG acknowledges that the proposed development would provide three retail units with varying floor plates that could accommodate comparison retailers, and that this would improve local consumer choice in relation to comparison goods and would also provide new employment opportunities in the local area. There is also agreement that the amount of retail floorspace proposed would not be out of scale with Malton's role or function as a principal town as defined in the Yorkshire and Humber Regional Spatial Strategy (RSS) or the draft LPS. Although the Secretary of State has signalled his intention to abolish the RSS, it still remains part of the development plan at the time of writing this decision.
36. The SoCG indicates that the Council does not accept that the LM site forms a logical extension to the town centre, but this does not sit comfortably with its first reason for refusal, which quite clearly states a contrary view. However, notwithstanding this point the fact remains that at the present time the Council is promoting, through its emerging LPS, a "northern arc" (which includes both the LM site and the WSCP), to the north of the existing town centre, to accommodate new retail space to support the role of the town centre. In addition, paragraph 5.25 of the LPS Submission document of May 2012 notes that the LM site has the ability, over time to form a logical extension to the town centre.
37. Having regard to these points and the fact that there would be good linkages between a development on the appeal site and the town centre, I consider it reasonable to assume that the appeal proposal would strengthen and enhance the town centre, rather than adversely impact upon it. In coming to this view I have also had regard to the retail advice consistently given to the Council by RTP prior to this inquiry, through the various retail assessments referred to earlier, that the LM site would be an appropriate location for further retail development. I do not believe that this advice would have been given if RTP considered that it would result in harm to the existing town centre.
38. Moreover, it became apparent during the inquiry that the appellant's (withdrawn) 2007 scheme, supported by RTP, would have provided some 1,500 sqm of convenience sales area and about 2,060 sqm of comparison floor area, compared to about 1,590 sqm convenience floorspace and 1,575 sqm comparison floorspace in the current scheme. Whilst the current proposal would provide about 500 sqm less comparison floorspace than was the case in the 2007 scheme, I share the appellant's view that these two schemes should be viewed as broadly similar in scale, and therefore likely to be similar in impact.
39. To my mind there is some inconsistency between the Council's preference and hence implicit support for a comparison-led scheme on the LM site, and its contention that the current proposal, which would offer virtually a 50/50 split of convenience and comparison floorspace, would be harmful to the town centre. The Council has not submitted any firm evidence to demonstrate in what ways the appeal proposal would be harmful, whereas the appellant's evidence that

convenience retailing is critical to a market town's vitality and viability is drawn from a research report for the former Department of Environment, Transport and the Regions³ (DETR). The appellant's planning witness was the author of this report and the oral evidence on this matter was not disputed by the Council.

40. In addition, I understand that the appellant is also a major land-owner in the town centre, and because of this I can appreciate that its concerns regarding the appeal proposal's likely impact upon the town centre take on an added significance. There is clearly merit in the argument that in such circumstances it would not make sense for the appellant to propose a scheme which would do anything but boost the town's vitality and viability. I consider that this adds weight to this proposal which, in retail terms was accepted by the Council at the inquiry to fully comply with guidance in the Framework.
41. Finally on this issue, I briefly consider the scenario whereby the WSCP scheme is granted planning permission. The first point of note is that there is agreement within the SoCG that the cumulative scale of both the appeal proposal and the WSCP scheme would significantly exceed the retail capacity identified for Malton within the RTP 2008 Retail Study. In addition, the submitted evidence indicates that the WSCP scheme would draw trade from the town centre Morrisons store, which is currently over-trading. However, I accept that in resolving to grant planning permission for the WSCP proposal the Council considered that the overall impact on the town centre, including linked-trips, would be acceptable.
42. Nevertheless, trade would be drawn from the existing centre, and this impact would be increased if the appeal site was also granted planning permission. In such circumstances a judgement has to be made as to the overall extent of any impact, having regard to the specific details of the cases and the locations of the respective sites. In this regard it is of note that in asserting that the appeal proposal would result in harm to the vitality and viability of the town centre, the Council has not undertaken any specific assessment of this matter.
43. In contrast, the appellant has argued that although a greater impact on the existing town centre would arise if both the WSCP and the appeal proposal were to proceed, custom drawn to the LM scheme should be seen as contributing to town centre turnover, in view of the general acceptance that it would function as a logical extension to the town centre. Indeed the appellant argues that on this basis the appeal proposal would lead to an overall positive impact of 24%, compared to the situation if only the WSCP scheme proceeds.
44. I fully accept that such arguments have to be treated with some caution, in light of the view expressed by the Inspector and endorsed by the Secretary of State, in a call-in case in Stoke on Trent⁴, that including edge-of-centre stores in assessments of "functional" centres could generate misleading conclusions. However, I am not persuaded that the particular circumstances of that case, which related to a much larger centre and a different disposition and juxtaposition of foodstores, are directly comparable to the current situation which involves a relatively modest development immediately adjacent to an existing market town centre. On balance, and particularly having regard to the Council's aspirations for additional retail areas in the "northern arc", set out within the emerging LPS, I consider that the appellant's assessment of this matter is to be favoured.
45. Having regard to all the matters detailed above, I conclude that the proposed development would accord with the sequential approach to town centre uses, set

³ The Impact of Large Food Stores on Market Towns and District Centres – DETR 1998

⁴ Ref: APP/M3455/V/10/2122016

out in the Framework, and would not have an unacceptable effect on the vitality and viability of Malton town centre. Accordingly I find no material conflict with policies YH5 or E2 of the RSS which seek, amongst other matters, to make Principal Towns (such as Malton) the main local focus for shopping activities and facilities, and to strengthen the role and performance of existing city and town centres.

Relocation of the existing livestock market

46. The Council's second reason for refusal states that the LM is an important element of the local economy and the desirability of its retention in the local area is considered to be of such importance that a redevelopment proposal for the existing site should not be allowed until proper provisions are in place for the existing LM use of the site to be relocated. The reason for refusal goes on to indicate that the appellant has not demonstrated that it would be willing to enter into a planning obligation to secure the LM's relocation.
47. There is, however, no adopted policy backing for the Council's stance, although emerging LPS policies SP7 and SP9 do address this matter. Policy SP7 itself makes no direct reference to the LM, but its supporting text states that redevelopment of the livestock area would be predicated on the successful relocation of the existing LM, which is greatly valued by the local farming community and many residents. Policy SP9 indicates that Ryedale's land-based economy will be sustained and diversified with indirect support being given to, amongst other things, the retention of a livestock market in Ryedale which serves the District, is convenient to users, minimises landscape impact and is located close to a market town to ensure a continued relationship for associated services.
48. It is clear from the foregoing that the retention of the LM somewhere within Ryedale District is an objective of the LPS, but that it does not necessarily need to be retained on its present site. Indeed, the LPS makes it clear that the existing LM site would be appropriate for retail development to support the existing town centre, as already noted above. Moreover, the weight that I can accord to these emerging policies has to be reduced as a result of the fact that specific objections have been raised against those aspects which seek to link the redevelopment of the existing site to the relocation of the LM.
49. Furthermore, the factual situation surrounding the current LM operation is an important element in the consideration of this matter. In summary, the LM site is within the ownership of the appellant, as the freeholder, and is currently subject to a lease to Canteen Properties which was signed in 2008. This contains mutual, unconditional break clauses every five years, under which either party can terminate the lease. The appellant has exercised its option under these break clauses, with legal notice having been served on the leaseholder that the lease will be terminated on 5 October 2013, regardless of whether the appeal proposal receives planning permission. These matters are confirmed in the agreed SoCG, which also notes that no scheme for the relocation of the LM has been identified and that the Council has not identified a value for any financial contribution linked to the relocation of the LM.
50. These points reinforce the appellant's view that it is acting within its legal rights and is under no obligation to find an alternative site for the LM to move to. I share that view and note that there is no requirement in any development plan policy or in the Framework which would seek to impose such an obligation on the appellant. The Council did make reference to paragraph 70 of the Framework, which states that planning decisions should guard against the loss of valued facilities and services but this point, which falls under the heading of "Promoting Healthy Communities", was

not put directly to any of the appellant's witnesses. Although the LM is undoubtedly valued by some sectors of the community, no firm, factual evidence has been placed before me to demonstrate its importance to the social and economic fabric of the area, as claimed by the Council. Therefore, whilst I give some weight to this matter, I am not persuaded that the loss of the LM would reduce the community's ability to meet its day-to-day needs, as referred to in this Framework paragraph.

51. With regard to objectors to the appeal proposal, I have been mindful of the evidence presented at the inquiry by representatives of the leaseholding company, the local auctioneers, local farmers and livestock hauliers, and directors of the relatively newly formed Malton and Ryedale Farmers Livestock Market company. But whilst I have sympathy with those who wish to see a LM retained in the area, questions regarding the viability of the existing LM operation and the weight which should therefore be attached to its retention on this site were raised by the appellant and, in my opinion, carry some weight in this appeal.
52. In this regard Mr Stephenson, a Director of the company holding the lease of the LM premises⁵ and also a Partner of the Malton Livestock Auctioneers (MLA) stated that MLA is able to pay the modern 2008 rent and still leave a modest profit. However, whilst some general turnover figures for the LM for 2011 were provided, these do not assist in establishing the viability of the existing operation. Moreover, I understand that when the rent income from sub-tenants in The Shambles is taken into account, the effective annual sum paid for the lease of the LM land is only between £10,000 and £14,000. For a prime, edge-of-town centre location such as this I share the appellant's view that this is a very low figure, and I can well appreciate why the appellant does not wish this existing situation to continue.
53. It is clear that the existing LM operators have known since at least the time of the withdrawn planning application in 2007 that the appellant wished to redevelop the LM site. In addition, Mr Stephenson indicated that he has tried to explore the prospect of an out of town site for the LM since 1987, but with no success, although in this regard the appellant maintained that discussions did not proceed because Mr Stephenson would not accept the imposition of certain conditions on any sale of land. The appellant considered such conditions necessary as Mr Stephenson's company had sold another livestock market site at Seamer near Scarborough to a supermarket developer for more than £3 million over ten years ago and the appellant wanted to avoid the possibility of a similar situation arising again.
54. Regardless of the actual details of this matter, the fact remains that other than instigating a campaign to save the LM, which included a 5,000 signature petition in favour of retaining the LM, submitted in April 2008, it is unclear what other positive steps the operators have taken to secure an alternative site in recent years. Although a new Malton and Ryedale Farmers Livestock Market company has now been formed, it appears that this has only happened relatively recently, with no business plan available at the inquiry, not even in draft form. Moreover, it was confirmed that no architects or engineers have been engaged by the new market company to assist in developing a new livestock market.
55. No firm details of the likely cost of moving to a new site were placed before me, and there was some inconsistency and vagueness in the figures given orally in evidence. The capital sums involved in setting up a new LM were stated variously to be between £1 million and £3.5 million, and although about £1 million of "working capital" was said to be already available, no firm details of this were

⁵ Mr Stephenson's written statement indicates that Boulton & Cooper is the company which holds the lease of the LM premises, but he confirmed in his oral evidence that the lease is actually in the name of Canteen Properties Ltd, as a result of the restructuring of the family business.

submitted, nor was any clear indication given of how the remaining sums would be raised. Although the new market company's Chairman indicated that farmers would be prepared to put money into a new market proposal without requiring rates of return this, again, was not supported by any hard evidence.

56. In addition to uncertainties regarding financial matters, there was also a lack of clarity regarding the likely timescales involved in establishing a new LM. The new market company's Chairman suggested that building the new market could take up to two years, not including the planning permission timescale, whereas one of the Partners of the Malton Livestock Auctioneers, Mr Watson, considered that an extra 18 months would be needed, beyond the lease's termination in October 2013. However, these suggested timescales have to be dependent, to some extent at least, upon finding a suitable alternative site, and whilst I was told that an offer to provide a site on the Pickering Road has been made by the Fitzwilliam Trust Cooperation, this is another matter for which no firm details have been provided.
57. In summary, it is clear that the retention of the LM is a material consideration in this appeal, but the weight I can attach to it is significantly reduced by the absence of any firm, clear plans for its future from those with most interest in its continued existence. Moreover, notwithstanding the fact that the appellant was characterised as taking a long-term view of things, it would not be reasonable to consider attaching a Grampian style condition to any permission, specifying a date before which no development should take place, as no clear, justified and verified timetable for relocation has been submitted. Nor would it be appropriate to seek to obtain a financial contribution towards relocation, as this would not accord with the guidance on planning obligations set out in paragraph 204 of the Framework.
58. On balance, taking all the above points into account, I conclude that it would not be reasonable to make any development on the appeal site dependent on the relocation of the existing livestock market.

Effect on character and appearance

59. The Council's third reason for refusal alleges that the application as submitted does not adequately demonstrate, amongst other matters, that the proposed development could proceed in a form which would be appropriate in design and layout terms; that key elements would function well in the context of the surrounding built form and established urban grain in the area; and that it would have due regard to the designated and undesignated heritage assets of the area.
60. This matter was elaborated on at the inquiry by the Council's conservation witness, who also contended that the design and layout as shown on the submitted plans would not be appropriate in this setting. It is of note, however, that this witness, who indicated that his evidence represented his own views and did not necessarily accord completely with the Council's stated concerns in its reasons for refusal, had not had any involvement with this proposal prior to the appeal being lodged.
61. Be that as it may, in view of the fact that this is an outline application, for which the Council did not request further information under the provisions of the Development Management Procedure Order⁶, I can give little weight to the claim that insufficient information was submitted. In any case, it seems to me that the appellant has submitted an extensive amount of information in the form of a Design and Access Statement (DAS), a PPS5⁷ Assessment, a DAS Addendum and a Heritage Statement Addendum, in addition to plans and illustrative drawings.

⁶ The Town and Country Planning (Development Management Procedure) (England) Order 2010

⁷ Planning Policy Statement 5: Planning for the Historic Environment

62. Some of this information was submitted in response to comments and concerns expressed by the Council's Design and Conservation Officer (DCO), early on in the planning application process. This Officer maintained that the LM area should be seen as a non-designated heritage asset, in accordance with PPS5, the relevant national guidance current at that time. In this context the DCO argued that the street pattern had been an historic feature of this area and that any proposals should retain Spital Street, The Shambles, Back Street, Mount Road and Horsemarket Road where they are, and clearly delineate any development around these existing streets and the land blocks they create. This was considered necessary in order to retain the views into and out of the conservation area and retain the setting, context and significance of the listed buildings within the area, particularly the Spotted Cow public house.
63. However, the submitted evidence clearly indicates that amendments were made to the scheme during the processing of the application, such that by the time it was considered by the Planning Committee some of the concerns of the Conservation and Design Officers dealing with this proposal had been addressed. It is of note, that nothing more appears to have been said about the LM being a non-designated heritage asset, and there is nothing before me to suggest that the Council ever adopted this designation, the intended extent of which was never formally clarified. I therefore give this suggested designation little weight. It is also of note that the Committee was advised that the loss of the northern part of Spital Street (which would be subsumed into the proposed car park) would be acceptably compensated for, at least to a degree, by the proposal to extend the pedestrian link from Newgate to the new Livestock Square and thence to Horsemarket Road.
64. Notwithstanding the above it is clear that some concerns remained over matters such as scale and massing. These concerns were taken forward by the Council's conservation witness at the inquiry in relation to the two larger buildings, the main retail unit proposed for the southern part of the site and the decked car park building to the north. Whilst not taking exception to the individual height, width and length parameters submitted by the appellant to define the scale of this outline proposal, the Council's witness was critical of their combination insofar as they would relate to these two buildings. Particular concern was expressed regarding the absence of what was referred to as a domestic scale to the buildings; the length of frontage which would be presented to Horsemarket Road and Newmarket; and the unbroken roofline of the proposed car park building.
65. However, the illustrative drawings show how the massing of the larger retail building could be broken up by variations in the roof-line and roof form, by the choice and style of fenestration and by the use of different and contrasting external surfacing materials. Moreover, whilst the length of façade facing onto Horsemarket Road would be a little in excess of 50m, this would not be that different in length to the frontages of the terraced dwellings which lie on the western side of this road, more or less opposite the appeal site. In addition, the illustrative material indicates that this building would have a lower ridge height than both the existing terraced dwellings on the western side of Horsemarket Road and existing nearby properties on Market Place. I accept that this retail building could not be considered of domestic scale, but in view of the comments set out above I consider that it would sit acceptably alongside the other, nearby buildings.
66. The proposed car park building is shown on the illustrative plans as having an unbroken roof-line for much of the Newgate elevation, and this is one of the points highlighted as in need of "tweaking" by the DCO from ERYC who was commenting on the application prior to determination. I generally share this view, but have

noted the appellant's comment that this matter could be addressed through changes to the ridge line of this roof. This is a matter which could be dealt with through a subsequent application for approval of reserved matters, and if this were to be done I consider that this building would not appear unduly out of keeping with its surroundings.

67. Overall, it is clearly the case that constructing new buildings on much of this currently open and generally flat area would change its character and appearance and would also change views across the site, into the site and out from the site. However, I was able to consider these matters at my site inspection, with the aid of photographs and the illustrative plans, and formed the view that by rebuilding street frontages and defining routes through the development the proposal would repair the urban grain and result in distinct improvements to the townscape.
68. I accept that some of the lengthy views currently obtainable in this area would be curtailed by new buildings, but as a result of my on-site observations I am not persuaded that this aspect of the proposal would be unacceptably harmful. Nor am I persuaded that new buildings of the size and scale suggested on the illustrative plans would have any materially adverse visual impact. On balance I am therefore satisfied that the proposed development would not adversely affect the character and appearance of the surrounding area, and that the setting of the Malton Conservation Area would therefore be preserved.
69. The information submitted by the appellant includes details of all the relevant listings of the statutorily identified heritage assets sited close to the appeal site. These include the Spotted Cow public house, the King's Head public house on Market Place and other Market Place buildings that back onto the appeal site. With regard to these latter buildings, a particular concern of the Council's conservation witness was that there was insufficient information available to enable him to assess the likely implications of the proposed development on their setting.
70. However, the PPS5 Assessment contains a comprehensive description of the rears of these burgage plot buildings, which are referred to as the "working" elements of the buildings, and the appellant's evidence draws attention to recent alterations and additions to them. As I saw at my inspection, many of these additions are essentially modern in form and provide services ancillary to the LM in a manner which has served to erode much of the properties' original character.
71. Taking account of the appellant's detailed evidence and the illustrative plans of the proposal, I consider that the submitted information is sufficient to be able to evaluate the appeal proposal in the context of the nearby listed buildings. It is my assessment that the proposed development would not have an adverse impact on the nearby heritage assets, but instead would preserve the settings of these listed buildings. Moreover, the proposals to erect two new retail buildings to the east of the listed Spotted Cow public house, either side of a proposed pedestrian entrance to the decked car park, would provide real potential to repair the townscape at this location and enhance the setting of the Spotted Cow, a matter accepted by the Council.
72. Having regard to all the above points, I conclude that the proposed development would not have any unacceptable adverse impact on the character and appearance of the surrounding area, and that it would preserve the settings both of the Malton Conservation Area and the nearby listed buildings. No conflict with any development plan policies was referred to in the Council's reason for refusal, although it asserted that the proposal has failed to satisfactorily demonstrate that it would be in accordance with the provisions of the Framework.

73. In this regard I am mindful of the fact that in accordance with paragraph 56 of the Framework the Government attaches great importance to the design of the built environment, with good design being seen as a key aspect of sustainable development and indivisible from good planning. The Framework goes on to point out that planning decisions should not attempt to impose architectural styles or particular tastes and should not stifle innovation, originality or initiative, although it is proper to seek to promote or reinforce local distinctiveness. Whilst some concern has been raised on matters of design by the various Council conservation officers who have considered this proposal, any such details could be adequately considered as part of a subsequent reserved matters application. Accordingly I find no conflict between the appeal proposal and the design aspects of the Framework.

Effect on living conditions

74. This matter, forming one strand of the Council's third reason for refusal, was speedily dealt with at the inquiry, and I can similarly deal with it shortly in this decision. The contention made by the Council was that the application as submitted does not adequately demonstrate that the proposed development could proceed in a form which would, amongst other matters, prevent any significant impact on the amenities of occupiers of properties on the eastern side of Victoria Road. These are terraced 2-storey dwellings set at a slightly tapering angle to the appeal site's north-western boundary. They have both 2-storey and single storey rear projections and are separated from an area of open and covered animal pens by a backway, a few metres wide, bounded by a wall.
75. At the outset the Council indicated that this matter might be resolved during the course of the inquiry. Indeed, matters were agreed between the parties by the submission of an additional plan and a condition clarifying design matters and dimensions relating to the elevation of the proposed decked car park which would face the rear of these dwellings. I have noted that no development plan policy was cited by the Council in this reason for refusal, and no conflict with the development plan or national planning guidance was identified.
76. I visited this location as part of my site inspection, and walked along the backway in question. Having considered the proposed positioning, eaves height and ridge height of the car park building, and examined the illustrative material, including the shadow studies and Daylight/Sunlight Report contained within the appellant's evidence, I see no reason why the visual or physical impact of the car park building should be unacceptable. Indeed I share the appellant's view that it would improve the outlook from the Victoria Road dwellings. I therefore conclude that the proposed development would not have an adverse effect on the living conditions of occupiers of these properties on the eastern side of Victoria Road. As noted above, no conflict with any development plan policies has been identified in this regard.

Other matters

77. As already noted, the only matter of detail to be determined at this stage is access. At the present time, vehicular access to the site is available from Newgate, Spital Street, Middlecave Road and Horsemarket Road/Victoria Road. Vehicles are also able to use The Shambles to cross part of the site. These arrangements would have to change under the appeal proposal, with Spital Street being effectively closed to vehicular traffic between The Shambles and Newgate/Spital Field Court. The Shambles would also be closed to general vehicular traffic between Horsemarket Road and the rear of properties on Market Place, although it would remain in its current location and would continue to operate as a public right of way

through the site and could be used for servicing purposes. Entry to and exit from the proposed decked car park would be from Newgate/Spital Field Court.

78. I understand from the Council's Committee Report that the Local Transport Plan proposes changes to the highway network in the vicinity of the LM site, including the introduction of a one way system. These changes have been taken into account as part of the appeal proposal, together with a proposed new mini-roundabout at the junction of Victoria Road/Spital Field Court/ Middlecave Road. In addition, the appellant is proposing that the existing market day parking restrictions on Victoria Road be removed as part of the development.
79. Deliveries and servicing of all the proposed retail units would be via the service yard proposed for the southern end of the site, accessed from Horsemarket Road. Delivery and service vehicles that are unable to turn within the service yard itself or that are accessing retail units which are not serviced by this yard would travel along the rear of the Market Place properties and exit the site onto Horsemarket Road, via The Shambles. Servicing details and general transport matters covered by a submitted Transport Assessment have been judged to be generally acceptable by the local Highway Authority, North Yorkshire County Council.
80. The Council's Local Transport Plan also proposes a package of works to reduce congestion and associated delays in the town centre, thereby improving air quality. A Supplementary Planning Document (SPD) sets out the details of the financial contributions that developers will be expected to make to such improvements, which are to be based on the number of vehicular trips which the development in question is predicted to generate through the Butcher's Corner junction during the AM peak period. Even though this SPD only appears to exist as an "Interim Version", its reasoning seems to be generally sound. Accordingly I see no reason why this and the other contributions which are offered by way of a unilateral undertaking made under S106 of the Town and Country Planning Act 1990 should not accord with the guidance in paragraph 204 of the Framework. In summary the contributions offered are:
- £35,000 towards the implementation of a one-way system and footpath improvements on Finkle Street;
 - £2,500 towards costs associated with the making and implementation of any Traffic Regulation Orders; and
 - £135,000 towards the A64 Brambling Fields Scheme.
81. On other matters, I have noted that the conclusions of the "Retail" section of the draft Malton and Norton Neighbourhood Plan add support to a development along the lines of the appeal proposal. Although I can only give limited weight to this Neighbourhood Plan as it has not been formally made or adopted it does, nevertheless, indicate that the appeal proposal has some strong local support, a point firmly put on behalf of the Town Council both in writing and at the inquiry.

Conclusions

82. Having considered the four main issues prompted by the Council's reasons for refusal alongside the submitted evidence, and taking into account the changed position of the Council on a number of key matters as the inquiry progressed, my overall conclusion is that this proposal is acceptable and would represent sustainable development, as detailed in the Framework. I therefore intend to allow this appeal, subject to a number of conditions, as set out in the Schedule at the end of this decision.

83. Conditions 1-3 are standard conditions for outline planning permissions. Condition 4 is necessary to safeguard the character and appearance of the area, the amenity of adjacent uses, access issues and for the avoidance of doubt. Conditions 5-6 are imposed to ensure the safety and convenience of users of the highway network, whilst Condition 7 is necessary to ensure that the construction of the development proceeds in a safe and appropriate manner. Condition 8 is imposed to establish measures to encourage more sustainable non-car modes of transport. Although it was suggested at the inquiry that this condition should only apply to the main retail unit, the combined floorspace of the other three retail units would be comparable with that of the main unit, and they could therefore have a significant number of employees. In these circumstances I see no good reason why this condition should not be applied to all the proposed units.
84. Conditions 9-11 are imposed in order to safeguard the living conditions of residents in the surrounding area, whilst Condition 12 is needed to ensure that risks from land contamination are minimised during construction, and for future users of the land and neighbouring land. For clarity, I have imposed a simplified version of the condition discussed at the inquiry. Condition 13 is imposed as the site is of archaeological importance and Condition 14 is imposed to ensure the protection of bats in the area. Condition 15 is imposed to ensure that the site can be properly drained, but other suggested conditions dealing with the positioning of buildings in relation to water mains and sewers are concerned with scheme layout, and hence are best dealt with at reserved matters stage.
85. Condition 16 is imposed to ensure the scheme secures the retail benefits intended. I acknowledge that it is not usual to control the type of retail floorspace in this way, but in view of the clear need to improve the comparison shopping offer in the town, and to reflect the appellant's stated intention for the proposed development, set out in evidence and closing submissions, I consider such a condition appropriate in this case. Condition 17 is imposed in the interests of sustainability and to minimise the development's impact on climate change, whilst Condition 18 is necessary to ensure a satisfactory relationship between the development and existing residential properties. I do not consider it necessary to attach the suggested condition seeking details of servicing arrangements to be submitted and approved, as the intended servicing arrangements are clearly shown on the submitted plans.
86. I have had regard to all other matters raised, but they are not sufficient to outweigh the considerations which have led me to my conclusion.

David Wildsmith

INSPECTOR

Schedule of conditions (18 in total)

- 1) Approval of the details of the layout, scale, appearance and landscaping of the development (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

- 3) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
- 4) The details to be submitted for approval of the matters reserved by Condition 1 above shall follow the principles and parameters set out in the plans and the accompanying documents, namely:
 - i) the Design and Access Statement (DAS) (April 2011);
 - ii) the PPS5 Assessment and DAS Addendum (July 2011)
 - iii) the Development Schedule (September 2012)
 - iv) the drawings numbered 185-15, 185-22, 185-23, 185-24; and
 - v) the indicative drawings numbered 185-25 and 185-26.
- 5) No part of the development to which this permission relates shall be brought into use until the carriageway and any footway/footpath from which it gains access has been constructed to basecourse macadam level and kerbed and connected to the existing highway network with street lighting installed and in operation. All road works, including any phasing, shall be completed in accordance with a programme approved in writing with the Local Planning Authority in consultation with the Local Highway Authority.
- 6) There shall be no excavation or other groundworks, except for investigative works, remediation works or the depositing of material on the site in connection with the construction of the access road or building(s) or other works until:
 - i) the details of the required highway improvement works, listed below, have been submitted to and approved in writing by the Local Planning Authority in consultation with the Local Highway Authority;
 - ii) an independent Stage 2 Safety Audit has been carried out in accordance with HD19/03 - Road Safety Audit or any superseding regulations;
 - iii) a programme for the completion of the proposed works has been submitted.

The required highway improvements shall include:

 - a) provision of a mini roundabout at the Spital Field Court/Victoria Road/Middlecave Road junction, with associated parking restrictions on Victoria Road.
 - b) provision of 2m wide footways along the site frontages on Horsemarket Road, Spital Field Court and Newgate.
 - c) formation of new private accesses from the development hereby approved, onto Horsemarket Road, Spital Field Court and Newgate.

The required highway improvements shall be completed prior to the development hereby approved being brought into use.
- 7) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;

- v) wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during construction;
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - viii) proposed dates, times and duration of all piling operations.
- 8) Prior to the retail units hereby approved being brought into use, a Travel Plan shall have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. This shall include:
- i) the appointment of a travel co-ordinator;
 - ii) a partnership approach to influence travel behaviour;
 - iii) measures to encourage the use of alternative modes of transport other than the private car by persons to the site;
 - iv) provision of up-to-date details of public transport services;
 - v) continual appraisal of travel patterns and measures provided through the travel plan;
 - vi) improved safety for vulnerable road users;
 - vii) a reduction in all vehicle trips and mileage;
 - viii) a programme for the implementation of such measures and any proposed physical works;
 - ix) procedures for monitoring the uptake of such modes of transport and for providing evidence of compliance.

The Travel Plan shall be implemented and the development shall thereafter be carried out and operated in accordance with the Travel Plan.

- 9) Prior to the operation of the retail outlets hereby approved a Noise Management Plan shall be submitted to and approved in writing by the Local Planning Authority and thereafter adhered to. The submitted Noise Management Plan shall specify retail unit opening hours and shall include measures to be implemented at the site to minimise noise disturbance to local residents from deliveries, car parking (including consideration of operating hours and physical enforcement measures as required) and servicing requirements.
- 10) No fixed plant and/or machinery associated with the development hereby permitted shall come into operation until a scheme containing details of the fixed plant and machinery serving the development hereby permitted together with associated mitigation measures has been submitted to and approved in writing by the Local Planning Authority. This scheme will include the anticipated rating level of plant noise emitted from the site between the hours of 23.00 and 07.00 and separately between 07.00 and 23.00 when assessed at the nearest noise sensitive property. The measurements and assessment shall be made in accordance with BS 4142: 1997. No further fixed plant and or machinery shall be operated. There shall be no operation of external generators.
- 11) Prior to the development hereby permitted being brought into use an external lighting scheme for the site shall be submitted to and approved in writing by the Local Planning Authority, such scheme to be implemented in accordance with the approved details prior to the development being brought into use.
- 12) No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the Local Planning Authority. The results of the site investigation shall be made available to the Local Planning Authority before any development begins. If any contamination is found during the site investigation, a report specifying the

measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. The site shall be remediated in accordance with the approved measures before development begins. If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the Local Planning Authority. The remediation of the site shall incorporate the approved additional measures.

- 13) The details submitted in pursuance of condition 1 shall be preceded by the submission to the Local Planning Authority for approval in writing, and subsequent implementation, of a scheme of archaeological investigation to provide for:
- i) The proper identification and evaluation of the extent, character and significance of archaeological remains within the application area;
 - ii) An assessment of the impact of the proposed development on any archaeological remains;
- This shall be followed by the submission of:
- iii) Proposals for the preservation in situ, or for the investigation, recording and recovery of archaeological remains and the analysis and publishing of the findings, it being understood that there shall be a presumption in favour of their preservation in situ wherever feasible.

These proposals shall be approved by the Local Planning Authority in writing and implemented before any development commences.

- 14) The method statement described in section 4.2 of the bat report dated August 2010 should be followed.
- 15) No development shall take place until details of the proposed means of foul and surface water drainage, including details of any balancing works and off-site works, together with a programme for their implementation, have been submitted to and approved in writing by the Local Planning Authority. These foul and surface water drainage works shall then be carried out in accordance with the approved details and programme.
- 16) The development hereby approved shall provide a minimum of 1,575 sqm (gross internal area) of comparison goods floorspace.
- 17) No development of any phase of the development hereby permitted shall take place until a report has been submitted to, and approved by, the Local Planning Authority, identifying how the predicted CO₂ emissions of the development will be reduced by at least 10% through the use of on-site renewable energy equipment, sustainable building techniques and/or other sustainability measures. The carbon savings which result from this will be above and beyond what is required to comply with Part L Building Regulations. The development shall then proceed in accordance with the approved report.
- 18) The boundary with the houses on Victoria Road shall be formed on the line of the existing boundary wall, or in any other event not closer to the houses than the same boundary wall. The boundary shall consist of a wall (to maximum eaves level 40.950m Ordnance Datum with roof on top (maximum 43.250m Ordnance Datum to ridge height) as indicated in Drawing No 185-27, accompanying the application.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr J Easton of Counsel	instructed by the Local Planning Authority, Ryedale District Council
He called	
Mr M Johnston	Senior Associate, Roger Tym & Partners
MA(Hons) MRTPI	
Mr D Carruthers	Building Conservation Officer, Forward Planning Section, Ryedale Borough Council
BA(Hons) DipArch	
MA(Conservation) ARB	
RIBA	

FOR THE APPELLANTS:

Mr P Village QC	instructed by Matthew Baker, Pinsent Masons LLP
Assisted by	
Mr J Strachan of Counsel	
He called	
Mr C Goddard BA(Hons)	Senior Director, GVA
MRTPI MRICS	
Mr J Maciag BA(Arch)	Principal, Jan Maciag Architects
BArch RIBA	
Mr L Pavlou BSc(Hons)	Director, GVA
MRICS	

INTERESTED PERSONS SUPPORTING THE PROPOSAL:

Mr P Andrews LLB BA	Local Ward Councillor
Mr M Skehan	Town Clerk, Malton Town Council
Mrs E Brooksbank	Local resident

INTERESTED PERSONS OPPOSING THE PROPOSAL:

Mr J Stephenson MA(Cantab)	Director of Boulton & Cooper; Partner, Malton Livestock Auctioneers
FRICS FAAV FLA	
Mr P Foxtan	Local farmer and livestock haulier; Chairman of the board of Directors, Malton and Ryedale Farmers Livestock Market
Mr W Kobyłka MBA MCIPS	Director and owner, G Woodall & Sons Ltd, Malton; Director of the Malton and Ryedale Farmers Livestock Market
ACIPD	
Mr D Watson	Director of Cundalls; Partner, Malton Livestock Auctioneers; Director of the Malton and Ryedale Farmers Livestock Market
Mr J M Douglas	Local farmer

CORE DOCUMENTS

Number	Document	Date
	Earlier Livestock Market Site application 2007	
CD1.1	Roger Tym and Partners Retail Statement - submitted as part of LMS application	Aug 2007
	Current Livestock Market Site application 2011	
CD2.1	Application forms	Apr 2011
CD2.2	LMS Planning and Retail Statement (GVA)	Apr 2011
CD2.3	Design and Access Statement (Jan Maciag)	Apr 2011
CD2.4	Community Consultation Statement (GVA)	Apr 2011
CD2.5	Lower Ground Floor Plan – Drg No 185-12 (superseded)	Apr 2011
CD2.6	Ground Floor Plan - Drg No 185-13 (superseded)	Apr 2011
CD2.7	First Floor Plan - Drg No 185-14 (superseded)	Apr 2011
CD2.8	Site Plan - Drg No 185-15	Apr 2011
CD2.9	Transport Assessment (Sanderson Associates)	Feb 2008
CD2.10	Transport Statement (Steer Davies Gleave)	Apr 2011
CD2.11	Archaeology Report (MAP Archaeological Consultancy Ltd)	Jul 2007
CD2.12	Flood Risk Assessment (ARP Associates)	Apr 2011
CD2.13	Geo-environmental Report (Encia Regeneration Ltd)	Mar 2011
CD2.14	Bat Survey report (Wold Ecology)	Aug 2010
	Further Correspondence with Ryedale District Council/East Riding of Yorkshire Council in relation to LMS application	
CD3.1	Noise Assessment (AECOM)	Jun 2011
CD3.2	Noise Report Cover Letter	18 Jul 2011
CD3.3	Community Consultation Report Addendum Cover Letter	18 Jul 2011
CD3.4	Community Consultation Report Addendum (GVA)	Jul 2011
	Community Consultation Report Addendum Attached	
CD3.5	Comments	Jul 2012
CD3.6	Daylight/Sunlight Report (GVA)	20 Jul 2011
	PPS5 Assessment and Design and Access Addendum (GVA)	
CD3.7		Jul 2011
CD3.8	Transport Assessment Report (Steer Davies Gleave)	Jul 2011
CD3.9	Letter from GVA to RDC re: Livestock Market lease	4 Jul 2011
CD3.10	Supplementary Retail Statement (GVA)	Oct 2011
CD3.11	RTP letter on GVA Supplementary Retail Statement	7 Nov 2011
CD3.12	Response Letter to Retail Position (GVA)	13 Feb 2012
CD3.13	Dimensional Drawing – Proposal D, View 2	Mar 2012
CD3.14	Heritage Statement Addendum (GVA)	Mar 2012
CD3.15	Livestock Market Materiality Letter (GVA)	7 Mar 2012
		Last
	E-mails between GVA and RDC Confirming Air Quality Assessment Acceptance	response 5 Mar 2012
CD3.16		
	E-mails between GVA and RDC/ERYC regarding Transport and Access Arrangements	Last e-mail 12 Mar 2012
CD3.17		
CD3.18	E-mail to ERYC/RDC confirming proposed transport works Additional Transport Information Technical Note (Steer Davies Gleave)	12 Mar 2012
CD3.19		Feb 2012
CD3.20	Alternative Trip Rate Calculations Memo	1 Mar 2012

CD3.21	Vehicle tracking plan	2 Mar 2012
CD3.22	Service Yard Vehicle Tracking Plan	2 Mar 2013
CD3.23	E-mail to ERYC (including revised plans and daylight sunlight report attachments) confirming design matters	Last e-mail 16 Mar 2012
CD3.24	Lower Ground Floor Plan - Drg No 185-22	Mar 2012
CD3.25	Ground Floor Plan - Drg No 185-23	Mar 2012
CD3.26	First Floor Plan - Drg No 185-24	Mar 2012
CD3.27	Elevations A to C - Drg No 185-25 (illustrative)	Mar 2012
CD3.28	Elevations D to H - Drg No 185-26 (illustrative)	Mar 2012
CD3.29	Car Park Visual – View 2 (illustrative)	Mar 2012
CD3.30	Livestock Market Visual – View 1 (illustrative)	Mar 2012
CD3.31	Further e-mail confirming update to Daylight/Sunlight Report	16 Mar 2012
CD3.32	Malton Numbered Plan (as attached to e-mail document 44)	
CD3.33	Email to ERYC regarding the Heritage Addendum	16 Mar 2012
CD3.34	Email from RDC confirming no AQIA	5 Mar 2012
CD3.35	LMS Committee Report	29 Mar 2012 Presented to Members 29 Mar 2012
CD3.36	Additional NPPF update to the Committee Report	Mar 2012
Wentworth Street Car Park Application		
CD4.1	Planning Statement (GMI Holbeck Land (Malton) Ltd)	Aug 2011
CD4.2	Proposed site plan	
CD4.3	Retail Statement (Nathaniel Lichfield and Partners) Roger Tym and Partners Advice Note to ERYC/RDC on Retail Case	19 Aug 2011 24 Nov 2011
CD4.4	NLP Briefing Note on Retail Case in response to Roger Tym Study	21 Dec 2011
CD4.5	Roger Tym Response on Retail Case	11 Jan 2012
CD4.6	Further NLP Briefing Note on Retail Case	23 Jan 2012
CD4.7	GMI Economic Case Report	22 Feb 2012
CD4.8	WSCP Committee Report	29 Mar 2012
CD4.9		
Planning Policy Documents and Guidance Notes		
CD5.1	Retail Capacity Study Report (Roger Tym and Partners)	May 2006
CD5.2	Ryedale Local Plan 2002 – Schedule of saved policies	2007
CD5.3	Submission draft of former Core Strategy Developer Contributions towards Strategic Transport Improvements at Malton and Norton (Interim version) - consultation draft	2007 Jul 2007
CD5.4	Malton Transportation Review Technical note (Jacobs)	Aug 2008
CD5.5	Regional Spatial Strategy - Yorkshire and The Humber	May 2008
CD5.6	Retail Capacity Study Update (Roger Tym and Partners)	Sep 2008
CD5.7	RDC Livestock Market Development Brief	2008
CD5.8	RDC Wentworth Street Car Park Development Brief	2008
CD5.9	Supplementary advice on Convenience Retail Provision (Roger Tym and Partners)	2009
CD5.10	Malton Town Centre Study Report (WSP and Atisreal)	2009
CD5.11	PPS4 Planning for Town Centres - Practice Guide	Dec 2009
CD5.12	PPS5 Planning for the Historic Environment - Practice Guide	Mar 2010
CD5.13		

CD5.14	Malton and Norton Strategic Transport Assessment Final Report (Jacobs)	Jun 2010
CD5.15	Malton and Norton Neighbourhood Plan - Draft 2	Mar 2011
CD5.16	Malton and Norton Neighbourhood Plan - Schedule of Responses	Jun 2011
CD5.17	Malton and Norton Neighbourhood Plan - Analysis of Responses	Jun 2011
CD5.18	Retail Capacity Study and Impact Update (Roger Tym and Partners)	Jul 2011
CD5.19	Ryedale Local Plan Strategy – Publication Version (formerly Core Strategy)	Jan 2012
CD5.20	Retail Capacity Study Addendum (Roger Tym and Partners)	Jan 2012
CD5.21	National Planning Policy Framework	Mar 2012
CD5.22	Ryedale Plan: Local Plan Strategy Submission Version	May 2012
Additional documents – Ryedale District Council		
CD6.1	Policy and Resources Committee Minute - Minute 397 Report of the Malton Town Centre Strategy & Accompanying Development Briefs	2 Apr 2009
CD6.2	Full Council Minute - Item 10 minute 397	2 Apr 2009
CD6.3	Council meeting - Minutes 82	27 May 2009
CD6.4	Council meeting - Agenda and Report	9 Feb 2010
CD6.5	Transcript of Committee Meeting	9 Feb 2010
CD6.6		29 Mar 2012
Additional documents – Fitzwilliam (Malton) Estates		
CD7.1	Boulton and Cooper Lease on LMS	19 May 2010
CD7.2	RTP Report: Audit of GVA's Planning and Retail Assessment in relation to the Proposed Retail Scheme at the Livestock Market, Malton	19 Oct 2011
CD7.3	Planning Policy Statement 4: "Planning for Sustainable Economic Growth"	2009
CD7.4	FME Notice to Surrender the Boulton and Cooper Lease	10 Sep 2012
CD7.5	Livestock Market Site Development Schedule	Sep 2011
CD7.6	Bundle of three objections lodged by the Fitzwilliam Malton Estate to The Ryedale Plan – Local Plan Strategy	9 Mar, 8 May & 24 Aug 2012
CD7.7	Comparison of proposed floor areas for the 2007 and 2011 applications for development at the Livestock Market Site	Sep 2011

DOCUMENTS AND PLANS SUBMITTED AT THE INQUIRY

Document 1	Letter of notification of the inquiry, and list of persons notified
Document 2	Opening submissions from the appellant
Document 3	Opening submissions from the Council
Document 4	Secretary of State decision and Inspector's Report, 6 October 2010, relating to Appeal Ref APP/M3455/V/10/2122016 – Application by Tesco Stores Ltd at Newcastle Road, Springfields Retail Park, Trent Vale, Stoke on Trent

- Document 5 Written Statement submitted by Cllr Andrews
- Document 6 Undated letter from the Simons Group, submitted by Cllr Andrews
- Document 7 Written submission from GMI Holbeck Land (Malton) Limited
- Document 8 Planning Policy Statement 6: "Planning for Town Centres", submitted by the appellant
- Document 9 United Kingdom Supreme Court Judgment – Tesco Stores Limited v Dundee City Council, 21 March 2012, submitted by the appellant
- Document 10 Written Statement submitted by Mrs Brooksbank
- Document 11 Written Statement and attachment submitted by Mr Stephenson
- Document 12 Written Statement submitted by Mr Foxton
- Document 13 Written Statement submitted by Mr Kobylka
- Document 14 Information on the Malton Livestock Market, submitted by Mr Watson
- Document 15 Written Statement submitted by Mr Douglas
- Document 16 Letter from Ryedale District Council to Pinsent Masons LLP, dated 14 September 2012, relating to a proposed claim for Judicial Review
- Document 17 Details of numbers of sheep and cattle sold through Malton Livestock Market, 2002 – 2011, submitted by Mr Stephenson
- Document 18 Written submission from Mr J Story dated 18 September 2012
- Document 19 Appellant's notice of an intention to make an application for an award of Costs against Ryedale District Council
- Document 20 Note on borrowing costs, prepared by Mr Pavlou, 14 September 2012 and submitted to the inquiry
- Document 21 Written submission to the inquiry from Walton & Co, on behalf of GMI Holbeck Land (Malton) Limited, including copy correspondence from the Treasury Solicitor's Department to Pinsent Masons LLP, dated 15 August 2012
- Document 22 Signed and dated planning obligation by way of a S106 Unilateral Undertaking, submitted by the appellant
- Document 23 Signed Statement of Common Ground
- Document 24 Letter from Pinsent Masons LLP, dated 6 September 2012, responding to the letter from the Treasury Solicitor's Department dated 15 August 2012
- Document 25 Note detailing the Unilateral Undertaking contribution relating to the Brambling Fields Junction, submitted by the appellant
- Document 26 Suggested conditions, following round table session
- Document 27 Parking Variation Drawing No 185-27, dated September 2012, submitted by the appellant
- Document 28 A0 version of Drawing No 185-25
- Document 29 A0 version of Drawing No 185-26
- Document 30 Closing submissions on behalf of the Council
- Document 31 Closing submissions on behalf of the appellant
- Document 32 Bundle of four Authorities, relied on by the appellant in closing submissions
- Document 33 Council's response to the appellant's application for Costs

WENTWORTH STREET CAR PARK – SUPERSTORE APPLICATIONS

RESPONSE OF COUNCILLOR PAUL ANDREWS TO REPORT OF ENGLAND AND LYLE OF FEBRUARY AND APRIL 2014

Status of this document.

I submitted a short document previously, but made it clear that, as Mr. England's report preceded the news of the announcement of Booths interest in the LMS site and did not take this into account, I reserved my right to make further comments. However, now that the date for the meeting has been fixed for 24th April, and I still do not have Mr. England's comments, I submit the following representations on an interim basis, pending receipt of a copy of his comments in regard to Booths, when I may wish to submit further representations. This document complements all earlier representations, and is not a substitute.

Position of Mr. England, and the status of his evidence.

Mr. England is appointed by Ryedale District Council. His advice should therefore be impartial and independent. **Exhibit 1** shows he also acts for TESCO on occasions. As Tesco is the only superstore chain likely to be interested in WSCP (according to evidence submitted by the applicant), could the Council please have confirmation that Mr. England is not currently retained by Tesco on any project and that there is no conflict of interest between him and his position as independent adviser of the council? Could he please also indicate what procedures his firm has in place to deal with potential conflicts of interest, and how these have been applied in this case?

Consultants can be instructed in two ways: either to give a truly independent and impartial opinion or simply to make the very best case for those instructing them. England and Lyle follow consultants RTP, whose advice was criticised as being "inexcusable" by the inspector at the LMS enquiry. This followed a long series of correspondence and reports and counter-reports which should have helped RTP to avoid giving "inexcusable" evidence. The resulting order for costs was followed by two requests for an investigation as to how such "inadvisable" evidence came to be provided. Both requests were refused, one by the Council (**see Exhibit 2 attached**), and the other, by the Scrutiny Committee. This leads me to suspect that RTP were deliberately instructed to make the very best case for granting planning permission, instead of being asked to produce a fair and impartial report.

The nature and quality of Mr. England's reports leads me to the conclusion that he may have been instructed in much the same way as RTP.

The bias of the Council and its officers is in any case quite clear from the evidence of Section 5 and 6 (pages 4-10) of my original representations to the Council on both the LMS and the WSCP applications dated 29th September 2011 (which incidentally are not comprehensive). The award of costs in the LMS appeal simply confirms this.

Normally councils are given credit for their position as impartial arbiters of matters of this kind. In these circumstances, no weight of this kind should be attached to any evidence provided by or on behalf of the Council, and indeed all the Council's

evidence should be treated with caution. The Council's evidence should be treated no better than any evidence provided by any other self-interested developer or land owner.

I have to say that, in these circumstances where the Council remains determined to pursue its own financial vested interests to the exclusion of the public good, one wonders if I am wasting my time preparing yet another set of representations, because Mr. England clearly has his instructions, and would seem to have ignored my representations to date.

General Overview

My comments on Mr. England's and DTZ reports are as follows:

- Mr. England's report fails to adequately explain why the figures in the adopted Ryedale Plan should be superseded by NLP's figures, or why the general principle of there being room for only one new food store, as, in effect, stated in the adopted Ryedale Plan should be breached.
- Mr. England's report fails to address the reasoning and findings of the inspector's report in the LMS case. He doesn't even discuss it. He does not even accept the inspector's decision that the LMS site is the most sequentially preferable site, even though this was fully debated at the public enquiry. His finding that both WSCP and the LMS sites are equally sequentially preferable is outrageous, and discredits his entire report.
- Both Mr. England and DTZ have been shown to be mistaken in their fundamental assumption that the LMS site is undeliverable. Their evident bias in spite of the clear unsuitability of the WSCP site is also utterly outrageous and is another factor which discredits both reports in their entirety.
- Neither report adequately addresses the other issues and matters raised previously by me.

The DTZ report

The penultimate paragraph of the DTZ report confirms that WSCP "lacks prominence, has poor access and is dislocated from the existing retail area in the town centre.....It is inferior in terms of prominence and quality of access for customers and service vehicles". In other words, it's not a good site for a superstore. On the other hand we do have an operator who is keen to take on the alternative sequentially preferable site which has been recommended by an impartial government inspector, after thorough debate of the merits of both sites.

The Local Plan

the second hearing which was after the CMS decision had been reviewed.

As regards the Local Plan, I witnessed the two retail presentations at the public hearings in 2012. On the second occasion (after the inspector had issued his interim report) The Council, the Fitzwilliam Malton Estate and GMI Holbeck all turned up with a full team, including planning consultants and Queen's Counsel. NLP produced a report which contradicted the Council's own evidence, and has much the same figures as their most recent retail "update" dated 18th November 2013. There was therefore an opportunity for their arguments to be fully debated, either on that day or a day to be arranged. However, the Council refused to agree to discuss NLP's evidence and objected to its presentation, and the local plans inspector upheld their objection. This was on the basis that the Council was sticking to the evidence of RTP, as modified as a result of the decision in the LMS appeal case. Since then the Council has insisted on adopting the local plan, of which the retail section remains as accepted by the Council at the Local Plans hearing. It is not therefore open to the Council or its consultant to suddenly change their position so that it now broadly accepts the NLP figures and arguments which it refused to even discuss at the local plans hearing when the top experts of all parties were available either to debate them or to fix a date for such a debate.

The other issues

As regards the other issues raised by me previously, one of the matters which most concerns me is the size and shape of the OCA (or PCA as Mr. England calls RTP's Overall Catchment Area). I dispute this. I have always disputed this, and I see that Peacock and Smith also dispute it. It is not disputed by the Fitzwilliam Malton Estate, whose case is substantially different from mine.

The OCA is arbitrarily determined and, if Zone 4A is deleted, the boundary follows almost exactly the boundaries of the administrative district of Ryedale. The boundaries of the district have no commercial significance, and there is no adequate, verifiable, reasoned justification in any report to justify making the boundaries of the OCA correspond with them. Para.5 of NLP's submission is not an adequate explanation.

Instead, in Para 5.8, of his report Mr. England concedes that perhaps zone 4A Should have been excluded from the OCA, but as less than 10% of respondents to the RTP 2011 survey came from this zone, "its inclusion does not distort the analysis of shopping patterns". Perhaps relying on his undoubted, superior knowledge, wisdom and experience (but without giving any reasons or justification at all) he goes on to say that the OCA used by NLP is "acceptable".

It is therefore important to examine the OCA in more careful detail.

The boundaries of the zones of the OCA follow postcode boundaries. They do not follow ward boundaries, which might have been more helpful. The zones radiate out from a central hub like the spokes of a wheel. This would not matter if the population were distributed evenly throughout the whole district. However, as the population is not distributed evenly, but is concentrated around five towns, the effect is one of distortion, as is demonstrated below.

Table 1 (below) shows the population of Ryedale ward by ward. This is relevant, bearing in mind that, with the exception of Zone 4A the OCA boundaries correspond with the boundaries of the district.

I also produce a copy of a map (**Exhibit 3**) showing the district's electoral wards.

I take as my base point the 2011 population figures, so as to relate to the only available survey – that of RTP which was carried out in 2011.

It will be seen that the combined population of the two Pickering wards, the Malton ward and the two Norton wards is 19,160, which is 37% of the district population of 51,900. If one adds the population of the Kirby Moorside ward, the population of all these towns is 22,610, which is 44%. If the population of Helmsley is added, the total population of the five town wards is 25,680, which is 49% of the total population of Ryedale.

Where does the rest of the population live? Ryedale is a district which comprised 550 square miles. It is, I believe, the second most sparsely populated district in England, and the rest of the population are dispersed about the villages and country areas.

Table 1

RYEDALE DISTRICT POPULATION ESTIMATES

Ward	Population	
	2011	2012
AMOTHERBY	2,050	2,060
AMPLEFORTH	2,150	2,130
CROPTON	1,540	1,540
DALES	1,410	1,400
DERWENT	3,470	3,470
HELMSLEY	3,070	3,070
HOVINGHAM	1,660	1,650
KIRKBYMOORSIDE	3,450	3,440
MALTON	4,890	5,050
NORTON EAST	3,920	4,040
NORTON WEST	3,520	3,490
PICKERING EAST	3,220	3,240
PICKERING WEST	3,610	3,590
RILLINGTON	1,750	1,730
RYEDALE SOUTH WEST	1,700	1,730
SHERBURN	1,990	1,980
SHERIFF HUTTON	1,730	1,730
SINNINGTON	1,680	1,680
THORNTON DALE	3,270	3,250
WOLDS	1,810	1,840
DISTRICT TOTAL	51,900	52,100

Notes

1. Population Estimates are calculated by Policy, Performance and Partnerships, Chief Executive's Group, NYCC. They are constrained to the Office for National Statistics Mid-2011 Population Estimates and Mid-2012 Population Estimates; ONS; Crown Copyright.
2. All figures are rounded independently and may not sum.
3. The methodologies used in the calculation of Ward Population Estimates, and in some cases the ward boundaries, vary over time. Population estimates are not directly comparable with those for other years.
4. File N:\CEG-DATA\PPP\CIS\Demog\PopEstimates\popest12\popwd1112.xls

Source RDC

Page 5 of the joint statement of Paul Beanland and myself shows in red the boundary of what Paul Beanland thinks is the correct OCA for Malton. This takes into account the fact that much of Ryedale is nearer district and sub-regional centres outside the OCA than they are to Malton. The question is how to assess **the convenience retail retention** for Paul Beanland's catchment area.

If the boundaries of RTP's OCA zones had followed ward boundaries, it would have been easy to assess this. However, it is still possible to form a rough opinion based on the data we have. Table 2 below combines data from two of RTP's spreadsheets and shows the percentages of Ryedale's population which does convenience shopping within RTP's OCA, and derives population numbers from the percentages. I have then selected those zones which either include Malton and Norton or have a boundary which is immediately adjacent to these two towns. These zones (4B, 5B, 6A & 6B) can be expected to have most of their population concentrated nearest the two towns. It should be noted that the population projection is for 2011, and that the overall figure of 53,875 differs from the figure provided by Ryedale of 51,900 which purport to take into account mid-2012 population estimates.

Table 2

RTP Zone	Population	Percentage shopping within OCA	Numbers	Population of selected zones	Numbers of shoppers in selected zones shopping in OCA
1	6149	58.67	3,608		
2	6324	68	4300		
3A	5873	71.28	4186		
3B	6084	67.43	4102		
4A	5026	22.05	1108		
4B	5679	68.72	3902	5679	3902
5A	2809	47.5	1334		
5B	8042	81.94	6514	8042	6514
6A	2873	89	2557	2873	2557
6B	5014	81	4061	5014	4061
Total	53875		35672	21608	17034

Source: Spreadsheets 2 and 12 Appendix 2 Volume2 RTP Ryedale Retail Capacity and Impact Assessment Update 2011 – population figures from 2011

It will be seen that the percentage retention of 35,672 and 53875 is 66%.

However, if one looks at the selected zones, the percentage retention of 17034 and 21608 is 78%

It therefore follows that:

- there has to be a watershed from which shoppers will go to the easiest and most convenient retail outlets, and that the line of this watershed does not follow the OCA of RTP or NLP's PCA, and
- The amount of the convenience retention in any OCA is proportionate to the distance of the boundaries of the OCA from its convenience retail centre, after taking into account the threshold from where it becomes more convenient to travel to other centres. In other words, the further the OCA boundary is drawn from the Paul Beanland's watershed line, the less reliable it is, and the "retention" of 66% or 68% underrates the true "retention" within an acceptable and realistic OCA, and
- The OCA boundaries are too wide to provide a reasonable assessment of a realistic retention. There is no evidence to suggest that a 66% or 68% retention is either unreasonable or unrealistic within the boundaries of the OCA as drawn. There is no evidence to show that the retention can realistically be increased. It goes without saying that, if there is insufficient capacity to support the existing centres and new development there will be trade diversion which will damage and weaken existing centres.
- Malton's retention is highest in the densely populated area in and around the towns of Malton and Norton, and
- As regards the less densely populated areas, it is reasonable to assume that residents outside Paul Beanland's watershed boundary are less likely to shop in RTP's OCA than residents within it, and,
- In the absence of any clear data to the contrary, it is reasonable to suppose that Malton's "retention" within an acceptable OCA for Malton alone is 78%, and
- In the absence of clear data to the contrary, it is reasonable to expect that within Paul Beanland's "watershed" which includes the towns of Pickering and Kirby Moorside, the combined retention of those towns and other outlets within the watershed and Malton is likely to be in the region of 78%.

It is not, of course, impossible to increase the retention of any town within any OCA, however wide or unrealistic the OCA is drawn. However, in order to achieve this, the offer would have to be something special or out of the ordinary.

All the evidence suggests that the only store chain likely to be interested in WSCP is Tesco. There is nothing in a Tesco which is special or out of the ordinary, because RTP's OCA is surrounded by Tesco's (Clifton Moor, Thirsk) or similar stores (Sainsbury's and ASDA Monks Cross, Morrisons Scarborough, Seamer etc.) One has to ask the question: why would a regular customer of any of these stores prefer to do their weekly shop in Malton, when their regular store is nearer to them and has a

better site than WSCP, which is described by DTZ as lacking “prominence, has poor access and is dislocated from the existing retail area in the town centre”

However, Booths is a store which has its own special character and range of products and is out of the ordinary. People will drive miles to get to a Waitrose. Booths targets a similar market, and so people are likely to drive miles to get to a Booths at Malton. It follows that if there is any so called “leakage”, a Booths in the Cattle Market area is far more likely to plug the “leakage” than a Tesco in WSCP.

Forecast Retention and Trade draw – Comparison goods

As far as Comparison retail retention is concerned, the view I take is that this will come (if at all) mainly on the back of increased convenience retention. I will accept that, if convenience retail retention within RTP’s OCA can be increased to 83%, then it would not be unreasonable to expect the comparison retention to increase by 6%. However, there are three important qualifications:

- A Booths store in the sequentially preferable LMS site is more likely to increase convenience retention than a Tesco in WSCP; and
- If there is no or little increase in convenience retention, there will not be a significant increase in comparison retention; and
- As indicated in my joint statement with Paul Beanland, the 6% increase in comparison retention (if attainable) would almost entirely be spent in the planned superstore in the car park, if planning permission is granted, and so the rest of Malton Town Centre will not benefit to any significant degree from any increase in comparison retention if consent is given for a superstore on the car park.

I therefore will make no further comment on comparison retention at this time, although I reserve the right to do so later, if appropriate.

Forecast Retention and Trade Draw – Convenience Goods

RTP, in the light of their undoubted, superior knowledge, wisdom and experience (but without giving adequate reasons or justification) set a target for increasing convenience retention within RTP’s flawed OCA from 66% to 85%. In their earlier reports, again relying on their undoubted, superior knowledge, wisdom and experience (but without giving adequate reasons or justification), they had set a target of 80%. In paragraph 8.13 of his report, Mr. England recognises that the 85% target is an “aspiration”. He then makes an almost uncritical analysis of NLP’s impact tables in order to assess what the potential convenience retention could be (paras. 8.25 – 8.27). According to this, he notes that NLP have stated that they expect there would be clawback from the “large superstores, principally in York and Scarborough” of £11m in convenience goods. However, he goes on to say that NLP’s impact tables, (which he accepts almost without question) show that as £10.2M of convenience turnover is expected to be trade diversion from stores/centres within the study area, the amount of clawback “MUST” be £8.9M, which justifies an assumption of an increased convenience retention of 83%.

This is to put the cart before the horse. It depends on an assumption that if the turnover is £22.51m, then NLP are able to predict precisely how much of that turnover will come from existing stores and how much from “clawback”. As we have seen, clawback cannot be forecast with any degree of accuracy unless there is an acceptable OCA. Clawback does not depend on the capacity of the superstore, as Mr. England would have us believe, but on the size and nature of the OCA and an accurate assessment of shopping trends within the OCA, which in my view has not been done.

The arguments in Mr. England’s report do not therefore provide a reasoned and logical justification for setting an 83% retention target for convenience shopping within RTP’s flawed OCA.

NLP’s Tables on Convenience Retention

In his undoubted, superior knowledge, wisdom and experience (but without giving reasons or justification), Mr. England all but accepts NLP’s data, tables and conclusions, without putting them under adequate scrutiny or examination. The following points should be noted:

- a) NLP have not carried out their own survey work. So their data derives entirely from the survey carried out by RTP in 2011, and before permission was granted for a TESCO at Kirkby Moorside.
- b) The RTP survey was carried out before Lidl in Pickering was built and before Netto in Malton was converted into an ASDA
- c) NLP have added a new element called “inflow”, which is not understood, bearing in mind that RTP either did not include it, or included it without specifying it as a separate item.
- d) NLP’s figures look at two scenarios – both with a superstore on WSCP, but one with and one without a store on LMS site. However, both these scenarios are based on an exaggerated model of the flawed RTP’s “Rising Retention plus” scenario.
- e) NLP have combined the data from RTP’s zones 3 – 6, discarding RTP’s subdivision of each of these zones into two, thus increasing the distortion created by treating the entire OCA as if there is an even spread of population, instead of concentrations around towns, as previously explained.
- f) NLP have used “local estimates of available convenience expenditure per capita at 2011 (in 2011 prices) sourced from Experien E-Marketer software” instead of “2008based per capita convenience expenditure data sourced from Oxford Economics 2010 via Mapinfo Anysite 8.8.1”, as used by RTP.
- g) NLP have acknowledged that, notwithstanding their calculations, the “worst case scenario” would be for there to be stores on both LMS and WSCP. So, in spite of all their manipulation of the figures, they cannot get away from the

fact that there is not room for another superstore in Malton if the LMS project goes ahead.

As regards the above:

(a) is self-explanatory;

The survey has not taken into account shopping trends since the stores in (b) were completed or converted. The applicants' data is out of date. Any estimates of the amount of trade the three stores in question, or of the TESCO which has been allowed at Kirkby Moorside is guesswork and should not be accepted until they have been tested by another survey;

(d) is a fundamental point. Both of NLP's scenarios (as modified by Mr. England) assume there is a potential retention of 83% throughout RTP's OCA. If, as I have argued, the OCA is unsound, and/or the potential 83% retention is unrealistic, the applicants cannot base a sound argument on the rising retention plus scenario. All their figures and tables should therefore be given little weight.

As regards (e), it has already been explained how important population density in a district like Ryedale is to drawing a realistic OCA. The fewer the zones the more difficult it is to take population density into account.

As regards (f) In appendix 3 NLP provides tables on their purported retail impact assessment. As mentioned, this depends entirely on RTP's flawed "Rising Retention Plus" scenario. NLP use data from RTP's survey, except that instead of using RTP's material to determine the "convenience expenditure per capita", they've used "local estimates of available convenience expenditure per capita at 2011 (in 2011 prices) sourced from Experien E-Marketer software" (see note 1 Table 2)

The equivalent RTP table is Spreadsheet 10 in Appendix 2 of the of Volume 2 of the RTP "Ryedale Retail Capacity and Impact Assessment Update" of July 2011. This does not use experien figures, but states (Note 1) "2008 based per capita convenience expenditure data were sourced from Oxford Economics 2010 via Mapinfo Anysite 8.8.1"

The differences in regard to convenience retail expenditure per capita between the RTP and NLP tables are significant, as shown in the following Table 2(in regard to 2011):

Table 2

OCA Zone	RTP (£)	NLP (£)
1	1,484	1,740
2	1,530	1,918
3a	1,534	1,883
3b	1,554	Ditto
4a	1,594	1,841
4b	1,488	Ditto

5a	1,522	1,801
5b	1,500	Ditto
6a	1,523	1,779
6b	1,528	Ditto

One has to ask the question: why are NLP using Experien and not Oxford Economics? What is the difference between the two? Why are Experien's figures so much higher? Which is more reliable or appropriate, and why? I can find no adequate explanation of why one set of projections should be preferred over the other, either in NLP's submission or Mr. England's report.

This difference in figures works its way through to the issue of the alleged "overtrading".

According to para. 5.24 of England and Lyles' "Review of updated Retail Statement by Nathaniel Lichfield and Partners" dated February this year, Morrisons "has an estimated survey-based convenience turnover of £34.57M, to which is added an inflow of trade of £6.10M to obtain a total convenience turnover of £40.67M (inflow is 15% of turnover). Morrisons convenience sales floorspace, they say, is 2010 sq.m, giving a sales density of £20,234 per sq.m. Morrisons company average turnover in convenience goods according to Verdict 2012 (also in 2011 prices) is £12,737 per sq.m.. Therefore the store's actual turnover is estimated to be 59% higher than its benchmark turnover....." The "estimated" survey based data is the relevant data multiplied by the Experien figure.

However, according to RTP Table 3.9 on page 20 of volume 1 of their 2011 report, the convenience goods expenditure retained by Morrisons is £29.4M, and no account is taken of any added "inflow of trade". If this is correct, Morrisons Malton's sales density is £14,627 per sq.m., which is not a lot more than the quoted Morrisons company average turnover benchmark.

Of course, one cannot know if Morrisons are actually over-trading, without Morrisons reporting what their convenience turnover is.

There is a **second point in regard to overtrading**. This is that RTP provided for half of this, whereas NLP and Mr. England have provided for the whole of it. Presumably RTP were of the opinion that it was not realistic to expect the whole of any overtrading by Morrisons to go to the new store on WSCP. Indeed, I can find no adequate explanation for doubling the allowance for "overtrading" as stated by NLP and agreed by Mr. England, and wonder if this too should be written down to their undoubted, superior knowledge, wisdom and experience (for which they do not feel obliged to give reasons or justification).

A **third point in regard to overtrading** is linked to (b) above. The 2011 survey was completed before Netto was converted into an ASDA and before Lidl was built at Pickering or permission was given for a TESCO at Kirkby Moorside. The question is: what allowance (if any) have NLP made for this, bearing in mind that there is no reliable survey data?

RTP reckon, on the basis of their survey, that the convenience retention of Malton is 66.2%. NLP consider that the retention will be 68.1% in 2018 (Table 5 Appendix 3 NLP. see Note 2 for the 2018 date). The difference can be noted in Table 3 by comparing NLP's said Table 5 with RTP's Appendix 2 Spreadsheet 13:

Table 3

Store/Centre	RTP's OCA area percentage retention (2011)	NLP's OCA area percentage retention (2018)	Difference (+ or -)	Difference in percentage
Morrisons , Malton	35.8	35.2	-	0.6
NETTO/ASDA, Malton	2.9	2.6	-	0.3
Other shops Malton TC	4.9	4.6	-	0.3
Lidl, Norton	2.5	3.6	+	1.1
Other shops Norton TC	1.6	1.6	=	0
Co-op Pickering	4.8	5.9	+	1.1
Other shops, Pickering	4.0	3.7	-	0.3
Kirkby Moorside centre	4.0	4.2	+	0.2
Helmsley Centre	3.6	3.6	=	0
Other stores	2.1	3.1	-	1
Total	66.2	68.1	+	1.9

A number of points should be noted:

- The source document for the data for both NLP and RTP is RTP's 2011 survey.
- The differences in percentages for both NLP and RTP is generally small, and may be due only or mainly to the substitution by NLP of Experien based calculations on population expenditure per capita for RTP's use of Oxford economics figures.
- No allowance would seem to have been made for the conversion of NETTO to an ASDA. My understanding is that NETTO, being a deep discount store, would expect to have a convenience turnover of £3,000 per sq.m per annum, whereas even a small ASDA of the size of the Malton store could expect to have a turnover of at least £10,000 per sq.m per annum. It follows that ASDA's retention should be at least tripled to 7.8%, and either the total

percentage retention for RTP's OCA should be increased by (7.8 – 2.6) 5.2%, or a trade diversion of that percentage must be taken from other centres or stores.

- No account is taken of the new Lidl at Pickering, which is not included in RTP's survey at all. As the similarly sized Lidl at Norton is expected to take a percentage of 3.6%, it is reasonable for the one at Pickering to also retain 3.6%. It therefore follows that NLP's 68.1% retention should either be increased by at least 3.6%, or else trade diversion of that amount has to be deducted from the percentages representing the convenience trade retained by them.
- No account is taken of the permission for the new TESCO in Kirkby Moorside, which is expected to come into operation in 2016. This would have at least the same impact as the ASDA in Malton, which, as suggested above, is likely to be 7.8%.

Taking all these figures together, it would appear to be necessary to do one or other of the following:

Either to add the additional percentage retentions as follows:

ASDA	5.2%
Lidl Pickering	3.6%
Tesco (KM)	7.8%
Total	16.6%
Add NLP's OCA retention	68.1%
Total	84.7%

It will be seen that, if this is done, the required retention of 83% recommended by Mr. England will have been exceeded without any need for any new store for which planning permission has not already been granted.

If, on the other hand, it is accepted that the new stores and the new conversion are unlikely to increase the overall retention of the entire OCA by the amounts stated above, one has no alternative but to assume that there will have to be a trade diversion from other existing stores. This trade diversion is not allowed for in NLP's figures and will come **BEFORE and IN ADDITION to** any trade diversion which would be occasioned by the completion and bringing into operation of a new superstore in Wentworth Street Car Park.

It should not therefore be necessary to set out any further figures or calculations on impact to prove the point, as it would seem that in the light of these figures it is wholly unrealistic to suggest that there is room for another TESCO-type store on Wentworth Street Car Park or to argue that if one is built, it is not going to have a catastrophic impact on other centres within the OCA.

However, this is not the end of the story, because NLP use Experien expenditure per capita figures to get round this. This will be dealt with in the next section.

Mr. England's analysis

In paragraph 8.7 of his report, Mr. England says: "In this review we summarise NLP's impact tables in a format that we believe will be easier for officers and members to understand". He then goes on to say how he has dealt with the capacity analysis tables of NLP. It is suggested that this is all he has done. He has simply reproduced NLP's arguments and calculations in a more user-friendly format without making any significant critical analysis. As a consequence it is disappointing and should be given very little weight.

However, Table 1A of his report is helpful, as it shows how NLP have dealt with Netto/Asda, Norton, Tesco Kirkby Moorside and Lidl Pickering. This table uses the Experien derived expenditure per capita formula to give a convenience goods expenditure for the flawed OCA as £100.18m.

According to the table, if a retention of 83% is required in 2018, there will be an expenditure capacity of £83.15m. Please bear in mind my submission to the effect that an 83% retention is unrealistic for such a large OCA, surrounded as it is by other Tesco-type superstores in neighbouring district (eg. Thirsk) and sub-regional centres (eg. York and Scarborough).

On this flawed basis, there is stated to be a "total available capacity" of £39.22m, of which £21.75 will come from "commitments".

These commitments are listed as: Lidl, Pickering, Tesco Kirkby Moorside and the store on the LMS site. On this basis, Mr. England reckons that there is room for stores on both sites.

However, Mr. England's figures are clearly mistaken, for the following reasons:

- His figures do not take into account the conversion of NETTO to a full ASDA local. As mentioned above, the RTP data taken from their 2011 survey refers to this store as NETTO. RTP state that NETTO's turnover ("convenience goods expenditure retained within the OCA" - Table 3.9) is £2.4M. NLP Table 4 gives ASDA a total turnover of £2.95m, which suggests that NLP have no new data about ASDA, but have used figures which coincide with those of RTP in relation to NETTO, so as not to make allowance for the conversion. Further, as explained above, it is understood that an ASDA of this size would expect to have a turnover of at least £10,000 per sq.m – roughly three times the amount of a deep discount store such as NETTO. So ASDA should be added to the list of commitments with a total estimated turnover of £8.85m (ie 3 x £2.95), of which £5.9m should be attributed to the conversion.
- According to Mr. England, the total estimated (for 2018) turnover of Lidl, Pickering is given as £3.10m. However, NLP Table 4 states that for 2013 the total turnover of the Lidl in Norton is £4,214m. It is difficult to understand

why the Pickering Lidl should be any less prosperous than the one in Norton, as they are both Lidl's standard size.

On this basis, the commitments in Mr. England's Table 1A should be re-written as follows:

Lidl, Pickering	£ 4.214m
Tesco Kirkby Moorside	£ 8.51m
Conversion of NETTO to ASDA	£ 5.9m
Foodstore LMS	£ 14.66
Total turnover	£ 33.284m

This gives a turnover from PCA of £27.557m ($21.75/26.27 \times 33.284$).

This is £5.807m in excess of the inflated capacity which both NLP and Mr. England say is available, and shows that even on their inflated figures there is insufficient capacity to support two new stores.

Summary in regard to convenience retail

There has been a history of manipulation of figures and data in this case as follows:

- RTP created an OCA which bears no relation to the commercial realities of the district;
- RTP then set an arbitrary aspirational retention target, firstly of 80%, and then in 2011, of 85%. In doing so, they put the cart before the horse – they set the target without first establishing whether the target was attainable;
- RTP then revised their figures several times to take into account spare capacity taken up first by the grant of a new extension to Morrisons, then the permission for the Lidl at Norton;
- RTP's 2011 survey does not take into account the conversion of NETTO, Norton to an ASDA.
- All the above matters have been dealt with at length in the submissions which I made before the meeting in March 2012 which considered both this application and the LMS application. These submissions are included in my earlier submissions, and are part of my case.
- Planning permission was granted for WSCP and refused for the LMS site in March 2012. The owners of the LMS site appealed, both sites were the subject of debate during the ensuing public enquiry which took place in September 2012, and RTP were obliged to concede in cross-examination that the LMS site was the sequentially preferable site, and it was common ground between the Council and the appellants that there was only room for one new store for the whole district. The inspector found some of the Council's evidence as "inexcusable", and the Council were ordered to pay costs which were assessed

at £148,000. They also had to undertake not to issue the permission for WSCP without going back to committee. The inspector allowed the appeal and granted consent for the LMS application.

- Also in 2012 the retail issue was debated before a local plans inspector at a hearing when full teams of leading counsel and consultants were in attendance representing the Council, GMI Holbeck and the owners of the LMS site. GMI's team asked the inspector to consider a new case submitted by NLP, which was on much the same basis as the current matter. The Council refused to allow this new information to be submitted, and relied upon the evidence of RTP which was that there was only room for one new store in the entire district.
- Early in 2013 the Council granted permission for Tesco at Kirkby Moorside.
- Notwithstanding the inspector's decision, GMI submitted a revised application, and instead of using RTP, Ryedale appointed Mr. England to vet GMI's application.
- NLP, acting on behalf of GMI have based their submission on the same flawed OCA as RTP, and the same flawed "aspirational" 85% retention target. Mr. England has substituted an 83% retention target. NLP and Mr. England have made the same mistakes in this respect as RTP.
- NLP rely on the data from RTP's 2011 survey, and have done no survey of their own.
- Both RTP and NLP have assumed that Morrisons are vastly over-trading. However, their evidence for this is based on supposition and not on established facts. RTP considered Morrisons store would reasonably be expected to lose one half of the estimated alleged over-trading. NLP disagree: they think Morrisons will lose ALL its alleged over-trading. The reason for this difference of opinion has not been adequately explained.
- NLP have calculated per capita expenditure using Experien E-Marketer software, which is more favourable to their client than the Oxford Economics formulae used by RTP. This has enabled them to allow for more spending capacity within the OCA than RTP had. However, no adequate explanation has been given as to why Experien's formulas should be preferred to Oxford Economics.
- It can be argued that the capacity within the OCA has already been exceeded. This means that, if the aspirational retention target of 83% is realistic, this target has already been attained. Alternatively, if the said target is not realistic, then there is already considerable trade diversion from existing stores and centres, which is damaging them.
- In my opinion there is no quantitative need for another store at all, but there is a qualitative need to provide an anchor for Malton Town Centre. The LMS site

is the sequentially preferable site, and Booths is more likely to attract new shoppers to Malton than a bog standard Tesco.

COUNCILLOR PAUL ANDREWS

11th April 2014

EXHIBIT 21

Conflict of interest row erupts over Tesco stores expansion Supermarket and councils both on the books of the same planning advisers

By Alan Crawford

Sunday 21 August 2005

THE expansion of Tesco superstores into smaller towns across the UK is encountering cross-party political opposition following allegations of possible irregularities in the planning process.

Local opponents of new supermarkets have written to the Royal Town Planning Institute (RPTI), a professional body for planners, with allegations of three instances in Scotland and North England of a potential conflict of interest.

The complaints centre on two consultancy firms, GVA Grimley and England & Lyle, that have produced reports on the need for a supermarket for the local authority granting planning permission, while also acting on behalf of Tesco, the UK's largest supermarket group, with some 30-per cent of the retail market.

Both firms deny any conflict of interest, and GVA Grimley is taking legal advice on the allegations. The firms say they have acted for Tesco but in different parts of the country than those the subject of current planning applications.

Paul Rounce, of GVA Grimley in Edinburgh, said the firm worked for "all manner of clients including a number of local authorities. We will see what our lawyers have to say about it. But we do this work all the time and have never come across a case where an individual has alleged something like this."

John England, a partner in Darlington-based England & Lyle, added: "It's in the nature of consultancy work that occasionally you find that you're working for one client and then in a different area, let's say the council, it may well be that same client, say Tesco, is closely involved. But there's no conflict from a professional point of view because the work is totally different."

However, politicians of all parties are now demanding greater scrutiny of the planning process, particularly in Berwick, Castle Douglas and Crieff, where complaints have been made over stores planned by Tesco.

Labour and Liberal Democrat MPs have raised the Berwick case with the Office of the Deputy Prime Minister, John Prescott, and in Scotland Green MSP Chris Balance has written to the Scottish Executive asking ministers to look into the Castle Douglas case.

The SSP's Rosemary Byrne, MSP for the South of Scotland, is also asking the Scottish Public Services Ombudsman, who looks at administrative processes involved, to investigate.

"I've grave concerns about the practises uncovered, " she said.

Meanwhile, Tory MSP Alex Fergusson is urging Dumfries and Galloway Council's chief executive to put Tesco's new store in Castle Douglas on hold until the RTPI completes its investigations.

The issue first came to light in Castle Douglas 10 days ago, when it emerged that an opponent of Tesco's plans had lodged a complaint with the RTPI against Roger Slipper, a partner of GVA Grimley.

The complaint alleged that Slipper's agreeing to write a report for the council broke the RTPI code of conduct, which state that members "must take all reasonable precautions to ensure that no conflict of duty arises between the interests of one employer or client and another, or between the interests of any employer or client and the interests of themselves or their firms or business associates".

The Sunday Herald has learned that a complaint has also been made against England & Lyle in similar circumstances.

Ross Dempster, an optician, wrote to the RTPI in June and last week on behalf of the Berwick Chamber of Trade and Commerce, to point out that England & Lyle had advised the council on catchment areas for a new Tesco store, although the firm also has Tesco as a client.

LibDem MP for Berwickupon-Tweed, Alan Beith, has written to John Prescott and planning minister Baroness Andrews calling for a public inquiry into plans to site up to six supermarkets on the outskirts of the historic town.

He too is concerned that the report prepared for Berwick Council stated that the potential catchment area for a Tesco store - the only supermarket of the six proposed to have been approved so far - included some 50,000 people, even though the population of Berwick is only 12,000. He said such a catchment area would impact on Galashiels or Kelso.

Beith said he wants the public inquiry to look at the role of England & Lyle in light of Tesco being a client, saying: "Even if the report is entirely objective, it is not entirely satisfactory."

"It's a conflict of interest at worst; at the least, it suggests that the council and Tesco are relying on the same source of information for shopping potential in the area."

The Sunday Herald has also learned that GVA Grimley produced a retail survey of Crieff for Perth and Kinross Council in June in preparation for a proposed supermarket in the town, to be recommended as the site for a Tesco store at a council meeting on Wednesday. Another complaint is understood to be on its way to the RTPI over this case, along with requests to the Scottish Public Services Ombudsman for an investigation.

"It doesn't look good, " said SNP MSP for Perth, Roseanna Cunningham. "I think it will make people in Crieff very suspicious of the results of the survey that was done."

Rounce, of GVA Grimley, confirmed he was aware of the complaint but he said the council was "relaxed", and "absolutely" denied any conflict of interest.

Jonathan Refoy, corporate affairs manager for Tesco in Scotland, speaking of the process in Castle Douglas, said it had been conducted "with utmost public scrutiny".

He added: "We are very robust in the nature in which we carry out our planning applications."

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