



Appeal Decision

Inquiry opened on 11 September 2012

Site visit made on 18 September 2012

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

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

Decision date: 29 October 2012

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

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

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

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

Application for costs

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

Preliminary matters

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

Main issues

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

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

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

Site Description and relevant Planning History

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

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

Reasons

The sequential approach, vitality and viability

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

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

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

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

that applicants and local planning authorities should demonstrate flexibility on issues such as format and scale.

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

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

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

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

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

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

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

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

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

⁴ Ref: APP/M3455/V/10/2122016

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

Relocation of the existing livestock market

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

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

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

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

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

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

Effect on character and appearance

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

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

⁷ Planning Policy Statement 5: Planning for the Historic Environment

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

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

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

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

Effect on living conditions

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

Other matters

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

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

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

Conclusions

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

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

David Wildsmith

INSPECTOR

Schedule of conditions (18 in total)

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

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

The required highway improvements shall include:

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

The required highway improvements shall be completed prior to the development hereby approved being brought into use.

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

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

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

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

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

- 13) The details submitted in pursuance of condition 1 shall be preceded by the submission to the Local Planning Authority for approval in writing, and subsequent implementation, of a scheme of archaeological investigation to provide for:
- i) The proper identification and evaluation of the extent, character and significance of archaeological remains within the application area;
 - ii) An assessment of the impact of the proposed development on any archaeological remains;

This shall be followed by the submission of:

- iii) Proposals for the preservation in situ, or for the investigation, recording and recovery of archaeological remains and the analysis and publishing of the findings, it being understood that there shall be a presumption in favour of their preservation in situ wherever feasible.

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

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

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

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

FOR THE APPELLANTS:

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

INTERESTED PERSONS SUPPORTING THE PROPOSAL:

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

INTERESTED PERSONS OPPOSING THE PROPOSAL:

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

CORE DOCUMENTS

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

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

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

DOCUMENTS AND PLANS SUBMITTED AT THE INQUIRY

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

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