

Planning Advice on Behalf of
Ryedale District Council

5 Welham Road, Norton, Malton, North
Yorkshire (LPA Ref. 17/01249/FUL)

ELG

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APPENDICES

Appendix 1 DCP Extract

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1. INTRODUCTION

1.1 This advice note has been prepared on behalf of Ryedale District Council to provide an independent review of the supplementary information submitted by the appellant to address the requirements of the retail and flood risk sequential tests in relation to the submitted S.78 Planning Appeal against the refusal of planning permission for the erection of a petrol filling station with forecourt shop at Welham Road, Norton (LPA Ref. 17/01249/FUL).

1.2 The planning application was registered by Ryedale District Council on 1st December 2017 with the following description of development:

'Erection of petrol filling station with forecourt shop sales building, canopy, car parking, 3 No. 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'

1.3 During the course of the application, further justification was requested in relation to the sequential assessment following concerns raised by Officers and within objections submitted on behalf of the Fitzwilliam Estate. These concerns focused primarily on the suitability of the Malton Livestock Market Site to accommodate the proposed development. However, insufficient additional justification was submitted by the applicant to address Officers stated concerns in this regard. The application was subsequently taken to Planning Committee on 1st August 2018 and was refused, in line with Officer recommendation, for the following reasons:

- i. 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 3a) is not a suitable and appropriate site to accommodate*

the proposed development. Consequently, the flood risk sequential test required by Paragraph 101 of the National Planning Policy Framework 2012 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 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 101 of the NPPF.

- ii. 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 Site is not suitable or available for the development proposed. Consequently, the proposed development is contrary to the requirements of Paragraph 24 of the National Planning Policy Framework 2012.*

1.4 The applicant has now therefore submitted a S.78 Planning Appeal against the refusal of planning permission, which is accompanied by further justification to demonstrate that the Livestock Market Site is not suitable to accommodate the proposed development, including a commercial appraisal of the Livestock Market Site to accommodate a petrol filling station development.

1.5 The purpose of this advice note is to therefore advise Officers as to whether the additional supporting justification is sufficient to address the stated reasons for refusal relating to the flooding and retail sequential tests. It should be noted that the revised version of the National Planning Policy Framework has been published since the determination of the application and this updated policy guidance will be taken into account within this advice note.

2. SITE CONTEXT & PROPOSED DEVELOPMENT

Site Context

2.1 The site lies to the eastern edge of Welham Road approximately 200m to the south west of the defined Norton Town Centre boundary. The site extends to 0.52 hectares and was formerly occupied by the Dewhirst Clothing Factory. The former three-storey factory buildings have now been cleared and the site is largely overgrown with vegetation.



Figure 2.1: Site Location

2.2 The southern boundary of the site adjoins Spring Field Garth and is bound to the north and east by residential properties on St Nicolas Street, as well as KM Car Sales, which lies at the junction of Welham Road and St Nicolas Street. Welham Road forms the western boundary of the site beyond which lie two-storey terraced residential properties fronting the highway and a Lidl supermarket.

Proposed Development

2.3 The appeal proposals relate to the provision of a petrol filling station with forecourt shop sales building, canopy, car parking, 3 No. 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.

2.4 The proposed development will be served by a new access point from Welham Road and the fuel tanks and associated canopy will be located towards the front (west) of the site. The forecourt shop

will have a total GIA of 495 sq.m and will be located towards the rear of the site. A servicing area with associated delivery bay, bin store and trolley storage compound will be located to the rear of the retail unit. A total of 35 car parking spaces will be located to the front and side of the retail unit, with a further 4 spaces located towards the Welham Road frontage of the site.

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3. RETAIL SEQUENTIAL TEST

Introduction

- 3.1 Paragraph 86 of the NPPF confirms 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.
- 3.2 Paragraph 87 advises that, 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 LPAs 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.
- 3.3 Annex 2 of the NPPF defines main town centre uses as follows:
- '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).'*
- 3.4 The appellants contend within the submitted Statement of Case prepared by Rapleys that *'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.'* We therefore consider in the first instance whether there is a requirement to apply the retail sequential test in assessing the current proposals.

Is there a Requirement to Demonstrate Compliance with the Retail Sequential Test?

- 3.5 It is acknowledged that the appeal proposals involve the erection of a petrol filling station, which would not fall within the definition of main town centre uses contained at Annex 2 of the NPPF. However, the scheme includes the provision of a forecourt shop with a total GIA of 495 sq.m, which would be operated by M&S. **Appendix 1** contains an extract from Development Control Practice, which highlights a number of previous appeal cases where it was established that forecourt shops would not be ancillary to fuel sales and would be destinations in their own right and, accordingly, the main town centre use policy tests would be applicable.
- 3.6 In this instance, the proposals include an M&S forecourt retail unit with a total GIA of 495 sq.m. By way of comparison, convenience foodstore units operated by national retailers that we have been involved with across the Country (e.g. Tesco Express, Sainsburys Local, Co-Operative) generally have a GIA of approximately 372 sq.m (4,000 sq.ft). The submitted plans also show the provision of 35 car parking spaces to the front and side of the retail unit. In view of the nature and scale of the proposed retail unit and the associated level of car parking, we are of the opinion that it would not remain ancillary to the fuel sales element and would be a shopping destination in its own right. On this basis, we are of the opinion that the key retail policy tests outlined within the NPPF would be applicable in this instance.

Sequential Test Considerations

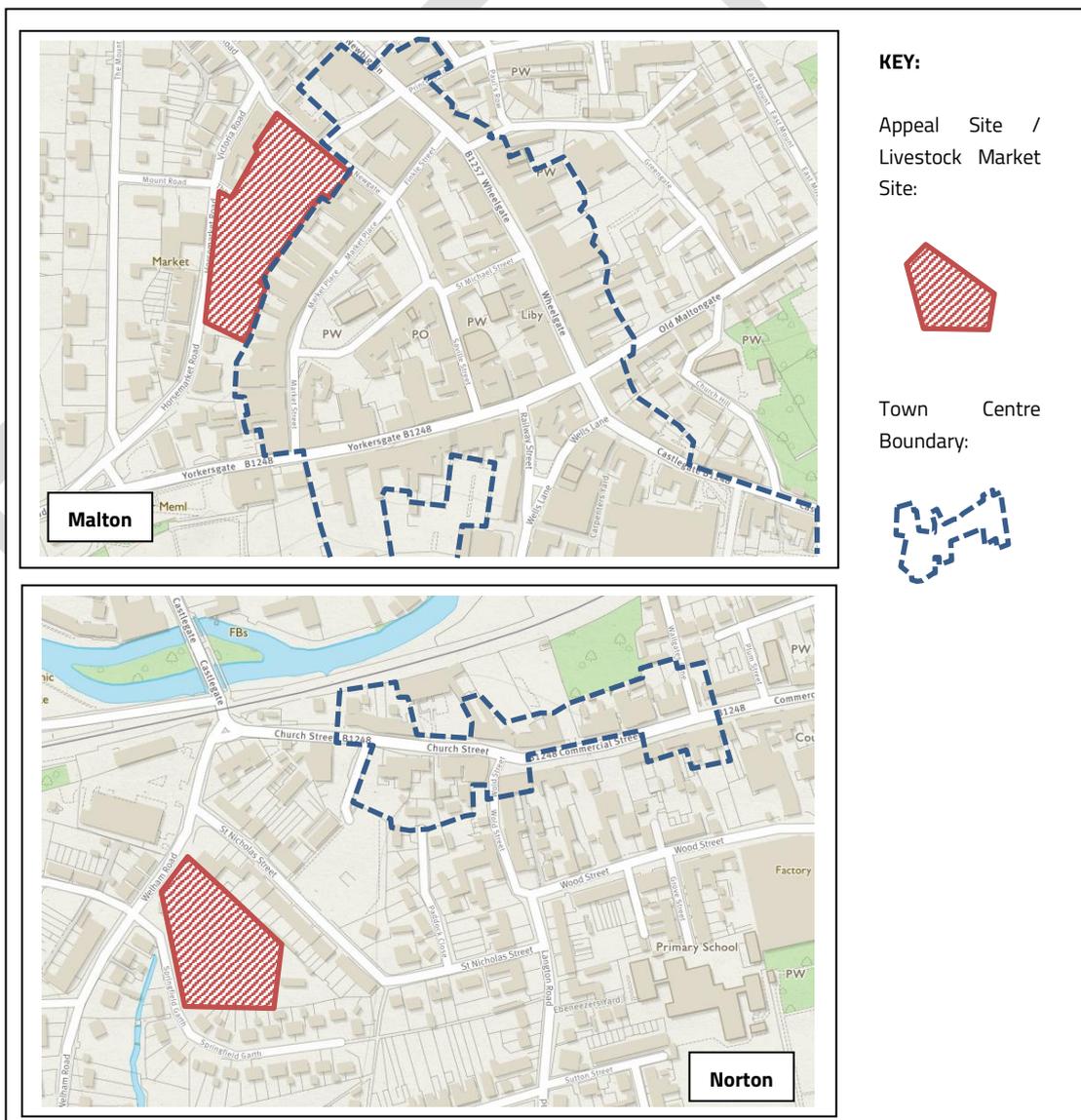
Locational Status of Appeal Site and Malton Livestock Market Site

- 3.7 The Appeal Statement submitted on behalf of the appellant contends that:

'...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 sequentially preferable to the appeal site in principle.’

3.8 The appeal site lies approximately 200m from the western edge of Norton Town Centre boundary following Welham Road and Church Street. The Livestock Market site lies outside but adjacent to the defined boundary of Malton Town Centre and the location of the respective sites relative to the town centre boundaries are illustrated in the figure contained below:



3.9 The appeal site and Livestock Market Site are therefore both edge-of-centre locations having regard to the definition contained at Annex 2 of the NPPF. However, Paragraph 87 of the NPPF advises that, when considering edge-of-centre and out-of-centre proposals, preference should be given to available sites which are well-connected to the town centre. In this case, it is evident that the appeal site, whilst being edge-of-centre, is separated from Norton Town Centre, whereas the Livestock Market Site directly abuts the north western edge of Malton Town Centre and any development on this site would therefore clearly form a logical extension to the town centre, as has been acknowledged by previous Inspectors. On this basis, we are of the opinion that the Livestock Market Site should be regarded as a sequentially preferable location to the appeal site.

3.10 In light of these findings, it is necessary to assess whether the Livestock Market Site is suitable and available to accommodate the proposed development having regard to guidance contained within the NPPF, National Planning Practice Guidance (NPPG) and key case law relating to the application of the sequential test. It is understood that it is common ground between the main parties that there are no other suitable and available sites that could potentially accommodate the proposed development and, as such, this advice focuses solely on the Livestock Market Site.

Application of the Sequential Test

3.11 NPPG provides guidance on the application of the sequential test and confirms that it is for the applicant to demonstrate compliance. NPPG also sets out the following checklist of considerations that should be taken into account in determining whether a proposal complies with the sequential test:

- With due regard to the requirement to demonstrate flexibility, has the suitability of more central sites to accommodate the proposal been considered? Where the proposal would be located in an edge-of-centre or out-of-centre location, preference should be given to

accessible sites that are well-connected to the town centre. Any associated reasoning should be set out clearly.

- Is there scope for flexibility in the format and / or scale of the proposal? It is not necessary to demonstrate that a potential town centre or edge-of-centre site can accommodate precisely the scale and form of development being proposed, but rather to consider what contribution more central sites are able to make individually to accommodate the proposal.
- If there are no suitable sequentially preferable locations, the sequential test is passed.

3.12 There have been a number of Court judgement and Secretary of State (SoS) / appeal decisions since the publication of the original NPPF in March 2012 that have provided clarification of the application of the sequential test:

Suitability

3.13 Key case law in terms of to what extent an alternative site is considered suitable is provided by the *Tesco Stores Limited v Dundee City Council [2012] UKSC13* judgement. The judgement established that for a site to be considered suitable for the purposes of the sequential test, it must meet the commercial requirements of the development. In respect of the size of an alternative, provided that applicant has demonstrated the requisite flexibility, the question is:

'...whether an alternative site is suitable for the proposed development, not whether the proposed development can be altered or reduced so that it can be made to fit the alternative site.'

(Paragraph 29)

3.14 Paragraph 38 of the Dundee judgement considers the issue of suitability as follows:

'...the issue of suitability is directed to the developer's proposals, not some alternative scheme which may be suggested by the planning authority. I do not think that this is in the least surprising, as developments of this kind are generated by the developer's assessment of the market he seeks to serve. If they do not meet the sequential approach criteria, bearing in mind the need for flexibility and realism to which Lord Reed refers in para 28 above, they will be rejected. But these criteria are designed for use in the real world in which developers wish to operate, not some artificial world in which they have no interest in doing so.'

(Paragraph 38)

3.15 The subsequent Rushden Lakes SoS decision (APP/G2815/V/12/2190175) relating to a retail-led mixed use development acknowledged that the *Dundee* judgement is of 'seminal importance' and is clear that, if a site is not suitable for the commercial requirements of the developer in question then it is not a suitable site for the purposes of the sequential approach; and that, in terms of the size of the alternative site, provided that the applicant has demonstrated flexibility with regards to format and scale, the question is whether the alternative site is suitable for the proposed development, not whether the proposed development could be altered or reduced so that it can be made to fit the alternative site. The Rushden Lakes decision also recognised that there was no suggestion within Paragraph 24 of the NPPF that the sequential test means to refer to anything other than the application proposal.

3.16 The subsequent *Aldergate Properties Ltd v Mansfield District Council* [2016] judgement provides further clarification on the meaning of 'suitable' and 'available' for the purposes of applying the sequential test:

'...it was held that "suitable" and "available" generally mean "suitable" and "available" for the broad type of development which is proposed in the application by approximate size, type and range of goods. This incorporates the requirement for flexibility in NPPF paragraph 24, and excludes, generally, the identity and personal or corporate attitudes of an individual retailer.'

The area and sites covered by the sequential test search should not vary from applicant to applicant according to their identity, but from application to application based on their content.'

Disaggregation

- 3.17 The Rushden Lakes decision also gave consideration to the need to consider disaggregation in undertaking the sequential test and it was concluded:

'Had the Government intended to retain disaggregation as a requirement it would and should have explicitly stated this in the NPPF. If it had been intended to carry on with the requirement, then all that would have been required is the addition of the word "disaggregation" at the end of NPPF [24]'

- 3.18 However, an appeal decision at Tollgate Village in Colchester in relation to proposals for a mixed-use development comprising leisure uses, including a cinema and retail (Use Classes A1, A2, A3, A4 & A5) also considered the requirement for disaggregation. Extracts from the Inspector's Decision Letter on this issue are set out below:

'Under disaggregation, or sub-division, the proposal would be split into smaller parts spread over a number of sites in, and on the edge of, Colchester Town Centre. The Appellant maintains that a development split into several disparate parts does not amount to approximately the same size or type of development but that depends on the circumstances of the case.'

(Paragraph 12.3.9)

'The extent of flexibility should not be constrained by policy or guidance, and there is nothing in the PPG that suggests subdivision is not to be considered. Indeed, subdivision was considered in the Dundee case itself. There will be cases where subdivision is not appropriate, both Rushden Lakes and Scotch Corner conclude that disaggregation is not required to demonstrate

flexibility. In Scotch Corner, the proposal was a Designer Outlet Centre whose business model requires units of a certain scale and which is tightly controlled by conditions to be different from ordinary Town Centre development. In Rushden Lakes there was a strong development plan justification for a critical mass of units.'

(Paragraph 12.3.10)

'In this case there is no evidence that the proposed format is necessary or fundamental to the proposal. Whilst the proposal is in outline, not a single retailer has been identified, and the size and location of units within the site has not been established and there is no defined timescale or phasing. It is difficult to conceive of a more open-ended proposal. The parameters established by the plans show a greater level of gross floorspace than permission has been sought for. Most importantly, the Appellants have themselves disaggregated within the appeal site with three distinct zones. DZ1 and DZ3 are some distance apart. In these circumstances disaggregation within the sequential test would be justified.'

(Paragraph 12.3.11)

- 3.19 A further Inspector in relation to a recent appeal decision at Kingswood, Hull also considered the issue of disaggregation and relevant extracts from the Decision Letter are again set out below:

'The English PPG wording "to consider what contribution more central sites are able to make individually to accommodate the proposal" could refer either to the accommodation of the appeal proposal on only one alternative central site or it could allow for the contribution of more than one site towards accommodating parts of the proposal if it is capable of sub-division. The phrase "to accommodate the proposal" would seem to favour the former interpretation.'

(Paragraph 52)

'I acknowledge that the Inspector concluded in the Rushden Lakes appeal report and Scotch Corner appeal report that there is no requirement in national policy to disaggregate. However, the issue was again considered in the very recent Tollgate appeal report. There the Inspector concluded that in the circumstances of that case disaggregation within the sequential test would be justified. He contrasted that scheme with the Rushden and Scotch Corner developments where there were specific reasons why disaggregation would have been more difficult. The Inspector also pointed out that "sub-division" was also considered in the Dundee case. I acknowledge that the Secretary of State did not himself refer to disaggregation in his Tollgate decision but neither did he explicitly disagree with the Inspector's approach.'

(Paragraph 56)

- 3.20 A subsequent Call-In Inquiry Decision relating to a retail-led mixed-use development at Cribbs Causeway, Gloucestershire (APP/PO119/V/17/3170627) further considered the scope for disaggregation and the appointed Inspector made reference to the aforementioned Tollgate Village and Kingswood decisions, as follows:

'There was debate at the inquiry about whether the proposals should be split into different parts so that they can be accommodated on several town centre sites. Whereas past retail policy and guidance has adopted a disaggregation approach this is not embodied in either the Framework or the PG as was confirmed by the Court of Appeal in Warners Retail. The Secretary of State reached a similar conclusion in his decisions on Rushden Lakes, Scotch Corner and Honiton Road. Whilst the Inspector in the Kingswood, Hull appeal decision did endorse a disaggregated approach this seems to have been influenced by a wording of the relevant policy and the availability of two allocated sites.'

'In the Tollgate Village case the Inspector did consider that there was scope for disaggregating the proposals and spreading them onto different sites, even though ultimately such sites were found not to be available. However, the findings here were case specific and it is noted that

they were not specifically endorsed by the Secretary of State in his decision. As a general principle, an approach that involves disaggregation does not seem to me to fit well with the Aldergate Properties or Warners Retail judgements referred to above. The town centre uses in the application proposals would comprise the retail and leisure uses and to divide them up would change the broad nature of the development in this case.'

- 3.21 It is also noted that the revised version of the NPPF was published in July 2018 and does not make any specific reference to the need to consider disaggregation in carrying out the sequential test. It merely requires applicants to demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre and edge of centre sites are fully explored.
- 3.22 On this basis, it is considered that the disaggregation of the scheme would sit uncomfortably with case law and key decisions by the Secretary of State and therefore there is no requirement to consider the scope for disaggregation. The sequential test should be undertaken for the proposal as a whole, notwithstanding that some flexibility in terms of format and scale is required. It is acknowledged that particular circumstances may arise, such as an adopted Development Plan policy, that requires disaggregation to be considered in order to satisfy the sequential test. However, there is no such policy in this instance or any other circumstances that would require the scope for disaggregation to be considered. On this basis, we would accept that there is no requirement to disaggregate the proposed development in undertaking the sequential test and it is noted that this is accepted by the main parties.

Availability

- 3.23 In terms of availability, Paragraph 8.55 of the Rushden Lakes Inspector's Report states '*NPPF [24] simply asks whether town centre or edge of centre sites are "available." It does not ask whether such sites are likely to become available during the remainder of the plan period or over a period of some years.'*

However, the revised version of the NPPF has included a requirement for sites that are expected to become available within a reasonable period to be considered in undertaking the sequential test.

Is the Livestock Market Site Available to Accommodate the Proposed Development?

- 3.24 The Livestock Market Site lies to the north western edge of the town centre and outline planning permission was granted in October 2012 at appeal for the *'demolition of existing Livestock Market and associated outbuildings and redevelopment for retail use together with three-storey car park and public square (site area 0.9ha).'* Reserved Matters approval was subsequently granted by the LPA in August 2015 and it is understood that the consent has been partially implemented.
- 3.25 The site has also been designated as a retail commitment within the emerging Local Plan Sites document, which confirms that the Livestock Market Site currently accounts for quantitative food retailing. The emerging Local Plan also suggests that the Livestock Market Site together with new retail space at Kings Head Yard, Malton and the ancillary retail element of the Malton Agri-Business Park scheme account for the majority of the non-food retailing space (circa 4,500 sq.m) which the LPS directs to the Principal Town.
- 3.26 The site in question therefore benefits from planning permission for retail development and an emerging Local Plan designation for such use. The existing landowner has also indicated a willingness to make the site available for a petrol filling station development. It is understood that the Livestock Market is still operational on the site, although, at this stage, it is considered feasible that at least part of the site could be made available within a reasonable timeframe based on the representations made, although Officers may wish to consider this matter in further detail based on their local knowledge and understanding of the existing Livestock Market operation and prospective relocation.

Is the Livestock Market Site Suitable to Accommodate the Proposed Development?

- 3.27 The Livestock Market Site abuts the defined boundary of Malton Town Centre and the redevelopment of the site for retail use has previously been accepted. The site has been identified as a retail commitment within the emerging Local Plan Sites Document, which confirms that the Livestock Market Site currently accounts for quantitative food retailing. The emerging Local Plan also suggests that the Livestock Market Site together with new retail space at Kings Head Yard, Malton and the ancillary retail element of the Malton Agri-Business Park scheme account for the majority of the non-food retailing space (circa 4,500 sq.m) which the LPS directs to the Principal Town. Moreover, the Local Plan Strategy recognises that the Livestock Market Site provides a key development opportunity in a location which immediately abuts the existing Town Centre and within the 'Northern Arc' – the stretch of land around the Town Centre which the plan recognises as having potential to accommodate further town centre uses, including new retail space.
- 3.28 We would question whether the redevelopment of part of the Livestock Market Site for a petrol filling station and forecourt retail unit would be consistent with the aspirations for this key development site and the overall strategy to provide improved shopping to ensure choice for food retailing and non-food shops, particularly fashion shops outlined within the adopted and emerging Local Plan documents and this is therefore a matter that Officers may wish to give further consideration.
- 3.29 Notwithstanding this, it is common ground between the main parties that the Livestock Market Site is of sufficient size to accommodate the proposed development in physical terms. However, as outlined above, previous case law has established that if a site is not suitable for the commercial requirements of the developer in question then it is not a suitable site for the purposes of the sequential approach. The appeal submission is accompanied by an appraisal of the potential of the Livestock Market Site to accommodate a petrol filling station use carried out by Tim Hancock Associates, who '*specialise in the acquisition, assessment and valuation of petrol filling stations and service areas throughout the UK.*' The appraisal highlights the following fundamental issues that mean

there is not any reasonable commercial prospect of the site being developed as a petrol filling station in their opinion:

- The site does not have access to the required level of traffic flow needed to justify the high levels of investment need to construct a service station. Passing traffic flows are substantially below the minimum reasonable threshold that could be considered necessary to support a service station development.
- The surrounding road network is narrow and likely to be interrupted by local deliveries and the general business of the town centre. It is not considered that it would be attractive to motorists to detour to the Livestock Market Site.
- The likelihood of extraordinary costs in dealing with the stopping up of highways, likely diversion of services and modification of third-party rights would make it unattractive to a petrol filling station.

3.30 We would accept that a use of this type will require a prominent roadside location with a high volume of passing traffic to meet the commercial requirements of petrol retailers. The main vehicular routes into Malton Town Centre are Newbiggin from the north; York Road from the west; Old Malton Road from the east and Castlegate from the south. Horsemarket Road and the wider road network immediately surrounding the appeal site are considered to be more secondary routes. The appraisal prepared by Tim Hancock Associates suggests that petrol filling stations would generally seek a flow of between 10,000 – 15,000 vehicles per day, whereas the Technical Note appended to the appraisal prepared by Markides Associates has indicated daily traffic flows of only 3,726 vehicles on Horsemarket Road. In addition, the Committee Report refers to traffic count figures from July 2017 obtained from NYCC Highways confirming 25,448 weekly daily movements at a location 25m to the south of the Spittal Street junction and the cattle pens on Horsemarket Road. We fully accept that a petrol filling station use will require a prominent roadside location with a high volume of passing traffic and we are persuaded by the appellant's case that there is an insufficient volume of vehicular

traffic on the road network surrounding the Livestock Market Site to meet the commercial requirements of petrol retailers.

- 3.31 The Livestock Market Site abuts the defined town centre boundary, however, the majority of the site lies behind a row of terraced commercial properties fronting Market Place. Whilst the site is visible on Horsemarket Road, this is a secondary route within the town centre and it is accepted that there would be limited visibility of any petrol filling station facility in this location from the wider road network, including the primary routes into the town centre. We are therefore again persuaded by the appellant's suggestion that the site lacks sufficient prominence to attract passing trade and would not therefore meet the commercial requirements of petrol retailers.
- 3.32 The appraisal prepared by Tim Hancock Associates suggests that not all of the land comprising the Livestock Market Site would be required to accommodate the development and, in their experience, developers of sites do not seek to acquire more land than is necessary for the delivery of their preferred scheme since this invariably complicates the property transaction. However, it is considered, in theory, that a deal could be reached with the landowner to acquire part of the site and, as such, at this stage we do not consider that the fact that the Livestock Market Site is larger than would be required by the developer of a petrol filling station would, in itself, render the site unsuitable.
- 3.33 The appraisal also highlights concerns over the potential need for stopping up of highways and associated land ownership issues, which may prejudice the delivery of a petrol filling station scheme on the site. However, it is noted that the comprehensive redevelopment of the site for retail use has previously been approved and, whilst this scheme has not yet been delivered, it is considered at this stage that any such issues could potentially be resolved subject to further evaluation.
- 3.34 It is also noted that the site lies adjacent to the Conservation Area boundary and in close proximity to a number of listed buildings. However, the Committee Report confirms that *'Officers do not see*

this [nearby heritage assets] as a reason why in principle the development could not be located on the LMS. A carefully and sensitive scheme would need to be prepared but this is not considered to be unduly challenging.'

3.35 Having regard to the above assessment, we are persuaded that the supplementary information prepared on behalf of the appellant satisfactorily demonstrates that the Livestock Market Site is not suitable to accommodate a petrol filling station development, primarily due to an insufficient volume of traffic on the surrounding road network and its lack of visibility from the primary road network within Malton. We have also sought to question whether the redevelopment of part of the Livestock Market Site for a petrol filling station and forecourt retail unit would be consistent with the aspirations for this key development site and the overall strategy to provide improved shopping to ensure choice for food retailing and non-food shops, particularly fashion shops outlined within the adopted and emerging Local Plan documents and this is therefore a matter that Officers may wish to give further consideration.

Impact Considerations

3.36 It is accepted that the proposed level of retail floorspace falls below the threshold for assessing impact and such matters would not therefore form a reasonable basis for withholding planning permission and, indeed, no such reasons were given by the LPA.

Summary

3.37 In summary, given the nature and scale of the proposed retail unit and the associated level of car parking, we are of the opinion that it would not remain ancillary to the fuel sales element and would be a shopping destination in its own right. On this basis, we are of the opinion that the key retail policy tests would be applicable in this instance despite the contentions of the appellant. Moreover,

we are satisfied that the Livestock Market Site should be regarded as a sequentially preferable location to the appeal site.

- 3.38 However, ultimately, we are persuaded that the supplementary information prepared on behalf of the appellant satisfactorily demonstrates that the Livestock Market Site is not suitable to accommodate a petrol filling station development, primarily due to an insufficient volume of traffic on the surrounding road network and its lack of visibility from the primary road network within Malton. We have also sought to question whether the redevelopment of part of the Livestock Market Site for a petrol filling station and forecourt retail unit would be consistent with the aspirations for this key development site and the overall strategy to provide improved shopping to ensure choice for food retailing and non-food shops in Malton, particularly fashion shops outlined within the adopted and emerging Local Plan documents and this is therefore a matter that Officers may wish to give further consideration.

4. FLOOD RISK SEQUENTIAL TEST

4.1 The appeal site lies within Flood Zone 3a, as shown on the adjacent EA Flood Map extract, and it has been confirmed during the course of the application that the proposed use is *'less vulnerable'* in line with the flood risk classifications contained within NPPG.

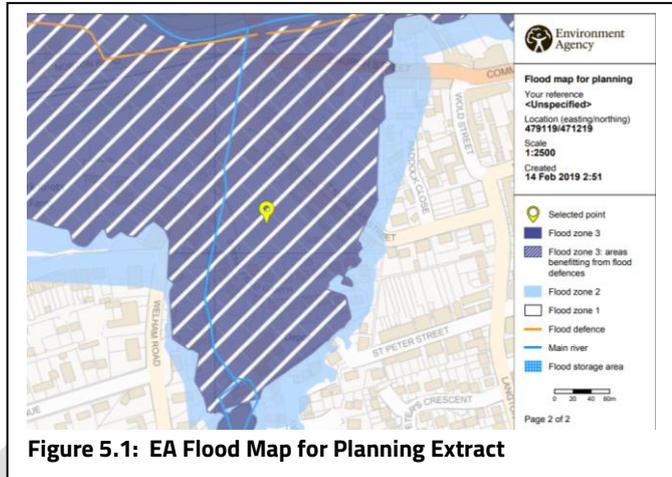


Figure 5.1: EA Flood Map for Planning Extract

4.2 Paragraph 155 of the NPPF confirms that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. A sequential test should therefore be applied to ensure that a sequential approach is followed to steer new development to areas with the lowest probability of flooding. NPPG confirms it is for local planning authorities, taking advice from the Environment Agency as appropriate, to consider the extent to which Sequential Test considerations have been satisfied, taking into account the particular circumstances in any given case. The developer should justify with evidence to the local planning authority what area of search has been used when making the application. Ultimately the local planning authority needs to be satisfied in all cases that the proposed development would be safe and not lead to increased flood risk elsewhere.

4.3 The appellant submits that the Livestock Market Site is not suitable for a petrol filling station development and, as such, it cannot be considered sequentially preferable. In light of our analysis in Section 3, we are satisfied that the Livestock Market Site is not suitable to accommodate the proposed development and, as such, we are in agreement with the appellant in this regard. However, Officers should obviously satisfy themselves that there are no other suitable sites within Malton to accommodate the proposed development at lower risk of flooding than the appeal site.

4.4 In addition, in line with guidance contained within NPPG, there is no requirement to consider the requirements of the Exceptions Test in this instance.

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5. CONCLUSIONS

- 5.1 This advice note has been prepared on behalf of Ryedale District Council to provide an independent review of the supplementary information submitted by the appellant to address the requirements of the retail and flood risk sequential tests in relation to the submitted S.78 Planning Appeal against the refusal of planning permission for the erection of a petrol filling station with forecourt shop at Welham Road, Norton.
- 5.2 The proposals relate to the erection of a petrol filling station with an associated forecourt retail unit with a total GIA of 495 sq.m. In view of the nature and scale of the proposed retail unit and the associated level of car parking, we are of the opinion that it would not remain ancillary to the fuel sales element and would be a shopping destination in its own right. On this basis, we are of the opinion that the key retail policy tests would be applicable in this instance despite the contentions of the appellant. Moreover, we are satisfied that the Livestock Market Site should be regarded as a sequentially preferable location to the appeal site.
- 5.3 However, ultimately, we are persuaded that the supplementary information prepared on behalf of the appellant satisfactorily demonstrates that the Livestock Market Site is not suitable to accommodate a petrol filling station development, primarily due to an insufficient volume of traffic on the surrounding road network and its lack of visibility from the primary road network within Malton. We have also sought to question whether the redevelopment of part of the Livestock Market Site for a petrol filling station and forecourt retail unit would be consistent with the aspirations for this key development site and the overall strategy to provide improved shopping to ensure choice for food retailing and non-food shops, particularly fashion shops outlined within the adopted and emerging Local Plan documents and this is therefore a matter that Officers may wish to give further consideration.
- 5.4 On this basis, we would also accept that the Livestock Market Site is unsuitable in terms of the application of the flood risk sequential test. However, Officers should obviously satisfy themselves

that there are no other suitable sites within Malton to accommodate the proposed development at lower risk of flooding than the appeal site.

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Appendix 1

DCP Extract

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