

RAPLEYS

Appellant Statement of Case on behalf of
BP Oil (UK) Ltd

**APPEAL AGAINST THE DECISION OF
RYEDALE DISTRICT COUNCIL AT 5
WELHAM ROAD, NORTON, MALTON
NORTH YORKSHIRE
(LPA REF: 17/01249/FUL)**

31 January 2019

Our Ref: /17-03177

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1 INTRODUCTION

- 1.1 This appeal statement (the **Statement**) has been prepared by Rapleys LLP (the ‘**Agent**’) on behalf of BP Oil UK Ltd (“**BP**”, the **Appellant**), in response to the refusal of planning permission for the redevelopment of land at 5 Welham Road, Norton, Malton, North Yorkshire (the “**Site**”). A site location plan attached at **Appendix 1**.
- 1.2 The Statement relates to, and is submitted in support of, an appeal pursuant to Section 78 of the Town and Country Planning Act 1990 (as amended) and is made in accordance with the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 (as amended).
- 1.3 The planning application (the ‘**Application**’) to which this Appeal relates was submitted in full to Ryedale District Council (as the Local Planning Authority - the “**LPA**”) 13/10/2017 and subsequently validated on 01/12/2017, with the reference 17/01249/FUL.
- 1.4 The Application sought permission for the “**Proposal**”, specifically the: ‘*Erection of Petrol Filling Station with forecourt shop sales building, canopy, car parking, 3no. fuel pumps, below ground offset fills, air/water bay, trolley compound, goods in delivery bay, bin storage, site floodlighting and ancillary arrangements to forecourt and boundary.*’
- 1.5 The planning committee resolved to refuse planning permission, in line with Officers recommendation, on 01/08/2018. Planning permission was then refused on 02/08/2018 (copy of the Decision Notice is attached at **Appendix 2**). The LPA’s reasons for refusal are listed below:
- *It has not been demonstrated through the submission of sufficient evidence that the Malton Livestock Market site (Horsemarket Road, Malton) which is at a much lower risk of flooding (Flood Zone 1) and sequentially preferable in flood risk terms to the application site (Flood Zone 3 (a)) is not a suitable and appropriate site to accommodate the proposed development. Consequently the flood risk sequential test required by paragraph 158 of the National Planning Policy Framework 2018 and Policy SP17 of the Local Plan Strategy has not been met in respect of the application site. The approval of this application would result in a development being located in an area at a higher risk of flooding than is necessary. The proposed development is therefore contrary to the requirements of Policy SP17 of the Local Plan Strategy and contrary to paragraph 155 and 158 of NPPF 2018.*
 - *It has not been demonstrated through the submission of sufficient evidence that the retail sequential test has been met. The Malton Livestock Market (Horsemarket Road, Malton) is considered to be sequentially preferable to the application site in terms of it being regarded as a Town Centre site in the Published Sites Document 2018. No compelling arguments have been made as to demonstrate why the Malton Livestock Market site is not suitable or available for the development proposed. Consequently the proposed development is contrary to the requirements of paragraph 86 of the National Planning Policy Framework 2018.*
- 1.6 It is requested that this Appeal be dealt with by way of a Public Inquiry, this is considered to be the most appropriate appeal method given the type and nature of the proposal and the issues raised within the reasons for refusal.

GROUNDS FOR APPEAL

- 1.7 The grounds for appeal, can be summarised as follows:
- In the context of Section 38(6) of the Planning and Compensation Act 2004, the Proposal is in accordance with the adopted Development Plan and, in the absence

of material considerations that would indicate otherwise, planning permission should be granted.

- Further, given compliance with the development plan, paragraph 11 (C) of the NPPF applies - planning permission should be granted without delay.
- There are no national planning policies which prevent the principle of the Proposal.
- The former Livestock Market site is not a suitable or viable location for a petrol filling station and as such, the Proposal satisfies the Flood Sequential Tests.
- There is no statutory requirement for a PFS development to undertake and satisfy a retail sequential test, and in any event, the former Livestock Market site is not suitable or viable location for a petrol filling station.
- The Application is acceptable in all other respects, delivering a range of planning benefits, and therefore should be allowed.

1.8 This Statement will set out in further detail why, in the context of the above grounds, the Appeal should be allowed.

STRUCTURE OF THE APPEAL STATEMENT

1.9 This Statement addresses the following matters:

- The Site and its surroundings;
- The Site's planning history and the LPA's determination of the application;
- The Proposal;
- The Development Plan and other relevant planning policy;
- The Appellant's case; and
- Conclusion.

2 APPEAL SITE AND SURROUNDINGS

SITE

- 2.1 The Site extends to circa 0.56 ha and currently comprises a largely cleared flat site, with three small temporary buildings (a further site office, toilet block and storage containers) with areas covered and overgrown with vegetation. The site is previously developed land within the built up area, having previously been occupied by Malton Clothing as a factory, and has been vacant for a considerable amount of time
- 2.2 The Site's access is taken from Welham Road in the north west corner of the Site just south of K M Barker Garage.
- 2.3 The site is located within an area of known archaeological significance and Flood Zone 3(a), albeit it benefits from flood defences, according to the Environment Agency Flood Map for Planning.

SURROUNDINGS

- 2.4 The surrounding area is largely residential with commercial units to the north / north west in the town centre.
- 2.5 The Site is bound by two-storey residential dwellings and their associated back gardens along St Nicholas Street to the north/east, Springfield Garth to the south and Welham Road to the west. KM Barker Garages and showroom abuts the Site to the north and is located at the junction of Welham Road/St Nicholas Street. Beyond is a Lidl supermarket located across from Welham Road.
- 2.6 To the west, a single storey bungalow (5a Welham Road) immediately abuts the Site on the corner of Welham Road/Spring Field Garth. Along the Site's western boundary is tall, dense hedging running along Spring Field Garth.
- 2.7 The Site is well connected to Norton and Malton Town Centre. Norton town centre's primary shopping area is located circa 300m from the site. Malton town centre is approximately a 10 minute walk away from the Site, in addition to Malton train station, local services, shops and facilities on the northern side of the River Derwent.
- 2.8 There are no listed buildings within the vicinity of the Site, however Norton Conservation Area abuts the Site along its north and eastern boundary.

3 PLANNING HISTORY

SITE

- 3.1 The oldest planning application on the LPA's online public database indicates planning permission was refused in 1981 for the change of use of a former clothing factory into a private social club (LPA Ref: 81/00123/OLD), which led to a dismissed appeal in 1982.
- 3.2 Between 1994 and 1999, temporary permission for the siting of a portable building for a factory shop was granted (LPA Ref: 97/00190/FUL; 99/00279/FUL). In 1999, permission was granted for the erection of two extensions to the rear to form additional office space (LPA Ref: 99/00657/FUL).
- 3.3 In 2013, outline permission was granted on the site for the erection of an Aldi food store (Class A1), day nursery (Class D1) and health/medical facility (Class D1), with associated car parking and vehicle access (LPA Ref: 09/00282/MOUT). In the context of the local authority's reasons for refusing the Proposal, and from a review of the committee reports attached at Appendix 3, the following should be noted:
- The issue of **flood risk** was reviewed, and it was confirmed that no sequentially preferable sites existed.
 - In addition, it is confirmed that the **retail sequential test** was adequately addressed.
- 3.4 Later that same year, outline permission was granted for 3 retail units (Class A1), and a child day nursery (Class D1) with associated vehicle access, parking and landscaping (LPA Ref: 13/00166/MOUT). This permission was granted in accordance with the local authority's current adopted policy framework and in terms of how flood risk and retail sequential test issues were addressed in the committee report (attached at **Appendix 4**):
- The matter of **flood risk** was considered in the report, and notwithstanding that there is no reference to the sequential test, no objections were raised.
 - In terms of the **retail sequential test**, the applicant's submitted assessment was accepted.
- 3.5 In 2014, a reserved matters application in respect of the latter 2013 permission was approved (LPA Ref: 14/00316/MREM). It is understood that this permission has not been implemented.
- 3.6 The site is previously developed, but has been vacant for some time. Most recently, two planning permissions have been granted by the LPA at the Site, and specifically the following land uses have been consented:
- Class A1 (retail), in two different formats - a single foodstore, and smaller open A1 units, and
 - Class D1.

4 THE PROPOSAL

- 4.1 The Application which is subject of this Appeal was submitted on 13/10/2017 to the LPA and validated on 01/12/2017 with the reference 17/01249/FUL.
- 4.2 The Application sought full planning permission for a petrol filling station which meets modern standards in terms of offer and supporting facilities. Developments of the nature proposed are now commonplace, an example being Saxon Cross Service Station (drawings and decision notice attached at **Appendix 5**). This site lies on the edge of a settlement, but well located on the highway network (see further commentary below), and involved the demolition of an existing petrol filling station with a small, out-dated forecourt shop with a GIA of 114sqm, and its replacement with an up to date forecourt shop of 466sqm (a similar scale to this proposal). The application was supported by the local authority, and permission was granted under delegated powers in June 2017.
- 4.3 Specifically, the Proposal sought planning permission for the erection of a Petrol Filling Station with forecourt shop sales building, canopy, car parking, 3no. fuel pumps, below ground offset fills, air/water bay, trolley compound, goods in delivery bay, bin storage, site floodlighting, new access road off Springfield Garth (to serve adjacent site) and ancillary arrangements to forecourt and boundary.
- 4.4 More specifically, the Proposal includes the following:
- New PFS forecourt shop (495 GIA sqm) operating on a 24 hour basis.
 - A 5.2m canopy and 3no pumps located beneath.
 - 40 no. car parking spaces including 4 disabled and 4 parent and child.
 - A new access road off Spring Field Garth (to serve adjacent site 0.14ha).
- 4.5 The Proposal also includes the provision of a trolley storage compound, 1no. A/W bay, 2no. below ground 80,000l tanks with offset fills and vents, goods delivery bay, bin storage and ancillary forecourt and boundary treatments.
- 4.6 The submission comprised the following supporting documents:
- Completed application and certificate from, signed and dated.
 - Completed additional information requirements CIL form, signed and dated.
 - Existing Location Plan (Ref: 30061 - 25).
 - Existing Site Layout (Ref: 30061 - 20).
 - Proposed Site Elevations (Ref: 30061 - 23).
 - Proposed Building Elevations (Ref: 30061 - 24).
 - Proposed Site Layout (Ref: 30061 - 22).
 - Design and Access Statement.
 - Preliminary Risk Assessment, prepared by Scothern Construction Ltd.
 - Flood Risk Assessment and SUDs, prepared by Marks Heeley.
 - Proposed SUDs Strategy, prepared by Marks Heeley.
 - Proposed Lighting Layout, prepared by The Graham White Consultancy.
 - Proposed Lighting Specification, prepared by The Graham White Consultancy.

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- Proposed Servicing of Development, prepared by BP.
 - Balanced Options Appraisal, prepared by BP.
 - Site Fuel System Spec and Construction, prepared by BP
 - Pack selection Summary, prepared by Green and Cool.

4.7 At the request of Officers, the following technical information was submitted for validation purposes on 01/12/2018:

- Trip Generation, prepared by Markides Associates;
- Air Quality Screening Letter, prepared by Wardell Armstrong;
- Noise Report, prepared by Sharps Redmore

AMENDMENTS TO THE PROPOSAL

4.8 During consideration of the Application, and as a result of feedback received, some minor changes were made to the Proposal and further information submitted as follows:

- Proposed Site Layout (Ref 30061-22-D) **16/03/2018**
- Proposed Site Elevations (Ref 30061-23-D) **16/03/2018**
- Proposed Building Elevations (Ref 30061-24-D) **16/03/2018**
- Location Plan (Ref 30061-25-A) **16/03/2018**
- Transport Technical Note (prepared by Markides Associates) **16/03/2018 and 25/06/2018**
- Air Quality Assessment (prepared by Wardell Armstrong) **16/03/2018**
- Flood Sequential Test (prepared by Weetwood) **16/03/2018**
- Retail Sequential Test (prepared by Rapleys) **16/03/2018**
- Archaeological Assessment (prepared by On Site Archaeology) **26/06/2018**
- Addendum FRA (prepared by Marks Heeley) **14/06/2018**
- Flood Risk Sequential Test Addendum **19/07/2018**

5 THE DETERMINATION OF THE APPLICATION

5.1 Throughout the determination process, the Agent monitored the Application by reviewing the LPA's online planning register and liaising with the Case Officer in order to obtain consultation responses.

5.2 The events following validation, up to refusal of planning permission, can be summarised as follows:

- A post-submission meeting was held with the Head of Planning and application Case Officer on 23/01/2018;
- Minor amendments were made to the Proposal, and further information provided 16/03/2018; and
- Ongoing information was provided by the Agent on both the flood risk and retail Sequential Tests and transport matters in a number of submissions.

5.3 Following validation of the Application a meeting was requested by Officers to discuss it. The meeting was held on 23/01/2018 (note attached at **Appendix 6**), with the key points summarised below:

- Description of development - Officers concurred that, notwithstanding representations, that the Proposal was a PFS in Sui Generis use. As such, Officers would not seek a change to the description of development to include a "retail shop" in addition to the PFS.
- Retail Sequential Test - Officers considered that the size and type of the PFS sales area meant a retail sequential test will have to be submitted. It was outlined by the Agents that a retail sequential test was not applicable in the context of the land use proposed, but to provide Officers with comfort, it was agreed that one would be conducted.
- Flood Sequential Test - following Officers' request it was agreed that a Flood Sequential Test would be undertaken.
- Lighting Scheme - in response to the EHO Officer's consultation feedback, it was agreed with Officers that the lighting will be reduced during the night time period and it would only be at the proposed levels while deliveries were taking place.
- Air Quality Impact Assessment - it was first outlined, by the Agent, that an AQIA was unnecessary, however for the LPA's comfort the Appellant agreed to undertake the assessment.
- Design - a more sympathetic design was requested by Officers and as such it was agreed that a pitched slate roof and brick finish to the sales building and canopy structures would be introduced.
- Adjacent site access - the development site to the east, taking access from Springfield Garth, was questioned by the Officers. Whilst the Agent outlined the inclusion of the access was there to illustrate that the future of the Site to the rear would not be prejudiced, it was nonetheless agreed that the site plan could be amended to remove the access from Springfield Garth.

5.4 In light of discussions at the meeting, an additional electronic submission was made to the LPA on 16/03/2018 containing the following revised plans and documents: Proposed Site Layout 30061-22-D;

- Proposed Site Elevations 30061-23-D;
- Proposed Building Elevations 30061-24-D;

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- Location Plan 30061-25-A;
 - Retail Sequential Test - Prepared by Rapleys LLP;
 - Flood Sequential Test - Prepared by Weetwood;
 - Air Quality Assessment - Prepared by Wardell Armstrong, and
 - Technical Transport Note - Prepared by Markides Associates.
- 5.5 In addition, in response to Officer feedback, the Appellant agreed to amend the proposed opening hours from 24 hours a day to 06:00 - 22:00.
- 5.6 On 23/03/2018 the Case Officer undertook his site visit. Following this further information was requested on 03/04/2018 relative to the Retail Sequential Test, Flood Sequential Test and Highway Trip Generation in response to letter dated 29/03/2018 submitted by WYG on behalf of The Fitzwilliam Estate (attached at **Appendix 7**). On 18/04/2018, a formal response was issued to the Case Officer by the Agent which addressed why the former Livestock Market Site and other sites in Malton were not considered suitable for a PFS (attached at **Appendix 8**).
- 5.7 On 20/04/2018 an email was received from the Case Officer (attached at **Appendix 9**), requesting that the ATS site in Norton be considered for both the Retail and Flood Sequential Tests, as well as further clarification on the Flood Sequential Test methodology. Accordingly, and following a phone conversation with the Officer on 23/04/2018, on 24/04/2018, a formal response addressing these matters was issued to the Case Officer (attached at **Appendix 10**).
- 5.8 On 27/04/2018 the Case Officer confirmed to the Agent that the supporting information provided in respect of the Flood Sequential Test methodology (discounting Greenfield sites) was now agreed.
- 5.9 On 01/05/2018 the Case Officer forwarded an email (attached at **Appendix 11**) and enclosed letter dated 01/05/2018 to the Agent from WYG (attached at **Appendix 12**), who advised that the former Livestock Market site was still available on a leasehold basis and suitable for the proposed PFS development. In addition, WYG's letter also confirmed that the PFS and forecourt sales building can not be disaggregated.
- 5.10 On 03/05/2018, it was agreed between the Agent and Case Officer (attached at **Appendix 13**) that it would be beneficial to provide additional information on the suitability of the Livestock Market Site in response to WYG's letter.
- 5.11 In the meantime, on 15/05/2018, although not requested by the Appellant, an EIA Screening Letter was received from the LPA confirming that the proposal did not require the support of an environmental statement however, the document also referred to the development as a dwelling. The Agent questioned this via email on the 22/05/2018 and it was confirmed by the Case Officer that the error would be amended. Within the response, the case officer outlined the reason for screening the Proposal. This response is attached at **Appendix 14**.
- 5.12 To address WYG's letter, a formal response was issued by the Agent to the Case Officer on 14/06/2018 containing the following which outlined that the Livestock Market Site was not suitable for a PFS development (**Appendix 15**):
- A cover email from the Agent;
 - Statements from BP and M&S; and
 - Supporting note from Rapleys' Automotive and Roadside team.

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- 5.13 In response to consultation comments received from the Local Lead Flood Authority (LLFA) and North Yorkshire County Council an addendum to the Flood Risk Assessment and updated Highways Technical Note were submitted on 14/06/2018. Likewise, an Archaeology Report was submitted, and subsequently agreed as acceptable, in response to original comments received from the Heritage Officer in the consultation period.
- 5.14 On 23/03/2018 and 14/06/2018, the EA and LLFA respectively confirmed no objection to the Application and an extension of time was agreed with the Case Officer up until 02/08/2018, to allow Highways and Planning Officers more time to consider the Application.
- 5.15 On 26/06/2018, the Case Officer informally indicated during a conversation with the Agent that the additional information (in particular, relative to the Retail and Flood Sequential Tests) was more robust, but that he could not make a determination yet (**Appendix 16**).
- 5.16 Following receipt of Transport Officer feedback, the Case Officer confirmed a meeting would happen with his Line Manager, Head of Planning and a barrister. Following this a decision on his Officer Report for Planning Committee would be made (see relevant email correspondence attached at **Appendix 17**).
- 5.17 Further clarification was sought, by the Case Officer, on whether the Application was ‘less vulnerable’ in flooding terms. Following confirmation of the proposed fuel storage it was agreed by all, and amended by Weetwood (flood sequential test), that the proposed PFS was a less vulnerable use 16/07/2018. Following agreement, the Case Officer outlined, 17/07/2018, that he was writing his Officers report for committee in August (**Appendix 18**).
- 5.18 On 24/07/2018, the Case Officer advised the Agent that, following consultation with the Head of Planning and Barrister advice, that the Application was considered to fall short in terms of evidence submitted to demonstrate that the Livestock Market Site is not suitable for the proposed development.
- 5.19 Also on 24/07/2018, a Committee Report (attached at **Appendix 19**) was issued to the Agent which confirmed that the Application was being recommended for refusal at Planning Committee.
- 5.20 Notably, in respect of the first reason for refusal, the Committee Report stated that “*The applicant’s sequential test is considered to be wholly inadequate. Its search area is considered to be too wide given the significant town centre use component of the proposed development.*” This is despite the Appellant receiving written advice on the search area for the flood sequential test, and following this agreed approach through the report.
- 5.21 In advance of the Planning Committee, the Agent issued letters to Members dated 24 July 2018 (attached at **Appendix 20**) outlining and addressing the Officers’ recommended reasons for refusal, and urging them to overcome their Officers recommendation.
- 5.22 On 01/08/2018, whilst the Agent spoke in support of the Application, it was resolved unanimously by the Planning Committee to uphold the Officer’s recommended reasons for refusal, and accordingly to refuse to grant planning permission.
- 5.23 On 02/08/2018, a decision notice was issued to the Agent by the LPA (attached at **Appendix 2**) refusing planning permission on the following grounds:
- (1) It has not been demonstrated through the submission of sufficient evidence that the Malton Livestock Market site (Horsemarket Road, Malton) which is at a much lower risk of flooding (Flood Zone 1) and sequentially preferable in flood risk terms to the application site (Flood Zone 3 (a)) is not a suitable and appropriate site to accommodate the proposed development. Consequently the flood risk sequential test required by paragraph 158 of the National Planning Policy Framework 2018 and Policy

SP17 of the Local Plan Strategy has not been met in respect of the application site. The approval of this application would result in a development being located in an area at a higher risk of flooding than is necessary. The proposed development is therefore contrary to the requirements of Policy SP17 of the Local Plan Strategy and contrary to paragraph 155 and 158 of NPPF 2018.

- (2) It has not been demonstrated through the submission of sufficient evidence that the retail sequential test has been met. The Malton Livestock Market (Horsemarket Road, Malton) is considered to be sequentially preferable to the application site in terms of it being regarded as a Town Centre site in the Published Sites Document 2018. No compelling arguments have been made as to demonstrate why the Malton Livestock Market site is not suitable or available for the development proposed. Consequently the proposed development is contrary to the requirements of paragraph 86 of the National Planning Policy Framework 2018.

SUMMARY

- 5.24 From review of the above, it is evident that the Appellant and the LPA worked closely during the course of the Application, in line with the spirit of paragraph 38 of the National Planning Policy Framework. Further, the Appellant provided detailed information which went well beyond what was considered necessary to assist the LPA. In addition to a number of submissions pertaining to the flood risk and retail sequential tests, amendments to the Proposal were agreed as a result of officer feedback, not least:
- The design of the shop's frontage, roof and canopy;
 - The opening hours of the shop and permitted delivery hours were reduced to 06:00 - 22:00 and 07:00 - 20:00, respectively; and
 - Amendments to the lighting scheme.
- 5.25 As a result of this engagement, it appeared through informal discussions that the substantial level of additional information provided by the Appellant had provided sufficient comfort for the LPA to support the Application.
- 5.26 However, the appellant was informed abruptly in late July that the information submitted relative to the retail and flood risk sequential tests was not sufficient, and that officers would be recommending planning permission be refused at the following Committee meeting. The Application was duly refused planning permission in August 2018.

6 PLANNING POLICY AND GUIDANCE

6.1 This section lists the planning policy and associated documents that are considered, at this stage, relevant to the Appeal, including those cited in the reasons for refusal in decision notice.

6.2 Section 38(6) of the 2004 Planning and Compulsory Purchase Act requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise.

THE DEVELOPMENT PLAN

Adopted Policy

6.3 The Development Plan for the site comprises saved policies from Ryedale Local Plan (2002) and Local Plan Strategy (2013).

6.4 The Site is located in an edge-of-centre location outside the Malton and Norton “town centre commercial limits”. It is not subject to an allocation, however falls within an area designated as “Liable to Flooding”. As aforementioned, the Norton Conservation Area also sits along the Site’s north eastern/southern boundaries.

6.5 There are no policies within the Development Plan which specifically relate to petrol filling stations.

6.6 In terms of the only Development Plan policy referenced in the Decision Notice, Policy SP17 (Managing Air Quality, Land and Water Resources) advises that, where feasible, the use of sustainable drainage systems and techniques are required to reduce flood risk and promote groundwater recharge. Previously developed land will be prioritised for development within towns, subject to risk based sequential/exception tests as necessary.

6.7 In addition, the following policies have more general relevance to the Proposal:

- Policy SP10 Physical Infrastructure - the level of car parking is to be provided in consultation with the County Council.
- Policy SP12 Heritage - development that results in substantial harm to the significance of a designated historic asset and its setting will be resisted unless exceptional circumstances are demonstrated. Proposals resulting in less substantial harm will only be agreed where the public benefit of the proposal is considered to outweigh the extent of the harm to the asset.
- Policies SP13 Landscape and SP14 Biodiversity - new development should contribute to the local landscape character and maximise opportunities for conserving, restoring and enhancing biodiversity.
- Policy SP16 Design - development proposals will be expected to create high quality durable places that are accessible, protect amenity whilst being well integrated with their surroundings by making efficient use of the land.
- Policy SP18 Renewable and Low Carbon Energy - all new development will demonstrate that all levels of the energy hierarchy have been considered, taking into account the nature, scale and location of development, with measure to be subject to feasibility and viability.
- Policy SP20 Generic Development Management Issues - sets out a number of generic development control considerations including amenity and safety, character, contamination, and access, parking and servicing.

NATIONAL PLANNING POLICY AND GUIDANCE

- 6.8 The National Planning Policy Framework ('NPPF', July 2018) and its accompanying Planning Practice Guidance (PPG), adopted/launched online in March 2014 sets out the Government's economic, environmental and social priorities for England and explains how planning can help to ensure a pattern of development that matches these priorities, whilst meeting local aspirations.

The Presumption in Favour of Sustainable Development

- 6.9 Paragraph 10 of the NPPF confirms that a presumption in favour of sustainable development is at the heart of the Framework.

- 6.10 For decision-making, the NPPF at paragraph 11 encourages approving development proposals that accord with an up-to-date development plan without delay, or where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

- The application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed, or
- Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

- 6.11 Furthermore, LPAs should according to paragraph 38, approach decisions on proposed development in a positive and creative way - using a full range of planning tools available and working proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area.

Decision-Making

- 6.12 NPPF paragraph 38 confirms that local authorities should approach decisions on proposed development in a positive and creative way, and work pro-actively with applicants to secure development that will improve the economic, social and environmental conditions of the area. It also stresses that decision-makers at every level should seek to approve applications for sustainable development, where possible.

Building a Strong, Competitive Economy

- 6.13 The NPPF sets out a paragraph 80 that planning decisions should help create the conditions in which businesses can invest, expand and adapt with significant weight to be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. In particular, paragraph 82 states that planning decisions should recognise and address the specific locational requirements of different sectors.

Technical Considerations

- 6.14 In terms of flood risk, NPPF paragraph 155, indicates that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. Where development is necessary in such areas, the development should be made safe for its lifetime, without increasing flood risk elsewhere.

- 6.15 As set out in NPPF paragraph 158, the aim of the sequential test is to steer new development to areas with the lowest risk of flooding and development should not be permitted if there are reasonable available sites appropriate for the proposed development in areas with a lower risk of flooding.

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- 6.16 NPPF paragraph 163 outlines that when determining any planning application, LPA should ensure that flood risk is not increased elsewhere.
- 6.17 Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:
- within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;
 - the development is appropriately flood resistant and resilient;
 - it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;
 - any residual risk can be safely managed; and
 - safe access and escape routes are included where appropriate, as part of an agreed emergency plan.
- 6.18 In terms of retail development, the NPPF, at paragraph 86, outlines that LPAs should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.
- 6.19 As set out in the Annex 2 (Glossary) of the, main town centre uses are defined as -
- Retail development (including warehouse clubs and factory outlet centres); leisure, entertainment and more intensive sport and recreation uses (including cinemas, restaurants, drive-through restaurants, bars and pubs, nightclubs, casinos, health and fitness centres, indoor bowling centres and bingo halls); offices; and arts, culture and tourism development (including theatres, museums, galleries and concert halls, hotels and conference facilities).*
- 6.20 As petrol filling stations are not included in the above definition of main town centre uses, the NPPF places no requirement on such development meeting the sequential and impact tests.
- 6.21 Notwithstanding the above, paragraph 87 of the NPPF outlines, when considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.

EMERGING POLICY

- 6.22 The local authority is in the process of promoting its “Local Plan Sites Document”, which will supplement the Local Plan Strategy. This document has been submitted to the Secretary of State for Examination, and indicates in Policy SD14 that both the appeal site and the former Livestock Market site “will continue to be supported for retail development in principle in the event that existing permissions are not implemented”. In addition, amendments to the town centre boundary are proposed to include the former Livestock Market site within the town centre.
- 6.23 However, in their submissions to the examination in public in October, the local authority has requested amendments to the Local Plan Sites document to remove the appeal site as a

retail commitment within Policy SD14. Although mention is made to the previous planning permission having lapsed, reference is also made to the refusal of the appeal scheme.

6.24 Regardless of the outcome of the Examination, this change in policy would have limited impact relative to merits of the appeal proposal, for the following reasons:

- If Policy SD14 is retained in the form that was being promoted by the local authority prior to the refusal of planning permission, it did not indicate that non-retail uses, including sui generis uses such as petrol filling stations, would be resisted, and
- If the Inspector agrees to the local authority's late request for a change in approach, or is unable to find emerging policies to be sound, evidently the Development Plan would then be silent in terms of the local authority's favoured land use relative to the appeal site - as such, any land use would be equally acceptable in principle (subject to relevant development management considerations).

SUMMARY

6.25 National policy recognises the planning benefits of economic growth, confirming that planning permission should be granted without delay for proposals that comply with the Development Plan, with account taken of specific locational requirements of different sectors.

6.26 The Site is an edge-of-centre location and within local policy there are no restrictions on where new PFS development is to be located, with support for development to be directed to previously developed land in accessible and sustainable locations. Whilst the Site is subject to a proposed allocation for a mix of A1/D1 uses, in principle, this does not exclude other types of development.

6.27 Finally, prevailing national and local policy is clear that retail sequential testing is not applicable to PFS development.

7 PETROL FILLING STATION FACILITIES

7.1 Before turning to the Planning Considerations of this appeal, it is important to note the evolution of petrol filling stations and as such the changing site selection criteria. **Appendix 23** of this Statement of Case comprises a report prepared for BP by Tim Hancock Associates which includes an outline description of the changing nature of PFS development and the factors which affect their trading potential. In summary:

- Historically, petrol filling stations had the principal function of serving petrol to the passing motorists, often supported by a subsidiary role of providing the skills of a mechanic within a workshop to maintain unreliable vehicles;
- Since the 1970s there has been a steady and continued decline in the number of petrol filling station in the UK. Initially it was the traditional model of the small petrol filling station, perhaps with a workshop and small kiosk that became obsolete;
- The numbers of cars and the distances travelled increased and larger facilities were built, sometimes with small shops and car washes, to cater for the increasing needs of the motorist;
- From the 1980s, progressively larger sites were required to meet the requirements of the motorist. With higher costs of development, sites needed to be capable of achieving higher annual throughputs from stronger locations;
- As a consequence of these changes the type of site identified for investment in new petrol filling stations changed, with the smaller traditional filling stations in and close to town centres becoming increasingly difficult to expand given other competing urban land uses and town centres planning policies. Additionally, their relative inaccessibility due to town centre congestion and consequential town centre traffic management policies made investment undesirable;
- Modern forecourt developments are expensive to build and operate. Consequently, considerable care is required in terms of the selection of a site which must satisfy the essential site selection criteria. This includes the need to ensure a long-term defensible trading position which is relatively free from the risks of injury to trade which can be principally caused by changes to traffic movements and road patterns and the introduction of additional competition in superior locations.

7.2 Further to the above, and as outlined in detail within Mr Hancock's report at **Appendix 23**, the below factors are considered when acquiring land for a PFS:

- Location and Access to Traffic - The site should have access to a strong passing traffic flow in absolute terms.
- Competition - High quality service station sites tend to occupy a dominant location which is attractive and convenient to large numbers of customers.
- Accessibility and Prominence - The best service station sites are readily accessible and convenient. Motorists do not like to detour from their journey significantly for the purchase of fuel.
- Site Size, Shape and Levels - The service station site needs to be capable of conveniently incorporating all elements of a modern service station with scope for expansion should this be justifiable. The layout must accommodate deliveries including the fuel tanker.

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- Tenure - Generally, most petrol retailers will seek freehold sites given the high levels of investment required to construct a petrol filling station which will typically be in the range of £1,500,000 to £1,700,000. This approach gives long-term control of the asset. Where petrol retailers are forced to acquire sites on lease, they will generally need a term of 25 years over which to write off the investment.
 - Extraordinary Costs - Given the high costs of developing a modern petrol filling station it is essential that any extraordinary costs are identified, assessed and reflected in the development appraisal. These costs relate to such matters as the abnormal costs in constructing accesses, managing adjoining land use and associated rights, stopping up highways and diverting existing services. Where these costs are excessive a site can become unviable. Given the extensive underground works required to construct a modern service station environmental factors need to be managed within the site selection process.

8 PLANNING CONSIDERATIONS

8.1 The Appellant's Case is reviewed in the following subsections which address why the LPA's reasons for refusal of the Proposal are not substantiated, and why planning permission should be granted. It also addresses other Development Plan policies, as far as they are relevant to the reasons for refusal.

REASONS FOR REFUSAL

8.2 As aforementioned, the decision notice sets out the following two reasons for refusal:

(1) It has not been demonstrated through the submission of sufficient evidence that the Malton Livestock Market site (Horsemarket Road, Malton) which is at a much lower risk of flooding (Flood Zone 1) and sequentially preferable in flood risk terms to the application site (Flood Zone 3 (a)) is not a suitable and appropriate site to accommodate the proposed development.

(2) It has not been demonstrated through the submission of sufficient evidence that the retail sequential test has been met. The Malton Livestock Market (Horsemarket Road, Malton) is considered to be sequentially preferable to the application site in terms of it being regarded as a Town Centre site in the Published Sites Document 2018.

8.3 The Appellant appeals the LPA's reasons for refusal on the following grounds:

1. In the context of Section 38(6) of the Planning and Compensation Act 2004, the development is in accordance with the adopted Development Plan and, in the absence of material considerations that would indicate otherwise, planning permission should be granted.
2. On the basis that the Proposal is in accordance with the development plan, paragraph 11 (C) of the NPPF applies and planning permission should be granted for the Proposal without delay.
3. There are no national planning policies which indicate the Proposal should be refused.
4. The former Livestock Market site is not a suitable for a PFS and as such, the Proposal satisfies the Flood Sequential Tests.
5. There is no statutory requirement for a PFS development to undertake and satisfy a Retail Sequential Test, and in any event, the Livestock Market Site is not a suitable or viable location for a PFS.
6. The Proposal is acceptable in all other respects, delivering a range of planning benefits, and therefore should be allowed.

8.4 In addressing the reasons for refusal, the following planning matters are discussed:

- Conformity with the Development Plan;
- Flood Sequential Test;
- Retail Sequential Test, and
- Other Development Management Criteria and Planning Benefits.

CONFORMITY WITH THE DEVELOPMENT PLAN

8.5 There are no planning policies within the adopted Development Plan or emerging Local Plan which prevent the principle of the Proposal. PFS development is not directed (or restricted) to any specific location (including town centres), nor are other development types (i.e. sui

generis uses such as PFSs) excluded under the Site's proposed mixed use allocation for A1/D1 uses.

- 8.6 Secondly, the Site has been cleared of the former clothing factory and is therefore previously developed land within the built-up area of the town where national and local policy encourages new development to be directed. This is clearly demonstrated within emerging policy as well as the planning history where the LPA has previously accepted Use Classes A1, B1/B2/B8 and D1 on the Site.
- 8.7 The NPPF, at paragraph 158, outlines that the aim of a sequential test is to steer new development to areas with the lowest risk of flooding and as such, and within the following section, it confirms that that the appropriate methodology has been undertaken.
- 8.8 Paragraph 86 of the NPPF refers to main town centre uses, rather than petrol filling stations. As such, this paragraph is not applicable, but even if this was the case, the commentary below confirms that the sequential test has been appropriately addressed.
- 8.9 The Proposals is in accordance with the adopted Development Plan and there are no material considerations which indicate planning permission should be refused. As such, planning permission should approved in accordance with S38(6) of the Planning and Compulsory Purchase Act 2004.
- 8.10 There are no policies in the NPPF which would suggest planning permission should be refused. On this basis, and considering S38 (6) above and paragraph 2 of the NPPF planning permission should be approved without delay.
- 8.11 As such, redevelopment of the Site is therefore confirmed as acceptable, and in principle, a PFS (sui generis use) on the Site will accord with the Development Plan, emerging policy and national policy, and therefore planning permission should have been granted.

FLOOD RISK SEQUENTIAL TEST

- 8.12 Following scoping and agreeing the methodology with the LPA (see attached at **Appendix 21**), a Flood Risk Sequential Test was provided by the Appellant during the determination period of the Application. The conclusion of this test was that no potential alternative sites - including the Livestock Market Site (Site 442) - could be found at a lower risk of flooding that were suitable, available and deliverable and on brownfield land capable of accommodating the Proposal.
- 8.13 In terms of the Livestock Market Site, the Flood Risk Sequential Test did not consider it to be available due to it having an extant planning permission for retail development. As such, the Livestock Market Site was not considered further. This approach, in all other instances, has been considered acceptable by other LPAs, and as such Weetwood did not alter their methodology. However, Weetwood have updated their statement to take the former Livestock Market site into consideration, and this is attached at **Appendix 22**).
- 8.14 Further, the assessment below in section 7.22 and **Appendix 23** of this document confirms that the former Livestock Market Site would not be an appropriate site to accommodate a petrol filling station, and as such it cannot be considered sequentially preferable.
- 8.15 On this basis, sufficient evidence has been provided by the Appellant which confirms that the Livestock Market Site is not available or suitable for a PFS, and as such, the Proposal satisfies the Flood Risk Sequential Test in line with paragraphs 155 and 158 of the NPPF and Policy SP17 of the Local Plan Strategy.

RETAIL SEQUENTIAL TEST

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- 8.16 Within the NPPF, NPPG and local policy, it is clear that sequential testing is not applicable to PFS development as petrol filling stations are not included within the definition of town centre uses. This is a long-standing reflection of the role and nature of petrol filling stations, as set out in Section 7 of this Statement. Put simply, the location of petrol filling stations should be guided by their relationship to the highway network, rather than their relationship with existing town centres. As such, the requirement for the Application to undertake a Retail Sequential Test, as if a petrol filling station were a town centre use, is not appropriate in principle.
- 8.17 However, in the interests of collaborative working, and to provide the LPA with comfort in response to an objection from the Fitzwilliam Estate, the Appellant undertook a sequential test. In considering other sites, the exercise did not disaggregate the fuel element from the supporting forecourt sales building, as evidently the sales building would not be promoted without the accompanying fuel offer. As a result, to be “sequentially preferable” any alternative site would need to be appropriate to accommodate a petrol filling station. This approach was accepted by both the Fitzwilliam Estate and the LPA (see correspondence attached at **Appendix 12**).
- 8.18 In addition, it needs to be recognised that the former Livestock Market Site is outside current town centre boundaries within the Development Plan. Although there are proposals to amend this, the appeal site is also recognised by the local authority as being “edge of centre” in relation to Norton town centre. In these terms - against the current Development Plan - the former Livestock Market Site cannot be considered as being sequentially preferable to the appeal site in principle. On this basis, and considering paragraph 87 of the NPPF, LPA’s should give preference to accessible sites that are well connected to the town centre. Therefore, and while it is noted that the LMS is located edge of centre, the pedestrian route, via the public access from the Shambles onto Market Place, is not particularly clear or legible.
- 8.19 On the other hand, the appeal site is well connected to Norton and Malton’s Town Centre, the appeal Site is easily accessible by vehicles and pedestrians utilising the surrounding road network. The footpaths, road network and access to the appeal site allows for safe and easy identification, access and circulation.
- 8.20 However, even if the sequential test was applicable, and even if the former Livestock Market site lay within an adopted town centre boundary, the commentary below and in the report by Tim Hancock, attached in **Appendix 23** confirms that the former Livestock Market Site would not be an appropriate site to accommodate a petrol filling station, and as such it cannot be considered sequentially preferable.
- 8.21 Whilst the Committee Report states that “*Officers have considered this application carefully and obtained both expert retail advice and expert Counsel advice to ensure compliance with the relevant statutory duties and planning policy requirements*”, the LPA has not been transparent in sharing any of this advice with the Appellant at any stage. As such, to date no evidence has been presented to the Appellant which might overcome the above matters, and suggest that, contrary to the above submissions, the former Livestock Market site is appropriate to accommodate a petrol filling station.
- 8.22 In this context, there is also no policy requirement for PFSs to be located on town centre sites at the expense of others. Even if this was not the case, as confirmed below and in **Appendix 23**, the former Livestock Market site is not preferable to the Site to accommodate the Proposal.
- 8.23 On this basis, and as far as it is relevant, sufficient evidence has been provided by the Appellant which confirms that the Livestock Market Site is not available or suitable for a

PFS and that the Retail Sequential Test has been fully met. Therefore, there is no conflict with paragraph 86 of the NPPF.

LIVESTOCK MARKET SITE

8.24 The Livestock Market is not a suitable location for a petrol filling station. This section should be read alongside the Report prepared by Mr Timothy Hancock appended to this Statement at **Appendix 23** which appraises the suitability of the LMS for PFS uses.

8.25 This section addresses the planning history and gives detail to the proposed relocation of the Livestock Market. Finally, it addresses further the availability, suitability and viability of the site to be developed for a petrol filling station.

Planning History

8.26 An outline planning application (LPA Ref: 11/00412/MOUT) was submitted in April 2011 at the former Livestock Market site, for the “demolition of existing Livestock Market and associated outbuildings and re-development for retail use together with three-storey car park and public square (site area 0.9ha)”.

8.27 However, this application was refused planning permission in April 2012 on the grounds of, inter alia, the retail sequential test. The decision was appealed, and the appeal was allowed in October 2012. Costs were given to the appellant, on the basis of flaws in the local authority’s application of the retail sequential test.

8.28 Reserved matters were subsequently approved pursuant to this development in August 2015. In submissions to the Secretary of State during the examination of emerging local plan policies, it was indicated by the LPA that this permission had been partially implemented, and is therefore extant. However, there is no evidence that the proposal will be progressed, let alone completed. Further, it is unclear as to how partial implementation has been established, as there does not appear to be any evidence of certificates to this effect being granted by the local authority on its online database.

8.29 In the wider context, the following needs to be noted:

- Both retail permissions on the appeal Site (reviewed in 3 of this report) were granted in the context of the former Livestock Market site having an extant planning permission for retail development, and
- In terms of policy, the most recent planning permission for retail development on the appeal Site was granted in accordance with the local authority’s current planning policy framework, and although the 2012 NPPF was applied to both permissions, in terms of flood risk and retail sequential test there is no material difference between the 2012 iteration and the 2018 version (against which the proposal subject to this appeal was refused planning permission).

8.30 In this respect, circumstances have remained the same since planning permission was granted, twice, for retail development. Evidently, it is clear that a PFS on this site would not be in line with the LPA vision for the site as is illustrated with the permissions above and text in planning policy.

Proposed replacement Livestock Market Site

8.31 The relocation of the Livestock Market, to a new site opposite Eden Camp was granted planning permission in March 2015 (LPA Ref - 14/00426/MOUTE) as part of a wider development including a range of uses. However, while this application was approved nearly three years ago, to date no reserved matters have been submitted in respect of the livestock market element of the proposal. It is understood development has commenced in

relation to the first phase of uses within the scheme, which do not contain the proposed relocated market facility.

- 8.32 Notwithstanding the above, at a recent policy and resource committee the LPA voted to approve, in principle, to lead the development of the relocated Livestock Market. However, the LPA has commissioned an independent options appraisal report (comprised of up to two stages) to determine the viability of a relocated Livestock Market and recommend a preferred option (including not moving forward). The findings of this are yet to be published.
- 8.33 Considering the above, it is clear that the LPA are assisting with the relocation of the Livestock Market to help facilitate the redevelopment of the current LMS. However, its move to this site is still far from certain.

Suitability

- 8.34 Whilst it may physically be possible to accommodate a PFS on the site, the design would likely to be compromised. Further, the cost of development would be significant, which when compared with the reduction in passing trade, footprint and car parking spaces this makes the site unsuitable.
- 8.35 In his report appended at Appendix 23, Mr Tim Hancock Associates appraises the potential of a petrol filling station being developed on the LMS. In part drawing from this report, the following matters are relevant when considering the suitability of the former Livestock site for a petrol filling station::

- **Site configuration** - A public right of way would need to be provided east-west through the LMS on the approximate line of The Shambles so that pedestrian access to Market Place is maintained. The shape and size of the site south of The Shambles is such that it will almost certainly be necessary to compromise on how delivery vehicles are accommodated on site. Further to this, the LMS would not allow for the same level of floorspace and parking as the appeal Site and as such the offer would not be bought forward. Whilst it is acknowledged by the Appellant that there is a requirement for some flexibility to be shown by applicants in relation to format and scale when applying the sequential test, as referred to in paragraph 87 of the National Planning Policy Guidance (NPPG), this needs to be applied sensibly. It is entirely unreasonable to expect the Appellant to amend a proposal to the extent that it no longer meets their business requirement and becomes unviable.
- **Position on the strategic road network** - the former Livestock Market is fragmented by a number of minor roads providing local access - Horsemarket Road, Victoria Road, Newgate Road, Spital Street and The Shambles. Access to the nearest classified roads are immediately to the north at Newbiggin (B1257) and to the south at Yorkersgate (B1248). Spital Street, particularly in the PM peak, would be expected to experience changes in traffic flows that exceed 30% and would therefore potentially have a material effect on pedestrian amenity, particularly bearing in mind the substandard footway provision that is already in place (discussed in more detail below). Further, traffic flows are very low in absolute terms and substantially below the order of traffic flow that would be needed to support a modern service station.
- **Visibility on the strategic road network** -the former Livestock Market Site is located not only on unclassified roads, but also behind a row of commercial buildings in a town centre location. This is clearly incompatible with the fundamental need for a petrol filling station to attract the passing trade of motorists.
- **Site accessibility** - in addition to being able to serve and attract trade from the strategic road network, a petrol filling station needs to be serviced by large delivery

vehicles, not least fuel tankers. The road networking servicing the site is not sufficient. In multiple places it is not wide enough for an HGV and large car to pass. It is also clear that if an articulated lorry servicing the PFS were to arrive from or travel back to the north, the restricted nature of the junction between Newbiggin and Spital Street means that almost the entire width of Newbiggin would be needed to accommodate the required manoeuvres. As such, a fuel tanker / articulated lorry could realistically only visit the LMS from the south and as such this limits the developable area to land south of The Shambles.

- **Utilities** - considering the above, it would be necessary to stop up Spital Street. It is not known what utilities plant currently runs under the site along Spital Street (or under the rest of the site). Bearing in mind the need to accommodate underground tanks and to limit wayleaves through the site, it may be necessary to relocate any existing utilities, which would have further cost implications impacting on viability.
- **Footpath** - The footway provision on Spital Street is intermittent and there is not a continuous footway on both sides, with gaps occurring on both sides for significant lengths of the street. Where footways are available, they are generally below the recommended 2m in width and in many locations are below 1.5m, which is the minimum width recommended to allow two pedestrians to pass without having to step into the carriageway. Bearing in mind the increase in traffic that would occur on Spital Street with the introduction of a PFS and the fact that the convenience retail use may attract trips on foot from the local catchment area, the lack of adequate footway widths is a concern.
- **Listed buildings** - There are a number of listed buildings within the vicinity of the LMS, including The Spotted Cow Public house (Grade II) which is located at the junction of the Shambles and Spital Street, number 11 Mount Road (Grade II) and 1 and 1A Victoria Road (Grade II). As such, development at the LMS, for a modern petrol station including a forecourt sales building, pump islands and canopy, will evidently cause harm to the setting of the designated heritage assets. As a consequence of the constraints referenced above, development would have to be contained south of The Shambles, across the two plots of land either side of Spital Street, and as such immediately adjacent to three Grade II listed buildings.
- **Air quality** - the former Livestock Market Site is within close proximity to the Malton AQMA (and closer than the appeal site). In this context, and considering the traffic data, it is not a suitable site for a petrol filling station.

8.36 As such, and considering the above, the LMS is considered by the Appellant to be unsuitable for a petrol filling station.

Availability

8.37 Notwithstanding that the representatives of the LMS owners indicated that they would be open to negotiations in terms of accommodating a petrol filling station, this offer was made in a second round of representations objecting to the Proposal. Specifically, it was made after Rapleys had responded to the LMS owner's initial representations confirming that - regardless of the merits of applying the sequential test in this case or any other matter - no indication had been given that the LMS was available.

8.38 Further, given the LMS owner's long term aspirations for "high quality" retail development on the LMS, to the point (it is understood) that a permission was partially implemented to allow it to be completed in perpetuity, this offer of a leasehold agreement is not credible. Instead, the offer appears to have been made as a tactic to resist the Proposal coming forward on the appeal Site.

8.39 Even if this were not the case, the offer was made on the basis of a leasehold interest being offered. Petrol Filling Stations Developers generally prefer to acquire freehold sites to secure long term strategic locations given the very substantial investments required in developing large modern facilities. Whilst petrol retailers will consider leases in some circumstances these will need to be of the order of 25 years in length and will only be considered for the very best sites with direct access to very strong traffic flows. Consequently, in practice the number of new to industry ground rent leases taken in the UK is currently very small.

The alternative development potential of the former Livestock Market Site

8.40 Beyond matters of availability and suitability, both the LMS owner and the LPA have clear aspirations for development other than a petrol filling station on the LMS.

8.41 The LMS owner secured outline planning permission for a “high quality” retail development at the LMS through appeal at public inquiry, and subsequently ensured that reserved matters details were approved and - it is understood - partially implemented the consent in order to allow for its completion in perpetuity. Further, it is understood it successfully challenged the LPA’s decision to grant planning permission for development including retail floorspace at the Wentworth Car Park site. The accommodation of a petrol filling station at the former Livestock Market Site would evidently be at odds with the site owner’s substantial work to date in promoting retail development at the LMS.

8.42 In addition, within the local authority’s emerging Local Plan Sites document, the former Livestock Market Site has been designated as a retail commitment, and it is recognised as a “key development opportunity” for contributing to majority of non-food retail space (together with other mixed use commitments) in the district. This is reflected further in the Livestock Market Site’s proposed inclusion within the ‘Town Centre Commercial Limits’, confirming that it is key to the local authority’s aspirations to expand the town centre. Further, if the examining inspector agrees to the Local Authority’s request to remove the appeal Site as a retail commitment in emerging policy, this will result in the former Livestock Market Site being the only site in the district identified as being suitable to accommodate anticipated retail growth. In this context, the introduction of a petrol filling station would evidently have the potential to prejudice this vision.

8.43 Even if the retail development committed at the LMS, and the expansion of the town centre, proves to be commercially unviable, its proximity to the town centre would make it a sustainable location for more appropriate development, for example residential development to take pressure of land that is currently outside settlement boundaries.

Summary

8.44 In this context the former Livestock Market Site:

- Cannot credibly be confirmed as being genuinely available, and in any event the Appellant could not justify the development commercially based on a leasehold interest;
- It is unsuitable, and by extension unviable, for a petrol filling stations on the basis of a range of matters, and
- The LMS has been, and remains, the subject of longstanding aspirations to accommodate the growth of Malton town centre, and a petrol filling station on the site would clearly undermine this.

OTHER DEVELOPMENT MANAGEMENT CRITERIA AND PLANNING BENEFITS

8.45 The Appellant has proactively responded to all other LPA and consultee comments to ensure the Proposal is acceptable against the following development management considerations (as set out within the Committee Report):

- Air quality;
- Appearance, design and siting;
- Archaeology;
- Biodiversity and ecology;
- Contamination;
- Designing out crime;
- Drainage;
- Flood Risk;
- Ground Water;
- Highways;
- Residential amenity, and
- Setting of and views into Norton Conservation Area.

8.46 In this context the Proposal is acceptable in all planning aspects, as also confirmed in the Officers report to committee.

8.47 Before turning to conclusions, it is also essential to recognise the intrinsic planning benefits that the Proposal will bring, which further establish the proposal as “sustainable development” in the context of the NPPF, and its presumption in favour of such development at paragraph 10:

ECONOMIC

8.48 As demonstrated in the supporting documentation submitted as part of the Application, the Proposal have taken into consideration local design, highways and the environmental to deliver significant visual enhancements and improvements to a vacant and underused brownfield site.

8.49 As outlined above at paragraph 7.2, Petrol Filling Stations require substantial upfront costs and as such illustrate a substantial investment in the local community. A global business such as BP will provide not only a quality redevelopment of a currently vacant site which will benefit the local community, but also BP will provide substantial employment opportunities for the local community.

8.50 Specifically for this Proposal, and notwithstanding the employment generated by the construction of the Site, BP will provide an additional 20-30 quality and secure jobs for the local community. BP is a global business who will provide secure and stable employment across a range of employment opportunities.

8.51 Overall, the redevelopment of the Site will provide additional economic benefits for the local community while also improving the visual impact of the current derelict and overgrown site.

ENVIRONMENTAL

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- 8.52 It has been agreed with by the LPA that the Proposal positively minimises the potential for impacts on the local watercourse and further River Derwent SAC.
- 8.53 The Environment Agency considered the application and had no concerns in relation to the impact on ground waters and potential contamination. Through extensive design and engineering the site will improve the overall environmental benefits in terms of drainage and flooding. There will be a net benefit to the local area in terms of flood water storage and as such the likelihood of flooding within the area immediately adjacent to the site will be reduced.
- 8.54 Overall, the Proposal will allow for the site to be redeveloped in a sympathetic manner, which not only doesn't impact on surrounding development but also improves the current situation wherever possible i.e. surrounding flood risk.
- 8.55 Further to the above, the construction of the Site includes the most up-to-date construction methods which include:
- Double wall steel storage tanks with high build epoxy anti-corrosion coating to external surface. The tanks conform to EN12285 and are tested at works. Interstitial space monitored using class 1 leak detection in accordance with EN 13160-2. An active pressure monitoring system is used. A failure of the inner wall will result in pressure loss to the internal tank and an alarm.
 - Pipe work follows a similar design to above in which there a multiple design methods which ensures a fail safe operation.
 - Specific drainage around tanker stand and offset fill area taking any spills to class 1 (10300 litre) full retention interceptor with shut off valve, sampling chamber and oil level alarm. Drainage from the remainder of the forecourt runs through gullies and channels to the same class 1 full retention interceptor. From here, and once safe to do so, an interceptor drains to a foul sewer.
 - BP is committed to providing a safe working environment for their staff and customers', ensuring their safety while at their sites is at the forefront of BP's model. Likewise, being a responsible neighbour and making sure that all risks are minimised to surrounding communities is important to BP. This is evident by the quality of the development and construction proposed.

SOCIAL

- 8.56 The Proposal will involve bringing back into use a long standing vacant and underused site through delivering a welcoming and visually appealing development that makes efficient use of land.
- 8.57 The design proposed was progressed through extensive communication with the LPA and adopts similar design principles as neighbouring development, such as an outer brick design with pitched slate roof at both the canopy and forecourt sales building. This approach has been agreed as acceptable by the LPA. The committee reports notes 'It is considered that Officers have secured an acceptable design solution that respects the surrounding context of development, including views into and out of the Conservation Area.'
- The Proposal will address the current lack of suitable PFS provision within the locality. As such, the redevelopment will meet the modern needs and expectations of existing passing motorists, whilst substantially contributing to the local employment and economy throughout the construction and operational phases.
- 8.58 **The Proposal therefore accords with the three overarching objectives - economic, social and environmental - of sustainable development, as set out in the NPPF.**

9 CONCLUSION

- 9.1 This Appeal has been submitted in response to the LPA's refusal of planning permission for the redevelopment of land at 5 Welham Road, Norton, Malton, North Yorkshire for a new PFS development (LPA Ref: 17/01249/FUL).
- 9.2 In the context of s.38(6) of the Planning and Compensation Act 2004, the Proposal is in accordance with the Development Plan, as well as other material considerations the NPPF and the LPA's emerging local policies. Further, given that the Proposal is in accordance with the Development Plan, the NPPF confirms that planning permission should be granted without delay.
- 9.3 The Proposal therefore constitutes appropriate development at the Site and should be further supported for the following reasons:
- The Site is previously developed land and has long been vacant, in an accessible and sustainable location within the built up area where the recycling of land in the first instance is encouraged in policy.
 - There is no policy basis that prevents the principle of a sui generis PFS development at the Site, which has previously had a range of land uses (including retail) consented by the LPA.
 - Flood Risk and Retail Sequential Tests were undertaken by the Appellant (with the methodology of the former having been scoped and agreed with the LPA). In approaching the Retail Sequential Test, the PFS element was not disaggregated from the forecourt sales building which was accepted by the LPA and WYG. Subsequently, both tests and the further supporting evidence submitted to the LPA conclude that the Livestock Market Site is not available, and that even if it was, it would not be suitable or viable for the Proposal.
 - All development management considerations have been satisfied, and can if necessary be appropriately mitigated, as confirmed in the Committee Report. The Proposal is therefore acceptable in all planning aspects.
 - The Proposal is in accordance with national and local policy and as such planning permission should be approved without delay in accordance with paragraph 11 of the NPPF.
 - The Proposal will bring a range of economic, social and environmental benefits to deliver a sustainable development in Norton.
- 9.4 In light of the above, the Proposal has been demonstrated to be consistent with the relevant planning policies and guidance at both the national and local level, and should be considered acceptable.
- 9.5 It is respectfully requested that that this Appeal is allowed.