



COUNCIL

Council Summons and Agenda

You are hereby summoned to attend an **Ordinary Meeting of Ryedale District Council** to be held in the **Council Chamber, Ryedale House, Malton** on **Thursday, 3 September 2015** at **6.30 pm** in the evening for the transaction of the following business:

Agenda

1 Emergency Evacuation Procedure

The Chairman to inform Members of the Public of the emergency evacuation procedure.

2 Apologies for absence

3 Public Question Time

4 Minutes

(Pages 5 - 24)

To approve as a correct record the minutes of the Ordinary Meeting of Council held on 9 July 2015.

5 Urgent Business

To receive notice of any urgent business which the Chairman considers should be dealt with at the meeting as a matter of urgency by virtue of Section 100B(4)(b) of the Local Government Act 1972.

6 Declarations of Interest

Members to indicate whether they will be declaring any interests under the Code of Conduct.

Members making a declaration of interest at a meeting of a Committee or Council are required to disclose the existence and nature of that interest. This requirement is not discharged by merely declaring a personal interest without further explanation.

7 Announcements

To receive any announcements from the Chairman, the Leader and/or the Head of Paid Service.

8 To Receive any Questions submitted by Members Pursuant to Council Procedure Rule 10.2 (Questions on Notice at Full Council)

From Cllr Thornton to the Chair of Planning

In relation to the ministerial guidance on affordable contributions on small developments, how much has the government's misleading of Tory controlled RDC cost the Council?

From Cllr Joy Andrews to the Chair of Planning

What is the breakdown of the costs of the attempted sale of WSCP to date?

From Cllr Clark to the Chair of Planning

Has Councillor Windress considered his position as Chair of Planning?

9 To Receive a Statement from the Leader of the Council and to Receive Questions and Give Answers on that Statement

10 To consider for Approval the Recommendations in respect of the following Part 'B' Committee Items: (Pages 25 - 134)

Licensing Committee – 21 July 2015

Minute 4 – The Gambling Act 2005 - Draft Statement of Principles (page 25)

Overview and Scrutiny Committee – 30 July 2015

Minute 22 – Treasury Management Annual Report 2014/15 (page 65)

Planning Committee – 18 August 2015

Minute 53 – Developer Contributions from Small Sites (page 79)

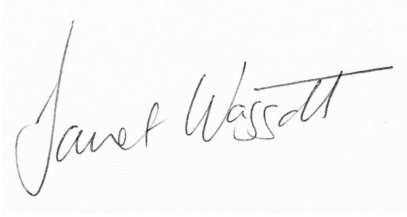
Minute 54 – Judicial Review - The Queen on the Application of Milton (Peterborough) Estates Company trading as Fitzwilliam (Malton) Estate v Ryedale District Council (page 85)

11 North Yorkshire Fire and Rescue Service - Fire Service Review 2015 (Pages 135 - 136)

12 Funding for Citizens Advice Bureau (Pages 137 - 160)

13 Devolution - Combined Authorities (Pages 161 - 166)

14 Any other business that the Chairman decides is urgent.

A handwritten signature in black ink on a light-colored background. The signature reads "Janet Waggott" in a cursive script. The first name "Janet" is written in a larger, more prominent cursive, while "Waggott" is written in a smaller, more compact cursive. A horizontal line extends from the end of the signature.

Janet Waggott
Chief Executive

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Council

Minutes of Proceedings

At the **Ordinary Meeting of the District Council of Ryedale** held in the **Council Chamber, Ryedale House, Malton** on **Thursday 9 July 2015**

Present

Councillors Acomb
 Joy Andrews
 Paul Andrews
 Steve Arnold
 Val Arnold (Chairman)
 Bailey
 Burr MBE
 Clark
 Cleary
 Cowling
 Cussons
 Duncan
 Farnell
 Frank
 Gardiner (Vice-Chairman)
 Goodrick
 Hope
 Ives
 Jainu-Deen
 Jowitt
 Maud
 Oxley
 Raper
 Sanderson
 Shields
 Thornton
 Wainwright
 Windress

In Attendance

Peter Johnson
Phil Long
Bridget Skaife
Clare Slater
Janet Waggott
Anthony Winship

Minutes

14 **Apologies for absence**

Apologies for absence were received from Councillors Keal and Evans.

15 **Staff Celebration Awards Presentation**

Councillor Farnell, the Member Champion for Equalities/Staff Issues, presented the following staff celebration awards:

Excellence in Leadership - Awarded to Marcus Lee, Team Leader Revenues and Benefits.

Outstanding Achievement by a Team - Awarded to the group of staff who successfully worked together and implemented IER, Individual Electoral Registration. - Lynne Bayes, Paul Haworth, Kath Bower, Anne Smith, Will Baines and Jo Dodgson.

Excellence in Customer Service and also Community Focus - Awarded to the Housing Benefits Team - Carroll Welburn, Jenny Knowles, Kevin Jackson, Mark Smith, Sally Roger, Simon King, Tracey Brown, Zoe Nixon, Debbie Armitage, Margaret Douthwaite, Jane Kitching and Janette Young.

16 **Public Question Time**

There were no public questions.

17 **Minutes**

The minutes of the Ordinary Meeting of Council held on 16 April 2015 were presented.

Resolved

That the minutes of the Ordinary Meeting of Council held on 16 April 2016 be approved and signed by the Chairman as a correct record.

18 **Urgent Business**

There were no items of urgent business which the Chairman considered should be dealt with as a matter of urgency by virtue of Section 100B(4)(b) of the Local Government Act 1972 (as amended).

19 **Declarations of Interest**

The following interests were declared:

Councillor Goodrick declared a personal non-pecuniary but not prejudicial interest in Agenda Item 12 Minute 16 (Funding for Citizen's Advice Bureau) as she is the council's representative.

Councillor Steve Arnold declared a personal non-pecuniary but not prejudicial interest in Agenda Item 12 Minute 24 (Helmsley Plan Adoption) as he was involved in the plan.

Councillor Bailey declared a personal non-pecuniary but not prejudicial interest in Agenda Item 12 Minute 24 (Helmsley Plan Adoption) as he is the Chairman of the North York Moors National Park Authority.

Councillor Frank declared a personal non-pecuniary but not prejudicial interest in Agenda Item 12 Minute 24 (Helmsley Plan Adoption) as she was involved in the plan.

Councillor Val Arnold declared a personal non-pecuniary but not prejudicial interest in Agenda Item 12 Minute 24 (Helmsley Plan Adoption) as she is involved as a member of the North Yorkshire County Council.

Councillor Clark declared a personal non-pecuniary but not prejudicial interest in Agenda Item 12 Minute 16 (Funding for Citizen's Advice Bureau) as he is representative of North Yorkshire County Council.

20 **Announcements**

The Leader of the Council made the following announcement :

- That the Citizen's Advice Bureau are to make a presentation on Monday 3 August 2015 at the Policy and Resources Committee meeting.

The Chief Executive made the following announcement :

- That the High Court judge Mr Justice Dove has quashed a decision to grant planning permission for a supermarket and petrol filling station at the Wentworth Street Car Park Malton.

The decision follows a court hearing before Mr Justice Dove in the Leeds High Court on Wednesday and Thursday of 10th and 11th June 2015.

The judgement of Mr Justice Dove was delivered in the High Court in London at 2 pm on 9 July 2015.

21 **To Receive any Questions submitted by Members Pursuant to Council Procedure Rule 10.2 (Questions on Notice at Full Council)**

There were no questions on notice.

22 **To Receive a Statement from the Leader of the Council and to Receive Questions and Give Answers on that Statement**

Councillor Cowling, the Leader of the Council, presented the following statement:

"I attended the Local Government Conference last week- where Leaders spent most of the time discussing devolution! The general consensus among Leaders is that any bid for a Combined Authority for our district should be based on an area that would include North Yorkshire, Ryedale, Scarborough, Hambleton, Craven, Harrogate, Richmondshire, Selby, East Riding, Hull, York and Leeds city region. You may have heard that Leeds have put in a bid for a combined authority that includes York, Harrogate, Craven and Selby. I understand that under the present rules, the North Yorkshire district councils cannot be split up. I also understand that authorities in a combined authority have to have adjoining boundaries – so that doesn't bode well for the Leeds City Region bid. Officers will work on the "asks" for our bid and then Leaders will bring the detail to their members for support - or not! Further consultation will be undertaken.

Greg Clark was very clear that devolution is what it says on the box - power devolved down from the government – not another tier of local government. He was also very clear about the value of the work that district councils do and that no one should be hoping that devolution means unitaries by the back door."

Just a few snippets from the budget yesterday:

- Compulsory new National Living Wage of £9 an hour by 2020 - starts at £7.20 next April*
- Tax free-personal allowance rising to £11,000 in 2016 - higher rate threshold rising to £43,000*
- Three million more apprentices with new scheme*
- No increase in main rates of income tax, NI or VAT*
- Corporation tax rate – will fall by 2% to 18% by 2020*

The following questions were received on the Leader's Statement:

1. From Councillor Ives

"The Council Leader will be aware that there were discussions about potentially having a combined authority for all of Yorkshire, which I believe are now dead, judging by what I have read in the papers. Does the Council Leader support movements to create a joint authority for all of Yorkshire?"

The Leader replied:

"It's very difficult for me to answer that question Luke, I haven't taken a stance on it because I believe that any combined authority has got to be the will of the various councils that belong to it. My preference would have been for a

combined authority for the whole of Yorkshire and then I would have liked to see it split into perhaps 3 further tiers of combined authority below the Mother Body, if you like. At the moment as far as I can make out South Yorkshire is very determined on their own combined authority and not really looking to join with anyone else. They feel that they're strong enough and big enough on their own to be able to put in a successful bid by themselves. I'm very open to persuasion about what will be the best - I don't have a firm view on it yet. It will be for this Council to decide what it supports".

Councillor Ives then asked the following supplementary question:

"We all know that combined authorities is a way of working together on strategic issues but may I ask the Council Leader what discussions we are having with other neighbouring authorities in terms of partnership working so we can make efficiencies and minimise the potential cuts to our tax payers?"

The Leader then replied:

"It's a very interesting time for the start of partnership working. Whereas in the past we've seen a great deal of reluctance to work in partnership because many of our authorities in North Yorkshire are quite wealthy and they feel they don't need to work with other people. I see a growing will to be wanting to work with other authorities and I think we're at a really exciting time. I think one of the main things that we shall work on together, which will be really successful and I hope will save us a lot of money, will be a waste partnership and if we can set up a successful model through the waste partnership, draw in other people, I think success creates success and the more successful we are in building partnerships, then others will follow on. As I said, I do think it's a really exciting time for local government."

2. Councillor Paul Andrews submitted the following question:

"We're all aware that authorities like Ryedale have their affinities with other authorities, in the sense that we are a sparsely populated authority, we have small market towns and vast amounts of countryside and there is always a danger, therefore, that if an authority like Ryedale becomes part of another authority, the rural interest could simply be swallowed up and engulfed and all the money could go to the cities as it always does anyway but even more money and less representation. Does she recognise this danger and will she ensure that the interests of the rural areas of the greater Yorkshire ward, or whatever it's going to be called, will be taken into account and given full representation so that our interests are not outweighed or outbalanced by the urban interests?"

The Leader replied:

"Well it's rather interesting Cllr Andrews that you've asked exactly the question that I asked the group of Leaders when we met. I got quite a slap down from what I would call the urban areas because they reminded me very sharply that they have some very rural areas in their counties. I believe that the group of

authorities that we're looking at, at the moment would be mainly very rural and I think that would give us a lot of strength and the ability to protect ourselves from being swamped by the urban areas. Your concerns were exactly what were my concerns and I got an answer from them. We're never going to have the numbers that they have but I think a lot of the things that we need, such as infrastructure, help some of the cities such as York as well. So what benefits them, benefits us as well".

Councillor Andrews then asked the following supplementary question:

"Bearing in mind that Leeds has got such a huge population and that all the money goes into the conurbations as it is, do you think that a process of having a combined authority including Leeds is going to be to the benefit of a rural area such as this, or is it going to be to the disadvantage?"

The Leader Replied

"I believe that it will be a benefit to a rural area like this because I think the government are looking for strength in the combined authority, and unity, and the thing that we can ask for need to be run throughout the area - it needs to be a big enough area to be able to administer those things that we want devolving down from government; the money that we want devolving down from government to spend on infrastructure, perhaps health, perhaps the Police, things like that - it needs to be a big enough area. Yes I do believe that it will strengthen our ask."

3. Councillor Shields submitted the following question:

"Looking at the list that... in your proposed ...with these, worries me considerably. North Yorkshire is the biggest county as we know in England for a start, it is totally rural. If we included also East Riding which in their case - part of which has been subsumed into North Yorkshire, Hull and York seems to me would be quite large enough without having Leeds on top. I'm perfectly sure that once there is money around, that it is going to start off in the urban areas, even though I know they do have rural areas but there are a huge, vast majority of people in the city and it worries me considerably that people in far parts of Ryedale and further in North Yorkshire should actually come under an urban area like Leeds. I hope it doesn't happen. There's a lot to go forward yet but that is my concern actually and hopefully when you go to your Leaders meetings, you will be expressing concerns that we have here on that particular subject."

The Leader Replied:

"Yes I definitely will be expressing those concerns and like many more of the districts in North Yorkshire, we're all very rural and we all have the same concerns. It would have to be a structure and a voting systems that we felt we could get our share of what we needed. I don't think things could be any worse that they are. One of my main beefs is that the rural areas in particularly the north of England have no parity with other areas of the country. We certainly don't get as much per head spent on us as the urban areas, we don't get as much per head spent on us as they do in the south of England. So I think

there's a big piece of work to be done on parity to begin with and then there would have to be parity in any combined authority as well."

4. Councillor Clark submitted the following question:

"I just wondered if you could give us the criteria out of the very complex budget yesterday, how you picked out the 5 points you have picked out of there yet you don't mention the increase in vehicle duty and so on, which was given to those of the vote blue go green approach of reducing carbon emissions and they've had a massive increase. I just wondered what basis you used for picking out these that you've got here?"

The Leader Replied:

"The basis I used was items that I thought supported particularly the stance that this Council has taken in Ryedale and that I felt supported the work that we were doing here. I thought I made that clear when I mentioned them."

Councillor Clark asked the following supplementary question:

"That's fascinating that you actually think that a change in policy on climate change, a charging for people in Ryedale who were intending to buy low carbon vehicles to be now having to pay £140 - I thought we had a low carbon policy for this Council and I thought - I would have said that absolutely opposes what this Council says its trying to do but maybe not. Maybe vote blue go green didn't really mean much."

The Leader Replied:

"I've already said twice now that I tried to pick a few items that I felt supported the economy in Ryedale. I could have gone through the whole budget line by line if you like but I think we'd have been here until midnight."

5. Councillor Burr submitted the following question:

"I'd just like to ask the Leader about a recent event that was held here and would the Leader agree that the recent skills summit was a huge success and that the conclusion of the meeting was now to focus on all business in Ryedale for the wider economic success? Could you maybe give me some assurance that all businesses other than engineering would now be the prime focus for the future of this Council? To follow the wishes of the many people that attended that meeting from all businesses, all sectors and the local schools. They all attended that meeting and that was the general conclusion - they said you'd made a fantastic job over the last 2 years of supporting engineering but now they wanted it to be rolled out to probably tourism, to other industries, entrepreneurial skills because basically that's what Ryedale is - it's built up of small businesses. "

The Leader Replied:

"You're absolutely right and it was very remiss of me not to mention the very successful skills summit that was held here. It was a great event with lots of employers here and it was really interesting that they thought that Ryedale was doing really well on this issue and that they did want it opening out. Thank you

for reminding me about that, absolutely we do need to look towards all businesses."

6. Councillor Thornton submitted the following question:

"I wonder if you could help me to better understand how, as this Council has a green energy policy, how we can get round the problem of reducing support for renewable energy in the budget? The whole world is heading in the opposite direction led by the United Nations and by stars such as the Dalai Lama, the Pope and our very own David Attenborough encouraging us to increase our renewable energy supply and yet this reduction in support for renewable energy seems to be a rather curious move."

The Leader replied:

"I can't say that I know an awful lot about this but I do know that the government has to save money and that a lot of reports that I've read recently are saying that we aren't getting the return on some of the investments that we're making. There is, I believe, a movement towards different forms of renewable energy and actually this Council does do a lot of work on renewable energy. At the moment we've got a scheme whereby all householders in Ryedale can have photovoltaic panels fitted to their roofs. As a Council we do a lot of work. Government set the policies on what money they've got and where they're going at the moment."

Councillor Thornton asked the following supplementary question:

"If the government has decided to save money it must cut the support of renewable energy industry, could you explain how we can also explain the increase in the threshold of inheritance tax for house - it's now gone up to £1 million?"

The Leader replied:

"I don't know what we want me to explain - the reason I understand is so that lots of ordinary people who live in the south of England, not the north of England - do own houses that are worth more than £1 million."

7. Councillor Burr submitted the following question:

"I attend all the safeguarding meetings and Cllr Duncan is the safeguarding officer and I'm really passionate about safeguarding. I would like to request if Members could have more training on certain issues around safeguarding, especially around legal highs etc, which is coming over from Scarborough area to Ryedale. I think that there are a lot of other issues around safeguarding, around children's issues that us as Councillors need to be aware of because we are making massive decisions and if we understood more about everything I think it would help us very much. I wonder if I put that forward, if you would be supportive of that because I think it's a huge area that we sometimes - because we're maybe not in the scene where it's happening legal highs etc - we maybe don't know enough about it. I would just like to maybe bring it to you, could we broaden that out please?"

The Leader replied:

"Yes I'd be absolutely supportive of that. I did attend a safeguarding training session that we did here and it was absolutely fascinating and we learnt lots of things I thought from that session that you just didn't realise and I think it would be a really good idea to repeat that and perhaps add to it. "

8. Councillor Goodrick submitted the following question:

"I'd like to ask the Leader if it would be possible to ask officers to prepare a very brief report on the efficiencies of paper copies of the agendas against iPads? Perhaps we should be doing a little bit more in the Council to be green?"

The Leader replied:

"I think we're getting a little off piste here but I will answer your question. I have already asked about that and it is costing this Council in the region of £5000 per year for those Councillors who elect not to have iPads - let alone the trees that have to be cut down to do it - but if you would like a report, I will request that."

9. Councillor Duncan submitted the following question:

"With regard to devolution that we were talking about earlier - does the Leader have any idea of the timescale going forward of potentially when we could have something brought before us to make a decision. or what discussion she's going to be having in the future with regards to devolution?"

The Leader Replied:

"I can't put a timetable on it at all. It's fairly fast moving. There's stuff coming through nearly every day. Carl Les and the Chief Executive at North Yorkshire County Council are collating information at the moment, so just as soon as possible I will put stuff in front of you."

23 **The Council's Priorities 2015-20**

The Chief Executive submitted a report (previously circulated) which presented the delivery against the Councils priorities in 2014/15, highlighted the challenges facing the Council for the next 12 months and reaffirmed the Aims and Strategic objectives of the Council Business Plan for 2015/16 within this context.

Councillor Cowling moved and Councillor Arnold seconded the recommendations in the report.

- (i) That Members note the progress made by the Council in delivering its priorities in 2014/15 and the challenges to be faced in 2015/16;
- (ii) That Members agree the Aims and Strategic Objectives of the Council Business Plan for 2015/20 as attached at Annex A.

Councillor Clark moved and Councillor Thornton seconded the following amendment:

After (i) "This council recognises that one of the largest challenges that may be faced is that of 'fracking'. So as to be prepared this council will create an all party working group to investigate any potential concerns and impacts"

Upon being put to the vote the amendment was lost.

Recorded Vote

For

Councillors Joy Andrews, Paul Andrews, Burr, Clark, Jowitt, Shields and Thornton.

Against

Councillors Val Arnold, Steve Arnold, Cleary, Cowling, Cussons, Duncan, Farnell, Frank, Gardiner, Hope, Ives, Jainu-Deen, Maud, Oxley, Raper, Sanderson, Wainwright and Windress

Abstentions

Acomb, Bailey, and Goodrick

Upon being put to the vote the recommendation was carried.

Resolved

- (i) That Council notes the progress made by the Council in delivering its priorities in 2014/15 and the challenges to be faced in 2015/16;
- (ii) That Council approves the Aims and Strategic Objectives of the Council Business Plan for 2015/20 as attached at Annex A to the report.

Voting Record

23 For

1 Against

4 Abstentions

- 24 **To consider for Approval the Recommendations in respect of the following Part 'B' Committee Items:**

Policy and Resources Committee – 18 June 2015

Minute 10 – Council Tax Discretionary Relief Policy

It was moved by Councillor Cowling and seconded by Councillor Goodrick that the following recommendations of the Policy & Resources Committee be approved and adopted.

That Council be recommended:

- i. That approval be given to introduce the attached Council Tax Discretionary Relief Policy attached at Appendix A of the report, incorporating powers to grant relief under section 13A(1)(c) of the Local Government Finance Act 1992.
- ii. That delegated authority be given to the Finance Manager to determine such applications for Council Tax Discretionary Relief where they relate to cases of exceptional hardship.
- iii. That application of Council Tax Discretionary Relief to a class of case be determined by the Policy and Resources Committee, the application of the relief is then delegated to the Finance Manager as under (ii).

Upon being put to the vote the motion was carried.

Resolved

- i. That Council approves the Council Tax Discretionary Relief Policy attached at Appendix A of the report, incorporating powers to grant relief under section 13A(1)(c) of the Local Government Finance Act 1992.
- ii. That Council authorises the Finance Manager to determine such applications for Council Tax Discretionary Relief where they relate to cases of exceptional hardship.
- iii. That application of Council Tax Discretionary Relief to a class of case be determined by the Policy and Resources Committee, the application of the relief is then delegated to the Finance Manager as under (ii).

Voting Record
Unanimous

Minute 11 – NNDR Transitional Relief

It was moved by Councillor Cowling and seconded by Councillor Arnold that the following recommendations of the Policy & Resources Committee be approved and adopted.

That Council be recommended:

That the policy to award discretionary rate “Transitional Relief”, attached at Appendix A of the report, be approved.

Upon being put to the vote the motion was carried.

Resolved

That Council approves the policy to award discretionary rate “Transitional Relief”, attached at Appendix A of the report.

Voting Record

26 For
0 Against
2 Abstentions

Minute 12 – Draft York, North Yorkshire and East Riding Housing Strategy 2015-2021

It was moved by Councillor Cowling and seconded by Councillor Arnold that the following recommendations of the Policy & Resources Committee be approved and adopted.

That Council be recommended:

That the York, North Yorkshire and East Riding Housing Strategy for 2015/21 be approved.

Councillor Goodrick moved and Councillor Clark seconded the following amendment:

Add "This council rejects any moves by York Council to off load its housing delivery in Ryedale"

Upon being put to the vote the amendment was carried.

Voting Record

15 For
11 Against
1 Abstention

On being put to the vote, the substantive motion was then carried.

Resolved

(i) That Council approves the York, North Yorkshire and East Riding Housing Strategy for 2015/21.

(ii) This council rejects any moves by York Council to off load its housing delivery in Ryedale.

Voting Record

22 For
1 Against
4 Abstentions

Minute 13 – Homelessness Strategy and Action Plan

It was moved by Councillor Cowling and seconded by Councillor Clark that the following recommendations of the Policy & Resources Committee be approved and adopted.

That Council be recommended to approve:

That the draft 2015/2020 Homelessness Strategy and Action Plan be approved.

Upon being put to the vote the motion was carried.

Resolved

That Council approves the draft 2015/2020 Homelessness Strategy and Action Plan be approved.

Voting Record
Unanimous

Exempt Information

It was moved by Councillor Burr and seconded by Councillor Cowling that the meeting move into exempt business.

Upon being put to the vote the motion was carried.

Resolved

That under Section 100(A)(4) of the Local Government Act 1972 the public be excluded from the meeting for the part of the following item where there would be a likely disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A of the Act as information relating to the financial or business affairs of any particular person.

Voting Record
Unanimous

Before the debate on the item it was moved by Councillor Clark and seconded by Councillor Goodrick that the meeting move out of the exempt session.

Upon being put to the vote the motion was carried.

Voting Record
21 For

2 Against
1 Abstention

Minute 16 – Funding for Citizen’s Advice Bureau

It was moved by Councillor Cowling and seconded by Councillor Acomb that the following recommendations of the Policy & Resources Committee be approved and adopted.

That Council be recommended to approve:

That the additional provision of up to £35k to the CAB be delayed until the CAB have presented their business case and forward plan beyond 2015/16 to Members of the Policy and Resources Committee.

Councillor Burr moved and Councillor Paul Andrews seconded the following amendment:

Add "And once the presentation has been satisfactorily received officers are authorised to make the immediate payment of £35,000"

Upon being put to the vote the amendment was lost.

Voting Result

4 For
13 Against
2 Abstentions

Councillor Clark moved and Councillor Thornton seconded the following amendment:

Add "So as to assist the cash flow of the Citizen's Advice Bureau Ryedale District Council releases £10,000 now and reviews up to £25,000 after the presentation by the Citizen's Advice Bureau and due process in Ryedale District Council, which is Policy and Resources in September."

Upon being put to the vote the amendment was lost

Recorded Vote

For

Councillors Joy Andrews, Paul Andrews, Thornton and Clark

Against

Val Arnold, Steve Arnold, Burr, Cleary, Cowling, Duncan, Farnell, Gardiner, Hope, Ives, Jainu-Deen, Oxley and Wainwright

Abstentions

Councillors Goodrick and Jowitt

Resolved

That Council approve that the additional provision of up to £35k to the CAB be delayed until the CAB have presented their business case and forward plan beyond 2015/16 to Members of the Policy and Resources Committee.

Voting Record

16 For

3 Against

0 Abstentions

Planning Committee – 23 June 2015

Minute 24 – Helmsley Plan Adoption

It was moved by Councillor Windress and seconded by Councillor Burr that the following recommendations of the Planning Committee be approved and adopted.

That Council be recommended to:

Adopt the Helmsley Plan as part of the Development Plan for the District.

Upon being put to the vote the motion was carried.

Resolved

That Council adopts the Helmsley Plan as part of the Development Plan for the District.

Voting Record

Unanimous

25 Notices on Motion Submitted Pursuant to Council Procedure Rule 11

1. It was moved by Councillor Clark and seconded by Councillor Thornton

Ryedale Council has an objective of increasing the average wage level in Ryedale.

So as to set an example and show sound leadership this Council resolves to:

i) "Pay all RDC employees at the living wage or above";

and

ii) "That preference will be given to external contracts where the applicant pays the living wage or above."

Any cost of the above to be financed in 2015/16 year from the reserves.

The Chairman referred the Motion to the Policy and Resources Committee since the motion concerned a matter within the purview of the committee.

26 **Community Infrastructure Levy - Statutory Declaration**

The Head of Planning and Housing submitted a report (previously circulated) which sought to agree a formal declaration that the Council has complied with the relevant legislation in preparing the Community Infrastructure Levy Draft Charging Schedule (DCS).

Councillor Windress moved and Councillor Burr seconded the recommendations in the report.

Upon being put to the vote the motion was carried.

Resolved

That Council agree:

- (i) The formal declaration at Appendix 1;
- (ii) Minor changes to the Council's Regulation 123 list as outlined in italics at Appendix 2.

Voting Result

Unanimous

27 **Health and Wellbeing Consultation Documents**

The Chief Executive submitted a report (previously circulated) which provided the Members of Council the opportunity to agree a response to the consultation documents issued by the North Yorkshire Health and Wellbeing Board:

- a. Realising Our Potential – Our New North Yorkshire
A North Yorkshire Approach to Integration, Prevention and New Models of Care
- b. North Yorkshire Health and Wellbeing Board Draft Mental Health Strategy
- c. North Yorkshire Health and Wellbeing Board Draft Joint Health and Wellbeing Strategy

The following questions were raised:

Councillor Ives asked the Chairman Councillor Arnold :

"Why has this item come straight to Council, when I believe that it went before the O&S Committee? I would presume that under normal circumstances this report would come from the O&S Committee, it would then be for the Chairman of the O&S to move the report and to be seconded by the Vice Chairman and for questions to be directed to the Chairman of the O&S seeing as it is his Committee that has studied this report and debated it. So once again we seem to be completely omitting standard procedure."

The Chairman Replied:

"We'll take a note of that."

Councillor Clark asked the Chair Councillor Arnold:

"I'd like to ask the question - if you have a hernia op, if you have a length of time in hospital with a broken leg, if you have a waiting time before you have your tonsils removed etc, all the physical health side, they've all got targets, they've all got timescales. I wonder if you could tell me why there are no timescales worth a light in the draft mental health strategy?"

The Chief Executive replied:

"I can't but we can take the comments from this Council to the County Council and Members of the County Council might be able to ask directly themselves."

Councillor Clark replied:

"We have 2 representatives on this body - 1 is the CX and 1 is a Councillor somewhere else because the other one lost the leadership of Richmondshire Council - it said in the paperwork for that lot that the district councils have made a submission. Now I don't know where that was I didn't know we'd made a submission or even that collectively that we'd made a submission.....some councils take scrutiny of health seriously as a district authority and I can't explain the question that Cllr Burr was asking about obesity. I can explain the one about serious road accidents and deaths that Cllr Raper mentioned because we're a very small population with a large amount of roads with a lot of tourists travelling through and those tourists do not figure in the number of people that are here but they figure in the deaths and so on Would you agree with me that it may be worth this Council considering looking at health on an ongoing basis rather than the scrutiny and health committee doing it.....?"

Councillor Thornton asked the Chairman Councillor Arnold:

"Can I embrace the concept of reducing road traffic accidents and commend the programme that was started in Pickering some 10 years ago or more, which has now been superseded by a further programme delivered by North Yorkshire I believe and that involved redesign of Golden Hill amongst other things. Might I ask the CX to recall the start of a programme of work in Pickering in 2004 and the byzantine progress it has been making since then to deliver a sport for all/exercise for all Community Park at Whitby Road. There was a considerable amount of work done on this, it was before they even dreamt of an Olympic bid, so at that time there was plenty of money. It's still making limping progress but the original concept was to have a play park for babies right the way through to

a long walk for older people and in between that, exercise for all. As for a health measure, as for a mental health measure and for a societal change, so that there was more community cohesion. At that time there was Section 106 money of round about £1 million earmarked for Pickering allegedly and I wonder, Madam Chairman if you would like to consider how much money the District Council and perhaps even the County Council, could put towards this effort that we were having and still have to deliver sport for all / exercise for all in Pickering?"

The Chairman Councillor Arnold replied:

"We have taken note of what you've just said. I can't give you a yes or a no. I can't give you an answer to that but that question will be taken on board but I'm afraid I can't just say yes or no this evening. There has been a note of that and has been taken into consideration."

Councillor Clark asked the Chairman Councillor Arnold:

"One comment to add to that. We will be getting, I hope, answers back. I'm quite happy and I'm not expecting Janet to answer these questions. They're rhetorical but there will be answers coming back to the specific questions I hope. Can they be minuted somewhere because otherwise back to the same Cllr Ives comment earlier on, you will have the report coming in here, the questions leaving here and the answers disappearing into the ether, so they do need to come back probably to Full Council again."

The Chairman Councillor Arnold Replied:

"They will be minuted. We have taken those on board and they will be minuted and they will get a response."

Councillor Wainwright moved and Councillor Acomb seconded the following motion:

The documents be supported subject to the comments being made.

Upon being put to the vote the motion was carried.

Resolved

The documents be supported subject to the comments being made.

Voting Record

24 For

0 Against

2 Abstentions

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

There being no other business, the meeting closed at 10.25 pm.

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REPORT TO: FULL COUNCIL
DATE: 3 SEPTEMBER 2015
SUBJECT: PART 'B' REFERRALS FROM LICENSING COMMITTEE ON 21 JULY 2015

4 The Gambling Act 2005 - Draft Statement of Principles

Recommendation to Council

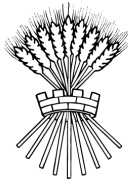
To adopt the Gambling Act 2005 - Statement of Principles.

[For 8

Against 0

Abstain 0]

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| | |
|-------------------------|--|
| PART B: | RECOMMENDATION TO COUNCIL |
| REPORT TO: | LICENSING COMMITTEE |
| DATE: | 21 JULY 2015 |
| REPORT OF THE: | HEAD OF ENVIRONMENT BECKIE BENNETT |
| TITLE OF REPORT: | THE GAMBLING ACT 2005 – DRAFT STATEMENT OF PRINCIPLES |
| WARDS AFFECTED: | ALL |

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

- 1.1 The purpose of this report is to advise Members of the consultation undertaken in relation to the Council's draft Statement of Principles in relation to the Gambling Act 2005 and seek Members views prior to adoption by Council.

2.0 RECOMMENDATION

- 2.1 It is recommended that:
1. Subject to Members views the draft Gambling Act 2005 – Statement of Principles be recommended for adoption by Council on 3 September 2015

3.0 REASON FOR RECOMMENDATION

- 3.1 The Council must review its Statement of Principles every three years. The Statement is due for review and must be consulted upon, ratified by the Council and published before the 31 December 2015. Following any proposed amendments by this Committee a final draft version of the Policy will be submitted to Council on 3 September 2015. The consideration of applications cannot proceed without a reviewed Statement of Principles being in place.

4.0 SIGNIFICANT RISKS

- 4.1 Failure to formally review or consult on a Statement of Principles within the timetable required by the Act, Regulations and guidance would mean the Council was not complying with its statutory duty and would also leave the Council open to legal challenge and any subsequent costs.

5.0 POLICY CONTEXT AND CONSULTATION

5.1 The Gambling Act 2005 imposes statutory requirements on the local authority as the Licensing Authority. The requirement to produce and consult on a Statement of Principles in relation to the Gambling Act 2005 is identified in the Health and Environment Service Delivery Plan 2015/16.

5.2 Section 349(3) of the Act requires that the Licensing Authority consult the following on the Statement of Principles (or any subsequent provision):

The Chief Officer of Police for the Authority's area

One or more persons who appear to the authority to represent the interests of persons carrying on gambling businesses in the authority's area; and

One or more persons who appear to the authority to represent the interests of persons who are likely to be affected by the exercise of the authority's functions under the Act.

5.3 The written consultation followed best practice as set out by the Cabinet Office (Consultation Principles November 2013) including allowing 12 weeks for responses to consultation. Consultation was undertaken as widely as possible and published on the Council's website

5.4 The Consultation period ran from 16 March to 8 June 2015.

REPORT

6.0 REPORT DETAILS

6.1 Section 349 of the Gambling Act 2005 requires that all licensing authorities prepare and publish a statement of the principles that they propose to apply in exercising their functions under the Gambling Act during the three year period to which the Statement of Principles applies. A Statement of Principles will last for a maximum of three years, but can be reviewed and revised by an authority at any time.

6.2 The existing Statement of Principles has been kept under review since coming into force on 31 January 2013 and no revision has been deemed necessary to date. However, the Statement requires review during 2015 in order for it to take effect from 31 January 2016 (when a new three year cycle will commence). The Statement or revision must be published at least one month before it takes effect, therefore any Statement will be required to be ratified by Council no later than the 31st December 2015. Section 154 of the Act provides that functions in relation to the three year Statement of Principles cannot be delegated but must be taken by the whole authority.

6.3 The draft Statement of Principles is a draft document suggesting the Council's proposals to ensure a balanced approach towards the licensing of gambling premises and was formally published for consultation on 16th of March 2015. This Statement is based on the requirements of the Act, the current guidance issued by the Gambling Commission and the template from Local Authority Coordinators of Regulatory

Services. Members should note that there has been no significant change to either regulations issued by the Secretary of State or guidance issued by the Gambling Commission in the intervening 3 year period that materially affects the current Statement of Principles and for that reason it is proposed that the Statement of Principles will remain unchanged for the years 2016-2019. However, Council Officers are aware that the Gambling Commission is currently consulting on the Guidance it issued to Licensing Authorities in September 2012. If any significant/relevant changes are made to the current Guidance, a further review of this Councils Statement of Principles may be required.

- 6.4 The draft Statement of Principles was formally published for consultation on 16th of March 2015. This allowed the Cabinet Office recommended consultation period of twelve weeks. All statutory undertakers have received a full copy of the draft Statement of Policy, and notification of the Statement was given to all Members, parish and town councils, all relevant service unit managers, and all libraries. A copy of the draft Statement of Principles was available on the Ryedale Council Website (www.ryedale.gov.uk). All relevant premises and specific bodies requesting information have been advised of the Statement and its availability. A full list of consultees is available on request. Despite widespread consultation, no comments have been received. It is therefore recommended that the draft Statement of Principles as submitted to this Committee be submitted for adoption by the Council on 3rd of September 2015.

7.0 IMPLICATIONS

- 7.1 The following implications have been identified:

a) Financial

The Statement of Principles has been produced in house and the consultation has be undertaken using existing staffing resources.

b) Legal

The Statement of Principles must be reviewed before the end of its third three year period and is classed as high priority. Failure to review the Statement of Principles, seek approval by full Council and publish it before the 31st January 2016 could leave the Council subject to judicial review and have serious financial implication

c) Other

Ryedale's Statement of Principles is fundamental to the successful operation of the Licensed Gambling System and is a core document Members of a Licensing Sub Committee have must have regard to when arriving at gambling related decisions. The proposed draft Statement of Principles aims to reflect the balance between the commercial interests of the licensed gambling trade and the communities they serve and impact on.

Beckie Bennett

Head of Environment

Author: Steven Richmond, Health and Environment Manager
Telephone No: 01653 600666 ext: 247
E-Mail Address: steve.richmond@ryedale.gov.uk

Background Papers:

Gambling Commission Guidance to Licensing Authorities, 4th Edition, September 2012

Gambling Act 2005 (Licensing Authority Policy Statement) (England & Wales) Regulations 2006

Notes to accompany LACORS Statement of Principles Template-Gambling Act 2005, May 2009

Ryedale District Council Licensing Committee *The Gambling Act 2005 – Draft Statement of Principles. 16th March 2015*

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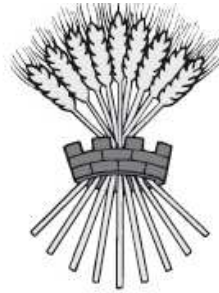
RISK MATRIX – The Gambling Act 2005 – Draft Statement of Principles

| Issue/Risk | Consequences if allowed to happen | Likelihood | Impact | Mitigation | Mitigated Likelihood | Mitigated Impact |
|--|--|------------|----------|--|----------------------|------------------|
| Failure to review or consult on a draft Statement of Principles.. Failure to get adoption of the Statement of Principles by Council within the necessary timescale. | Council failing to comply with its statutory duty and would also leave the Council open to legal challenge | 4 | D | Consultation undertaken of draft Statement of Principles, reviewed by Licensing Committee with a view to adoption by Council on 3 September 2015 | 1 | A |

| Score | Likelihood | Score | Impact |
|-------|----------------|-------|----------|
| 1 | Very Low | A | Low |
| 2 | Not Likely | B | Minor |
| 3 | Likely | C | Medium |
| 4 | Very Likely | D | Major |
| 5 | Almost Certain | E | Disaster |

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RYEDALE
DISTRICT
COUNCIL



Gambling Act 2005

DRAFT STATEMENT OF PRINCIPLES

MARCH 2015

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This Statement of Principles was approved by Ryedale District Council on the ???th ??????? 2015.

All references to the guidance refer to the Gambling Commission's Guidance to Licensing Authorities, 4th Edition, published September 2012.

PART A

1. The Licensing Objectives

In exercising most of their functions under the Gambling Act 2005, licensing authorities must have regard to the licensing objectives as set out in section 1 of the Act. The licensing objectives are:

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime
- Ensuring that gambling is conducted in a fair and open way
- Protecting children and other vulnerable persons from being harmed or exploited by gambling

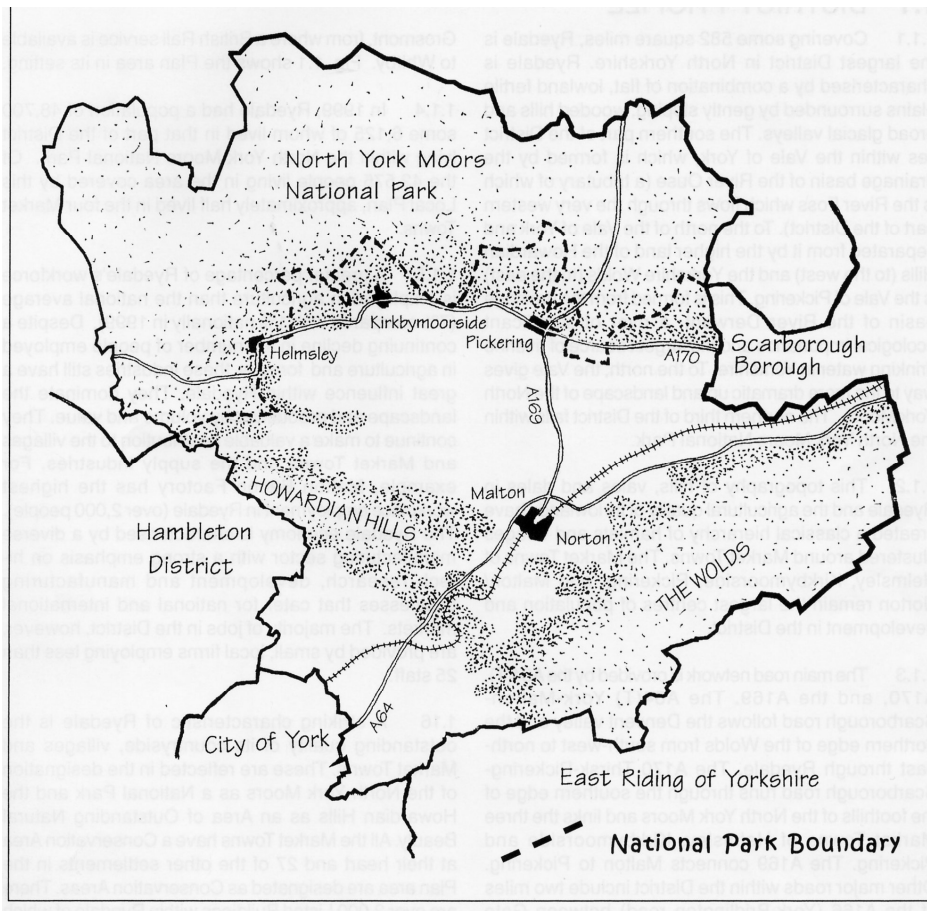
It should be noted that the Gambling Commission has stated: "The requirement in relation to children is explicitly to protect them from being harmed or exploited by gambling".

This licensing authority is aware that, as per Section 153, in making decisions about premises licences and temporary use notices it should aim to permit the use of premises for gambling in so far as it thinks it is:

- in accordance with any relevant code of practice issued by the Gambling Commission
- in accordance with any relevant guidance issued by the Gambling Commission
- reasonably consistent with the licensing objectives and
- in accordance with the authority's Statement of Principles

2. Introduction

Ryedale District Council is situated in the County of North Yorkshire, which contains seven District and Borough Councils in total. The Council area has a population of 53,600 making it one of the smaller in the County in terms of population. In terms of area it is one of the larger, covering 575 square miles. The District is mainly rural with several market towns. The major settlements in Ryedale are detailed in the map below.



Licensing authorities are required by the Gambling Act 2005 to publish a statement of the principles which they propose to apply when exercising their functions. This statement must be published at least every three years. The statement must also be reviewed from "time to time" and any amended parts re-consulted upon. The statement must be then re-published.

Ryedale District Council consulted widely upon this statement of principles before finalising and publishing. A summary of those consulted is provided below, the full list of those consulted can be found in Annex A.

The Gambling Act requires that the following parties are consulted by Licensing Authorities:

- The Chief Officer of Police
- One or more persons who appear to the authority to represent the interests of persons carrying on gambling businesses in the authority's area
- One or more persons who appear to the authority to represent the interests of persons who are likely to be affected by the exercise of the authority's functions under the Gambling Act 2005

List of persons this authority consulted:

- Local Councillors/responsible authorities(including police)
- Gambling businesses/related businesses
- Housing/residents associations/Parish Councils
- North Yorkshire County Council, Children & Young Persons Service.

Our consultation took place between **16th March and 8th June 2015** and we followed the HM Government Consultation Principles (published November 2013).

The full list of comments made and the consideration by the Council of those comments is available by request to: **The Licensing Team, Health and Environment, PO Box 67, Ryedale House, Old Malton Road, Malton, North Yorkshire, YO17 7ZG, Tel 01653 600666, E mail licensing@ryedale.gov.uk.**

This Statement of Principles was approved at a meeting of the Full Council on the ?th of ?????? 2015 and was published on Ryedale District Councils website on the ?st of ?????? 2015. Copies of this Statement of Principles can be found in the public libraries of the area as well as being available in the Council Offices.

Should you have any comments as regards this Statement of Principles please send them via e-mail or letter to the following contact:

Name:-The Licensing Team, Health and Environment

Address:-PO Box 67, Ryedale House, Old Malton Road, Malton, North Yorkshire, YO17 7ZG

E-mail:-licensing@ryedale.gov.uk

It should be noted that this Statement of Principles will not override the right of any person to make an application, make representations about an application, or apply for a review of a licence, as each will be considered on its own merits and according to the statutory requirements of the Gambling Act 2005.

3. Declaration

In producing the final Statement of Principles, this licensing authority declares that it has had regard to the licensing objectives of the Gambling Act 2005, the Guidance to Licensing Authorities issued by the Gambling Commission, and any responses from those consulted on the Statement of Principles.

4. Responsible Authorities

The licensing authority is required by regulations to state the principles it will apply in exercising its powers under Section 157(h) of the Act to designate, in writing, a body which is competent to advise the authority about the protection of children from harm. The principles are:

- the need for the body to be responsible for an area covering the whole of the licensing authority's area
- the need for the body to be answerable to democratically elected persons, rather than any particular vested interest group

In accordance with the suggestion in the Gambling Commission's Guidance to licensing authorities this authority designates Corporate Director, Children and Young Peoples Service, North Yorkshire County Council, County Hall, Northallerton, North Yorkshire, DL7 8AE for this purpose.

The contact details of all the Responsible Authorities under the Gambling Act 2005 are available via the Council's website at : www.ryedale.gov.uk.

5. Interested parties

Interested parties can make representations about licence applications, or apply for a review of an existing licence. These parties are defined in the Gambling Act 2005 as follows:

“For the purposes of this Part a person is an interested party in relation to an application for or in respect of a premises licence if, in the opinion of the licensing authority which issues the licence or to which the application is made, the person-

- a) lives sufficiently close to the premises to be likely to be affected by the authorised activities,
- b) has business interests that might be affected by the authorised activities, or
- c) represents persons who satisfy paragraph (a) or (b)”

The licensing authority is required by regulations to state the principles it will apply in exercising its powers under the Gambling Act 2005 to determine whether a person is an interested party. The principles are:

Each case will be decided upon its merits. This authority will not apply a rigid rule to its decision making. It will consider the examples of considerations provided in the Gambling Commission’s Guidance to licensing authorities at 8.11 to 8.18. Note though that decisions on premises licences and temporary use notices must be “in accordance” with Gambling Commission Guidance (Section 153).

Interested parties can be persons who are democratically elected such as councillors and MP’s. No specific evidence of being asked to represent an interested person will be required as long as the councillor / MP represents the ward likely to be affected. Likewise, parish councils likely to be affected, will be considered to be interested parties. Other than these however, this authority will generally require written evidence that a person/body (e.g. an advocate / relative) ‘represents’ someone who either lives sufficiently close to the premises to be likely to be affected by the authorised activities and/or has business interests that might be affected by the authorised activities. A letter from one of these persons, requesting the representation is sufficient.

If individuals wish to approach Councillors to ask them to represent their views then care should be taken that the Councillors are not part of the Licensing Committee dealing with the licence application. If there are any doubts then please contact the licensing team (see details on page 5).

6. Exchange of Information

Licensing authorities are required to include in their statements, the principles to be applied by the authority in exercising the functions under sections 29 and 30 of the Act with respect to the exchange of information between it and the Gambling Commission, and the functions under section 350 of the Act with the respect to the exchange of information between it and the other persons listed in Schedule 6 to the Act.

The principle that this licensing authority applies is that it will act in accordance with the provisions of the Gambling Act 2005 in its exchange of information which includes the provision that the Data Protection Act 1998 will not be contravened. The licensing authority will also have regard to any Guidance issued by the Gambling Commission on this matter, as well as any relevant regulations issued by the Secretary of State under the powers provided in the Gambling Act 2005.

Should any protocols be established as regards information exchange with other bodies then they will be made available.

7. Enforcement

Licensing authorities are required by regulation under the Gambling Act 2005 to state the principles to be applied by the authority in exercising the functions under Part 15 of the Act with respect to the inspection of premises, and the powers under section 346 of the Act to institute criminal proceedings in respect of the offences specified.

This licensing authority's principles are that:

It will be guided by the Gambling Commission's Guidance to licensing authorities and will endeavour to be:

- Proportionate: regulators should only intervene when necessary, remedies should be appropriate to the risk posed, and costs identified and minimised;
- Accountable: regulators must be able to justify decisions, and be subject to public scrutiny;
- Consistent: rules and standards must be joined up and implemented fairly;
- Transparent: regulators should be open, and keep regulations simple and user friendly; and
- Targeted: regulation should be focused on the problem, and minimise side effects.

This licensing authority will also endeavour to avoid duplication with other regulatory regimes so far as possible.

This licensing authority has adopted and implemented a risk-based inspection programme, based on;

- The licensing objectives
- Relevant codes of practice
- Guidance issued by the Gambling Commission, in particular at Part 36
- The principles set out in this statement of licensing principles

The main enforcement and compliance role for this licensing authority in terms of the Gambling Act 2005 is to ensure compliance with the premises licences and other permissions which it authorises. The Gambling Commission is the enforcement body for the operating and personal licences. It is also worth noting that concerns about manufacture, supply or repair of gaming machines are not dealt with by the licensing authority but should be notified to the Gambling Commission.

This licensing authority also keeps itself informed of developments as regards the work of the Better Regulation Delivery Office in its consideration of the regulatory functions of local authorities. In particular, with regard to the Regulators Code (April 2014) which provides a regulatory framework that supports compliance and growth while enabling resources to be focused where they are most needed.

Bearing in mind the principle of transparency, this licensing authority's enforcement policy is available upon request to the licensing team (*see details on page 5*).

8. Licensing Authority functions

Licensing Authorities are required under the Act to:

- Be responsible for the licensing of premises where gambling activities are to take place by issuing *Premises Licences*
- Issue *Provisional Statements*
- Regulate *members' clubs* and *miners' welfare institutes* who wish to undertake certain gaming activities via issuing Club Gaming Permits and/or Club Machine Permits
- Issue *Club Machine Permits* to *Commercial Clubs*
- Grant permits for the use of certain lower stake gaming machines at *unlicensed Family Entertainment Centres*
- Receive notifications from alcohol licensed premises (under the Licensing Act 2003) for the use of two or fewer gaming machines
- Issue Licensed Premises Gaming Machines Permits for premises licensed to sell/supply alcohol for consumption on the licensed premises, under the Licensing Act 2003, where there are more than two machines.
- Register *small society lotteries* below prescribed thresholds
- Issue *Prize Gaming Permits*
- Receive and Endorse *Temporary Use Notices*
- Receive *Occasional Use Notices*
- Provide information to the Gambling Commission regarding details of licences issued (see section above on 'information exchange')
- Maintain registers of the permits and licences that are issued under these functions

It should be noted that licensing authorities are not to be involved in licensing remote gambling at all, which is regulated by the Gambling Commission via operating licences.

PART B PREMISES LICENCES: CONSIDERATION OF APPLICATIONS

1. General Principles

Premises Licences are subject to the requirements set-out in the Gambling Act 2005 and regulations, as well as specific mandatory and default conditions which are detailed in regulations issued by the Secretary of State. Licensing authorities are able to exclude default conditions and also attach others, where it is believed to be appropriate.

(i) Decision-making

This licensing authority is aware that in making decisions about premises licences it should aim to permit the use of premises for gambling in so far as it thinks it:

- in accordance with any relevant code of practice issued by the Gambling Commission
- in accordance with any relevant guidance issued by the Gambling Commission
- reasonably consistent with the licensing objectives and
- in accordance with the authority's statement of principles

It is appreciated that as per the Gambling Commission's Guidance to Licensing Authorities "that in deciding whether or not to grant a licence a licensing authority must not have regard to the expected demand for gambling premises that are the subject of the application".

(ii) Definition of "premises"

In the Act, "premises" is defined as including "any place". Section 152 therefore prevents more than one premises licence applying to any place. But a single building could be subject to more than one premises licence, provided they are for different parts of the building and the different parts of the building can be reasonably regarded as being different premises. This approach has been taken to allow large, multiple unit premises such as a pleasure park, pier, track or shopping mall to obtain discrete premises licences, where appropriate safeguards are in place. However, licensing authorities should pay particular attention if there are issues about subdivisions of a single building or plot and should ensure that mandatory conditions relating to access between premises are observed.

The Gambling Commission states in the third edition of its Guidance to Licensing Authorities that: "In most cases the expectation is that a single building / plot will be the subject of an application for a licence, for example, 32 High Street. But, that does not mean 32 High Street cannot be the subject of separate premises licences for the basement and ground floor, if they are configured acceptably. Whether different parts of a building can properly be regarded as being separate premises will depend on the circumstances. The location of the premises will clearly be an important consideration and the suitability of the division is likely to be a matter for discussion between the operator and the licensing officer. However, the Gambling Commission does not consider that areas of a building that are artificially or temporarily separated, for example by ropes or moveable partitions, can properly be regarded as different premises.

This licensing authority takes particular note of the Gambling Commission's Guidance to Licensing Authorities which states that: licensing authorities should take particular care in considering applications for multiple licences for a building and those relating to a discrete part of a building used for other (non-gambling) purposes. In particular they should be aware of the following:

- The third licensing objective seeks to protect children from being harmed by gambling. In practice that means not only preventing them from taking part in gambling, but also preventing them from being in close proximity to gambling. Therefore premises should be configured so that children are not invited to participate in, have accidental access to or closely observe gambling where they are prohibited from participating.
- Entrances to and exits from parts of a building covered by one or more premises licences should be separate and identifiable so that the separation of different premises is not compromised and people do not "drift" into a gambling area. In this context it should normally be possible to access the premises without going through another licensed premises or premises with a permit.
- Customers should be able to participate in the activity named on the premises licence.

The Guidance also gives a list of factors which the licensing authority should be aware of, which may include:

- Is a separate registration for business rates in place for the premises?

- Is the premises' neighbouring premises owned by the same person or someone else?
- Can each of the premises be accessed from the street or a public passageway?
- Can the premises only be accessed from any other gambling premises?

This authority will consider these and other relevant factors in making its decision, depending on all the circumstances of the case.

The Gambling Commission's relevant access provisions for each premises type are reproduced below:

7.26:

Casinos

- The principal access entrance to the premises must be from a street (as defined at 7.24 & 7.25 of the Guidance)
- No entrance to a casino must be from premises that are used wholly or mainly by children and/or young persons
- No customer must be able to enter a casino directly from any other premises which holds a gambling premises licence

Adult Gaming Centre

- No customer must be able to access the premises directly from any other licensed gambling premises

Betting Shops

- Access must be from a street (as per paragraph 7.24 & 7.25 of Guidance to Licensing Authorities) or from another premises with a betting premises licence
- No direct access from a betting shop to another premises used for the retail sale of merchandise or services. In effect there cannot be an entrance to a betting shop from a shop of any kind and you could not have a betting shop at the back of a café – the whole area would have to be licensed.

Tracks

- No customer should be able to access the premises directly from:
 - a casino
 - an adult gaming centre

Bingo Premises

- No customer must be able to access the premise directly from:
 - a casino
 - an adult gaming centre
 - a betting premises, other than a track

Family Entertainment Centre

- No customer must be able to access the premises directly from:
 - a casino
 - an adult gaming centre
 - a betting premises, other than a track

Part 7 of the Gambling Commission's Guidance to Licensing Authorities contains further guidance on this issue, which this authority will also take into account in its decision-making.

(iii) Premises "ready for gambling"

The Guidance states that a licence to use premises for gambling should only be issued in relation to premises that the licensing authority can be satisfied are going to be ready to be used for gambling in the reasonably near future, consistent with the scale of building or alterations required before the premises are brought into use.

If the construction of a premises is not yet complete, or if they need alteration, or if the applicant does not yet have a right to occupy them, then an application for a provisional statement should be made instead.

In deciding whether a premises licence can be granted where there are outstanding construction or alteration works at a premises, this authority will determine applications on their merits, applying a two stage consideration process:-

- First, whether the premises ought to be permitted to be used for gambling
- Second, whether appropriate conditions can be put in place to cater for the situation that the premises are not yet in the state in which they ought to be before gambling takes place.

Applicants should note that this authority is entitled to decide that it is appropriate to grant a licence subject to conditions, but it is not obliged to grant such a licence.

More detailed examples of the circumstances in which such a licence may be granted can be found at paragraphs 7.60-7.67 of the Guidance.

(iv) Location

This licensing authority is aware that demand issues cannot be considered with regard to the location of premises but that considerations in terms of the licensing objectives are relevant to its decision-making. This authority will pay particular attention to the protection of children and vulnerable persons from being harmed or exploited by gambling, as well as issues of crime and disorder. Should any specific policy be decided upon as regards areas where gambling premises should not be located, this statement will be updated. It should be noted that any such policy does not preclude any application being made and each application will be decided on its merits, with the onus upon the applicant showing how the concerns can be overcome.

(v) Planning:

The Gambling Commission Guidance to Licensing Authorities states:

7.60 – In determining applications the licensing authority has a duty to take into consideration all relevant matters and not to take into consideration any irrelevant matters, i.e. those not related to gambling and the licensing objectives. One example of an irrelevant matter would be the likelihood of the applicant obtaining planning permission or building regulations approval for their proposal.

This authority will not take into account irrelevant matters as per the above guidance. In addition this authority notes the following excerpt from the Guidance:

7.67 - When dealing with a premises licence application for finished buildings, the licensing authority should not take into account whether those buildings have or comply with the necessary planning or building consents. Those matters should be dealt with under relevant planning control and building regulation powers, and not form part of the consideration for the premises licence. Section 210 of the 2005 Act prevents licensing authorities taking into account the likelihood of the proposal by the applicant obtaining planning or building consent when considering a premises licence application. Equally the grant of a gambling premises licence does not prejudice or prevent any action that may be appropriate under the law relating to planning or building.

(vi) Duplication with other regulatory regimes

This licensing authority seeks to avoid any duplication with other statutory / regulatory systems where possible, including planning. This authority will not consider whether a licence application is likely to be awarded planning or building approval, in its consideration of it. It will though listen to, and consider carefully, any concerns about conditions which are not able to be met by licensees due to planning restrictions, should such a situation arise.

When dealing with a premises licence application for finished buildings, this authority will not take into account whether those buildings have to comply with the necessary planning or building consents. Fire or health and safety risks will not be taken into account, as these matters are dealt with under relevant planning controls, buildings and other regulations and must not form part of the consideration for the premises licence.

Licensing Objectives- Premises licences granted must be reasonably consistent with the licensing objectives. With regard to these objectives, this licensing authority has considered the Gambling Commission's Guidance (Part 5) to licensing authorities and some comments are made below.

Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime - This licensing authority is aware that the Gambling Commission takes a leading role in preventing gambling from being a source of crime. The Gambling Commission's Guidance does however envisage that licensing authorities should pay attention to the proposed location of gambling premises in terms of this licensing objective. Thus, where an area has known high levels of organised crime this authority will consider carefully whether gambling premises are suitable to be located there and whether conditions may be suitable such as the provision of door supervisors. This licensing authority is aware of the distinction between disorder and nuisance and will consider factors (for example whether police assistance was required and how threatening the behaviour was to those who could see it) so as to make that distinction.

Ensuring that gambling is conducted in a fair and open way - This licensing authority has noted that the Gambling Commission states that it generally does not expect licensing authorities to be concerned with ensuring that gambling is conducted in a fair and open way as this will be addressed via operating and personal licences. There is however, more of a role with regard to tracks which is explained in more detail in the 'tracks' section below.

Protecting children and other vulnerable persons from being harmed or exploited by gambling - This licensing authority has noted the Gambling Commission's Guidance that this objective means preventing children from taking part in gambling (as well as restriction of advertising so that gambling products are not aimed at or are, particularly attractive to children). This licensing authority will therefore consider, as suggested in the Gambling Commission's Guidance, whether specific measures are required at particular premises, with regard to this licensing objective. Appropriate measures may include supervision of entrances / machines, segregation of areas etc.

This licensing authority is also aware of the Gambling Commission Codes of Practice as regards this licensing objective, in relation to specific premises.

As regards the term “vulnerable persons” it is noted that the Gambling Commission does not seek to offer a definition but states that “it will for regulatory purposes assume that this group includes people who gamble more than they want to; people who gambling beyond their means; and people who may not be able to make informed or balanced decisions about gambling due to a mental impairment, alcohol or drugs.” This licensing authority will consider this licensing objective on a case by case basis.

Conditions- Any conditions attached to licences will be proportionate and will be:

- relevant to the need to make the proposed building suitable as a gambling facility
- directly related to the premises and the type of licence applied for;
- fairly and reasonably related to the scale and type of premises: and
- reasonable in all other respects.

Decisions upon individual conditions will be made on a case by case basis, although there will be a number of measures this licensing authority will consider utilising should there be a perceived need, such as the use of door supervisors, appropriate signage for adult only areas etc. There are specific comments made in this regard under some of the licence types below. This licensing authority will also expect the licence applicant to offer his/her own suggestions as to ways in which the licensing objectives can be met effectively.

This licensing authority will also consider specific measures which may be required for buildings which are subject to multiple premises licences. Such measures may include the supervision of entrances; segregation of gambling from non-gambling areas frequented by children; and the supervision of gaming machines in non-adult gambling specific premises in order to pursue the licensing objectives. These matters are in accordance with the Gambling Commission's Guidance.

This authority will also ensure that where category C or above machines are on offer in premises to which children are admitted:

- all such machines are located in an area of the premises which is separated from the remainder of the premises by a physical barrier which is effective to prevent access other than through a designated entrance;
- only adults are admitted to the area where these machines are located;
- access to the area where the machines are located is supervised;
- the area where these machines are located is arranged so that it can be observed by the staff or the licence holder; and
- at the entrance to and inside any such areas there are prominently displayed notices indicating that access to the area is prohibited to persons under 18.

These considerations will apply to premises including buildings where multiple premises licences are applicable.

This licensing authority is aware that tracks may be subject to one or more than one premises licence, provided each licence relates to a specified area of the track. As per the Gambling Commission's Guidance, this licensing authority will consider the impact upon the third licensing objective and the need to ensure that entrances to each type of premises are distinct and that children are excluded from gambling areas where they are not permitted to enter.

It is noted that there are conditions which the licensing authority cannot attach to premises licences which are:

- any condition on the premises licence which makes it impossible to comply with an operating licence condition;
- conditions relating to gaming machine categories, numbers, or method of operation;
- conditions which provide that membership of a club or body be required (the Gambling Act 2005 specifically removes the membership requirement for casino and bingo clubs and this provision prevents it being reinstated;) and
- conditions in relation to stakes, fees, winning or prizes.

Door Supervisors- The Gambling Commission advises in its Guidance to Licensing Authorities that if a licensing authority is concerned that a premises may attract disorder or be subject to attempts at unauthorised access (for example by children and young persons) then it may require that the entrances to the premises are controlled by a door supervisor, and is entitled to impose a premises licence to this effect.

Where it is decided that supervision of entrances/machines is appropriate for particular cases, a consideration of whether these need to be SIA licensed or not will be necessary. It will not be automatically assumed that they need to be licensed, as the statutory requirements for different types of premises vary (as per the Guidance, Part 33).

2. Adult Gaming Centres

This licensing authority will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to, for example, ensure that under 18 year olds do not have access to the premises.

This licensing authority may consider measures to meet the licensing objectives such as:

- Proof of age schemes
- CCTV
- Supervision of entrances / machine areas
- Physical separation of areas
- Location of entry
- Notices / signage
- Specific opening hours
- Self-exclusion schemes
- Provision of information leaflets / helpline numbers for organisations such as GamCare.

This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

3. (Licensed) Family Entertainment Centres:

This licensing authority will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority, for example, that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machine areas.

This licensing authority may consider measures to meet the licensing objectives such as:

- CCTV
- Supervision of entrances / machine areas
- Physical separation of areas
- Location of entry
- Notices / signage
- Specific opening hours
- Self-exclusion schemes
- Provision of information leaflets / helpline numbers for organisations such as GamCare.
- Measures / training for staff on how to deal with suspected truant school children on the premises

This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

This licensing authority will, as per the Gambling Commission's guidance, refer to the Commission's website to see any conditions that apply to operating licences covering the way in which the area containing the category C machines should be delineated. This licensing authority will also make itself aware of any mandatory or default conditions on these premises licences, when they have been published

4. Casinos

No Casinos resolution - This licensing authority has not passed a 'no casino' resolution under Section 166 of the Gambling Act 2005, but is aware that it has the power to do so. Should this licensing authority decide in the future to pass such a resolution, it will update this Statement of Principles with details of that resolution. Any such decision will be made by the Full Council.

Licence considerations / conditions – This licensing authority will attach conditions to casino premises licences according to the principles set out in the Gambling

Commission's Guidance at paragraph 9, bearing in mind the mandatory conditions listed in paragraph 17 of the Guidance, and the Licence Conditions and Codes of Practice published by the Gambling Commission.

Betting machines - This licensing authority will, as per the Gambling Commission's Guidance, take into account the size of the premises, the number of counter positions available for person-to-person transactions, and the ability of staff to monitor the use of the machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable people, when considering the number/nature/circumstances of betting machines an operator wants to offer.

5. Bingo premises

This licensing authority notes that the Gambling Commission's Guidance states:

18.4 Licensing authorities will need to satisfy themselves that bingo can be played in any bingo premises for which they issue a premises licence. This will be a relevant consideration where the operator of an existing bingo premises applies to vary their licence to exclude an area of the existing premises from its ambit and then applies for a new premises licence, or multiple licences, for that or those excluded areas.

This authority also notes the Guidance at paragraph 18.8 " In the unusual circumstance that an existing bingo premises covered by one premises licence applies to vary the licence and acquire additional bingo premises licences (so that the area that was the subject of a single licence will become divided between a number of separate licensed premises) it is not permissible for all of the gaming machines to which each of the licences brings an entitlement to be grouped together within one of the licensed premises.

18.6 Children and young people are allowed into bingo premises; however they are not permitted to participate in the bingo and if category B or C machines are made available for use these must be separated from areas where children and young people are allowed.

6. Betting premises

Betting machines - This licensing authority will, as per the Gambling Commission's Guidance(19.18), take into account the size of the premises, the number of counter positions available for person-to-person transactions, and the ability of staff to monitor the use of the machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable people, when considering the number/nature/circumstances of betting machines an operator wants to offer.

7. Tracks

This licensing authority is aware that tracks may be subject to one or more than one premises licence, provided each licence relates to a specified area of the track. As per the Gambling Commission's Guidance, this licensing authority will especially consider the impact upon the third licensing objective (i.e. the protection of children and vulnerable persons from being harmed or exploited by gambling) and the need to ensure that entrances to each type of premises are distinct and that children are excluded from gambling areas where they are not permitted to enter.

This authority will therefore expect the premises licence applicant to demonstrate suitable measures to ensure that children do not have access to adult only gaming facilities. It is noted that children and young persons will be permitted to enter track areas where facilities for betting are provided on days when dog-racing and/or horse

racing takes place, but that they are still prevented from entering areas where gaming machines (other than category D machines) are provided.

This licensing authority may consider measures to meet the licensing objectives such as:

- Proof of age schemes
- CCTV
- Supervision of entrances / machine areas
- Physical separation of areas
- Location of entry
- Notices / signage
- Specific opening hours
- Self-exclusion schemes
- Provision of information leaflets / helpline numbers for organisations such as GamCare

This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

Gaming machines.-Where the applicant holds a pool betting operating licence and is going to use the entitlement to four gaming machines, machines (other than category D machines) should be located in areas from which children are excluded.

Betting machines - This licensing authority will, as per Part 20 of the Gambling Commission's Guidance, take into account the size of the premises and the ability of staff to monitor the use of the machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable people, when considering the number/nature/circumstances of betting machines an operator proposes to offer.

Applications and plans-The Gambling Act (s51) requires applicants to submit plans of the premises with their application, in order to ensure that the licensing authority has the necessary information to make an informed judgement about whether the premises are fit for gambling. The plan will also be used for the licensing authority to plan future premises inspection activity. (See Guidance to Licensing Authorities, paragraph 20.28).

Plans for tracks do not need to be in a particular scale, but should be drawn to scale and should be sufficiently detailed to include the information required by regulations. (See Guidance to Licensing Authorities, paragraph 20.29).

Some tracks may be situated on agricultural land where the perimeter is not defined by virtue of an outer wall or fence, such as point-to-point racetracks. In such instances, where an entry fee is levied, track premises licence holders may erect temporary structures to restrict access to premises (See Guidance to Licensing Authorities, paragraph 20.31).

In the rare cases where the outer perimeter cannot be defined, it is likely that the track in question will not be specifically designed for the frequent holding of sporting events or races. In such cases betting facilities may be better provided through occasional use notices where the premises boundaries do not need to be defined (See Guidance to Licensing Authorities, paragraph 20.32).

This authority appreciates that it is sometimes difficult to define the precise location of betting areas on tracks. The precise location of where betting facilities are provided is not required to be shown on track plans, both by virtue of the fact that betting is permitted anywhere on the premises and because of the difficulties associated with pinpointing exact locations for some types of track. Applicants should provide sufficient information that this authority can satisfy itself that the plan indicates the main areas where betting might take place. For racecourses in particular, any betting areas subject to the “five times rule” (commonly known as betting rings) must be indicated on the plan. (See Guidance to Licensing Authorities, paragraph 20.33).

8 Travelling Fairs

This licensing authority is responsible for deciding whether, where category D machines and / or equal chance prize gaming without a permit is to be made available for use at travelling fairs, the statutory requirement that the facilities for gambling amount to no more than an ancillary amusement at the fair is met

The licensing authority will also consider whether the applicant falls within the statutory definition of a travelling fair.

It is noted that the 27-day statutory maximum for the land being used as a fair applies on a per calendar year basis, and that it applies to the piece of land on which the fairs are held, regardless of whether it is the same or different travelling fairs occupying the land. This licensing authority will work with its neighbouring authorities to ensure that land which crosses our boundaries is monitored so that the statutory limits are not exceeded.

9. Provisional Statements

Developers may wish to apply to this authority for provisional statements before entering into a contract to buy or lease property or land to judge whether a development is worth taking forward in light of the need to obtain a premises licence. There is no need for the applicant to hold an operating licence in order to apply for a provisional statement.

Section 204 of the Gambling Act provides for a person to make an application to the licensing authority for a provisional statement in respect of premises that he or she:

- expects to be constructed;
- expects to be altered; or
- expects to acquire a right to occupy.

The process for considering an application for a provisional statement is the same as that for a premises licence application. The applicant is obliged to give notice of the application in the same way as applying for a premises licence. Responsible authorities and interested parties may make representations and there are rights of appeal.

In contrast to the premises licence application, the applicant does not have to hold or have applied for an operating licence from the Gambling Commission (except in the case of a track) and they do not have to have a right to occupy the premises in respect of which their provisional application is made.

The holder of a provisional statement may then apply for a premises licence once the premises are constructed, altered or acquired. The licensing authority will be constrained in the matters it can consider when determining the premises licence application, and in terms of representations about premises licence applications that follow the grant of a provisional statement, no further representations from relevant authorities or interested parties can be taken into account unless:

- they concern matters which could not have been addressed at the provisional statement stage, or
- they reflect a change in the applicant's circumstances.

In addition, the authority may refuse the premises licence (or grant it on terms different to those attached to the provisional statement) only by reference to matters:

- which could not have been raised by objectors at the provisional statement stage;
- which in the authority's opinion reflect a change in the operator's circumstances; or
- where the premises has not been constructed in accordance with the plan submitted with the application. This must be a substantial change to the plan and this licensing authority notes that it can discuss any concerns it has with the applicant before making a decision.

10. Reviews

Requests for a review of a premises licence can be made by interested parties or responsible authorities; however, it is for the licensing authority to decide whether the review is to be carried-out. This will be on the basis of whether the request for the review is relevant to the matters listed below;

- in accordance with any relevant Code of Practice issued by the Gambling Commission;
- in accordance with any relevant guidance issued by the Gambling Commission;
- reasonably consistent with the licensing objectives; and
- in accordance with the authority's statement of principles.

The request for the review will also be subject to the consideration by the authority as to whether the request is frivolous, vexatious, or whether it will certainly not cause this authority to wish to alter/revoke/suspend the licence, or whether it is substantially the same as previous representations or requests for review.

The licensing authority can also initiate a review of a particular premises licence, or a particular class of premises licence on the basis of any reason which it thinks is appropriate.

Once a valid application for a review has been received by the licensing authority, representations can be made by responsible authorities and interested parties during a 28 day period. This period begins 7 days after the application was received by the licensing authority, who will publish notice of the application within 7 days of receipt.

The licensing authority must carry out the review as soon as possible after the 28 day period for making representations has passed.

The purpose of the review will be to determine whether the licensing authority should take any action in relation to the licence. If action is justified, the options open to the licensing authority are:-

- (a) add, remove or amend a licence condition imposed by the licensing authority;
- (b) exclude a default condition imposed by the Secretary of State or Scottish Ministers (e.g. opening hours) or remove or amend such an exclusion;
- (c) suspend the premises licence for a period not exceeding three months; and
- (d) revoke the premises licence.

In determining what action, if any, should be taken following a review, the licensing authority must have regard to the principles set out in section 153 of the Act, as well as any relevant representations.

In particular, the licensing authority may also initiate a review of a premises licence on the grounds that a premises licence holder has not provided facilities for gambling at the premises. This is to prevent people from applying for licences in a speculative manner without intending to use them.

Once the review has been completed, the licensing authority must, as soon as possible, notify its decision to:

- the applicant for review (if any)
- the Commission
- any person who made representations
- the licence holder
- the chief officer of police or chief constable; and
- Her Majesty's Commissioners for Revenue and Customs

PART C

Permits / Temporary & Occasional Use Notice

1. Unlicensed Family Entertainment Centre (FEC) gaming machine permits (Statement of Principles on Permits – Schedule 10 para 7)

Where a premises does not hold a Premises Licence but wishes to provide gaming machines, it may apply to the licensing authority for this permit. It should be noted that the applicant must show that the premises will be wholly or mainly used for making gaming machines available for use (Section 238).

The Gambling Act 2005 states that a licensing authority may prepare a *statement of principles* that they propose to consider in determining the suitability of an applicant for a permit and in preparing this statement, and/or considering applications, it need not (but may) have regard to the licensing objectives and shall have regard to any relevant guidance issued by the Commission under section 25. The Gambling Commission's Guidance to licensing authorities also states: "licensing authorities may include a statement of principles that it proposes to apply when exercising their functions in considering applications for permits. In particular it may want to set out the matters that it will take into account in determining the suitability of the applicant. Given that the premises will particularly appeal to children and young persons, local authorities may want to give weight to matters relating to child protection issues".(24.6).

Guidance also states: “An application for a permit may be granted only if the licensing authority is satisfied that the premises will be used as an unlicensed FEC, and if the chief officer of police has been consulted on the application”. Licensing authorities might wish to consider asking applicants to demonstrate:

- a full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed FECs;
- that the applicant has no relevant convictions (those that are set out in Schedule 7 of the Act), and
- that staff are trained to have a full understanding of the maximum stakes and prizes. (24.7)

It should be noted that a licensing authority cannot attach conditions to this type of permit.

Statement of Principles = This licensing authority will expect the applicant to show that there are policies and procedures in place to protect children from harm. Harm in this context is not limited to harm from gambling but includes wider child protection considerations. The efficiency of such policies and procedures will each be considered on their merits, however, they may include appropriate measures / training for staff as regards suspected truant school children on the premises, measures / training covering how staff would deal with unsupervised very young children being on the premises, or children causing perceived problems on / around the premises. This licensing authority will also expect, as per Gambling Commission Guidance, that applicants demonstrate a full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed FECs; that the applicant has no relevant convictions (those that are set out in Schedule 7 of the Act); and that staff are trained to have a full understanding of the maximum stakes and prizes.

Further, applicants will have to provide:-a) a scaled plan of the premises and its location, b) Criminal Records Check(CRB) for staff working on such premises who would specifically come into contact with children, c) evidence that staff have received relevant training to deal with children/childrens issues and d) evidence of public liability insurance when making this type of application.

2. (Alcohol) Licensed premises gaming machine permits – (Schedule 13 Para 4(1))

Automatic entitlement:2 machines

There is provision in the Act for premises licensed to sell alcohol for consumption on the premises, to automatically have 2 gaming machines, of categories C and/or D. The premises merely need to notify the licensing authority.

This licensing authority can remove the automatic authorisation in respect of any particular premises if;

- provision of the machines is not reasonably consistent with the pursuit of the licensing objectives;
- gaming has taken place on the premises that breaches a condition of section 282 of the Gambling Act (i.e. that written notice has been provided to the licensing authority, that a fee has been provided and that any relevant code of practice

issued by the Gambling Commission about the location and operation of the machine has been complied with)

- the premises are mainly used for gaming; or
- an offence under the Gambling Act has been committed on the premises

Permit: 3 or more machines- If a premises wishes to have more than 2 machines, then it needs to apply for a permit and the licensing authority must consider that application based upon the licensing objectives, any guidance issued by the Gambling Commission issued under Section 25 of the Gambling Act 2005, and “*such matters as they think relevant.*”

This licensing authority considers that “such matters” will be decided on a case by case basis but generally there will be regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machines. Measures which will satisfy this authority that there will be no access may include the adult machines being in sight of the bar, or in the sight of staff who will monitor that the machines are not being used by those under 18. Notices and signage may also be help. As regards the protection of vulnerable persons, applicants may wish to consider the provision of information leaflets / helpline numbers for organisations such as GamCare.

It is recognised that some alcohol licensed premises may apply for a premises licence for their non-alcohol licensed areas. Any such application would need to be applied for, and dealt with as an Adult Gaming Centre premises licence.

It should be noted that this licensing authority can decide to grant the application with a smaller number of machines and/or a different category of machines than that applied for. Conditions (other than these) cannot be attached.

It should also be noted that the holder of a permit must comply with any Code of Practice issued by the Gambling Commission about the location and operation of the machine.

3. Prize Gaming Permits – (Statement of Principles on Permits - Schedule 14 Para 8 (3))

The Gambling Act 2005 states that a Licensing Authority may “prepare a statement of principles that they propose to apply in exercising their functions under this Schedule” which “may, in particular, specify matters that the licensing authority propose to consider in determining the suitability of the applicant for a permit”.

This licensing authority has prepared a Statement of Principles which is that the applicant should set out the types of gaming that he or she is intending to offer and that the applicant should be able to demonstrate:

- that they understand the limits to stakes and prizes that are set out in Regulations;
- that the gaming offered is within the law
- Clear policies that outline the steps to be taken to protect children from harm.

In making its decision on an application for this permit the licensing authority does not need to (but may) have regard to the licensing objectives but must have regard to

any Gambling Commission guidance (Gambling Act 2005, Schedule 14 paragraph 8(3)).

It should be noted that there are conditions in the Gambling Act 2005 by which the permit holder must comply, but that the licensing authority cannot attach conditions.

The conditions in the Act are:

- the limits on participation fees, as set out in regulations, must be complied with;
- all chances to participate in the gaming must be allocated on the premises on which the gaming is taking place and on one day; the game must be played and completed on the day the chances are allocated; and the result of the game must be made public in the premises on the day that it is played;
- the prize for which the game is played must not exceed the amount set out in regulations (if a money prize), or the prescribed value (if non-monetary prize); and
- participation in the gaming must not entitle the player to take part in any other gambling.

4. Club Gaming and Club Machines Permits

Members Clubs and Miners' Welfare Institutes (but not Commercial Clubs) may apply for a Club Gaming Permit or a Club Gaming machines permit. The Club Gaming Permit will enable the premises to provide gaming machines (3 machines of categories B3A, B4, C or D but only one B3A machine can be sited as part of the entitlement), equal chance gaming (without having to abide by the stake and prize limits which would apply to exempt gaming in the absence of a permit) and games of chance as prescribed in regulations, namely pontoon and chemin de fer. This is in addition to the exempt gaming authorisation under Section 269 of the Act. A Club machine permit will enable the premises to provide gaming machines (3 machines of categories B3A, B4, C and D).

Gambling Commission Guidance for licensing authorities states: "Members clubs must have at least 25 members and be established and conducted "wholly or mainly" for purposes other than gaming, unless the gaming is restricted to bridge and whist. A members' club must be permanent in nature, not established to make commercial profit, and controlled by its members equally. Examples include working men's clubs, branches of Royal British Legion and clubs with political affiliations."

The Commission Guidance also notes that "licensing authorities may only refuse an application on the grounds that:

- (a) the applicant does not fulfil the requirements for a members' or commercial club or miners' welfare institute and therefore is not entitled to receive the type of permit for which it has applied;
- (b) the applicant's premises are used wholly or mainly by children and/or young persons;
- (c) an offence under the Act or a breach of a permit has been committed by the applicant while providing gaming facilities;
- (d) a permit held by the applicant has been cancelled in the previous ten years; or
- (e) an objection has been lodged by the Commission or the police.

There is also a 'fast-track' procedure available under the Act for premises which hold a Club Premises Certificate under the Licensing Act 2003 (Schedule 12 paragraph

10). As the Gambling Commission's Guidance to licensing authorities states: "Under the fast-track procedure there is no opportunity for objections to be made by the Commission or the police, and the ground upon which an authority can refuse a permit are reduced."

The grounds on which an application under the process may be refused are:

- (a) that the club is established primarily for gaming, other than gaming prescribed under schedule 12;
- (b) that in addition to the prescribed gaming, the applicant provides facilities for other gaming; or
- (c) that a club gaming permit or club machine permit issued to the applicant in the last ten years has been cancelled."

There are statutory conditions on club gaming permits that no child uses a category B or C machine on the premises and that the holder complies with any relevant provision of a code of practice about the location and operation of gaming machines.

5. Temporary Use Notices

Temporary Use Notices allow the use of premises for gambling where there is no premises licence but where a gambling operator wishes to use the premises temporarily for providing facilities for gambling. Premises that might be suitable for Temporary Use Notices, according to the Gambling Commission, would include hotels, conference centres and sporting venues.

The licensing authority can only grant a Temporary Use Notice to a person or company holding a relevant operating licence, i.e. a non-remote casino operating licence.

The Secretary of State has the power to determine what form of gambling can be authorised by Temporary Use Notices, and at the time of writing this Statement the relevant regulations (SI no 3157; The Gambling Act 2005 (Temporary Use Notices) Regulations 2007) state that Temporary Use Notices can only be used to permit the provision of facilities for equal chance gaming, where the gaming is intended to produce a single winner, which in practice means poker tournaments.

There are a number of statutory limits as regards Temporary Use Notices. The meaning of "premises" in Part 8 of the Act is discussed in Parts 7 and 14 of the Gambling Commission Guidance to Licensing Authorities. As with "premises", the definition of "a set of premises" will be a question of fact in the particular circumstances of each notice that is given. In the Act "premises" is defined as including "any place". In considering whether a place falls within the definition of "a set of premises", the licensing authority needs to look at, amongst other things, the ownership/occupation and control of the premises.

This licensing authority expects to object to notices where it appears that their effect would be to permit regular gambling in a place that could be described as one set of premises, as recommended in the Gambling Commission's Guidance to Licensing Authorities.

6. Occasional Use Notices:

This licensing authority has very little discretion as regards these notices aside from ensuring that the statutory limit of 8 days in a calendar year is not exceeded. This licensing authority will though consider the definition of a 'track' and whether the applicant is permitted to avail him/herself of the notice.

Annex A

List of Consultees

| | | |
|--|--|---|
| Chief Executive The Gambling Commission Victoria Square House Victoria Square Birmingham B2 4BP | Chief Inspector Community Safety North Yorkshire Police Headquarters Newby Wiske Northallerton North Yorkshire DL7 9HA | Inspector Andrew Everitt Malton Police Station Malton |
| Sergeant Matthew France Licensing Manager North Yorkshire Police Alcohol Licensing Unit Fulford Road York YO10 4BY | Station Manager Malton Fire Station Sheepfoot Hill Malton N. Yorks YO17 0EB | Gary Housden Development Control Ryedale District Council |
| Director of Planning North York Moors National Park Authority The Old Vicarage Bondgate Helmsley York YO62 5BP | Mrs Ailish Lilley Pollution Section Ryedale District Council | Mr Robert Robinson Health & Safety Ryedale District Council |
| Operations Manager Health & Safety Executive Marshall Mill Marshall Street Leeds LS11 9YJ | Corporate Director Children & Young Peoples Service North Yorkshire County Council Room 122 County Hall Racecourse Lane Northallerton DL7 8DD | H M Revenue & Customs National Registration Unit (Betting & Gambling) Portcullis House 21 India Street Glasgow G2 4PZ |
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6 New Bridge Street
London
EC4V 6AB

The Chief Executive
The Jockey Club
75 High Holborn
London
WC1V 6LS

Carousel Games Co UK
Beansheaf Farm
Malton Road
Kirbymisperton
Malton
YO17 6UE

Gamestec Ltd
Low Lane
Horsforth
Leeds
LS18 4ER

Leisure Link
3 The Maltings
Wetmore Road
Burton on Trent
Staffs
DE14 1SE

Mr H N Mayne
The Mayne Bookmaker
3 Commercial Street
Norton
Malton

William Hill, Bookmakers
16 Market Place
Pickering
YO18

William Hill, Bookmakers
6 – 8 Yorkersgate
Malton
North Yorkshire

William Hill, Bookmakers
15 Newgate
Malton
North Yorkshire

Kirkbymoorside Golf Club
Manor Vale
Kirkbymoorside
York
YO62 6EG

Federation of Licensed Victuallers
Associations
The Raylor Centre
James Street
York
YO10 3DW

Malton Conservative Club
32 Market Place
Malton
YO17 7LX

Kirkbymoorside & District
Royal British Legion Club
Adela Shaw Site
Kirkbymoorside
York
YO62 6JE

Malton Railway Mens Sports &
Social Club
2 Welham Road
Norton
Malton
YO17 9DH

Bright Steels Social Club
55 Wood Street
Norton
Malton
YO17 9BA

Pickering & District
Conservative Club
40 Market Place
Pickering
YO18 7AE

Pickering & District Working Mens
Club & Institute Ltd
Southgate
Pickering
YO18 8BL

Malton & Norton Golf Club
Welham Road
Norton
Malton
YO17 9DU

Gail Snowden
Safer Ryedale
Ryedale District Council

North Yorkshire Trading
Standards
FAO Sharon Green
Unit 4/5 Block B
Thornfield Business Park
Standard Way
Northallerton
DL6 2XQ

Jos Holmes
Economy & Community Services
Manager
Ryedale District Council

Miss Anne Mackintosh MP
House of Commons
London
SW1A DAAD

Mrs H Chafer
Area Housing Manager
Yorkshire Housing
Stanley Harrison House
Norton Road
Malton
YO17 9RD

Mr T Bain
Regional Development Manager
William Hill Organisation Ltd
P O Box 170
Leeds
LS2 8JF

Association of British
BookmakersLtd
Ground Floor
Warwick House
25 Buckingham Palace Road
London
SW1W 0PP

The Bingo Association
Lexham House
75 High Street
Dunstable
Bedfordshire
LU6 1JF

Janet Waggott
Chief Executive
Ryedale District Council

Mr Simon Pullin
Flamingoland Ltd
Kirby Misperton
Malton
North Yorkshire
YO17 6UX

Mr C Lord
Housing Services Manager
Yorkshire Housing
Dysons Chamber
12-14 Briggate
Leeds
LS1 6ER

All 30 Ryedale District Councillors and 98 Parish Councillors were given the opportunity to comment on the draft Statement of Licensing Principles and copies were also placed in libraries.

ANNEX B

Table of delegation of licensing functions

| MATTER TO BE DEALT WITH | FULL COUNCIL | LICENSING COMMITTEE/SUB COMMITTEE | OFFICERS | COUNCIL SOLICITOR |
|--|---------------------|---|---|--------------------------|
| Three year licensing policy | X | | | |
| Policy not to permit casinos | X | | | |
| Fee setting-when appropriate | | X | | |
| Application for premises licences | | Where representations have been received and not withdrawn | Where no representations received/representations have been withdrawn | |
| Application for a variation to a licence | | Where representations have been received and not withdrawn | Where no representations received/representations have been withdrawn | |
| Application for a transfer of a licence | | Where representations have been received from the Gambling Commission | Where no representations received from the Gambling Commission | |
| Application for provisional statement | | Where representations have been received and not withdrawn | Where no representations received/representations have been withdrawn | |
| Review of premises licence | | X | | |
| Application for club gaming/club machine permits | | Where representations have been received and not withdrawn | Where no representations received/representations have been withdrawn | |
| Cancellation of club gaming/club machine | | X | | |

| | | | | |
|---|--|---|---|---|
| permits | | | | |
| Application for other permits | | | X | |
| Cancellation of licensed premises gaming machine permits | | | X | |
| Consideration of Temporary Use Notices | | | X | |
| Decision to give a counter Notice to a Temporary Use Notice | | X | | |
| Determination as to whether a person is an interested party | | | | X |
| Determination as to whether representations are relevant | | | | X |
| Determination as whether a representation is frivolous, vexatious or repetitive | | | | X |
| Representative of Licensing Authority who will be responsible for making representations as the Responsible Authority on licence applications | | | | X |
| Responsibility for attaching to premises licences Mandatory, Default and | | | X | |

| | | | | |
|--|--|--|--|---|
| Specific Conditions | | | | |
| Representative of Licensing Authority who can initiate a Licence review | | | | X |
| Representative of Licensing Authority who can reject an application for a Licence review | | | | X |

X indicates the lowest level to which decisions can be delegated.

NB The Council reserves the right to amend this table of delegation



REPORT TO: FULL COUNCIL
DATE: 3 SEPTEMBER 2015
**SUBJECT: PART 'B' REFERRALS FROM OVERVIEW AND SCRUTINY
COMMITTEE ON 30 JULY 2015**

22 Treasury Management Annual Report 2014/15

Considered the report of the Finance Manager (s151).

Recommendation to Council

- a. That the treasury management report for 2014/15 be noted.
- b. That the actual 2014/15 prudential and treasury indicators in this report be approved.

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REPORT TO: COUNCIL

DATE: 3 SEPTEMBER 2015

REPORT OF THE: FINANCE MANAGER (s151)
PETER JOHNSON

TITLE OF REPORT: TREASURY MANAGEMENT ANNUAL REPORT 2014-15

WARDS AFFECTED: ALL

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

1.1 The Council is required by regulations issued under the Local Government Act 2003 to produce an annual treasury management review of activities and the actual prudential and treasury indicators for 2014/15. This report meets the requirements of both the CIPFA Code of Practice on Treasury Management (the Code) and the CIPFA Prudential Code for Capital Finance in Local Authorities (the Prudential Code).

2.0 RECOMMENDATIONS

2.1 That Council is recommended to:

- (i) Note the annual treasury management report for 2014/15; and
- (ii) Approve the actual 2014/15 prudential and treasury indicators in this report.

3.0 REASON FOR RECOMMENDATIONS

3.1 The Council has adopted the Code. A provision of the Code is that an annual review report must be made to the Full Council relating to the treasury activities of the previous year.

4.0 SIGNIFICANT RISKS

4.1 There are significant risks when investing public funds especially with unknown institutions. However, by the adoption of the CIPFA Code and a prudent investment strategy these are minimised. The employment of Treasury Advisors also helps reduce the risk.

5.0 POLICY CONTEXT AND CONSULTATION

5.1 The Council has adopted the CIPFA Code of Practice on Treasury Management in Local Authorities and this report complies with the requirements under this code.

5.2 The Council uses the services of Capita Treasury Services Limited to provide treasury management information and advice.

REPORT

6.0 REPORT DETAILS

6.1 During 2014/15 the minimum reporting requirements were that the full Council should receive the following reports:

- An annual treasury strategy in advance of the year (Council 25 February 2014)
- A mid year (minimum) treasury update report (Council 24 February 2015)
- An annual review following the end of the year describing the activity compared to the strategy (this report).

In addition, treasury management update reports were received by the Policy and Resources Committee.

6.2 The regulatory environment places responsibility on members for the review and scrutiny of treasury management policy and activities. This report is therefore important in that respect, as it provides details of the outturn position for treasury activities and highlights compliance with the Council's policies previously approved by Members.

6.3 This Council also confirms that it has complied with the requirement under the Code to give prior scrutiny to all the above treasury management reports by the Overview and Scrutiny Committee before they were reported to the full Council. Further Member training on treasury management issues will be arranged in the forthcoming year in order to support Members' scrutiny role.

6.4 This report summarises:

- Capital activity during the year;
- Impact of this activity on the Council's underlying indebtedness (the Capital Financing Requirement);
- Reporting of the required prudential and treasury indicators;
- Summary of interest rate movement in the year;
- Detailed borrowing activity;
- Detailed investment activity.

The Council's Capital Expenditure and Financing 2014/15.

6.5 The Council undertakes capital expenditure on long-term assets. These activities may either be:

- Financed immediately through the application of capital or revenue resources (capital receipts, capital grants, revenue contributions etc.), which has no resultant impact on the Council's borrowing need; or
- If insufficient financing is available or a decision is taken not to apply resources, the capital expenditure will give rise to a borrowing need.

- 6.6 The actual capital expenditure forms one of the required prudential indicators. The table below shows the actual capital expenditure and how this was financed.

| | 2014/15 Actual (£) | 2013/14 Actual (£) |
|----------------------------------|-----------------------|-----------------------|
| Total Capital Expenditure | 1,330,779 | 3,331,140 |
| Resourced by: | | |
| Capital receipts | - | 320,836 |
| Capital grants and contributions | 318,561 | 1,884,635 |
| Capital reserves | 2,500 | 1,125,669 |
| External Borrowing | 1,009,718 | - |
| Total | 1,330,779 | 3,331,140 |

The Economy and Interest rates

- 6.7 The original market expectation at the beginning of 2014/15 was for the first increase in Bank Rate to occur in quarter 1 2015 as the unemployment rate had fallen much faster than expected through the Bank of England's initial forward guidance target of 7%. In May, however, the Bank revised its forward guidance. A combination of very weak pay rises and inflation above the rate of pay rises meant that consumer disposable income was still being eroded and in August the Bank halved its forecast for pay inflation in 2014 from 2.5% to 1.25%.
- 6.8 Expectations for the first increase in Bank Rate therefore started to recede as growth was still heavily dependent on buoyant consumer demand. During the second half of 2014 financial markets were caught out by a halving of the oil price and the collapse of the peg between the Swiss franc and the euro. Fears also increased considerably that the ECB was going to do too little too late to ward off the threat of deflation and recession in the Eurozone. In mid-October, financial markets had a major panic for about a week. By the end of 2014, it was clear that inflation in the UK was going to head towards zero in 2015 and possibly even turn negative. In turn, this made it clear that the MPC would have great difficulty in starting to raise Bank Rate in 2015 while inflation was around zero and so market expectations for the first increase receded back to around quarter 3 of 2016.
- 6.9 Gilt yields were on a falling trend for much of the last eight months of 2014/15 but were then pulled in different directions by increasing fears after the anti-austerity parties won power in Greece in January; developments since then have increased fears that Greece could be heading for an exit from the euro. While the direct effects of this would be manageable by the EU and ECB, it is very hard to quantify quite what the potential knock on effects would be on other countries in the Eurozone once the so called impossibility of a country leaving the EZ had been disproved. Another downward pressure on gilt yields was the announcement in January that the ECB would start a major programme of quantitative easing, purchasing EZ government and other debt in March. On the other hand, strong growth in the US caused an increase in confidence that the US was well on the way to making a full recovery from the financial crash and would be the first country to start increasing its central rate, probably by the end of 2015. The UK would be closely following it due to strong growth over both 2013 and 2014 and good prospects for a continuation into 2015 and beyond

Overall Treasury Position as at 31 March 2015

- 6.10 At the beginning and the end of 2014/15 the Council's treasury position was as follows (excluding finance leases):

| | 31 March 2014 Principal | 31 March 2015 Principal |
|------------------------|-------------------------|-------------------------|
| Total Debt | - | £1.75m |
| CFR | - | £1.01m |
| Over/(Under) borrowing | - | £0.74m |
| Total Investments | £4.91m | £9.16m |
| Net Debt | -£4.91m | -£7.41m |

The Strategy for 2014/15

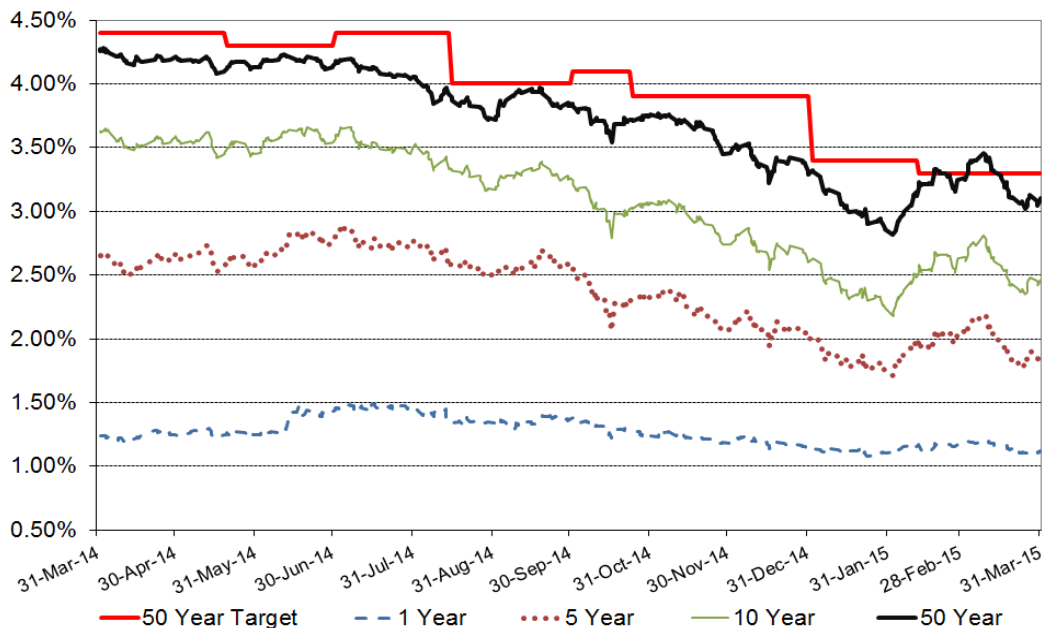
- 6.11 The Treasury Management Strategy for 2014/15 was approved by members at full Council on 25 February 2014.
- 6.12 The expectation for interest rates within the strategy for 2014/15 anticipated a low but rising Bank Rate, and gradual rises in medium and longer term fixed borrowing rates during 2014/15. Variable, or short term rates, were expected to be the cheaper form of borrowing over the period. Continued uncertainty in the aftermath of the 2008 financial crisis promoted a cautious approach, whereby investments would continue to be dominated by low counterparty risk considerations, resulting a relatively low returns compared to borrowing rates.

The Borrowing Requirement and Debt

- 6.13 The Council's underlying need to borrow to finance capital expenditure is termed the Capital Financing Requirement (CFR) (excluding borrowing by finance leases).

| | 31 March 2014 Actual | 31 March 2015 Budget | 31 March 2015 Actual |
|-----------|----------------------|----------------------|----------------------|
| Total CFR | - | £2.053m | £1.010m |

Borrowing Rates in 2014/15



Borrowing Outturn for 2014/15

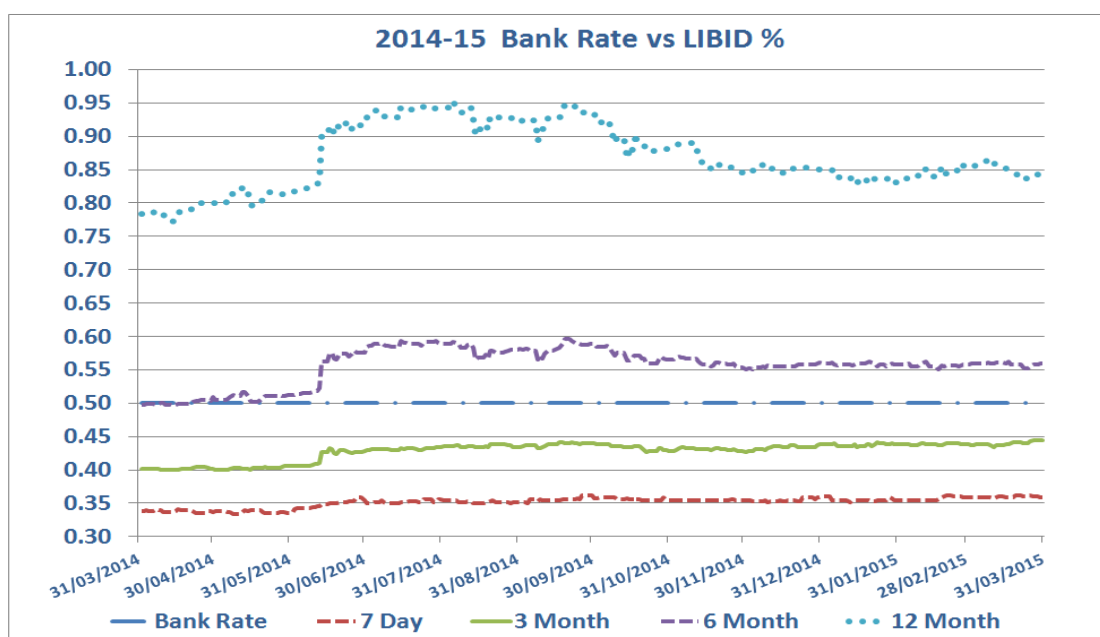
6.14 The following loans were taken out during the year:

| Lender | Principal | Type | Interest Rate | Maturity |
|--------|-----------|----------|---------------|----------|
| PWLB | £1.00m | Maturity | 3.69% | 50 years |
| PWLB | £0.75m | EIP | 2.99% | 19 years |

This compares with a budget assumption of borrowing at an interest rate of 3.85%.

Investment Rates in 2014/15

6.15 Bank rate remained at its historic low of 0.5% throughout the year; it has now remained unchanged for six years. Market expectations as to the timing of the start of monetary tightening started the year at quarter 1 2015 but then moved back to around quarter 3 2016 by the end of the year. Deposit rates remained depressed during the whole of the year, primarily due to the continued effects of the Funding for Lending Scheme.



Investment Outturn for 2014/15

6.16 The Council's investment policy is governed by DCLG guidance, which has been implemented in the Annual Investment Strategy approved by the Council on 25 February 2014. This policy sets out the approach for choosing investment counterparties, and is based on credit ratings provided by the three main credit rating agencies supplemented by additional market data (such as rating outlooks, credit default swaps, bank share prices etc).

6.17 The investment activity during the year conformed to the approved strategy and the Council had no liquidity difficulties.

6.18 The following table shows the result of the investment strategy undertaken by the

Council and the relative performance of the internally managed funds against the 7-day LIBID un-compounded rate benchmark:

| | Average Investment (£) | Gross Rate of Return | Net Rate of Return | Benchmark Return |
|---------------------------------|------------------------|----------------------|--------------------|------------------|
| Internally Managed: | | | | |
| Temporary & On-Call Investments | 5,995,918 | 0.50% | n/a | n/a |
| Fixed Term Deposits | 869,604 | 0.75% | n/a | 0.35% |

6.19 **The interest received by the Council from investments in 2014/15 totalled £71k; this compares to an original estimate of £68k.**

6.20 The Council's investment position is organised by the Finance Section in order to ensure adequate liquidity for revenue and capital activities and security of investments. Procedures and controls to achieve these objectives are well established both through Member reporting detailed in the summary, and through officer activity detailed in the Treasury Management Practices. At the beginning and the end of 2014/15 the Council's investments position was as follows:

| | 31 March 2015 (£) | 31 March 2014 (£) |
|--------------------------------|-------------------|-------------------|
| Internally Managed Investments | 9,160,000 | 4,910,000 |
| Total | 9,160,000 | 4,910,000 |

6.21 The maturity of the investment portfolio was as follows;

| | 31 March 2015 (£) | 31 March 2014 (£) |
|----------------------------------|-------------------|-------------------|
| On-call Investments | 60,000 | 60,000 |
| Fixed Term Deposits: | | |
| Repayable within 1 month | 0 | 0 |
| Repayable 1 month to 3 months | 3,000,000 | 2,850,000 |
| Repayable 3 months to 6 months | 3,600,000 | 500,000 |
| Repayable 6 months to 12 months | 2,500,000 | 1,500,000 |
| Repayable 12 months to 24 months | 0 | 0 |
| Total | 9,160,000 | 4,910,000 |

6.22 Investments were placed with the following institutions:

| Type of Institution | 31 March 2015 (£) | 31 March 2014 (£) |
|---------------------|-------------------|-------------------|
| UK Clearing Banks | 7,160,000 | 4,910,000 |
| Foreign Banks | 1,000,000 | 0 |
| Building Societies | 1,000,000 | 0 |
| Local Authorities | 0 | 0 |
| Total | 9,160,000 | 4,910,000 |

Compliance with Treasury Limits

6.23 During the financial year the Council operated within the treasury limits and Prudential Indicators set out in the Council's Treasury Management Strategy Statement (annex B).

7.0 IMPLICATIONS

7.1 The following implications have been identified:

- a) Financial
The results of the investment strategy effect the funding of the capital programme.
- b) Legal
There are no legal implications within this report
- c) Other (Equalities, Staffing, Planning, Health & Safety, Environmental, Crime & Disorder)
There are no additional implications within this report.

Peter Johnson
Finance Manager (s151)

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Background Papers:
None

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TREASURY MANAGEMENT ANNUAL REPORT 2014/15 - RISK MATRIX – ANNEX A

| Issue/Risk | Consequences if allowed to happen | Likelihood | Impact | Mitigation | Mitigated Likelihood | Mitigated Impact |
|--|--|------------|----------|--|----------------------|------------------|
| Credit risk - associated with investing with financial institutions that do not meet the credit rating criteria. | Could mean loss of principal sum and interest accrued. | 2 | D | In response to the economic climate the Council continue to adopt a more stringent credit rating methodology. | 1 | D |
| Market risk - Selection of wrong type of investment for higher return. | The poor performance of the chosen investment. | 3 | B | The number of investment options have been kept to a minimum within the investment strategy. | 2 | B |
| Liquidity risk - Use of fixed term deposits and / or instruments / investments with low marketability may mean a lack of liquidity | Unable to take advantage of better investment options. Funds are unavailable to cover capital spend. | 1 | B | The maturity profile has shortened for investments. The 2011/12 Investment Strategy reduced the period for non- specified investments and full Council agreed to continue with this policy in 2014/15. Short and medium term cash flow management ensures funds are available when needed. | 1 | B |

| Score | Likelihood | Score | Impact |
|-------|----------------|-------|----------|
| 1 | Very Low | A | Low |
| 2 | Not Likely | B | Minor |
| 3 | Likely | C | Medium |
| 4 | Very Likely | D | Major |
| 5 | Almost Certain | E | Disaster |

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PRUDENTIAL AND TREASURY INDICATORS

Prudential Indicators

| | 2013/14 Actual | 2014/15 Original | 2014/15 Actual |
|---|-------------------|---------------------|-------------------|
| Capital Expenditure | £3.331m | £1.375m | £1.331m |
| Ratio of financing costs to net revenue stream | 1.80% | 2.79% | 1.47% |
| Net borrowing requirement | -£4.708m | -£1.467m | -£6.897m |
| Capital Financing Requirement as at 31 March | £0.254m | £2.616m | £1.526m |
| Annual change in Capital Financing Requirement | -£0.041m | £2.362m | £1.272m |
| Incremental impact of capital investment decisions | | | |
| Increase in council tax (band D) per annum | N/a | £1.18 | N/a |

Treasury Management Indicators

| | 2013/14 Actual | 2014/15 Original | 2014/15 Actual |
|---|-------------------|---------------------|-------------------|
| Authorised Limit for external debt - | | | |
| borrowing | N/a | £20.0m | N/a |
| other long term liabilities | N/a | £1.0m | N/a |
| Total | N/a | £21.0m | N/a |
| Operational Boundary for external debt - | | | |
| borrowing | N/a | £5.0m | N/a |
| other long term liabilities | N/a | £0.7m | N/a |
| Total | N/a | £5.7m | N/a |
| External debt | £0m | £2.070m | £1.750m |
| Upper limit for fixed interest rate exposure | | | |
| Net principal re fixed rate investments | N/a | 100% | N/a |
| Upper limit for variable rate exposure | | | |
| Net principal re variable rate investments | N/a | 50% | N/a |
| Upper limit for total principal sums invested for over 364 days (per maturity date) | N/a | £1.0m | N/a |

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REPORT TO: FULL COUNCIL
DATE: 3 SEPTEMBER 2015
SUBJECT: PART 'B' REFERRALS FROM PLANNING COMMITTEE ON 18 AUGUST 2015

53 Part B Report - Developer Contributions from Small Sites

Recommendation to Council

That Council resolves to:

(i) No longer treat the Ministerial Statement of 1 December 2014 on support for small-scale developers, custom and self-builders as a material consideration in the planning process.

(ii) To apply full weight to Policies SP3 (Affordable Housing) and Policy SP11 (Community Facilities and Services) of the Ryedale Plan - Local Plan Strategy.

[For 10

Against 0

Abstain 0]

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

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

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

2.0 RECOMMENDATIONS

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

3.0 REASON FOR RECOMMENDATIONS

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

4.0 SIGNIFICANT RISKS

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

5.0 POLICY CONTEXT AND CONSULTATION

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

REPORT

6.0 REPORT DETAILS

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

7.0 IMPLICATIONS

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

8.0 NEXT STEPS

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

Gary Housden
Head of Planning and Housing

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

Background Papers:

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

Background Papers are available for inspection at:

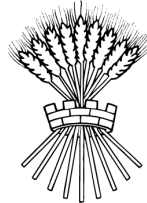
<http://planningguidance.planningportal.gov.uk/blog/guidance/planning-obligations/planning-obligations-guidance/>

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

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

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

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REPORT TO: FULL COUNCIL
DATE: 3 SEPTEMBER 2015
SUBJECT: PART 'B' REFERRALS FROM PLANNING COMMITTEE ON 18 AUGUST 2015

54 Part B Report - Judicial Review - The Queen on the Application of Milton (Peterborough) Estates Company trading as Fitzwilliam (Malton) Estate v Ryedale District Council

Recommendation to Council

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

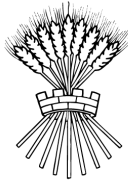
[For 6

Against 0

Abstain 3]

In accordance with the Members' Code of Conduct Councilors Cleary, Goodrick, Farnell, Jainu-Deen, Frank, Windress, Burr, Maud and Thornton declared a personal non pecuniary but not prejudicial interest.

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PART B: RECOMMENDATIONS TO COUNCIL

REPORT TO: PLANNING COMMITTEE

DATE: 18 AUGUST 2015

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

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

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

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

2.0 RECOMMENDATIONS

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

3.0 REASON FOR RECOMMENDATION

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

4.0 SIGNIFICANT RISKS

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

REPORT

5.0 BACKGROUND AND INTRODUCTION

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

6.0 POLICY CONTEXT

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

7.0 CONSULTATION

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

8.0 REPORT DETAILS

Why did the Council defend the judicial review action ?

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

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

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

The reasons why the judicial review was successful.

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

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

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

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

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

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

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

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

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

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

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

Status of the Planning Application

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

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

9.0 IMPLICATIONS

9.1 The following implications have been identified:

a) Financial

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

b) Legal

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

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

None.

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

APPENDIX 1

Q & A

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

Q1. What is the background to this case ?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Q4. What was the decision of Mr Justice Dove ?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Q9. What happens next ?

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

APPENDIX 2

CHRONOLOGY OF EVENTS

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

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

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

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

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

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

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

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

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

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

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

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

12.09.14 Planning permission was issued.

23.10.14 The Fitzwilliam Malton Estate lodged a claim for Judicial Review which was issued by Leeds High Court on 23 October 2014.

17.12.14 At first instance Mr Justice Gilbert designated the claim for Judicial Review as "totally without merit".

29.12.14 The Fitzwilliam Malton Estate gave notice that they would appeal that Order. It was later confirmed that the appeal would be considered by Lord Justice Sullivan of the Court of Appeal.

23.3.15 Lord Justice Sullivan found that the Fitzwilliam Malton Estate's grounds for a Judicial Review were properly arguable.

7.5.15 District Council election.

10-12.6.15 The Fitzwilliam Malton Estate's grounds for Judicial Review were considered before a Judge at Leeds High Court on 10 – 12 June 2015.

9.7.15 The High Court judge Mr Justice Dove handed down his judgement which quashed the decision to grant planning permission for a supermarket and fuel station at the Wentworth Street Car Park Malton. The Council was ordered to pay the reasonable costs of the Estate.

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Neutral Citation Number: [2015] EWHC 1948 (Admin)

Case No: CO/4915/2014

IN THE HIGH COURT OF JUSTICE
PLANNING COURT (LEEDS DISTRICT REGISTRY)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/07/2015

Before :

MR JUSTICE DOVE

Between :

The Queen

Claimant

- on the application of -

**MILTON (PETERBOROUGH) ESTATES
COMPANY TRADING AS FITZWILLIAM
(MALTON) ESTATE**

- and -

RYEDALE DISTRICT COUNCIL

Defendant

- and -

GMI HOLBECK LAND (MALTON) LIMITED

Interested Party

Peter Village QC & James Strachan QC (instructed by **Pinsent Masons LLP**) for the
Claimant

David Manley QC (instructed by **Ryedale District Council**) for the **Defendant**

Paul Tucker QC and Michael Rudd (instructed by **LB & Co Limited**) for the **Interested
Party**

Hearing dates: 10th – 11th June 2015

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this
Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE DOVE :

Introduction

1. This claim is a challenge by way of Judicial Review to the grant of planning permission by the defendant to the interested party for A1 retail units, offices, petrol filling station, car park and landscaping at a site known as Wentworth Street Car Park ("WSCP") in Malton, North Yorkshire. The planning permission was granted on 12th September 2014. The claimants are landowners who own a significant part of Malton town centre and who also have the benefit of the grant of a planning permission on appeal on 29th October 2012 for another retail development in the town on what is known as the Livestock Market Site ("LMS").
2. The claimant contends, in brief, that in granting planning permission the following errors of law occurred. Firstly, the members of the planning committee were seriously misled in relation to the conclusions that the Inspector had reached in the claimant's appeal in relation to the LMS site when he granted permission as set out above. This was, in particular, in relation to the Inspector's conclusions in respect of the sequential ranking of the LMS site and the WSCP site and his reasons for concluding that the former was preferable to the latter. They were further misled by the failure to allude at all to the Inspector's conclusion that for the purposes of retail impact analysis the LMS site should be counted as part of the town centre.
3. Secondly, in disagreeing with the Inspector's conclusions in particular in relation to the sequential test the officer's report on which members relied to make their decision to grant planning permission, failed to provide adequate reasons for that disagreement.
4. Thirdly, it is contended that the council failed to have regard to the impact on planned investment which would occur in relation to the implementation of the LMS if planning permission were granted for the WSCP. It is contended that the officers failed to properly disentangle the intentions of the proposed operator of the LMS site, Booths, from the intentions of the claimant, the landowner. Finally, it is contended that consideration should have been given to rescreening the proposed development for EIA purposes in the light of circumstances having changed since it was originally screened.

History

5. On 10th May 2011 the claimant applied for planning permission for the retail development of the LMS site. The proposal sought to demolish all buildings on the site and construct four new retail units with a total gross external floor space of 4,092 square metres along with a three storey decked car park and new public area. The largest of the retail units was proposed for a high quality food store and had a gross external floor space of 2,360 square metres. The three smaller retail units were proposed for comparison goods retailing.
6. In August 2011 the interested party applied for outline planning permission for a new food store of 5,205 square metres gross together with other ancillary development as described above. Around the time of making the application the interested party sought the opinion of the defendant as to whether or not their proposed development

was Environmental Impact Assessment (“EIA”) development pursuant to the then relevant Regulations, namely the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulation 1999. This request for a screening opinion was made by way of a letter dated 22nd August 2011. Amongst a number of characteristics of the proposed development the letter addressed the question of cumulative effect. The information provided in the letter was as follows:

“4.2 The Subject Site lies adjacent to the existing Malton town centre commercial limits (Ryedale Local Plan adopted March 2002). The emerging Core Strategy includes a proposal for the town’s commercial limits to be extended to an area known as the Northern Arc, which is suitable for mixed use development including new convenience and comparison retail uses. The area of the Subject Site proposed for built development lies broadly within the Northern Arc and there is currently another application for planning permission submitted to RDC for retail uses with the Northern Arc and thus adjacent to the existing town centre commercial limits. However, the two sites are not contiguous and are separated by existing town centre uses and residential streets. No adverse environmental effects are anticipated were both sites to include built development such as would result in a requirement for an EIA.

4.3 A full statement has been prepared by Nathaniel Lichfield and Partners (“NLP”) pursuant to Planning Policy Statement 4, which covers retail impact and the strategic retail policy implications of the proposal. The work by NLP includes a conclusion that only one large new convenience store/foodstore can be accommodated in Malton or the District generally. This is consistent with work undertaken on behalf of RDC by Roger Tym and Partners (“RTP”). Additionally Arup has prepared an economic impact assessment of the proposal which takes other development into account, where such potential is identified. These documents have been submitted as part of the planning application.

4.4 It is submitted that there are no developments anticipated to be constructed or conducted in the area which would together give rise to significant environmental effects such as to warrant EIA of this scheme.”

7. On 14th October 2011 the defendant responded to the screening opinion and the covering letter made clear that the opinion had been “given strictly on the basis of the information provided in the submitted application”. The screening opinion concluded that the development, whilst within Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (the applicable Regulations at the time of providing the opinion), it was a development which was not likely to give rise to significant effects on the environment and therefore did not qualify as EIA development.

8. On 12th April 2012 the defendant refused the claimant's application for planning permission for four reasons. The first and fourth reasons are of materiality to the matters in this case. So far as relevant the first reason for refusal was expressed as follows:

"Whilst the application site is on edge of centre as defined in National Planning Policy, and would function as an immediate and logical extension to the town centre, it is considered that the site is not currently available for the proposed development or suitable for the type/mix of retail development proposed by this application. Furthermore, the applicants have failed to demonstrate to the satisfaction of the Council that the proposed development would be viable, and therefore that the scheme would be deliverable.

It is considered that an alternative site, located to the east of Wentworth Street and currently in use as a car park, is sequentially preferable to the application's site on the basis that it is available suitable and viable.

The application is therefore judged to have failed to demonstrate compliance with the sequential approach required by National Planning Policy."

9. The fourth reason for refusal, again so far as relevant, provided as follows:

"The National Planning Policy Framework states that where a proposed development is likely to have a significant adverse impact on town centre vitality and viability planning permission should be refused...

There is a resolution to approve an application for a foodstore with a gross floor space of 4,494 square metres (net floor space of 3,086 square metres) as part of a scheme at Wentworth Street, Malton taking the impacts of the proposed development into account it is considered that in combination with this commitment the proposed development is likely to have a significant adverse impact on town centre vitality and viability, contrary to the provisions of the National Planning Policy Framework and Regional Spatial Strategy."

10. The claimants appealed and the appeal was heard by the public inquiry procedure. During the course of the inquiry the following material formed part of the evidence before the Inspector who made the decision on the appeal on behalf of the Secretary of State:

- a) Within the inquiry's Core Documents the Inspector was presented with reports from Roger Tym and Partners ("RTP") that had been commissioned to provide the evidence base for the defendant's emerging forward plan (which started as a Core Strategy and later developed into a Local Plan Strategy). The role of these reports was to provide the Council with evidence in relation to matters concerning retail planning both in terms of the retail needs that had to be planned for and also the potential candidate sites which might accommodate those needs. In the first report of May 2006 RTP noted that the LMS site had closer adjacency to the town centre and offered "good potential for retail uses" in particular for a small number of retail shops. They noted that the WSCP site was "approximately 160 metres to the north-east of the town centre" and edge of centre in terms of the then National Planning Policy on retail. They suggested that the WSCP had potential for retail warehousing. In the next report dated September 2008 they advised in relation to the LMS that it appeared "to offer excellent potential for retail uses because of its close adjacency to the town centre core". They noted that the site was already well connected to the retail core and "would form a natural extension to the town centre". In particular they considered that the site would be a suitable location for unit shops for comparison goods retailing. In respect of the WSCP they observed that this site was "more peripheral being separated from the town centre by existing residential development... and being located on a different lower level to town centre shops". They went on to say that whilst pedestrian linkages between the site and the town centre existed "the degree of separation by other non-retail uses means that the site is unlikely to form an "extension" to the existing town centre". RTP's most recent report was provided in July 2011 and in relation to the LMS site they noted that the site was "technically edge of centre" for the purposes of the sequential test but went on to provide as follows:

"However, the [LMS] site is well-connected to the retail core of Malton town centre, which can be easily accessed by pedestrians via The Shambles or Spittle Street / New Gate. Indeed the site lies just to the rear of the existing retail / service units at Market Place, which – in our professional judgment – is part of the primary shopping area of Malton (although we recognise that the Proposals Map does not formally define a primary shopping area). We therefore consider that the cattle market site, if developed for town centre uses, would form a natural extension of the town centre, and that it represents the most sequentially preferable opportunity in Malton."

RTP went on to reaffirm their view that the LMS site was well placed to provide comparison retail units albeit a foodstore could be acceptable as part of a mix of uses at the site they did not advocate a supermarket only scheme which would rule out the prospect of attracting comparison retailers. So far as the WSCP site was concerned they reiterated that it was approximately 160 metres to the

north-east of the town and they went on to conclude that the site was more suited to convenience rather than comparison retail development “because new high-street stores should be focused on the cattle market site as the first priority given its close proximity to the primary shopping area”.

- b) The Inspector received evidence from Mr Goddard on behalf of the claimant contending that the first reason for refusal set out above was misconceived and that the LMS site was sequentially preferable to the WSCP site. It appears from the closing submissions of the defendant that during the course of cross-examination their witness on retail planning issues, Mr Johnston, accepted that the LMS site was “sequentially the most preferable site in Malton”. The council were therefore no longer able by the end of the inquiry to sustain the first reason for refusal in particular as it was conceded that members had not been properly advised as to the policy content of the sequential test when they had reached their decisions both on the LMS but also on the WSCP which they had resolved to grant consent for at the same meeting that they refused the claimant’s application. Not only therefore was the council’s case at the close of the inquiry that the LMS site was sequentially preferable to the WSCP site but also they conceded that it would be necessary for the members to reassess their resolution to grant planning permission “in the light of the concession that the nature and application of the sequential test was not properly spelled out in the LMS Committee Report”.
- c) In order to address the fourth reason for refusal Mr Goddard undertook a cumulative impact on the town centre which included the impact of both the claimant’s and the WSCP proposed developments. In undertaking that analysis Mr Goddard incorporated the additional turnover from the claimant’s scheme within the overall figure for expenditure in the town centre. The effect of the analysis was to show that the claimant’s proposal would lead to an overall positive increase in the retail turnover in the town centre in the region of 24.7% leading to the conclusion that the claimant’s proposals would have a positive impact on the town centre. This approach was predicated on the RTP acknowledgement that the LMS site would form part of the functional town centre. This approach was disputed by the defendant.

11. The Inspector concluded that the claimant’s appeal should be allowed in a decision date 29th October 2012. The Inspector explained the backdrop provided for the application by the RTP studies and noted the claimant’s justification for the proposals on the basis that they would fulfil Malton’s convenience and comparison retail floor space needs up to 2021 and beyond. He then turned to consider the sequential approach. His conclusions are expressed as follows:

“21. I turn now to the sequential test, formerly set out in PPS4 and now carried forward into the Framework. Paragraph 24 of the Framework explains that local planning authorities should require applications for main town centre uses to be located in town centres, then in edge-of-centre locations and only if

suitable sites are not available should out-of-centre sites be considered. It further notes that when considering edge-of-centre and out-of-centre proposals, preference should be given to accessible sites that are well connected to the town centre, and goes on to say that applicants and local planning authorities should demonstrate flexibility on issues such as format and scale.

22. The RTP retail assessments referred to above have consistently taken the view that the LM site represents the most sequentially preferable opportunity in Malton. However, in the LM report to Committee, Officers adopted what the Council referred to at the inquiry as a “novel” application of the sequential test. As a result, the Planning Committee was advised that the WSCP site was preferable to the appeal site in PPS4 terms. A reading of the Committee Report reveals that this advice was based on the Officers’ view that the appeal site was not suitable for the development proposed; could not be considered as currently available for the proposed development; and that the development proposed had not been demonstrated to be viable.

23. However, at the inquiry the Council’s planning witness acknowledged that there had been significant flaws in the way this matter had been approached. Firstly, there is nothing within the Framework, nor was there anything within PPS4, which requires a developer to apply tests of availability, suitability and viability to the site being promoted for development. The sequential approach is intended to establish whether or not there are any more sequentially preferable sites for the development proposed, than the site in question. In this case there is no dispute between the parties that the LM site could accommodate the appeal proposal.

24. Moreover, an assessment of the site provided to the Council by RTP in the RRCIAU comments that a retail-led scheme would be viable at the site and could form a natural extension of the existing town centre. It considers that the site would be an ideal location for a development providing a small number of unit shops to attract the type of “high street” comparison retail outlets presently missing from Malton’s offer. It further suggests that such units could potentially form part of a mixed-use development, described as possibly including a basket foodstore and/or residential/office uses, although a supermarket-only scheme is not advocated. The study also comments that the WSCP site is located about 160m to the north-east of the Town Centre Commercial Limits and is more suited to convenience rather than comparison retail development.

25. A final point of note is that the LM report to Committee acknowledges that the LM site is not specifically allocated for comparison retail development at the present time. The report does indicate that the supporting text to policy SP7 of the LPS publication draft refers to the LM site as being particularly suitable for non-food retailing, but there is nothing to suggest that this need be to the exclusion of other uses. In any case, I understand that objections have been lodged to this policy and its supporting text, including from the appellant, and in these circumstances I can only give this emerging policy limited weight.

26. Taking the above points into account it is my view that the LM site is the sequentially preferable site to accommodate the development proposed and that its development for such uses would be in line with guidance in the Framework. Moreover, no firm evidence has been placed before me to suggest conflict with any adopted development plan policy in this regard.

32. However, whilst it is common ground that the grant of planning permission for a larger store on the WSCP site would make it more difficult for an operator to be found for the appeal proposal, this underscores the need and purpose of the sequential approach in seeking to promote and strengthen town centres. Despite the Officers' conclusion in the LM Committee Report, the submitted evidence as a whole, leads me to conclude that the WSCP site is a sequentially less preferable edge-of-centre site than the appeal site. Moreover, having visited both sites as part of my inspection I consider that a development on the WSCP site would have poorer pedestrian links to the town centre than the LM site, notwithstanding the fact that enhancement works to the connecting route are proposed."

12. The Inspector then turned to consider the question of the fourth reason for refusal and matters related to retail impact. He first looked generally at the relationship between the LMS site and the town centre to assess whether or not there would be an adverse effect on the town centre in principle and concluded as follows:

"36. The SoCG indicates that the Council does not accept that the LM site forms a logical extension to the town centre, but this does not sit comfortably with its first reason for refusal, which quite clearly states a contrary view. However, notwithstanding this point the fact remains that at the present time the Council is promoting, through its emerging LPS, a "northern arc" (which includes both the LM site and the WSCP), to the north of the existing town centre, to

accommodate new retail space to support the role of the town centre. In addition, paragraph 5.25 of the LPS Submission document of May 2012 notes that the LM site has the ability, overtime to form a logical extension to the town centre.

37. Having regard to these points and the fact that there would be good linkages between a development on the appeal site and the town centre, I consider it reasonable to assume that the appeal proposal would strengthen and enhance the town centre, rather than adversely impact upon it. In coming to this view I have also had regard to the retail advice consistently given to the Council by RTP prior to this inquiry, through the various retail assessments referred to earlier, that the LM site would be an appropriate location for further retail development. I do not believe that this advice would have been given if RTP considered that it would result in harm to the existing town centre.”

13. The Inspector determined that the WSCP scheme could not be regarded as a commitment in the light of the concession that the resolution to grant planning permission had arisen from a committee report which had provided the members with erroneous advice as to the proper application of the sequential test and that resolution would need to be revisited. Nevertheless in considering the arguments in relation to impact the Inspector provided conclusions on the analysis provided by Mr Goddard on cumulative impact. His conclusions were as follows:

“41. Finally on this issue, I briefly consider the scenario whereby the WSCP scheme is granted planning permission. The first point of note is that there is agreement within the SoCG that the cumulative scale of both the appeal proposal and the WSCP scheme would significantly exceed the retail capacity identified for Malton within the RTP 2008 Retail Study. In addition, the submitted evidence indicates that the WSCP scheme would draw trade from the town centre Morrison’s store, which is currently over-trading. However, I accept that in resolving to grant planning permission for the WSCP proposal the Council considered that the overall impact on the town centre, including linked-trips, would be acceptable.

42. Nevertheless, trade would be drawn from the existing centre, and this impact would be increased if the appeal site was also granted planning permission. In such circumstances a judgement has to be made as to the overall extent of any impact, having regard to the specific details of the cases and the locations of the respective sites. In this regard it is of note that in asserting that the appeal proposal would result in harm to the vitality and viability of the town centre, the Council has not undertaken any specific assessment of this matter.

43. In contrast, the appellant has argued that although a greater impact on the existing town centre would arise if both the WSCP and the appeal proposal were to proceed, custom drawn to the LM scheme should be seen as contributing to town centre turnover, in view of the general acceptance that it would function as a logical extension to the town centre. Indeed the appellant argues that on this basis the appeal proposal would lead to an overall positive impact of 24%, compared to the situation if only the WSCP scheme proceeds.

44. I fully accept that such arguments have to be treated with some caution, in light of the view expressed by the Inspector and endorsed by the Secretary of State, in a call-in case in Stoke on Trent⁴, that including edge-of-centre stores in assessments of “functional” centres could generate misleading conclusions. However, I am not persuaded that the particular circumstances of that case, which related to a much larger centre and a different disposition and juxtaposition of foodstores, are directly comparable to the current situation which involves a relatively modest development immediately adjacent to an existing market town centre. On balance, and particularly having regard to the Council’s aspirations for additional retail areas in the “northern arc”, set out within the emerging LPS, I consider that the appellant’s assessment of this matter is to be favoured.

45. Having regard to all the matters detailed above, I conclude that the proposed development would accord with the sequential approach to town centre uses, set out in the Framework, and would not have an unacceptable effect on the vitality and viability of Malton town centre. Accordingly I find no material conflict with policies YH5 or E2 of the RSS which seek, amongst other matters, to make Principal Towns (such as Malton) the main local focus for shopping activities and facilities, and to strengthen the role and performance of existing city and town centres.”

14. In the light of these conclusions the Inspector granted planning permission. He also concluded that the defendant had behaved unreasonably in relation to “the very significant admission that it had misapplied the sequential test” and the members had been wrongly advised that the WSCP site was sequentially preferable to the LMS site. The Inspector further concluded that the defendant’s fourth reason for refusal was also unreasonable and costs were awarded against them in respect of that issue as well.
15. On 19th November 2013 the interested party submitted revised documentation in respect of their application which had a resolution to grant consent. The size of the foodstore was reduced from 5,205 square metres gross to 4,530 square metres gross and other changes of detail were made in the application. A suite of updated documents including in particular an updated Retail Statement from Nathaniel Lichfield and Partners (“NLP”) was provided.

16. In September 2013 the defendant adopted its “Ryedale Plan – Local Plan Strategy”. This observed that current commitments which had been granted consent accounted for most, if not all, of the quantitative additional food retail floor space which was required to 2026. It indicated that if commitments failed to come forward then any outstanding requirements within the district would be directed to Malton in order to improve the range and choice of food stores in that town. It will be recalled that the Inspector had made reference to a “Northern Arc”. This was explained in paragraph 5.25 of the local plan strategy which provided as follows:

“5.25 Excellent edge of centre opportunities exist to accommodate new retail space to support the role of Malton Town Centre. A “Northern Arc” lies to the north of the town and it stretches from the existing Livestock Market to Wentworth Street Car Park. It is a band of existing and former agricultural buildings and spaces that were carved out of the medieval street pattern to relocate livestock trading in the mid 19th century. Today, whilst this broad area is not derelict, parts of it are under used and there are opportunities to redevelop sites and buildings to accommodate additional retail space with excellent connectivity with the existing town centre. Although this document does not allocate specific sites for new uses, it is considered that within this “Northern Arc”, the Livestock Market area is of strategic significance. It provides a key opportunity to accommodate a mix of uses and in particular to provide much needed space for additional non food retailing. Whilst it currently occupies a location which abuts the existing town centre, it has the ability – once developed – to form a logical extension to the town centre. Currently outline planning consent has been granted for a mixed convenience and comparison retail scheme on the site.”

17. In order to assess the revised application which had been provided by the interested party the defendant commissioned two pieces of independent work from consultants. Firstly they commissioned a review of the NLP retail planning work which they received in February 2014. It is unnecessary to set that material out in detail at this stage since it was, understandably, heavily drawn upon in the compilation of the committee report on the application. In summary England and Lyle (“EL”) endorsed the conclusions of the NLP retail work that there was greater potential for the creation of retail floor space for convenience retailing and that the LMS site and the WSCP site were sequentially equal. In the light of this and also the fact that the scale of the foodstore proposed in the interested party’s application could not physically be accommodated on the LMS site they accepted NLP’s conclusion that the sequential test was passed.
18. In relation to impact on planned investment EL relied upon the second piece of independent work commissioned by the council, namely a report from DTZ dated 11th February 2014, in relation to the commercial viability of both the claimant’s consented scheme and the interested party’s proposed scheme. In their report DTZ concluded that none of the principle foodstore operators would be interested in the

consented scheme on the LMS site and that whilst that location might appeal to Booths or Aldi the form of the consented scheme would be unacceptable to them. It would require redesign before having any chance of attracting commercial interest.

19. Further objections were made to the application by the claimant's planning consultant on 11th March 2014. That letter coincided with a letter from the claimants enclosing a letter of support from EH Booths and Company Limited ("Booths") expressing Booths' interest in the site and the fact that they were in the process of negotiating an agreement for a lease with the claimant for the foodstore element of the LMS site. In the letter the chairman of Booths indicated that they remained "very concerned" about the interested party's unresolved planning application. Following this up on 25th March 2014 the claimant wrote in the following terms:

"The estate company is willing to accept the scale and risk profile of investment required to develop the LMS. However the threat of a large area of excess retail capacity in an edge of town centre location with a surface car park on WSCP significantly increases the risks of the investment in LMS. With that threat hanging over the town, the Estate Company will be unlikely to proceed with the LMS development."

20. On 1st April 2014 Booths again wrote to confirm for the avoidance of doubt that the outline consent on the LMS site was acceptable. In the light of these new developments EL provide further advice to the council on 9th April 2014. Amongst a number of matters they addressed the recent confirmation of interest from Booths and observed as follows:

"We have allowed for a foodstore of the size approved on the Livestock Market site in the capacity analysis and the cumulative impact assessment. Although a Booths store would provide an improve range of choice and convenience retailing, as sought by the Ryedale Plan there remains a need for another large foodstore in Malton to provide choice and competition for Morrison's in main food shopping and claw back leakage that is going to large stores elsewhere. But the need for a large foodstore could not be met in the Livestock Market scheme. A store on the WSCP and a Booths store on the Livestock Market site would have a complimentary role."

21. EL went on to consider the question of retail impact in particular in terms of the criticism raised by the claimant's planning consultants that no scenario had been provided seeking to test foodstores being present on both the LMS site and the WSCP in the opening year of 2018. They advised as follows:

"In terms of retail impact, GVA criticise the fact that NLP considered only two scenarios, precluding new foodstores on the WSCP and Livestock Market sites in 2018. Our review considers a third scenario in which foodstores are developed on both sites and are trading in 2018. The largest overall

cumulative impact is predicted to be on the Morrison's store, representing three-quarters of total trade diversion from Malton town centre. We do not anticipate that there would be a significant adverse impact upon the overall vitality and viability of Malton town centre which has a high level of vitality and viability. The predicted overall trading impacts on the other town centres are small. We have assessed that the WSCP proposal would have a trading impact of 16% on a foodstore in the Livestock Market scheme. This is a matter of competition with a store located outside the town centre, not a town centre impact, not a material planning consideration."

22. The day before the planning committee was due to meet the claimant provided final objections to the defendant in relation to the application. They alluded in that correspondence to a letter of objection from Booths in relation to the WSCP proposal. In relation to the impact upon planned investment in the form of the LMS scheme their observations were as follows:

"For the avoidance of doubt, Fitzwilliam Malton Estate (FME) is willing to make the investment in redeveloping the Livestock Market Site (LMS) as soon as it has secured a pre-letting of the main food store to Booths. Whilst the preference is to have one or more of the smaller retail units let before we start on site, the development is not conditional upon retailer commitment for those units. However, the prospect of almost double the retail floor space being given consent by RDC is considered to be a considerable threat to FME's investment in LMS. FME will not make that investment if consent is given to the GMI application...for a large superstore on Wentworth Street car park."

23. On 24th April 2014 the defendant's planning committee met to consider the interested party's application. In addition to a lengthy committee report the members had a number of matters appended to the report including the EL report and letter of 9th April 2014 together with the advice which had been received from DTZ (which included a response to the claimant's planning consultant's objections) also included in the appendices were correspondence from the claimant planning consultant and from the claimant's themselves and Booths. Not included within the appendices circulated to the committee but provided to them at the meeting was a copy of the Inspector's report in relation to the claimant's appeal.
24. The committee report summarised the objections which had been received to the applications along with the other representations which had been made. The first topic that was addressed by the officer's conclusions was the question of retail planning policy. The report noted the content of the local plan strategy which has been set out above. It went on to set out the provisions of the National Planning Policy Framework and, whilst the contents of the report ranged far wider across the Framework for present purposes two paragraphs of the Framework were central, namely paras 24 and 26 which provide as follows:

"24. Local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. They should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. When considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale.

26. When assessing applications for retail, leisure and office development outside of town centres, which are not in accordance with an up-to-date Local Plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500 sq m). This should include assessment of:

- The impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and
- The impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made. For major schemes where the full impact will not be realised in five years, the impact should also be assessed up to ten years from the time the application is made."

25. Dealing firstly with the sequential test derived from paragraph 24 of the Framework and the comparative conclusions which had been reached by the Inspector in the claimant's appeal, the officers concluded as follows:

"6.27 The Livestock Market Site in Malton is also considered in detail within the submitted Updated Retail Statement. The Livestock Market site benefits from an extant planning permission for retail development for four new retail units, comprising of a 2,360 sq.m (gross) foodstore and three smaller comparison goods units (1,732 sq.m gross in total) and a three-storey car park, granted on appeal on 29th October 2012. The Inspector concluded that the Livestock Market site was both sequentially preferable to the WSCP site to accommodate the actual development proposed but also that the Livestock Market site was generally sequentially preferable, stating at Paragraph 32: *'However, whilst it is common ground that the grant of planning permission for a larger store on the WSCP*

site would make it more difficult for an operator to be found for the appeal proposal, this underscores the need and purpose of the sequential approach in seeking to promote and strengthen town centres. Despite the Officers' conclusion in the LM Committee Report, the submitted evidence as a whole, leads me to conclude that the WSCP site is a sequentially less preferable edge-of-centre site than the appeal site. Moreover, having visited both sites as part of my inspection, I consider that a development on the WSCP site would have poorer pedestrian links to the town centre than the LM site, notwithstanding the fact that enhancement works to the connecting route are proposed.'

6.28 The Livestock Market Inspector's Appeal Decision is an important material consideration and must carry significant weight in decision-making. However, it is not a binding precedent. The Inspector's conclusion as to why the Livestock Market site is sequentially preferable to the WSCP is not fully reasoned other than pointing to poorer pedestrian links. The issue of sequential preference is one for informed planning judgement. Officers have commissioned an independent review of the applicant's Updated Retail Statement by England & Lyle, who have submitted a report dated February 2014. In the report they consider whether the Livestock Market site is sequentially better located than the WSCP site. England & Lyle note that both sites are within the 'Northern Arc' and that the differences in accessibility to the town centre are minimal. Officers agree, for the reasons set out below that the differences are so negligible that the sites are, for all practical purposes, on an equal footing in terms of sequential testing.

6.29 The Livestock Market Site lies adjacent to the defined Town Centre Commercial Limits of Malton Town Centre and is therefore located slightly closer to the town centre than the application site, although the difference is minimal given the application site itself only lies 30m to from the Town Centre Commercial Limits and it is noted that both sites lie within the extent of the 'Northern Arc,' which is identified as an area that offers opportunities to redevelop sites and buildings to accommodate additional retail space with excellent connectivity with the existing Town Centre. Furthermore, it is considered that there are minimal differences between the sites in terms of accessibility and connectivity with the town centre, and the consequent ability to generate linked trips. Both sites offer easy access to the town centre for pedestrians using existing connections that are easy to follow. On this basis, it is considered that the application site and Livestock Market site should be considered as being 'sequentially equal.'

6.30 It is noted that applications for planning and listed building consent have recently been submitted by Fitzwilliam (Malton) Estates for the erection of a two storey retail extension to existing store with attached stairwell building on three levels and external flight of steps together with formation of retail unit(s) on two floors within Building D to include installation of new shop fronts, windows and chimneys all following removal of three existing outbuildings (LPA Ref. 14/00059/FUL & 14/00060/LBC) at Kings Head Yard, which lies to the direct south of the consent Livestock Market site. The Planning Statement that accompanies the Kings Head Yard application confirms that the development proposed can be viewed as a stand-alone proposal, albeit a precursor to the Livestock Market development. It is suggested that the proposed development will support the expansion of an existing retail business, as well as opening up a key route into the town centre from the Livestock Market development and residential properties to the east. It is accepted that the Kings Head Yard proposals will provide an improved link between the town centre and the Livestock Market site, however, these improvements are not considered to be so significant as to alter the conclusion that the Livestock Market site and WSCP should be considered '*sequentially equal*,' notwithstanding the fact that the Kings Head Yard proposals do not yet benefit from planning and listed building consent.

6.35 The applicant's supplementary information concludes that, in the context of the issues outlined above, a large foodstore on the Livestock Market site, which is comparable to that proposed by the current application, could only be developed over two or more storeys. It is also likely that such a store would need to be accommodated by decked parking, in order to provide a sufficient number of spaces. The applicant contends that this would be unacceptable to the main foodstore operators, who do not split their convenience goods sales area over different floors and such a compromised scheme would be highly unlikely to attract any retailer interest. These findings have been broadly endorsed by DTZ, who were appointed by the Council to advise on the commercial retail considerations in relation to the planning application. The applicant also suggests that it is also highly questionable as to whether a scheme could be developed which would be satisfactory in heritage, residential amenity and highways / transportation terms.

6.36 The applicant's findings in this respect are broadly accepted and, even taking into account the scope for flexibility in the format and scale of the proposal, it is not considered that the Livestock Market site offers a suitable practical alternative

to accommodate the proposed development. However, even if the Livestock Market site was considered to be a suitable practical alternative to accommodate the proposed development, the WSCP and Livestock Market sites are considered to be 'sequentially equal' and, accordingly, would not result in the sequential test being failed.

6.37 The NPPG advises, in applying the sequential test, that it is necessary to consider what contribution more central sites are able to make individually to accommodate the proposal and it is noted that an objection received from GVA on behalf of Fitzwilliam (Malton) Estates suggests that the sequential assessment has failed to consider whether there are available sites within or better integrated sites on the edge of the town centre that could accommodate the proposed smaller retail unit. The constituent main town centre elements of the application proposals comprise of a foodstore (4530 sq.m), a retail unit (227 sq.m) and office accommodation (253 sq.m) and, based upon Officer's local knowledge of centres and a review of commercial property websites to identify potential available sites / premises, Officers are satisfied that there are no suitable and available sequentially preferable premises or potential development sites that could accommodate any of the constituent main town centres uses. Furthermore, it is considered that the provision of the stand alone retail unit provides benefits from a design perspective, helping to create an active and interesting public frontage along the Wentworth Street frontage.

6.38 It is therefore accepted that the application complies with the sequential approach to site selection set out at Paragraph 24 of the NPPF and there are no sequentially preferable sites that are suitable and available alternatives to accommodate a large foodstore development."

26. The report then turned to the question of retail impact and advised members as follows:

"6.42 The planning application is accompanied by an Updated Retail Statement prepared by Nathaniel Lichfield & Partners. The impact assessment contained within the Updated Retail Statement considers two potential scenarios:

- **Scenario 1** – this is based upon what NLP regard as the '*most realistic scenario*' taking into account advice received from commercial agents outlining a lack of operator interest in the Livestock Market Site. This scenario therefore assumes that WSCP site is developed for a new large foodstore in isolation over the period to 2018.

- **Scenario 2** – this scenario considers a situation whereby a store of the size approved on the Livestock Market site is developed out over the longer period to 2023, although NLP suggest that this scenario is unlikely.

6.43 NLP state that the assumption that the Livestock Market store comes forward over the period to 2023 is considered to be a cautious approach, particularly in the context of the views from their commercial agents that there is no demand for a foodstore of the size currently proposed on the Livestock Market site and that the approved scheme is undeliverable. Notwithstanding this, the Retail Review undertaken by England & Lyle agrees that Scenario 2 represents a possible cumulative impact situation in Malton if both schemes were to be developed.

6.44 England & Lyle have therefore undertaken an independent review of the retail impact assessments for convenience and comparison goods and have fully reviewed NLP's Scenario 1 and Scenario 2 assumptions. In addition, although NLP have not considered the potential cumulative impact of the proposed and consented development on the WSCP site and Livestock Market site coming forward by 2018, England & Lyle have reviewed a scenario for 2018 in which both schemes are developed for sensitivity purposes.

6.45 It is noted that Fitzwilliam (Malton) Estates have suggested that they would not bring forward the approved Livestock Market site if the current proposals are approved and this would represent a significant impact on planned investment in the town centre. However, the Livestock Market lies to the northern edge of the defined Town Centre Commercial Limits and is not therefore in-centre, which is a pre-requisite of the impact test contained at Paragraph 26 of the NPPF. In any event, the Livestock Market site is a sequentially equivalent site to WSCP. It is noted that the Local Plan Strategy identifies that the Livestock Market site abuts the existing town centre and has the ability, once developed, to form a logical extension to the town centre. Whilst the WSCP lies slightly further from the town centre, the difference is minimal and both sites lie within the identified 'Northern Arc,' which is identified as an area that offers potential to redevelop sites and buildings with excellent connectivity to the town centre. It is considered that the application proposals provide an opportunity to improve choice and competition in Malton and to claw back expenditure, thus helping to broaden the town's consumer base.

6.60 It is anticipated that in convenience goods the proposed development on the WSCP site would draw 15% of its trade

from inflow / visitor spending, 40% from claw back of leakage and the remaining 45% from trade diversion within the catchment area. In comparison goods, the proposed development on the WSCP site is expected to draw 15% of its trade from inflow / visitor spending, 55% from claw back of leakage and the remaining 30% from trade diversion within the catchment area. In terms of cumulative impact, it is assumed that, to an extent, the WSCP scheme and the Livestock Market scheme would compete with each other and draw some of their trade from the other scheme, albeit that, were both to commence trading, there is plainly an increased opportunity for clawing back trade to the town which presently leaks outside of the district.

6.61 In convenience goods, the largest cumulative impacts of the proposed development together with the Livestock Market scheme and commitments in 2018 are predicted to be on Morrison's in Malton (30%), the Co-op in Pickering (16%), Lidl and Asda in Norton (11%), the new Tesco in Kirkbymoorside (8%), Kirkbymoorside centre (7%) and other shops in Malton (6%). The predicted cumulative impacts in 2023 are very similar to those predicted for 2018 because the turnovers of stores / centres and the turnovers of the proposed schemes have been increased in line with expenditure growth."

27. In respect of impact on planned investment in centres the officers advised as follows:

"6.69 Fitzwilliam (Malton) Estates in their objection have stated that they will not bring forward their consented scheme if the current application is approved and this would represent a significant impact on planned investment in the town centre. However, the Livestock Market lies to the northern edge of the defined Town Centre Commercial Limits and is not therefore in-centre, which is a pre-requisite of the impact test contained at Paragraph 26 of the NPPF. In any event, the Livestock Market site is a sequentially equivalent site to WSCP.

6.74 Despite the advice received from DTZ highlighting concerns over the deliverability of the approved foodstore on the Livestock Market site, the subsequent correspondence received from GVA highlights retailer interest on behalf of Booths and suggests that the outline consent delivers a store and layout with adequate parking and servicing to meet their requirements. The confirmation of interest from Booths in the approved scheme on the Livestock Market site is acknowledged and Booths will be a welcome addition to the retail offer in Malton. However, the expression of interest in the Livestock Market site from Booths should not, in Officer's view, be seen

as a reason to prevent the provision of a larger foodstore on the WSCP.

6.75 The independent review of the application undertaken by England & Lyle illustrates that, whilst the capacity for two new foodstores (i.e. Livestock Market site and WSCP) in 2018 is marginal, the impact assessment demonstrates that the two stores would not have a significant adverse impact on town centre vitality and viability in 2018, which is the policy test set out in the NPPF. Furthermore, there would be more than sufficient capacity in both convenience and comparison goods for both stores in 2023, based on a revised and more up-to-date assessment than that used to inform the preparation of the Ryedale Plan – Local Plan Strategy. Although it is evident that a Booths store would provide an improved range and choice of convenience retailing, as sought by the Local Plan Strategy, it is accepted that another large foodstore in Malton would provide choice and competition for Morrison's and claw back leakage that is going to stores elsewhere and this has been reflected within a number of letters of support received from local residents in respect of the application. A large foodstore on WSCP and a Booths store on the Livestock Market site would have a complementary role to one another.

6.76 The correspondence received from GVA indicates that Booths remain 'very concerned' regarding the WSCP proposals, although it is not explicitly stated that they would not proceed if the WSCP proposals were approved and it is noted that Booths have expressed an interest in the Livestock Market site in full knowledge of the planning application that has been made on the WSCP site. Fitzwilliam (Malton) Estates have, however, suggested that they be unlikely to bring forward the Livestock Market site scheme if the WSCP proposals were approved, which would represent a significant impact on planned investment in the town centre. However, Officers are of the view that this statement should be treated with a degree of caution given that, whilst 'very concerned,' Booths have not explicitly stated that they would not proceed with a store on the Livestock Market site were the WSCP proposals to be approved. With this in mind, there is no reason to believe that further investment in the Livestock Market site in the form of comparison shopping development would not follow the development of a Booths store, as it is considered that Booths would act as a catalyst for the development of the consented non-food retail units. On this basis, Officers are of the opinion that Fitzwilliam (Malton) Estates' comments in respect of not bringing forward the Livestock Market site should planning permission be forthcoming for the WSCP proposals should be treated with a degree of caution.

6.77 Notwithstanding this, the Livestock Market site lies to the northern edge of the town centre and is not therefore 'in-centre,' which is a pre-requisite of the impact test contained at Paragraph 26 of the NPPF and, in any event, the Livestock Market site is a sequentially equivalent site to WSCP. The planned investment within the Livestock Market site is not therefore conferred policy protection under the provisions of the impact test contained at Paragraph 26 of the NPPF and, as such, any impact on investment in the Livestock Market site would not form reasonable grounds for refusing planning permission for the WSCP proposals."

28. The officers summarised the retail policy considerations as follows:

"6.79 Capacity is not a policy test; it is simply an indicator of whether any retail impact may occur. Policy SP7 of the Local Plan Strategy indicates that current commitments account for the quantitative convenience retail needs to 2026. The recognition within Policy SP7 that current commitments meet convenience retail needs to 2026 was based upon the findings of the *Ryedale Retail Capacity & Impact Assessment Update* prepared by Roger Tym & Partners, which formed part of the evidence base for the Local Plan Strategy. However, it should be acknowledged that the Retail Capacity & Impact Assessment Update was prepared in 2011 and it is clearly important that forecasts of need are kept under regular review. The assessment of capacity for additional retail floorspace must be considered on the basis of the latest available evidence to ensure that retail needs are met. The independent assessment of the proposals undertaken by England & Lyle demonstrates that the capacity for the proposed foodstore, as well as the approved scheme on the Livestock Market site, would be marginal in 2018, however, the impact assessment demonstrates that the development of both schemes would not have a significant adverse impact on town centre vitality and viability in 2018, which is the policy test outlined in the NPPF. Furthermore, there would be more than sufficient capacity in both convenience and comparison goods for both stores in 2023, within the Local Plan period.

6.82 It is agreed that the proposed foodstore on the WSCP site is not likely to have any adverse impact upon the ability to bring forward any other planned investment in existing centres. Whilst it has been suggested that Fitzwilliam (Malton) Estates would not bring forward the Livestock Market site scheme, which has secured retailer interest from Booths, if the WSCP proposals were approved, it has been demonstrated that, whilst the capacity for two new foodstores (i.e. Livestock Market site and WSCP) in 2018 is marginal, the two stores would not have

a significant adverse impact on town centre vitality and viability in 2018, which is the policy test set out in the NPPF. Furthermore, there would be more than sufficient capacity in both convenience and comparison goods for both stores in 2023, based on a revised and more up-to-date assessment than that used to inform the preparation of the Ryedale Plan – Local Plan Strategy. Although it is evident that a Booths store would provide an improved range and choice of convenience retailing, as sought by the Local Plan Strategy, it is accepted that another large foodstore in Malton would provide choice and competition for Morrison's and claw back leakage that is going to stores elsewhere and this has been reflected within a number of letters of support received from local residents in respect of the application.

6.83 Officers are of the view that the statement from Fitzwilliam (Malton) Estates that they would not bring forward the redevelopment of the Livestock Market site if the WSCP proposals are approved should be treated with a degree of caution given that, whilst 'very concerned,' Booths have not explicitly stated that they would not proceed with a store on the Livestock Market site were the WSCP proposals to be approved. With this in mind, there is no reason to believe that further investment in the Livestock Market site in the form of comparison shopping development would not follow the development of a Booths store, as it is considered that Booths would act as a catalyst for the development of the consented non-food retail units.

6.84 Notwithstanding this, the Livestock Market site lies to the northern edge of the town centre and is not therefore 'in-centre,' which is a pre-requisite of the impact test contained at Paragraph 26 of the NPPF and, in any event, the Livestock Market site is a sequentially equivalent site to WSCP. The planned investment within the Livestock Market site is not therefore conferred policy protection under the provisions of the impact test contained at Paragraph 26 of the NPPF and, as such, any impact on investment in the Livestock Market site would not form reasonable grounds for refusing planning permission for the WSCP proposals."

29. In the light of these views the officers concluded that the relevant retail planning policy tests had been passed. Having appraised a range of other topics unrelated to retail planning the overall conclusion reached by the officers was that planning permission should be granted. That conclusion was accepted by the members and permission was ultimately granted following the completion of a S106 obligation on 12th September 2014.

The Law

30. The grant of planning permission is governed by s70(2) of the Town and Country Planning Act 1990 which requires the decision maker to have regard to the provisions of the development plan and any other material considerations. Additionally s38(6) of the Planning and Compulsory Purchase Act 2004 provides that if the determination is being made with regard to the development plan then it must be made in accordance with the plan unless material considerations indicate otherwise. The interpretation of the development plan, and indeed any other planning policy, is a matter of law for the court (see Tesco Stores Limited v Dundee City Council 2012 UKSC 13).
31. Here, as is good practice, the planning application was determined by a committee having the benefit of an officer's report. The principles governing the approach to a committee report to seek to establish whether or not there may have been an error of law were captured by Hickinbottom J in R (Zurich Assurance Limited v/a Threadneedle Investments) v North Lincolnshire Council 2012 EWHC 3708 at paragraph 15 as follows:
- i. In the absence of contrary evidence it is a reasonable inference that members of the planning committee follow the reasoning of the report, particularly where a recommendation is adopted
 - ii. When challenged such reports are not to be subjected to the same exegesis that might be appropriate for the interpretation of a statute: what is required is a fair reading of the report as a whole consequently:

"An application for Judicial Review based on criticisms of the planning officer's report will not normally begin to merit consideration unless the overall effect of the report significantly misleads the committee about material matters which thereafter are left uncorrected at a meeting of the planning committee before the relevant decision is taken." (Oxten Farms, Samuel Smiths Old Brewery (Tadcaster) v Selby District Council (18th April 1997) 1997 WL 1106106 per judge LJ as he then was)
 - iii. In construing reports it has to be borne in mind that they are addressed to a "knowledgeable readership", including council members "who, by virtue of that membership, may be expected to have a substantial local and background knowledge" (R v Mendip District Council ex parte Fabre (2000) 80 P and CR 500 per Sullivan J as he then was). That background knowledge includes "a working knowledge of the statutory tests" for determination of a planning application (Oxten Farms per Pill LJ)."
32. One of the matters capable of being a material consideration in the determination of a planning application is a previous decision, in particular a previous appeal decision. The commencement of the jurisprudence in relation to this issue is the case of North Wiltshire District Council v Secretary of state for the Environment [1993] 65 P&CR 137 at page 145 where Mann LJ observed as follows:

“To state that like cases should be decided alike presupposes that the earlier case is alike and is not distinguishable in some relevant respect. If it is distinguishable then it usually will lack materiality by reference to consistency although it may be material in some other way. Where it is indistinguishable then ordinarily it must be a material consideration. A practical test for the Inspector is to ask himself whether, if I decide this case in a particular way am I necessarily agreeing or disagreeing with some critical aspect of the decision in the previous case? The areas for possible agreement or disagreement cannot be defined but they would include interpretation of policies, aesthetic judgments and assessment of need. Where there is disagreement then the Inspector must weigh the previous decision and give his reasons for departure from it. These can on occasion be short, for example in the case of disagreement in aesthetics. On other occasions they may have to be elaborate.”

33. This issue was further considered by the Court of Appeal in the case of Dunster Properties Limited v FSS 2007 EWCA Civ 236 where Lloyd LJ at paragraph 23 stated as follows:

“In my judgment, notwithstanding Ms Olley’s submission to the contrary, Mr Mead did not adequately perform his obligation to give reasons for this decision in respect of his refusal to follow the basis of the earlier appeal decision which was a material consideration. In this respect it seems to be that by declining to comment, other than to refer to his own reasons already expressed, Mr Mead appears not to have faced up to his duty to have regard to the previous decision so far as it related to the point of principle as a material consideration. An omission to deal with the conflicting decision, as in the North Wiltshire case, mightn’t have been sufficient in itself. But Mr Mead’s last sentence in paragraph 8 suggests that he has not grasped the intellectual nettle of the disagreement, which is what is needed if he is to have had proper regard to the previous decision. Either he did not have a proper regard to it, in which case he has failed to fulfil the duty to do so, or he has done so but has not explained his reasons, in which case he has not discharged the obligation to give his reasons.”

34. The essence of the principle has also been applied, as a matter of common law, to previous decisions of the local authority and their relevance to subsequent decisions. In the case of R (Thompson) v Oxford City Council 2014 EWCA Civ 94 Lloyd Jones LJ stated at paragraph 34 as follows:

“The principles stated in Dunster are of general application and are not limited to planning cases. The explanation provided by Lloyd LJ as to why the reasons provided were inadequate was in no sense dependant on the planning context: on the contrary it flows from the function of reasons as a safeguard to sound

decision making. Moreover, I do not consider that Dunster turned on its particular facts or the refusal to give reasons following a request. Accordingly, I consider that while it was open to the Sub-Committee in the present case to depart from the decision of its predecessor, it was under a duty to take account of the earlier decision, to grasp the nettle of any disagreement with the earlier decision and to state its reasons for coming to a different conclusion. That obligation to give reasons arises at common law...”

35. Turning to the issues arising in relation to Environmental Impact Assessment, Regulation 3(4) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 prevents the decision maker from granting planning permission for development which is EIA development without having first considered the environmental information relevant to the development in the form of an Environmental Impact Assessment. Regulation 5 entitles a proposed developer to request from a local planning authority a Screening Opinion, namely a determination as to whether or not their proposed development is EIA development.
36. In this case the question has arisen as to the correct approach to when, as a matter of law, a development which has been the subject of a Screening Opinion may require a further Screening Opinion in order to discharge the obligation under Regulation 3 of the 2011 Regulations. Reference was made to the decision of Lindblom J in The Queen (on the application of CBRE Lionbrook (general partners) Limited) v Rugby Borough Council and another 2014 EWHC 646. The circumstances of that case were that a planning application had been made by the interested party and been the subject of a negative Screening Opinion in September 2011. The application then changed and in November 2012 consultants instructed on behalf of the interested party drew attention to the changes which were considered to be slight and invited the local planning authority to consider whether or not the Screening Opinion remained valid, it being the opinion of those consultants that a fresh Screening Opinion was not needed. The council’s officer considered that enquiry and concluded that it was not necessary to submit a fresh EIA Screening Opinion.
37. The main submission made in the challenge brought by an interested developer was that the council were compelled by the 2011 Regulations to re-screen the development or to treat to enquiry of the consultants as a request for a Screening Opinion. The judge concluded that the consultant’s letter was not a request for a Screening Opinion. It was in truth the assertion that no further Screening Opinion was necessary as there had not been any material alteration to the proposal or its environmental context. The judge concluded that the council’s position was lawful and he expressed the principles as follows:

“47. The thrust of this submission [from the defendant and interested party], which I accept, is that the concept of a development having been the subject of a Screening Opinion is broad enough to include a previous screening process for an earlier version of the proposal, so long as the nature and extent of any subsequent changes to the proposal do not give rise to a realistic prospect of a different outcome if another formal screening process were to be gone through. This is classically a

matter of judgment for “the relevant planning authority”. It will always turn on the facts of the particular case.

48. The essential point is that Regulation 7 allows the authority to judge whether any changes to a proposal are such as to cast doubt on the continuing validity of the screening opinion for the proposal in its previous form. In principle, and subject to review by the court on Wednesbury grounds, it is open to an authority to conclude that in the screening process it has already conducted the essential characteristics of the site of proposal bearing on the crucial question – whether the development is likely to have any significant effects on the environment – have been taken into account and the relevant screening thresholds criteria applied.

49. If the result of that process was a Screening Opinion determining that the project was not “EIA development”, and if the result of a further screening process for the revised proposal would inevitably be the same, the authority would be able to conclude that its Screening Opinion is competent for the proposed development in its modified form. The judgment embodied in that Screening Opinion will be no less valid and effective for the proposal as revised as it was for the proposal as originally conceived. The potential effects of the development will already have been dealt with in a formal screening process. The development would have been “the subject of a Screening Opinion” – the concept in Regulation (b). The provisions of paragraphs (4) and (5) of Regulation 5 will not be engaged. The screening process will not have to be repeated. If it were repeated it would be of no benefit to the authority, no benefit to anyone likely to be affected by the outcome, and no benefit to the public interest and the EIA regime being operated being operated with the rigour required.”

38. It will be apparent from the facts of that case that the point which arises in this case, namely what is the threshold at which a previously negatively screened proposed development needs to be re-screened in the light of changed circumstances, did not directly arise. On the facts of that case there had been no change in the environmental context and such changes as were proposed to the application were insignificant. Active consideration had been given to whether the new proposals would have given rise to a potentially different outcome to the Screening Opinion.
39. During the course of argument reference was made to the case of Mageean v SSCLG and another (2011) EWCA Civ 863 (which was subsequently applied in the case of Smyth v SSCLG and others 2013 EWHC 3844). The circumstances of that case were that following a positive Screening Opinion by the local planning authority the proponent of the development asked the Secretary of State for a screening direction under Regulation 6 of the 2011 Regulations. Such a direction is binding on the planning authority for the purpose of reaching its decision on the application. The Secretary of State concluded that the proposed development was not EIA development. After the screening direction and before the consideration of an appeal

against the subsequent refusal of planning permission the site became part of an area designated a World Heritage Site. The challenge proceeded on the basis that the Inspector ought to have invited the Secretary of State to reconsider the screening direction which had been issued in the light of the World Heritage Site designation. Lord Justice Sullivan expressed his conclusions on this point as follows:

“20. It is common ground that an Inspector determining an appeal on behalf of the Secretary of State does have power to invite the Secretary of State to reconsider a screening direction. Although the observations of Simon Brown LJ in paragraph 24 of Evans were obiter they do in my judgement provide eminently sensible guidelines as to the circumstances in which an Inspector not merely may but should invite the Secretary of State to reconsider a screening direction with a view to deciding that an application for planning permission is after all an application for EIA development. An Inspector is under an obligation to invite the Secretary of State to reconsider the matter only if the Inspector considers that, because for example of a change of circumstances, such as the inscription of the WHS in the present case, there is “at the very least a realistic prospect” of the Secretary of State coming to a different screening conclusion. Although Evans was a case where the screening direction had preceded an inquiry by only a few months, I do not accept Mr Kolinsky’s submission that the observations in paragraph 24 of Evans are not applicable to the circumstances of the present case where there was a change of circumstances by reason of the inscription of the WHS after the screening direction. The court plainly had in mind cases where “other material facts [come] to light” after the screening direction. Whether those other material facts come to light because they were not appreciated at the time of the direction or because of a subsequent change of circumstances is in my judgment immaterial. The guidance is equally well applicable.

21. Although as Mr Kolinsky submits, it is for the Secretary of State to decide whether a proposed development is likely to have significant environmental effects for the purpose of issuing a screening direction, whether there is a “realistic prospect” of the Secretary of State changing his or her opinion as to the likely environmental effects on the development is pre-eminently a matter of planning judgment for the Inspector. The Inspector’s judgment on that issue can be challenged on rationality ground: see Evans. It is not for the court to decide for itself whether there was or was not a “realistic prospect” of the Secretary of State making a different screening direction.

22. Precisely because an Inspector has to use his or her own planning judgment on that issue the mere fact that he or she has not been asked by any of the parties to the appeal to exercise the power to refer the matter back to the Secretary of State will

not necessarily be fatal to a legal challenge to a failure to exercise power. However, an applicant under S288, which is of course concerned with an error of law on the part of the Inspector determining the appeal, will face a formidable task in such a case. A S288 challenge in those circumstances will succeed only if the court is satisfied that any reasonable Inspector would, on the facts before the Inspector in that appeal, have concluded that they should exercise the power to refer the matter back to the Secretary of State of their own motion, not withstanding the fact that they had not been asked to do so by any party to the appeal.”

40. The decision in the case of Mageean (and to some extent in the CBRE case) was different to the present circumstances. In Mageean the Inspector had to consider exercising his or her planning judgment as to whether on the facts as known at the time of the appeal the screening direction should be referred back to the Secretary of State. Here the question is when, in the absence of that obligation, the point arises where consideration should be given as to whether or not the Screening Opinion ought to be revisited. The challenge is not therefore to a positive decision not to reconsider an earlier Screening Opinion; the challenge is to a failure to consider the point at all.
41. In my view the germ of the answer to this question is to be found in both of the authorities to which I have referred. In paragraph 47 of the CBRE case Lindblom J caveated the breadth of a previous screening process by stating that it would continue to have validity “so long as the nature and extent of any subsequent changes to the proposal do not give rise to a realistic prospect of a different outcome if another formal screening process were to be gone through”. In the Mageean case the question for the Inspector distilled in paragraph 21 of the judgment is “whether there is a “realistic prospect” of the Secretary of State changing his or her opinion”. Thus the trigger point, if a development has been previously negatively screened, to determine whether any change in its environmental context or its proposals require consideration to be given as to whether or not the Screening Opinion ought to be revisited in order to discharge the duty under Regulation 3(4) at the point at which consent is granted is whether or not those changes create any realistic prospect of the Screening Opinion being different. If such circumstances arise and the local authority apply their mind to the point and reach a further negative Screening Opinion then that is a decision challengeable on the normal public law grounds. Failure to give any consideration to the issue places the local authority in the position of subsequently granting permission for EIA development without having gone through the procedure required for EIA development by the 2011 Regulations.
42. It is correct to observe that the 2011 Regulations do not expressly contain any continuing duty in relation to Schedule 2 development which has been previously negatively screened. However, I accept the submission made on behalf of the claimant by Mr Strachan QC that the effect of Regulation 3(4) is that the discharge of the requirements under the Regulation crystallises at the point at which planning permission is granted since at that point the Regulations preclude the grant of consent for development which is in truth EIA development. It follows that in order to discharge that obligation it is necessary for a decision maker, dealing with a Schedule

2 development subject of a negative Screening Opinion (and not the subject of a definitive direction in that respect under Regulation 4(3) of the 2011 Regulations) to continue to ensure that the requirements of the Regulations and the directive are met throughout the lifetime of the application prior to consent.

43. Denial of this proposition could envisage a Schedule 2 application being made to the local authority and the subject of a negative Screening Opinion followed by a change in its environmental circumstances or in the nature of the proposal which would make it obviously EIA development but which as a result of the earlier Screening Opinion the local authority were under no duty or obligation to reconsider. Such an approach would lead to the grant of consent for that development without it having been the subject of EIA contrary to Regulation 3(4) and indeed the wider scope and broad purpose of the parent Directive. In such circumstances, therefore, the local planning authority are clearly under an obligation in order to discharge their duties under the 2011 Regulations to keep the circumstances of the application under review and, if there is a realistic prospect that a change of circumstances may lead to a different outcome to the Screening Opinion, to reconsider that question. That is the key difference between the present case and the CBRE case. In the CBRE case the question was considered and a conclusion reached; in the present case the question was never considered at all.

Conclusions

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

Ground 1

45. Prior to embarking upon the substance of Ground 1 it is important to offer some observations about submissions that were made in relation to the correct approach to the officer's report. Attention was drawn to the extensive background documentation which was appended to the officer's report together with other documentation circulated during the committee meeting. Notwithstanding this material in my view it must be the officer's analysis which is the key to understanding the member's decision and the legality of it. In this case they followed the officer's recommendation and granted planning permission and therefore can be taken to endorse the officer's reasons in reaching that decision. The basis for the recommendation is, of course, set out in the officer's report not the background documentation. That material no doubt is present to provide further information but it is important to note that it contains material on both sides of the argument. The resolution of those issues and the justification for the decision to grant permission is found within the officer's report and in particular within the officer's conclusions on the various topics that were raised. It is therefore to the officer's report that it is necessary to look to see whether there has been any error of law.
46. Ground 1 is the allegation that the officer's report significantly misled the committee about the contents of the Inspector's report in relation to the sequential approach. Before engaging with that argument in detail it is worthwhile observing that in this case it is beyond argument that the Inspector's decision on the claimant's appeal was an important material consideration that carried significant weight. So much was

observed in terms in paragraph 6.28 of the officer's report. Thus whilst the Inspector's decision was obviously not binding on the members it was nonetheless a weighty and significant matter in their decision making process. It is also undoubted that in relation to the issue of the sequential test the Inspector had made an assessment of the same issue against the background of, for instance, the same physical circumstances on the ground in relation to the location of the sites, the disposition of surrounding uses and their relationship to the functioning of the town centre. Equally clearly the Inspector had reached a contrary conclusion to that which was contemplated by the interested party and the council's consultants in respect of the status of the WSCP site.

47. Having considered the material in this case I am satisfied that the officer's report did mislead members, and mislead them significantly, as to the findings and conclusions of the Inspector in relation to the sequential test. The starting point of the officer's report (having set out solely paragraph 32 of the Inspector's decision) was that the Inspector's conclusions were 'not fully reasoned other than pointing to poorer pedestrian links'. That observation which appears to be the summation of the officer's understanding of the Inspector's conclusions was not merely a gross over simplification but fundamentally misrepresented the Inspector's decision. As will be clear from the far more extensive passages from his decision that I have set out above his conclusions were fully reasoned and in a manner which was legally impeccable (regardless of the fact that there was no challenge by the council on this basis after the decision was received). The totality of the reasons for his decision are to be found from paragraphs 21 of the decision letter onwards. Without repeating them, those reasons were not only fully expressed but covered a range of evidence to which the Inspector was referring when, in paragraph 32, he related his conclusions to the submitted evidence as a whole'. The reasons provided engaged, firstly the consistent findings of RTP in relation to the sequential preference for the LMS site bearing in mind its ideal location for incorporation within the functioning of the town centre and its ability to operate as an extension of the town centre unlike the WSCP site. The Inspector's analysis also engaged with the erroneous approach of the defendant in their determination of the LMS application and, importantly, their revised stance that in fact the LMS site was the best site sequentially and their conclusions in the first reason for refusal could not stand to the extent that no further decision could be made on the WSCP site until the erroneous sequential analysis was corrected by a new report re-advising the committee. Whilst it is not made express no doubt such a corrected report would have involved re-advising members along the lines of the revised position which the council presented to the appeal. Further the Inspector's reasons engaged with the consistency of his conclusion with emerging development plan policy. Thus far from being 'not fully reasoned' the Inspector's decision, which was addressed to an informed audience not least the defendant, embraced in its full reasons a range of pieces of evidence all supporting the conclusion that the LMS site was decisively preferable to the WSCP site in terms of the sequential test.
48. This leads to the second way in which Ground 1 is put, namely that since the officers were inviting members to reach a contrary conclusion on the sequential test to that which had been reached by the Inspector, did they provide adequate reasons to justify that disagreement and an alternative decision? In my view it is clear that they did not. That is perhaps unsurprising given that they thought, erroneously, that the Inspector's report wasn't 'fully reasoned' save with respect to pedestrian links. As a result of not

having properly appreciated the wealth of reasoning provided by the Inspector they thereafter do not engage with those reasons in explaining why a different answer to the one reached by the Inspector should be provided. There is in the officer's report at paragraphs 6.28 – 6.38 (and in particular in paragraph 6.29) no mention of the previous consistent advice from RTP providing the evidence base for the local plan strategy, the council's previous position and no engagement with the substance of the points raised by RTP and the Inspector in relation to the capacity of the LMS site to integrate intimately with and function as part of the town centre without any intervening development which underpinned the preference for the LMS site and the conclusion in the RTP evidence that the WSCP site was far less suitable as an extension to the town centre. The principle paragraph which deals with the Inspector's conclusions, paragraph 6.29, focuses on distances between the town centre and the sites and the potential for linkage but does not deal with the capacity for physical integration. A subsequent assertion later in the report that the WSCP site 'also has potential to form an extension to the town centre' which was relied upon by the defendant and the interested party in their submissions does not assist in that regard. This is because that assertion does not engage with the conclusions of RTP and the Inspector that it was the absence of existing intervening development and uses between the site and functional town centre which rendered the LMS site preferable and, in terms, the WSCP less so. This observation does nothing to explain why those earlier, less assertive and more fully explained justifications for preferring the LMS site are to be overridden. The reasons therefore are inadequate.

49. I am unable to accept the submission made by Mr Tucker QC on behalf of the interested party that this was a matter, like for instance an aesthetic judgment, where reasons could be simple or brief. This was an issue which related to explaining earlier and fully reasoned conclusions in both earlier independent advice obtained by the council from RTP, and also the full reasons provided by the Inspector. These earlier judgments were not subjective assessments for instance in relation to visual impression, but were grounded in the physical circumstances of the sites and surrounding uses and their physical proximity and linkages to the functional town centre. It required in my judgment reasons and explanations which were at least comparable to those which the defendant was seeking to gain say, and met the points with which they disagreed. Little more than contradiction is not an adequate form of reasoning in these circumstances. It is notable that the officers did not in the material that they provided seek to rely upon any physical or other contextual or policy matters which had changed since the claimant's appeal. I am therefore satisfied that the reasons provided by the officers in support of the conclusion that a different decision should be reached from that of the Inspector was based on misleading advice to the committee and was inadequately reasoned. All that said there is an important issue for discretion which I shall analyse later.

Grounds 2 and 4

50. These two grounds run together and they are based on the allegation that the officer's report failed to take account of or advise members about the Inspector's conclusions in particular at paragraph 44 of his decision that the LMS site should be treated for planning purposes as part of the town centre in particular when assessing retail impact and its quantification.

51. Having analysed the officer's report there is no doubt that it did not refer at all to the Inspector's conclusions in paragraph 44 of the decision that 'having regard to the council's aspirations for additional retail areas in the 'Northern Arc' set out within the emerging LPS' the LMS proposal should be seen as contributing to town centre turnover and creating (in the analysis then available) a 24 % positive impact on the town centre's turnover. The question that arises is as to whether or not that omission misled the members significantly, or alternatively whether that left out of account a material consideration in the analysis of retail policy and retail impact.
52. Having considered the submissions made in this respect I am in no doubt that this omission did amount to significantly misleading the members about an important material consideration, namely the conclusions previously reached by the Inspector. Although, as set out above, reference was made in the officer's report to the LMS site having the ability to form a logical extension to the town centre what was important in this respect was the failure of the analysis in the officer's report in relation to retail impact to treat the LMS site (as the Inspector had) as part of the town centre for the purposes of assessing impact. The economic modelling results which were presented to members detailing the effects of the establishment of the WSCP proposal did not either include the LMS site within the town centre overall or, more importantly, analyse in quantitative terms the impact of the WSCP scheme on the LMS proposals. As Mr Tucker on behalf of the interested party correctly observed the exclusion of the LMS site from the overall turnover of the town centre is perhaps of little moment. That is because its inclusion would have diluted the impact percentages created by the WSCP scheme. The real question that was obviously and in any event before the members was the effects of the WSCP proposal on the LMS scheme.
53. The officer's report repeatedly contends that the LMS site is not protected by paragraph 26 of the Framework because it is not in the town centre. That is an observation that is made in paragraphs 6.45, 6.69, 6.77 and 6.84. That is a conclusion which has, however, been reached without regard to the important material consideration that the Inspector concluded in analysing the impact of the LMS site that it should be included within the town centre. If the Inspector's approach had been taken into account that conclusion may well have been very different. His incorporation of the LMS site in the centre would have justified its inclusion in paragraph 26 as a commitment to planned in centre investment. Thus the exclusion of this aspect of the Inspector's decision on the claimant's appeal meant that the application of the Framework's policy occurred without taking account of a material consideration.
54. During the course of argument Mr Manley QC submitted on behalf of the defendant that the LMS site could only ever be an edge of centre site and therefore could never be protected by paragraph 26 because the LMS scheme had not been developed and the proposal had not been implemented. In my judgment that is an interpretation of the policy which is difficult if not impossible to sustain especially bearing in mind the particular circumstances of the present case. The reference in paragraph 26 to 'committed and planned public and private investment in a centre or centres' clearly contemplates developments which are planned for and have yet to materialise on the ground. The particular circumstances involved in the present case are that the LMS proposal was a commitment for which permission had been granted on the basis that it would function as part of the town centre and indeed the expenditure it generated

should be counted as part of the town centre. Furthermore the reference in paragraph 26 to the analysis of impact 'up to five years from the time the application was made' envisages a prospective examination of retail impact. Thus in the particular circumstances of this case the application of paragraph 26 to the LMS site cannot be excluded.

55. Mr Tucker submitted that there was no need for any quantified assessment of the impact on the LMS scheme, but the difficulty with that submission is that if paragraph 26 applied that is precisely what it requires and indeed what was undertaken and reported to members in terms of the impact upon both Malton town centre as a whole and individual elements of it such as the Morrison's store. This (so far as possible) objective, transparent and quantified analysis is a well recognised means of testing the economic impact of retail proposals.
56. It is correct to observe that as set out above in their letter of 9th April 2014 EL appear to have undertaken some analysis of the impact on the LMS store and placed a figure of 16% as an outcome of their analysis. However, that material did not feature as any part of the officer's conclusions and further, and perhaps more importantly, was accompanied by the obviously erroneous conclusion that the impact on the LMS proposal was not a material consideration. That was a proposition which neither Mr Manley nor Mr Tucker were prepared to support and rightly so. The approach which I take to this material is governed by what I have set out above in paragraph 45. The 9th April letter was part of the background material furnished to members but it is clear this element of their advice did not feature in the officer's conclusions which are the important source for the member's reasons. If I were wrong about that and reliance was to be placed upon this material as perfecting the absence of any analysis of impact on the LMS proposal then it is in turn affected by the legal error of suggesting that that issue was immaterial.
57. In a similar vein, both in relation to these grounds and also Ground 1, reliance was placed by the defendant and the interested party on the fact that members had access to the Inspector's report. I am unable to accept that this step perfected or overcame the errors which I have identified. Firstly, for the reasons which I have given above, in circumstances where the members accepted the officer's recommendation the basis for that recommendation provides the reasoning to justify it and in this case that is as set out in the officer's conclusions. In any event it is clear that the Inspector's decision was only provided to members on the night of the meeting and not as part of their pre-reading. Providing them with a relatively lengthy decision letter at the start of the meeting was no sensible substitute for the officers providing them with proper advice as to the content and conclusions of this earlier significant decision.
58. To conclude, the omission of any mention of the Inspector's conclusions in relation to the incorporation of the LMS site within the town centre for retail impact purposes was a material and significant misrepresentation to members. No reasons were provided for departing from the Inspector's conclusion. The conclusions which the officers reached and which the members adopted on the application of paragraph 26 of the Framework and the absence of protection for the LMS proposal were made without regard to that important material consideration and thus were unlawful.

Ground 3

59. In this ground the claimant contends that, in particular in paragraph 6.76 of the officer's report, the defendant conflated the view of Booths (who were solely the proposed tenant and operator of part of the proposed scheme) with the views of the claimant (who had to fund and develop the totality of the proposal). Having reviewed this element of the officer's report it is clear in my view that each of the positions of the parties, both Booths and the claimant, were fairly and properly put before members. However, beyond the advice that the claimant's views should be treated with caution it is a little unclear what definitive view the officers formed about the prospects of the LMS proposal being implemented if consent was granted for the WSCP scheme. They seemed to conclude that it would still happen but during the course of argument Mr Manley was unwilling to be definitive as to what precisely the prospect of that scheme happening was in the minds of the officers. Whilst I am not satisfied that on a fair and full reading of the officer's report they muddled up or conflated the views of the claimant with that of Booths and therefore provided members with incoherent advice, the failure of this ground does not overcome in any way the problems which I have identified for the defendant in relation to Grounds 2 & 4.
60. The 'caution' that the officers counselled in relation to the claimant's views of the prospects for the LMS site coming forward is qualified by the contention that because the LMS site is not part of the town centre paragraph 26 of the Framework did not apply. For the reasons I have already given the latter conclusion was infected with error and led to a failure to undertake any quantified impact analysis on the LMS scheme. If the Inspector's conclusions had been taken into account and his approach of including the LMS within the town centre had been adopted then the economic impact of the WSCP would have been fully analysed and that would have provided an important means of testing the realism of what both the claimants and Booths were contending. As a result of the approach in the officer's report and the absence of analysing the impact on the LMS scheme the conclusions which they reached in relation to the impact on planned investment were inchoate. As a result simple reporting of the position of the claimant and its intended operator did not amount to reaching a decision on planned investment based upon all of the relevant or potentially relevant material considerations.

Ground 5

61. For the reasons which I have set out above in relation to the legal argument which relates to this ground I am satisfied that the correct approach is that the defendant needed to keep under continual review the validity of the Screening Opinion which it had given bearing in mind any changes in circumstances which might lead to a different conclusion. In the light of that legal background the factual question which then emerges is as to whether or not there were any changes in the circumstances of the WSCP proposal which might lead to a different conclusion being reached and which required attention to be given to whether the Screening Opinion needed to be reconsidered.
62. There is no doubt in my view that the original Screening Opinion request made by the interested party clearly drew attention to the existence of the LMS proposal as an application for planning permission at the time when the request was made. Equally

clearly the reference to it in paragraph 4.2 in relation to cumulative effect relates to environmental impacts caused by built development. Paragraph 4.3 of the request then goes on to deal with the economic effects and in particular considerations of retail impact. There can be no doubt that this paragraph in relation to economic effects is predicated on the NLP 'conclusion that only one new large convenience store / foodstore can be accommodated in Malton or the district generally'. Those paragraphs, one dealing with effects from built developments and the other dealing with economic effects are the foundation of the conclusion suggested in paragraph 4.4 of the request that cumulative effects would not give rise to any significant environmental effects warranting EIA.

63. A witness statement has been produced from Ms Lancaster who was the officer of East Riding of Yorkshire Council who undertook the screening opinion. It should be noted that at the time when the Screening Opinion occurred the defendant had passed the assessment of the LMS and WSCP applications to East Riding of Yorkshire Council on the basis that they owned the WSCP site. In a witness statement dated the 10th December 2014 Ms Lancaster states that she 'was fully aware and took into account the LM application as part of the cumulative impact of the respective retailing proposals'. It is understandable given the remove of time that Ms Lancaster is not able to provide any information beyond that observation. I have no doubt that she has been involved in considering many many other applications in the meantime. I have equally no doubt that she was aware and took account of the LMS application in forming her view as set out above that its existence was drawn to her attention through the screening request. However none of this answers the critical question which is whether or not the cumulative economic effect of both stores in operation was taken into account in the Screening Opinion. On the basis of the evidence which I have set out I am not satisfied that it was. Indeed, I can see no reason why Ms Lancaster would have considered the cumulative economic effect of both schemes trading when she had been told in the screening request that that was not a possibility.
64. It may be said that the suggestion that both schemes might be trading (and I bear in mind as I have already observed the absence of any absolute or definitive position adopted by the officers in their assessment of the contentions made by the claimant and Booths in respect of impact on planned investment) was not definitively concluded upon. Nevertheless once the position had changed from one where only one store could possibly be operating to circumstances where the council were undoubtedly contemplating the prospect of both stores operating the need to assess the cumulative effects of that in economic terms arose leading to the conclusion that on the basis that this might lead to a different outcome to the Screening Opinion consideration needed to be given to whether or not the screening process should be revisited. This issue was simply never considered prior to the grant of planning permission and that was, in my judgment, an error of law in dealing with the application.

Discretion

65. In the event of me reaching adverse conclusions in respect of the grounds of challenge the defendant and the interested party raised questions pertaining to the exercise of discretion. I deal with the matters raised in turn. In particular in relation to Ground 1 it was contended that whatever may have been the position about the Inspector's approach to the sequential test, because of the scale of the proposal and the inability to

fit it on the LMS site the conclusion was bound to be reached that the WSCP proposal met the requirements of the sequential test because there was no other site suitable to accommodate it given its size. In my view there is force in this submission and it is one which is based clearly on the conclusions set out in the officer's report that the scale of the WSCP proposal could not be accommodated on the LMS site. That is a conclusion which has not and could not in substance be challenged. Thus were the errors confined to Ground 1 I would not have been persuaded that it was appropriate to grant relief so as to quash the decision.

66. I do not consider, however, that similar considerations pertain to Grounds 2, 4 and 5. So far as Grounds 2 & 4 are concerned the failure to take account of the Inspector's conclusions in paragraph 44 in the way that I have analysed above does not enable me to say that were the matter to be reconsidered the same decision would arise. Upon reconsideration it would be necessary for the defendant to actively consider whether the Inspector's conclusions in paragraph 44 are accepted, and in accordance with their legal duty explain why they were not accepted if that became their position. If they did accept the Inspector's conclusions then issues would arise in relation to the analysis of the impact on the LMS scheme which have not been undertaken. A range of planning judgments therefore would need to be reached and it is simply not possible to conclude that the decision would inevitably (or even very likely) be the same.
67. Similarly in relation to the Screening Opinion under Ground 5, whilst it was contended by the defendant and the interested party that there was no evidence to suggest that any different conclusions might be reached I am not satisfied that that is the case. As was pointed out by Mr Strachan in reply this is not a case like the CBRE Lionbrook case where the Council had indeed expressed a view about whether or not screening was required. The fact is that on the conclusions I have reached the defendant has never considered the point and on the evidence before me it is simply not possible to say that the difference between both schemes operating and only one of the schemes operating is so inconsequential that the outcome of re-screening would inevitably be the same. This is not a case therefore where the failure is purely procedural or trivial in character but is in truth a matter which calls for investigation and about which it would be improper to exercise discretion.

Overall Conclusion

68. For the reasons given the claimant's case succeeds on Grounds 1, 2, 4 & 5 and the decision of the defendant to grant planning permission on 12th September 2014 to the interested party should be quashed.



REPORT TO: COUNCIL

DATE: 3 SEPTEMBER 2015

REPORT OF THE: CHIEF EXECUTIVE
JANET WAGGOTT

TITLE OF REPORT: NORTH YORKSHIRE FIRE AND RESCUE SERVICE - FIRE
COVER REVIEW 2015

WARDS AFFECTED: ALL

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

1.1 To provide Members of Council the opportunity to agree a response to the consultation document of North Yorkshire Fire and Rescue Service (NYFRS), Fire Cover Review 2015.

2.0 RECOMMENDATION

2.1 That Members agree a response on behalf of the Council to the following document, The Future of Your Fire and Rescue Service - Have Your Say and the Ryedale District briefing document Fire Cover Review 2015, and decide whether they wish to support either option 1 or option 2.

3.0 SIGNIFICANT RISKS

3.1 NYFRS have identified the total incidents across the service over 5 years which include residential fires, road traffic collisions, false alarms and other incidents and have suggested the resource allocation accordingly.

4.0 POLICY CONTEXT AND CONSULTATION

4.1 Ryedale District Council are being consulted as are the other 6 District Councils in North Yorkshire and the City of York on the future of NYFRS.

4.2 NYFRS are holding a number of drop in events in relation to this review which are listed in section 2 of the booklet.

4.3 There is a public survey which is available on the NYFRS website
http://www.northyorksfire.gov.uk/news-events/public-consultations/fcr_jul15

4.4 The consultation closes at 6pm on Friday 16 October 2015.

REPORT

5.0 REPORT DETAILS

- 5.1 During 2014 and early 2015 NYFRS carried out a review of fire cover across North Yorkshire and the City of York. At its meeting on 24 June 2015, North Yorkshire Fire and Rescue Authority approved a number of location specific proposals to be taken forward for consultation. The consultation period runs from 20 July to 16 October 2015.
- 5.2 Ryedale district has a total of five fire stations, four of which, Helmsley, Kirkbymoorside, Pickering, Sherburn are retained (on-call) stations, and Malton is a combined retained (on-call) and wholetime day crewed station.
- 5.3 No changes are proposed to the number or disposition of special response units.
- 5.4 For the Ryedale district, the Fire Cover Review has concluded changes should be made to the resources at Malton station.
- 5.5 At Malton fire station there are two fire engines, one of which is staffed by day-crewed staff and the other by retained staff.
- 5.6 There are two proposals for change:
- 1) Replace the day crewed fire engine with a day crewed Tactical Response Vehicle, or
 - 2) Replace the day crewed fire engine with a mixed crewed fire engine

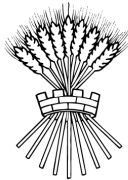
6.0 IMPLICATIONS

- 6.1 There is a difference in the resources allocated in options 1 and 2 which have implications to service delivery as identified in the report.

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Background Papers:

NYFRS - The future of your Fire and Rescue Service
NYFRS - Ryedale District briefing document Fire Cover Review 2015



REPORT TO: COUNCIL

DATE: 3 SEPTEMBER 2015

REPORT OF THE: CHIEF EXECUTIVE
JANET WAGGOTT

TITLE OF REPORT: FUNDING FOR CITIZENS ADVICE BUREAU

WARDS AFFECTED: ALL

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

- 1.1 To update Members following the presentation given by Sue Bywater, Janet Sharp and David Brown from Ryedale Citizens Advice Bureau (CAB) The presentation was held on Monday 3 August 2015 and is attached at **Annex A**.

2.0 RECOMMENDATION

- 2.1 That Council agree to allocate the provision of the additional £35k to Ryedale CAB.

3.0 REASON FOR RECOMMENDATION

- 3.1 The Ryedale CAB will be unable to continue to operate after October 2015 unless additional resources are made available.

4.0 SIGNIFICANT RISKS

- 4.1 The presentation given by the Ryedale CAB made it clear that the current financial position is fragile and that the Ryedale CAB require the additional financial allocation of up to £35k (which was made at Budget Council on 24 February 2015) in order to maintain the necessary cash flow and the services used and valued by a number of Ryedale residents.
- 4.2 In addition it was also made clear that whilst efforts had been put in to apply for other sources of “core funding” this funding was not guaranteed. It is therefore possible that the Ryedale CAB may be in a similar position next year (2016/17) and could require future financial support. If this is necessary this will be the subject of a further report to the Policy and Resources Committee.

REPORT

5.0 REPORT DETAILS

- 5.1 Members resolved at Full Council on 24 February 2015 to make a provision for funding Ryedale CAB up to £35K for the year 2015/16 from the New Homes Bonus and that officers work up to a formal proposal to support core funding for Ryedale CAB going forward.
- 5.2 This was brought to Policy and Resources Committee on 18 June 2015 where it was recommended to Council to delay the additional provision of £35k to the Ryedale CAB until they have presented their business case and forward plan beyond 2015/16 to Members of the Policy and Resources Committee. The presentation took place on 3 August 2015 where all Members were invited to attend.

6.0 IMPLICATIONS

- 6.1 The following implications have been identified:
- a) Financial
The additional resource of £35k will enable the Ryedale CAB to operate until the end of the 2015/2016 financial year. There is a risk that the operational shortfall will continue into future years unless a more permanent solution is found which is not dependent on Local Authority funding.
 - b) Supporting Vulnerable People
Failure to offer additional financial support to the Ryedale CAB could result in vulnerable residents of Ryedale being unable to access necessary advice, support and services at difficult times of need.

7.0 NEXT STEPS

- 7.1 The progress of the Ryedale CAB's ability to attract additional funding (other than local authority funding) will be reported to a future meeting of Policy and Resources Meeting.

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Background Papers:

Presentation 3 August 2015

Policy and Resources Committee 18 June 2015 report - Funding for Citizens Advice Bureau

RYEDALE CITIZENS ADVICE BUREAU

Presentation to Ryedale District Council

Janet Sharp – Chair of Trustee Board
David Brown – Treasurer and Trustee
Sue Bywater – Chief Officer

OBJECTIVES

- To inform Members of RDC about the work of Ryedale CAB
- To demonstrate the benefits to RDC our service brings to the community
- To illustrate how we envisage our future

Who We Are

- Ryedale CAB has been established for over 30 years
- We are part of the national Citizens Advice network which sets standards for excellence
- We are primarily staffed by volunteers from the local community with 8 part time paid employees

The Work We Do

- We provide advice free to the citizens of Ryedale District on a wide range of social issues
- We provide specialist advice and advocacy and follow-up appointments for
 - Housing
 - Welfare Benefits
 - Money Advice

Service Delivery

- We offer drop-in sessions at
 - Harrison House, Norton – 3 sessions per week
 - Pickering Library – 1 session per week
- We are part of the Advice Line network via a rota taking calls on a national basis 3 sessions per week
- We offer specialist appointments

Client Numbers

covering period April 2014-March 2015

Key Statistics

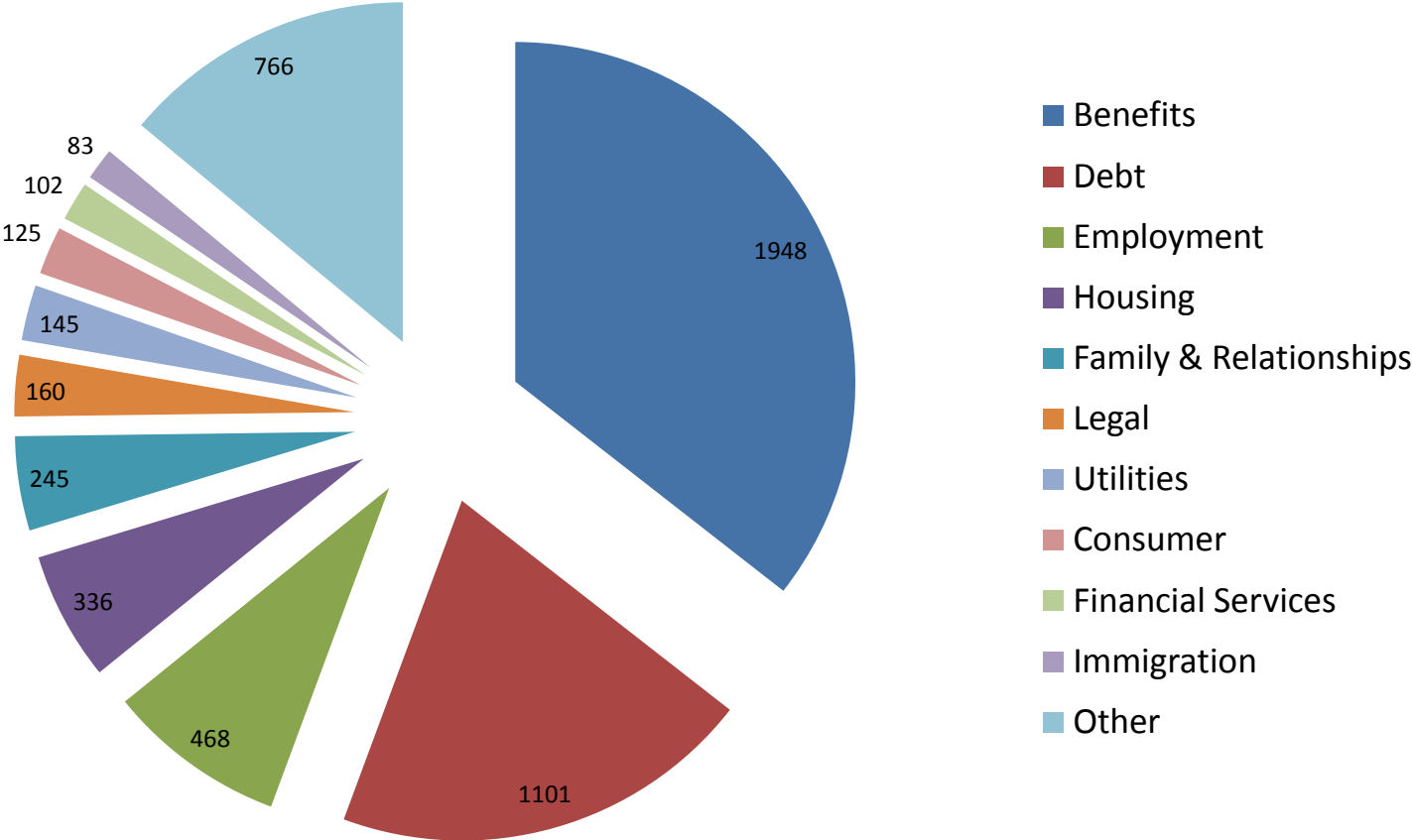
| | |
|----------------|--------------|
| Clients | 1,868 |
|----------------|--------------|

| | |
|-------------------------|--------------|
| Number of Issues | 5,479 |
|-------------------------|--------------|

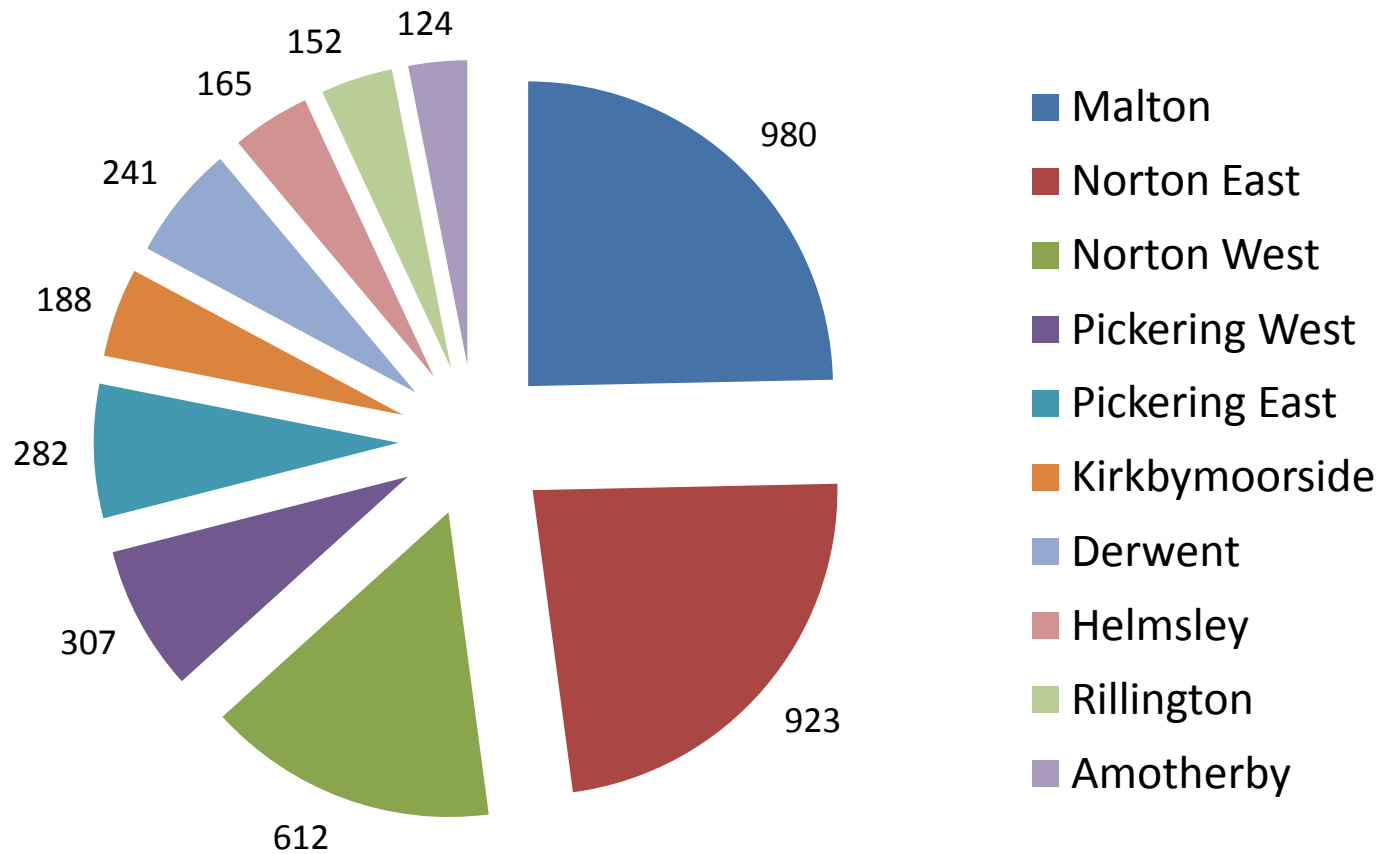
| | |
|------------------------|--------------|
| Client Contacts | 8,234 |
|------------------------|--------------|

| | |
|------------------|--------------|
| Enquiries | 2,121 |
|------------------|--------------|

Client Issue Breakdown



Client Issues for top 10 Wards



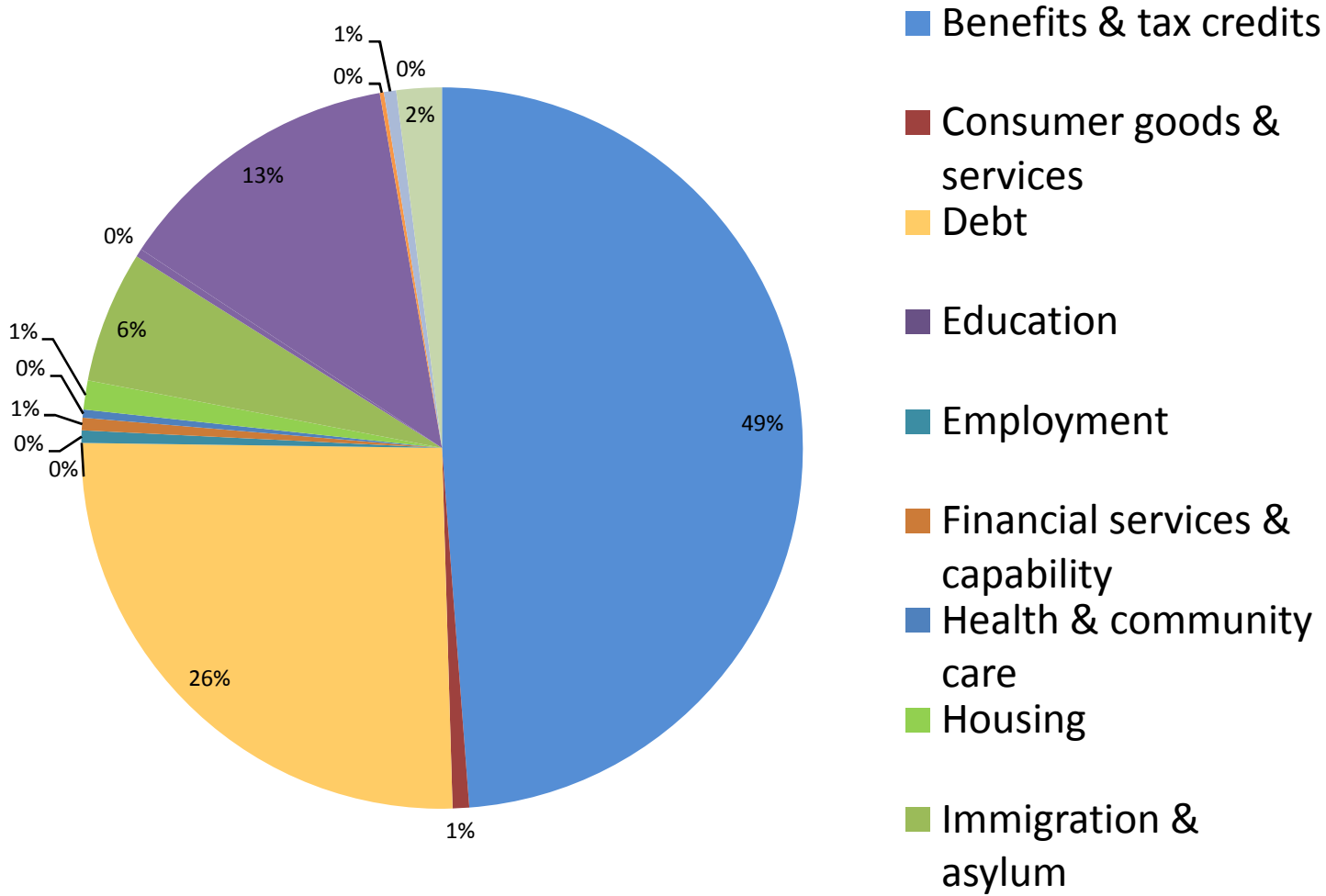
The top ten Wards account for 72% of clients seen

Financial Outcomes

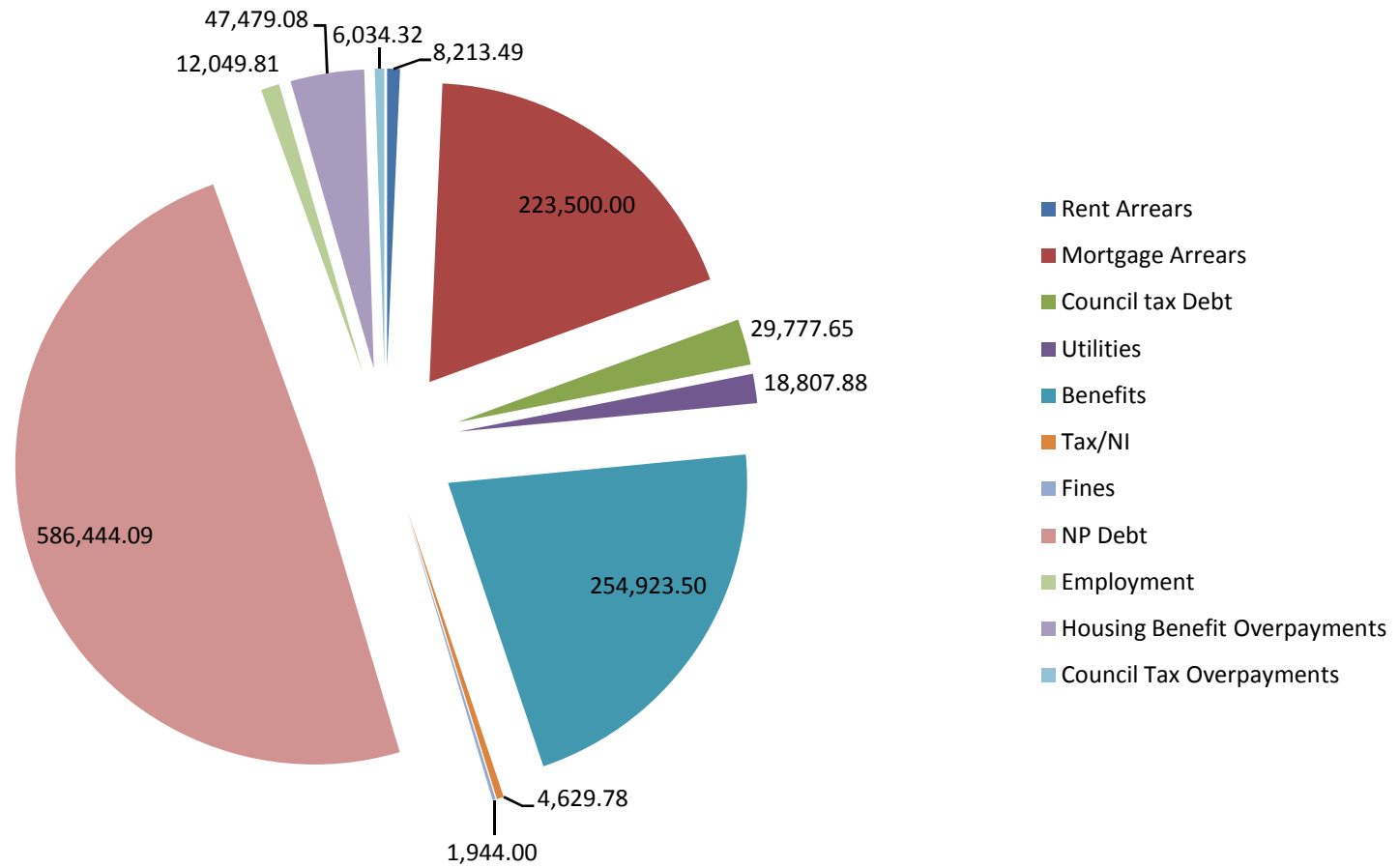
Financial Year 2014-15

- Income Gains £2,4000,00
- Debts Written Off £259,243
- Repayments Rescheduled £5,248

Outcomes



Gains for Clients £s



PARTNERSHIPS

- RDC – Housing options team
- Stonham tenancy support
- Community mental health team
- Children's centre
- Ryedale jobcentre plus
- Ryedale foodbank
- Member of Parliament

Housing

Our success in this area derives from:

- Streamlining emergency housing referrals
- Prioritising emergencies
- Pre-court preparation prior to referral to duty desk
- Priority applications by charity worker to reduce arrear levels prior to court
- Post emergency client care and follow up

Other Activities

Charity Worker

- Funded from Core – cost £8K p/a
- Accesses small sums on behalf of client for
 - Rent Arrears
 - Council Tax Arrears
 - Utilities
 - Small Household items

GAINS 2014-15

£33000

Fighting Chance Project

Funded by Awards for All

£10K over 10 months of project

Improving life chances for 18-24 age group

- CV writing
- Interview techniques
- Gateway to further training

GAINS Oct 14-June 15

£20000

Case Studies

- Alison, rural isolation, mental health problems. Single parent of teenage son, has benefit, housing and ongoing health issues.
- Client, 82 years old, living in a rural isolation. Challenging high and very complex fuel bills. Intervention by MP.

Bureau Income

Financial Year 2014-15

| | | |
|--------------------------------|--------|------|
| Ryedale District Council | £83000 | 23% |
| North Yorkshire County Council | £24000 | 6.5% |
| Grants from other sources | £24000 | 6.5% |

VALUE OF VOLUNTEERS
£230,000

Funding Applications

Financial Year -2015/16 (to date)

- Burden Trust - £6k – pending
- Inman Charity - £20k – pending
- Charles and Elsie Sykes Trust - £5k – successful
- Lloyds Invest - £71k – invited to resubmit
- Big Lottery – £350k (5 years)
- Henry Smith Charity – Draft

**Over the last 4 years we have successfully
obtained £149K**

Savings

In order to manage our budget for the current financial year we have:

- Reduced staff hours
- Relet our IT maintenance contract
- Reduced Audit costs

We constantly review our finances to identify further efficiency savings

Going Forward

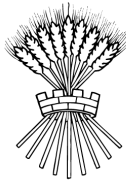
We envisage that in the future we will be able to sustain services through

- Big Lottery and other sources
- Ryedale CAB and RDC communicate on a regular basis
- Initial provision of £35k to be reduced upon our success at obtaining other funding

Funding for 2015/16

Without the proposed additional funding from RDC for the current financial year we will be unable to survive beyond September of this year

QUESTIONS



REPORT TO: FULL COUNCIL

DATE: 03 SEPTEMBER 2015

REPORT OF THE: CHIEF EXECUTIVE
JANET WAGGOTT

TITLE OF REPORT: DEVOLUTION – COMBINED AUTHORITIES

WARDS AFFECTED: ALL

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

- 1.1 To update Members on the current position regarding the ongoing national devolution debate, regional developments and how these may impact on Ryedale District Council.

2.0 RECOMMENDATION

- 2.1 It is recommended that Council agree to be part of a York, North Yorkshire and East Riding proposal for a Combined Authority (which may include Hull), which is to be submitted to the Treasury by the 4 September 2015 deadline.

3.0 REASON FOR RECOMMENDATION

- 3.1 It is likely that the only option available to the Council for inclusion in a Combined Authority proposal by the deadline for submission will be that for the York, North Yorkshire and East Riding (which may include Hull)

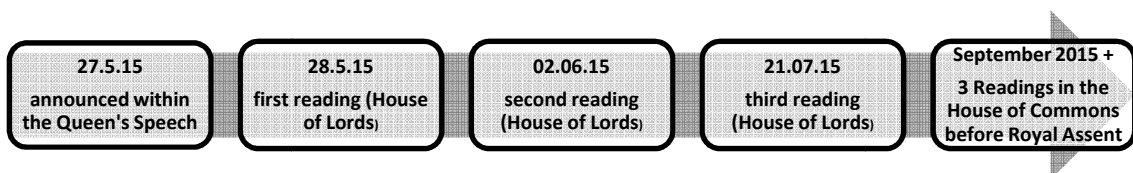
4.0 BACKGROUND

- 4.1 Combined Authorities were introduced in England outside Greater London by the Local Democracy, Economic Development and Construction Act 2009. The first combined authority, covering the Greater Manchester area, was formally established on 1 April 2011. Further combined authorities were established in the North East, West Yorkshire, Sheffield and Liverpool in April 2014.
- 4.2 Combined authorities have their origins in the 2012 Hesletine Review “No stone unturned in the pursuit of growth” which set a clear message that the drivers of the economy – business, central government and local leadership – “should be organised and structured for success”. The Review received broad cross-party support and calls for devolution within English regions intensified following the Scottish referendum in September 2014.

- 4.3 Combined Authorities bring together key decision making powers into a single body, putting member authorities in a much stronger position to tackle shared economic challenges, including improving transport and boosting jobs and growth. Other efficiencies should follow from shared functions, procurement and commissioning powers.
- 4.4 Greater Manchester Combined Authority (GMCA) has been leading the way, and in November 2014 its 'City Deal' was published. This included devolving additional transport powers, a housing capital budget, various business support and skills related budgets, a statutory spatial strategy, with a promise of closer working on the Work Programme and further education reform. In February 2015, further proposals on devolving strategic responsibility for commissioning of NHS and social care services were published. The 2015 Budget signalled an intention to allow Greater Manchester Combined Authority to retain 100% of business rate growth, if certain targets are met. It will be led by a directly elected Mayor, who will be responsible for the strategic government of Greater Manchester, including health, transport, housing, strategic planning, policing and skills. The Mayor will hold significant powers but can be vetoed if a majority of 10 combined authority leaders vote against proposals put forward. The role of the Greater Manchester Police and Crime Commissioner will be rolled into the new mayoralty.

5.0 POLICY CONTEXT

- 5.1 In May 2015, the Queen's Speech set out the Government's legislative programme for the 2015/16 Parliament. The '*Cities and Local Government Bill*' (applicable to England and Wales only) was one of 26 Bills announced. This provided a generic and enabling legislative framework to deliver the Greater Manchester devolution deal and subsequent deals in larger cities and "other places" which choose to have directly elected mayors. The following flow chart summarises the progress on the Cities and Local Government Devolution Bill 2015 (The Devolution Bill):



- 5.2 The House of Lords passed three amendments to the Bill including devolving powers to cities without the need for a mayor; however it is likely this will be overturned when the Bill is debated in the Commons. In parallel with the progress of the Bill through Parliament, groupings of local authorities have been invited to submit proposals for Combined Authorities comprising devolution 'Asks' and an agreed geography over which devolved powers might be exercised. Such proposals are expected to be fiscally neutral.

6.0 CONSULTATION

- 6.1 Ryedale District Council is consulting with residents and local businesses, the consultation is available on Ryedale Districts Council's website. Local media have also been involved in seeking public opinion on this matter. Feedback on this consultation will be presented to the Council meeting on the 3 September 2015.

7.0 REPORT DETAILS

- 7.1 Initial proposals for Combined Authorities need to be with the Government by 4 September 2015. Decisions on 'Asks' and geography cannot be taken without regard to potential governance arrangements. Ryedale District Council is not part of a combined authority area and, as a lower tier district authority, cannot currently be a full member of a combined authority independently of the County Council (this is due to the County holding statutory transport responsibilities). However, in April 2012 the Government issued a consultation on a Legislative Reform Order that would remove such barriers. This has now been incorporated into the Cities and Local Government Devolution Bill. If the legislation is passed its effect will be to:
- i. enable local authorities with non-contiguous boundaries and "doughnut" authorities to join or form a combined authority
 - ii. enable a county council to delegate or share its transport function with a combined authority for part of the county council's area; and
 - iii. simplify the administrative processes required to make changes to an existing combined authority.
- 7.2 In summary, the Devolution Bill streamlines the process for new joiners to a combined authority by removing the requirement to undertake a review and publish a scheme for combined authorities wishing to change their constitution, function or funding; replacing this with a requirement for all authorities concerned to consent to proposed changes before an application to make the changes is made to the Secretary of State. It also streamlines the process by providing circumstances where the Secretary of State need not consult on the proposed changes. The Bill reiterates the need for all authorities to consent to the change for an order to be made.
- 7.3 Members are reminded that a report was submitted to the 4 September 2014 Policy and Resources Committee and 18 December 2014 Council. The report addressed the views of Local Government, North Yorkshire and York (LGNYY) on the issue of future governance within the area served by the North Yorkshire, York and East Riding Local Enterprise Partnership in relation to economic growth. The report highlighted the then Government's thinking in relation to the devolution of powers via a combined authority and that local partnerships would be required to take decisions on issues relating to economic growth over large geographical areas.

Regional Proposals

- 7.4 LGNYY decided to progress with the establishment of a Joint Committee for the area, whilst at the same time progressing with work to develop a combined authority model that would be re-visited after the General and Local Elections in May 2015. Council supported, in principle, the position taken by LGNYY and agreed that the issue would be reconsidered after May 2015.
- 7.5 Since the General Election, the Conservative Government has indicated its intention to devolve powers to parts of England and has announced its Cities and Local Government Devolution Bill which proposes devolved powers.
- 7.6 In the Government's Spending Review published on 21 July 2015, it was announced that "*City regions that want to agree a devolution deal in return for a mayor by the spending review will need to submit formal, fiscally neutral proposals and an agreed geography to the Treasury by 4 September 2015*".

- 7.7 Locally, devolution proposals are being worked up for both the Leeds City Region and North Yorkshire, York and East Riding Local Enterprise Partnership areas. The devolution 'Asks' will be worked on, up to and beyond the 4 September deadline as negotiations with Government and between local authorities continue. The September deadline is for initial proposals / expressions of interest, and the detail of the "Asks" will be finalised in sufficient time to inform announcements in the Autumn Statement due in November / December 2015.
- 7.8 During the last three months, discussions have been taking place across the region and sub-region in response to the Government's stated position of increased devolution of powers. The Leeds City Region (which includes the five West Yorkshire Authorities, Bradford, Calderdale, Kirklees, Leeds, Wakefield and North Yorkshire County Council, Harrogate Borough Council, Craven District Council, Selby District Council and the City of York Council as members) has had detailed discussions with the Government on a potential devolution deal. Negotiations about the deal are currently ongoing and what deal may result, i.e. the powers that would be devolved and the geographical area that would be included.

Options

- 7.9 Ryedale, Hambleton, Richmondshire and Scarborough are not part of the Leeds City Region and would not form part of a devolution deal based on the West Yorkshire Combined Authority Metropolitan area. Given this situation, authorities in York, North Yorkshire and East Riding Local Enterprise Partnership have held discussions on options that might be available. The Leader of the Council and Chief Executive have attended meetings in York to discuss the various options and scenarios available. Alternative options that have unfolded and been discussed include:
- i. A 'Yorkshire' option – for the whole of the geographical area of North Yorkshire, West Yorkshire, South Yorkshire, East Riding and Hull (an area of Gross Value Added 'GVA' of £95.4billion and a well known 'brand')
 - ii. A 'Greater Yorkshire' option – which would add North Yorkshire, York, East Riding and Hull to the West Yorkshire Combined Authority geographical area, or similar variation (an area with a GVA over £60billion); and
 - iii. A York, North Yorkshire, East Riding and possibly Hull option, or similar variation (an area with a GVA of between £20-26billion)

Conclusion

- 7.10 Since the Spending Review terms of reference were issued on 21 July 2015, the devolution agenda has been moving at a rapid pace and there have been many changes within regional, sub-regional and local areas on their approach during this period. However, the deadline for initial expressions of interest of 4 September 2015 has focused attention at the time of preparing this report.
- 7.11 The Council will need to make a decision on its' position relating to devolution and at this stage the Council only has one option available to it if it wishes to be part of a devolution outcome / deal. This is the York led option for devolution of powers to a York, North Yorkshire and East Riding (with or without Hull) geographical area, based on a combined authority model. On this basis it is recommended that Council agree to be part of the York, North Yorkshire and East Riding proposal, which is to be submitted by the 4 September deadline. If the expression of interest is accepted by

Government, there will be much more discussion and debate on the detail of any worked up bid for devolved powers to the Local Enterprise Partnership sub-region.

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Background Papers:

Report to Policy and Resources Committee, 4 September 2014
and to Full Council on 18 December 2014

Background Papers are available for inspection at:

www.ryedale.gov.uk

[Local Democracy, Economic Development and Construction Act 2009](#)

[The Cities and Local Government Devolution Bill 2015-16](#)

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