

PLANNING COMMITTEE

Tuesday 18 August 2015 at 6.00 pm

Council Chamber, Ryedale House, Malton

Agenda

- 1 **Apologies for absence**
- 2 **Minutes of meeting held on 21 July 2015** (Pages 3 - 6)
- 3 **Urgent Business**
To receive notice of any urgent business which the Chairman considers should be dealt with at the meeting as a matter of urgency by virtue of Section 100B(4)(b) of the Local Government Act 1972.
- 4 **Declarations of Interest**
Members to indicate whether they will be declaring any interests under the Code of Conduct.

Members making a declaration of interest at a meeting of a Committee or Council are required to disclose the existence and nature of that interest. This requirement is not discharged by merely declaring a personal interest without further explanation.
- 5 **Schedule of items to be determined by Committee** (Pages 7 - 8)
- 6 **15/00627/MOUT - Agricultural Contractors, Welham Road, Norton** (Pages 9 - 29)
- 7 **15/00612/MREM - Malton Livestock Market, Cattle Market, Malton** (Pages 30 - 77)
- 8 **15/00616/MREM - The Showfield, Pasture Lane, Malton** (Pages 78 - 124)

- 9 **15/00348/FUL - Boortmalt Group, Poplars Lane, West Knapton** (Pages 125 - 141)
- 10 **15/00620/FUL - Land To The Rear Of Woodmans Cottage, High Street, Cropton**
(Pages 142 - 151)
- 11 **15/00792/FUL - Land To The East Of Wold Lane, Staxton** (Pages 152 - 182)
- 12 **Part B Report - Developer Contributions from Small Sites** (Pages 183 - 185)
- 13 **Part B Report - Judicial Review - The Queen on the Application of Milton
(Peterborough) Estates Company trading as Fitzwilliam (Malton) Estate v
Ryedale District Council** (Pages 186 - 232)
- 14 **Any other business that the Chairman decides is urgent.**
- 15 **List of Applications determined under delegated Powers.** (Pages 233 - 240)
- 16 **Update on Appeal Decisions** (Pages 241 - 253)

15/00098/MOUT - Residential development of up to 79 no. dwellings together with formation of vehicular access - Site B (site area 3.65ha).

Decision

APPLICATION REFUSED - As recommended.

[For 8 Against 0 Abstain 0]

In accordance with the Members' Code of Conduct Councilors Hope and Goodrick declared a personal non pecuniary but not prejudicial interest. Councilor Burr declared a personal and prejudicial interest and left the room.

37 **15/00636/HOUSE - Orchard House, Main Street, Middleton, Pickering**

15/00636/HOUSE - Erection of single storey rear extension.

Decision

PERMISSION GRANTED - Subject to conditions as recommended.

[For 8 Against 0 Abstain 0]

38 **15/00601/FUL - Land At Cornborough Road, Sheriff Hutton**

15/00601/FUL - Retention of timber cabin for use as an office, staff facilities, storage area and incubator area.

Resolution

That the Council declines to determine the retrospective planning application (received 20 May 2015) for the retention of a timber cabin for use as office/WC/store room under Section 70C of the Town and Country Planning Act 1990(the 1990 Act).

[For 8 Against 0 Abstain 0]

In accordance with the Member's Code of Conduct Councilor Hope declared a personal non pecuniary but not prejudicial interest.

39 **Any other business that the Chairman decides is urgent.**

There was no other business.

40 **List of Applications determined under delegated Powers.**

The Head of Planning & Housing submitted for information (previously circulated) which gave details of the applications determined by the Head of Planning & Housing in accordance with the scheme of Delegated Decisions.

41 **Update on Appeal Decisions**

Members' were advised of the following appeal decision.

Appeal Ref: APP/Y2736/D/15/3007572 - 26 Piercy End, Kirkbymoorside, North Yorkshire, YO62 6DF

The meeting closed at 8.20pm

APPLICATIONS TO BE DETERMINED BY RYEDALE DISTRICT COUNCIL

PLANNING COMMITTEE - 18/08/15

6

Application No: 15/00627/MOUT

Application Site: Agricultural Contractors Welham Road Norton Malton North Yorkshire

Proposal: Residential development of 23no. dwellings following demolition of existing agricultural type buildings (site area 0.54 ha) - revised details to refusal 14/00096/MOUT dated 09.06.2014.

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Application No: 15/00612/MREM

Application Site: Malton Livestock Market Cattle Market Malton North Yorkshire

Proposal: Demolition of existing livestock market and erection of retail units, three storey car park and public square (outline approval by Appeal Ref: APP/Y2736/A/12/2174677 dated 29.10.2012 following refusal 11/00412/MOUT dated 12.04.2012 refers)

8

Application No: 15/00616/MREM

Application Site: The Showfield Pasture Lane Malton North Yorkshire

Proposal: Erection of 34no. two bedroom dwellings, 59no. three bedroom dwellings and 81no. four bedroom dwellings together with associated access, garaging and landscaping to include formation of earth bund to eastern site boundary. Phase 1 site area 6.32ha (outline approval 14/00427/MOUTE dated 24.03.2015 refers).

9

Application No: 15/00348/FUL

Application Site: Boortmalt Group Poplars Lane West Knapton Malton North Yorkshire YO17 6RN

Proposal: Raising the roof of part of existing building to allow installation of new roasting plant and associated equipment, installation of external plant and chimneys ranging in height from 12m to 23m and siting of an external steel container.

APPLICATIONS TO BE DETERMINED BY RYEDALE DISTRICT COUNCIL

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Application No: 15/00620/FUL

Application Site: Land To The Rear Of Woodmans Cottage High Street Cropton Pickering North Yorkshire

Proposal: Erection of detached 2 bedroom dwelling together with formation of 5no. parking spaces for shared use with Woodmans Cottage.

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Application No: 15/00792/FUL

Application Site: Land To The East Of Wold Lane Staxton Scarborough North Yorkshire

Proposal: Erection of a general purpose agricultural building to include the housing of livestock

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SCHEDULE OF ITEMS TO BE DETERMINED BY THE COMMITTEE

PLANS WILL BE AVAILABLE FOR INSPECTION 30 MINUTES BEFORE THE MEETING

Item Number: 6
Application No: 15/00627/MOUT
Parish: Norton Town Council
Appn. Type: Outline Application Major
Applicant: Thomas Crown Associates Ltd
Proposal: Residential development of 23no. dwellings following demolition of existing agricultural type buildings (site area 0.54 ha) - revised details to refusal 14/00096/MOUT dated 09.06.2014.
Location: Agricultural Contractors Welham Road Norton Malton North Yorkshire

Registration Date: 3 June 2015
8/13 Wk Expiry Date: 2 September 2015
Overall Expiry Date: 16 July 2015
Case Officer: Alan Hunter **Ext:** Ext 276

CONSULTATIONS:

Highways North Yorkshire	Recommend conditions
Parish Council	Recommend refusal
Vale Of Pickering Internal Drainage Boards	Not in the IDB area
Public Rights Of Way	Recommend informative
Housing Services	Recommend conditions
Countryside Officer	No views received to date
Sustainable Places Team (Yorkshire Area)	Object
Land Use Planning	Recommend conditions
Tree & Landscape Officer	No views received to date
Environmental Health Officer	Recommend condition
Archaeology Section	Further archaeological evaluation required
North Yorkshire Education Authority	Developer contribution request
Flood Risk (Stuart Edwards)	Object - insufficient information
North Yorkshire Police Architectural Liaison Officer	Detailed comments, recommend conditions

Neighbour responses: David & Audrey Slaughter, Dinah & Howard Keal, Mr Chris Kirby, Mr John Stuart, Mr Frank Greatorex, Mrs Mellisa Mackenzie, Mr John Gelson, Patricia Greene, Mrs Nichola Scott, Mrs Lisa Horton, Mr Daniel Gilbank, Mr David Cooper, Mrs A Watts, Ms Dahne Moulding, Noel Revis, Mr & Mrs J Calvert, Mr & Mrs J Simpson, Mrs Sharon Bone, Mrs Yvonne Fogg, Mrs Karen Scott, Mr Stephen Waudby, Mrs Carla Mitchell, Mrs Gill Coates, Mr John Deacon, Mrs Joanne Clarke, Pat Wade, Mrs Irene Linfoot, Mr Paul Sandy, Mr A Paine, Mr Trevor Moss, Mr James Urquhart, Mrs Cathryn Hart, Mr Neil Campbell, Mr Reece Horton, Mrs P Jones, E Moss, Mr Mark Kewley,

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SITE:

The application site is located within the development limits of Norton, approximately 100 metres to the east of Welham Road and directly to the north of the Lakeside Way development. The site is almost triangular in shape and to the northern boundary, the site abuts the rear gardens of dwellings in Spring Field Garth. St Peter's Street lies further to the east. A footpath runs along the southern boundary of the site and is part of a network of pedestrian links which run between Welham Road, Lakeside Way, St Peter's Street, Springfield Garth and St Nicholas Street.

The site has a total area of 0.514 hectares (1.27 acres) and approximately 95% of the site lies within Flood Zone 3 with the remainder in Flood Zone 2. Mill Beck abuts the sites western boundary.

PROPOSAL:

The application seeks outline planning permission for a residential development proposal of 23No. dwellings, following the demolition of the existing buildings on site. The outline application seeks approval for the reserved matters of both access and layout.

The layout is submitted at a scale of 1:500 and shows a development comprising a mix of flats and houses. The submitted plan includes a schedule of accommodation which specifies the following units on the layout.

Unit 1 - Detached 2/3 bed house

Unit 2 - Detached 4 bed house

Unit 3 - Detached 4 bed house

Units 4 - 11 (inc) - 8No. 1 bed flat - located within a 3-storey block

Units 12 - 17 (inc) - 6No. 2 bed houses (terraced)

Units 18 - 20 - 3No. 3 bed houses (terraced)

Units 21/23 - 2No. 3 bed houses (terraced)

Unit 22 - 1No. 2 bed houses (terraced)

The layout also shows ancillary garaging, open residents parking and also visitor parking spaces. The density equates to approximately 42 dwellings/hectare.

In addition to the submitted plan, the application is accompanied by a Design & Access Statement; a Planning Supporting Statement; an Ecological Assessment; an Arboricultural Assessment; an Archaeological Desk Based Assessment; a Phase 1 Desk Top Study Report; and a Flood Risk Assessment including Flood Compensation information. All of the technical reports can be viewed in full on the Council's website.

RELEVANT PLANNING HISTORY:

Relating to the Application Site

80/00129/OLD (3/96/270/PA) - Erection of steel framed implement shed - Approved 31.03.1980

83/00128/OLD (3/96/270A/PA) - Toilet block - Approved 19.08.1983

12/00890/PREAPP - Pre-application advice in respect of Proposed Development - Advice given 18.10.2012

14/00096/MOUT - Residential development of 18No. dwellings following demolition of existing agricultural type buildings (site 0.54ha) - Refused 09.06.2014

Relating to Lakeside Way

91/00083/OLD (3/96/335E/OA) -Residential development including provision of public open space, lake, construction of Mill building and access improvements (site area 3.25 HA) at Leopold Nursery and Beck Mill - Approved 21.9.92

POLICY:

National Planning Policy

National Planning Policy Framework
National Planning Practise Guidance

Ryedale Local Plan Strategy

Policy SP 1 - General Location of Development and Settlement Hierarchy
Policy SP 2 - Delivery and Distribution of New Housing
Policy SP 3 - Affordable Housing
Policy SP 4 - Type and Mix of New Housing
Policy SP 10 - Physical Infrastructure
Policy SP 11 - Community Facilities and Services
Policy SP 14 - Biodiversity
Policy SP 16 - Design
Policy SP 17 - Managing Air Quality, Land and Water Resources
Policy SP 19 - Presumption in Favour of Sustainable Development
Policy SP 20 - Generic Development Management Issues
Policy SP 22 - Planning Obligations, Development Contributions and the Community Infrastructure Levy

CONSULTATION RESPONSES:

The Parish Council have objected to this application. The concerns raised include:

- Overdevelopment of a relatively small site, with insufficient parking leading to more congestion on surrounding streets;
- Vehicular access to the site cutting across a much used safe public footpath;
- Increased flood risk. This site is in the floodplain and any further development would limit the drainage of ground water which is already a problem in the area;
- Impact on sewage system. The Victorian sewers are already at over capacity and any further development puts residents in other areas, especially those living in the vicinity of Church Street, the bottom end of St Nicholas Street and Welham Road at much greater risk of having raw sewage impacting on their property whenever there is a period of heavy rain and the system is under pressure.

In addition a significant number of objections (36 in total) have been received from members of the public. The concerns they raise include:

- The site is located within the flood zone;
- The site and the surrounding area suffers from standing water in times of heavy rainfall;
- The development will increase the risk of flooding elsewhere;
- Surface water run-off will overload the existing drainage system;
- Impact on the local sewage system;
- The development is high density / overdevelopment;

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- The development would over dominate existing nearby residential properties;
- Impact on residential amenity of nearby dwellings;
- Concerns regarding increased highway activity, including noise levels and traffic;
- The existing local services (schools, doctors etc) are at capacity;
- The impact on the public footpath network within the area;
- The loss of valued open space;
- Ecology related issues;
- Concerns over the removal of Japanese knotweed;
- Affordable housing provision does not represent 35% of the total development;
- Inclusion / integration of affordable unit into the development;
- The planning history of the site – does the site already have outline planning permission?
- In addition a petition against the development has been submitted, which is signed by 46 individuals

APPRAISAL:

The main considerations in the assessment of this application are:

- i) The principle of the development
- ii) Flood related issues and the Site Sequential Test
- iii) Affordable housing
- iv) Site layout and design
- v) Residential amenity
- vi) Highway / Public Right of Way
- vii) Archaeology
- viii) Ecology
- ix) Impact on local sewerage system
- x) Public open space
- xi) Education contribution
- xii) Tree and Landscaping
- xiii) Land Contamination

The principle of the development

In considering the principle of this development, Policy SP1 (General Location of Development and Settlement Hierarchy) and Policy SP2 (Delivery and Distribution of New Housing) of the Ryedale Local Plan Strategy are relevant. These policies identify Malton and Norton as the principle towns for growth in the District and the main focus for new development and housing within Ryedale. In light of this, the proposed residential development, which is located within the settlement limits for Norton, is considered to be acceptable in principle, subject to compliance with other material considerations.

On the previous application, a member of the public raised concerns that the site may already benefit from outline planning permission. Officers have researched this matter, and it has been identified that Planning Application ref. 3/96/335E/OA (Lakeside Way, Norton) did not include this application site in the approved decision. Therefore, Members are advised that the site does not benefit from any outline planning consent.

Flood related issues and the Site Sequential Test

With respect the Sequential Test, the NPPF forms an important material consideration. Paragraph 101 of the NPPF states that development should not be permitted if the sequential test demonstrates that there are reasonably available sites appropriate for the proposed development in areas with a lower flood probability. The Sequential Test should therefore be applied to proposals for new development.

The National Planning Practice Guidance identifies the aim of the sequential test. It states:

“The Sequential Test ensures that a sequential approach is followed to steer new development to areas with the lowest probability of flooding. The flood zones as refined in the Strategic Flood Risk Assessment for the area provide the basis for applying the Test. The aim is to steer new development to Flood Zone 1 (areas with a low probability of river or sea flooding). Where there are no reasonably available sites in Flood Zone 1, local planning authorities in their decision making should take into account the flood risk vulnerability of land uses and consider reasonably available sites in Flood Zone 2 (areas with a medium probability of river or sea flooding), applying the Exception Test if required. Only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 (areas with a high probability of river or sea flooding) be considered, taking into account the flood risk vulnerability of land uses and applying the Exception Test if required”

The starting point in applying the Sequential Test is the Strategic Flood Risk Assessment (SFRA). The submitted FRA for this application has been assessed by the Environment Agency who has recommended conditions to ensure that the development would be safe from flooding. Nevertheless, as the Agency state in their letter dated 19 February 2014, the Sequential Test should be applied to the site to determine if there are other available sites with a lower probability of flooding.

In terms of defining the area to which the Sequential Test should apply, Malton and Norton should be considered as they are the principle towns within the District and form the primary focus for growth (as identified in Policy SP1 and SP2 of the Ryedale Local Plan Strategy). The FRA has considered Strategic Housing Land Availability Assessment (SHLAA) sites for both Malton and Norton, which includes a number of sites both within and outside of the development limits for the town. Officers consider that this approach is acceptable therefore those sites within the FRA have been considered in the assessment of the Sequential Test.

Members will note that the current planning policy position is that the settlement limits identified in the Ryedale Local Plan are in a transitional period where sites outside of the development limits are being considered as part of the Council’s emerging Site’s Allocation Document. This is illustrated by the fact that the Council has recently granted planning permission (for example ref. 10/00977/MFUL, 10/00899/MOUT and 14/00427/MOUTE) to a number of housing sites which are located outside the development limits of Norton / Malton (the principle towns of the district). The SHLAA also includes numerous sites outside of the current development limits. In light of this, it is considered that sites should not be discounted solely because of their location outside of the identified development limits.

Policy SP17 of the Local Plan Strategy states that:-

“Flood Risk will be managed by:

Undertaking a risk based sequential approach to the allocation of land for new development and in the consideration of development proposals in order to guide new development to areas with the lowest probability of flooding, whilst taking account of the need to regenerate vacant and previously developed sites within the towns. In considering development proposals or the allocation of land, full account will be taken of the flood risk vulnerability of proposed uses and the national ‘Exception Test’ will be applied if required.”

As previously identified, the requirements of Paragraph 101 of the NPPF is to give preference to sites in areas of lower flood probability. In this case, the application site is located within approximately 95% - 98% flood zone 3. It is also understood that part of the site is within the rapid inundation area. This is the zone with the highest probability (1 in 100 or greater annual probability of river flooding).

Given the comments identified in the previous paragraph, Officers consider that there are clearly other sites available with a lower flood risk, both inside and outside of development limits of Malton and Norton, that have been discounted within the FRA. Therefore, based on the information within the FRA, Officers consider that there are a number of sites which would be sequentially preferable to the application site as they would direct the development area from the areas of highest flood risk. For this reason, it is considered the Sequential Test has failed to meet the requirements of Paragraph 101 of the NPPF and the NPPG.

Members are also advised that the Environment Agency has objected to the application on flood risk grounds. The formal response states:-

"Flood risk"

Flood risk Sequential Test

*We **object** to the application in the absence of any evidence to demonstrate that the flood risk Sequential Test has been applied. The application site lies within Flood Zone 3a, defined by Table 1 of the National Planning Practice Guidance as having a high probability of flooding, and as shown on the Environment Agency's Flood Map. Paragraph 101 of the National Planning Policy Framework (NPPF) requires decision-makers to steer new development to areas at the lowest probability of flooding by applying a 'Sequential Test'.*

You can overcome our Sequential Test objection by providing the following information:-

- Written confirmation from the Local Planning Authority that the Sequential Test has been undertaken in an open and transparent way, to fulfil the requirements of the NPPF, and that it has been passed;*
- Written confirmation that evidence to support the Sequential Test has been added to the planning application file for the public record.*

Should the development pass the flood risk Sequential Test, we would have the following comments to make on the site specific Flood Risk Assessment:

Site specific Flood Risk Assessment

*In the absence of an acceptable Flood Risk Assessment (FRA) we **object** to the grant of planning permission and recommend refusal on this basis for the following reasons:*

Reason

The FRA submitted with this application does not comply with the requirements set out in the National Planning Policy Framework. The submitted FRA does not therefore, provide a suitable basis for assessment to be made of the flood risks arising from the proposed development. In particular, the submitted FRA fails to:

- 1. Consider the effect of a range of flooding events including extreme events on people and property.*
- 2. Demonstrate that surface water can be dealt with within the site.*

Overcoming our objection

The applicant can overcome our objection by submitting an FRA which covers the deficiencies highlighted above and demonstrates that the development will not increase risk elsewhere and where possible reduces flood risk overall. If this cannot be achieved we are likely to maintain our objection to the application. Production of an FRA will not in itself result in the removal of an objection.

Further detail is required regarding the impacts of an overtopping event from the River Derwent. The standard of protection of the defences through Norton / Malton is up to the 1 in 50 year event. (This means the defences protect against flood events that have up to a 1 in 50 chance of occurring in that location in any given year. They do not protect against events that have less than a 1 in 50 chance of occurring in that location in any given year – the defences will be overtopped during these larger flood events). The applicant should also provide details of the mitigation that is to be provided.

Further details are also required regarding surface water runoff. The applicant has stated that it will be restricted to agricultural rates, but not what these rates are, nor the amount of attenuation required and whether it can be incorporated into the site."

In addition the response from North Yorkshire County Council as Lead Local Flood Authority (LLFA) confirms that the LLFA concur with the comments of the EA with respect to flood risk, and that they also object to the application. The LLFA go on to state that insufficient information is present with the application document to 'assess the priority of surface water management proposals.

In view of the above, and that there are other available sites in Norton and Malton that could accommodate this development it is considered that the sequential test is not passed. Furthermore, there is insufficient information to demonstrate that surface water can be satisfactorily drained from the site.

Affordable Housing

In considering affordable housing, Policy SP3 of the Ryedale Local Plan Strategy is relevant. This policy identifies the levels of developer contributions that the Local Planning Authority seeks for affordable housing. The policy also states:

“The size, type and tenure of affordable units will be expected to reflect the affordable housing needs in the locality. Affordable housing contributions should comprise of both social and affordable rent tenures as well as intermediate tenure types. Off-site provision in lieu of on-site contributions will only be supported where it is agreed that this is preferable in terms of management arrangements or where there are clear advantages or overriding reasons for contributions in lieu of provision on-site.”

In this case, the proposed affordable units are proposed to be the 8 no.1 bedroomed dwellings (shown as Plots 4-11) on the submitted scheme. The proposed affordable housing is considered to be acceptable by the Council's Housing Manager, based on a split of 50% affordable rent, together with the need for a developer contribution (commuted sum) equating to 0.05 of a dwelling unit (based on a one bedroomed flat).

Site layout and design

Policy 16 (Design) of the Ryedale Local Plan states that *“To reinforce local distinctiveness, the location, siting, form, layout, scale and detailed design of new development should respect the context provided by its surroundings including:*

- *The grain of settlements, influenced by street blocks, plot sizes, the orientation of buildings, boundaries, spaces between buildings and the density, size and scale of buildings.*

As mentioned earlier in this report the application site has a total area of 0.514 hectares and the mix of development proposed provides for a density of development at approximately 42 dwellings/hectares.

By way of comparison the adjacent post war development at Springfield Garth (a combination of largely semi-detached two storey dwellings and bungalows) is developed at a density of approx. 28 dwellings/hectare.

Lakeside Way is developed mainly with larger detached dwellings at a density of approximately 19 dwellings/hectare (23 dwellings/hectare if excluding the Mill Pond and public open space).

The density of the development is therefore much higher than both of the adjacent sites to the north and south of the application site.

The higher density of the development has been achieved through the introduction of larger numbers of smaller properties in the form of 1 no. Bedroomed flats and 9 no. 2 and 3 bed terraced dwellings. The block of flats is also proposed to be over three storeys. Whilst the scheme provides for a mix of housing types it is considered that the application as submitted (even in outline form) fails to re-enforce local distinctiveness in terms of form, layout and scale and as such it fails to adequately respect the context provided by its surrounds.

The proposal is, therefore, considered not to satisfy Policy SP16 of the adopted Ryedale Plan - Local Plan Strategy.

Residential Amenity

With respect to residential amenity, concerns have been received in relation to the impact of the proposed development on the existing residential properties within the area. Such concerns include overlooking, overbearing impact and the impact of increased traffic levels through Lakeside Way.

In terms of overlooking and overbearing issues, the impact of the development on the existing amenities of the neighbouring occupiers will largely be dependent on the detailed design and layout of the dwellings. With respect to the traffic related concerns created as a result of the proposal, it is not considered that the development would result in a such an increase that would materially harm the amenities of nearby residents. Therefore, it is considered that the development would not in principle have a significant adverse impact on neighbouring amenities.

In the event that Members are minded to grant approval, the Councils Environmental Health Officers have recommended an informative to restrict the hours of activity during the construction phase of the development.

Highway / Public Rights of Way

NYCC Highway Authority have been consulted on the application. No objections have been received to the proposal subject to conditions. The comments received from the Highway Authority do however identify that as the proposal will increase the number dwellings served off Lakeside Way would be beyond 50, that a dedicated alternative route for emergency service vehicles will be required. The applicant has informed the Local Planning Authority that they have a right of access over the track leading directly from Welham Road to the site which would address this issue. NYCC have however identified that evidence of such rights will need to be provided to the Highway Authority as part of the adoption process of the new estate road.

With regards to the Public Right of Way, NYCC Public Rights of Way Officers have not raised any objections to the proposal. However, it is stated that the developer will need to agree a safe crossing of the road from the PROW with the Highway Authority.

Archaeology

NYCC Historic Environment Team have requested a scheme of trial trenching prior to determining this application because of the sensitivity of the site. A written scheme of investigation (WSI) for identifying this work has been submitted to NYCC for their comments. Members will be updated. Nevertheless, the lack of this information forms an additional reason for refusal at this point in time.

Ecology

The Council's Countryside Officer has been consulted on this application. The comments received on 15 April 2014 identify that no objections are received to the development subject to the mitigation and compensation measures identified sections 9 and 10 of the submitted ecological report being carried out.

Impact on local sewerage system

Members are referred to the comments received from Yorkshire Water dated 26 March 2014. This correspondence identifies that Yorkshire Water do not have any objections to the development. Within this correspondence it is identified that the public sewer network does not have capacity to accept any discharge of surface water from the site therefore the use of SUDS is suggested as an appropriate alternative. Yorkshire Water have also advised that a suitable watercourse could be used for the disposal of surface water, such as Mill Beck located to the west of the site, however, members will appreciate from earlier in the report that the Local Lead Flood Authority (LLFA) objects to the proposal because the submitted information does not demonstrate that surface water can be satisfactorily drained from the site.

Public Open Space

The layout provided does not allow for on-site public open space provision, although the applicant is aware of the Council's policy on this matter. Therefore, should Members be minded to approve this application financial contributions will be sought for off-site provision.

Education contribution

NYCC Education Authority has been consulted on the application, and have made no objection subject to the receipt of developer contributions to deal with anticipated need for additional primary school places. The contribution sought is £78,177.

Tree and Landscaping

The Councils Tree and Landscape Officer has been consulted on the application, however, no response has been received. Members will be updated on this aspect of the application in the late pages.

Land Contamination

A Phase 1 Desktop Study Report has been submitted alongside the planning application. The Councils Environmental Health Officers have considered this document. A condition has been recommended to ensure further investigations are undertaken into the potential land contamination before any dwelling on the site is occupied, if permission is granted.

Conclusion

Officers consider that there are other sites at the principle towns of Malton and Norton which are preferable to the application site in terms of flood risk and which are capable of accommodating the residential development proposed. The proposal is also considered to fail to reinforce local distinctiveness and it is therefore contrary to Policy SP16. Inadequate information is currently submitted to assess the impact on archaeology and surface water drainage.

RECOMMENDATION: Refusal

- 1 The proposed development is located within Flood Zones 2 and 3a as identified in the Environment Agency's flood maps. The Local Planning Authority considers that there are sequentially preferable areas of land at Malton and Norton which are located in areas with lower probability of flooding which are capable of accommodating the residential development proposed. The development of this site is, therefore, considered to be contrary to Policies SP17 and SP19 of the Ryedale Plan - Local Plan Strategy.
- 2 Paragraph 101 of the NPPF states that development should not be permitted if the sequential test demonstrates that there are reasonably available sites appropriate for the proposed development in areas with a lower flood probability.

The National Planning Practice Guidance identifies the aim of the sequential test. It states:

"The Sequential Test ensures that a sequential approach is followed to steer new development to areas with the lowest probability of flooding. The flood zones as refined in the Strategic Flood Risk Assessment for the area provide the basis for applying the Test. The aim is to steer new development to Flood Zone 1 (areas with a low probability of river or sea flooding). Where there are no reasonably available sites in Flood Zone 1, local planning authorities in their decision making should take into account the flood risk vulnerability of land uses and consider reasonably available sites in Flood Zone 2 (areas with a medium probability of river or sea flooding), applying the Exception Test if required. Only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 (areas with a high probability of river or sea flooding) be considered, taking into account the flood risk vulnerability of land uses and applying the Exception Test if required."

In this case, the application site is located within 100% Flood Zone 2, and approximately 95% - 98% flood zone 3a. The Local Planning Authority considers that the Council's SHLAA demonstrates that there are sequentially preferable sites in Malton and Norton (including those located outside of development limits) which are capable of accommodating market led housing in areas of lower risk of flooding. As such the application fails the sequential test and is contrary to the requirements of paragraph 101 of the NPPF and the NPPG.

- 3 The proposed development by virtue of the density and quantity of residential units, on this site and as detailed on the submitted layout the proposed development is not considered to reinforce a local distinctive layout and density in this location. As a result the high density proposal would represent an alien form of development within this medium density low-level suburban environment. The proposal is therefore contrary to Policy SP16 of the Ryedale Plan - Local Plan Strategy.

- 4 There is insufficient information submitted with the application to fully assess the impact of the proposal upon known archaeology in the area. As a result the proposal is contrary to the requirements of NPPF, Section 12 Conservation and enhancing the historic environment with particular regard to Paragraphs 126 and 128.
- 5 There is insufficient information submitted to demonstrate that surface water can be satisfactorily drained from the site. The proposal is therefore contrary to the requirements of Policy SP17 and the NPPF.

Background Papers:

Adopted Ryedale Local Plan 2002
Local Plan Strategy 2013
National Planning Policy Framework
Responses from consultees and interested parties

PDP

The Planning & Design Partnership Planning.. Architecture.. Interiors.. Landscape

The Chicory Barn Studio, The Old Brickyards, Moor Lane, Stamford Bridge
York, The East Riding Of Yorkshire, YO41 1HU.
Telephone 01759 373656 Fax 01759 371810 e-mail: chicorybarn@the-pdp.co.uk

DESIGN & ACCESS STATEMENT Rev A

**23 No. PROPOSED DWELLINGS TO LAND NORTH OF
LAKESIDE WAY, NORTON, YO17 9PG.**



AERIAL VIEW OF SITE

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1. INTRODUCTION

This Design and Access Statement has been prepared to support the re-submission of an outline planning application with some matters reserved. A previous application for 18 No. Dwellings to the same site was refused (14/00096/MOUT 9th June 2014) on the grounds of flood risk and failing the sequential test. Mitigating measures have been incorporated into this scheme to overcome the flooding issue and within the same site area, the layout redesigned to suit results in the application being a Residential Development for 23 No. dwellings following the demolition of existing agricultural type buildings. The site lies to the north of the modern housing development bounding Lakeside Way, Norton YO17 9PG.

The Design and Access Statement has been carried out in accordance with the guidance published by CABE regarding the preparation of such statements. The statement has been written to show the efforts that have been made to provide for a development that will be compatible with the site's surroundings, having regard to local character and will be accessible and inclusive.

The National Planning Policy Framework (PPS1) sets out the general planning policies on the delivery of sustainable development through the planning system. Under section heading of 'Design' PPS1 states that:-
"Good design ensures attractive usable, durable and adaptable places and is a key element in achieving sustainable development. Good design is indivisible from good planning."

PPS3 Housing seeks to promote more sustainable residential environments through requiring developers to make efficient use of land and states that good design is fundamental to this objective. It also includes an emphasis on the need to design in order to create places for people. New, well designed development can enhance the character and quality of an area and intensification need not result in increased building heights or low quality accommodation with inappropriate space.

2. ASSESSMENT OF SITE

The application site lies within the market town of Norton, within the development limits and identified as Site No. 423 - 'Potential Development Sites in Norton' shown on the proposals map of Ryedale District Local Plan which was adopted in September 2013.

The application site is located north of Lakeside Way which forms the principle road within a modern housing development and is currently occupied by Rawlings Agricultural depot which is now redundant. It is bounded on all sides by housing development from various eras and has a public footpath running along the southern boundary.

The site is 0.54 hectares in area and triangular in shape. Buildings and open roofed structures currently occupy the site, with corrugated metal roofing to the main building, metal barrel vaulting to sheds and timber construction to walls. Hardstanding areas surround the buildings with much of the site being grassed, but with some trees and shrubs. An arboricultural survey has been undertaken to provide detailed, independent and arboricultural advice on the trees present in the context of potential housing development on the site.

In planning terms, the site is considered to be 'previously developed'. The National Planning Policy Framework for Housing (PPS3), requires local planning authorities to deliver a "flexible responsive supply of land including the re-use of previously developed land, where appropriate". Therefore, as the site is defined as a 'brownfield' or 'previously developed' and located within the agreed development limits, it is considered that there are no policy constraints which will prevent the site being developed for residential use.

3. USE & AMOUNT

It is proposed to provide 23 new dwellings on the site by demolishing the existing agricultural buildings and these would meet the minimum housing density requirement of 30 dwellings per hectare as set out in PPS3.

The proposals envisage that the development will comprise of several house types in a variety of sizes. Each unit will have the required amount of parking provision situated on the driveways and permeable communal car parking areas on the site.

Overall, the indicative layout for the development proposes a mix of two & three storey residential dwellings, providing for a range of needs and the inclusion of affordable homes. Provision has been made for 1 bedroomed flats with parking/cycle and refuse storage provision; 2/3 bedroomed terrace cottages, and detached dwellings with 3 and 4 bedrooms. Each house unit will have an adequate amount of parking provision provided by permeable hardstandings to the front.

Accommodation Schedule

Building No.	No. of Beds	No. of Floors	House Type	Parking Provision	Cycle/Refuse Storage
1	2/3	2	Detached	Integral garage and drive	Garage
2	4	2	Detached	Attached garage and drive	Garage
3	4	2	Detached	Integral garage and drive	Garage
4	1	3	Flat	Carpark Space	Cycle & Refuse St
5	1	3	Flat	Carpark Space	Cycle & Refuse St
6	1	3	Flat	Carpark Space	Cycle & Refuse St
7	1	3	Flat	Carpark Space	Cycle & Refuse St
8	1	3	Flat	Carpark Space	Cycle & Refuse St
9	1	3	Flat	Carpark Space	Cycle & Refuse St
10	1	3	Flat	Carpark Space	Cycle & Refuse St
11	1	3	Flat	Carpark Space	Cycle & Refuse St
12	2	2	End terrace	2 Carpark Spaces	External Storage

13	2	2	Mid terrace	2 Carpark Spaces	External Storage
14	2	2	End terrace	2 Carpark Spaces	External Storage
15	2	2	End terrace	2 Carpark Spaces	External Storage
16	2	2	Mid terrace	2 Carpark Spaces	External Storage
17	2	2	End terrace	2 Carpark Spaces	External Storage
18	3	2	End terrace	Attached garage and drive	Garage, External St
19	3	2	Mid terrace	Detached Garage	Garage, External St
20	3	2	End terrace	Detached Garage	Garage, External St
21	3	2	End terrace	Detached Garage	Garage, External St
22	3	2	Mid terrace	Detached Garage	Garage, External St
23	3	2	End terrace	2 Carpark Spaces	External Storage

4. PLANNING POLICY CONTEXT

Please See Planning Supporting Statement by Yew Tree Associates.

5. LAYOUT & SCALE

In line with national and local government policy, considerable importance has been placed on arriving at a layout which has been well thought out, to provide for a development which is compatible with the site's surroundings, having regard to local character and which is accessible and inclusive.

The site has space to provide enclosed private amenity space for each house comfortably and with adequate space for waste/bin storage either externally to the rear of each property or within the curtilage of the garage. The one bedroomed flats have an external single storey storage building for refuse/recycling waste also a cycle store in the building with an accessible and communal gardens to the rear.

The majority of the housing surrounding the site is two with some three storey and this theme has been continued and includes the affordable flats situated at the western end of the site. It is proposed that the flats be reached via Lakeside Way as this provides good visibility and sufficient space for turning heads and good overall access. The Flats have been orientated in such a way as to limit the overlooking issues from first floor to both existing and proposed neighbours. Landscaping this area to provide shrub and tree screening will be provided to delineate the communal areas and provide privacy for the residents.

6. LANDSCAPE

Please See Arboricultural Assessment by Barnes & Associates.

It is intended that the site will be fully landscaped, with emphasis on retaining the existing trees to the western end of the site and around the flats.

Existing trees and hedgerows will be retained and supplemented with new planting to form the enclosure of the proposed gardens. New tree planting and screening is also proposed to the eastern side of the site where there is a dearth of soft landscaping to the garden boundaries of Springfield Garth.

The access road will be a continuation of Lakeside Way with tarmac finish and road gulleys, however the new private drive area will be finished with permeable block paving to allow for natural drainage and retain rainwater for the new gardens. It is proposed that all drives, pedestrian access and the communal car parking area to the flats will also be finished with permeable paving.

7. APPEARANCE

Careful consideration has been given to the proposals to ensure that the design maximises the use of the site without impacting on the existing built up suburban environment. The units have been positioned on the site in a way which minimises the overlooking issues and attempts to allow existing adjacent householders a degree of openness to their rear gardens. Separation distances of properties are at or beyond the normally accepted 21m from Spring Field Garth and Welham Road.

Materials will be of brick and roof tile to match samples submitted at reserved matters stage.

8. ACCESS

The main vehicular access to the site is proposed off Lakeside Way as this allows for good visibility in both directions along the two access braches to the turning and parking areas, in line with the Manual for Streets recommendations.

9. FLOODING

Please See Flood Compensation Statement and engineered solution and Flood Risk Assessment.

10. CONCLUSIONS

As stated in the accompanying Supporting Planning Statement, under PPF3, the reuse of previously developed land is an effective way to supply housing development.

The proposed 23 residential units of differing type and size will help to meet the local housing need.

Through this report and accompanying documents for the planning application an appraisal of the site in relation to its surroundings has been undertaken to inform of the initial design process. Every effort has been made to take account of any relevant planning issues that may emerge through the consideration of the application. Notwithstanding this, we remain willing to discuss any aspect of the proposal with the Local Planning Authority.

AH

recommnd refer

NORTON-ON-DERWENT TOWN COUNCIL

Town Clerk: Mrs R.Tierney
Tel/Fax: 01653 695348
Council Chamber and Office
The Old Courthouse
84B Commercial Street
Norton-on-Derwent
Malton
North Yorkshire YO17 9ES



16 June 2015

Head of Planning Services,
Ryedale District Council,
Ryedale House,
Malton.
YO17 7HH

RYEDALE DISTRICT COUNCIL
16 JUN 2015
DEVELOPMENT
MANAGEMENT

ML 17/06/15

Dear Sir,

PLANNING APPLICATIONS NORTON-ON-DERWENT

I have to inform you that at its meeting on Monday, 15 June 2015 the Town Council made the following recommendations in respect of the applications listed below:-

- 15/00511/FUL Erection of detached 1 bedroom dwelling together with formation of new pedestrian access.
14 Church Street, Norton, YO17 9HS
For: Mr E Bromilow
RESOLVED: Recommend refusal, on the grounds that the site is situated in a flood area and should be reconsidered at such time as the flood risk issues are resolved.

- 15/00098/MOUT Residential development of up to 79no. dwellings together with formation of vehicular access – Site B (site area 3.65ha).
Land Adjacent to Auburn Cottages Langton Road, Norton.
For: Gladman Developments

- 15/00099/MOUT Residential development of up to 6no. dwellings together with formation of vehicular access – Site A (site area 0.9ha).
Land to North of Sutton Grange Langton Road, Norton.
For: Gladman Developments

Both Applications were considered again together, and the recommendation applies to both.

RESOLVED Recommend refusal on the following grounds;

- This development lies on a green field site which is of considerable importance to the town, and is outside the current development limits therefore until such time as the sites allocations for the Ryedale Plan are set no further development should take place.

E. Mail: norton.tc@btconnect.com

- Congestion on Langton Road is already problematic especially taking into account the proximity of not only Norton College but the local Community Primary School as well. With this heavily used road members fear that there will be a temptation to make use of Bazley's Lane a totally inappropriate route when trying to avoid the congestion further in the town.
- This development would have a detrimental effect on the important local horse racing industry given that the designated horse path runs straight along this section of Langton Road.
- Impact on the sewage system the Victorian sewers are already over capacity and any further development puts residents in other areas, especially those living in the vicinity of Church Street, the lower end of St Nicholas Street and Welham Road at a much greater risk of having raw sewage impacting on their property whenever there is a period of heavy rain and the system is under pressure
- Lack of infrastructure to support another large scale development especially in Norton with no sustainable provision without having to access Malton.
- Over-development, while this is only an outline application both sites would seem to be allocating too many dwellings on what are relatively small areas.

15/00627/MOUT

Residential development of 23no. dwellings following demolition of existing agricultural type buildings (site area 0.54 ha) – revised details to refusal 14/00096/MOUT dated 09.06.2014.

Agricultural Contractors Welham Road, Norton.

For Thomas Crown Associates Ltd.

RESOLVED Recommend Refusal on the following grounds;

- Overdevelopment of what is a relatively small site, with insufficient parking leading to more congestion on surrounding streets.
- Vehicular access to the site cuts across a much used safe public footpath.
- Increased flood risk, this site sits in the floodplain, and any further development would limit the drainage of ground water, which is already a problem in this area.
- Impact on the sewage system, the Victorian sewers are already over capacity, and any further development puts residents in other areas, especially those living in the vicinity of Church Street, bottom end of St Nicholas Street and Welham Road at a much greater risk of having raw sewage impacting on their property whenever there is a period of heavy rain and the system is under pressure.
- Increased number of dwellings overall since last application.
- Increased number of three storey provision since last application, meaning an increase in the number of properties that are overlooked.

Yours sincerely,

Ros Tierney
Town Clerk

E. Mail: norton.tc@btconnect.com

Agenda Item 7

Item Number: 7
Application No: 15/00612/MREM
Parish: Malton Town Council
Appn. Type: Approval of Reserved Matters Major
Applicant: Fitzwilliam Malton Estate (Mr Roddy Bushell)
Proposal: Demolition of existing livestock market and erection of retail units, three storey car park and public square (outline approval by Appeal Ref: APP/Y2736/A/12/2174677 dated 29.10.2012 following refusal 11/00412/MOUT dated 12.04.2012 refers)
Location: Malton Livestock Market Cattle Market Malton North Yorkshire

Registration Date:
8/13 Wk Expiry Date: 27 August 2015
Overall Expiry Date: 29 July 2015
Case Officer: Alan Hunter **Ext:** Ext 276

CONSULTATIONS:

NY Highways & Transportation	Comments made
North Yorkshire Police Architectural Liaison Officer	Recommend conditions.
Historic England	No comments to offer.
Building Conservation Officer	No Objection
Sustainable Places Team (Yorkshire Area)	No objection
Archaeology Section	Advise that WSI is carried forward and undertaken in advance of development commencing.
Land Use Planning	Comments and conditions to be attached to any planning permission granted
Environmental Health Officer	Initial points and concerns raised
Parish Council	No response
Highways North Yorkshire	Comments made

Neighbour responses: Mrs C Woodhouse, Mrs Julie Stockdale, Miss B Foley,

SITE:

The site extends to approximately 0.9 hectares in area and is located adjacent to the boundary of the Town Centre Commercial Limits identified on the saved proposals map in the Ryedale Local Plan. Large areas of the site are hardstandings, with open-air animal pens and parking areas. There are also two commercial 'bams' at each end of the site and other smaller buildings.

The site is bisected by Spital Street and The Shambles. The Shambles continues as a pedestrian link into the Market Place.

There are terraced properties abutting the site on Victoria Road and other residential and commercial properties face the site along Horsemarket Road. Residential and commercial properties also exist on Spital Field Court and Newgate. The eastern site boundary abuts the rear of properties located in Market Place, many of these properties are listed and located within the designated Conservation Area. The Spotted Cow public house is also Grade II listed and immediately abuts the application site.

PROPOSAL:

This application is for the approval of reserved matters following the grant of outline planning permission of 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 outline planning permission was granted on appeal on 25th October 2012 following the earlier refusal of the application.

The earlier outline permission included the 'detail' of access as part of the submission and was considered to be acceptable by the Inspector subject to the implementation of a number of planning conditions relating to highway matters, mainly covered by Conditions No 5 -8(inc) in the decision letter.

The other reserved matters relating to layout, scale, appearance and landscaping remain to be approved.

Whilst the appeal application was submitted in outline it was accompanied by a number of detailed documents and illustrative information which the Inspector considered as part of his deliberations. At the time a detailed Design and Access Statement had been submitted (with addendum) a PPS 5 Assessment and a Heritage Statement addendum and illustrative plans and elevations.

The current application seeks approval for all of the outstanding reserved matters. Members may also wish to note that to date the applicant has separately applied to discharge Conditions Nos. 6, 8, 9, 10, 12 and 13 of the outline planning permission.

The reserved matters application is accompanied by a detailed set of plans and elevations which are appended in full to this report, together with a 'street views' drawing.

The submission of this reserved matters application follows a series of pre-application discussions with the developer. A covering letter dated 20th May 2015 from the agents White Young Green accompanies the application and is also attached for Members information.

This reserved matters scheme has been screened in the light of The 2011 Environmental Impact Regulations and the Town and Country Planning (E I A) (Amendment) Regulations 2015. The amended thresholds now mean that this development is below the threshold set out within Schedule 2. Even taking account of other live retail applications it is not considered that this site in combination with others comprises E I A development.

RELEVANT HISTORY:

11/00412/MOUT: Outline Application for demolition of Livestock Market and associated outbuildings and redevelopment for retail use together with three storey car park and public square (site area 0.9 ha) - Refused 12.04.2012. Allowed on Appeal 29.10.2012

POLICY:

NPPF - National Planning Policy Framework

NPPG - National Planning Practice Guidance

Ryedale Plan - Local Plan Strategy

The principle of development has already been accepted by the grant of outline planning permission. It is considered therefore that the following development plan policies are relevant to the consideration of the remaining reserved matters.

Policy SP 12 - Heritage

Policy SP 16 - Design

Policy SP 18 - Renewable and Low Carbon Energy

Policy SP 19 - Presumption in Favour of Sustainable Development

Policy SP 20 - Generic Development Management Issues

It is also necessary to note that the reserved matters scheme proposals for 1,695 square metres of comparison goods floor space (Comprising Units 1, 2, & 3). This exceeds the minimum requirement of 1,575 sq metres stipulated by the Planning Inspector in Condition 16 of the appeal decision letter.

APPRAISAL:

Whilst the outline permission did not approve the reserved matters in respect of layout, scale, appearance and landscaping it is of note (as explained earlier in the report) that the outline application was accompanied by a significant amount of additional documentation and plans which the Inspector was able to consider.

Indeed, the Inspector saw fit to impose Condition No 4 which stated:-

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

Following the grant of the outline planning permission a pre-application proposal was submitted to the Local Planning Authority and this has resulted in the submission of the current reserved matters application which is considered to satisfy the 'principles and parameters' as required by Condition No 4 above.

Heritage/Design Issues

The design approved closely follows the principles and parameters set out in the Design and Access Statement. Detail discussion in respect of the design and appearance of the scheme have evolved through pre-application meetings with officers. The Council's Building Conservation Officer had made two detailed design comments in respect of the column bases and fascia detailing (shown on Elevation A) and also the proposed treatment of the fascias and shop windows.

The applicant has responded to both of these detailed comments by stating:

"Firstly, concern was raised regarding the bulky column bases and elaborate fascia detailing on elevation A. The bulky appearance comes from a partial rustication of these columns facing the public square and is deliberate to denote strength and bulk, reflecting the role of the column within the architecture of the building (i.e. a supporting structure). This approach is not unusual and there are many examples of this around the world. Reducing the bulk would, in our view, create an incongruous feature.

Secondly a concern has been raised regarding contrast between the heavily detailed cornice / fascia and the simple treatment of the shop windows. This approach is similarly not unusual in traditional architecture, including classical work, which relies on relationships i.e. plainness is emphasised when in contact with something more elaborate. The frontage of unit 2 is deliberately plain to reflect the existing elevation of The Spotted Cow (Grade II Listed Building). The fascia detailing is more elaborate to draw the eye to the entrance of this unit, and tie it to the wider development without detracting from the existing listed building adjacent. This play between two styles provides interest."

Having reconsidered the scheme in the light of this response the Council's Building Conservation Officer raises no objection to the proposals on design or heritage grounds.

Members will also note that Historic England have considered the scheme and do not wish to offer any comments. Their recommendation is that the application should be determined in accordance with National and Local Policy Guidance and on the basis of the Councils specialist conservation advice.

Access/Traffic Issues

Access has already been considered as part of the outline approval. The applicant has also separately submitted a discharge of conditions application to deal with Conditions 6 and 8 of outline permission which are being considered by NYCC-Highways. In respect of the reserved matters proposal NYCC - Highways has made the following comments:-

1. Use of non-standard materials within the existing or proposed highway would generally not be acceptable due to the additional long term maintenance costs.
2. The layout of the new footways on Newgate should take into account the proposed one way system for Spital Street.
3. A delivery route is required through the site to facilitate access to the new retail units.
4. A suitable area to accommodate deliveries off Newgate to the back of the properties fronting the Market should be provided.
5. The remaining section of highway opposite Mount Road should be amended to ensure parked cars do not park and block access or use as a drop off area unless a suitable turning facility is provided

Further plans and details have been submitted to address these comments and the final clearance of NYCC - Highways is awaited. Members will be updated on the Late Pages or at the meeting.

Archaeology

The outline permission required the submission of a scheme for archaeology evaluation (Condition No 13) prior to the permission of the reserved matters. The condition discharge application was made as required and the Historic Environmental Team at NYCC approved a Written Scheme of Investigation for archaeological excavation and watching brief proposed by MAP Archaeological Practice on 9th June 2015.

Secured by Design Issues

The Police Designing Out Crime Officer has submitted a report in relation to the application, together with a crime and disorder analysis. The full report can be viewed on the Councils website. Whilst the appeal decision did not include a condition relating to the prevention of crime and disorder the agent has confirmed that the car park will be closed at night to prevent entry and this will deter anti-social behaviour. The agent has confirmed, however, that this and remaining detailed comments set out can be dealt with by conditions and that the applicant is happy to liaise with the Designing Out Crime Officer on these matters

Residential Amenity - Noise/disturbance

The scheme has been considered by the Councils' Environmental Health Officer who initially made some detailed comments relating to potential noise and disturbance. Detailed matters relating to fixed plant and equipment and a Noise Management Plan are being dealt with separately through on-going discussions for the discharge of Conditions 9 and 10 of the appeal decision. As mentioned above, however, the car park entrance and exits will be closed with shuttered doors in order to prevent anti-social behaviour in the evening and at night.

Whilst discussion are on-going in respect of the discharge of conditions the reserved matters scheme is considered to satisfy the requirements of Policies SP6 and 20 of the Local Plan Strategy.

Residential Amenity - Scale/Form/Privacy

The site is located close to a mix of existing residential and commercial uses as detailed earlier in this report. The Inspector considered various aspect of the potential impacts on adjacent residents as part of the outline proposals. In particular Condition No.18 make explicit reference to the boundary with houses on Victoria Road. Condition No 18 states:-

- 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.

Members will note from the agents submission letter and from the submitted plans and elevations that the eaves and ridge levels of the car park comply with the datum heights of 40.95m and 43.25m specified in the Condition. Elevation G (along Newgate) and Section B shows the relationship of the new building in relation to the rear of properties in Victoria Road. Members will note that there are no openings shown on this elevation and it is considered therefore that there are no privacy/overlooking issues that could arise as a result of this aspect of the scheme. The mass of new car park building will be apparent to the adjacent residents in Victoria Road. However, the eaves and apex heights of the nearest part of the car park building comply with the requirements of the outline permission and the scheme is therefore considered to be acceptable. Moreover, officers consider that rejection of the reserved matters scheme in this respect would be unreasonable in the light of the earlier appeal decision.

Other Matters

The proposed roofing material for the main retail unit is a lead grey coloured roof membrane with solar PV panels being proposed to the south facing roof slope (these are shown on the roof plan Drawing 185 - 44c). The Building Conservation Officer is content with this material and the principle of locating solar PV panels in the roof. It is anticipated that the panels will be black in colour and also likely to be positioned on the flat section of roof of Units 2 and 3. Full details of the measures to reduce CO₂ emissions and other measures to address sustainability issues will be submitted to discharge the specific requirements of Condition 17 of the appeal decision.

Third Party Comments

Malton Town Council has made no response to the consultation.

The occupiers of Nos. 6, 10 and 12 Victoria Road have made representations expressing concerns and some objections to the scheme. Their full responses can be viewed on the Councils' website. Issues raised include:

- Objection to the multi-storey car park
 - scale
 - impact on on-street parking
- Concern over roundabout/delivery vehicles
- None impact from car park / air pollution
- Loss of privacy/overlooking
- Concerns during building works/demolition
- Vibration from construction/land stability
- Car park must be locked at night
- 'Lane' should be widened at the back of Victoria Road

The consideration of the outline application dealt with many of these issues and the development was accepted in principle subject to numerous planning conditions.

The detailed approach has addressed matters of scale, layout and design and it is considered that the proposal is acceptable on the basis of the submitted plans, subject to receipt of the final comments from NYCC-Highways.

Conclusion

This reserved matters application is considered to comply with the requirements of the outline permission and the details shown in the reserved matters submission are considered to comply with the policies contained in the adopted development plan. There are no other material considerations to warrant a deviation from the adopted plan.

RECOMMENDATION: Approval subject to receipt of final observations of NYCC - Highways and subject to the following conditions

- 1 Prior to the commencement of works on site details of how the developer proposes to address the issues raised in the Police Designing Crime Officers Report 2nd July 2015 shall be submitted to the Local Planning Authority for approval. The approved measures shall be implemented in full prior to the first use of the development hereby approved.

Reason: In order to satisfy para 58 and 59 of the NPPF and to reduce the risk of crime and anti-social behaviour.

- 2 The development hereby permitted shall be carried out in accordance with the following approved plan(s):

Red Line Plan
Drawing no. 185-15
Drawing no. 185-41c
Drawing no. 185-43c
Drawing no. 185-42d
Drawing no. 185-44c
Drawing no. 185-45d
Drawing no. 185-46c
Drawing no. 185-47

Reason: For the avoidance of doubt and in the interests of proper planning.

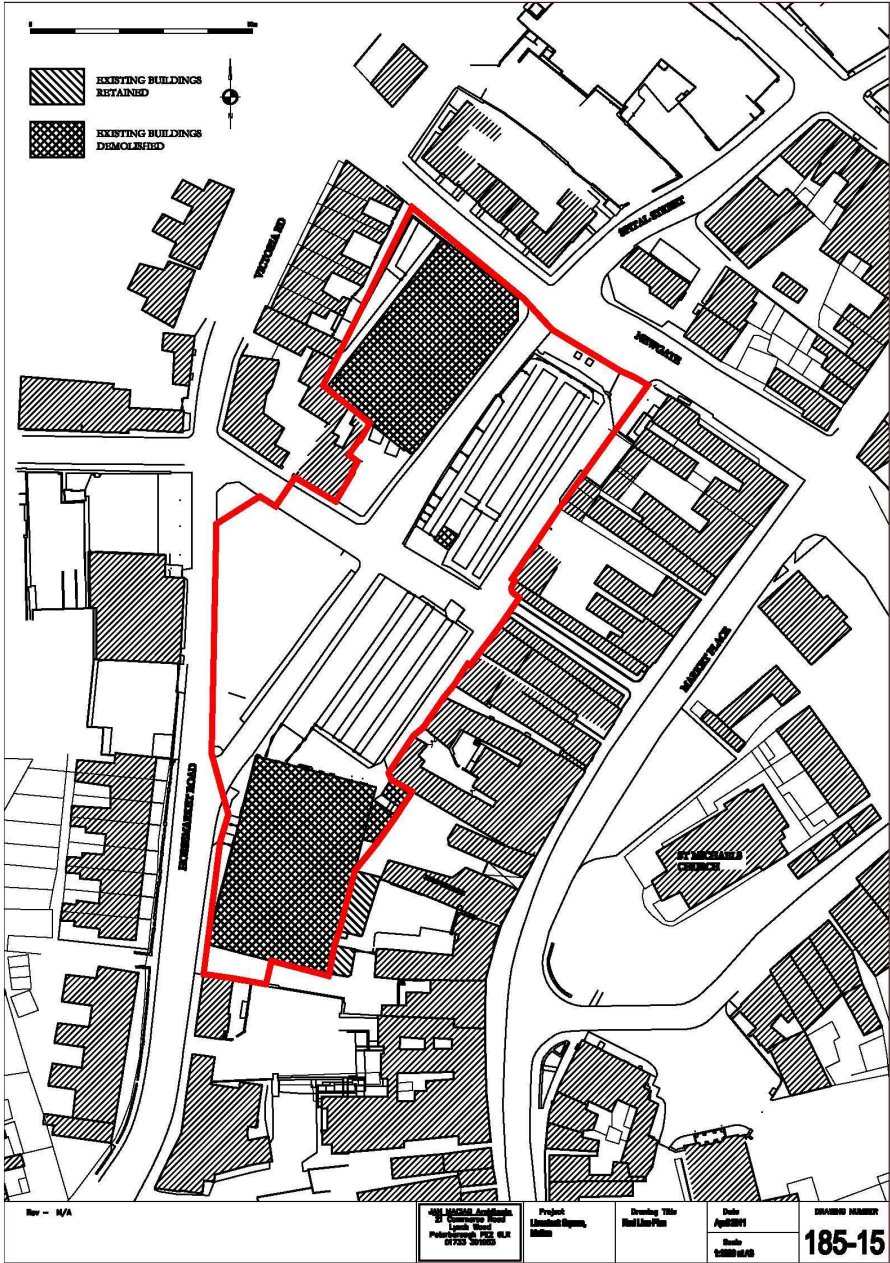
INFORMATIVES:

- 1 The applicant/developer is advised to take account of the consultation response of Yorkshire Water dated 10.06.2011 to the associated outline planning application - 11/00412/MOUT.
- 2 You should satisfy yourself, prior to commencement of any work related to this project, that no part of the works hereby approved (including foundations and/or guttering) extended onto or over adjoining land unless you have first secured the agreement of the appropriate landowner(s).

Background Papers:

Adopted Ryedale Local Plan 2002
Local Plan Strategy 2013
National Planning Policy Framework
Responses from consultees and interested parties

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DATE VALID
28/05/15

REVISED PLAN



Basement Floor Plan

Notes: 1. All dimensions are to be taken from the approved floor plan. 2. All dimensions are to be taken from the approved floor plan. 3. All dimensions are to be taken from the approved floor plan. 4. All dimensions are to be taken from the approved floor plan. 5. All dimensions are to be taken from the approved floor plan.

The contractor is to verify all dimensions on site prior to any construction. Any discrepancy found between this drawing and any other documents or site condition should be referred immediately to the architect. No dimensions are to be scaled from this drawing.

Reserved Matters

Rev A - 01 October 2014 - Unit 1 major changes.
 Rev B - 04 February 2015 - Wash Retail unit.
 Rev C - 16 June 2015 - The 'Shambles' units added.
 Rev D - 27 July 2015 - Future Service 'Yard' note removed.

Jim Moxley Architects
 21 Colindale Avenue
 Finchley Road
 Hendon, Middlesex
 HA5 2HE
 Tel: 020 8773 8000

Project
 Smeeth Square, Milton

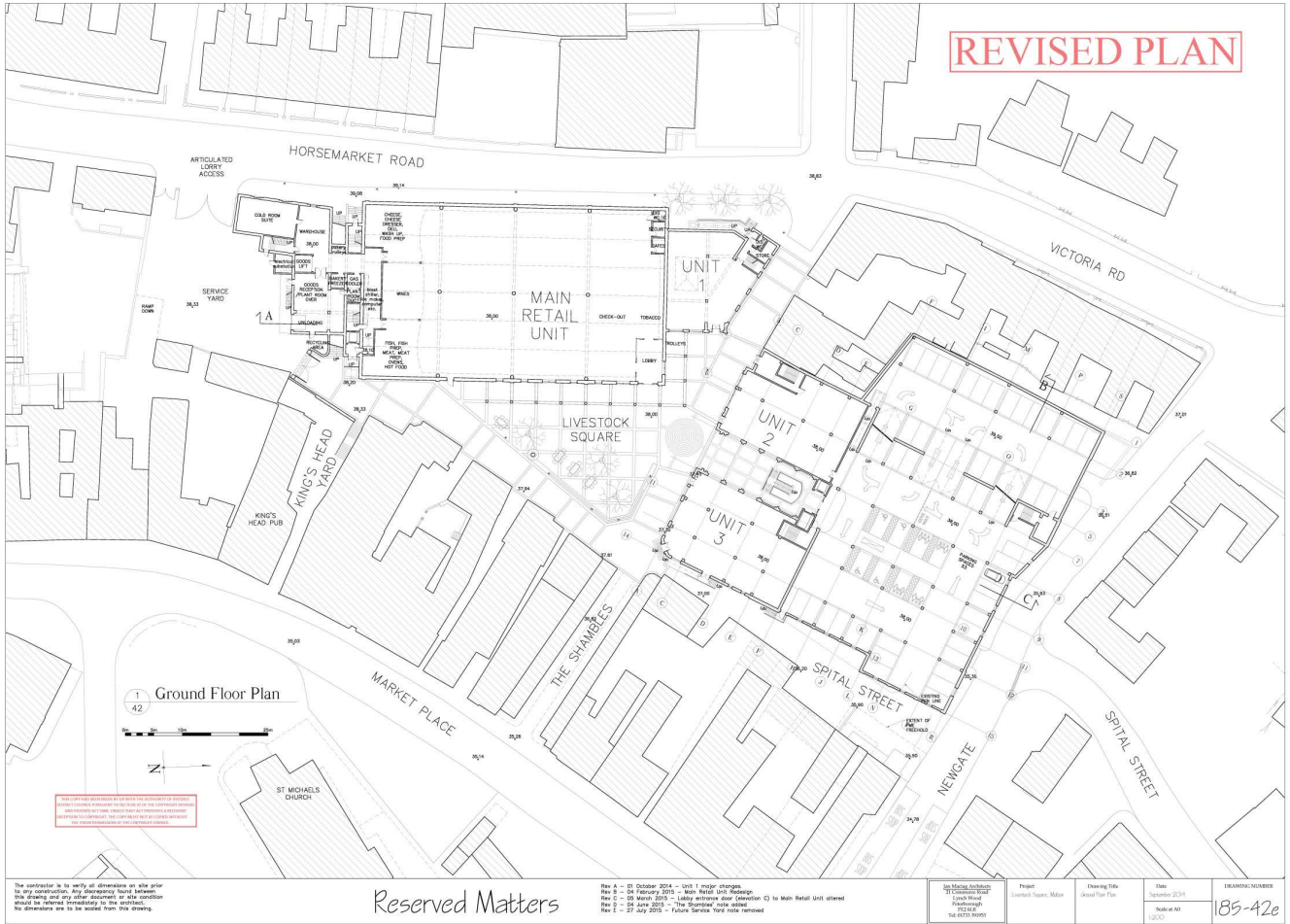
Drawing Title
 Basement Floor Plan

Date
 September 2015

Drawn at A3
 1:500

DRAWING NUMBER
 185-41d

REVISED PLAN



1
42

Ground Floor Plan

THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS ON SITE PRIOR TO ANY CONSTRUCTION. ANY DISCREPANCY FOUND BETWEEN THIS DRAWING AND ANY OTHER DOCUMENTS OR SITE CONDITIONS SHOULD BE REPORTED IMMEDIATELY TO THE ARCHITECT. NO DIMENSIONS ARE TO BE TAKEN FROM THIS DRAWING.

Reserved Matters

- Rev A - 01 October 2014 - Unit 1 major changes.
- Rev B - 05 February 2015 - Main Retail Unit Storage.
- Rev C - 05 March 2015 - Library entrance floor (section C) to Main Retail Unit altered.
- Rev D - 05 June 2015 - The entrance floor altered.
- Rev E - 27 July 2015 - Future Service Yard note narrowed.

Jim Meehan Architects
21 Colindale Avenue
London NW9 1EQ
Tel: 020 8834 1000

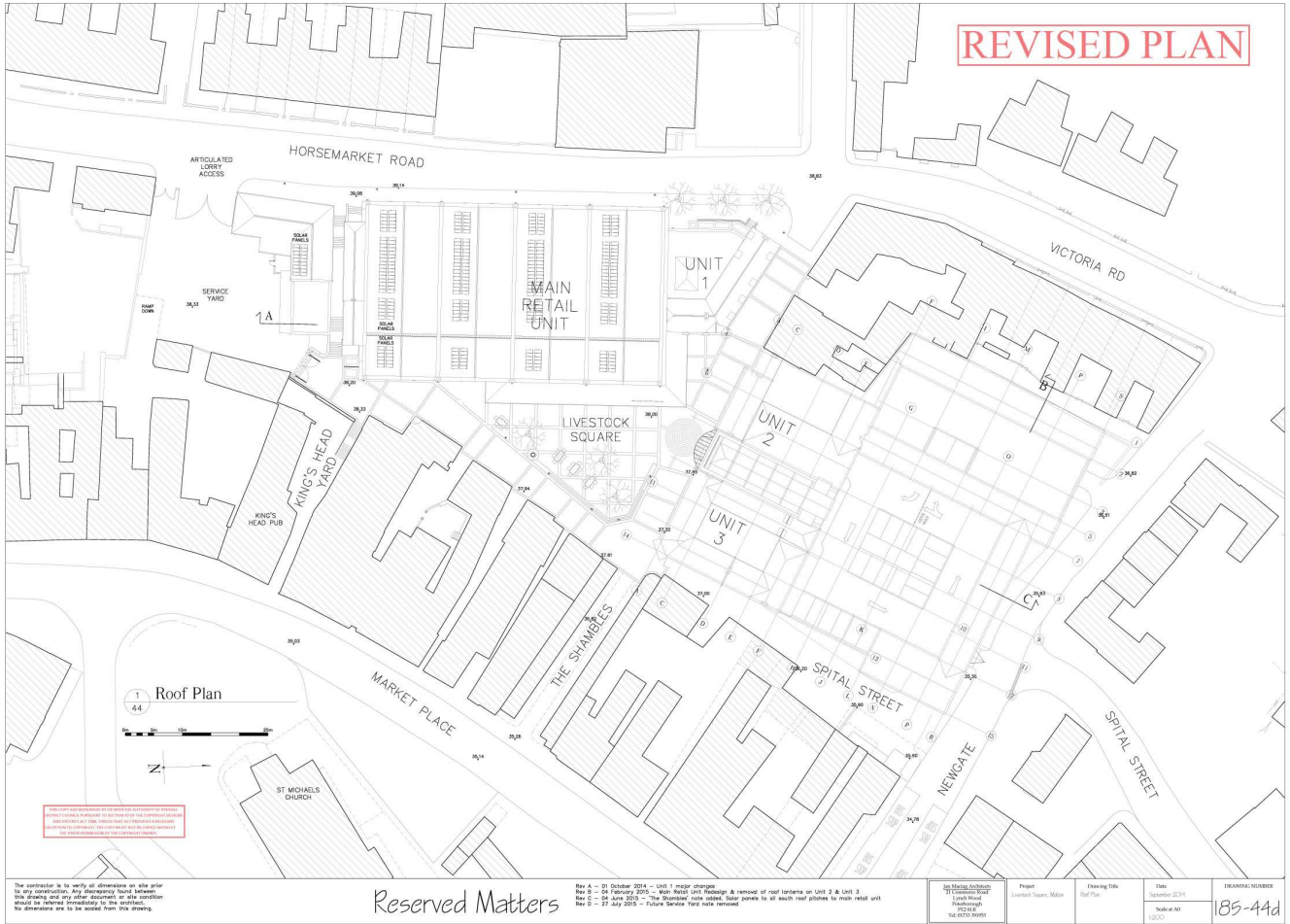
Project
Suttons Square, Milton

Drawing Title
Ground Floor Plan

Date
September 2015
Scale
As Shown

DRAWING NUMBER
185-42e

REVISED PLAN



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Reserved Matters

- Rev A - 01 October 2024 - Unit 1 major changes
- Rev B - 04 February 2024 - High Retail Unit Renovation & removal of roof terraces on Unit 2 & Unit 3
- Rev C - 04 June 2024 - The 'Shambles' roof access, solar panels to all south roof pitches to main retail unit
- Rev D - 27 July 2024 - Future Service Yard north removed

Jim Macey Architects
21 Colindale Avenue
London NW9 1EQ
Tel: 020 8877 8000

Project
Suttons Square, Milton

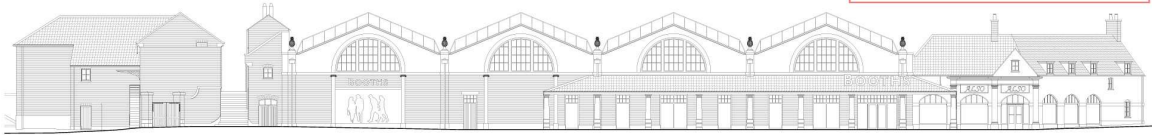
Drawing Title
Roof Plan

Date
September 2024

Drawn by
Public at A0

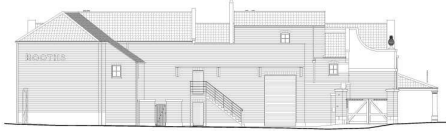
DRAWING NUMBER
185-44d

REVISED PLAN



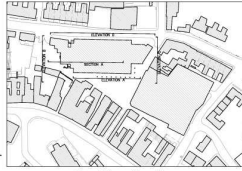
DATUM
36,000

1
45 Elevation A
ALONG LIVESTOCK SQUARE

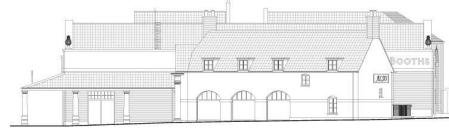


DATUM
36,000

2
45 Elevation B
ALONG SERVICE YARD

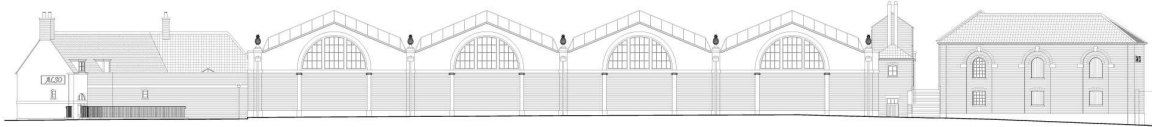


Elevation Key



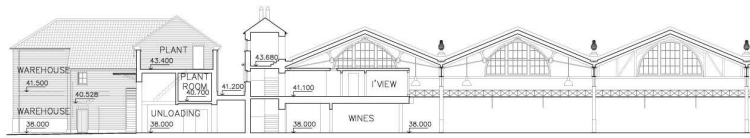
DATUM
36,000

3
45 Elevation C
THE SHAMBLES TO MOUNT ROAD



DATUM
36,000

4
45 Elevation D
ALONG HORSEMARKET ROAD



DATUM
36,000

5
45 Section A

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Reserved Matters

Rev A - 01 October 2014 - Unit 1 major changes
 Rev B - 04 February 2015 - Sign panel detail
 Rev C - 02 March 2015 - Lobby entrance door
 Revision C2 to West Detail Unit offering
 Rev D - 04 June 2015 - Addition of Elevation Key
 Standards spelling corrected

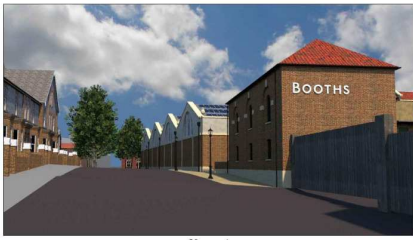
Jim Moxley Architects
 21 Colindale Avenue
 London NW9 1EQ
 Tel: 020 8877 1000

Project
 Smeeth Tapers, Milton

Drawing Title
 Elevation and Section

Date
 September 2015
 Scale at A0
 1:100

DRAWING NUMBER
 185-45d



View 1



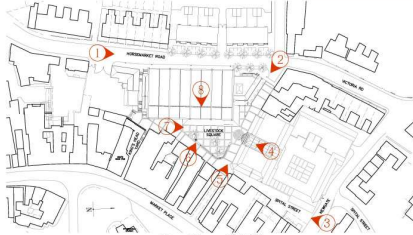
View 2



View 3



View 4



Key Plan - N.T.S.



View 5



View 6



View 7



View 8

DATE VALID
08/25/16

The contractor is to verify all dimensions on site prior to any construction. Any discrepancies found between this drawing and any other documents or site conditions should be alerted immediately to the architect. No dimensions are to be scaled from this drawing.

Reserved Matters

Rev - N. A.

By: [Signature]
21 Thompson Street
Leeds, West Yorkshire
LS2 9PL
Tel: 0113 275 1000

Project: Leicestershire Square, Milton
Drawing Title: Street Views

Date: 08/11/2016
Scale: as shown

DRAWING NUMBER: 185-47



Ref: HA/A092100

Date: 20th May 2015

FAO Gary Housden
Ryedale District Council
Ryedale House
Old Malton Road
Malton
YO17 7HH

Dear Gary,

Reserved Matters Application for Demolition of Existing Livestock Market and Associated Outbuildings and Redevelopment for Retail Use Together with 3 Storey Car Parking and Public Square at the Livestock Market site, Malton

Outline Application Reference: 11/004120MOUT & APP/Y2736/A/12/2174677

I am pleased to submit our reserved matters application for the redevelopment of the livestock market site.

This follows extensive pre-application discussions with RDC and the submission of a number of applications to discharge conditions, including condition 13 which is required to be submitted in advance of the reserved matters application.

For the avoidance of doubt the schedule attached to this letter provides the current position regarding condition discharge.

The package of information provided to with this reserved matters application includes:

- Basement Floor Plan Ref: 185-41b
- Ground Floor Plan Ref: 185-42c
- First Floor Plan Ref: 185-43b
- Roof Plan Ref: 185-44b
- Elevations and Sections Ref: 185-45c
- Elevations and Sections Ref: 185-46b
- Street Views Ref: 185-47

The design of the proposed has evolved in response to occupier requirements, more detailed site and construction information and pre-application discussions with the Council. The principles and parameters set out in the Design and Access Statement (April 2011), PPS5 Assessment and DAS Addendum (July 2011), Development Schedule (September 2012) and drawings 185-15, 185-22, 185-23, 185-24, 185-25 and 185-26 have been followed as required by Condition 4 of the appeal decision.

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Registered Office: Arndale Court, Headingley, Leeds, LS6 2UJ



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Condition 16 requires a minimum of 1,575 m² (GIA) of comparison goods floorspace. The total floorspace of units 1, 2 and 3 is 1,695 m² (GIA) which is more than sufficient to enable compliance with this condition.

The height of the ridge and eaves of the car park, at the boundary with Victoria Road, is 43.250 and 40.950 respectively as required by Condition 18.

The design also conforms to the Design Code provided in the PPS5 Assessment Addendum (March 2012) Section 4, although this was not subject to a specific condition.

The palette of materials for the proposed will include local bricks, lime mortar, limestone and sandstone, lime render, clay pantiles and wooden and metal windows. Notwithstanding this, it is proposed to use a lead grey, single sheet roof membrane for the main retail unit with solar PV panels fixed to south facing roof slopes. The choice of this material has resulted from the detailed design process and is related to load bearing issues, whereby a requirement to reduce the overall weight of the proposed was identified. This area of roofscape is the largest in the development but also the least visible, being partially hidden from view at street level by other buildings and the parapet. More visible areas of roofscape remain clay pantile, retaining the traditional appearance of the development. The minimal impact of this change is clearly illustrated in the Street Views provided.

The inclusion of Solar PV responds to the requirements of Condition 17 whereby a 10% reduction of predicted CO₂ emissions is required. We are investigating the options but anticipate the panels will be black in colour, arranged to all south facing roof elevations on the main building, service yard and the flat roofs of units 2 & 3 (facing south). This layout allows for a total system size of 146.9 kWp with a forecast output of 129,566 kWh, providing significant CO₂ savings and supporting the overall sustainability of the development. A report setting out the overall approach to sustainability measures, to fully comply with Condition 17 will be submitted under a separate discharge of condition application prior to development commencing.

The change in roofing materials and the inclusion of solar PV has been accepted in principle by the Building Conservation Officer through the pre-application process (written response attached).

The final detailed design was well received at the pre-application meetings with officers including the Building Conservation Officer supportive of the scheme. Only minor issues were raised relating to design detailing and signage (which will be the subject of a separate application). The following seeks to respond to these final issues:

Firstly, concern was raised regarding the bulky column bases and elaborate fascia detailing on elevation A. The bulky appearance comes from a partial rustication of these columns facing the public square and is deliberate to denote strength and bulk, reflecting the role of the column within the architecture of the building (i.e. a supporting structure). This approach is not unusual and there are many examples of this around the world. Reducing the bulk would, in our view, create an incongruous feature.

Secondly a concern has been raised regarding contrast between the heavily detailed cornice / fascia and the simple treatment of the shop windows. This approach is similarly not unusual in traditional architecture, including classical work, which relies on relationships i.e. plainness is emphasised when in contact with something more elaborate. The frontage of unit 2 is deliberately plain to reflect the existing elevation of the Spotted Cow (Grade II Listed Building). The fascia detailing is more elaborate to draw the eye to the entrance of this unit, and tie it to the wider development without detracting from the existing listed building adjacent. This play between two styles provides interest.

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We have also provided street views of the development as it will look when complete; these are in colour as requested.

The proposed is in compliance with the principles and parameters of the design approved by the outline application and the relevant conditions applied. It is also in compliance with Local Plan Strategy policies including, but not limited to, SP12 Heritage, SP15 Green Infrastructure, SP16 Design and SP18 Renewable and Low Carbon Energy. On this basis we consider the granting of planning permission is appropriate.

If there are any concerns relating to the information submitted I would be grateful if you would contact me on 0113 219 2250, to enable the application to be validated.

Yours Sincerely,

Hannah Andrew
Associate
For and on behalf of WYG



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Decision Notice Ref: 2174677 (App: 11/00412/MOUT)

No	Text	Status
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.	Reserved Matters Application Submitted
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.	Reserved Matters Application Submitted
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.	Reserved Matters Application is in general conformity with the principles and parameters set out.
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	Information to be submitted under a separate application

No	Text	Status
	programme approved in writing with the Local Planning Authority in consultation with the Local Highway Authority.	
6	<p>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:</p> <ul style="list-style-type: none"> 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. <p>The required highway improvements shall include:</p> <ul style="list-style-type: none"> 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. <p>The required highway improvements shall be completed prior to the development hereby approved being brought into use.</p>	<p>Condition discharge application for part A was submitted 4th August 2014</p> <p>The remaining information has been submitted for discharge 18th May 2015</p>
7	<p>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</p>	<p>Information to be submitted under a separate application</p>

No	Text	Status
	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	Discharged 30 th June 2014

No	Text	Status
	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.	Submitted 18 th May 2015
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.	Submitted 18 th May 2015
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	Information to be submitted under a separate application

No	Text	Status
	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.	Condition discharge application submitted: 4 th August 2014
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	Part i) discharged 3 th June 2014 Final report submitted for discharge 18 th May 2015

No	Text	Status
	<p>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.</p>	
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.	Information to be submitted under a separate application
16	The development hereby approved shall provide a minimum of 1,575 sqm (gross internal area) of comparison goods floorspace.	The Reserved Matters Application meets the requirements of this condition
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	The Reserved Matters Application includes Solar PV and a full sustainability report will be submitted demonstrating compliance with this condition under a separate discharge of condition application.

No	Text	Status
	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.	The Reserved Matters Application meets the requirements of this condition.



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.
-

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 the 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 appellants are 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	12 Mar 2012
	Additional Transport Information Technical Note (Steer Davies Gleave)	
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 Foxtton
- 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

Agenda Item 8

Item Number: 8
Application No: 15/00616/MREM
Parish: Malton Town Council
Appn. Type: Approval of Reserved Matters Major
Applicant: Linden Homes
Proposal: Erection of 34no. two bedroom dwellings, 59no. three bedroom dwellings and 81no. four bedroom dwellings together with associated access, garaging and landscaping to include formation of earth bund to eastern site boundary. Phase 1 site area 6.32ha (outline approval 14/00427/MOUTE dated 24.03.2015 refers).
Location: The Showfield Pasture Lane Malton North Yorkshire

Registration Date:
8/13 Wk Expiry Date: 21 August 2015
Overall Expiry Date: 1 July 2015
Case Officer: Gary Housden **Ext:** 307

CONSULTATIONS:

Archaeology Section	Recommend conditions
LEP Mr A Leeming	No views received to date
Parish Council	No views received to date
North Yorkshire Police Architectural Liaison Officer	Support - no concerns or issues
Natural England	No views received to date
Sustainable Places Team (Yorkshire Area)	No views received to date
NY Highways & Transportation	No views received to date
Vale Of Pickering Internal Drainage Boards	No comments
Land Use Planning	Recommend conditions
Countryside Officer	Recommend conditions
Environmental Health Officer	No views received to date
Housing Services	Comments made
Tree & Landscape Officer	Detailed comments - objects to the loss of tree belt
Head Of Planning Services	No views received to date
Economic Development	No views received to date
National Grid Plant Protection	No views received to date
North Yorkshire Education Authority	No views received to date
Highways North Yorkshire	Recommend previous conditions (plus minor revision to layout)

Neighbour responses: Mr Ricardo Valantino, Mr Duncan Humphreys,

SITE:

The showfield site at Pasture Lane, Malton is comprised of two parcels of farmland, together with a small group of disused farm buildings. Pasture Lane abuts the southern site boundary with the A64 trunk road, forming the northern site boundary. To the east at lower level, is the established Showfield Lane industrial estate and to the west is Outgang Road, an un-surfaced lane which runs from Showfield Lane and which crosses the A64.

Further to the west is a substantial housing estate under construction by Taylor Wimpey Ltd. Three separate residential properties are located adjacent to the south-western corner of the site. The site generally falls from west to east and it is also elevated above the ground levels on Showfield Lane industrial estate. The land also rises from south to north across the parcel of land denoted as 'show ground'.

PROPOSAL:

This application is for the approval of reserved matters for Condition No. 2 of the outline planning permission granted on 24 March 2015, reference 14/00427/MOUTE.

The outline planning permission had already sought approval for the detail of access and the current application seeks approval for the layout, scale, appearance of the buildings including a materials schedule and landscaping. The application is accompanied by a Design & Access Statement produced by STEW Architecture.

The outline planning permission was accompanied by thirty four planning conditions which will be the subject of separate discharge procedures. The agents have, however, confirmed that this reserved matters submission has been designed to comply with key elements of the outline planning permission with particular regard to drainage, access, noise, crime prevention, sewer protection and the provision of 5% of the dwellings as bungalows.

The details provide for the creation of 174No. dwellings in total as part of this phase of the development, together with the erection of the noise attenuation bund along with the entire eastern boundary of the site.

The accommodation is proposed to be:

- 8No. 2-bed bungalows;
- 26No. 2-bed terraces;
- 49No. 3-bed terraced/semi-detached/detached units;
- 10No. 3-bed semi-detached; and
- 81No. 4-bed detached houses

The access point into the site is via a roundabout onto Showfield Lane. The road layout shown on this phase of the development closely follows the 'indicative' plans submitted as part of the outline application.

Prior to the submission of the application, the applicant submitted a pre-application proposal. The design of the layout and in particular, the individual house types have been amended to reflect the advice given by officers on the pre-application proposal.

The application has been accompanied by detailed reports including a Design & Access Statement; Design Statement; Environmental Noise Survey and Assessment Review; Arboricultural Method Statement; and Impact Assessment. All of these can be viewed on the Council's website.

For ease of reference, the agents covering letter of 22 May 2015 and Design & Access Statement are appended to this report.

HISTORY:

14/00427/MOUTE: Outline planning permission for erection of circa 227 dwellings with associated development (site area 11.9ha) - Approved 24.03.2015

POLICY:

Ryedale Plan - Local Plan Strategy

Policy SP1 - General Location of Development and Settlement Hierarchy
Policy SP6 - Delivery and Distributing of Employment Land and Premises
Policy SP9 - The Land-Based and Rural Economy
Policy SP10 - Physical Infrastructure

Policy SP 12 - Heritage
Policy SP 13 - Landscapes
Policy SP 16 - Design
Policy SP 17 - Managing Air Quality, Land and Water Resources
Policy SP 19 - Presumption in Favour of Sustainable Development
Policy SP 20 - Generic Development Management Issues
Policy SP 22 - Planning Obligations, Developer Contributions and the Community Infrastructure Levy

APPRAISAL:

The principle of the development has already been established by the grant of planning permission granted earlier this year, subject to the stipulations required by condition and the submission of the remaining detailed reserved matters.

In the context of the remaining reserved matters and the consultees received, the following matters remain relevant to the approval of this reserved matters application.

The main considerations are:-

- Layout/scale/mix and design;
- Landscaping/tree issues;
- Highways/access;
- Noise/residential amenity;
- Drainage;
- Secured by Design; and
- Archaeology

Whilst the principles of the layout were shown on the illustrative plan accompanying the outline planning application, the reserved matters still require approval for the layout of the site. Access into the site from Pasture Lane is 'fixed' via the roundabout shown on the submitted layout with a large area of Public Open Space (approximately 0.5ha) shown adjacent to the southern boundary of the site.

The layout is shown in more detail with the reserved matters scheme and follows the approach promoted at outline stage with main 'spine roads' running broadly north-south, linked across the northern extent of Phase 1. The interior of the site is accessed via smaller estate roads, shown mainly surfaced with block pavings as an alternative surface material.

The net area of the site, excluding the large area of Public Open Space at the front of the site, is approximately 5.8 hectares, giving an overall density of dwellings at 30 units/hectare net.

All of the dwellings are two-storey with the exception of 8No. single-storey dwellings, submitted to satisfy the requirements of Policy SP4 of the Ryedale Plan - Local Plan Strategy which requires 5% of all new homes in schemes of 50 dwellings or more to be built as bungalows.

The variety and type of dwellings have been considered prior to the submission of the application, with standard house types modified to reflect traditional vernacular details found in the town.

The mix of dwellings is set out earlier in this report. The mix of house types is considered to be acceptable. In particular, the scheme provides for a significant amount of smaller sized market housing units, mostly promoted as terrace and smaller semi-detached units.

The application is accompanied by individual house type, designs, a series of street scenes and a full materials schedule. The palette of materials is considered to reflect the colour and profile of tiles and bricks found in the locality. Samples of the materials proposed have been requested and will be available for consideration at the meeting.

Landscaping/Tree Issues

The application is accompanied by detailed landscaping drawings to accompany the arboricultural method statement and impact assessment. The information also includes details of tree protection in respect of those trees which are proposed to be retained.

The major consideration in respect of this issues relates to the proposed removal of trees and saplings along part of the eastern site boundary, abutting the rear of commercial premises on Showfield Lane.

However, Members will be aware that at outline stage, there was a requirement for the developer to build and construct a substantial acoustic screen in the form of an acoustic fence and bund along this entire boundary. Without the screen, the future amenity of the residents living along this part of the site would not be protected to the satisfaction of the Council's Environmental Health Officer. Condition Nos. 18, 19 and 33 of the outline permission were imposed to ensure that this level of amenity was protected.

In order to mitigate this impact, the landscape plan proposes the planting of replacement trees and shrubs on either side of the bund and these will be the subject of the detailed landscaping scheme and method statement required by Condition Nos. 15 and 16 of the outline permission.

Officers are, however, continuing to negotiate with the developer to investigate retention of existing trees/saplings where possible adjacent to the south-eastern corner of the site where views from Pasture Lane are most apparent. Members will be updated on the late pages or at the meeting.

Highways/Access Issues

NYCC Highways have made comments requiring minor revisions to the scheme in respect of driveway lengths, position of traffic calming features and the precise location of the first distributor road when entering into the site.

The layout plan has been amended to reflect these requirements and the formal comments of NYCC Highways are awaited. Members will be updated at the meeting.

Noise/Residential Amenity

In principle, the EHO has confirmed no objection to this development at outline application stage. Details discharge of conditions 19, 19 and 33 remains. However, the reserved matters proposed are accompanied by a Noise Survey Assessment Review report and the required bunding and acoustic fencing is shown along the eastern site boundary as anticipated. Comments of the EHO are also awaited and will be reported to Members.

Drainage

Yorkshire Water have repeated conditions previously recommended for the outline planning permission. No other comments have been received, although it is of note that again, the outline permission will require the formal discharge of a package of sustainable drainage solutions and both foul and surface water details to be agreed before any development commences. These are covered by Conditions 3, 4, 6, 7, 24 and 28 of the outline planning permission.

Secured by Design

The Police Designing Out Crime Officer has no concerns and is pleased that most, if not all of his recommendations have been considered and incorporated into the design of the scheme.

Archaeology

Due attention to the need for further investigation - this is already covered by Condition Nos. 08 and 29 and 30 and 31 of the outline permission.

Third Party Responses

Malton Town Council have not responded to their consultation on this application.

Two letters have been received objecting to the scheme, raising the following points:-

- Too many houses being built at the town - adverse impact on infrastructure, especially roads;
- Extra noise (traffic); and
- Loss of view

The above comments from third parties were considered at outline stage. Members will note that the application was accompanied by detailed transport information and no objections were raised from NYCC Highways or Highways England.

Similarly, the EHO did not object to the scheme subject to the imposition of appropriate conditions.

Members will be aware that the loss of (or spoiling of) a view is not a material consideration.

In the light of the earlier grant of outline permission and the detailed assessment above, it is considered that there are no grounds to withhold approval of the reserved matters.

RECOMMENDATION: Approval of reserved matters subject to final responses of outstanding consultees

- 1 The development hereby permitted shall be carried out in accordance with the following approved plan(s):.

Reason: For the avoidance of doubt and in the interests of proper planning.

Background Papers:

Adopted Ryedale Local Plan 2002
Local Plan Strategy 2013
National Planning Policy Framework
Responses from consultees and interested parties

PLANNING LAYOUT | MALTON SHOWGROUND, MALTON

SHEET 7 - DRG NUM: 1448.011

REVISED PLAN



- PLANNING LAYOUT LAYERS KEY**
- 2500mm BRICK WALL
 - 2500mm BRICK WALL WITH STONE CORNICE
 - 1500mm TIMBER FENCE
 - 1500mm GASTRO FENCING
 - PILLARS
RIBBON ACCESS DATE
RIBBON OPERATES & OPERABLE FROM BOTH SIDES
 - BR COLLECTION POINTS
 - BLOCK PAVING
 - RETAINED TREE
(T10)

GROSS SITE AREA : 15.61 Acres
 AREA NETTED OFF : 2.59 Acres
 NETT DEVELOPABLE AREA : 13.02 Acres
 TOTAL HOUSETYPE SQ FT : 178801 Sq Ft
 COVERAGE : 1388.1 Sq Ft per Acre

SCHEDULE OF ACCOMMODATION

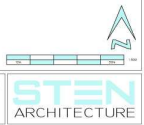
REFERENCE	HOUSE TYPE	BED NO	SIZE	AMOUNT
002	2 Storey Semi	2 Bed	720 Sq Ft	26 No
003a	1 Storey Semi Det	2 Bed	420 Sq Ft	8 No
003	2 Storey Semi Det	3 Bed	450 Sq Ft	16 No
004	2 Storey Det. Stone 1901/Ten	3 Bed	450 Sq Ft	16 No
005	2 Storey Detached	3 Bed	1110 Sq Ft	12 No
006	2 Storey Detached Semi	4 Bed	1100 Sq Ft	12 No
007	2 Storey Detached	3 Bed	1150 Sq Ft	8 No
008	2 Storey Detached	4 Bed	1195 Sq Ft	8 No
009	2 Storey Detached	4 Bed	1195 Sq Ft	12 No
010	2 Storey Detached	4 Bed	1277 Sq Ft	12 No
011	2 Storey Detached	4 Bed	1405 Sq Ft	12 No
012	2 Storey Detached	4 Bed	1405 Sq Ft	12 No
013	2 Storey Detached	4 Bed	1405 Sq Ft	12 No
014	2 Storey Detached	4 Bed	1405 Sq Ft	12 No
015	2 Storey Detached	4 Bed	1405 Sq Ft	12 No
016	2 Storey Detached	4 Bed	1405 Sq Ft	12 No
				Total 174

THIS DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE LOCAL AUTHORITY AND THE ENVIRONMENTAL AGENCY. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS AND FOR THE PROVISION OF ALL NECESSARY SERVICES AND INFRASTRUCTURE. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROVISION OF ALL NECESSARY SERVICES AND INFRASTRUCTURE.

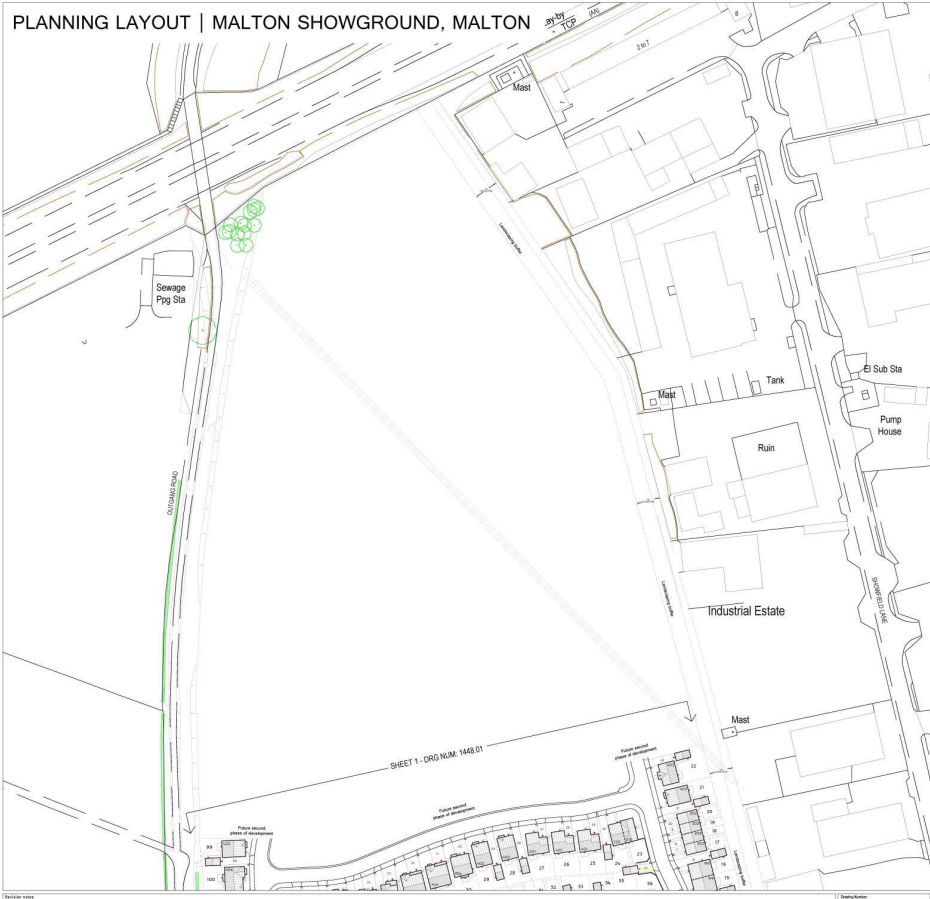
REVISIONS

No	Date	By	Description
1	10/06/15	STEN	Issue for comment
2	10/06/15	STEN	Issue for comment
3	10/06/15	STEN	Issue for comment
4	10/06/15	STEN	Issue for comment
5	10/06/15	STEN	Issue for comment
6	10/06/15	STEN	Issue for comment
7	10/06/15	STEN	Issue for comment
8	10/06/15	STEN	Issue for comment
9	10/06/15	STEN	Issue for comment
10	10/06/15	STEN	Issue for comment

Client	Malton Showground	Date	10/06/15
Project	Malton Showground	Drawn by	STEN
Site	Malton Showground	Checked by	STEN
Scale	1:1000	Approved by	STEN
Author	STEN	Project Manager	STEN
Designer	STEN	Project Engineer	STEN
Checker	STEN	Project Architect	STEN
Approver	STEN	Project Director	STEN



REVISED PLAN



- PLANNING LAYOUT LAYERS KEY**
- 2500mm BRICK WALL
 - 1500mm BRICK WALL WITH STONE CORNICE
 - 1500mm TIMBER FENCE
 - 1500mm METAL FENCING
 - ***** FILLARS
 - REAR ACCESS DATE
 - W/5 OPERATES & CREWABLE FROM BOTH SIDES
 - ■ ■ ■ ■ BIN COLLECTION POINTS

GROSS SITE AREA : 15.61 Acres
 AREA NETTED OFF : 2.59 Acres
 NETT DEVELOPABLE AREA : 13.02 Acres
 TOTAL HOUSETYPE SQ FT : 17861 Sq Ft
 COVERAGE : 138.1% (1.56 per Acre)

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REFERENCE	HOUSE TYPE	BED NO	SIZE	AMOUNT
001	2 Storey Terrace	2 Bed	710 Sq Ft	26 No
002	1 Storey Semi Det	2 Bed	420 Sq Ft	8 No
003	2 Storey Semi Det	3 Bed	433 Sq Ft	16 No
004	2 Storey Det. Stone 1901/Ten	3 Bed	1405 Sq Ft	10 No
005	2 Storey Detached	3 Bed	1170 Sq Ft	8 No
006	2 Storey Detached Semi	4 Bed	1120 Sq Ft	12 No
007	2 Storey Detached	3 Bed	1150 Sq Ft	8 No
008	2 Storey Detached	4 Bed	1115 Sq Ft	8 No
009	2 Storey Detached	4 Bed	1195 Sq Ft	12 No
010	2 Storey Detached	3 Bed	1177 Sq Ft	12 No
011	2 Storey Detached	4 Bed	1405 Sq Ft	10 No
012	2 Storey Detached	4 Bed	1405 Sq Ft	10 No
013	2 Storey Detached	4 Bed	1405 Sq Ft	10 No
014	2 Storey Detached	4 Bed	1405 Sq Ft	10 No
015	2 Storey Detached	4 Bed	1405 Sq Ft	10 No
016	2 Storey Detached	4 Bed	1405 Sq Ft	10 No
				Total 174

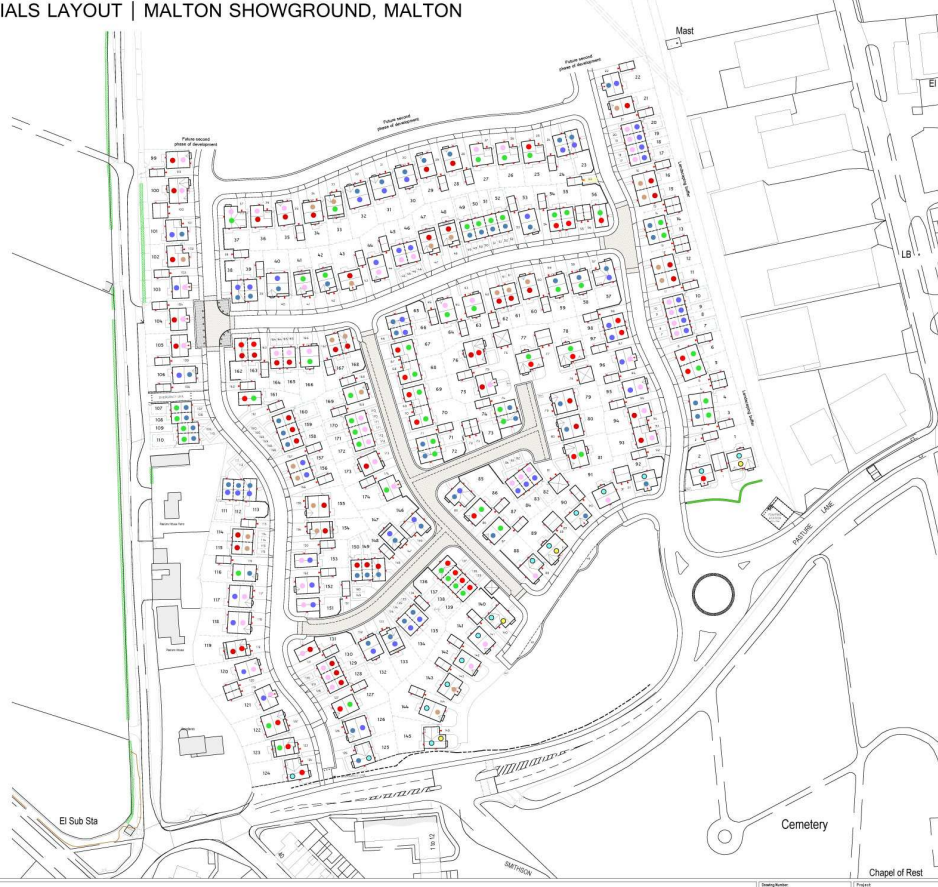
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Author:	Project:	Date:	Scale:
Drawn:	Client:	Issue:	Revision:
Checked:	Approved:	Project Manager:	Project Engineer:

DATE: 10/05/15

STEN ARCHITECTURE

MATERIALS LAYOUT | MALTON SHOWGROUND, MALTON

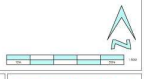


THIS PLAN HAS BEEN REVISED TO REFLECT THE APPROVED MATERIALS LIST. ANY CHANGES TO THE MATERIALS LIST WILL BE REFLECTED IN THIS PLAN. THE CLIENT IS RESPONSIBLE FOR THE ACCURACY OF THE MATERIALS LIST.

- MATERIAL LAYOUT LAYERS KEY**
- FORMERLY RICHMOND HEAD
 - BISTOCK WILSON DORSET BLEND
 - BISTOCK WILSON VILLAGE BLEND
 - WIENERBERGER GATWELL BLEND
 - WIENERBERGER HARVEST BUFF MULTI
 - CALDERALE - DARK GREY
 - CALDERALE - TERRACOTTA RED
 - SHIRE SINGLE PAN-TILE - TERRACOTTA RED
 - TILE (THIN LEADING EDGE) - DARK GREY

REVISED PLAN

DATE: 10/05/15



Revision	Date	By	Notes
1	10/05/15	STEN	Initial design and materials list
2	10/05/15	STEN	Revised design and materials list
3	10/05/15	STEN	Final design and materials list
4	10/05/15	STEN	Final design and materials list
5	10/05/15	STEN	Final design and materials list

Author	Project	Date
STEN	MALTON SHOWGROUND	10/05/15
STEN	MALTON SHOWGROUND	10/05/15
STEN	MALTON SHOWGROUND	10/05/15

Client	Project	Date
STEN	MALTON SHOWGROUND	10/05/15
STEN	MALTON SHOWGROUND	10/05/15
STEN	MALTON SHOWGROUND	10/05/15



SHOWFIELD | MALTON



REVISED PLAN



This drawing shows the proposed development and is not to be used for any other purpose without the written consent of the architect. It is the responsibility of the client to ensure that the development complies with all relevant planning and building regulations. The architect does not accept liability for any errors or omissions in this drawing.



DATE
10/08/15



Revisions notes: No. Date Reason A 10/08/15 Updated to show with revised external layout sections B		Drawing Number: SS.01 Client: LINDEN HOMES	Project: MALTON SHOWFIELD MALTON Drawing Title: STREET SCENES A-A to D-D	Date: 17.08.15 Drawn by: J. COO Reviewed by: A.	STEN ARCHITECTURE LLP Suite 10, Unit 2 Belmont Office Park Bennett Avenue Bradford West Yorkshire WF8 5BA Telephone: 01824 686424	Web: www.sten-architecture.co.uk Twitter: @STEN_arch Facebook: stenarchitecture	STEN ARCHITECTURE
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SHOWFIELD | MALTON

ADDITIONAL PLAN



Rev:	Date:	Revision:
A	20.06.15	Updated in line with revised material layout revision B

Drawing Number: SS.02
Client: LINDEN HOMES

Project: MALTON SHOWFIELD MALTON
Drawing Title: STREET SCENES E-E to F-F

Date: 17.03.15
Scale @ A2: 1:200
Revision: A

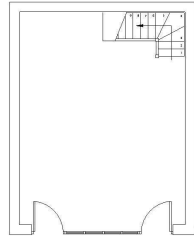
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Web: www.sten-architecture.co.uk
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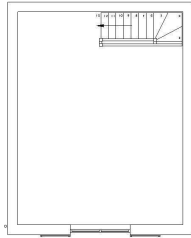


DATE
10/08/15

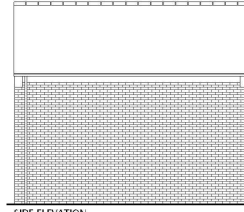
ADDITIONAL PLAN



GROUND FLOOR PLAN



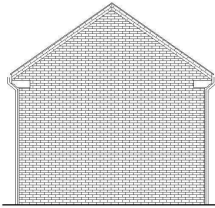
FIRST FLOOR PLAN



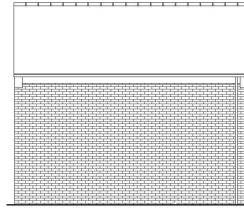
SIDE ELEVATION



FRONT ELEVATION



REAR ELEVATION



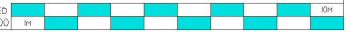
SIDE ELEVATION

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DATE
10/08/15

REV A - Garage type corrected, garage to be as sales centre. - TS - 23.06.15

SCALED
AT 1:100



Drawing Number: 1448.301
Client: Linden Homes

Project: Malton Showfield Malton
Drawing Title: Garage planning drawings Single garage B

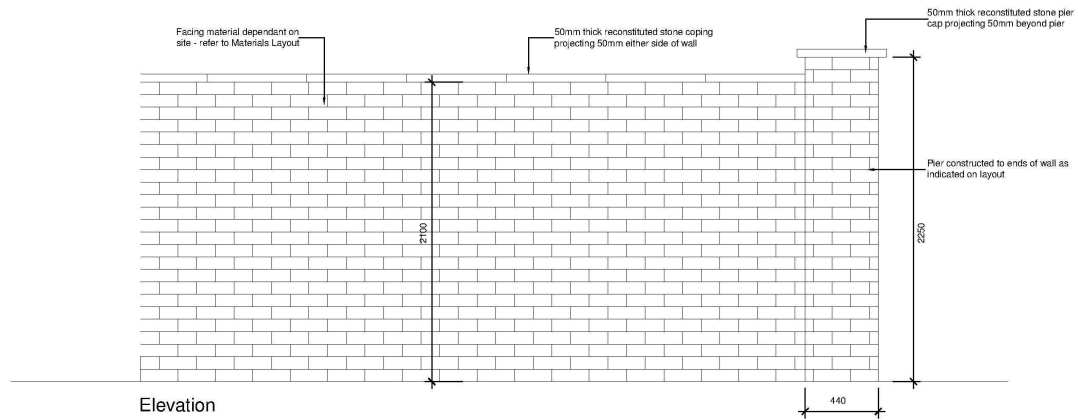
Date: March 2015
Scale @ A3: 1:100
Revision: A



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DATE
10/08/15

RWV A - Wall height corrected in site box - TS - 06.07.15

SCALED AT
1:20



Drawing Number: 1448.203	Project: Malton Showfield Malton	Date: March 2015
Client: Linden Homes	Drawing Title: Boundary treatments 2.1m high brick wall - frontage only	Scale @ A3: 1:20
		Revision: A

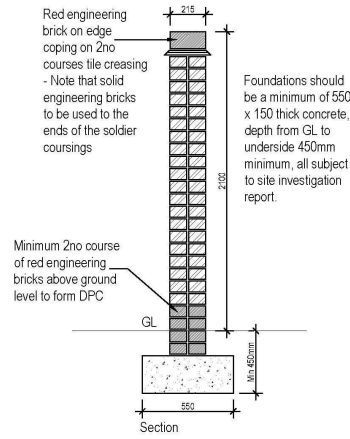
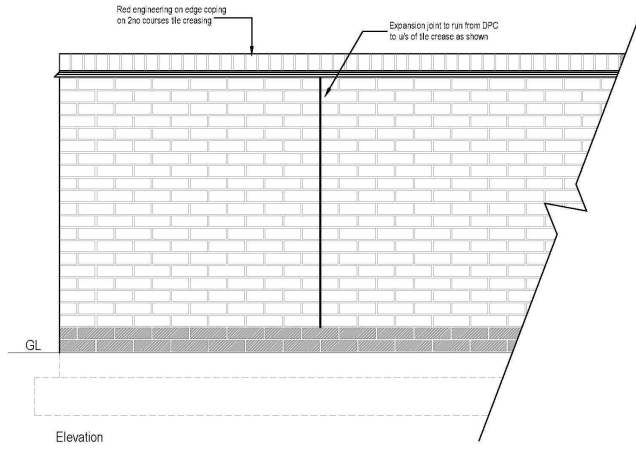


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LinkedIn: Sten Architecture



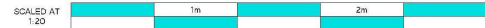
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DATE
10/06/15

REV A - Boundary wall increased to 2.1m high - TS - 23.06.15
REV B - Wall height corrected in title box - TS - 06.07.15



Drawing Number: 1448.201
Client: Linden Homes

Project: Malton Showfield Malton
Drawing Title: Boundary treatments 2.1m high brick wall

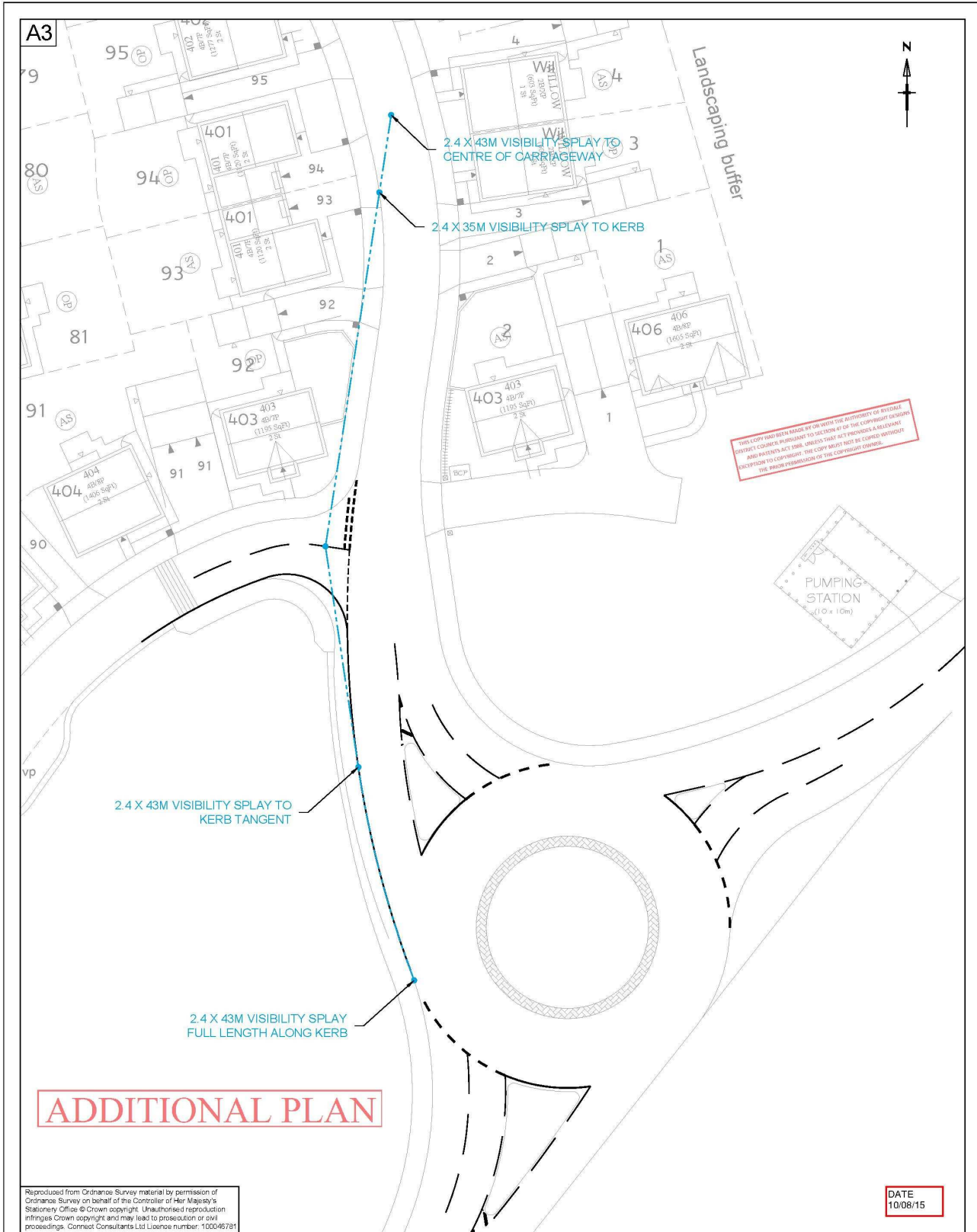
Date: March 2015
Scale @ A3: 1:20
Revision: B



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Platinum award

client LINDEN HOMES NORTH	scale N.T.S	date JULY 15
project MALTON SHOWGROUND MALTON	drawn by T.A.S	checked by C.B.W
title VISION SPLAY TO ROUNDABOUT	drawing number 15069 - SK150723.1	
	cad file 15069 - SK150723.1	rev.

SHOWFIELD | MALTON



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DATE VALID
22/05/15



Revisions table: <table border="1"> <thead> <tr> <th>Rev</th> <th>Date</th> <th>Name</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>		Rev	Date	Name				Drawing Number: 66.01 Client: LINDEN HOMES	Project: MALTON SHOWFIELD MALTON Drawing Title: STREET SCENES A-A to D-D	Date: 17.05.15 Scale: 1:200 Revision: -	STEN Architecture Ltd Suite 10, Unit 2, Business Centre, Malton, North Yorkshire, YO10 2AA Telephone: 01924 686424	Web: www.sten-architecture.co.uk Twitter: @STEN_arch Facebook: stenarchitecture LinkedIn: Sten Architecture	STEN ARCHITECTURE
Rev	Date	Name											

Design and Access Statement

For a Reserved Matters Planning Application

Linden Homes | Malton Showfield

Issue 2 | 7th May 2015



1.0 | Introduction

2.0 | Summary of Approved Outline Application

3.0 | Design Development

4.0 | Design Solution

5.0 | Appearance

6.0 | Landscaping

7.0 | Summary



Client: Linden Homes



Architect: STEN Architecture



Planning Consultant: FREETHS

1.0 | Introduction

1.0 | Introduction

This Design and Access Statement has been prepared by STEN Architecture on behalf of Linden Homes to accompany a Reserved Matters Application for land at Malton Showground

This document has been prepared in accordance with the Department for Communities and Local Government (DCLG) 'Planning Practice Guidance' (March 2014).

The aims of the statement is to provide a framework to explain how the proposed development is a suitable response to the site and its setting, and demonstrate that it can be adequately accessed by prospective users.

The Design and Access statement seeks to explain the design principles and concepts that have been applied to the development. It also aims to demonstrate how the proposed development's context has influenced the design. The Statement also explains the approach to access and how relevant Local Plan policies have been taken into account.

Linden Homes have collaborated with other consultants to prepare an appropriate design solution which responds to planning policy and site context whilst working to mitigate constraints and maximise the opportunities provided.

This document is submitted in support of the planning application and sets out to achieve the following:

- Identify the existing context of the site
- Identify the key development principles and framework which have informed the detailed design of the scheme
- Provide a detailed design analysis and design solution.

The ethos of the design is to:

- Create a high quality residential development
- Create a legible and attractive place with a sense of identity
- Create a sustainable and high quality living environment
- Make efficient use of land in terms of ecological enhancement and density
- Provide a well planned sustainable settlement with dwellings which will meet high architectural standards and the creation of pleasant and well planned streets

2.0 | Summary of Approved Outline Application

2.0 | Summary of Approved Outline Application

Planning History

Outline Planning Permission for Demolition of existing buildings and structures and erection of circa 227 residential dwellings (Use Class C3) along with all associated development including drainage, landscaping, cut and fill, formation of earth bund, boundary treatments (including noise mitigation measures) provision of services and access and associated highway works (site area 11.90ha) was granted on Tue 24th Mar 2015 (14/00427/MOUTE)

The approval of the details of the layout, scale, appearance, and the landscaping of the site were the reserved matters

Summary of Scheme

The application was made on behalf of Commercial Development Projects & Fitzwilliam Trust Corp. Although the layout of the site was a Reserved Matter, there was an indicative site layout included with the outline application. This layout shows street and landscape infrastructure and cells of development and is shown opposite.

The layout for the reserved matters application will be for the first phase of development for 174 units. This will seek to retain the design principals of this indicative site layout and develop them to a detailed stage.



2.0 | Summary of Approved Outline Application

Design Principles

Within the Design and Access Statement for the outline application there was a series of design principles to help guide the detailed design.

These principles will be considered during the detailed design stage and incorporated where possible. These design principles are shown adjacent for reference together with an artist's impression of the green space to the frontage

- Create a common vocabulary for all of the buildings, offering the opportunity for variation within a theme, but creating a harmonious overall arrangement.
 - All of the buildings will be traditional in nature and informed by the local vernacular
 - Roofs will be pitched
 - Windows will have heads either of masonry arches or natural/artificial lintols, and natural/artificial stone cills
 - Front doors will be painted in a variety of colours
 - Front gardens will generally be bounded by hedges, railings or low brick or stone walls. Rear gardens by hedges or timber fences
 - To ensure that the character of the shared areas adds to the overall high quality aspired to, generous areas of landscaping will be created within the site.
 - Facing onto Pasture Lane there will be a large grassed communal area, planted with informal groups of woodland trees and shrubs.
 - Main distributor roads within the site will be in tarmac, with conservation grade kerbs and good quality concrete slabs on the pavement.
 - Subsidiary roads may be in block paviers or sealed gravel, and may include some 'shared-surface' areas
 - The line of the roads will meander to create adjacent green edges where trees will be planted
- At two locations larger green communal spaces will run east-to-west across the site to aid legibility and give character
 - In order to integrate the development into the overall landscape, and shelter the site from adjoining areas with aggressive environments, shelter belts of native woodland trees, containing a bank and topped by a timber acoustic fence, will be planted along the eastern and northern edges of the site.
 - Housing along the northern and eastern edges of the site will follow the principles established in the special house studies, both to give an acceptable environment for eth residents, and to protect eth rest of the site
 - Lighting of shared areas will be designed in accordance with BSEN 13201-2:2003, but be sympathetic to the overall character of the development



3.0 | Design Development

3.0 | Design Development

Pre-application Meeting

On Monday 26th January a pre-application meeting was held with Ryedale Council. The adjacent layout was presented at the meeting and below is a bullet point summary of the feedback received:

- Noise bund details / mitigation important – Minimum of 10m wide **(1)**
- 5 % Bungalow required
- Distance to existing houses to southern boundary minimum 21m **(2)**
- Siting of house types around frontage 'Village green' important and should be well thought through **(3)**
- House types adjacent to emergency access onto Pasture Lane to face onto street not back onto. **(4)**
- Materials – Red / Buff brick with pantiles
- Dual aspect units to be used on corner plots **(5)**
- Junction stop dwelling to be centred on junction and be of a non-integral / front parking type **(6)**
- Dwelling design – Simple elevations to suit location



Pre-application Meeting

A further pre-application meeting was held on Thursday 19th March where a revised layout was presented (shown adjacent) that aimed to address the comments made at the previous pre-application meeting.

It was agreed that the majority of the points had been addressed, but the following comments were made :

- Location of 5% bungalows welcomed **(1)**
- Section through existing houses to southern boundary to new required but can see distance increased **(2)**
- The use of detached types onto 'Village green' frontage welcomed. **(3)**
- Use of non-integral / front parking types at junction heads welcomed **(4)**
- Dwelling design – Lose gables that have no projections
- Garages doors to be vertical types
- Sections through bund and adjacent industrial estate required **(5)**
- Site sections required due to sloping nature of site.



4.0 | Design Solution & Evaluation

4.0 | Design Solution & Evaluation

Introduction

The site constraints, considerations and strategies discussed in Design & Access Statement that was prepared for the outline application have all been borne with the final scheme incorporating refinements from earlier sketches where deemed appropriate in order to address and improve certain aspects following the consultation process. The following text clarifies the specific detail of the submitted scheme.

Development Proposals

The proposal is for a first phase development of 174 new dwellings on a site area of approximately 6.32 Hectares.

The new development will be served off a single vehicle access from Pasture Lane however a new roundabout is proposed off this road with a turn into the new residential development.

The layout has been designed so that there is good natural surveillance to all areas of open space and roads with new dwellings looking onto these areas.

Dwellings are well laid out with garages set back in rear gardens. Most dwellings or parking is alongside dwellings with some to frontage parking. This mix of car parking arrangement allows for landscaping in the street.

Limited use of blocks of multiple dwellings have been used and these have been kept to where we would have smaller 2 or 3 bedroom housing.

Dwellings are predominantly 2 storey in height with some single storey bungalows in some locations.

Pedestrian connectivity has been thought of within the design allowing safe movement into the site by means of 2m wide footpaths to primary routes. The new site access also has 2m footpaths either side that run right into the

heart of the development.

The new houses respect the existing dwellings to the west by maintaining sufficient distances from them to minimise overlooking.

Scheme Parameter	Detail
Total Number of residential units	174
Number of affordable units	Off-site Provision at Peasey Hills
Average Density	33 d/h
Storey Heights	Mix of 1 and 2 Storey
Primary Means of vehicle access	Pasture Lane (new roundabout)
Gross Site Area	approx 6.32Ha
Area of Public Open Space	approx 0.55Ha
Mix of dwellings	34 No. 2 Bed 59 No. 3 Bed 81 No. 4 Bed

Use and Amount & Scale

The proposed layout follows the principles that were set out in the outline planning application (see page 6)

In total we are proposing a first phase development of 174 new residential dwellings.

The proposed development includes a mix of 2,3 and 4 bedroom mews, semi-detached and detached dwellings.. The majority of dwellings are 2 storey in height with a small number of single storey bungalows in some areas

4.0 | Design Solution & Evaluation

Access

A new vehicle access is proposed from Pasture Lane which has been designed in detail by 'Connect Consultants' (see drawing on right hand side).

A 5.5m wide road with 2m footpaths to both sides brings you into the site and is the main road running into the site which combined with a series of shared surfaces will create a very permeable layout.

Secondary roads will be shared surfaces that will have incidental visitor parking located on them at a ratio of approximately 1 in 5.

There will be 2 emergency vehicle access points into the new development which can be seen identified on page 18. One of these will be to the western end of the site onto Pasture Lane and the second will be on the western boundary onto Outgang Road.

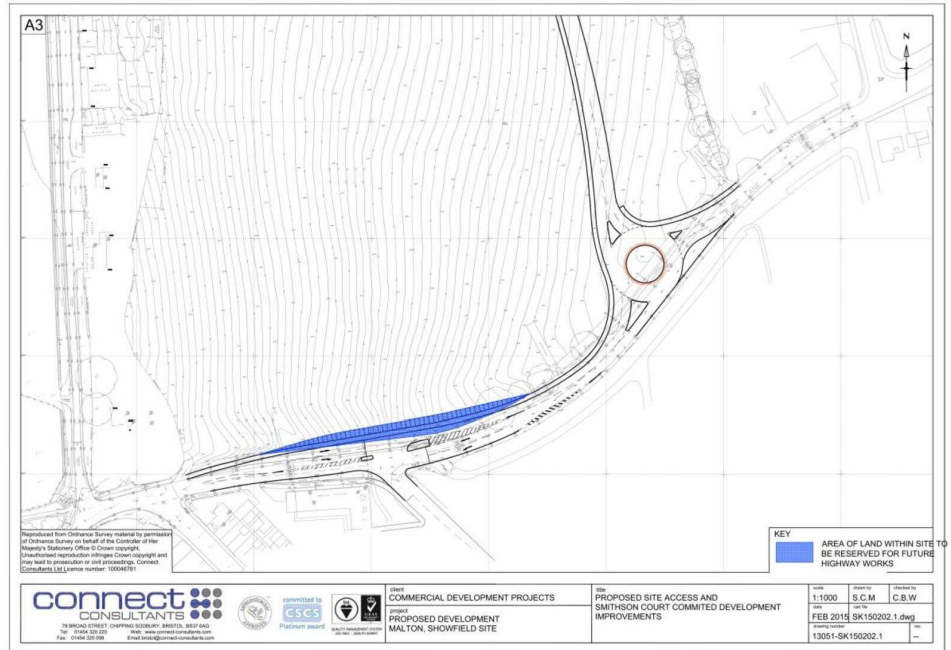
Inclusive access within the layout provides for ease of movement by all social groupings and seeks certain minimum standards for disabled access for such items as steps, ramps, door widths, etc. The 'approach' to the dwelling, the area of land within the curtilage of the property from the boundary of the plot up to the building itself, will have 'accessible' paths and drives wherever possible, taking into account the topography of the site. The use of various surface materials, dropped kerbs, tactile paving, parking and drop off points will be used to facilitate ease of movement by all.



4.0 | Design Solution & Evaluation

Access

A area of land has been safeguarded at the site frontage for the Smithson Court Signal Junction if a future application off Wentworth Street is granted:



Layout

The location and orientation of the new dwellings respect the surrounding properties and relate well to one another. They are generally positioned parallel to one another, or at 90 degrees to their neighbours.

There are also some intimate dwelling clusters, typically at the head of the cul-de-sacs.

Certain buildings are located to create focal ends and vista stops.

There is a clear definition between the public and private domain with all properties having 'defensible spaces' to their frontages, and sides on a corner position, with a variety of hard and soft treatments to the street, some giving physical enclosure to the semi-private spaces such as railings, hedges and shrub beds. Additional gable windows are also introduced to overlook public areas and ensure 'active frontages' exist throughout the site creating a safe and naturally surveyed environment.

All the properties will have individual footpath accesses to their rear gardens giving direct control over their own private domain. This will aid security and, with easy access, also enable waste and recycling provisions to be located at the rear of the properties, out of sight from the street.

Where possible the dwelling's private amenity spaces back onto other gardens or are screened from public areas by 1800 high brick pillar/fences or vertically boarded fences, with rails inboard to reduce climbing potential.

Parking

All new private dwellings have car parking in curtilage. Detached dwellings either have a drive to the side leading to a garage or has a drive to the front

with an integral garage.

Semi detached / terraced dwellings will have parking either in front or down the side of each dwelling.

Mews / terraced housing either have parking in front of each house or in some areas to keep the frontage free on cars have a small parking court adjacent to them.

Visitor car parking is provided throughout the layout in the form of incidental parking on the roads and designated visitor parking spaces on the shared surfaces.

Appearance

On pages 23-25 we have included a series of Linden Homes proposed dwellings for the site. The main material for the new dwellings will be brick and further details of the materials proposed for each dwelling can be found on the materials plan that has been submitted as part of the planning application.

The street scenes and site section help to demonstrate the relationships between the new dwellings and the existing site levels and site features. These can be seen on page 25 and 26.

Designing out Crime

All new developments should create pleasant environments for residents where they feel safe and quality of life is not undermined by crime or the fear of crime. To this end opportunities for criminal activity should be recognised and designed out where possible. The following considerations have been taken into account when planning the scheme layout;

4.0 | Design Solution & Evaluation

- Well defined routes for cars and pedestrians which are well overlooked.
- Car parking overlooked, no rear courtyards.
- Structured places with no conflict between uses.
- All publicly accessible spaces overlooked.
- Well defined defensible spaces and the use of suitable planting.
- Management scheme to ensure landscaped areas are well maintained.
- Layout designed to minimise vulnerable rear and side boundaries
- Robust 1.8m high fences and lockable gates provided.

Sustainability

Environmental Design

The development will be designed to meet the requirements of the current Building Regulations, specifically the requirements for Approved Document Part 1 –Conservation of Fuel and Power, and Part F –Ventilation will ensure good levels of heat retention and ventilation are achieved.

Energy Efficiency

The dwellings will be designed to have high standards of efficiency, by limiting the heat loss across the building envelope, in order to minimise the over energy demand in line with the requirements of the Building Regulation Approved Document Part 1.

Waste Management

The development will make adequate provision for the internal and external

storage of non-recyclable household waste.

Delivering a Sustainable Community

The proposed scheme would create a highly sustainable community, which is in accordance with NPPF. The site is within a close range of existing facilities and services, all of which are easily accessible through a series of pedestrian and vehicular routes.

Conclusion

As a whole, the site generally will be designed to meet the current Building Regulation requirements and will therefore achieve the inherent standards of energy efficiency and ventilation

Final Layout






Below is a copy of our final detailed layout that not only follows the principles of the 'Development Framework Plan' approved at the Outline Application stage but incorporates revisions to the last sketch scheme that were made at the pre-application meeting with the Local Authority.

The following pages will explain in an illustrative form the detailed design rationale behind our proposed layout.





Road Hierarchy

-  Primary highway
-  Secondary Highway
-  Private Drive
-  Key pedestrian route
-  Emergency Vehicle Access



Accomodation



4 Bedrooms



3 Bedrooms



2 Bedrooms



Green Infrastructure

-  Existing trees
-  Proposed Public Open Space
-  Proposed Tree Planting



Storey Heights

-  2 Storey dwellings
-  Single storey dwelling
-  Single storey garage



Active Frontages



Active frontage



Key frontages with positive aspect over public spaces

5.0 | Appearance

The images on this page and the following two pages show examples of the house types for use on this development.

These examples show the scale and appearance of the house types will look

Further details can be found in the accompanying drawing pack



MATERIALS

- Mixture of brick types
- Mixture of roof coverings
- UPVC Windows
- Black UPVC Rainwater goods





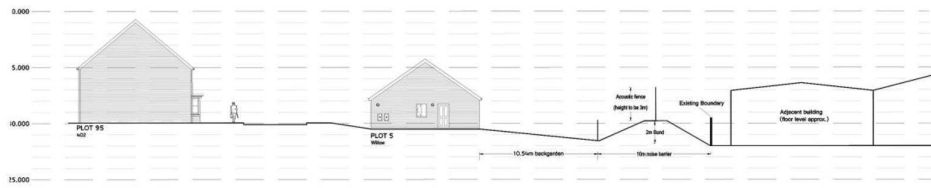
5.0 | Appearance



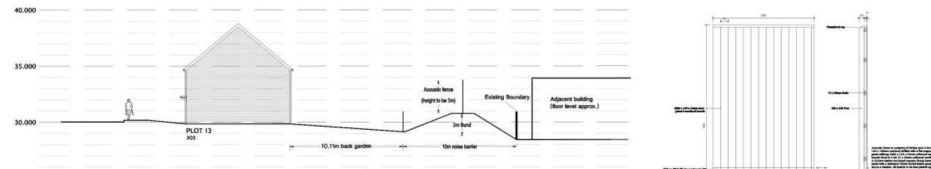
Street Scenes & Site Sections

As the site has changes in level and sloping land combined with existing site features we have produced a series of site sections and street scenes to allow a clear picture of how the new dwellings will look and relate to each other.

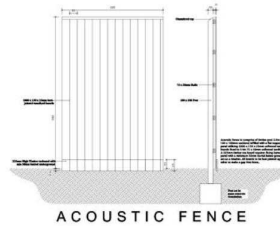
5.0 | Appearance



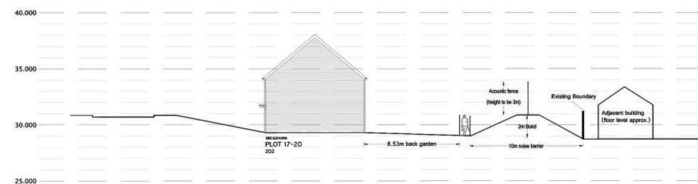
SECTION A - A



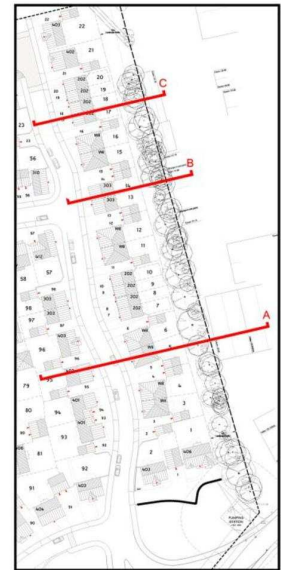
SECTION B - B



ACOUSTIC FENCE



SECTION C - C



Street Scenes & Site Sections

As the site has changes in level and sloping land combined with existing site features we have produced a series of site sections and street scenes to allow a clear picture of how the new dwellings will look and relate to each other.

6.0 | Landscaping

6.0 | Landscaping

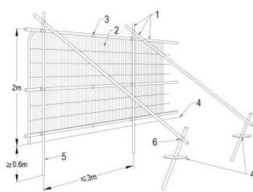
Landscaping

In support of this application Rosetta Landscape Design have produced a number of documents including:

- Arboricultural Impact Assessment,
- Arboricultural Method Statement,
- Tree protection Fencing Plan,
- Landscape Proposals.

Extracts from these documents are shown here but more information can be found in the planning application pack.

Default Specification for Protective Barrier
N.T.S.



Key

- 1 Standard scaffold poles
- 2 Heavy gauge 2m tall galvanised tube and welded mesh infill panels
- 3 Panels secured to uprights and cross-members with wire ties
- 4 Ground level
- 5 Uprights driven into the ground until secure (minimum depth 0.6m)
- 6 Standard scaffold clamps



7.0 | Summary

7.0 | Summary

This statement seeks to establish the most suitable potential design solution for the development of the site.

This design solution has evolved from the outline planning application through a number of options, with overriding design principles in place to guide the development. It is considered that the approach to the development of the scheme provides a robust design and it can be demonstrated that the final plans and proposals are those most suitable for the site within the context of the development and use proposed.

Below is a summary of the scheme proposals with the final layout on the following page:

Scheme Parameter	Detail
Total Number of residential units	174
Number of affordable units	Off-site Provision at Peasey Hills
Average Density	33 d/h
Storey Heights	Mix of 1 and 2 Storey
Primary Means of vehicle access	Pasture Lane (new roundabout)
Gross Site Area	approx 6.32Ha
Area of Public Open Space	approx 0.55Ha
Mix of dwellings	34 No. 2 Bed
	59 No. 3 Bed
	81 No. 4 Bed





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Agenda Item 9

Item Number: 9
Application No: 15/00348/FUL
Parish: Scampston Parish Council
Appn. Type: Full Application
Applicant: Boortmalt Group (Mr Kevin Drillot)
Proposal: Raising the roof of part of existing building to allow installation of new roasting plant and associated equipment, installation of external plant and chimneys ranging in height from 12m to 23m and siting of an external steel container.
Location: Boortmalt Group Poplars Lane West Knapton Malton North Yorkshire YO17 6RN

Registration Date:
8/13 Wk Expiry Date: 28 May 2015
Overall Expiry Date: 10 June 2015
Case Officer: Charlotte Comforth **Ext:** 325

CONSULTATIONS:

Environmental Health Officer Comments received
Parish Council No views received to date

Neighbour responses: M E Carter, Richard Neasham, Ms Karen Sellers, Mr And Mrs T C Cammish, Mrs Sally Mills, Mr & Mrs J Simpson, Mrs Kim Burnett, Mr Thomas Cammish, Mrs Sandra Piercy, Mrs Doreen Hicks, Mr Joe Simpson,

SITE:

The site comprises of numerous substantial buildings that are used to produce various types of malt. The site is located within the wider open countryside, approximately 1.23 kilometres to the north of A64 and approximately 0.8 kilometres to the north west of the village of West Knapton. The site is also adjacent to the Malton – Scarborough railway line, with the residential properties of ‘The Poplars’ to the south of the site and other residential properties to the north and west close to the railway line.

PROPOSAL:

Raising the roof of part of an existing building to allow the installation of a new roasting plant and associated equipment, the installation of an external plant and a chimney ranging in height from 12m to 23m and the siting of an external steel container.

Members should note that the proposal seeks the following:

- 2 external cooler cyclones at a height of 12m
- 1 external chimney at a height of 23m
- 1 external steel container
- 2 internal roaster machines
- 2 internal coolers
- 2 internal afterburners
- 4 internal fans

Members should also note that the initial scheme was submitted without a noise survey. Following discussions with the agent, a noise survey was submitted along with further noise, odour and dust information. Members should also note that one chimney has been omitted from the initial scheme; therefore the scheme now proposed one chimney and not two as originally proposed.

HISTORY:

There is extensive history in connection with the site. However, it is considered that there is no relevant history pertinent to this planning application.

POLICY:

National Policy Guidance

National Planning Policy Framework (2012)

National Planning Practice Guidance (2014)

The Ryedale Plan – Local Plan Strategy

Policy SP6 - Delivery and Distribution of Employment/Industrial Land and Premises

Policy SP13 - Landscapes

Policy SP16 - Design

Policy SP19 - Presumption in Favour of Sustainable Development

Policy SP20 - Generic Development Management Issues

APPRAISAL:

The main considerations to be taken into account when considering the proposal are:

- i. The principle of development
- ii. Impact upon the wider open countryside
- iii. Impact upon neighbouring amenity
 - a) Noise
 - b) Dust
 - c) Odour
- vi. Other matters
- vi. Conclusion

i. The principle of development

Local and National Planning Policy is generally supportive of the expansion of existing established businesses, including the Boormalt Group. Policy SP6 (Delivery and Distribution of Employment/Industrial Land and Premises) is supportive of the expansion land for existing major employers and established buildings within the wider open countryside. This proposal seeks to alter and use an existing building within the site and will not involve any expansion of the application site beyond its existing boundaries. It is therefore considered that the principle of development in this location is considered acceptable.

ii. Impact upon the wider open countryside

The external elements of the proposal include the chimney, 2 cooler cyclones, a steel container and the raising of the existing roof by 4 metres. The chimney and the raising of the existing roof will be visible from the wider open countryside. There will be glimpsed views of the 2 cooler cyclones and the steel container when approaching the site from the south along the B1258. However, it is considered that the external elements will be read in the context of the existing buildings within the site.

The proposed cladding to raise the roof will be of a Moorland Green that matches the adjacent buildings. It is therefore considered that the proposal will not have a detrimental impact upon the wider open countryside.

iii. Impact upon neighbouring amenity – noise, dust and odour

The application has generated numerous objections from the occupiers of nearby properties. The full letters of objection may be viewed on the Council's website.

8 letters of objection were received as a result of the initial consultation and a further 3 letters of objection have been received following the submission of a noise survey and further noise, odour and dust information.

A summary of the objections include the following main points and material planning considerations:

- The proposal will make the odour worse for neighbouring properties
- The proposal will increase the noise that will impact upon neighbouring properties
- The proposal will increase the dust (which adds to air pollution) that will impact upon neighbouring properties
- The proposal will increase traffic congestion
- The proposal will increase the risk of fire and explosion
- Blocking up on soakaways
- The discarding of rubbish into the drainage gutters
- The garden of a property has been flooded; therefore the infrastructure of the factory cannot cope with the current level of production
- Fly infestations
- Property values

a) Noise

Following discussions with the Council's Environmental Protection Officer, the following comments have been made with regard to noise:

A BS 4142:2014 Noise Assessment was submitted by the applicants. The assessment considered measurements of existing noise levels at the nearest noise sensitive receptors: Station House on Malton Road, which is situated ~ 75m away to the north east; and the closest property on Poplars Lane, which is slightly further away and screened from the proposed development by parts of the existing installation. Measurements were also taken of noise levels 5 metres from the existing roasting plant whilst three of the existing four roasting ovens were in operation. By calculation, the specific noise level predicted to arise at the nearest noise sensitive receptor as a result of the operation of all existing roasters plus the two proposed additional roasters was then determined. The calculated specific noise level at the nearest receptor was 40dB. The calculation was based on attenuation due to the distance between the noise source and the receptor and assumed that there would be no barrier attenuation. A +3dB penalty was added to this giving a rating value of 43dB. This is 3dB below the measured background noise level at the receptor, a result that indicates that the specific noise from the extended roasting plant will have no adverse noise impact.

This assessment may be considered cautious in respect of the fact that in determining the rating level, noise from the existing roasting plant has not been excluded. It's exclusion would result in a lower rating level. However, the calculated rating level does also make an assumption that the two new roasters (and the existing roaster that was not operating when the assessment was undertaken) will have similar sound emission characteristics to the three existing roasters that were operating, thereby resulting in a doubling of sound power. That is the basis on which the measured sound pressure level of 61dBA at 5m from three roasters has been used to predict a level of 64dBA if six roasters (including the proposed two new ones) operated together.

(Doubling the sound power results in a 3dB increase in the sound pressure level). This means that there is a degree of uncertainty with regards to the predicted impact.

I therefore recommend the following condition if the application is approved:

The applicant shall arrange for noise monitoring to be undertaken by a suitably qualified acoustic consultant to check that the noise level arising from the combined impact of the existing four roasters and two new roasters does not exceed the level of 64dB (LAeq15min) 5metres away from the external façade of the building housing the roasters. This monitoring shall be undertaken within 2 months of the completion of commissioning of the new roasters and whilst all six roasters are operating. If the measured level exceeds 64dB(A), the applicant must identify and implement appropriate measures to attenuate noise from the plant so that it does not exceed the predicted level of 64dB (LAeq15min).

Reason : To protect the local amenity by preventing an increase in noise levels at noise sensitive properties

b) Dust

The Environmental Protection Officer has also stated the following comments with regard to dust.

The proposed new plants incorporate cyclones to capture dust from the roasters and coolers. The applicant has stated that there is a 'small amount of deposition taking place from the roasters' but that this is limited to the roof area close to the flues and emissions are confined to within the site. Furthermore the applicant states that past complaints concerning dust have related to other parts of the plant.

Environmental Health complaints records for the period 2011 to the present date do not show any complaints relating to dust emissions from the installation.

I recommend the following condition if the application is approved:

Emissions to air from the roasting drums and coolers to which this permission relates shall at all times discharge through cyclone arrestment systems so as to minimise emissions of particulate matter. Materials captured by the cyclones shall be transferred via enclosed conveyance systems to secure enclosed storage vessels.

Reason : To protect the local amenity by minimising emissions of particulate matter

c) Odour

The Environmental Protection Officer has also made with the following comments with regard to odour and smoke:

Several complaints have been made in recent weeks concerning emissions of smoke from the roasting plant. The production of high coloured malts may give rise to odour and visible smoke. This is because production of darker malts involves subjecting the malt to more heat. These products are currently produced exclusively using one particular roasting drum (No.5). This drum has an afterburner, the purpose of which is to abate emissions of odour and smoke which arise from the process. It should be noted that the smoke emitted through the normal production of high coloured malt is not the result of the malt catching fire (which is not part of the process). Green malt fed into the roasting drum is heated indirectly by hot air blown through the rotating drum. In order to minimise smoke and odour emissions the afterburner must start up in time and attain the required temperature in order to ensure effective oxidation of odorous compounds and smoke. My understanding is that provided the afterburner is operated properly it is effective and smoke and odour emissions are minimal.

Following a recent complaint from a local resident concerning smoke emissions, enquiries were made and the operator confirmed that on 13 July there was a fire in No. 5 roasting drum. Such incidents are not common but if they do occur are usually associated with the production of high coloured malts. To minimise the risk of fire a sensor continuously measures the temperature of the malt. The detection of a high temperature automatically activates the release of water to flood the drum and extinguish the fire. There is also a temperature sensor in the exhaust ductwork taking air from the drum to the afterburner and there are smoke detectors in the roasting house. I understand that the automated extinguisher operated effectively on this occasion and although the fire and rescue emergency services were called out as part of the standard operating procedures, the fire in the roaster was extinguished before they arrived. The incident was caused by a batch of green malt that had become sticky and having adhered to the inside of the drum became overheated.

The other three existing roasting drums are used to produce less coloured malts and are not equipped with afterburners as the potential for smoke and odour emissions is low. The risk of fire is also lower and consequently unlike drum 5, the other drums do not have automated emergency systems to detect and extinguish fires, although they do have product and exhaust temperature sensors which are monitored by the operator.

My understanding is that the demand for high coloured malts is growing significantly and the two proposed new roasters, each of which will be equipped with an afterburner and automated systems to detect and extinguish fires, will be used to increase the capacity to produce these products. The applicant has stated that the afterburners of the new roasters will be more efficient than the one fitted to existing roaster No. 5 and that there will therefore be little or no impact on emissions of smoke and odour if the development is approved.

I recommend the following condition if the application is approved:

Each of the two roasters to which this permission relates shall be equipped with an afterburner to treat exhaust air from the roasters. The afterburners shall be operated for the appropriate time duration and at appropriate temperatures so as to ensure the effective treatment of exhaust gases thereby preventing or minimising emissions of smoke and odour at all times.

Reason : To protect the local amenity by preventing or minimising emissions of odour and smoke.

Policy SP20 (Generic Development Management Issues) of the Ryedale Plan – Local Plan Strategy states the following regarding amenity and safety:

New development will not have a material adverse impact on the amenity of present or future occupants, the users or occupants of neighbouring land and buildings or the wider community by virtue of its design, use, location and proximity to neighbouring land uses. Impacts on amenity can include, for example, noise, dust, odour, light flicker, loss of privacy or natural daylight or be an overbearing presence

Developers will be expected to apply the highest standards outlined in the World Health Organisation, British Standards and wider international and national standards relating to noise

New development proposals which will result in an unacceptable risk to human life, health and safety or unacceptable risk to property will be resisted. Developers will be expected to address the risks/potential risks posed by contamination and/or unstable land in accordance with recognised national and international standards and guidance

It is considered that with conditions suggested by the Environmental Protection Officer being attached to the Decision Notice (if planning permission is granted), the amenity of neighbouring properties will be adequately protected in terms of noise, dust and odour. Members should also note that other legislative procedures would take into account issues regarding nuisance in respect of noise, odour, dust and fire risk.

vi. Other matters

The proposal will not involve a material increase in traffic and vehicular movements associated with the proposed development.

There has been no response from the Parish Council with regard to the proposal.

v. Conclusion

In light of the above, it is considered that the raising the roof of part of an existing building to allow the installation of a new roasting plant and associated equipment, the installation of an external plant and a chimney ranging in height from 12m to 23m and the siting of an external steel container meets the relevant policy criteria outlined within Policies SP6, SP13, SP16, SP19 and SP20 of the Ryedale Plan - Local Plan Strategy and with the policies contained within the National Planning Policy Framework. The proposal is therefore recommended for approval, subject to the following conditions.

RECOMMENDATION: Approval

- 1 The development hereby permitted shall be begun on or before .

Reason:- To ensure compliance with Section 51 of the Planning and Compulsory Purchase Act 2004

- 2 If the application is approved, the applicant shall arrange for noise monitoring to be undertaken by a suitably qualified acoustic consultant to check that the noise level arising from the combined impact of the existing four roasters and two new roasters does not exceed the level of 64dB (L_{Aeq15min}) 5metres away from the external façade of the building housing the roasters. This monitoring shall be undertaken within 2 months of the completion of commissioning of the new roasters and whilst all six roasters are operating. If the measured level exceeds 64dB(A), the applicant must identify and implement appropriate measures to attenuate noise from the plant so that it does not exceed the predicted level of 64dB (L_{Aeq15min}).

Reason:- To protect the local amenity by preventing an increase in noise levels at noise sensitive properties and to comply with Policy SP20 of the Ryedale Plan - Local Plan Strategy.

- 3 Emissions to air from the roasting drums and coolers to which this permission relates shall at all times discharge through cyclone arrestment systems so as to minimise emissions of particulate matter. Materials captured by the cyclones shall be transferred via enclosed conveyance systems to secure enclosed storage vessels.

Reason:- To protect the local amenity by minimising emissions of particulate matter and to comply with Policy SP20 of the Ryedale Plan - Local Plan Strategy.

- 4 Each of the two roasters to which this permission relates shall be equipped with an afterburner to treat exhaust air from the roasters. The afterburners shall be operated for the appropriate time duration and at appropriate temperatures so as to ensure the effective treatment of exhaust gases thereby preventing or minimising emissions of smoke and odour at all times.

Reason:- To protect the local amenity by preventing or minimising emissions of odour and smoke and to comply with Policy SP20 of the Ryedale Plan - Local Plan Strategy.

- 5 The development hereby permitted shall be carried out in accordance with the following approved plan(s):.

Reason: For the avoidance of doubt and in the interests of proper planning.

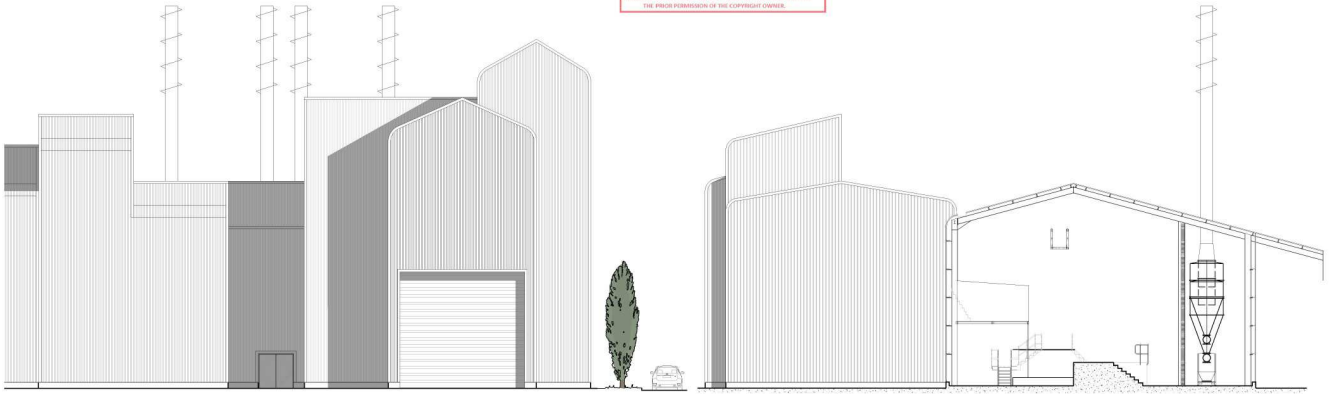
Background Papers:

Adopted Ryedale Local Plan 2002
Local Plan Strategy 2013
National Planning Policy Framework
Responses from consultees and interested parties

NOT SCALE FROM THIS DRAWING FOR CONSTRUCTION PURPOSES

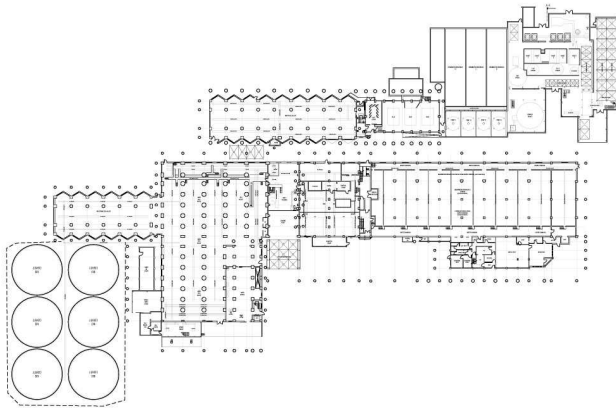
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REVISIONS		
No.	Description	By



General Arrangement Existing South Elevation_1:100

General Arrangement Existing West Elevation & Section A-A_1:100



General Arrangement Existing Key Plan_1:500



General Arrangement Existing Ground level_1:200

DATE VALID
02/04/15

Gelder and Kitchen LLP
CORPORATE CONSULTANTS
Milton House, 181 High Street, Kingston upon Hull, HU1 1LH
T: +44 (0)1482 20000 www.gelderandkitchen.co.uk

BOORMALT

Client: Boormalt Group
Knapton Maltings, Knapton Malton, North Yorkshire, YO17 6RN
Roaster Project

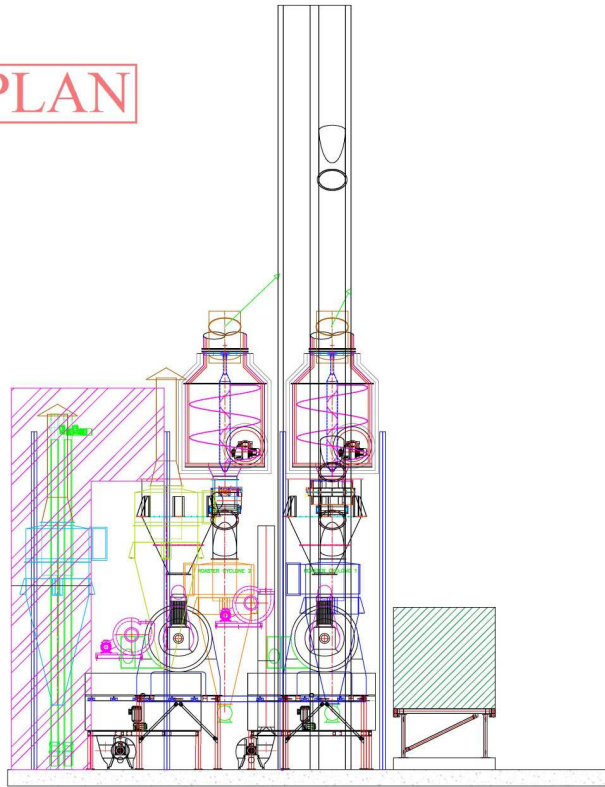
Job No: 13/209
Date: 28.03.2015
Scale: 1:100
Drawing: Existing details
Plans, Section and Elevation

PLANNING

13/209 AA 100 002

IF IN DOUBT ASK.

REVISED PLAN



DATE
10/08/15

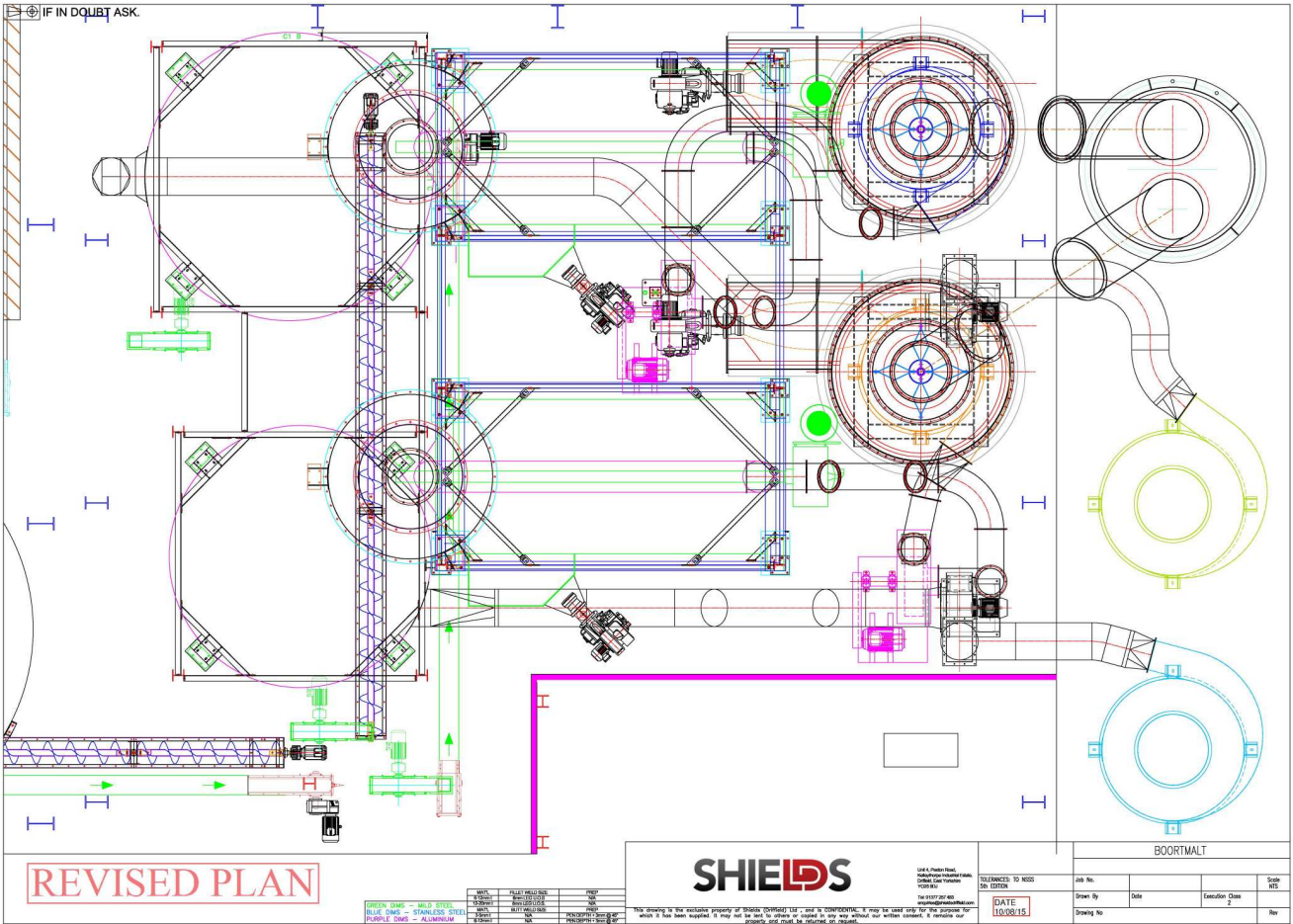
UNIT	WARRANTY	WARRANTY	WARRANTY
GREEN DMS - MILD STEEL	12 MONTHS	12 MONTHS	12 MONTHS
BLUE DMS - STAINLESS STEEL	24 MONTHS	24 MONTHS	24 MONTHS
PURPLE DMS - ALUMINIUM	24 MONTHS	24 MONTHS	24 MONTHS

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BOORTMALT			
ROASTER PROJECT END VIEW NO DUCTING			
Job No.	Scale	Drawn By	Date
08-000000	1:1	CS	07/06/2015
Revision	Description	Date	By
1			



REVISED PLAN

UNIT	WALL	FLOOR	CEILING	FRONT	REAR
GREEN DIMS - MILD STEEL	3/8"	1/2"	1/2"	1/2"	1/2"
BLUE DIMS - STAINLESS STEEL	3/8"	1/2"	1/2"	1/2"	1/2"
PURPLE DIMS - ALUMINUM	3/8"	1/2"	1/2"	1/2"	1/2"

SHIELDS

DATE: 10/28/15

BOORTMALT

Job No.	Date	Revision	Scale
		2	MS

Knapton **New roaster project**

Architectural Design Statement March 2015

Boortmalt Group
Knapton Maltings, Knapton
Malton,
North Yorkshire
YO17 6RN

Introduction

This Architectural Statement has been prepared by Gelder and Kitchen LLP, to be read in association with the submission of a planning application for consent for a development at Boortmalt Group, Knaptown Maltings, Knaptown, Malton, North Yorkshire, YO17 6RN.

The document provides an overview of the key issues, design considerations in conjunction with the drawings submitted as part of this planning submission.

Our clients successful and well established business has developed over the years and as a result of increased demand there is a need to improve its existing operations to meet the requirements of the food industry on a local, national and international level. As a result of this demand our client is looking for consent to raise the roof of an existing building and for the installation of a new roasting plant which will increase their production to meet their business demands.

Description of the Proposal

The proposal is for :

- Raising the roof to part of an existing building [4mtrs high x 5.8mtrs wide] in order to accommodate the installation of a new roasting plant & equipment with associated coolers, cyclones and afterburners.
- Installation of external plant and chimney's ranging in height from 12mtrs to 23mtrs
- External steel container, 10 x 3 x 2.7mtrs

Assessment

Context

The site is located within open countryside adjacent to the Scarborough and York railway line, to the north of Knaptown. The site is an established business/ industrial site, which covers a large area. The existing site is well screened by dense and mature vegetation. The site is within a designated Industrial / business area that is afforded protection under Policy EMP8 – Existing industrial and business area as a local employment site within the Reydale District.

The site has an extensive planning history with in-excess of 20 application, policies applicable to this application are – ENV1, ENV25 and EMP6.

The property is not statutory Listed nor is it located within a Conservation Area.

The proposed location is considered suitable for the proposed plant as it cannot be seen from any public vantage points and this area is already home to a number of similar service facilities. Therefore, when viewed in context, it is considered that the development proposed wouldn't cause any additional harm to the external appearance of the property.

Use

Not applicable – There will be no change to the current use of the site and facilities.

Amount

The proposal would be located towards the north east of the site, bound by the existing industrial buildings. The proposal would be appropriate in terms of its scale and orientation and it is considered that the proposal would not be detrimental to the character and appearance of the area nor would it have an adverse affect upon the amenity of the near by properties.

Layout

The raised roof and associated equipment shall be located within the centre of the site and is surrounded by various large buildings and similar plant and equipment. The plant cannot be seen from any public vantage points and the closest residential properties are circa 100m to the south west [see submitted drawings].

Scale

The physical characteristics of scale are to remain in keeping with the existing built forms on the site. The existing parameters of height, width and depth have set the precedent for the proposal and, used as one of the principle considerations for the design of the development. The dimensions for all the plant and raised section of roof are set out above and on the application drawings. When viewed within context, plant of this scale and location will cause no harm to the overall visual appearance of the buildings and area.

Landscape & Access

Not applicable – the external plant is not sited in a location where landscaping would be considered appropriate. Public access is not required to the plant and no changes are proposed to public access into or throughout the site and buildings.

Appearance

The appearance of the new building and plant will match the existing context and characteristics of the existing buildings and use. Finishes and colours will predominantly be neutral to blend into the environment as much as possible.

Flood Risk

The site lies outside an area which may be at risk from flooding. According to PPS25, table D.1: Flood Zones: All uses of land are appropriate in this zone.

A Flood Risk Assessment will therefore not be necessary for the proposed development.

Noise & Smell

The proposed plant will be the same as the existing roaster and associated equipment which is already housed within another part of the development building, noise and smell from the new plant will not exceed that of the existing or exacerbate the current levels.

CC
10/7 MALS

Charlotte Cornforth

From: Paul Hunt
Sent: 07 August 2015 11:14
To: Charlotte Cornforth
Subject: FW: Boort Malt Planning Application Ref. 15/00348/FUL

Dear Charlotte

My comments on this matter are as follows:

Noise

A BS 4142:2014 Noise Assessment was submitted by the applicants. The assessment considered measurements of existing noise levels at the nearest noise sensitive receptors: Station House on Malton Road, which is situated ~ 75m away to the north east; and the closest property on Poplars Lane, which is slightly further away and screened from the proposed development by parts of the existing installation. Measurements were also taken of noise levels 5 metres from the existing roasting plant whilst three of the existing four roasting ovens were in operation. By calculation, the specific noise level predicted to arise at the nearest noise sensitive receptor as a result of the operation of all existing roasters plus the two proposed additional roasters was then determined. The calculated specific noise level at the nearest receptor was 40dB. The calculation was based on attenuation due to the distance between the noise source and the receptor and assumed that there would be no barrier attenuation. A +3dB penalty was added to this giving a rating value of 43dB. This is 3dB below the measured background noise level at the receptor, a result that indicates that the specific noise from the extended roasting plant will have no adverse noise impact.

This assessment may be considered cautious in respect of the fact that in determining the rating level, noise from the existing roasting plant has not been excluded. It's exclusion would result in a lower rating level. However, the calculated rating level does also make an assumption that the two new roasters (and the existing roaster that was not operating when the assessment was undertaken) will have similar sound emission characteristics to the three existing roasters that were operating, thereby resulting in a doubling of sound power. That is the basis on which the measured sound pressure level of 61dBA at 5m from three roasters has been used to predict a level of 64dBA if six roasters (including the proposed two new ones) operated together. (Doubling the sound power results in a 3dB increase in the sound pressure level). This means that there is a degree of uncertainty with regards to the predicted impact.

I recommend the following condition if the application is approved:

The applicant shall arrange for noise monitoring to be undertaken by a suitably qualified acoustic consultant to check that the noise level arising from the combined impact of the existing four roasters and two new roasters does not exceed the level of 64dB (LAeq15min) 5metres away from the external façade of the building housing the roasters.

This monitoring shall be undertaken within 2 months of the completion of commissioning of the new roasters and whilst all six roasters are operating. If the measured level exceeds 64dB(A), the applicant must identify and implement appropriate measures to attenuate noise from the plant so that it does not exceed the predicted level of 64dB (LAeq15min).

Reason : To protect the local amenity by preventing an increase in noise levels at noise sensitive properties

Dust

The proposed new plants incorporate cyclones to capture dust from the roasters and coolers. The applicant has stated that there is a 'small amount of deposition taking place from the roasters' but that this is limited to the roof area close to the flues and emissions are confined to within the site. Furthermore the applicant states that past complaints concerning dust have related to other parts of the plant.

Environmental Health complaints records for the period 2011 to the present date do not show any complaints relating to dust emissions from the installation.

I recommend the following condition if the application is approved:

Emissions to air from the roasting drums and coolers to which this permission relates shall at all times discharge through cyclone arrestment systems so as to minimise emissions of particulate matter. Materials captured by the cyclones shall be transferred via enclosed conveyance systems to secure enclosed storage vessels.

Reason : To protect the local amenity by minimising emissions of particulate matter.

Smoke

Several complaints have been made in recent weeks concerning emissions of smoke from the roasting plant. The production of high coloured malts may give rise to odour and visible smoke. This is because production of darker malts involves subjecting the malt to more heat. These products are currently produced exclusively using one particular roasting drum (No.5). This drum has an afterburner, the purpose of which is to abate emissions of odour and smoke which arise from the process. It should be noted that the smoke emitted through the normal production of high coloured malt is not the result of the malt catching fire (which is not part of the process). Green malt fed into the roasting drum is heated indirectly by hot air blown through the rotating drum. In order to minimise smoke and odour emissions the afterburner must start up in time and attain the required temperature in order to ensure effective oxidation of odorous compounds and smoke. My understanding is that provided the afterburner is operated properly it is effective and smoke and odour emissions are minimal.

Following a recent complaint from a local resident concerning smoke emissions, enquiries were made and the operator confirmed that on 13 July there was a fire in No. 5 roasting drum. Such incidents are not common but if they do occur are usually associated with the production of high coloured malts. To minimise the risk of fire a sensor continuously measures the temperature of the malt. The detection of a high temperature automatically activates the release of water to flood the drum and extinguish the fire. There is also a temperature sensor in the exhaust ductwork taking air from the drum to the afterburner and there are smoke detectors in the roasting house. I understand that the automated extinguisher operated effectively on this occasion and although the fire and rescue emergency services were called out as part of the standard operating procedures, the fire in the roaster was extinguished before they arrived. The incident was caused by a batch of green malt that had become sticky and having adhered to the inside of the drum became overheated.

The other three existing roasting drums are used to produce less coloured malts and are not equipped with afterburners as the potential for smoke and odour emissions is low. The risk of fire is also lower and consequently unlike drum 5, the other drums do not have automated emergency systems to detect and extinguish fires, although they do have product and exhaust temperature sensors which are monitored by the operator.

My understanding is that the demand for high coloured malts is growing significantly and the two proposed new roasters, each of which will be equipped with an afterburner and automated systems to detect and extinguish fires, will be used to increase the capacity to produce these products. The applicant has stated that the afterburners of the new roasters will be more efficient than the one fitted to existing roaster No. 5 and that there will therefore be little or no impact on emissions of smoke and odour if the development is approved.

I recommend the following condition if the application is approved:

Each of the two roasters to which this permission relates shall be equipped with an afterburner to treat exhaust air from the roasters. The afterburners shall be operated for the appropriate time duration and at appropriate temperatures so as to ensure the effective treatment of exhaust gases thereby preventing or minimising emissions of smoke and odour at all times.

Reason : To protect the local amenity by preventing or minimising emissions of odour and smoke.

Best regards

Paul
Paul Hunt
Environmental Protection Officer
Ryedale DC
Ryedale House
Old Malton Road
Malton
YO17 7HH

Tel: 01653 600666 EXT 257
E:Mail: paul.hunt@ryedale.gov.uk
www.ryedale.gov.uk

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Agenda Item 10

Item Number: 10
Application No: 15/00620/FUL
Parish: Cropton Parish Council
Appn. Type: Full Application
Applicant: Mr John Standen
Proposal: Erection of detached 2 bedroom dwelling together with formation of 5no. parking spaces for shared use with Woodmans Cottage.
Location: Land To The Rear Of Woodmans Cottage High Street Cropton Pickering North Yorkshire

Registration Date:
8/13 Wk Expiry Date: 6 August 2015
Overall Expiry Date: 20 July 2015
Case Officer: Helen Bloomer **Ext:** 328

CONSULTATIONS:

Sustainable Places Team (Yorkshire Area) No detailed comments to make
Land Use Planning No views received to date
Parish Council No views received to date
Highways North Yorkshire Recommend conditions

Neighbour responses: Mrs Janet Mckay, Dr David McHugh,

SITE:

The application site is the rear amenity space of Woodman's Cottage, whilst the host dwelling is within the Development Limits, the application site the subject of the application is not. The site is within The Fringe of the Moors Area of High Landscape Value.

A Public Right of Way (Back Lane) runs along the eastern boundary, north – south.

PROPOSAL:

Planning approval is being sought for the erection of a two bedroom detached bungalow with the formation of a separate amenity space and five parking spaces, which would be shared with the existing Woodman's Cottage, along with the existing vehicle access. The material pallet would match that of the existing dwellinghouse

HISTORY:

3/31/67/OA Erection of a dwelling and garage at land adjacent to Woodmans Cottage. Refused. Appeal Dismissed (1992)

14/01412/PREAPP Erection of a single storey dwelling. Principle not supported.

APPRAISAL:

The main considerations in assessing this application are:

- i) Principle
- ii) Character and Form
- iii) Neighbour Amenity
- iv) Highways

v) Other Issues

Principle

In accordance with S38(6) of the Planning Compulsory Purchase Act 2004 planning applications must be considered against the adopted Development Plan unless material planning considerations indicate otherwise. The adopted Development Plan is the Ryedale Local Plan - Local Plan Strategy, adopted 5 September 2013 and the 'saved' development limits shown on the proposals map of the Ryedale Local Plan adopted 2002. Policy SP1 (General Location of Development and Settlement Hierarchy) directs development to the Principle Towns of Malton and Norton, then to Market Towns, Service Villages, new residential development within 'Other Villages' such as Cropton would only be supported in principle when it is part of a continually built up frontage and would be subject to a Local Needs Occupancy condition in line with Policy SP21 (Occupancy Restrictions).

However the application site is outside of the adopted development limits and is therefore in open countryside in the context of the development plan. Policy SP2 (Delivery and Distribution of New Housing) only supports the principle of a new build dwellings in the locations, where it is necessary to support the land based economy where an essential need for residential development within that location can be justified. The proposed development is not required for the aforementioned purpose. The applicant who currently resides in Woodman's Cottage is a long standing member of the community and states that he requires the bungalow due to health reasons. Whilst Officers sympathise with the applicants situation and note the support for the applicant from members of the public, this is not a material planning consideration. It is Officers opinion therefore that the development would be contrary to the aims of the Ryedale Plan - Local Plan Strategy.

Prior to this application an earlier application was made for the erection of a bungalow and garage on the site. Planning permission was refused and the applicant appealed the decision. The Inspector dismissed the appeal. He did so for a number of reasons including that the proposal was not compliant with the adopted policies, the reason being that the development was not within a location where development is required to stimulate growth and it did not form part of a otherwise continually built up frontage and that it would constitute backland development, which from Back Lane would be extremely prominent.

The dwelling being considered by members is smaller in scale and is appraised under the more recent Ryedale Plan - Local Plan Strategy (adopted September 2013). The policy considerations remain similar to the earlier adopted plan which the Inspector referred to when he dismissed the appeal. A recommendation other than that of refusal would clearly be contrary to the aims of the development plan, with no material planning considerations identified to justify the departure from policy.

Character and Form

Policy SP16 (Design) of the Ryedale Plan – Local Plan Strategy requires new development to respect the context provided by its surroundings including the grain of settlements, influenced by street blocks, plot sizes, orientation of buildings, boundaries, spaces between buildings and the density, size and scale of buildings. Whilst the design of the proposed development (subject to the relevant conditions regarding materials is considered to be acceptable), it is not considered that siting of a dwellinghouse with the amenity space of an existing dwelling respects the grain of the settlement. Historically (an agricultural dependant village) the majority of dwellings have long amenity spaces which stretch back from Main Street to the Back Lane. Policy SP13 (Landscape) seeks new development proposals to contribute to the protection and enhancement of distinctive elements of landscape character that are the result of historical and cultural influences. The proposed siting of a dwellinghouse and associated parking area would undoubtedly through the process of back land development urbanise the historically rural character of this part of Cropton.

The impact on the landscape setting was a significant factor in the Inspector dismissing the earlier appeal. The development is therefore considered to be contrary to the aims of Policy SP13 (Landscapes) and SP16 (Design).

Neighbour Amenity

Policy SP20 (Generic Development management Issues) of the Ryedale Plan - Local Plan Strategy expects that new development would not have a material adverse impact on the amenity of present or future occupants, the users or occupants of neighbouring land and buildings or the wider community by virtue of the ... 'use, location and proximity to neighbouring uses'. The National Planning Policy Framework Paragraph 17 seeks to secure ... a good standard of amenity for all existing and future occupants of land and buildings.

The site is in an area currently used for residential purposes. Nevertheless the comings and goings associated with two dwellings will be greater than for a single dwelling. The occupiers of Moor View are likely to be the most effected. This is given the proposed siting of the car parking spaces which would not only serve the proposed new dwelling but the existing Woodman's Cottage running a large proportion of their eastern boundary to their amenity area. The access road would run the entirety of Moor Views northern boundary and amenity space. It is noted that the occupiers have not objected to the proposed development. Nevertheless it is a requirement of both SP20 and Paragraph 17 of the NPPF to consider the amenity of current and future occupiers. Officers consider the associated coming and goings associated with the vehicle movements of two dwelling on the boundaries of Moor View amenity space would adversely effect the amenity of current and future occupiers to such an extent that the development would be contrary to both local and national planning policy.

It is not considered that the development would result in a loss of privacy, light or have an overbearing presence on the amenity of the neighbouring properties. If approval was to be granted a landscaping condition would be advised to ensure a clear separation between the applicants existing property and that of the proposed.

Highways

Subject to the relevant conditions North Yorkshire County Council Highway Authority has raised no objection to the proposed development.

Other Issues

Drainage and Foul Waste

The treatment of foul waste would be dealt with via the means of a package treatment plant; this is in line with Government Guidance when it is not possible to connect to mains sewers. If Members are minded to approve the application it Officers recommendation that a condition is attached requiring the details of the treatment plant to be submitted to and agreed in writing by the LPA. Surface water will be gathered in underground rainwater harvesting header tank, again if the members are minded to approve Officers would recommend a condition requiring further details and a percolation test.

Trees

There is a number of existing trees particularly along the northern boundary of the site. If planning permission is granted it is recommended that a scheme of protection be submitted to and agreed in writing to ensure that none of the trees are damaged as a result of the development.

Consultation Responses

At the time of writing one letter of support had been received in relation to the Councils consultation letters. A summary of the letter has been included below. The full version can be seen on the Councils website.

- i. The linear form of Cropton is a façade with many dwellings having substantial buildings and extensions to the rear and therefore would not be setting a precedent.
- ii. Would be hardly visible if at all
- iii. The applicants are long standing residents of Cropton and as their existing property no longer meets the needs, the proposed dwelling would meet their needs and would allow them to remain part of the community.

It is also noted that a number of letters of support were submitted at the time the application was received as supporting information.

The Environment Agency has no observations to make.

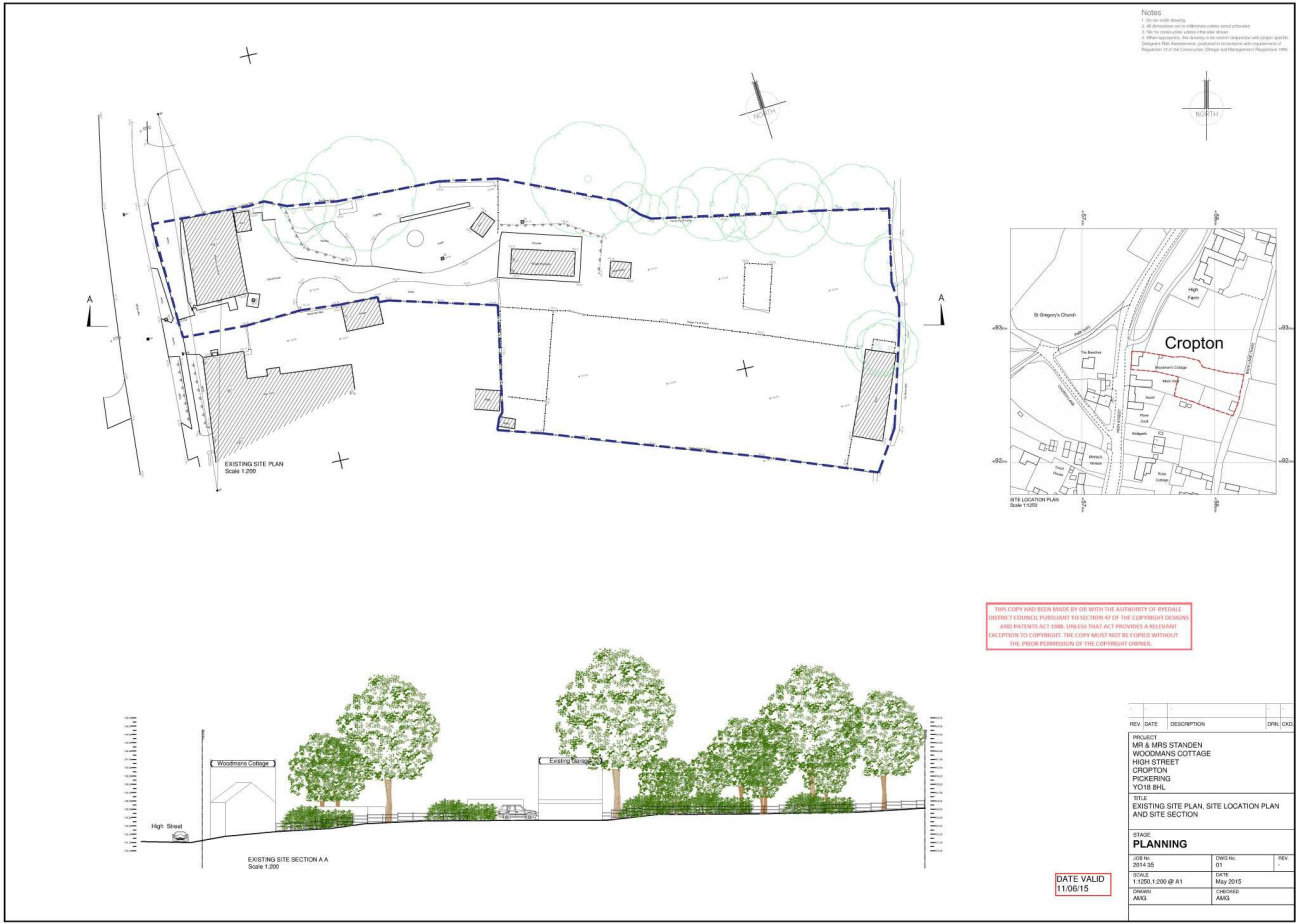
At the time of writing no other written representations had been received. In consideration of the above the recommendation is one of refusal.

RECOMMENDATION: Refusal

- 1 The proposed dwelling is located outside of the Development Limits of Cropton. No exceptional circumstances have been submitted to justify the erection of this dwelling in open countryside. The proposal is therefore considered to be contrary to Policy SP1 of the adopted Ryedale Local Plan Strategy and contrary to the National Planning Policy Framework.
- 2 The proposed dwelling by virtue of its siting would fail to reinforce the village form of Cropton through the creation of additional backland development. This type of development fails to reinforce local distinctiveness and appear visually intrusive within the Area of High Landscape Value, The proposal is therefore considered to be contrary to Policies SP13, SP16 and SP20 of the adopted Ryedale Local Plan Strategy and contrary to the National Planning Policy Framework.
- 3 The proposed no.5 space car parking area and access road by virtue of its close proximity to the neighbouring property (Moor View) (and the level of noise and disturbance arising from such use), will not provide for a satisfactory level of residential amenity for the future occupiers. The proposed development is considered therefore to be contrary to the Policy SP20 of the Ryedale Plan - Local Plan Strategy and Paragraph 17 of the National Planning Policy Framework.

Background Papers:

Adopted Ryedale Local Plan 2002
Local Plan Strategy 2013
National Planning Policy Framework
Responses from consultees and interested parties



DESIGN AND ACCESS STATEMENT

Date:

26th May 2015

Prepared by:

Alex Green

Applicant and on behalf of:

Mr & Mrs J. Standen

Address:

Woodmans Cottage
High Street
Cropton
Near Pickering
North Yorkshire
YO18 8HL

Application Type:

Proposed new dwelling to the rear garden of Woodmans Cottage, Cropton.

Notes:

This statement is to be read in conjunction with drawing 14/35 01 and 02

Introduction

Woodmans Cottage is located in the village of Cropton which lies in the District of Ryedale and is with in the North Yorkshire Moors National Park.

Cropton is a small and attractive Moorland village without a village shop and no public transport links. The village however boasts a church, a chapel and a recently refurbished village hall. The village hall is an integral part of the small community.

Given villages restraint and lack of day to day amenities younger families in Cropton are generally required to leave and look for more affordable and convenient accommodation elsewhere. This is detrimental to the community and goes against the ethics and requirements outlined in the Parish Plan.

The applicants Mr and Mrs Standen have lived in the village for a large percentage of their lives. Mrs Standen is an active member of the community and has become integral to the village over a long period of time. Both Mr and Mrs Standen are highly respected in the village and this is reflected in the heartfelt letters provided by local residents including neighbours which serve on the Parish Council. A copy of these letters has been included with this planning application.

Over recent times Mr Standen's health has deteriorated and as a result Woodman's Cottage where they have lived for over 30 years is no longer suitable for Mr Standen's additional needs. Given the lack of suitable accommodation elsewhere in the village of Cropton unless a new purpose built dwelling can be constructed to meet Mr Standen's health requirements the only alternative will be

Address: Alex Green, 3 Comfrey Close,
Harrogate, HG3 2XB
Mobile: 07966 576 346
Email: AMGarchitectural@outlook.com

for another long serving family to leave the village. Given the respect for Mr and Mrs Standen in the village this would create a large void in the local community.

As a result we have collectively taken the decision to submit a formal application to construct a new dwelling in the rear garden of Woodman's Cottage. Given the unprecedented nature of this application we submitted a pre-application and a positive response was not received. However in our opinion the planning officer did not consider the justifications for the proposals and considered it an application for the purposes of profit.

There is a huge interest in this application throughout the village of Cropton and it goes without saying that the whole community is whole heartedly in support of the proposals. This is reflected in the letters of support received which have been appended to the formal application.

Appearance

The High Street is the main road which runs thru the village of Cropton. There are number of properties which face the High Street and include deep rear gardens which include built forms. Generally the built forms are ancillary to that of the main house which face the High Street, however it is understood that some of the ancillary type buildings have been converted for the purposes of additional accommodation and holiday lettings. It should be noted that a number of the ancillary buildings are outside of the development limits.

The proposed new dwelling will follow a familiar trend to that on the High Street and will be ancillary in appearance to the main house which is Woodmans Cottage. The proposed dwelling is a single storey dwelling and the ridge height does not exceed that of Woodmans Cottage despite the fact it is built on elevated existing ground.

In order to ensure the new dwelling is in keeping the materials will reflect those materials which give Woodmans Cottage its character. The new dwelling will comprise of natural stone walling with natural stone heads and cills at any openings and a pan tile roof. The doors and window styles will mirror those on Woodmans Cottage and the finer elements such as guttering and chimneys will also be similar in appearance and detailing.

Scale and Proportion

The scale and the proportion of the new single storey dwelling has been considered and a long and narrow dwelling has been designed to ensure proposed ridge heights are kept to a minimum. It is also important that the new dwelling remains ancillary in appearance to that of Woodmans Cottage.

The new dwelling sits in a large rear garden and as a result the new dwelling is not intrusive to either of the neighbouring properties adjacent.

Amount of Development

The amount of development has been considered and both the new dwelling and Woodmans Cottage still boast significant gardens despite the uplift in the number of dwellings on the site.

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Use

There is no change of use proposed with this development. The application has been made with the sole purpose of safe guarding a respected elderly couple's future in the village.

Layout

The layout has been specifically designed to meet DDA requirements for a person who is bound to a wheelchair and in need of extra care. This is reflected by the layout and the oversized nature of the living room, open plan kitchen, hallway, bedroom 1 and en Suite. An additional bedroom and bathroom which are none DDA compliant are also provided in the likely event that carers are required to stay overnight at the property.

Ecological Impact

The existing site is vacant and there are no trees, shrubs or hedges which will require removal prior to any works been undertaken.

Although the site history is not fully known, the only known use for the land is agricultural over 125 years ago and therefore it is assumed that there are no contaminated land concerns.

Access

Woodmans Cottage includes a shared drive for the purposes of access to the rear gardens of Woodmans Cottage and the adjacent neighbouring property. The drive closest to Woodmans Cottage is the only area currently available for parking to Woodmans Cottage.

The proposals include the need for an additional dwelling and as a result special consideration has been given for off street parking. 5No. spaces have been allocated for both Woodmans Cottage and the new dwelling. The area for parking will also allow vehicles to suitably manoeuvre on site which we believe will mitigate any highway concerns regarding vehicles reversing down the drive and onto the main road. This is a significant improvement on the current parking arrangements where vehicles are either required to park off site or at the side of Woodmans Cottage. The existing parking arrangements require vehicles to reverse onto the High Street.

Level access is provided to the principle entrance and other external doors. The dwelling is all on 1 floor and internal doors will be wide enough to allow wheelchair circulation. The new dwelling will be DDA compliant to meet the requirements for a wheelchair user.

It is also important to note that the new dwelling will meet the required Code for Sustainable homes rating of Code 4.

Siting

Following comments received in the pre-application the new dwelling has been located to be as close to the development limit line as possible. The new dwelling sits on the middle of the site and does not impact negatively on either of the neighbouring properties.

Whilst considering the above it is important to note that a Householder Planning Check will be undertaken to make some alteration works to Woodmans Cottage. The intended works will consider

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the overall scheme and the principle entrance door which currently is on the side elevation facing the drive will be relocated.

Summary

Although this is an unprecedented planning application for the village of Cropton the proposals do not negatively impact on the village and the merits and justifications for the application are to maintain the future wellbeing of the local community.

The residents in Cropton are not in support of mass development in the future should this application be successful. The collective motive for this application to safeguard the local community in the future. We are hopeful that the assigned planning officer and planning committee can take this view when considering this application.

Address: Alex Green, 3 Comfrey Close,
Harrogate, HG3 2XB
Mobile: 07966 576 346
Email: AMGarchitectural@outlook.com

Agenda Item 11

Item Number: 11
Application No: 15/00792/FUL
Parish: Staxton/Willerby Parish Council
Appn. Type: Full Application
Applicant: Glaves And McNay (Mr R. McNay)
Proposal: Erection of a general purpose agricultural building to include the housing of livestock
Location: Land To The East Of Wold Lane Staxton Scarborough North Yorkshire

Registration Date:
8/13 Wk Expiry Date: 31 August 2015
Overall Expiry Date: 20 August 2015
Case Officer: Rachel Smith **Ext:** 323

CONSULTATIONS:

Environmental Health Officer	No views received to date
Countryside Officer	No comment to make
Highways Agency (Leeds)	No views received to date
Archaeology Section	No views received to date
Parish Council	Object
Highways North Yorkshire	No objection

Neighbour responses: None

SITE:

Pear Tree Farm is situated within the village of Staxton on the northern side of the A64, and within an Area of High Landscape Value. It comprises a two storey dwelling which is Grade II listed, together with a range of outbuildings. The farm extends to approximately 88 hectares in total, including arable and livestock. There are currently 40 head of beef cattle together with a flock of 79 sheep. A range of buildings including a grain store and livestock shed are situated on of the A64. The site rises up from the road, and is bounded along the roadside by young ash trees and saplings.

PROPOSAL:

Permission is sought for the erection of an agricultural building for the housing of livestock. The building will have a footprint of 17m by 34m with a ridge height of 7.5m. It will be constructed from Yorkshire boarding under a light grey fibre cement roof. The proposed building includes feed gates and handling doors to allow ease of access and cleaning.

HISTORY:

2004: Permission granted for the erection of an agricultural building for use as a workshop and general storage.
2008 Agricultural notification for the erection of a general purpose agricultural storage shed.

POLICY:

National Policy Guidance

National Planning Policy Framework
National Planning Policy Guidance

Ryedale Plan - Local Plan Strategy

Policy SP9 - The land based and rural economy

Policy SP12 - Heritage

Policy SP13 - Landscapes

Policy SP16 - Design

Policy SP17 - Managing Air Quality, Land and Water resources

Policy SP20 - Generic Development Management Issues

APPRAISAL:

The material considerations in respect of this application are:

- the impact of the development on the character of the Area of High Landscape Value;
- appropriateness of the design;
- impact of development on the existing amenities of neighbouring occupiers;
- access considerations;
- Archaeological considerations; and
- Highway implications

The principle of a building in this location has already been established with the erection of the existing buildings. They are relatively small scale and not readily visible in the landscape. Indeed during summer months, the site is only visible from directly opposite. This is largely due to the level of planting that is situated along much of the boundary with the A64 in the vicinity of the site. It is noted that there is a row of young ash trees and saplings to the immediate frontage of the proposed building. Nevertheless it is considered that further planting to supplement that existing on site, will improve the screening throughout the year. Accordingly it is not considered that the proposed building will harm the character of the Area of High Landscape Value.

In relation to design, the building incorporates a traditional linear form under a pitched roof. The use of Yorkshire boarding will enable the building to blend into the environment. It is proposed however to use natural grey for the roof. It has been noticed by officers that the use of light grey can appear white when viewed from a distance, and during some weather conditions. This makes the building more prominent than it would otherwise be. Accordingly, it is recommended that a darker grey roof is utilised.

In relation to neighbour impact, a letter of objection has been received from the Parish Council on the following basis:

- the location and size of the building will have a detrimental impact on nearby residents;
- there will be a need to mitigate the smell of animals from nearby residents;
- there is a need for screening to reduce visual impact for nearby residents;
- the proposed building is too close to local housing; and
- the relocation of the building to the rear of the existing building will address concerns in relation to neighbour impact.

The formal views of the Council's Environmental Health Officer are awaited, and Members will be updated at their meeting. Nevertheless, preliminary discussions have determined that it is unlikely that an objection on the basis of smell from the development will be raised. The site is situated in a rural area, however it is separated from the nearest residential property by the A64 trunk road. Furthermore, the cattle will be straw bedded. Manure will be spread on land in accordance with Environmental guidelines. When possible straw based manure will be removed from the building, and spread on available land. Otherwise manure is stored within a field heap waiting for land to become available for spreading.

Such heaps are sited away from sensitive areas such as dwellings and water courses/ditches. Positions vary dependent on cropping, and weather conditions. Areas liable to flood are avoided.

Comments regarding the need for additional screening have been addressed earlier in the report.

In relation to comments that the building is too close to housing, the loss of a view is not a material planning consideration. Nevertheless, the addition of further landscaping will ensure that the building is not readily visible in any event. In addition it is not considered that a reason for refusal on this basis can be sustained unless Environmental Officers conclude that there will be a likely adverse impact on neighbouring occupiers by virtue of smell or additional flies as a result of the development. The building has been sited in the proposed location for operational purposes. If it were moved to the rear of the existing building, it would not create the same operational benefits. Furthermore, the ground levels rise and there is potential for the building to be more prominent .

In relation to access, the existing building on the site is served by an unclassified road which runs in a southerly direction from the A64 trunk road. It is not considered that the proposal will result in a significant increase in vehicular movements. Comments are awaited from Highways England, however the local Highways Authority has not objected to the application.

In relation to archaeology, the views of the County Archaeologist are also awaited, and Members will be updated at their meeting.

In conclusion, it is considered that the location of the proposed building adjacent to other farm buildings is acceptable in principle. Accordingly the recommendation is one of approval unless objections are raised by the Council's Environmental Health officer, in relation to the proximity of the site to neighbouring occupiers, and subject to the views of other outstanding consultees.

RECOMMENDATION: **Approval subject to no adverse comments being received from the Council's Environmental Health Officer and County Archaeology**

1 The development hereby permitted shall be begun on or before .

Reason:- To ensure compliance with Section 51 of the Planning and Compulsory Purchase Act 2004

2 Before any part of the development hereby approved commences, plans showing details of landscaping and planting schemes shall be submitted to and approved in writing by the Local Planning Authority. The schemes shall provide for the planting of trees and shrubs and show areas to be grass seeded or turfed where appropriate to the development. The submitted plans and/or accompanying schedules shall indicate numbers, species, heights on planting, and positions of all trees and shrubs including existing items to be retained. All planting, seeding and/or turfing comprised in the above scheme shall be carried out in the first planting season following the commencement of the development, or such longer period as may be agreed in writing by the Local Planning Authority. Any trees or shrubs which, within a period of five years from being planted, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar sizes and species, unless the Local Planning Authority gives written consent to any variation.

Reason: To enhance the appearance of the development hereby approved and to comply with the requirements of Policies of the Ryedale Plan - Local Plan Strategy.

- 3 The development hereby approved shall be carried out in accordance with the submitted waste management plan, unless details of a variation have first been submitted to, and approved in writing by the Local Planning Authority.

Reason: To ensure that the development does not have an adverse impact on the existing amenities of neighbouring occupiers nor water courses in the area. And to satisfy the requirements of Policies SP20 and SP17.

- 4 Before the development hereby permitted is commenced, or such longer period as may be agreed in writing with the Local Planning Authority, details and samples of the materials to be used on the exterior of the building the subject of this permission shall be submitted to and approved in writing by the Local Planning Authority.

(NB Pursuant to this condition the applicant is asked to complete and return the attached proforma before the development commences so that materials can be agreed and the requirements of the condition discharged)

Reason: To ensure that the development hereby approved does not have a significant adverse impact on the character of the Area of High Landscape Value, and to satisfy the requirements of policies SP13 and SP20 of the Ryedale Plan - Local Plan Strategy.

- 5 Any conditions at the request of the Council's Environmental Health officer.

- 6 Any conditions at the request of the County Archaeologist

- 7 Any conditions at the request of Highways England.

- 8 The development hereby permitted shall be carried out in accordance with the following approved plan(s):

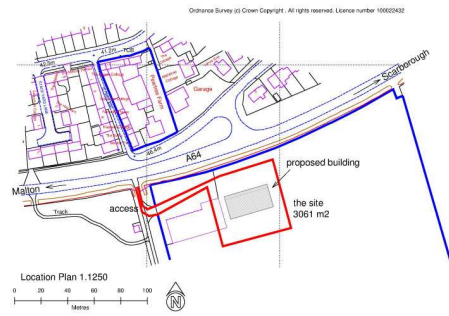
Drawing no. 1142.1 - OS location and field plan
Drawing no. 1142.3 - Proposed site plan with levels
Drawing no. 1142.4 - Proposed plan and elevations
Drawing no. 1142.5 - Proposed section and elevations
Drawing no. 1142.6 - Proposed roof plan

Reason: For the avoidance of doubt and in the interests of proper planning.

Background Papers:

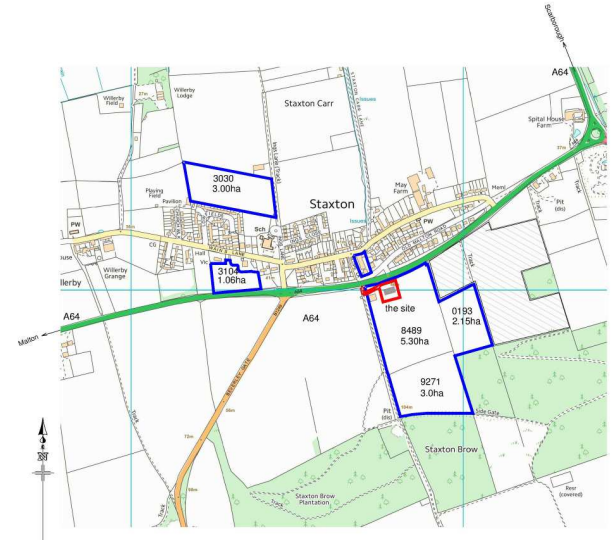
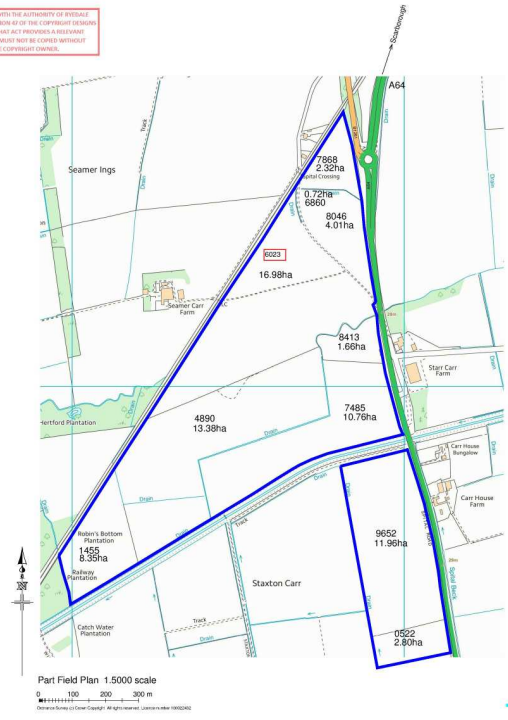
Adopted Ryedale Local Plan 2002
Local Plan Strategy 2013
National Planning Policy Framework
Responses from consultees and interested parties

a1



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as location and field plan

proposed general purpose agricultural/livestock building

Pear Tree Farm
Old Malton Road
Staxton Road
Staxton
North Yorkshire, YO12 4SB

Gibson & McHay

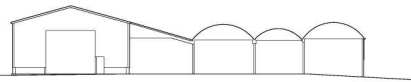
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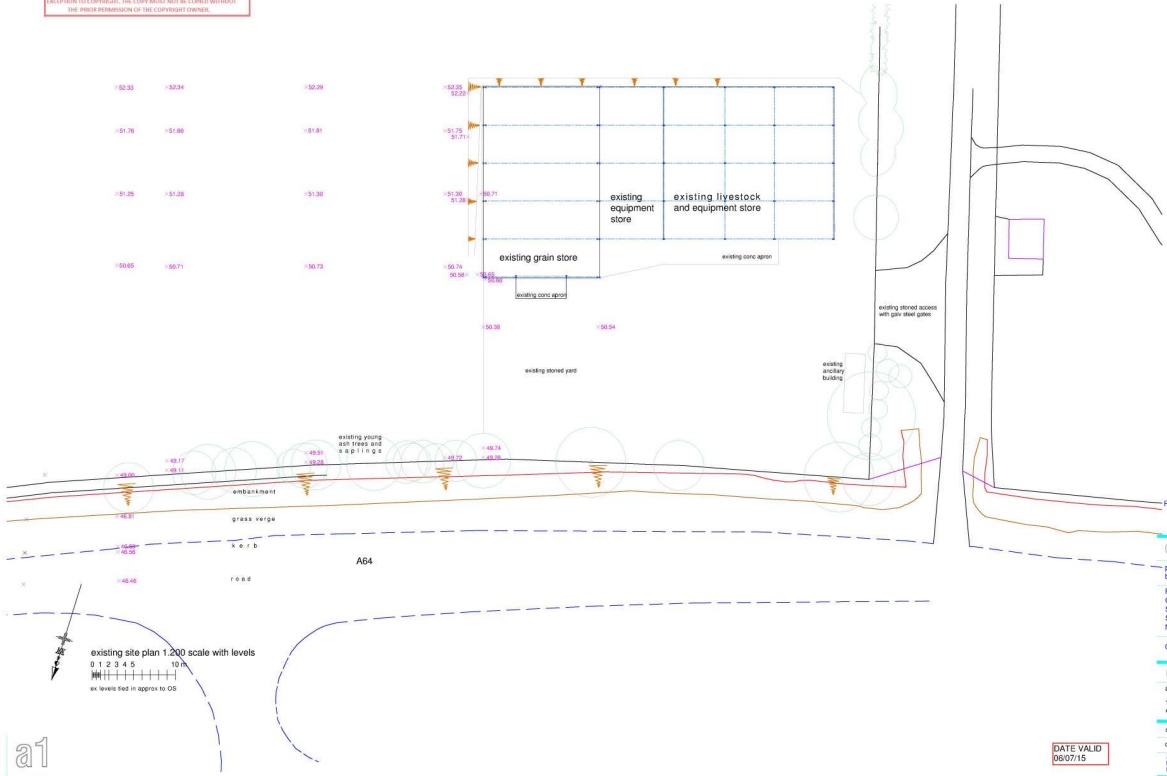
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existing north elevation 1:200 scale

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1142-2

existing site plan with levels

proposed general purpose agricultural/livestock building
Pear Tree Farm
Old Malton Road
Station Road
Station
North Yorkshire, YO12 4SB

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date: June 2015
1142.2

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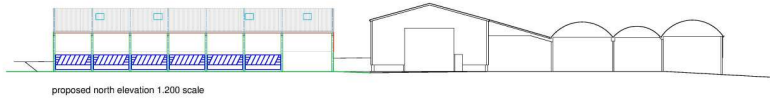
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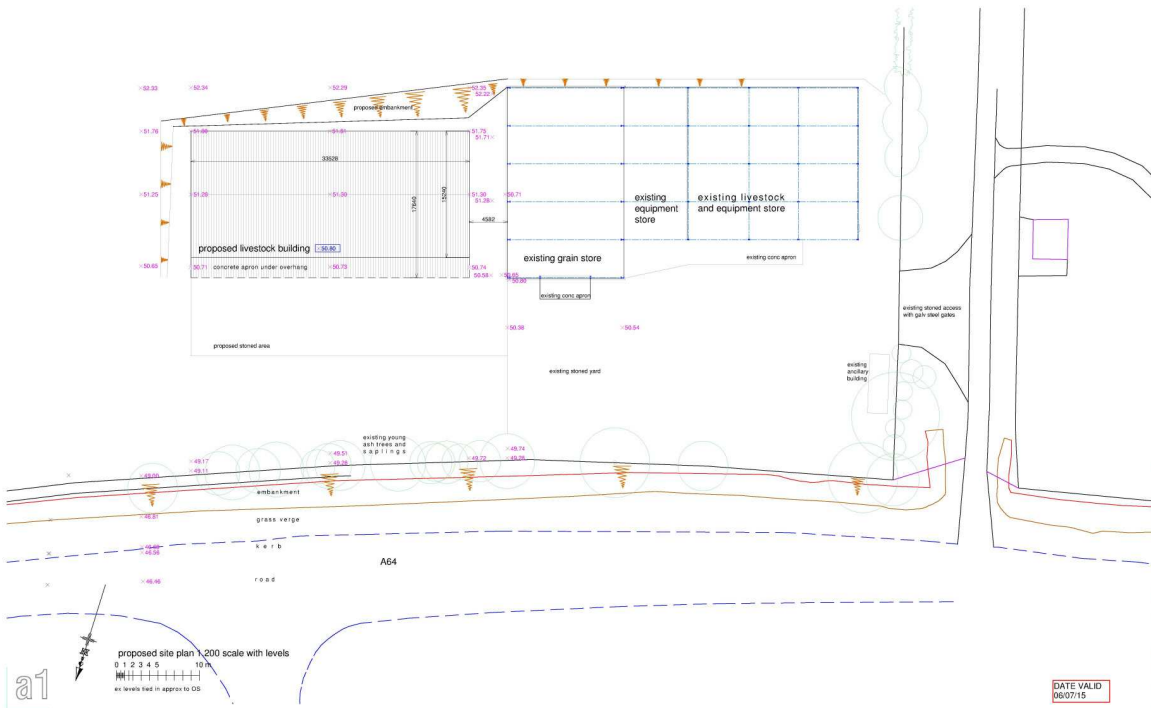
existing site plan 1:200 scale with levels
0 1 2 3 4 5
10m
all levels tied in accord to OS

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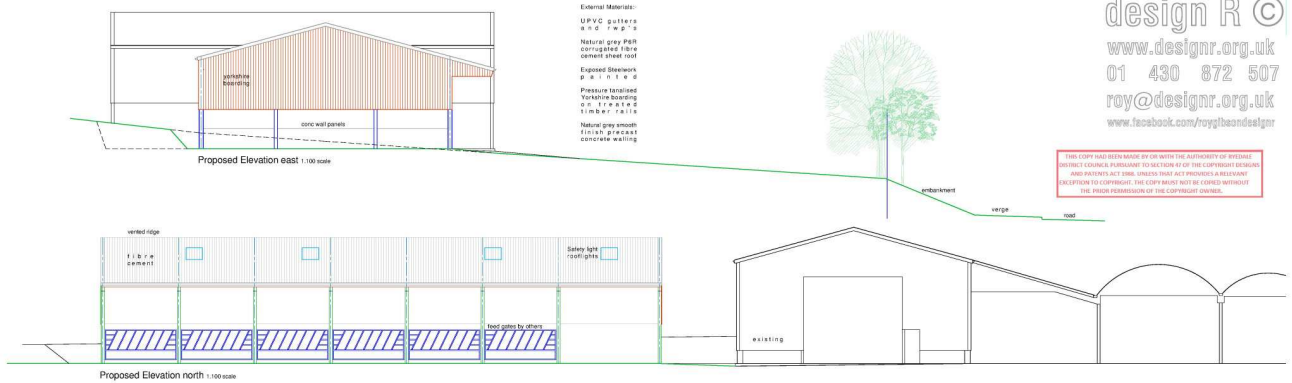
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Rev 1142-3
proposed site plan with levels
proposed general purpose agricultural/livestock building
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Old Malton Road
Station Road
Station
North Yorkshire, YO12 4SB

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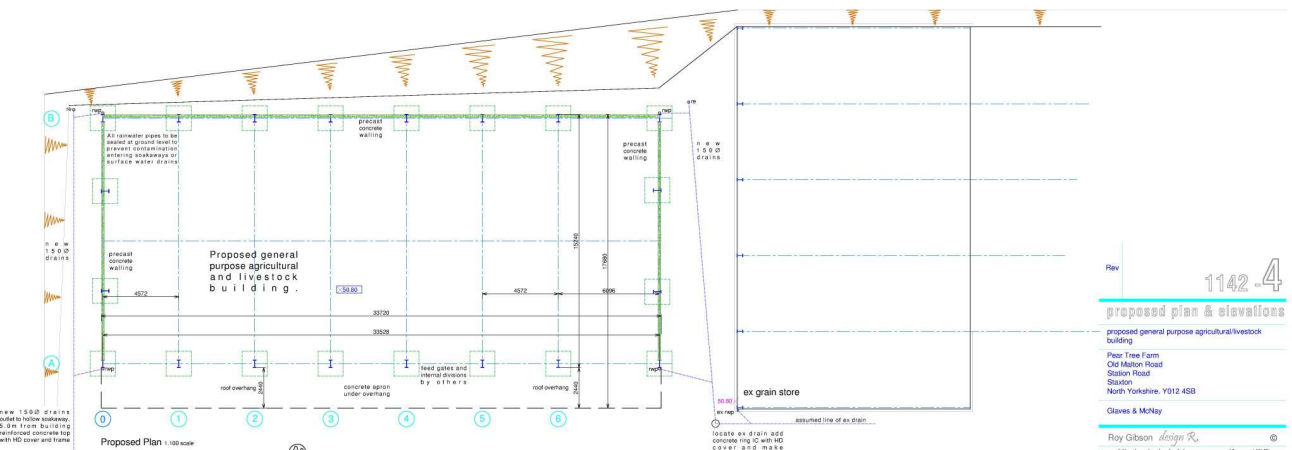
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External Materials:
 UPVC gutters
 4" x 6" x 12"
 Natural grey PBR
 corrugated fibre
 cement sheet roof
 Exposed Steelwork
 4" x 11" x 4"
 Pressure treated
 Yorkshire boarding
 or equivalent
 Natural grey smooth
 finish precast
 concrete walling

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new 100mm 100mm
 offset to follow substructure,
 2.0m from building
 reinforced concrete top
 with HD cover and frame

Drawings produced for planning application purposes only.
 NOT FOR CONSTRUCTION
 Building manufacturer to carry out dimensional
 check survey prior to fabrication
 All steel sizes indicative only.

a1

Rev 1142.4

proposed plan & elevations

proposed general purpose agricultural/livestock building

Pear Tree Farm
 Old Millon Road
 Station Road
 Station
 North Yorkshire, YO12 4SB

Claves & McVay

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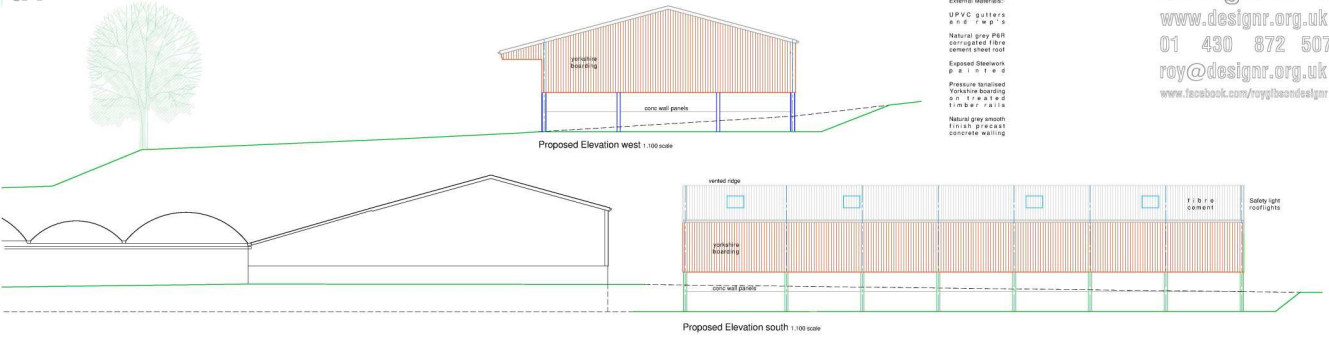
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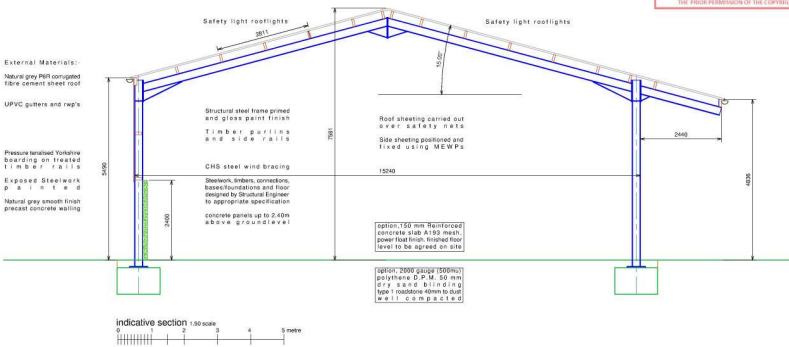
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External Materials:
 UPVC gutters and rap's
 Natural grey PFR corrugated fibre cement sheet roof
 Exposed Steelwork painted
 Pressure treated Yorkshire boarding on treated timber rails
 Natural grey smooth finish precast concrete walling

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Indicative section 1:50 scale
 0 2 4 5 meters

Rev 1142-5

proposed section & elevations
 proposed general purpose agricultural/livestock building
 Pear Tree Farm
 Old Malton Road
 Station Road
 Station
 North Yorkshire, YO12 4SB

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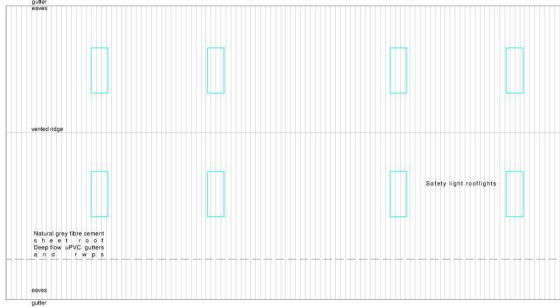
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Proposed Roof Plan 1:100 scale



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Rev 1142-6
p r o p o s e d r o o f p l a n

proposed general purpose agricultural/livestock building
Pear Tree Farm
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scale: 1:100 @ A1 *R Gibson*
date: June 2015 1142.6
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PearTree farm view from north

daps

design, access and planning statement
FRA, Bio and Tree report, etc.

Photographs

Proposed cattle shed/general purpose
agricultural building.

Pear Tree Farm
Old Malton Road
Station Road
Staxton
North Yorkshire. YO12 4SB

Glaves & McNay

Project/doc ref 1142-DAPS
June2015

Roy Gibson
architectural technician
t/a design R
Hill Rise Market Weighton YORK YO43 3JX

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roy@designr.org.uk

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This combination design, access and planning statement should be read in conjunction with the submitted plans, these are available for viewing on the councils public access website or at the council service centres, by appointment.

The Farm

The applicants Glaves and McNay operate a livestock, intensive farming and butchers business from Pear Tree Farm, Staxton.

The farm extends to about 88 hectares in total, cropping includes, Winter Wheat, Barley, Oil seed Rape and Permanent Pasture. Some adjacent land is rented (cross hatched on the 1:5000 scale map)

The farm has approx 40 head beef herd and a sheep flock of 79 with followers, the current proposals will allow the beef herd to expand to 80 head.

All livestock is straw bedded, with manure spread on the land in line with Environmental guidelines.

See manure plans and information attached to the end of this document

The Proposal

The proposal is to erect a general purpose agricultural/livestock building. The building will be predominantly used for housing livestock, with occasional general purpose use.

The new structure will allow the herd size to be increased and will also provide better occupancy ratios with improved ventilation. The proposal includes feed gates and handling doors which allow for easier clean out, feeding and cattle movements.

Physical

Pear Tree Farm is situated in Staxton, north of the A64, the farmstead consists of a substantial two storey dwelling, with agricultural outbuildings, traditional and steel framed. The butcher shop is situated at the northern end of the farmstead facing on to Staxton Main Street.

The proposal site is opposite the farmstead, to the south of the A64.

Access to the proposal site is off the A64 via a short section of unclassified road, Wold Lane, leading to a stoned access with secure gates.

The proposal site slopes down, from south to north. Existing structures are steel framed and clad in either fibre cement sheet or profiled steel sheet. Buildings include a Grain Store, equipment store and livestock shed. There are concrete aprons at access points but most of the yard area is stoned.

The site is bounded on the north by a line of young ash trees and saplings, set on top of an earth embankment adjacent to the A64.

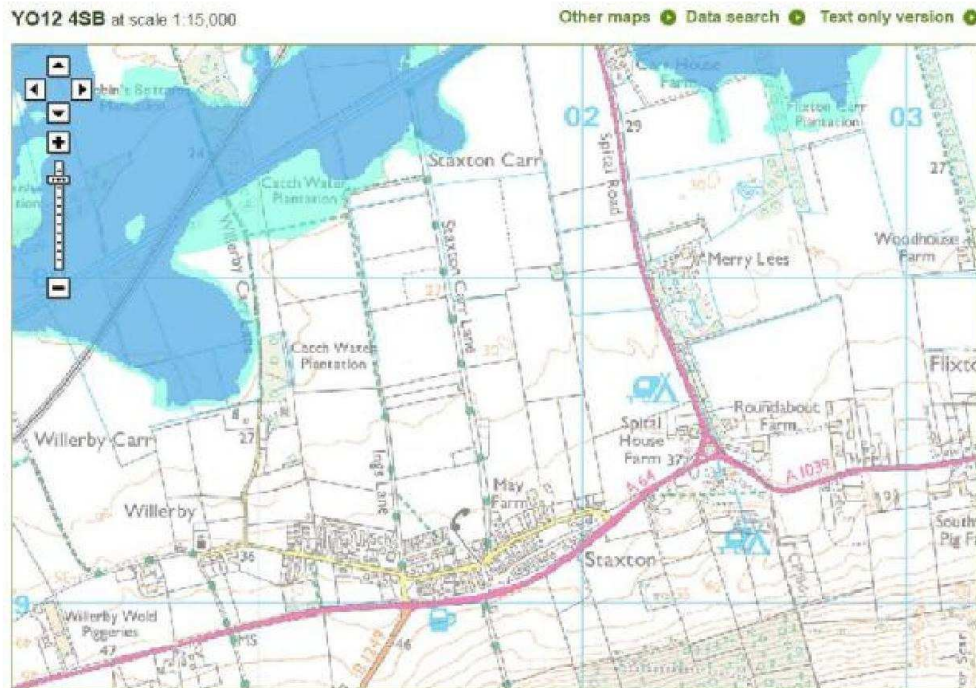
To the east and south is open farmland; to the west is a mature tree group and a field hedge adjacent to Wold Lane.

Biodiversity

Following a site walk over, it is considered that there is no likelihood of protected and priority species being affected adversely by the proposed development.

Flood Risk assessment

According to the Environment Agency web site, the site is not situated in an area of flood risk.



Environment Agency flood map for planning

Tree Report

There are no trees within the red lined site area. There is a line of young ash trees to the south. The works will have no impact on the existing trees due to the distance away from the development.

Ground levels will not be changed within roots zones or canopy spread of any existing tree or hedgerow, and no construction materials will be stored against or adjacent to trees/hedges.

The excavation of isolated shallow concrete pad foundations for the main stanchions will not affect the long term survival of any tree or hedge.

Service/drain runs have been positioned so as to avoid passing through root protection zones.

Additional hedge/tree planting is not proposed.

Noise

General farming activities do not generally create major noise problems. There is very little likelihood of noise transmission to neighbouring sites or any likely cause for complaints regarding noise in general.

Foul sewage & utilities assessment

The proposal is to erect an agricultural livestock building. There is no requirement for foul drainage, none is proposed.

Surface water is dealt with via connections to an existing surface water farm drain and new hollow soakaway. Location and details of the surface water drains are noted on the submitted plans.

All rainwater pipes to be sealed at ground level to prevent contamination entering soakaways or surface water sewer/drains

There is no gas requirement. Electricity connection is in adjacent building. All pipe runs have been positioned to avoid any existing trees or hedges.

Climate Change Mitigation

The farm buys and sells all livestock locally and uses some stock for the butchers business, food miles are kept to an absolute minimum, greatly reducing fuel use and pollution.

The applicant is considering rainwater harvesting and the use of PV panels at some time in the future.

Light Pollution

There are very few existing external lights on the farm; most are aimed to yard level. The duration of light usage is not constant and varies with seasonal daylight changes.

The lights provide a safe working environment for loading and unloading in the hours of darkness and provide safe access to and from the buildings.

The new building will be lit with low power LED internal external lights, ceiling mounted over access points. The lights will be aimed to yard surface.

There will be no discernable increase in overall light levels on the whole site and the lighting will not have an undesirable impact upon neighbouring properties, the highway or night skies.

Transport

Vehicle movements will not be overly increased by this proposal.

Parking

The site already benefits from stoned areas which provide sufficient parking and loading/unloading areas for current and future needs.

The proposal will not affect existing parking provision.

Planning Policy

Generally, government policy is that the expansion of existing rural businesses is recommended. It is considered that the proposal is generally supported by the following policies.

Ryedale Plan (extracts)**Economy****SP6 Delivery and Distribution of Employment/Industrial Land and Premises, Wider Open Countryside.**

Expansion land for existing major employers/ established businesses; small scale conversion of existing buildings or provision of new buildings to support appropriate rural economic activity in line with the provisions of Policy SP9

SP9 The Land-Based and Rural Economy

Ryedale's land-based economy will be sustained and diversified with support for:

- New buildings that are necessary to support land-based activity and a working countryside, including for farming, forestry and equine purposes
- Appropriate farm and rural diversification activity including innovative approaches
- Local food production and sales. Farm shops which will meet a demand for local produce and which contribute to the local economy will be supported where they do not adversely affect easily accessible convenience shopping.

And indirectly by supporting:

- The retention of a livestock market within Ryedale on a site which is convenient to users, well related to the main road network and in a location which is close to a Market Town but will not harm its character, landscape setting or the amenities of nearby residents
- Local weekday and Saturday markets, farmer's markets and events
- Proposals or actions that would assist in utilising and retaining traditional rural skills including land and woodland management, farming, conservation, local traditional building technique

MANAGING AND CONTROLLING DEVELOPMENT**SP19 Presumption in Favour of Sustainable Development**

When considering development proposals the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework.

It will always work proactively with applicants jointly to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.

MANAGING AND CONTROLLING DEVELOPMENT

SP20 Generic Development Management Issues

Character

New development will respect the character and context of the immediate locality. Proposed uses and activity will be compatible with the existing ambience of the immediate locality and the surrounding area and with neighbouring land uses

Design

The design of new development will follow the principles established in Policy SP16. Extensions or alterations to existing buildings will be appropriate and sympathetic to the character and appearance of the existing building in terms of scale, form, and use of materials

Amenity and Safety

New development will not have a material adverse impact on the amenity of present or future occupants, the users or occupants of neighbouring land and buildings or the wider community by virtue of its design, use, location and proximity to neighbouring land uses.

Access, Parking and Servicing

Access to and movement within the site by vehicles, cycles and pedestrians would not have a detrimental impact on road safety, traffic movement or the safety of pedestrians and cyclists.

National Planning Policy Framework

Achieving *sustainable development (extracts)

(6) The purpose of the planning system is to contribute to the achievement of sustainable development. The policies in paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development in England means in practice for the planning system

(9) Pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people's quality of life, including (but not limited to):

- making it easier for jobs to be created in cities, towns and villages;
- moving from a net loss of bio-diversity to achieving net gains for nature;
- replacing poor design with better design;
- improving the conditions in which people live, work, travel and take leisure

The presumption in favour of sustainable development (extract)

(11) Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

3. Supporting a prosperous rural economy

(28). Planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. To promote a strong rural economy, local and neighbourhood plans should:

- support the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well designed new buildings;
- promote the development and diversification of agricultural and other land-based rural businesses;

Decision-taking (extract)

(187) Local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area.

***Sustainable development - Brundtland Report: (1987) definition,**
“development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.

Use

The proposed building will be used in connection with existing farming operations.

Amount

The proposals are considered to be sufficient to enable safe and satisfactory use, whilst making best use of available space.

Layout

The internal layout of the building will be purpose designed and gated by others.

Scale

The scale of the works is considered to be appropriate for the proposed agricultural use and rural/farmstead siting.

- Height to ridge 7.581 m
- Height to eaves 5.490 m max
- External width 17.680 m
- External length 33.720 m

Appearance

The building will be of simple agricultural design, utilizing a portal framed steel structure and standard sheeting and precast concrete walling components, plus treated timber (Yorkshire) boarding/cladding.

Material type and colours will generally be matched to those of the existing structures to provide continuity of appearance.

Yorkshire boarding will be used to provide ventilation whilst maintaining a degree of weather protection.

Natural colour grey fibre cement sheet will be used for the roof covering. The Light coloured roof will reduce both visual impact and thermal gain. Natural colour precast walling panels will be used for low level side walling.

Site Access

Access to the proposed building provides easy approach for likely vehicles and foot traffic. Pedestrian and ambulant disabled access is unrestricted.

The farm access is of suitable dimensions to allow for all likely sizes of vehicles requiring access, including fire service vehicles.

Building Access

Open Access for the general public and disabled is not encouraged but access design is where possible in accord with Part M of the approved documents, providing level or slightly sloping approach

NVZ information and Manure Plans (extracts)

The farm has current Nutrient Management Plans, prepared by Agronomy Supplies, Mr J A Gaines. The information attached is copied from the plan prepared for 2014/2015

Presently the farm only uses three fields to spread manure produced by the beef herd and sheep flock, total area 21.41 ha. Additional nitrogen is also imported to the farm to apply to these and other areas as required. The amount of nitrogen imported will be adjusted to make allowance for the increase in the farms organic manure production. Other field areas can also be used for manure spreading in accordance with current legislation. Without using other fields the imported nitrogen for field numbers 6023, 8046, 8489 can be reduced by half and replaced with organic manure from the new cattle (40no.) without increasing predicted/required Nitrogen loadings.

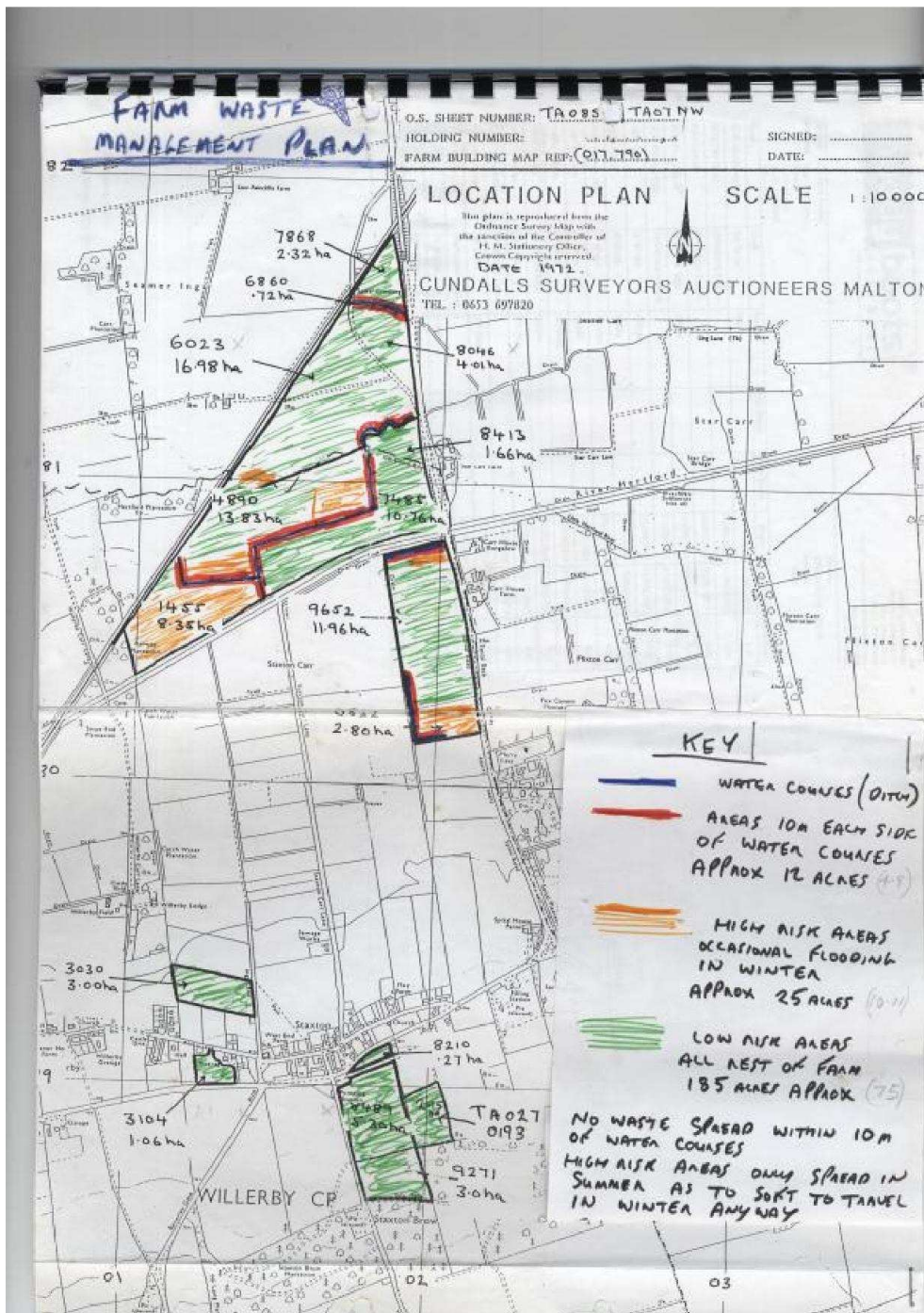
Conclusion

Following an assessment of the sites circumstances and characteristics it is considered that the proposals are appropriate in a rural context.

It is considered that the proposal is generally compliant with and/or supported by policies contained within National and Local Plans as noted in this document.


The application is offered for approval.

NVZ info



Manure Plan.

Livestock Manure Calculations 2014 / 15


AGRONOMY
SUPPLIES

Glaves & McNay
Pear Tree Farm
Staxton
Scarborough
North Yorkshire
YO12 4SB

Nitrogen and Excreta Production from Sheep


79 Lowland Sheep Over 60kg + Suckled Lambs up to 6 Months:

11.9kg / N Per Year	=	940.1 kg

		12 Months
Total N Combined of Sheep and Lambs for 1 Month	=	78.34 kg / N
Total N Combined of Sheep and Lambs for 2 Months	=	156.68 kg / N

The Sheep and Lambs are kept inside for no longer than 8 weeks, therefore manure calculations are based on this duration.

Manure calculation

Nitrogen and Excreta Production from Cattle			
40 Beef Growers	13 months to 25 months	x	50kg / N Per Year = 2000 kg
Total N Combined of 20 Beef Growers housed for 12 Months			= 1000kg
Total N Combined of 20 Beef Growers housed for 6 Months			= 500kg
Sheep Nitrogen	-	156.68kg	
Cattle Nitrogen	-	1500.00kg	
Imported Nitrogen	-	3120.00kg	
Combined N (4776kg) Divided By 21.41 Ha			= 223.28kg / N

Manure calculation

muddy boots[®]
SOFTWARE

PLANET Nutrient Breakdown for 2015

Farm: Glaves & McNay, Pear Tree Farm
Annual rainfall: Moderate (686mm)

Field	Crop	Area ha	Nutrient	RB209 recommendations (kg/ha)		
				Crop need	From manures	From fertilisers or lime
7485 Cut Side Soil Type: Light sand	W Wheat (Alchemy)	5.1	N	160	0	160
			P205	115	0	115
			K2O	105	0	105
			MgO	0		0
			SO3	40		40
			Lime	0		0
7868 Far 6ac Soil Type: Medium	W Oilseed Rape (Catana)	2.32	N	250	0	250
			P205	0	0	0
			K2O	0	0	0
			MgO	0		0
			SO3	75		75
			Lime	0		0
8046 Roadside Soil Type: Medium	W Wheat (J B Diego)	4.01	N	190	17	173
			P205	85	148	0
			K2O	105	279	0
			MgO	0		0
			SO3	40		40
			Lime	0		0
8489 Front Field Soil Type: Medium	W Wheat (J B Diego)	5.26	N	220	17	203
			P205	20	148	0
			K2O	0	279	0
			MgO	0		0
			SO3	40		40
			Lime	0		0
9652 Carr Soil Type: Medium	W Oilseed Rape (Catana)	11.96	N	250	0	250
			P205	0	0	0
			K2O	55	0	55
			MgO	0		0
			SO3	75		75
			Lime	0		0

These Crop Nutrient Requirements have been calculated by James Galves of Agronomy Supplies Ltd based upon data supplied to Agronomy Supplies Ltd by Glaves & McNay. Agronomy Supplies Ltd can not be held responsible if the data supplied by Glaves & McNay is proved to be inaccurate in any way.

All calculations are based upon the electronic version of the Fertiliser Manual (RB209) produced by DEFRA and which is incorporated within the CropWalker Planet software. Muddy Boots Software Limited accepts no liability whether in contract, tort or otherwise for any loss or damage arising from inaccurate recommendations produced through the CropWalker Planet software.

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PLANET
CROPPERS' CHOICE

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Field Info.

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SOFTWARE

PLANET Nutrient Breakdown for 2015

Farm: Glaves & McNay, Pear Tree Farm
Annual rainfall: Moderate (686mm)

Field	Crop	Area ha	Nutrient	RB209 recommendations (kg/ha)		
				Crop need	From manures	From fertilisers or lime
0278 Greenwoods Soil Type: Medium	Spr Barley (Tipple)	2.15	N	120	0	120
			P2O5	65	0	65
			K2O	90	0	90
			MgO	0		0
			SO3	40		40
			Lime	0		0
3030 Cow Pasture Soil Type: Light sand	W Oilseed Rape (Catana)	3	N	280	0	280
			P2O5	0	0	0
			K2O	85	0	85
			MgO	0		0
			SO3	75		75
			Lime	0		0
4890 34ac Soil Type: Organic	W Wheat (Alchemy)	13.83	N	80	0	80
			P2O5	115	0	115
			K2O	105	0	105
			MgO	0		0
			SO3	40		40
			Lime	0		0
6023 30ac Soil Type: Medium	W Barley (Cassia)	12.14	N	170	17	153
			P2O5	70	148	0
			K2O	120	251	0
			MgO	0		0
			SO3	40		40
			Lime	6		0
6023 Railway Side Soil Type: Medium	W Wheat (Alchemy)	4	N	220	0	220
			P2O5	20	0	20
			K2O	75	0	75
			MgO	0		0
			SO3	40		40
			Lime	0		0

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PLANET
CROPPING MANAGEMENT

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Field Info

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PLANET Nutrient Breakdown for 2015

Farm: Glaves & McNay, Pear Tree Farm
Annual rainfall: Moderate (686mm)

Field	Crop	Area ha	Nutrient	RB209 recommendations (kg/ha)		
				Crop need	From manures	From fertilisers or lime
Daves 8 Soil Type: Medium	Spr Barley (Tipple)	8	N	120	0	120
			P2O5	0	0	0
			K2O	60	0	60
			MgO	0		0
			SO3	40		40
			Lime	0		0

These Crop Nutrient Requirements have been calculated by James Glaves of Agronomy Supplies Ltd based upon data supplied to Agronomy Supplies Ltd by Glaves & McNay. Agronomy Supplies Ltd can not be held responsible if the data supplied by Glaves & McNay is proved to be inaccurate in any way.

All calculations are based upon the electronic version of the Fertiliser Manual (RB209) produced by DEFRA and which is incorporated within the CropWaker Planet software. Muddy Boots Software Limited accepts no liability whether in contract, tort or otherwise for any loss or damage arising from inaccurate recommendations produced through the CropWaker Planet software.

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PLANET
CROPWAKER

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Field Info



The site viewed from Old Malton Road. View to south



Wold Lane and western boundary, south of access.



view to A64 north of access



ex buildings, viewed from access.



View across site to west.



Adjacent buildings view to south west.



Adjacent buildings view to north west.



View across site to trees and A64, view to north.



View to site from Old Malton Road junction with A64, view to south



View to site from Old Malton Road, view to south



Aerial view, arrow indicates site.

RSS

OBJECT.

Karen Hood

From: AandC Adnitt
Sent: 22 July 2015 11:46
To: Karen Hood
Subject: Planning Application 15/00792/FUL

Importance: High

RYEDALE DAA

22 JUL 2015

DEVELOPMENT
MANAGEMENT

64
22/7.

Morning Karen

Willerby Parish Council has received a number of objections from local residents to planning application ref: 15/00792/FUL. In view of this the parish council wishes to make a formal objection for the following reasons:-

1. The location and size of the proposed building will have a detrimental effect on nearby residents.
2. There will be a need to mitigate against animal smells from the building so as to minimise the effect on residents in nearby housing.
3. There will be a need for screening to reduce the visual impact for residents living nearby.
4. The proposed building is too close to local housing and should be sited in a more suitable location away from housing.

Local opinion suggests that the building should be located behind the existing building (south side). That way the detrimental effects highlighted would be eliminated. Please present this objection to the planning committee for consideration.

Regards
Chris Adnitt
Clerk to Willerby Parish Council



PART B:	RECOMMENDATIONS TO COUNCIL
REPORT TO:	PLANNING COMMITTEE
DATE:	18 AUGUST 2015
REPORT OF THE:	HEAD OF PLANNING AND HOUSING GARY HOUSDEN
TITLE OF REPORT:	DEVELOPER CONTRIBUTIONS FROM SMALL SITES
WARDS AFFECTED:	ALL

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

- 1.1 For Members to consider the implications of the recent case of West Berkshire District Council and Reading Borough Council v Secretary of State for Communities and Local Government (2015) Case No: CO/76/2015, and to confirm the Council's position regarding developer contributions from small sites.

2.0 RECOMMENDATIONS

- 2.1 That Council resolves to:
- (i) No longer treat the Ministerial Statement of 1 December 2014 on support for small-scale developers, custom and self-builders as a material consideration in the planning process.
 - (ii) To apply full weight to Policies SP3 (Affordable Housing) and Policy SP11 (Community Facilities and Services) of the Ryedale Plan - Local Plan Strategy.

3.0 REASON FOR RECOMMENDATIONS

- 3.1 To clarify the Council's position in relation to the implementation of the Policies SP3 and SP11 of the Local Plan Strategy following the recent court case, and the consequential changes to the Planning Practice Guidance (PPG).

4.0 SIGNIFICANT RISKS

- 4.1 There are no significant risks associated with the recommendations of the report. The Council would at greater risk if it continued to apply weight to the Ministerial Statement in the decision making process.

5.0 POLICY CONTEXT AND CONSULTATION

- 5.1 This report specifically relates to Policies SP3 (Affordable Housing) and SP11 (Community Facilities and Services) of the Ryedale Plan - Local Plan Strategy.

REPORT

6.0 REPORT DETAILS

- 6.1 On the 1 December 2014 a Ministerial Statement on support for small-scale developers, custom and self-builders was published. The Planning Practice Guidance (PPG) was accordingly updated to reflect the changes to national policy as a result of the Ministerial Statement. The effect of the Statement and the changes to the PPG was to establish thresholds below which affordable housing and tariff-based contributions should not be sought. These thresholds were higher than those in the Council's adopted Policies.
- 6.2 The implications of the Ministerial Statement were presented to Members of Planning Committee on the 10 February 2015. The report recommended that existing planning policies should be implemented to take account of the revisions to national policy introduced by the Statement.
- 6.3 The case of West Berkshire District Council and Reading Borough Council v Secretary of State for Communities and Local Government (2015) resulted in a successful challenge against the Ministerial Statement. Accordingly, the Planning Practice Guidance has been amended to remove any such thresholds concerning developer obligations on small sites. On this basis, Members are advised that weight can no longer be afforded to the Ministerial Statement, and Planning Committee should revert to determining applications on the basis of Policies SP3 and SP11 as set out in the Development Plan.

7.0 IMPLICATIONS

- 7.1 The following implications have been identified:
- a) Financial
The reinstatement of SP3 and SP11 will increase capability to deliver public open space and affordable housing.
 - b) Legal
The Ministerial Statement is no longer a material consideration in the decision taking process. Paragraphs 12-23 have been deleted from the Planning Policy Guidance on Planning Obligations. The adopted Development Plan has primacy.
 - c) Other (Equalities, Staffing, Planning, Health & Safety, Environmental, Crime & Disorder)
The application of SP3 as drafted in the adopted Plan will increase the provision of affordable housing across the District

8.0 NEXT STEPS

- 8.1 The court ruling means these changes should take immediate effect.

Gary Housden
Head of Planning and Housing

Author: Rachael Balmer, Planning Officer (Forward Planning)
Telephone No: 01653 600666 ext: 357
E-Mail Address: rachael.balmer@ryedale.gov.uk

Background Papers:

- Planning Practice Guidance. Planning Obligations.
- Developer Contributions from Small Sites - Planning Committee 10 February 2015
- The Ryedale Plan - Local Plan Strategy (September 2013)
- Case No: CO/76/2015 in the high court of justice queen's bench division administrative court planning court. Date: 31/07/2015
West Berkshire District Council and Reading Borough Council (claimants)
- and -
Department for Communities and Local Government (defendant)
Judgement

Background Papers are available for inspection at:

<http://planningguidance.planningportal.gov.uk/blog/guidance/planning-obligations/planning-obligations-guidance/>

<http://democracy.ryedale.gov.uk/ieListMeetings.aspx?CId=117&Year=0>
(10 February 2015)

<http://www.ryedaleplan.org.uk/local-plan-strategy>

Case CO/76/2015 is available in paper format to be viewed in the Members' Room

Agenda Item 13

RYEDALE
DISTRICT
COUNCIL



PART B: RECOMMENDATIONS TO COUNCIL

REPORT TO: PLANNING COMMITTEE

DATE: 18 AUGUST 2015

**REPORT OF THE: COUNCIL SOLICITOR
ANTHONY WINSHIP**

**TITLE OF REPORT: JUDICIAL REVIEW - THE QUEEN ON THE APPLICATION
OF MILTON (PETERBOROUGH) ESTATES COMPANY
TRADING AS FITZWILLIAM (MALTON) ESTATE V
RYEDALE DISTRICT COUNCIL**

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

- 1.1 To advise members of the outcome of the judicial review proceedings against Ryedale District Council which involved a review of a planning permission granted by the Council on 12 September 2014 being for the construction of a supermarket and fuel station at the Wentworth Street Car Park Malton. (WSCP)
- 1.2 To inform members of the reasons why the judicial review was successful.
- 1.3 To advise Council of the costs of the litigation and the proposed method of funding.

2.0 RECOMMENDATIONS

- 2.1 That the outcome of the judicial review proceedings be noted.
- 2.2 That Council be recommended to meet the award of costs from the improvement, contingency and emergency fund.

3.0 REASON FOR RECOMMENDATION

- 3.1 To ensure that Members of the Planning Committee are aware of the decision of the High Court, and the implication for the planning application and any future officer report.

4.0 SIGNIFICANT RISKS

- 4.1 There are no significant risks associated with the recommendations of this report.

REPORT

5.0 BACKGROUND AND INTRODUCTION

- 5.1 This report relates to a judicial review case of the Queen on the application of Milton (Peterborough) Estates Company trading as Fitzwilliam (Malton) Estate v Ryedale District Council. A copy of the approved judgement is attached. Judicial review is a specialised type of public law legal action. The nature of this type of legal action and other matters are summarised in a Q & A in the attached Appendix 1.
- 5.2 The planning history of this case is complex and is summarised in the attached Appendix 2. The account below is a brief summary of the key matters.
- 5.3 The Planning Committee meeting on 24 April 2014 granted a planning permission for the construction of a supermarket and fuel station at the Wentworth Street Car Park Malton. The planning permission was issued on 12 September 2014.
- 5.4 A judicial review action was lodged in the Leeds High Court on 23 October 2014 by the Claimants, the Milton (Peterborough) Estates Company trading as the Fitzwilliam (Malton) Estate, who are landowners affected by the grant of planning permission.
- 5.5 The court hearing took place before Mr Justice Dove in the Leeds High Court on Wednesday and Thursday of 10th and 11th June 2015.
- 5.6 The High Court judge Mr Justice Dove handed down his judgement on 9 July 2015 which allowed the claim, gave judgement for the claimants and ordered the Council to pay costs. The Judge determined that the Council's decision to grant planning permission for a supermarket and fuel station at the Wentworth Street Car Park Malton should be quashed.

6.0 POLICY CONTEXT

- 6.1 This case has a bearing on the implementation of the local plan policies and managing the environment.

7.0 CONSULTATION

- 7.1 The Chief Executive, Chief Financial Officer, and the Forward Planning Manager have been consulted on this report.

8.0 REPORT DETAILS

Why did the Council defend the judicial review action ?

- 8.1 The reasons why the Council defended the judicial review case may be summarised as follows :
- (i) After taking Counsel's advice, the Council defended its position.
 - (ii) In making its planning decision and the planning permission being issued, the Planning Committee was functus officio. Functus officio is

latin for "having performed his function." The Planning Committee had performed its function and could not revisit its decision;

- (iii) A Local Authority has a general duty to defend its reasonable decisions. In this Judicial Review case, one High Court Judge had found the claim to be "totally without merit" and a Single Lord Justice had only found the case "arguable". The view of the Council's barrister was that the District Council had a good case. That was also the view of Leading Counsel for the interested party. The District Council relied on its own independent legal advice.
- (iv) Against the background of clear legal advice from Leading Counsel that the Council had a good case and the fact that the third party was defending the judicial review claim, there was no good reason why the District Council should concede the Fitzwilliam Malton Estate's claim for a judicial review of the Council's grant of planning permission.

The reasons why the judicial review was successful.

- 8.2 It is worthy of note that Mr Justice Dove made the following observation at paragraph 44 of his judgement :

"During the course of argument the grounds as originally pleaded by the claimant were refashioned and I propose to deal with them in the manner in which they emerged during the hearing."

- 8.3 The Fitzwilliam Malton Estate challenged the grant of planning permission for a supermarket and fuel station at the Wentworth Street Car Park Malton LPA Ref; 11/00927/MOUT on five grounds of which four were accepted by the Judge, namely :

Ground 1; The report to the Planning Committee had not properly reported the Planning Inspectors decision on the Livestock market site appeal in relation to the sequential approach.

Grounds 2 and 4; The report had not properly taken into account the Planning Inspectors conclusions in relation to treating the Livestock Market site as a town centre site for retail impact purposes.

Ground 5; The Council had not undertaken a further screening opinion for the purposes of the Environmental Impact Assessment Regulations.

Ground 3 relating to an allegation of the report to the Planning Committee not properly reporting the intentions of Booths and Fitzwilliam Malton Estate on redeveloping the Livestock Market site at Malton was dismissed.

In his judgement Mr Justice Dove made a finding that the Officer report to the Planning Committee seriously misled the Planning Committee. Members are advised that there was no intention to mislead the Planning Committee.

- 8.4 The essence of the High Court decision of Mr Justice Dove in the Judicial Review case was mainly to the effect that and largely turned upon the reasoning contained in the officer report to the Planning Committee meeting on 24 April 2014

in relation to the decision of the Planning Inspector on the Livestock Market Malton appeal decision.

- 8.5 At the heart of these grounds was the issue of whether or not the retail impact of the WSCP proposals on the Livestock Market site had been sufficiently and properly addressed in the Officers report and the appended information as a material consideration. Mr Justice Dove clearly considered that this had not been the case.
- 8.6 Litigation risk hugely increases if a matter is regarded as irrelevant or immaterial rather than being dealt with as a matter of weight.
- 8.7 The findings of the Judge were disappointing, particularly given the evidence presented to him. The Planning Committee is requested to note the views of Mr Justice Dove, that there was a lack of clarity in certain aspects of the report, namely the reasoning relating to the Inspectors decision on the livestock market appeal and the retail impact of the WSCP proposals on the Livestock Market site which was a material consideration all of which emerged during the High Court's scrutiny of the case. Due regard also needs to be given to the need for further screening opinion for the purpose of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 as amended.
- 8.8 Consideration was given to an appeal against the High Court's decision but, an appeal was not recommended having weighed up the prospects of success against the cost of further litigation. Accordingly it was considered that it would not be in the general public interest to appeal the judgement.
- 8.9 The planning permission which was the subject of the judicial review has therefore been quashed and, should the applicants wish to continue with the planning application, that application will need to be reconsidered by the Council's Planning Committee.
- 8.10 Whilst this is the first time that this Council has been involved in a judicial review relating to its planning decisions which has been successful, it is not by any means alone nationally. In the past few years there has been a significant growth in the number of judicial review cases involving planning decisions across the country. By way of context reference is made to a retail planning decision relating to The Queen On the application of Midcounties Co-Operative Ltd v Forest of Dean District Council (2015). That Council has had three successful judicial review challenges in respect of the same retail planning application. In that particular case Mr Christopher Katkowski QC the most famous retail planning law barrister in England represented the Interested Party.

Status of the Planning Application

- 8.11 As a result of the judgement and court order quashing the planning permission dated 12 September 2014, the planning application remains live and the District Council as Local Planning Authority has a duty to re-determine it, unless the application is withdrawn by the applicant or called in by the First Secretary of State for him to determine.
- 8.12 If the application is not withdrawn the Local Planning Authority would reassess the planning application and address the issues raised in the judgement, and any material changes in circumstances since the application documents were prepared and since the 24 April 2014 Planning Committee meeting. This will require the

submission of additional information from the applicant, consultation with statutory and non-statutory consultees and members of the public before it is reported to the Planning Committee to be re-determined. The District Council would also need to undertake a further screening opinion for the purposes of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 as amended.

9.0 IMPLICATIONS

9.1 The following implications have been identified:

a) Financial

The Council must pay the Claimant's reasonable costs for the judicial review .

b) Legal

Detailed in the body of the report. The Planning decision made by the Planning Committee on 24 April 2014 is quashed. The Local Planning Authority has a duty to determine Planning Applications before it.

c) Other (Equalities, Staffing, Planning, Health & Safety, Environmental, Crime & Disorder

None.

Author: Anthony Winship
Council Solicitor
Telephone No: 01653 600666 ext: 267
E-Mail Address: anthony.winship@ryedale.gov.uk

Background Papers:
Planning Application LPA Ref 11/00927/MOUT

APPENDIX 1

Q & A

Approved Judgment: The Queen on the application of Milton (Peterborough) Estates Company trading as Fitzwilliam (Malton) Estate v Ryedale District Council - CO/4915/2014

Q1. What is the background to this case ?

R1. Please see the attached chronology of events in Appendix 2.

Q2. What is a judicial review ? How does it differ to an appeal ?

R2. A judicial review is different to a planning appeal.

Judicial review is a type of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body.

In other words, judicial reviews are a challenge to the way in which a decision has been made, rather than the rights and wrongs of the conclusion reached.

It is not really concerned with the conclusions of that process and whether those were 'right', as long as the right procedures have been followed. The court will not substitute what it thinks is the 'correct' decision.

This may mean that the public body will be able to make the same decision again, so long as it does so in a lawful way.

In a planning appeal the Planning Inspector considers the merits of the proposal and makes a decision to approve or refuse.

In a judicial review case the High Court judge is not considering the merits of the proposal but the legality of the decision.

The judgement is not challenging the appropriateness of the development, but has considered the process of reaching the decision.

The High Court ruling nullifies the decision taken by the Planning Committee in April 2014 if there is no appeal. If there is no appeal the decision enables the application to be re-considered by councillors of the Planning Committee at a later date.

Q3. What is the usual procedure for a judicial review ?

R3. The usual sequence of events in a judicial review action is briefly summarised. When a planning application is approved, within a specified timescale, third parties with a legitimate interest in the application can apply to the High Court to have the decision quashed. Judicial review is a two stage process. At the first, the permission stage, an applicant needs to satisfy the High Court that there is an arguable case. This stage is done on paper, although there is scope for a hearing. If permission is refused then, subject to a right of appeal, that is the end of the matter. If permission is granted, the matter goes to the hearing stage. The parties submit detailed arguments and a full hearing is fixed.

At the full hearing, the Court may quash the Council's decision to grant planning permission. If this occurs, the decision is referred back to the Council for redetermination.

Q4. What was the decision of Mr Justice Dove ?

R4. In challenging the grant planning permission for a supermarket and fuel station at the Wentworth Street Car Park (WSCP) Malton the barristers for the Fitzwilliam Malton Estate relied heavily on the decision of the Planning Inspector in the planning appeal decision letter dated 29 October 2012 for the proposed redevelopment of the Livestock Market site at Malton.

The Fitzwilliam Malton Estate challenged the planning approval on five grounds of which four were accepted by the Judge, namely;

Ground 1 - That the report to the Planning Committee had not properly reported the Planning Inspectors decision on the Livestock Market site appeal in relation to the sequential approach

Ground 2 and 4 - The Council had not properly taken into account the Planning Inspectors conclusions in relation to treating the Livestock Market site as a town centre site for retail impact purposes

Ground 5 - That the Council had not undertaken a further screening opinion for the purposes of the Environmental Impact Assessment Regulations.

Ground 3 - Relating to an allegation of the report to the Planning Committee not properly reporting the intentions of Booths and Fitzwilliam Malton Estate on redeveloping the Livestock Market site at Malton was dismissed.

Q5 In his judgement Mr Justice Dove makes a finding that the officer's report did mislead Members of the Planning Committee and misled them significantly.

Was there an intention by Officers to mislead Members of the Planning Committee ?

R5. In paragraph 31 of his judgement Mr Justice Dove makes reference to the principles governing the approach to a committee report to seek to establish whether or not there may have been an error of law in the following case relating to Selby District Council :

"An application for Judicial Review based on criticisms of the planning officer's report will not normally begin to merit consideration unless the overall effect of the report significantly misleads the committee about material matters which thereafter are left uncorrected at a meeting of the planning committee before the relevant decision is taken." (Oxton Farms, Samuel Smiths Old Brewery (Tadcaster) v Selby

District Council (18th April 1997) 1997 WL 1106106 per Judge LJ as he then was)

The officers' recommendations were guided by national planning policy advice and professional retail planning advice. They are a professional and dedicated team and are committed to providing the best possible report.

Whilst Mr Justice Dove made a finding that the officer's report did mislead Members of the Planning Committee and misled them significantly, Officers' did not intend to mislead Members of the Planning Committee.

Q6. Does the judgement Mr Justice Dove mean that Wentworth Street Car Park is not a good site for a superstore ?

R6. No. As mentioned above in a judicial review case the High Court judge is not considering the merits of the proposal but the legality of the decision.

The judgement is not challenging the appropriateness of the development, but has considered the process of reaching the decision.

On 22 May 2013 at the Examination in Public hearing at Ryedale House Peter Village QC for the Fitzwilliam Malton Estate made the following points :

"Peter Village QC made the point that Wentworth Street Car Park is a more attractive site for a supermarket operator and needed to be "strangled at birth" and that any reference to the Northern Arc should be removed from the Plan. It will stifle the ability of the LMS site to come forward."

The above quote is taken from the minutes of the Examination in Public hearing.

Q7. Will the District Council have to pay costs in the judicial review case ?

R7. The general rule is that costs follow the event in the sense of the successful party being entitled to an order for costs against the unsuccessful party. The usual costs order is that the defendant pays the reasonable and proportionate costs of the claimant such costs to be subject to detailed assessment if not agreed. In the absence of agreement on costs assessment usually takes place before a High Court Official.

The terms of the order for costs in this case are still before Mr Justice Dove for his consideration.

The Fitzwilliam Estate has claimed £145,602.71 plus VAT costs . The costs claim as a whole appears to be completely unreasonable and is being contested.

Q8. In 2012 Ryedale District Council was ordered to pay £148,000 costs to the Fitzwilliam Malton Estate in relation to the Livestock Market Appeal. Now the District Council will be ordered to pay costs to the Fitzwilliam Malton Estate in the Judicial Review of the grant of planning permission for the WSCP site. Has the District Council repeated the same mistake?

R8. The District Council has not repeated the same mistake.

In the Planning Inspectors Livestock Market appeal decision dated 29 October 2012, costs were awarded against the Council for not being able to substantiate two out of four reasons for refusal in refusing the retail planning application to redevelop the Livestock Market site.

The reason for the costs award was the misapplication of the retail planning policy sequential test in PPS 4 terms.

There was no award of costs on the remaining two reasons for refusal relating to impact on heritage assets and loss of the livestock market. They were material considerations. The Planning Inspector attached a different weight to those reasons than the Council. He was legally entitled to do that.

At the end of the day the High Court decision of Mr Justice Dove in the Judicial Review case in relation to the grant of planning permission to redevelop Wentworth Street Car Park Malton, was to the effect that and largely turned upon the reasoning contained in the officer report in relation to the decision of the Planning Inspector on the Livestock Market Malton appeal decision.

Mr Justice Dove made a finding that the officer's report did mislead Members of the Planning Committee and misled them significantly.

The Fitzwilliam Malton Estate challenged the planning approval on five grounds of which four were accepted by the Judge, namely;

Ground 1 - That the report to the Planning Committee had not properly reported the Planning Inspectors decision on the Livestock Market site appeal in relation to the sequential approach

Ground 2 and 4 - The Council had not properly taken into account the Planning Inspectors conclusions in relation to treating the Livestock Market site as a town centre site for retail impact purposes

Ground 5 - That the Council had not undertaken a further screening opinion for the purposes of the Environmental Impact Assessment Regulations.

Ground 3 - Relating to an allegation of the report to the Planning Committee not properly reporting the intentions of Booths and Fitzwilliam Malton Estate on redeveloping the Livestock Market site at Malton was dismissed.

To state that the judicial review case was the repeat of the same mistake as the Livestock Market appeal is not an accurate characterisation of the position.

Q9. What happens next ?

R9. The ruling nullifies the decision taken by the Planning Committee in April 2014 if there is no appeal and means that the application will have to be re-considered by councillors of the Planning Committee at a later date if there is no appeal or if the planning application is not withdrawn.

APPENDIX 2

CHRONOLOGY OF EVENTS

03.09.2007 Planning application LPA Ref 07/00813/MOUT which was submitted by the Fitzwilliam Malton Estate for the redevelopment of the Livestock Market site Malton was registered on 3 September 2007.

13.02.2009 Planning application LPA Ref 07/00813/MOUT which was submitted by the Fitzwilliam Malton Estate was withdrawn on 13/02/09.

17.11. 2010 At its meeting on 17th November 2010 the Council considered and approved a recommendation to accept an offer to purchase land at Wentworth Street Car Park in Malton. This decision was subsequently implemented through the completion of a legal agreement with GMI Holbeck Land (Malton) Ltd (GMIHL) which was completed in May 2011.

10.05.2011 Planning application LPA Ref 11/00412/MOUT which was submitted by the Fitzwilliam Malton Estate for the redevelopment of the Livestock Market site Malton was registered on 10 May 2011.

26.08.11 The planning application LPA Ref 11/00927/MOUT which was submitted by GMI Holbeck Limited for the redevelopment of the Wentworth Street Car Park was registered by the Council on 26 August 2011.

29.03.12 The planning applications LPA Ref 11/00412/MOUT and LPA Ref 11/00927/MOUT were originally considered by Members at a Planning Committee Meeting on 29 March 2012. It was resolved to :

- (i) refuse planning application LPA Ref 11/00412/MOUT; and
- (ii) grant planning permission for LPA Ref 11/00927/MOUT for the proposed development subject to the Secretary of State confirming that the application did not need to be referred to him for determination, the completion of a S106 Agreement and the imposition of conditions. The Secretary of State subsequently confirmed in writing that he would not 'call in' the application for his own determination.

29.10.12 Livestock Market Site appeal decision issued, allowing the appeal and granting of planning permission for the Livestock Market Scheme. The Inspector made a partial award of costs against the Council. Despite the resolution of the 29 March 2012 Planning Committee to grant planning permission for the WSCP scheme, and the Decision of the Secretary of State not to call it in, the planning permission was not issued prior to the Livestock Market Site appeal decision being published. However in the light of the Inspector's decision and specifically his observations relating to Wentworth Street Car Park, Officers considered that it was appropriate that the matter was considered afresh by Members.

13.05.13 The Fitzwilliam Malton Estate agreed the sum of £148,000 in costs. The original claim for costs was £251,505

26.11.13 Revised information for the Wentworth Street Car Park application submitted by the applicants to the Local Planning Authority taking into account the Livestock Market appeal decision, as well as other amendments to the scheme.

24.4.14 The revised Wentworth Street Car Park planning application LPA Ref 11/00927/MOUT was considered by Members at Planning Committee. It was resolved to grant planning permission for the proposed development subject to the Secretary of State confirming that the application did not need to be referred to him for determination, the completion of a S106 Agreement and the imposition of conditions.

9.9.14 Letter received from the National Planning Casework Unit that the Secretary of State would not 'call in' the application for his own determination.

12.09.14 Planning permission was issued.

23.10.14 The Fitzwilliam Malton Estate lodged a claim for Judicial Review which was issued by Leeds High Court on 23 October 2014.

17.12.14 At first instance Mr Justice Gilbart designated the claim for Judicial Review as "totally without merit".

29.12.14 The Fitzwilliam Malton Estate gave notice that they would appeal that Order. It was later confirmed that the appeal would be considered by Lord Justice Sullivan of the Court of Appeal.

23.3.15 Lord Justice Sullivan found that the Fitzwilliam Malton Estate's grounds for a Judicial Review were properly arguable.

7.5.15 District Council election.

10-12.6.15 The Fitzwilliam Malton Estate's grounds for Judicial Review were considered before a Judge at Leeds High Court on 10 – 12 June 2015.

9.7.15 The High Court judge Mr Justice Dove handed down his judgement which quashed the decision to grant planning permission for a supermarket and fuel station at the Wentworth Street Car Park Malton. The Council was ordered to pay the reasonable costs of the Estate.



Neutral Citation Number: [2015] EWHC 1948 (Admin)

Case No: CO/4915/2014

IN THE HIGH COURT OF JUSTICE
PLANNING COURT (LEEDS DISTRICT REGISTRY)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/07/2015

Before :

MR JUSTICE DOVE

Between :

The Queen

Claimant

- on the application of -

**MILTON (PETERBOROUGH) ESTATES
COMPANY TRADING AS FITZWILLIAM
(MALTON) ESTATE**

- and -

RYEDALE DISTRICT COUNCIL

Defendant

- and -

GMI HOLBECK LAND (MALTON) LIMITED

Interested Party

Peter Village QC & James Strachan QC (instructed by **Pinsent Masons LLP**) for the
Claimant

David Manley QC (instructed by **Ryedale District Council**) for the **Defendant**
Paul Tucker QC and Michael Rudd (instructed by **LB & Co Limited**) for the **Interested
Party**

Hearing dates: 10th – 11th June 2015

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE DOVE :

Introduction

1. This claim is a challenge by way of Judicial Review to the grant of planning permission by the defendant to the interested party for A1 retail units, offices, petrol filling station, car park and landscaping at a site known as Wentworth Street Car Park ("WSCP") in Malton, North Yorkshire. The planning permission was granted on 12th September 2014. The claimants are landowners who own a significant part of Malton town centre and who also have the benefit of the grant of a planning permission on appeal on 29th October 2012 for another retail development in the town on what is known as the Livestock Market Site ("LMS").
2. The claimant contends, in brief, that in granting planning permission the following errors of law occurred. Firstly, the members of the planning committee were seriously misled in relation to the conclusions that the Inspector had reached in the claimant's appeal in relation to the LMS site when he granted permission as set out above. This was, in particular, in relation to the Inspector's conclusions in respect of the sequential ranking of the LMS site and the WSCP site and his reasons for concluding that the former was preferable to the latter. They were further misled by the failure to allude at all to the Inspector's conclusion that for the purposes of retail impact analysis the LMS site should be counted as part of the town centre.
3. Secondly, in disagreeing with the Inspector's conclusions in particular in relation to the sequential test the officer's report on which members relied to make their decision to grant planning permission, failed to provide adequate reasons for that disagreement.
4. Thirdly, it is contended that the council failed to have regard to the impact on planned investment which would occur in relation to the implementation of the LMS if planning permission were granted for the WSCP. It is contended that the officers failed to properly disentangle the intentions of the proposed operator of the LMS site, Booths, from the intentions of the claimant, the landowner. Finally, it is contended that consideration should have been given to rescreening the proposed development for EIA purposes in the light of circumstances having changed since it was originally screened.

History

5. On 10th May 2011 the claimant applied for planning permission for the retail development of the LMS site. The proposal sought to demolish all buildings on the site and construct four new retail units with a total gross external floor space of 4,092 square metres along with a three storey decked car park and new public area. The largest of the retail units was proposed for a high quality food store and had a gross external floor space of 2,360 square metres. The three smaller retail units were proposed for comparison goods retailing.
6. In August 2011 the interested party applied for outline planning permission for a new food store of 5,205 square metres gross together with other ancillary development as described above. Around the time of making the application the interested party sought the opinion of the defendant as to whether or not their proposed development

was Environmental Impact Assessment (“EIA”) development pursuant to the then relevant Regulations, namely the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulation 1999. This request for a screening opinion was made by way of a letter dated 22nd August 2011. Amongst a number of characteristics of the proposed development the letter addressed the question of cumulative effect. The information provided in the letter was as follows:

“4.2 The Subject Site lies adjacent to the existing Malton town centre commercial limits (Ryedale Local Plan adopted March 2002). The emerging Core Strategy includes a proposal for the town’s commercial limits to be extended to an area known as the Northern Arc, which is suitable for mixed use development including new convenience and comparison retail uses. The area of the Subject Site proposed for built development lies broadly within the Northern Arc and there is currently another application for planning permission submitted to RDC for retail uses with the Northern Arc and thus adjacent to the existing town centre commercial limits. However, the two sites are not contiguous and are separated by existing town centre uses and residential streets. No adverse environmental effects are anticipated were both sites to include built development such as would result in a requirement for an EIA.

4.3 A full statement has been prepared by Nathaniel Lichfield and Partners (“NLP”) pursuant to Planning Policy Statement 4, which covers retail impact and the strategic retail policy implications of the proposal. The work by NLP includes a conclusion that only one large new convenience store/foodstore can be accommodated in Malton or the District generally. This is consistent with work undertaken on behalf of RDC by Roger Tym and Partners (“RTP”). Additionally Arup has prepared an economic impact assessment of the proposal which takes other development into account, where such potential is identified. These documents have been submitted as part of the planning application.

4.4 It is submitted that there are no developments anticipated to be constructed or conducted in the area which would together give rise to significant environmental effects such as to warrant EIA of this scheme.”

7. On 14th October 2011 the defendant responded to the screening opinion and the covering letter made clear that the opinion had been “given strictly on the basis of the information provided in the submitted application”. The screening opinion concluded that the development, whilst within Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (the applicable Regulations at the time of providing the opinion), it was a development which was not likely to give rise to significant effects on the environment and therefore did not qualify as EIA development.

8. On 12th April 2012 the defendant refused the claimant's application for planning permission for four reasons. The first and fourth reasons are of materiality to the matters in this case. So far as relevant the first reason for refusal was expressed as follows:

"Whilst the application site is on edge of centre as defined in National Planning Policy, and would function as an immediate and logical extension to the town centre, it is considered that the site is not currently available for the proposed development or suitable for the type/mix of retail development proposed by this application. Furthermore, the applicants have failed to demonstrate to the satisfaction of the Council that the proposed development would be viable, and therefore that the scheme would be deliverable.

It is considered that an alternative site, located to the east of Wentworth Street and currently in use as a car park, is sequentially preferable to the application's site on the basis that it is available suitable and viable.

The application is therefore judged to have failed to demonstrate compliance with the sequential approach required by National Planning Policy."

9. The fourth reason for refusal, again so far as relevant, provided as follows:

"The National Planning Policy Framework states that where a proposed development is likely to have a significant adverse impact on town centre vitality and viability planning permission should be refused...

There is a resolution to approve an application for a foodstore with a gross floor space of 4,494 square metres (net floor space of 3,086 square metres) as part of a scheme at Wentworth Street, Malton taking the impacts of the proposed development into account it is considered that in combination with this commitment the proposed development is likely to have a significant adverse impact on town centre vitality and viability, contrary to the provisions of the National Planning Policy Framework and Regional Spatial Strategy."

10. The claimants appealed and the appeal was heard by the public inquiry procedure. During the course of the inquiry the following material formed part of the evidence before the Inspector who made the decision on the appeal on behalf of the Secretary of State:

- a) Within the inquiry's Core Documents the Inspector was presented with reports from Roger Tym and Partners ("RTP") that had been commissioned to provide the evidence base for the defendant's emerging forward plan (which started as a Core Strategy and later developed into a Local Plan Strategy). The role of these reports was to provide the Council with evidence in relation to matters concerning retail planning both in terms of the retail needs that had to be planned for and also the potential candidate sites which might accommodate those needs. In the first report of May 2006 RTP noted that the LMS site had closer adjacency to the town centre and offered "good potential for retail uses" in particular for a small number of retail shops. They noted that the WSCP site was "approximately 160 metres to the north-east of the town centre" and edge of centre in terms of the then National Planning Policy on retail. They suggested that the WSCP had potential for retail warehousing. In the next report dated September 2008 they advised in relation to the LMS that it appeared "to offer excellent potential for retail uses because of its close adjacency to the town centre core". They noted that the site was already well connected to the retail core and "would form a natural extension to the town centre". In particular they considered that the site would be a suitable location for unit shops for comparison goods retailing. In respect of the WSCP they observed that this site was "more peripheral being separated from the town centre by existing residential development... and being located on a different lower level to town centre shops". They went on to say that whilst pedestrian linkages between the site and the town centre existed "the degree of separation by other non-retail uses means that the site is unlikely to form an "extension" to the existing town centre". RTP's most recent report was provided in July 2011 and in relation to the LMS site they noted that the site was "technically edge of centre" for the purposes of the sequential test but went on to provide as follows:

"However, the [LMS] site is well-connected to the retail core of Malton town centre, which can be easily accessed by pedestrians via The Shambles or Spittle Street / New Gate. Indeed the site lies just to the rear of the existing retail / service units at Market Place, which – in our professional judgment – is part of the primary shopping area of Malton (although we recognise that the Proposals Map does not formally define a primary shopping area). We therefore consider that the cattle market site, if developed for town centre uses, would form a natural extension of the town centre, and that it represents the most sequentially preferable opportunity in Malton."

RTP went on to reaffirm their view that the LMS site was well placed to provide comparison retail units albeit a foodstore could be acceptable as part of a mix of uses at the site they did not advocate a supermarket only scheme which would rule out the prospect of attracting comparison retailers. So far as the WSCP site was concerned they reiterated that it was approximately 160 metres to the

north-east of the town and they went on to conclude that the site was more suited to convenience rather than comparison retail development “because new high-street stores should be focused on the cattle market site as the first priority given its close proximity to the primary shopping area”.

- b) The Inspector received evidence from Mr Goddard on behalf of the claimant contending that the first reason for refusal set out above was misconceived and that the LMS site was sequentially preferable to the WSCP site. It appears from the closing submissions of the defendant that during the course of cross-examination their witness on retail planning issues, Mr Johnston, accepted that the LMS site was “sequentially the most preferable site in Malton”. The council were therefore no longer able by the end of the inquiry to sustain the first reason for refusal in particular as it was conceded that members had not been properly advised as to the policy content of the sequential test when they had reached their decisions both on the LMS but also on the WSCP which they had resolved to grant consent for at the same meeting that they refused the claimant’s application. Not only therefore was the council’s case at the close of the inquiry that the LMS site was sequentially preferable to the WSCP site but also they conceded that it would be necessary for the members to reassess their resolution to grant planning permission “in the light of the concession that the nature and application of the sequential test was not properly spelled out in the LMS Committee Report”.
- c) In order to address the fourth reason for refusal Mr Goddard undertook a cumulative impact on the town centre which included the impact of both the claimant’s and the WSCP proposed developments. In undertaking that analysis Mr Goddard incorporated the additional turnover from the claimant’s scheme within the overall figure for expenditure in the town centre. The effect of the analysis was to show that the claimant’s proposal would lead to an overall positive increase in the retail turnover in the town centre in the region of 24.7% leading to the conclusion that the claimant’s proposals would have a positive impact on the town centre. This approach was predicated on the RTP acknowledgement that the LMS site would form part of the functional town centre. This approach was disputed by the defendant.

11. The Inspector concluded that the claimant’s appeal should be allowed in a decision date 29th October 2012. The Inspector explained the backdrop provided for the application by the RTP studies and noted the claimant’s justification for the proposals on the basis that they would fulfil Malton’s convenience and comparison retail floor space needs up to 2021 and beyond. He then turned to consider the sequential approach. His conclusions are expressed as follows:

“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.

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."

12. The Inspector then turned to consider the question of the fourth reason for refusal and matters related to retail impact. He first looked generally at the relationship between the LMS site and the town centre to assess whether or not there would be an adverse effect on the town centre in principle and concluded as follows:

"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, overtime 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.”

13. The Inspector determined that the WSCP scheme could not be regarded as a commitment in the light of the concession that the resolution to grant planning permission had arisen from a committee report which had provided the members with erroneous advice as to the proper application of the sequential test and that resolution would need to be revisited. Nevertheless in considering the arguments in relation to impact the Inspector provided conclusions on the analysis provided by Mr Goddard on cumulative impact. His conclusions were as follows:

“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 Morrison’s 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 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.”

14. In the light of these conclusions the Inspector granted planning permission. He also concluded that the defendant had behaved unreasonably in relation to “the very significant admission that it had misapplied the sequential test” and the members had been wrongly advised that the WSCP site was sequentially preferable to the LMS site. The Inspector further concluded that the defendant’s fourth reason for refusal was also unreasonable and costs were awarded against them in respect of that issue as well.
15. On 19th November 2013 the interested party submitted revised documentation in respect of their application which had a resolution to grant consent. The size of the foodstore was reduced from 5,205 square metres gross to 4,530 square metres gross and other changes of detail were made in the application. A suite of updated documents including in particular an updated Retail Statement from Nathaniel Lichfield and Partners (“NLP”) was provided.

16. In September 2013 the defendant adopted its “Ryedale Plan – Local Plan Strategy”. This observed that current commitments which had been granted consent accounted for most, if not all, of the quantitative additional food retail floor space which was required to 2026. It indicated that if commitments failed to come forward then any outstanding requirements within the district would be directed to Malton in order to improve the range and choice of food stores in that town. It will be recalled that the Inspector had made reference to a “Northern Arc”. This was explained in paragraph 5.25 of the local plan strategy which provided as follows:

“5.25 Excellent edge of centre opportunities exist to accommodate new retail space to support the role of Malton Town Centre. A “Northern Arc” lies to the north of the town and it stretches from the existing Livestock Market to Wentworth Street Car Park. It is a band of existing and former agricultural buildings and spaces that were carved out of the medieval street pattern to relocate livestock trading in the mid 19th century. Today, whilst this broad area is not derelict, parts of it are under used and there are opportunities to redevelop sites and buildings to accommodate additional retail space with excellent connectivity with the existing town centre. Although this document does not allocate specific sites for new uses, it is considered that within this “Northern Arc”, the Livestock Market area is of strategic significance. It provides a key opportunity to accommodate a mix of uses and in particular to provide much needed space for additional non food retailing. Whilst it currently occupies a location which abuts the existing town centre, it has the ability – once developed – to form a logical extension to the town centre. Currently outline planning consent has been granted for a mixed convenience and comparison retail scheme on the site.”

17. In order to assess the revised application which had been provided by the interested party the defendant commissioned two pieces of independent work from consultants. Firstly they commissioned a review of the NLP retail planning work which they received in February 2014. It is unnecessary to set that material out in detail at this stage since it was, understandably, heavily drawn upon in the compilation of the committee report on the application. In summary England and Lyle (“EL”) endorsed the conclusions of the NLP retail work that there was greater potential for the creation of retail floor space for convenience retailing and that the LMS site and the WSCP site were sequentially equal. In the light of this and also the fact that the scale of the foodstore proposed in the interested party’s application could not physically be accommodated on the LMS site they accepted NLP’s conclusion that the sequential test was passed.
18. In relation to impact on planned investment EL relied upon the second piece of independent work commissioned by the council, namely a report from DTZ dated 11th February 2014, in relation to the commercial viability of both the claimant’s consented scheme and the interested party’s proposed scheme. In their report DTZ concluded that none of the principle foodstore operators would be interested in the

consented scheme on the LMS site and that whilst that location might appeal to Booths or Aldi the form of the consented scheme would be unacceptable to them. It would require redesign before having any chance of attracting commercial interest.

19. Further objections were made to the application by the claimant's planning consultant on 11th March 2014. That letter coincided with a letter from the claimants enclosing a letter of support from EH Booths and Company Limited ("Booths") expressing Booths' interest in the site and the fact that they were in the process of negotiating an agreement for a lease with the claimant for the foodstore element of the LMS site. In the letter the chairman of Booths indicated that they remained "very concerned" about the interested party's unresolved planning application. Following this up on 25th March 2014 the claimant wrote in the following terms:

"The estate company is willing to accept the scale and risk profile of investment required to develop the LMS. However the threat of a large area of excess retail capacity in an edge of town centre location with a surface car park on WSCP significantly increases the risks of the investment in LMS. With that threat hanging over the town, the Estate Company will be unlikely to proceed with the LMS development."

20. On 1st April 2014 Booths again wrote to confirm for the avoidance of doubt that the outline consent on the LMS site was acceptable. In the light of these new developments EL provide further advice to the council on 9th April 2014. Amongst a number of matters they addressed the recent confirmation of interest from Booths and observed as follows:

"We have allowed for a foodstore of the size approved on the Livestock Market site in the capacity analysis and the cumulative impact assessment. Although a Booths store would provide an improve range of choice and convenience retailing, as sought by the Ryedale Plan there remains a need for another large foodstore in Malton to provide choice and competition for Morrison's in main food shopping and claw back leakage that is going to large stores elsewhere. But the need for a large foodstore could not be met in the Livestock Market scheme. A store on the WSCP and a Booths store on the Livestock Market site would have a complimentary role."

21. EL went on to consider the question of retail impact in particular in terms of the criticism raised by the claimant's planning consultants that no scenario had been provided seeking to test foodstores being present on both the LMS site and the WSCP in the opening year of 2018. They advised as follows:

"In terms of retail impact, GVA criticise the fact that NLP considered only two scenarios, precluding new foodstores on the WSCP and Livestock Market sites in 2018. Our review considers a third scenario in which foodstores are developed on both sites and are trading in 2018. The largest overall

cumulative impact is predicted to be on the Morrison's store, representing three-quarters of total trade diversion from Malton town centre. We do not anticipate that there would be a significant adverse impact upon the overall vitality and viability of Malton town centre which has a high level of vitality and viability. The predicted overall trading impacts on the other town centres are small. We have assessed that the WSCP proposal would have a trading impact of 16% on a foodstore in the Livestock Market scheme. This is a matter of competition with a store located outside the town centre, not a town centre impact, not a material planning consideration."

22. The day before the planning committee was due to meet the claimant provided final objections to the defendant in relation to the application. They alluded in that correspondence to a letter of objection from Booths in relation to the WSCP proposal. In relation to the impact upon planned investment in the form of the LMS scheme their observations were as follows:

"For the avoidance of doubt, Fitzwilliam Malton Estate (FME) is willing to make the investment in redeveloping the Livestock Market Site (LMS) as soon as it has secured a pre-letting of the main food store to Booths. Whilst the preference is to have one or more of the smaller retail units let before we start on site, the development is not conditional upon retailer commitment for those units. However, the prospect of almost double the retail floor space being given consent by RDC is considered to be a considerable threat to FME's investment in LMS. FME will not make that investment if consent is given to the GMI application...for a large superstore on Wentworth Street car park."

23. On 24th April 2014 the defendant's planning committee met to consider the interested party's application. In addition to a lengthy committee report the members had a number of matters appended to the report including the EL report and letter of 9th April 2014 together with the advice which had been received from DTZ (which included a response to the claimant's planning consultant's objections) also included in the appendices were correspondence from the claimant planning consultant and from the claimant's themselves and Booths. Not included within the appendices circulated to the committee but provided to them at the meeting was a copy of the Inspector's report in relation to the claimant's appeal.
24. The committee report summarised the objections which had been received to the applications along with the other representations which had been made. The first topic that was addressed by the officer's conclusions was the question of retail planning policy. The report noted the content of the local plan strategy which has been set out above. It went on to set out the provisions of the National Planning Policy Framework and, whilst the contents of the report ranged far wider across the Framework for present purposes two paragraphs of the Framework were central, namely paras 24 and 26 which provide as follows:

"24. Local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. They 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. 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. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale.

26. When assessing applications for retail, leisure and office development outside of town centres, which are not in accordance with an up-to-date Local Plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500 sq m). This should include assessment of:

- The impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and
- The impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made. For major schemes where the full impact will not be realised in five years, the impact should also be assessed up to ten years from the time the application is made."

25. Dealing firstly with the sequential test derived from paragraph 24 of the Framework and the comparative conclusions which had been reached by the Inspector in the claimant's appeal, the officers concluded as follows:

"6.27 The Livestock Market Site in Malton is also considered in detail within the submitted Updated Retail Statement. The Livestock Market site benefits from an extant planning permission for retail development for four new retail units, comprising of a 2,360 sq.m (gross) foodstore and three smaller comparison goods units (1,732 sq.m gross in total) and a three-storey car park, granted on appeal on 29th October 2012. The Inspector concluded that the Livestock Market site was both sequentially preferable to the WSCP site to accommodate the actual development proposed but also that the Livestock Market site was generally sequentially preferable, stating at Paragraph 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.'

6.28 The Livestock Market Inspector's Appeal Decision is an important material consideration and must carry significant weight in decision-making. However, it is not a binding precedent. The Inspector's conclusion as to why the Livestock Market site is sequentially preferable to the WSCP is not fully reasoned other than pointing to poorer pedestrian links. The issue of sequential preference is one for informed planning judgement. Officers have commissioned an independent review of the applicant's Updated Retail Statement by England & Lyle, who have submitted a report dated February 2014. In the report they consider whether the Livestock Market site is sequentially better located than the WSCP site. England & Lyle note that both sites are within the 'Northern Arc' and that the differences in accessibility to the town centre are minimal. Officers agree, for the reasons set out below that the differences are so negligible that the sites are, for all practical purposes, on an equal footing in terms of sequential testing.

6.29 The Livestock Market Site lies adjacent to the defined Town Centre Commercial Limits of Malton Town Centre and is therefore located slightly closer to the town centre than the application site, although the difference is minimal given the application site itself only lies 30m to from the Town Centre Commercial Limits and it is noted that both sites lie within the extent of the 'Northern Arc,' which is identified as an area that offers opportunities to redevelop sites and buildings to accommodate additional retail space with excellent connectivity with the existing Town Centre. Furthermore, it is considered that there are minimal differences between the sites in terms of accessibility and connectivity with the town centre, and the consequent ability to generate linked trips. Both sites offer easy access to the town centre for pedestrians using existing connections that are easy to follow. On this basis, it is considered that the application site and Livestock Market site should be considered as being 'sequentially equal.'

6.30 It is noted that applications for planning and listed building consent have recently been submitted by Fitzwilliam (Malton) Estates for the erection of a two storey retail extension to existing store with attached stairwell building on three levels and external flight of steps together with formation of retail unit(s) on two floors within Building D to include installation of new shop fronts, windows and chimneys all following removal of three existing outbuildings (LPA Ref. 14/00059/FUL & 14/00060/LBC) at Kings Head Yard, which lies to the direct south of the consent Livestock Market site. The Planning Statement that accompanies the Kings Head Yard application confirms that the development proposed can be viewed as a stand-alone proposal, albeit a precursor to the Livestock Market development. It is suggested that the proposed development will support the expansion of an existing retail business, as well as opening up a key route into the town centre from the Livestock Market development and residential properties to the east. It is accepted that the Kings Head Yard proposals will provide an improved link between the town centre and the Livestock Market site, however, these improvements are not considered to be so significant as to alter the conclusion that the Livestock Market site and WSCP should be considered '*sequentially equal*,' notwithstanding the fact that the Kings Head Yard proposals do not yet benefit from planning and listed building consent.

6.35 The applicant's supplementary information concludes that, in the context of the issues outlined above, a large foodstore on the Livestock Market site, which is comparable to that proposed by the current application, could only be developed over two or more storeys. It is also likely that such a store would need to be accommodated by decked parking, in order to provide a sufficient number of spaces. The applicant contends that this would be unacceptable to the main foodstore operators, who do not split their convenience goods sales area over different floors and such a compromised scheme would be highly unlikely to attract any retailer interest. These findings have been broadly endorsed by DTZ, who were appointed by the Council to advise on the commercial retail considerations in relation to the planning application. The applicant also suggests that it is also highly questionable as to whether a scheme could be developed which would be satisfactory in heritage, residential amenity and highways / transportation terms.

6.36 The applicant's findings in this respect are broadly accepted and, even taking into account the scope for flexibility in the format and scale of the proposal, it is not considered that the Livestock Market site offers a suitable practical alternative

to accommodate the proposed development. However, even if the Livestock Market site was considered to be a suitable practical alternative to accommodate the proposed development, the WSCP and Livestock Market sites are considered to be 'sequentially equal' and, accordingly, would not result in the sequential test being failed.

6.37 The NPPG advises, in applying the sequential test, that it is necessary to consider what contribution more central sites are able to make individually to accommodate the proposal and it is noted that an objection received from GVA on behalf of Fitzwilliam (Malton) Estates suggests that the sequential assessment has failed to consider whether there are available sites within or better integrated sites on the edge of the town centre that could accommodate the proposed smaller retail unit. The constituent main town centre elements of the application proposals comprise of a foodstore (4530 sq.m), a retail unit (227 sq.m) and office accommodation (253 sq.m) and, based upon Officer's local knowledge of centres and a review of commercial property websites to identify potential available sites / premises, Officers are satisfied that there are no suitable and available sequentially preferable premises or potential development sites that could accommodate any of the constituent main town centres uses. Furthermore, it is considered that the provision of the stand alone retail unit provides benefits from a design perspective, helping to create an active and interesting public frontage along the Wentworth Street frontage.

6.38 It is therefore accepted that the application complies with the sequential approach to site selection set out at Paragraph 24 of the NPPF and there are no sequentially preferable sites that are suitable and available alternatives to accommodate a large foodstore development."

26. The report then turned to the question of retail impact and advised members as follows:

"6.42 The planning application is accompanied by an Updated Retail Statement prepared by Nathaniel Lichfield & Partners. The impact assessment contained within the Updated Retail Statement considers two potential scenarios:

- **Scenario 1** – this is based upon what NLP regard as the '*most realistic scenario*' taking into account advice received from commercial agents outlining a lack of operator interest in the Livestock Market Site. This scenario therefore assumes that WSCP site is developed for a new large foodstore in isolation over the period to 2018.

- **Scenario 2** – this scenario considers a situation whereby a store of the size approved on the Livestock Market site is developed out over the longer period to 2023, although NLP suggest that this scenario is unlikely.

6.43 NLP state that the assumption that the Livestock Market store comes forward over the period to 2023 is considered to be a cautious approach, particularly in the context of the views from their commercial agents that there is no demand for a foodstore of the size currently proposed on the Livestock Market site and that the approved scheme is undeliverable. Notwithstanding this, the Retail Review undertaken by England & Lyle agrees that Scenario 2 represents a possible cumulative impact situation in Malton if both schemes were to be developed.

6.44 England & Lyle have therefore undertaken an independent review of the retail impact assessments for convenience and comparison goods and have fully reviewed NLP's Scenario 1 and Scenario 2 assumptions. In addition, although NLP have not considered the potential cumulative impact of the proposed and consented development on the WSCP site and Livestock Market site coming forward by 2018, England & Lyle have reviewed a scenario for 2018 in which both schemes are developed for sensitivity purposes.

6.45 It is noted that Fitzwilliam (Malton) Estates have suggested that they would not bring forward the approved Livestock Market site if the current proposals are approved and this would represent a significant impact on planned investment in the town centre. However, the Livestock Market lies to the northern edge of the defined Town Centre Commercial Limits and is not therefore in-centre, which is a pre-requisite of the impact test contained at Paragraph 26 of the NPPF. In any event, the Livestock Market site is a sequentially equivalent site to WSCP. It is noted that the Local Plan Strategy identifies that the Livestock Market site abuts the existing town centre and has the ability, once developed, to form a logical extension to the town centre. Whilst the WSCP lies slightly further from the town centre, the difference is minimal and both sites lie within the identified 'Northern Arc,' which is identified as an area that offers potential to redevelop sites and buildings with excellent connectivity to the town centre. It is considered that the application proposals provide an opportunity to improve choice and competition in Malton and to claw back expenditure, thus helping to broaden the town's consumer base.

6.60 It is anticipated that in convenience goods the proposed development on the WSCP site would draw 15% of its trade

from inflow / visitor spending, 40% from claw back of leakage and the remaining 45% from trade diversion within the catchment area. In comparison goods, the proposed development on the WSCP site is expected to draw 15% of its trade from inflow / visitor spending, 55% from claw back of leakage and the remaining 30% from trade diversion within the catchment area. In terms of cumulative impact, it is assumed that, to an extent, the WSCP scheme and the Livestock Market scheme would compete with each other and draw some of their trade from the other scheme, albeit that, were both to commence trading, there is plainly an increased opportunity for clawing back trade to the town which presently leaks outside of the district.

6.61 In convenience goods, the largest cumulative impacts of the proposed development together with the Livestock Market scheme and commitments in 2018 are predicted to be on Morrison's in Malton (30%), the Co-op in Pickering (16%), Lidl and Asda in Norton (11%), the new Tesco in Kirkbymoorside (8%), Kirkbymoorside centre (7%) and other shops in Malton (6%). The predicted cumulative impacts in 2023 are very similar to those predicted for 2018 because the turnovers of stores / centres and the turnovers of the proposed schemes have been increased in line with expenditure growth."

27. In respect of impact on planned investment in centres the officers advised as follows:

"6.69 Fitzwilliam (Malton) Estates in their objection have stated that they will not bring forward their consented scheme if the current application is approved and this would represent a significant impact on planned investment in the town centre. However, the Livestock Market lies to the northern edge of the defined Town Centre Commercial Limits and is not therefore in-centre, which is a pre-requisite of the impact test contained at Paragraph 26 of the NPPF. In any event, the Livestock Market site is a sequentially equivalent site to WSCP.

6.74 Despite the advice received from DTZ highlighting concerns over the deliverability of the approved foodstore on the Livestock Market site, the subsequent correspondence received from GVA highlights retailer interest on behalf of Booths and suggests that the outline consent delivers a store and layout with adequate parking and servicing to meet their requirements. The confirmation of interest from Booths in the approved scheme on the Livestock Market site is acknowledged and Booths will be a welcome addition to the retail offer in Malton. However, the expression of interest in the Livestock Market site from Booths should not, in Officer's view, be seen

as a reason to prevent the provision of a larger foodstore on the WSCP.

6.75 The independent review of the application undertaken by England & Lyle illustrates that, whilst the capacity for two new foodstores (i.e. Livestock Market site and WSCP) in 2018 is marginal, the impact assessment demonstrates that the two stores would not have a significant adverse impact on town centre vitality and viability in 2018, which is the policy test set out in the NPPF. Furthermore, there would be more than sufficient capacity in both convenience and comparison goods for both stores in 2023, based on a revised and more up-to-date assessment than that used to inform the preparation of the Ryedale Plan – Local Plan Strategy. Although it is evident that a Booths store would provide an improved range and choice of convenience retailing, as sought by the Local Plan Strategy, it is accepted that another large foodstore in Malton would provide choice and competition for Morrison's and claw back leakage that is going to stores elsewhere and this has been reflected within a number of letters of support received from local residents in respect of the application. A large foodstore on WSCP and a Booths store on the Livestock Market site would have a complementary role to one another.

6.76 The correspondence received from GVA indicates that Booths remain 'very concerned' regarding the WSCP proposals, although it is not explicitly stated that they would not proceed if the WSCP proposals were approved and it is noted that Booths have expressed an interest in the Livestock Market site in full knowledge of the planning application that has been made on the WSCP site. Fitzwilliam (Malton) Estates have, however, suggested that they be unlikely to bring forward the Livestock Market site scheme if the WSCP proposals were approved, which would represent a significant impact on planned investment in the town centre. However, Officers are of the view that this statement should be treated with a degree of caution given that, whilst 'very concerned,' Booths have not explicitly stated that they would not proceed with a store on the Livestock Market site were the WSCP proposals to be approved. With this in mind, there is no reason to believe that further investment in the Livestock Market site in the form of comparison shopping development would not follow the development of a Booths store, as it is considered that Booths would act as a catalyst for the development of the consented non-food retail units. On this basis, Officers are of the opinion that Fitzwilliam (Malton) Estates' comments in respect of not bringing forward the Livestock Market site should planning permission be forthcoming for the WSCP proposals should be treated with a degree of caution.

6.77 Notwithstanding this, the Livestock Market site lies to the northern edge of the town centre and is not therefore 'in-centre,' which is a pre-requisite of the impact test contained at Paragraph 26 of the NPPF and, in any event, the Livestock Market site is a sequentially equivalent site to WSCP. The planned investment within the Livestock Market site is not therefore conferred policy protection under the provisions of the impact test contained at Paragraph 26 of the NPPF and, as such, any impact on investment in the Livestock Market site would not form reasonable grounds for refusing planning permission for the WSCP proposals."

28. The officers summarised the retail policy considerations as follows:

"6.79 Capacity is not a policy test; it is simply an indicator of whether any retail impact may occur. Policy SP7 of the Local Plan Strategy indicates that current commitments account for the quantitative convenience retail needs to 2026. The recognition within Policy SP7 that current commitments meet convenience retail needs to 2026 was based upon the findings of the *Ryedale Retail Capacity & Impact Assessment Update* prepared by Roger Tym & Partners, which formed part of the evidence base for the Local Plan Strategy. However, it should be acknowledged that the Retail Capacity & Impact Assessment Update was prepared in 2011 and it is clearly important that forecasts of need are kept under regular review. The assessment of capacity for additional retail floorspace must be considered on the basis of the latest available evidence to ensure that retail needs are met. The independent assessment of the proposals undertaken by England & Lyle demonstrates that the capacity for the proposed foodstore, as well as the approved scheme on the Livestock Market site, would be marginal in 2018, however, the impact assessment demonstrates that the development of both schemes would not have a significant adverse impact on town centre vitality and viability in 2018, which is the policy test outlined in the NPPF. Furthermore, there would be more than sufficient capacity in both convenience and comparison goods for both stores in 2023, within the Local Plan period.

6.82 It is agreed that the proposed foodstore on the WSCP site is not likely to have any adverse impact upon the ability to bring forward any other planned investment in existing centres. Whilst it has been suggested that Fitzwilliam (Malton) Estates would not bring forward the Livestock Market site scheme, which has secured retailer interest from Booths, if the WSCP proposals were approved, it has been demonstrated that, whilst the capacity for two new foodstores (i.e. Livestock Market site and WSCP) in 2018 is marginal, the two stores would not have

a significant adverse impact on town centre vitality and viability in 2018, which is the policy test set out in the NPPF. Furthermore, there would be more than sufficient capacity in both convenience and comparison goods for both stores in 2023, based on a revised and more up-to-date assessment than that used to inform the preparation of the Ryedale Plan – Local Plan Strategy. Although it is evident that a Booths store would provide an improved range and choice of convenience retailing, as sought by the Local Plan Strategy, it is accepted that another large foodstore in Malton would provide choice and competition for Morrison’s and claw back leakage that is going to stores elsewhere and this has been reflected within a number of letters of support received from local residents in respect of the application.

6.83 Officers are of the view that the statement from Fitzwilliam (Malton) Estates that they would not bring forward the redevelopment of the Livestock Market site if the WSCP proposals are approved should be treated with a degree of caution given that, whilst ‘*very concerned*,’ Booths have not explicitly stated that they would not proceed with a store on the Livestock Market site were the WSCP proposals to be approved. With this in mind, there is no reason to believe that further investment in the Livestock Market site in the form of comparison shopping development would not follow the development of a Booths store, as it is considered that Booths would act as a catalyst for the development of the consented non-food retail units.

6.84 Notwithstanding this, the Livestock Market site lies to the northern edge of the town centre and is not therefore ‘*in-centre*,’ which is a pre-requisite of the impact test contained at Paragraph 26 of the NPPF and, in any event, the Livestock Market site is a sequentially equivalent site to WSCP. The planned investment within the Livestock Market site is not therefore conferred policy protection under the provisions of the impact test contained at Paragraph 26 of the NPPF and, as such, any impact on investment in the Livestock Market site would not form reasonable grounds for refusing planning permission for the WSCP proposals.”

29. In the light of these views the officers concluded that the relevant retail planning policy tests had been passed. Having appraised a range of other topics unrelated to retail planning the overall conclusion reached by the officers was that planning permission should be granted. That conclusion was accepted by the members and permission was ultimately granted following the completion of a S106 obligation on 12th September 2014.

The Law

30. The grant of planning permission is governed by s70(2) of the Town and Country Planning Act 1990 which requires the decision maker to have regard to the provisions of the development plan and any other material considerations. Additionally s38(6) of the Planning and Compulsory Purchase Act 2004 provides that if the determination is being made with regard to the development plan then it must be made in accordance with the plan unless material considerations indicate otherwise. The interpretation of the development plan, and indeed any other planning policy, is a matter of law for the court (see Tesco Stores Limited v Dundee City Council 2012 UKSC 13).
31. Here, as is good practice, the planning application was determined by a committee having the benefit of an officer's report. The principles governing the approach to a committee report to seek to establish whether or not there may have been an error of law were captured by Hickinbottom J in R (Zurich Assurance Limited v/a Threadneedle Investments) v North Lincolnshire Council 2012 EWHC 3708 at paragraph 15 as follows:
- i. In the absence of contrary evidence it is a reasonable inference that members of the planning committee follow the reasoning of the report, particularly where a recommendation is adopted
 - ii. When challenged such reports are not to be subjected to the same exegesis that might be appropriate for the interpretation of a statute: what is required is a fair reading of the report as a whole consequently:

"An application for Judicial Review based on criticisms of the planning officer's report will not normally begin to merit consideration unless the overall effect of the report significantly misleads the committee about material matters which thereafter are left uncorrected at a meeting of the planning committee before the relevant decision is taken." (Oxten Farms, Samuel Smiths Old Brewery (Tadcaster) v Selby District Council (18th April 1997) 1997 WL 1106106 per judge LJ as he then was)
 - iii. In construing reports it has to be borne in mind that they are addressed to a "knowledgeable readership", including council members "who, by virtue of that membership, may be expected to have a substantial local and background knowledge" (R v Mendip District Council ex parte Fabre (2000) 80 P and CR 500 per Sullivan J as he then was). That background knowledge includes "a working knowledge of the statutory tests" for determination of a planning application (Oxten Farms per Pill LJ)."
32. One of the matters capable of being a material consideration in the determination of a planning application is a previous decision, in particular a previous appeal decision. The commencement of the jurisprudence in relation to this issue is the case of North Wiltshire District Council v Secretary of state for the Environment [1993] 65 P&CR 137 at page 145 where Mann LJ observed as follows:

“To state that like cases should be decided alike presupposes that the earlier case is alike and is not distinguishable in some relevant respect. If it is distinguishable then it usually will lack materiality by reference to consistency although it may be material in some other way. Where it is indistinguishable then ordinarily it must be a material consideration. A practical test for the Inspector is to ask himself whether, if I decide this case in a particular way am I necessarily agreeing or disagreeing with some critical aspect of the decision in the previous case? The areas for possible agreement or disagreement cannot be defined but they would include interpretation of policies, aesthetic judgments and assessment of need. Where there is disagreement then the Inspector must weigh the previous decision and give his reasons for departure from it. These can on occasion be short, for example in the case of disagreement in aesthetics. On other occasions they may have to be elaborate.”

33. This issue was further considered by the Court of Appeal in the case of Dunster Properties Limited v FSS 2007 EWCA Civ 236 where Lloyd LJ at paragraph 23 stated as follows:

“In my judgment, notwithstanding Ms Olley’s submission to the contrary, Mr Mead did not adequately perform his obligation to give reasons for this decision in respect of his refusal to follow the basis of the earlier appeal decision which was a material consideration. In this respect it seems to be that by declining to comment, other than to refer to his own reasons already expressed, Mr Mead appears not to have faced up to his duty to have regard to the previous decision so far as it related to the point of principle as a material consideration. An omission to deal with the conflicting decision, as in the North Wiltshire case, mightn’t have been sufficient in itself. But Mr Mead’s last sentence in paragraph 8 suggests that he has not grasped the intellectual nettle of the disagreement, which is what is needed if he is to have had proper regard to the previous decision. Either he did not have a proper regard to it, in which case he has failed to fulfil the duty to do so, or he has done so but has not explained his reasons, in which case he has not discharged the obligation to give his reasons.”

34. The essence of the principle has also been applied, as a matter of common law, to previous decisions of the local authority and their relevance to subsequent decisions. In the case of R (Thompson) v Oxford City Council 2014 EWCA Civ 94 Lloyd Jones LJ stated at paragraph 34 as follows:

“The principles stated in Dunster are of general application and are not limited to planning cases. The explanation provided by Lloyd LJ as to why the reasons provided were inadequate was in no sense dependant on the planning context: on the contrary it flows from the function of reasons as a safeguard to sound

decision making. Moreover, I do not consider that Dunster turned on its particular facts or the refusal to give reasons following a request. Accordingly, I consider that while it was open to the Sub-Committee in the present case to depart from the decision of its predecessor, it was under a duty to take account of the earlier decision, to grasp the nettle of any disagreement with the earlier decision and to state its reasons for coming to a different conclusion. That obligation to give reasons arises at common law...”

35. Turning to the issues arising in relation to Environmental Impact Assessment, Regulation 3(4) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 prevents the decision maker from granting planning permission for development which is EIA development without having first considered the environmental information relevant to the development in the form of an Environmental Impact Assessment. Regulation 5 entitles a proposed developer to request from a local planning authority a Screening Opinion, namely a determination as to whether or not their proposed development is EIA development.
36. In this case the question has arisen as to the correct approach to when, as a matter of law, a development which has been the subject of a Screening Opinion may require a further Screening Opinion in order to discharge the obligation under Regulation 3 of the 2011 Regulations. Reference was made to the decision of Lindblom J in The Queen (on the application of CBRE Lionbrook (general partners) Limited) v Rugby Borough Council and another 2014 EWHC 646. The circumstances of that case were that a planning application had been made by the interested party and been the subject of a negative Screening Opinion in September 2011. The application then changed and in November 2012 consultants instructed on behalf of the interested party drew attention to the changes which were considered to be slight and invited the local planning authority to consider whether or not the Screening Opinion remained valid, it being the opinion of those consultants that a fresh Screening Opinion was not needed. The council’s officer considered that enquiry and concluded that it was not necessary to submit a fresh EIA Screening Opinion.
37. The main submission made in the challenge brought by an interested developer was that the council were compelled by the 2011 Regulations to re-screen the development or to treat to enquiry of the consultants as a request for a Screening Opinion. The judge concluded that the consultant’s letter was not a request for a Screening Opinion. It was in truth the assertion that no further Screening Opinion was necessary as there had not been any material alteration to the proposal or its environmental context. The judge concluded that the council’s position was lawful and he expressed the principles as follows:

“47. The thrust of this submission [from the defendant and interested party], which I accept, is that the concept of a development having been the subject of a Screening Opinion is broad enough to include a previous screening process for an earlier version of the proposal, so long as the nature and extent of any subsequent changes to the proposal do not give rise to a realistic prospect of a different outcome if another formal screening process were to be gone through. This is classically a

matter of judgment for “the relevant planning authority”. It will always turn on the facts of the particular case.

48. The essential point is that Regulation 7 allows the authority to judge whether any changes to a proposal are such as to cast doubt on the continuing validity of the screening opinion for the proposal in its previous form. In principle, and subject to review by the court on Wednesbury grounds, it is open to an authority to conclude that in the screening process it has already conducted the essential characteristics of the site of proposal bearing on the crucial question – whether the development is likely to have any significant effects on the environment – have been taken into account and the relevant screening thresholds criteria applied.

49. If the result of that process was a Screening Opinion determining that the project was not “EIA development”, and if the result of a further screening process for the revised proposal would inevitably be the same, the authority would be able to conclude that its Screening Opinion is competent for the proposed development in its modified form. The judgment embodied in that Screening Opinion will be no less valid and effective for the proposal as revised as it was for the proposal as originally conceived. The potential effects of the development will already have been dealt with in a formal screening process. The development would have been “the subject of a Screening Opinion” – the concept in Regulation (b). The provisions of paragraphs (4) and (5) of Regulation 5 will not be engaged. The screening process will not have to be repeated. If it were repeated it would be of no benefit to the authority, no benefit to anyone likely to be affected by the outcome, and no benefit to the public interest and the EIA regime being operated being operated with the rigour required.”

38. It will be apparent from the facts of that case that the point which arises in this case, namely what is the threshold at which a previously negatively screened proposed development needs to be re-screened in the light of changed circumstances, did not directly arise. On the facts of that case there had been no change in the environmental context and such changes as were proposed to the application were insignificant. Active consideration had been given to whether the new proposals would have given rise to a potentially different outcome to the Screening Opinion.
39. During the course of argument reference was made to the case of Mageean v SSCLG and another (2011) EWCA Civ 863 (which was subsequently applied in the case of Smyth v SSCLG and others 2013 EWHC 3844). The circumstances of that case were that following a positive Screening Opinion by the local planning authority the proponent of the development asked the Secretary of State for a screening direction under Regulation 6 of the 2011 Regulations. Such a direction is binding on the planning authority for the purpose of reaching its decision on the application. The Secretary of State concluded that the proposed development was not EIA development. After the screening direction and before the consideration of an appeal

against the subsequent refusal of planning permission the site became part of an area designated a World Heritage Site. The challenge proceeded on the basis that the Inspector ought to have invited the Secretary of State to reconsider the screening direction which had been issued in the light of the World Heritage Site designation. Lord Justice Sullivan expressed his conclusions on this point as follows:

“20. It is common ground that an Inspector determining an appeal on behalf of the Secretary of State does have power to invite the Secretary of State to reconsider a screening direction. Although the observations of Simon Brown LJ in paragraph 24 of Evans were obiter they do in my judgement provide eminently sensible guidelines as to the circumstances in which an Inspector not merely may but should invite the Secretary of State to reconsider a screening direction with a view to deciding that an application for planning permission is after all an application for EIA development. An Inspector is under an obligation to invite the Secretary of State to reconsider the matter only if the Inspector considers that, because for example of a change of circumstances, such as the inscription of the WHS in the present case, there is “at the very least a realistic prospect” of the Secretary of State coming to a different screening conclusion. Although Evans was a case where the screening direction had preceded an inquiry by only a few months, I do not accept Mr Kolinsky’s submission that the observations in paragraph 24 of Evans are not applicable to the circumstances of the present case where there was a change of circumstances by reason of the inscription of the WHS after the screening direction. The court plainly had in mind cases where “other material facts [come] to light” after the screening direction. Whether those other material facts come to light because they were not appreciated at the time of the direction or because of a subsequent change of circumstances is in my judgment immaterial. The guidance is equally well applicable.

21. Although as Mr Kolinsky submits, it is for the Secretary of State to decide whether a proposed development is likely to have significant environmental effects for the purpose of issuing a screening direction, whether there is a “realistic prospect” of the Secretary of State changing his or her opinion as to the likely environmental effects on the development is pre-eminently a matter of planning judgment for the Inspector. The Inspector’s judgment on that issue can be challenged on rationality ground: see Evans. It is not for the court to decide for itself whether there was or was not a “realistic prospect” of the Secretary of State making a different screening direction.

22. Precisely because an Inspector has to use his or her own planning judgment on that issue the mere fact that he or she has not been asked by any of the parties to the appeal to exercise the power to refer the matter back to the Secretary of State will

not necessarily be fatal to a legal challenge to a failure to exercise power. However, an applicant under S288, which is of course concerned with an error of law on the part of the Inspector determining the appeal, will face a formidable task in such a case. A S288 challenge in those circumstances will succeed only if the court is satisfied that any reasonable Inspector would, on the facts before the Inspector in that appeal, have concluded that they should exercise the power to refer the matter back to the Secretary of State of their own motion, not withstanding the fact that they had not been asked to do so by any party to the appeal.”

40. The decision in the case of Mageean (and to some extent in the CBRE case) was different to the present circumstances. In Mageean the Inspector had to consider exercising his or her planning judgment as to whether on the facts as known at the time of the appeal the screening direction should be referred back to the Secretary of State. Here the question is when, in the absence of that obligation, the point arises where consideration should be given as to whether or not the Screening Opinion ought to be revisited. The challenge is not therefore to a positive decision not to reconsider an earlier Screening Opinion; the challenge is to a failure to consider the point at all.
41. In my view the germ of the answer to this question is to be found in both of the authorities to which I have referred. In paragraph 47 of the CBRE case Lindblom J caveated the breadth of a previous screening process by stating that it would continue to have validity “so long as the nature and extent of any subsequent changes to the proposal do not give rise to a realistic prospect of a different outcome if another formal screening process were to be gone through”. In the Mageean case the question for the Inspector distilled in paragraph 21 of the judgment is “whether there is a “realistic prospect” of the Secretary of State changing his or her opinion”. Thus the trigger point, if a development has been previously negatively screened, to determine whether any change in its environmental context or its proposals require consideration to be given as to whether or not the Screening Opinion ought to be revisited in order to discharge the duty under Regulation 3(4) at the point at which consent is granted is whether or not those changes create any realistic prospect of the Screening Opinion being different. If such circumstances arise and the local authority apply their mind to the point and reach a further negative Screening Opinion then that is a decision challengeable on the normal public law grounds. Failure to give any consideration to the issue places the local authority in the position of subsequently granting permission for EIA development without having gone through the procedure required for EIA development by the 2011 Regulations.
42. It is correct to observe that the 2011 Regulations do not expressly contain any continuing duty in relation to Schedule 2 development which has been previously negatively screened. However, I accept the submission made on behalf of the claimant by Mr Strachan QC that the effect of Regulation 3(4) is that the discharge of the requirements under the Regulation crystallises at the point at which planning permission is granted since at that point the Regulations preclude the grant of consent for development which is in truth EIA development. It follows that in order to discharge that obligation it is necessary for a decision maker, dealing with a Schedule

2 development subject of a negative Screening Opinion (and not the subject of a definitive direction in that respect under Regulation 4(3) of the 2011 Regulations) to continue to ensure that the requirements of the Regulations and the directive are met throughout the lifetime of the application prior to consent.

43. Denial of this proposition could envisage a Schedule 2 application being made to the local authority and the subject of a negative Screening Opinion followed by a change in its environmental circumstances or in the nature of the proposal which would make it obviously EIA development but which as a result of the earlier Screening Opinion the local authority were under no duty or obligation to reconsider. Such an approach would lead to the grant of consent for that development without it having been the subject of EIA contrary to Regulation 3(4) and indeed the wider scope and broad purpose of the parent Directive. In such circumstances, therefore, the local planning authority are clearly under an obligation in order to discharge their duties under the 2011 Regulations to keep the circumstances of the application under review and, if there is a realistic prospect that a change of circumstances may lead to a different outcome to the Screening Opinion, to reconsider that question. That is the key difference between the present case and the CBRE case. In the CBRE case the question was considered and a conclusion reached; in the present case the question was never considered at all.

Conclusions

44. During the course of argument the grounds as originally pleaded by the claimant were refashioned and I propose to deal with them in the manner in which they emerged during the hearing.

Ground 1

45. Prior to embarking upon the substance of Ground 1 it is important to offer some observations about submissions that were made in relation to the correct approach to the officer's report. Attention was drawn to the extensive background documentation which was appended to the officer's report together with other documentation circulated during the committee meeting. Notwithstanding this material in my view it must be the officer's analysis which is the key to understanding the member's decision and the legality of it. In this case they followed the officer's recommendation and granted planning permission and therefore can be taken to endorse the officer's reasons in reaching that decision. The basis for the recommendation is, of course, set out in the officer's report not the background documentation. That material no doubt is present to provide further information but it is important to note that it contains material on both sides of the argument. The resolution of those issues and the justification for the decision to grant permission is found within the officer's report and in particular within the officer's conclusions on the various topics that were raised. It is therefore to the officer's report that it is necessary to look to see whether there has been any error of law.
46. Ground 1 is the allegation that the officer's report significantly misled the committee about the contents of the Inspector's report in relation to the sequential approach. Before engaging with that argument in detail it is worthwhile observing that in this case it is beyond argument that the Inspector's decision on the claimant's appeal was an important material consideration that carried significant weight. So much was

observed in terms in paragraph 6.28 of the officer's report. Thus whilst the Inspector's decision was obviously not binding on the members it was nonetheless a weighty and significant matter in their decision making process. It is also undoubted that in relation to the issue of the sequential test the Inspector had made an assessment of the same issue against the background of, for instance, the same physical circumstances on the ground in relation to the location of the sites, the disposition of surrounding uses and their relationship to the functioning of the town centre. Equally clearly the Inspector had reached a contrary conclusion to that which was contemplated by the interested party and the council's consultants in respect of the status of the WSCP site.

47. Having considered the material in this case I am satisfied that the officer's report did mislead members, and mislead them significantly, as to the findings and conclusions of the Inspector in relation to the sequential test. The starting point of the officer's report (having set out solely paragraph 32 of the Inspector's decision) was that the Inspector's conclusions were 'not fully reasoned other than pointing to poorer pedestrian links'. That observation which appears to be the summation of the officer's understanding of the Inspector's conclusions was not merely a gross over simplification but fundamentally misrepresented the Inspector's decision. As will be clear from the far more extensive passages from his decision that I have set out above his conclusions were fully reasoned and in a manner which was legally impeccable (regardless of the fact that there was no challenge by the council on this basis after the decision was received). The totality of the reasons for his decision are to be found from paragraphs 21 of the decision letter onwards. Without repeating them, those reasons were not only fully expressed but covered a range of evidence to which the Inspector was referring when, in paragraph 32, he related his conclusions to the submitted evidence as a whole'. The reasons provided engaged, firstly the consistent findings of RTP in relation to the sequential preference for the LMS site bearing in mind its ideal location for incorporation within the functioning of the town centre and its ability to operate as an extension of the town centre unlike the WSCP site. The Inspector's analysis also engaged with the erroneous approach of the defendant in their determination of the LMS application and, importantly, their revised stance that in fact the LMS site was the best site sequentially and their conclusions in the first reason for refusal could not stand to the extent that no further decision could be made on the WSCP site until the erroneous sequential analysis was corrected by a new report re-advising the committee. Whilst it is not made express no doubt such a corrected report would have involved re-advising members along the lines of the revised position which the council presented to the appeal. Further the Inspector's reasons engaged with the consistency of his conclusion with emerging development plan policy. Thus far from being 'not fully reasoned' the Inspector's decision, which was addressed to an informed audience not least the defendant, embraced in its full reasons a range of pieces of evidence all supporting the conclusion that the LMS site was decisively preferable to the WSCP site in terms of the sequential test.
48. This leads to the second way in which Ground 1 is put, namely that since the officers were inviting members to reach a contrary conclusion on the sequential test to that which had been reached by the Inspector, did they provide adequate reasons to justify that disagreement and an alternative decision? In my view it is clear that they did not. That is perhaps unsurprising given that they thought, erroneously, that the Inspector's report wasn't 'fully reasoned' save with respect to pedestrian links. As a result of not

having properly appreciated the wealth of reasoning provided by the Inspector they thereafter do not engage with those reasons in explaining why a different answer to the one reached by the Inspector should be provided. There is in the officer's report at paragraphs 6.28 – 6.38 (and in particular in paragraph 6.29) no mention of the previous consistent advice from RTP providing the evidence base for the local plan strategy, the council's previous position and no engagement with the substance of the points raised by RTP and the Inspector in relation to the capacity of the LMS site to integrate intimately with and function as part of the town centre without any intervening development which underpinned the preference for the LMS site and the conclusion in the RTP evidence that the WSCP site was far less suitable as an extension to the town centre. The principle paragraph which deals with the Inspector's conclusions, paragraph 6.29, focuses on distances between the town centre and the sites and the potential for linkage but does not deal with the capacity for physical integration. A subsequent assertion later in the report that the WSCP site 'also has potential to form an extension to the town centre' which was relied upon by the defendant and the interested party in their submissions does not assist in that regard. This is because that assertion does not engage with the conclusions of RTP and the Inspector that it was the absence of existing intervening development and uses between the site and functional town centre which rendered the LMS site preferable and, in terms, the WSCP less so. This observation does nothing to explain why those earlier, less assertive and more fully explained justifications for preferring the LMS site are to be overridden. The reasons therefore are inadequate.

49. I am unable to accept the submission made by Mr Tucker QC on behalf of the interested party that this was a matter, like for instance an aesthetic judgment, where reasons could be simple or brief. This was an issue which related to explaining earlier and fully reasoned conclusions in both earlier independent advice obtained by the council from RTP, and also the full reasons provided by the Inspector. These earlier judgments were not subjective assessments for instance in relation to visual impression, but were grounded in the physical circumstances of the sites and surrounding uses and their physical proximity and linkages to the functional town centre. It required in my judgment reasons and explanations which were at least comparable to those which the defendant was seeking to gain say, and met the points with which they disagreed. Little more than contradiction is not an adequate form of reasoning in these circumstances. It is notable that the officers did not in the material that they provided seek to rely upon any physical or other contextual or policy matters which had changed since the claimant's appeal. I am therefore satisfied that the reasons provided by the officers in support of the conclusion that a different decision should be reached from that of the Inspector was based on misleading advice to the committee and was inadequately reasoned. All that said there is an important issue for discretion which I shall analyse later.

Grounds 2 and 4

50. These two grounds run together and they are based on the allegation that the officer's report failed to take account of or advise members about the Inspector's conclusions in particular at paragraph 44 of his decision that the LMS site should be treated for planning purposes as part of the town centre in particular when assessing retail impact and its quantification.

51. Having analysed the officer's report there is no doubt that it did not refer at all to the Inspector's conclusions in paragraph 44 of the decision that 'having regard to the council's aspirations for additional retail areas in the 'Northern Arc' set out within the emerging LPS' the LMS proposal should be seen as contributing to town centre turnover and creating (in the analysis then available) a 24 % positive impact on the town centre's turnover. The question that arises is as to whether or not that omission misled the members significantly, or alternatively whether that left out of account a material consideration in the analysis of retail policy and retail impact.
52. Having considered the submissions made in this respect I am in no doubt that this omission did amount to significantly misleading the members about an important material consideration, namely the conclusions previously reached by the Inspector. Although, as set out above, reference was made in the officer's report to the LMS site having the ability to form a logical extension to the town centre what was important in this respect was the failure of the analysis in the officer's report in relation to retail impact to treat the LMS site (as the Inspector had) as part of the town centre for the purposes of assessing impact. The economic modelling results which were presented to members detailing the effects of the establishment of the WSCP proposal did not either include the LMS site within the town centre overall or, more importantly, analyse in quantitative terms the impact of the WSCP scheme on the LMS proposals. As Mr Tucker on behalf of the interested party correctly observed the exclusion of the LMS site from the overall turnover of the town centre is perhaps of little moment. That is because its inclusion would have diluted the impact percentages created by the WSCP scheme. The real question that was obviously and in any event before the members was the effects of the WSCP proposal on the LMS scheme.
53. The officer's report repeatedly contends that the LMS site is not protected by paragraph 26 of the Framework because it is not in the town centre. That is an observation that is made in paragraphs 6.45, 6.69, 6.77 and 6.84. That is a conclusion which has, however, been reached without regard to the important material consideration that the Inspector concluded in analysing the impact of the LMS site that it should be included within the town centre. If the Inspector's approach had been taken into account that conclusion may well have been very different. His incorporation of the LMS site in the centre would have justified its inclusion in paragraph 26 as a commitment to planned in centre investment. Thus the exclusion of this aspect of the Inspector's decision on the claimant's appeal meant that the application of the Framework's policy occurred without taking account of a material consideration.
54. During the course of argument Mr Manley QC submitted on behalf of the defendant that the LMS site could only ever be an edge of centre site and therefore could never be protected by paragraph 26 because the LMS scheme had not been developed and the proposal had not been implemented. In my judgment that is an interpretation of the policy which is difficult if not impossible to sustain especially bearing in mind the particular circumstances of the present case. The reference in paragraph 26 to 'committed and planned public and private investment in a centre or centres' clearly contemplates developments which are planned for and have yet to materialise on the ground. The particular circumstances involved in the present case are that the LMS proposal was a commitment for which permission had been granted on the basis that it would function as part of the town centre and indeed the expenditure it generated

should be counted as part of the town centre. Furthermore the reference in paragraph 26 to the analysis of impact 'up to five years from the time the application was made' envisages a prospective examination of retail impact. Thus in the particular circumstances of this case the application of paragraph 26 to the LMS site cannot be excluded.

55. Mr Tucker submitted that there was no need for any quantified assessment of the impact on the LMS scheme, but the difficulty with that submission is that if paragraph 26 applied that is precisely what it requires and indeed what was undertaken and reported to members in terms of the impact upon both Malton town centre as a whole and individual elements of it such as the Morrison's store. This (so far as possible) objective, transparent and quantified analysis is a well recognised means of testing the economic impact of retail proposals.
56. It is correct to observe that as set out above in their letter of 9th April 2014 EL appear to have undertaken some analysis of the impact on the LMS store and placed a figure of 16% as an outcome of their analysis. However, that material did not feature as any part of the officer's conclusions and further, and perhaps more importantly, was accompanied by the obviously erroneous conclusion that the impact on the LMS proposal was not a material consideration. That was a proposition which neither Mr Manley nor Mr Tucker were prepared to support and rightly so. The approach which I take to this material is governed by what I have set out above in paragraph 45. The 9th April letter was part of the background material furnished to members but it is clear this element of their advice did not feature in the officer's conclusions which are the important source for the member's reasons. If I were wrong about that and reliance was to be placed upon this material as perfecting the absence of any analysis of impact on the LMS proposal then it is in turn affected by the legal error of suggesting that that issue was immaterial.
57. In a similar vein, both in relation to these grounds and also Ground 1, reliance was placed by the defendant and the interested party on the fact that members had access to the Inspector's report. I am unable to accept that this step perfected or overcame the errors which I have identified. Firstly, for the reasons which I have given above, in circumstances where the members accepted the officer's recommendation the basis for that recommendation provides the reasoning to justify it and in this case that is as set out in the officer's conclusions. In any event it is clear that the Inspector's decision was only provided to members on the night of the meeting and not as part of their pre-reading. Providing them with a relatively lengthy decision letter at the start of the meeting was no sensible substitute for the officers providing them with proper advice as to the content and conclusions of this earlier significant decision.
58. To conclude, the omission of any mention of the Inspector's conclusions in relation to the incorporation of the LMS site within the town centre for retail impact purposes was a material and significant misrepresentation to members. No reasons were provided for departing from the Inspector's conclusion. The conclusions which the officers reached and which the members adopted on the application of paragraph 26 of the Framework and the absence of protection for the LMS proposal were made without regard to that important material consideration and thus were unlawful.

Ground 3

59. In this ground the claimant contends that, in particular in paragraph 6.76 of the officer's report, the defendant conflated the view of Booths (who were solely the proposed tenant and operator of part of the proposed scheme) with the views of the claimant (who had to fund and develop the totality of the proposal). Having reviewed this element of the officer's report it is clear in my view that each of the positions of the parties, both Booths and the claimant, were fairly and properly put before members. However, beyond the advice that the claimant's views should be treated with caution it is a little unclear what definitive view the officers formed about the prospects of the LMS proposal being implemented if consent was granted for the WSCP scheme. They seemed to conclude that it would still happen but during the course of argument Mr Manley was unwilling to be definitive as to what precisely the prospect of that scheme happening was in the minds of the officers. Whilst I am not satisfied that on a fair and full reading of the officer's report they muddled up or conflated the views of the claimant with that of Booths and therefore provided members with incoherent advice, the failure of this ground does not overcome in any way the problems which I have identified for the defendant in relation to Grounds 2 & 4.
60. The 'caution' that the officers counselled in relation to the claimant's views of the prospects for the LMS site coming forward is qualified by the contention that because the LMS site is not part of the town centre paragraph 26 of the Framework did not apply. For the reasons I have already given the latter conclusion was infected with error and led to a failure to undertake any quantified impact analysis on the LMS scheme. If the Inspector's conclusions had been taken into account and his approach of including the LMS within the town centre had been adopted then the economic impact of the WSCP would have been fully analysed and that would have provided an important means of testing the realism of what both the claimants and Booths were contending. As a result of the approach in the officer's report and the absence of analysing the impact on the LMS scheme the conclusions which they reached in relation to the impact on planned investment were inchoate. As a result simple reporting of the position of the claimant and its intended operator did not amount to reaching a decision on planned investment based upon all of the relevant or potentially relevant material considerations.

Ground 5

61. For the reasons which I have set out above in relation to the legal argument which relates to this ground I am satisfied that the correct approach is that the defendant needed to keep under continual review the validity of the Screening Opinion which it had given bearing in mind any changes in circumstances which might lead to a different conclusion. In the light of that legal background the factual question which then emerges is as to whether or not there were any changes in the circumstances of the WSCP proposal which might lead to a different conclusion being reached and which required attention to be given to whether the Screening Opinion needed to be reconsidered.
62. There is no doubt in my view that the original Screening Opinion request made by the interested party clearly drew attention to the existence of the LMS proposal as an application for planning permission at the time when the request was made. Equally

clearly the reference to it in paragraph 4.2 in relation to cumulative effect relates to environmental impacts caused by built development. Paragraph 4.3 of the request then goes on to deal with the economic effects and in particular considerations of retail impact. There can be no doubt that this paragraph in relation to economic effects is predicated on the NLP 'conclusion that only one new large convenience store / foodstore can be accommodated in Malton or the district generally'. Those paragraphs, one dealing with effects from built developments and the other dealing with economic effects are the foundation of the conclusion suggested in paragraph 4.4 of the request that cumulative effects would not give rise to any significant environmental effects warranting EIA.

63. A witness statement has been produced from Ms Lancaster who was the officer of East Riding of Yorkshire Council who undertook the screening opinion. It should be noted that at the time when the Screening Opinion occurred the defendant had passed the assessment of the LMS and WSCP applications to East Riding of Yorkshire Council on the basis that they owned the WSCP site. In a witness statement dated the 10th December 2014 Ms Lancaster states that she 'was fully aware and took into account the LM application as part of the cumulative impact of the respective retailing proposals'. It is understandable given the remove of time that Ms Lancaster is not able to provide any information beyond that observation. I have no doubt that she has been involved in considering many many other applications in the meantime. I have equally no doubt that she was aware and took account of the LMS application in forming her view as set out above that its existence was drawn to her attention through the screening request. However none of this answers the critical question which is whether or not the cumulative economic effect of both stores in operation was taken into account in the Screening Opinion. On the basis of the evidence which I have set out I am not satisfied that it was. Indeed, I can see no reason why Ms Lancaster would have considered the cumulative economic effect of both schemes trading when she had been told in the screening request that that was not a possibility.
64. It may be said that the suggestion that both schemes might be trading (and I bear in mind as I have already observed the absence of any absolute or definitive position adopted by the officers in their assessment of the contentions made by the claimant and Booths in respect of impact on planned investment) was not definitively concluded upon. Nevertheless once the position had changed from one where only one store could possibly be operating to circumstances where the council were undoubtedly contemplating the prospect of both stores operating the need to assess the cumulative effects of that in economic terms arose leading to the conclusion that on the basis that this might lead to a different outcome to the Screening Opinion consideration needed to be given to whether or not the screening process should be revisited. This issue was simply never considered prior to the grant of planning permission and that was, in my judgment, an error of law in dealing with the application.

Discretion

65. In the event of me reaching adverse conclusions in respect of the grounds of challenge the defendant and the interested party raised questions pertaining to the exercise of discretion. I deal with the matters raised in turn. In particular in relation to Ground 1 it was contended that whatever may have been the position about the Inspector's approach to the sequential test, because of the scale of the proposal and the inability to

fit it on the LMS site the conclusion was bound to be reached that the WSCP proposal met the requirements of the sequential test because there was no other site suitable to accommodate it given its size. In my view there is force in this submission and it is one which is based clearly on the conclusions set out in the officer's report that the scale of the WSCP proposal could not be accommodated on the LMS site. That is a conclusion which has not and could not in substance be challenged. Thus were the errors confined to Ground 1 I would not have been persuaded that it was appropriate to grant relief so as to quash the decision.

66. I do not consider, however, that similar considerations pertain to Grounds 2, 4 and 5. So far as Grounds 2 & 4 are concerned the failure to take account of the Inspector's conclusions in paragraph 44 in the way that I have analysed above does not enable me to say that were the matter to be reconsidered the same decision would arise. Upon reconsideration it would be necessary for the defendant to actively consider whether the Inspector's conclusions in paragraph 44 are accepted, and in accordance with their legal duty explain why they were not accepted if that became their position. If they did accept the Inspector's conclusions then issues would arise in relation to the analysis of the impact on the LMS scheme which have not been undertaken. A range of planning judgments therefore would need to be reached and it is simply not possible to conclude that the decision would inevitably (or even very likely) be the same.
67. Similarly in relation to the Screening Opinion under Ground 5, whilst it was contended by the defendant and the interested party that there was no evidence to suggest that any different conclusions might be reached I am not satisfied that that is the case. As was pointed out by Mr Strachan in reply this is not a case like the CBRE Lionbrook case where the Council had indeed expressed a view about whether or not screening was required. The fact is that on the conclusions I have reached the defendant has never considered the point and on the evidence before me it is simply not possible to say that the difference between both schemes operating and only one of the schemes operating is so inconsequential that the outcome of re-screening would inevitably be the same. This is not a case therefore where the failure is purely procedural or trivial in character but is in truth a matter which calls for investigation and about which it would be improper to exercise discretion.

Overall Conclusion

68. For the reasons given the claimant's case succeeds on Grounds 1, 2, 4 & 5 and the decision of the defendant to grant planning permission on 12th September 2014 to the interested party should be quashed.

RYEDALE DISTRICT COUNCIL

APPLICATIONS DETERMINED BY THE DEVELOPMENT CONTROL MANAGER IN ACCORDANCE WITH THE SCHEME OF DELEGATED DECISIONS

PERIOD 13 JULY - 8 AUGUST 2015

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- 1.**
Application No: 14/01267/FUL **Decision: Approval**
Parish: Broughton Parish Meeting
Applicant: Mr Dylan Townend
Location: Quarry Farm Broughton Road Broughton Malton North Yorkshire YO17 6QG
Proposal: Erection of a three bedroom replacement dwelling following demolition of existing two bedroom dwelling and outbuildings
-
- 2.**
Application No: 15/00248/LBC **Decision: Approval**
Parish: Heslerton Parish Council
Applicant: Mr John Stroud
Location: Roseville Church Lane East Heslerton Malton North Yorkshire YO17 8RN
Proposal: Installation of 10no. solar panels to south elevation roof slope of existing rear extension.
-
- 3.**
Application No: 15/00364/HOUSE **Decision: Approval**
Parish: Nawton Parish Council
Applicant: Mr David Foster
Location: 12 The Sidings Nawton Helmsley North Yorkshire YO62 7TJ
Proposal: Erection of timber garden shed
-
- 4.**
Application No: 15/00376/TPO **Decision: Approval**
Parish: Staxton/Willerby Parish Council
Applicant: Mrs J Flower
Location: 10 Church Walk Staxton Scarborough North Yorkshire YO12 4SG
Proposal: To crown lift to provide 4m clearance from ground level, and crown reduce laterals by a maximum of 1.0m T18,19,20,21 (limes) within TPO 327/2010.
-
- 5.**
Application No: 15/00431/FUL **Decision: Approval**
Parish: Harome Parish Council
Applicant: Harome Parish Committee
Location: Sports Field Owmn Field Lane Harome Helmsley
Proposal: Erection of detached sports pavilion with village hall facilities together with formation of a 15 bay parking area to include the demolition of the existing pavilion.
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6.
Application No: 15/00524/FUL **Decision: Approval**
Parish: Ampleforth Parish Council
Applicant: Ampleforth Surgery (Dr Black And Dr Howlett)
Location: Doctors Surgery Back Lane Ampleforth YO62 4EF
Proposal: Erection of extensions to south and east elevations of existing building to include 2no. dormer windows to provide a first floor area together with reconfiguration of car parking area and additional hard and soft landscaping.

7.
Application No: 15/00534/FUL **Decision: Approval**
Parish: Sproxton Parish Meeting
Applicant: Ms Rosy Eaton & Mr Fraser Hugill
Location: Throstle Nest Farm Main Street Sproxton Helmsley YO62 5EQ
Proposal: Demolition of existing farmhouse and erection of a four bedroom replacement dwelling (revised details to approval 14/00606/FUL dated 30.07.2014)

8.
Application No: 15/00535/TPO **Decision: Approval**
Parish: Pickering Town Council
Applicant: Mrs C Archibald
Location: Isabella Court 72A Westgate Pickering North Yorkshire YO18 8AU
Proposal: To crown lift T1 (sycamore) and T2- T22 (beech) within TPO No. 72/1985 to provide 5.1m of clearance from ground level.

9.
Application No: 15/00557/FUL **Decision: Approval**
Parish: Acklam Parish Meeting
Applicant: Mr & Mrs Roland Groves
Location: Acklam Grange Main Street Acklam Malton North Yorkshire YO17 9RG
Proposal: Erection of block of four timber stables for domestic use on site of demolished stables

10.
Application No: 15/00570/HOUSE **Decision: Refusal**
Parish: Harome Parish Council
Applicant: Mr J Marwood
Location: The Grey House Main Street Harome Helmsley YO62 5JF
Proposal: Replacement of 8no. timber single glazed windows to front elevation with 8no. PVCU double glazed windows

11.
Application No: 15/00577/FUL **Decision: Refusal**
Parish: Kirby Grindalythe Parish Council
Applicant: Harrison Farms (Kilham) Ltd
Location: Thirkleby Wold Farm Croome Road Sledmere East Riding Of Yorkshire YO25 3XZ
Proposal: Erection of an agricultural building for the housing of pigs.

12.
Application No: 15/00579/FUL **Decision: Approval**
Parish: Helmsley Town Council
Applicant: Bisca
Location: Bisca Design (Unit 1) Sawmill Lane Helmsley YO62 5DQ
Proposal: Erection of extension to existing workshop (Use Class B1)

13.
Application No: 15/00580/FUL **Decision: Approval**
Parish: Thornton-le-Dale Parish Council
Applicant: Mr P And Mrs V Bainbridge
Location: Land And Building Harrow Cliff Hurrell Lane Thomton-Le-Dale Pickering North Yorkshire
Proposal: Change of use of agricultural land and buildings to equestrian, to include installation of internal partitions within existing buildings to form stabling for up to 19 horses, tack and feed rooms to form livery and riding centre.

14.
Application No: 15/00582/FUL **Decision: Approval**
Parish: Great & Little Barugh Parish Council
Applicant: Mr Allen
Location: Barsdale Farm Wandale Lane Great Barugh Malton North Yorkshire YO17 6XF
Proposal: Demolition of existing farmhouse and erection of a four bedroom replacement farmhouse on an adjacent site

15.
Application No: 15/00586/REM **Decision: Approval**
Parish: Thixendale Parish Council
Applicant: Mr Steve Anstey and Mrs R Smith
Location: Land Behind Round The Bend Main Street Thixendale Malton North Yorkshire
Proposal: Erection of 1no four bedroom dwelling with integral garage and 1no three bedroom dwelling with detached single garage to include formation of separate vehicular access for each dwelling and single garage to serve Round The Bend (outline approved 13/00105/OUT dated 10.05.2013 refers).

16.
Application No: 15/00587/HOUSE **Decision: Approval**
Parish: Great & Little Barugh Parish Council
Applicant: Mr N Paylor
Location: Bennisons Cottage Barugh Lane Great Barugh Malton YO17 6XD
Proposal: Erection of brick boundary wall (retrospective application).

17.
Application No: 15/00600/HOUSE **Decision: Approval**
Parish: Barton-le-Willows Parish
Applicant: Mr Andrew Craven
Location: Aspen House Barton Hill Malton YO60 7JZ
Proposal: Erection of two storey front extension - part two storey/part single storey rear extension with first floor balcony, single storey sun room, raising of roof height of existing garage and roofing over adjacent open area to form single garage.

18.
Application No: 15/00602/FUL **Decision: Approval**
Parish: Malton Town Council
Applicant: McColl's Retail Group Limited
Location: General Store 1 Milton Avenue Malton North Yorkshire YO17 7LB
Proposal: Installation of external staircase and first floor entrance door to rear north elevation

19.
Application No: 15/00605/HOUSE **Decision: Approval**
Parish: Leavening Parish Council
Applicant: Mr & Mrs Smith
Location: Graceland 10 The Rise Leavening Malton YO17 9TA
Proposal: Raising of roof height of existing attached garage to allow formation of additional domestic accommodation to include installation of 3 no. roof lights to east elevation roof slope and 3 no. roof lights to west elevation roof slope.

20.
Application No: 15/00611/FUL **Decision: Refusal**
Parish: Nawton Parish Council
Applicant: Miss Jenny Bulmer
Location: Land Rear Of Number 1 Chapel Street Nawton Helmsley
Proposal: Erection of 1 no. three bedroom dwelling together with vehicular access, parking and amenity area.

21.
Application No: 15/00614/HOUSE **Decision: Approval**
Parish: Harome Parish Council
Applicant: Mrs E Sylvia Andrews
Location: Knavesmire View Back Lane Harome Helmsley YO62 5JA
Proposal: Alterations to existing outbuilding to include raising of roof height, timber cladding and repositioning of entrance door for continued domestic use as hobby room and store.

22.
Application No: 15/00618/GPAGB **Decision: Prior Approval Granted**
Parish: Brawby Parish Meeting
Applicant: Mr Tim Easterby
Location: Mount Sinai Cottage Brawby Lane Brawby Malton North Yorkshire YO17 6QA
Proposal: Change of use of agricultural building to a three bedroom dwelling (use class C3).

23.
Application No: 15/00621/HOUSE **Decision: Approval**
Parish: Sheriff Hutton Parish Council
Applicant: Mr & Mrs J & M Read
Location: South View West End Sheriff Hutton YO60 6SH
Proposal: Erection of part two storey/part single storey side extension to east elevation.

24.
Application No: 15/00622/LBC **Decision: Approval**
Parish: Nawton Parish Council
Applicant: Mrs M Kilcran
Location: The Bield Chapel Street Nawton Helmsley YO62 7RE
Proposal: Erection of enclosed porch to the rear following demolition of existing enclosed porch.

25.
Application No: 15/00634/FUL **Decision: Approval**
Parish: Malton Town Council
Applicant: PKW Properties LLP (Mr Andrew Mason)
Location: 24 Wheelgate Malton North Yorkshire YO17 7HP
Proposal: Extension of retail area into covered former external passage to include removal of timber plank door and installation of section of shop front.

26.
Application No: 15/00635/LBC **Decision: Approval**
Parish: Malton Town Council
Applicant: PKW Properties LLP (Mr Andrew Mason)
Location: 24 Wheelgate Malton North Yorkshire YO17 7HP
Proposal: External and internal alterations to allow extension of retail area into covered former external passage to include removal of sections of existing blockwork wall and replacement of timber plank external door by section of shop front

27.
Application No: 15/00639/HOUSE **Decision: Approval**
Parish: Flaxton Parish Council
Applicant: Mr Adrian Lawrence
Location: Village Farm Main Street Flaxton Malton YO60 7RJ
Proposal: Installation of 3no conservation style roof lights to rear roof slope, replacement of existing first floor casement windows with sliding sash windows to gable ends and installation of rear entrance door with canopy above.

28.
Application No: 15/00640/LBC **Decision: Approval**
Parish: Flaxton Parish Council
Applicant: Mr Adrian Lawrence
Location: Village Farm Main Street Flaxton Malton YO60 7RJ
Proposal: External and internal alterations to include installation of 3no. conservation style roof lights to rear roof slope, replacement of existing first floor gable end casement windows with sliding sash windows and installation of rear entrance door with canopy above following demolition of existing UPVC porch, together with re-modelling of internal layout and widening of existing fireplace within proposed kitchen.

29.
Application No: 15/00649/FUL **Decision: Approval**
Parish: Malton Town Council
Applicant: Mr & Mrs K Davison
Location: Land West Of Middlecave Cottage Maiden Greve Malton North Yorkshire
Proposal: Erection of 2no. three bedroom dwelling with attached single garage and formation of individual vehicular accesses.

30.
Application No: 15/00650/HOUSE **Decision: Approval**
Parish: Sproxtton Parish Meeting
Applicant: Mr Stephen Burgess
Location: Whitestone Lodge Main Street Sproxtton Helmsley YO62 5EF
Proposal: Erection of garden room extension to rear elevation.

- 31.**
Application No: 15/00651/HOUSE **Decision: Refusal**
Parish: Welburn (Malton) Parish Council
Applicant: Mr Matthew Anderson
Location: Welgarth Welburn Malton North Yorkshire YO60 7EP
Proposal: Raising of roof height to include the installation of 7no. dormer windows to allow formation of first floor domestic accommodation.
-
- 32.**
Application No: 15/00656/HOUSE **Decision: Refusal**
Parish: Pickering Town Council
Applicant: Mr David Beeson
Location: The Mount 37 Potter Hill Pickering North Yorkshire YO18 8AD
Proposal: Erection of single storey glazed rear extension to include extension of rear patio with retaining wall and steps.
-
- 33.**
Application No: 15/00659/LBC **Decision: Approval**
Parish: Westow Parish Council
Applicant: Lady Grimthorpe
Location: Herbert Cottage Main Street Westow Malton YO60 7NE
Proposal: External and internal alterations to include removal of east elevation ground floor window with enlargement of opening to form entrance door, installation of soil vent pipe to eastern roofslope, reposition doors adjacent to oil tank and utility areas, installation of internal platform lift, replacement of section of first floor and alterations to internal layout to include removal of some internal walls and installation of stoothing walls
-
- 34.**
Application No: 15/00670/LBC **Decision: Approval**
Parish: Malton Town Council
Applicant: Fitzwilliam (Malton) Estate (Mr Keith Davies)
Location: 18 Castlegate Malton North Yorkshire YO17 7DT
Proposal: Internal and external alterations to include demolition of existing rear lean-to extension, formation of opening to ground floor party wall between 18 and 20 Castlegate and demolition of parts of internal walling to first floor of 18 Castlegate to form an open plan layout.
-
- 35.**
Application No: 15/00671/HOUSE **Decision: Approval**
Parish: Hovingham Parish Council
Applicant: Felicity Hirst
Location: Souters Cottage Brookside Hovingham YO62 4LG
Proposal: Erection of single storey rear extension and alteration of rear entrance door and window to a window
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- 36.**
Application No: 15/00672/LBC **Decision: Approval**
Parish: Hovingham Parish Council
Applicant: Felicity Hirst
Location: Souters Cottage Brookside Hovingham YO62 4LG
Proposal: External and internal alterations to include erection of a single storey rear extension, alteration of a rear entrance door and window to a window, installation of a rooflight and flue pipe to rear roofslope, removal of false outer wall in kitchen and installation of a cloakroom on half landing

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- 37.**
Application No: 15/00674/HOUSE **Decision: Approval**
Parish: Norton Town Council
Applicant: Mr Stephen Towse
Location: 115 Langton Road Norton Malton North Yorkshire YO17 9AE
Proposal: Erection of two storey side extension to include integral garage and front porch
-
- 38.**
Application No: 15/00688/HOUSE **Decision: Approval**
Parish: Slingsby Parish Council
Applicant: Dr Philip Jackson
Location: Southlands The Green Slingsby Malton YO62 4AA
Proposal: Erection of a single storey rear extension to replace existing porch
-
- 39.**
Application No: 15/00689/HOUSE **Decision: Approval**
Parish: Oswaldkirk Parish Meeting
Applicant: Mr & Mrs Derby
Location: Bridge Farm Station Road Gilling East York YO62 4JW
Proposal: Erection of detached garage and store with washroom facilities and additional storage above.
-
- 40.**
Application No: 15/00707/LBC **Decision: Approval**
Parish: Gilling East Parish Council
Applicant: Ampleforth Abbey & College (Mrs Laura Kilby)
Location: St Martins Ampleforth The Castle Main Street Gilling East Helmsley YO62 4HP
Proposal: External and internal alterations to North Wing of Foal Yard to include replacement of 4no. ground floor windows by 4no. entrance doors and alterations to internal layout.
-
- 41.**
Application No: 15/00712/HOUSE **Decision: Approval**
Parish: Habton Parish Council
Applicant: Mr & Mrs M Brennan
Location: Ryton Grange Ryton Rigg Road Ryton Malton North Yorkshire YO17 6RY
Proposal: Erection of a single storey extension with glazed link to adjacent out building and replacement of 3no. first floor windows to north east elevation of existing house.
-
- 42.**
Application No: 15/00714/LBC **Decision: Approval**
Parish: Habton Parish Council
Applicant: Mr & Mrs M Brennan
Location: Ryton Grange Ryton Rigg Road Ryton Malton North Yorkshire YO17 6RY
Proposal: External and internal alterations to include erection of a single storey extension with glazed link to adjacent out building and replacement of 3no first floor windows to north east elevation of existing house.
-

43.

Application No:

15/00724/HOUSE

Decision: Approval

Parish:

Kirkbymoorside Town Council

Applicant:

Mr & Mrs S & C Brackley

Location:

Holme Lea Gillamoor Road Kirkbymoorside YO62 6EL

Proposal:

Erection of a single storey extension to south elevation, porch to east elevation and replacement single storey extension to north elevation following demolition of existing single storey extension (revised details to part approval 15/00433/HOUSE dated 03.06.2015)

Appeal Decision

Site visit made on 6 July 2015

by Mrs A Fairclough MA BSc(Hons) LLB(Hons) PGDipLP(Bar) IHBC MRTPI
 an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23/07/2015

Appeal Ref: APP/Y2736/D/15/3013860
9 Ducks Farm Close, Kirby Misperton, Malton, North Yorkshire, England
YO17 6XH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Andrew Head against the decision of Ryedale District Council.
 - The application Ref: 14/01208/HOUSE dated 4 November 2014, was refused by notice dated 19 January 2015.
 - The development proposed is described as a "single story extension to rear of house to come out 3.3m".
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposed development on the living conditions of existing and future occupiers of No 9 Ducks Farm Close in terms of private amenity space.

Reasons

3. No 9 Ducks Farm Close is a 4-bed, end of terrace property within a terrace of three modern dwellings. The proposal comprises the erection of a single story brick extension to the rear of the appeal dwelling. It would have a hipped slate roof and the highest point of the roof would sit slightly below the existing first floor window cills. The plans indicates that it would be close to the shared party boundary with No 8, which is a high timber fence, and would project some 3.3m rearwards from the existing rear elevation into the rear yard.
4. Policy SP20 of the *Ryedale Plan - Local Plan Strategy*¹ (RPLPS) states, amongst other things, that new development will not have a materially adverse impact on the amenity of present or future occupants.
5. One of the Core planning principles of the *National Planning Policy Framework* (the Framework) is to always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
6. The private amenity space associated with the appeal dwelling includes a flagged yard area to the rear, which is some 39.5sqm. The proposal would

¹ Local Plan Strategy with Main Modifications and Additional Modifications- Text only version dated 5 September 2013.

- reduce this amenity space by approximately half. Although there is additional space to the side and front of the dwelling with garden furniture and pots, these areas are highly visible from the street on the basis they have low-level walls. In any case part of this space is allocated for car parking².
7. In my view, a well-designed family size dwelling, such as a 4 bed house, can reasonably be expected to provide outdoor space for, amongst other things, children to play safely, the occupiers to sit out in privacy and space for drying clothes. However, the proposal would result in a rear yard which would be an awkward tapered shape. The remaining rear amenity area would provide insufficient space to carry out these activities.
 8. I note that the appellant contends that the use of the space around his dwelling is his choice and that he has no intention of moving. If he were to do so then future occupiers could choose to buy his house or not. However, occupation of property is not permanent in nature in the same way as development is. Although future occupiers would have the choice of seeing the development first and then the choice of moving in or not, that does not, in my view, justify allowing something that I consider would unacceptably harm the living conditions of whoever occupied that property.
 9. I also note the appellant's reference to flats without gardens and other properties in the area with less land than the appeal dwelling. However, the appeal property is not a flat and as such is distinguishable. In addition, I have not been made aware of other similar properties in the locality. In any case, I am required to determine each appeal on its planning merits in the light of current policy. I have done so in this appeal.
 10. I consider that the proposal would have a materially adverse impact on the living conditions of the existing and future occupiers of the property and as such would conflict with RPLPS Policy SD20 and the Framework.

Other Matters

11. Concerns have been raised by a neighbouring occupier in terms of impact on character of the area, loss of light, loss of privacy as well as harm as a result of noise and disturbance. I will deal with each in turn. In terms of character, the proposal would be located at the rear of No 9 and it would be a modest extension, which has been designed to complement the existing dwelling. Although there would be an increase in the overall mass of the appeal dwelling and in relation to the ratio of the garden area, this would not significantly harm the character of the locality and would not be visible from nearby roads. With regard to light, No 8 is positioned to the north east of the appeal dwelling. Given the orientation of the dwellings and the existence of a high fence between Nos 8 and 9, I consider that there would be little change to the amount of daylight or sunlight received to the rear habitable room windows of No 8 as a result of the proposal. This reduction, if any, would be so marginal that it would not materially harm the living conditions of the occupiers of the dwelling. With regard to privacy, the proposal would include 4 ground floor windows and a pair of double doors, which would face approximately westwards and to the south away from the party boundary with No 8. Given the presence of the high party fence separating the appeal dwelling from the

² As part of the planning permission Ref: 07/00328/FUL

ground floor habitable rooms at No 8, I consider there would be no overlooking of the rear habitable rooms or garden of No 8 from the proposal.

12. Regarding the reference to noise and disturbance, the appellant confirms that the existing fence would not be removed and that the construction would not cause disruption. The appellant also states that any construction material, including rubble, would remain within the appeal site. Given that the proposal would be constructed some 0.2m from the party boundary, I have no reason to disagree with the appellant that there would be no need to remove the party fence or that the proposal would result in a safety hazard for the children at No 8. In terms of noise during the construction phase, any noise created would be relatively short lived and would be low impact.
13. I note the appellant's dissatisfaction about the way that the planning application has been handled by the Council. However, that is not a matter for me in the determination of this appeal. I also note that there are concerns that further building at the site would be likely to increase surface water run off from the site. However, given the development relates to a modest extension and that the external area is already hard surfaced, there would be negligible change to surface run off such that it is not material to my decision in this case.

Conclusions

14. Although I have concluded that there would be no harm to neighbours' living conditions in terms of daylight/sunlight, privacy or noise and disturbance, I consider that there would be a materially harmful impact on the living conditions of the existing and future occupiers of the appeal dwelling in terms of loss of private amenity space. This is the determining factor.
15. For the reasons given above, the appeal is dismissed.

Mrs A Fairclough

INSPECTOR



Appeal Decisions

Site visit made on 8 July 2015

by Martin Joyce DipTP MRTPI

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

Decision date: 5 August 2015

Appeals A & B: APP/Y2736/C/14/2219255 & 2219256 Land to the north of York Lane, Flaxton, York, North Yorkshire

- The appeals are made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr A J G and Mrs F J Brooks against an enforcement notice (Notice 1) issued by the Ryedale District Council.
- The Council's reference is 13/00126/UD.
- The notice was issued on 17 April 2014.
- The breach of planning control as alleged in the notice is, without planning permission, carrying out the following operational development:
 - (i) The erection of two 72m² timber stable blocks;
 - (ii) Engineering work to create a large excavated area for an all-weather riding area manege;
 - (iii) Excavation and formation of hardstanding areas; and,
 - (iv) Laying of concrete slabs.
- The requirements of the notice are to:
 - (i) Dismantle and remove the materials comprising the two 72m² timber stable blocks from the land;
 - (ii) Remove any hardcore and surface material from the manege area on the land;
 - (iii) Excavate and remove the hardstanding materials from the land filling excavated areas with topsoil;
 - (iv) Remove from the land all building materials and rubble arising from compliance with requirements (i) above (*sic*);
 - (v) Restore the land to its condition before the breach took place by levelling the ground with topsoil and re-seeding it with grass; and,
 - (vi) Restore the land to its former condition as agricultural land.
- The period for compliance with the requirements is 90 days.
- The appeals are proceeding on the grounds set out in Section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. The deemed planning applications also fall to be considered.

Summary of Decision: The appeals are allowed subject to the enforcement notice being corrected in the terms set out below in the Formal Decision.

Appeals C & D: APP/Y2736/C/14/2219257 & 2219258 Land to the north of York Lane, Flaxton, York, North Yorkshire

- The appeals are made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr A J G and Mrs F J Brooks against an enforcement notice (Notice 2) issued by the Ryedale District Council.
- The Council's reference is 12/00014/CU.
- The notice was issued on 17 April 2014.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the land from agriculture to a mixed use for agriculture

and the keeping of horses for recreational purposes with siting of two horse shelters, storage of associated equipment used to keep horses, motor vehicles, trailers and horse boxes together with the following operations to facilitate that use:

- (i) The erection of two 72m² timber stable blocks;
 - (ii) Engineering work to create a large excavated area for an all-weather riding area manege;
 - (iii) Excavation and formation of hardstanding areas; and,
 - (iv) Laying of concrete slabs.
- The requirements of the notice are to:
 - (i) Discontinue the use of the land for any purpose other than agricultural use or a temporary use permitted by permitted development rights under Part 4 of the General Permitted Development Order 1995 as amended or any Order replacing the 1995 Order;
 - (ii) Discontinue the use of the land for keeping horses for recreational purposes, manege and the parking of horse boxes and trailers, motor vehicles;
 - (iii) Remove the horses from the land;
 - (iv) Remove all trailers/horse boxes from the land;
 - (v) Remove from the land all vehicles and equipment brought on to the land for the purposes of that use. You may keep on the land any vehicles or equipment which you use solely for the purposes of agriculture on the land;
 - (vi) Dismantle and remove paddock fencing from the land; and,
 - (vii) Dismantle and remove the horse shelters from the land.
 - The period for compliance with the requirements is 90 days.
 - The appeals are proceeding on the grounds set out in Section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. The deemed planning applications also fall to be considered.

Summary of Decision: The appeals are allowed subject to the enforcement notice being corrected in the terms set out below in the Formal Decision.

Matters Concerning the Notices

1. The appellant has questioned the validity of Notice 2 and I have a number of concerns about the wording of both notices. I shall deal with these matters before considering the main grounds of appeal.
2. With regard to the question of validity, the appellants contend that both notices are invalid because the reasons for expediency of their issue are unclear, as they do not state what harm is being caused by the developments. This makes them invalid and incapable of correction. They are also invalid because they are confusing, with one notice relating to operational development and the other a material change of use yet with much overlap between the two and both notices containing references to the same elements of the alleged breach. The notices therefore fail to comply with Section 173(1) of the Town and Country Planning Act 1990 (TCPA) as they do not allow the recipient to know what he or she has done wrong, and they should be quashed as invalid.
3. Section 173 of the TCPA sets out what an enforcement notice shall contain. It includes requirements that the notice shall state the matters which appear to the Local Planning Authority to constitute the breach of planning control¹. It then states that a notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are². It does not, as a matter of fact, require that the notice sets out the reasons for the issue of the notice, including the alleged harm caused, but this matter is

¹ Section 173(1)(a).

² Section 173(2).

- covered by a subsequent Regulation³, as provided for in Section 173(10). The overall aim of these statutory requirements is to enable a recipient of a Notice to know what he or she has done wrong, and why the Local Planning Authority considers it expedient to issue the Notice.
4. In this case, I am satisfied that the notices meet the statutory requirements. Both state the alleged breach of planning control; Notice 1 is aimed at alleged unauthorised operational development, whilst Notice 2 concerns an alleged material change of use, together with operational development that facilitates such use. Both notices also set out the reasons for issue, mentioning proximity to a Conservation Area, harm to the character and appearance of the surrounding area, failure to improve the character of the area and to enhance the local environment, and a lack of survey information to show no adverse impact on protected species. They also set out, in some detail, the Development Plan policies that are thereby contravened. I accept that Section 4(iii) of the notice appears to be more abstract in saying that "Unauthorised development results in harm to the character and appearance of the surrounding area ...", but this could simply be a typing error, with the preceding word "The" omitted by mistake. However, I consider that there can be little doubt as to why the notices were issued, and the reasons for the Council taking such action. Neither notice is, therefore, a nullity or invalid, as claimed by the appellants.
 5. Notwithstanding my conclusions above, I consider that the notices are confusing, particularly through the reference in Notice 2 to the operational development that facilitates the alleged unauthorised material change of use, as set out in Notice 1. In this context, I am of the view that the appellants have misinterpreted the wording of Notice 2, in their reference to "incidental" operational development, and that they have not appreciated the relevance of the word "facilitates". It is quite permissible for a material change of use notice to require facilitating operational development to be removed, having regard to pertinent case law (*Somak Travel*⁴ and *Murfitt*⁵) which found that not only could such development be required to be removed, but that even matters that would not normally constitute development may also be required to be removed, such as an internal staircase (*Somak Travel*). Notice 2 does not, however, as a matter of fact, require the stated operational development to be removed, only other elements associated with the material change of use, including the horses, trailers/horse boxes, vehicles and equipment, paddock fencing and horse shelters. This could have had unwanted consequences for the Council, having regard to Section 173(11) of the TCPA were it not for the fact that the removal of such development is required by Notice 1, as compliance with the remainder of the notice could have granted planning permission for those works under Section 73A.
 6. Having regard to all of the above points, I am of the view that, whilst the notices are not invalid or a nullity, they would benefit considerably from correction with a view to greater clarity. In this context I am mindful of the duty of an Inspector to get a notice in order if it is possible to do so⁶. I

³ Regulation 4 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (SI 2002 No 2682).

⁴ *Somak Travel v Secretary of State for the Environment and London Borough of Brent Council* [1987] JPL 630.

⁵ *Murfitt v Secretary of State for the Environment* [1980] JPL 598.

⁶ *Hammersmith London Borough Council v Secretary of State for the Environment and Sandral* [1975] 30 P and CR19.

consider that this would be possible through combining the two notices into one, so as to create a composite notice which alleges both a material change of use of the land, to a mixed use of agriculture and the keeping of horses, and operational development that has facilitated that material change of use, including the elements which might not, by themselves, require a specific grant of planning permission. I consider that this can be done, using the powers available to me under Section 176(1) of the TCPA, without causing injustice or prejudice to either the appellants or the Council.

7. Turning to other matters concerning the wording of the notices, I am uncertain as to the legitimacy of requirement (vi) of Notice 1, as it seems to duplicate, to some extent, that of requirement (v), albeit with a reference to restoring the land to its condition *as agricultural land (my emphasis)*. This implies a requirement to return the land to agricultural use but, if that was what was intended, it would not be legitimate, having regard to the judgement in *Lipson*⁷. In such circumstances, it is sufficient to require restoration of the land to its condition before the breach took place. This would thereby also meet the requirements of Section 173(4)(a) of the TCPA.
8. With regard to Notice 2, I find a number of matters relating to the requirements to be of concern. Firstly, requirement (i) appears to be seeking to restrict the future use of the land, by limiting such use to either agriculture or any temporary use that may be permitted under Part 4 of the General Permitted Development Order 2015 (GPDO)⁸. Whilst this may also be taken to be attempting to comply with the *Mansi* principles⁹, such a requirement, if upheld, would prohibit other uses that would not require a grant of planning permission, such as forestry use. Section 173(4)(a) of the TCPA sets out the purposes of a notice as including the discontinuance of the use of the land and that is all that can be required in this instance.
9. On a second point, requirement (ii) does, as a matter of fact, require the discontinuance of the use of the land for the keeping of horses, but this step becomes confusing in that it goes on to include "manege and the parking of horse boxes and trailers, motor vehicles". The manege has been identified as an element of operational development thus it should not be included as a use of land. Moreover, the allegation refers not only to a use for the keeping of horses, but also to the "storage of associated equipment used to keep horses, motor vehicles, trailers and horse boxes". There is no explicit reference to the cessation of such storage, although the requirements to remove all trailers/horse boxes (Step (iv)), and all vehicles and equipment brought on to the land for the purposes of that use (Step (v)), could be taken to require such cessation.
10. Drawing all of these matters together, I conclude that the notices should be combined into a single composite notice, alleging both a material change of use, and the associated or facilitating operational development that has taken place, with the requirements corrected to provide greater clarity as indicated above. This is necessary not only in the event of the notices being upheld, but also to clarify the terms of the deemed planning applications that will be the subject of the appeals under ground (a). This will mean that Notice 1 will be

⁷ *Lipson v Secretary of State for the Environment* [1976] 33 P and CR 95.

⁸ The notice refers to the General Permitted Development Order 1995 (GPDO) as amended or any Order replacing the 1995 Order. Since the date of issue of the notice, the 2015 Order has come into effect.

⁹ *Mansi v Elstree Rural District Council* [1964] 16 P and CR 154.

corrected to include both the material change of use and the associated operational development, and Notice 2 will be quashed.

THE APPEALS ON GROUND (b)

11. The appeals on ground (b) relate to a contention that the horse shelters referred to in Notice 2 are in fact buildings constructed on the site, and that the reference to their siting is incorrect. The Council, however, state that they are moveable buildings albeit that if, following the site inspection, it is found that they are buildings they could be added to the items of operational development listed in Notice 1.
12. The legitimacy of such amendment is debatable as it could be seen to make a notice more onerous than if no appeal had been made. However, at my site inspection I saw no such shelters on the land, only the two main stable blocks, and some smaller wooden buildings at the western end of the site used in connection with the keeping of pigs on the land, albeit that there were no pigs there at that time. I have seen photographs of the shelters in question, but they did not appear to be on the site when I inspected it, which tends to add weight to the claim that they were moveable structures. In all of these circumstances I can, therefore, reach no firm conclusion on the question of whether the horse shelters referred to in Notice 2 are buildings or moveable structures. As the burden of proof lies, in legal grounds such as this, with the appellants¹⁰, I can only conclude that the appeals on ground (b) must fail.

THE APPEALS ON GROUND (c)

13. The appeals on this ground relate to the erection of the paddock fencing, required to be removed under Notice 2. The appellants claim that, if it is operational development it should have been included in Notice 1 but, in any event, it is permitted development as it is less than 2m in height.
14. I have largely dealt with this matter in my considerations on the wording and form of the notices. The appellants are correct in that such fencing would normally be permitted development under Part 2 of Schedule 2 to the GPDO, but insofar as it facilitates the material change of use to the keeping of horses that has taken place, it is legitimate for Notice 2 to require its removal. However, I saw that the south-western end of the site is fenced so as to provide nine enclosures for the keeping of pigs, together with four pig arks thus, as this represents part of the agricultural element of the alleged mixed use, the notice cannot lawfully require the fencing in this area to be removed. The appeals on ground (c) succeed to this extent and Notice 2 will be corrected accordingly.

THE APPEALS ON GROUND (a)

Main Issues

15. The main issues in these appeals are:
 - a) the effect of the use and development on the character and appearance of the surrounding area including the setting of the Flaxton Conservation Area;
 - and,

¹⁰ *Nelsovil v Minister of Housing and Local Government* [1962] 1 WLR 404.

- b) the effect of the use and development on interests of nature conservation, including protected species.

Reasoning

Effect on Character and Appearance

16. The appeal site comprises a flat roughly rectangular-shaped area of land on the northern side of York Lane. Access is gained close to the south-eastern corner, across a strip of land that is classified as common land. The site lies within open countryside to the west of the village of Flaxton, a largely linear settlement and Conservation Area, with many of the buildings on the eastern side of the main road through the village, albeit that, south of the junction with York Lane, there is development on both sides including opposite the entrance to the appeal site.
17. The character of the surrounding area is largely rural, with flat open agricultural land to the west of a village that comprises mainly two-storey buildings in a variety of styles and materials. In terms of appearance, the large fields are mostly bounded by thick mature deciduous hedgerows with hedgerow trees. One slightly discordant element, however, is the village hall, sited to the west of the Village Green, immediately north of the appeal site, as its materials and style do not reflect the high quality architecture of much of the remainder of the village. It is not, however, unduly prominent because of screening vegetation and its location set back from the main road.
18. The appeal development comprises areas of hardstanding, inside the entrance gates, and then two timber buildings each containing five stables, of about 4m in width and 19m in length, built parallel to one other. Beyond is a fenced manege, surfaced with sandy material, and a series of paddocks, including a row of smaller enclosures at the south-western end used for the breeding of pigs. I saw four horses in the paddocks, with a further horse and foal in one of the stables. Three of the stalls were being used for storage, and two were locked, presumably because they contained more valuable equipment and materials.
19. The Council's planning policy for this area is set out in the Ryedale Local Plan Strategy (LPS), which was adopted in September 2013. A number of policies are pertinent, to varying degrees, in these appeals. Policy SP1 relates to the general location of development and settlement hierarchy, and states that, in the open countryside, development will be restricted to that which is necessary to support a sustainable, vibrant and healthy rural community. Policy SP9 concerns the land-based and rural economy, and states that it will be sustained and diversified with support for a number of elements, including new buildings that are necessary to support land-based activity and a working countryside, including for farming, forestry and equine purposes, and appropriate new uses for land. Policy SP12 relates to Heritage and seeks to protect the District's historic assets and features, including through sensitive expansion, growth and land use changes in and around villages, safeguarding elements of historic character and value, including Visually Important Undeveloped Areas (VIUA). Policy SP13 concerns Landscape Character and aims at the protection and enhancement of the quality, character and value of Ryedale's diverse landscapes. Finally, Policy SP20 deals with generic development management issues, and requires that new development respect the character and context of the immediate locality and the wider landscape/townscape character in

terms of physical features and the type and variety of existing uses. The appeal site does not lie within a VIUA, or the Flaxton Conservation Area, but its north-eastern boundary abuts both areas, as defined in Inset 31 of the Ryedale Local Plan 2002.

20. The LPS accords largely with the policies set out in the National Planning Policy Framework (The Framework). I am particularly mindful of Section 3 of the latter which is entitled "Supporting a prosperous rural economy" and states that planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. This includes the promotion of the development and diversification of agricultural and other land-based rural businesses. Section 12 is also relevant, dealing with the conservation and enhancement of the historic environment, in relation to the effect on the setting of a Conservation Area.
21. The use, including the associated operational development that has taken place has a very limited visual impact, albeit that the buildings would be more visible from York Lane in winter months when the deciduous vegetation has less screening effect. Nevertheless, even in more open winter views, all that would be seen are a pair of unexceptional and functional stable buildings, of neat and tidy design in appropriate materials, together with paddock fencing and small areas of hardstanding where associated vehicles may be parked. These elements are not prominent, and can only be seen to any extent from upper floors of buildings some distance to the east and south. The use of land such as this is for the keeping of horses is not at all unusual in locations close to settlements, and is clearly provided for in Policy SP9 of the LPS as a viable alternative to traditional agricultural uses.
22. The appellants do not claim that they are running a business, although they had intended to breed pigs. The horses are kept for private recreational purposes, and they do not intend to use the stables for livery purposes, as alleged by some third parties. This could be covered by an appropriate condition on any grant of planning permission.
23. It is clear that considerable visual disruption, as well as noise and general disturbance, took place during the construction of the stables and hardstanding areas, but I can only consider the impact of the final development as it is not, as a matter of law, illegal to undertake development without first obtaining planning permission, albeit that it may result in enforcement action being taken, as in this instance. It follows, in conclusion on this issue, that I do not consider that the development has resulted in any material harm to either the character and appearance of the surrounding area or the setting of the Flaxton Conservation Area. The use and development thereby complies with relevant policies in the LPS and The Framework.

Nature Conservation

24. There is a pond immediately east of the south-eastern corner of the appeal site which is a habitat and breeding ground for great crested newts, a protected species under the Wildlife and Countryside Act 1981. The Council contend that it has not been shown that the use of this land for the keeping of horses, if approved, would safeguard this species, as no survey information has been provided, and also that harm may have occurred during the construction phase of the development. In this context, Policy SP14 of the LPS, concerning Biodiversity, states that proposals which would have an adverse effect on any

- site or species protected under international legislation will be considered in the context of the statutory protection which is afforded to them. Paragraph 109 of The Framework is also pertinent; this states, amongst other things, that the planning system should contribute to and enhance the natural and local environment by minimising impacts on biodiversity.
25. The appellants draw attention to the fact that no action, by any relevant authority, such as Natural England, has been taken in respect of impact on protected species, indicating a lack of concern on their part, and that removal of hardstandings and buildings, as required by the notices, would also be likely to cause harm if the Council's arguments are accepted, thus it is a more reasonable approach to allow the use to continue.
26. It is clear that there is no survey information available to me about the likely presence or otherwise of great crested newts on the appeal site and I consider that such work would have been of benefit before any development took place. However, the pond does not, as a matter of fact, lie within the appeal site, neither does it have any specific designation or protection. It is not, for example, a Site of Special Scientific Interest (SSSI) or local Site of Nature Conservation Interest (SNCI). I understand that it is one of three ponds around the village that contains great crested newts and it follows that migration between these sites is possible, including across land which may be part of the appeal site. Nevertheless, Natural England has not been consulted on this development and this suggests that the impact on the species is likely to be somewhat less than suggested by opponents of the development.
27. I am mindful of the fact that the highest risk of harm to great crested newts would have occurred during the construction phase of the development, but this has now passed, and it appears that no formal action of any sort was taken by relevant authorities in respect of curtailment of such work on the basis of the need to protect the species. Now that the development is effectively complete, the risk of harm is significantly lessened, and migration pathways across the land are likely to have been resumed. In all these circumstances, therefore, I conclude on this issue that the continuation of the use would not materially harm protected species and the aims of Policy SP14 and Paragraph 109 of The Framework would thereby be met.
28. It follows from my conclusions on the main issues that the appeals on ground (a) succeed, thus planning permission will be granted. In these circumstances, the appeals on grounds (f) and (g) do not need to be considered.

Conditions

29. The Council has not suggested any conditions in the event of the appeals being allowed and planning permission granted. In such circumstances, I consider that only one is required, which would prevent the use of the site for livery purposes without the further approval of the Local Planning Authority, as such a use could have significant traffic implications which have not otherwise been considered. The appellants have specifically stated that they do not intend to use the site in this way, only for private recreational purposes, thus this condition would not be unduly onerous.

Other Matters

30. I have taken account of all other matters raised in the written representations but they do not outweigh the conclusions I have reached in respect of the main issues and the grounds of appeal.

Conclusions

31. It is clear from my deliberations above that the notices require correction. I am satisfied that no injustice will be caused by this and I will therefore correct the enforcement notices, in those respects, in order to clarify the terms of the deemed applications under Section 177(5) of the 1990 Act as amended.
32. For the reasons given above, however, I conclude that the appeals should succeed on ground (a) and I will grant planning permission in accordance with the applications deemed to have been made under Section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation.

FORMAL DECISIONS

Appeals A & B: APP/Y2736/C/14/2219255 & 2219256

33. The enforcement notice (Notice 1) is corrected by:

- a) The deletion of Section 3 in its entirety and the substitution therefor of the following allegation:

"3. THE ALLEGED BREACHES OF PLANNING CONTROL

1. Without planning permission, the material change of use of the Land from agriculture to a mixed use for agriculture and for the keeping of horses for recreational purposes, including the siting of two horse shelters, the storage of associated equipment used for the keeping of the horses, and the parking of motor vehicles, trailers and horse boxes; and,
 2. Without planning permission, the carrying out of the following operational development:
 - (i) The erection of two 72m² timber stable blocks;
 - (ii) Engineering work to create a large excavated area for an all-weather riding area manege;
 - (iii) Excavation and formation of hardstanding areas; and
 - (iv) The laying of concrete slabs.
- b) The deletion of Section 5 in its entirety and the substitution therefore of the following requirements:
- (i) Discontinue the use of the land for the keeping of horses for recreational purposes, including the siting of two horse shelters, the storage of associated equipment used for the keeping of the horses, and the parking of motor vehicles, trailers and horse boxes;
 - (ii) Remove all horses, trailers, horse boxes and motor vehicles associated with the keeping of horses from the land;

- (iii) Remove all equipment brought onto the land for the purpose of the keeping of horses;
- (iv) Dismantle and remove paddock fencing from the land, other than that which is required for agricultural purposes;
- (v) Dismantle and remove the horse shelters from the land;
- (vi) Dismantle and remove the materials comprising the two 72m² timber stable blocks from the land;
- (vii) Remove any hardcore and surface material from the manege area on the land;
- (viii) Excavate and remove the hardstanding materials from the land, filling excavated areas with topsoil;
- (ix) Remove from the land all building materials and rubble arising from compliance with the above requirements; and,
- (x) Restore the land to its condition before the breach took place, by levelling the ground with topsoil and re-seeding it with grass."

34. Subject to these corrections, the appeals are allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under Section 177(5) of the 1990 Act as amended, for the development already carried out, namely the material change of use of the Land from agriculture to a mixed use for agriculture and for the keeping of horses for recreational purposes, including the siting of two horse shelters, the storage of associated equipment used for the keeping of the horses, and the parking of motor vehicles, trailers and horse boxes; and, the carrying out of the following operational development:

- (i) The erection of two 72m² timber stable blocks;
- (ii) Engineering work to create a large excavated area for an all-weather riding area manege;
- (iii) Excavation and formation of hardstanding areas; and,
- (iv) The laying of concrete slabs.

on land north of York Lane, Flaxton, North Yorkshire, subject to the following condition:

- 1) The use and buildings hereby permitted shall not be used for livery purposes except with the prior written approval of the Local Planning Authority.

Appeals C & D: APP/Y2736/C/14/2219257 & 2219258

35. The enforcement notice (Notice 2) is quashed.

Martin Joyce

INSPECTOR