



Appeal Decision

Hearing Held on 11-12 September 2019

Site visit made on 12 September 2019

by Roger Catchpole BSc (hons) PhD MCIEEM

an Inspector appointed by the Secretary of State

Decision date: 7th November 2019

Appeal Ref: APP/Y2736/W/19/3221639

5 Welham Road, Norton, North Yorkshire YO17 9DP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by BP Oil (UK) Ltd against the decision of Ryedale District Council.
- The application Ref: 17/01249/FUL, dated 13 October 2017, was refused by notice dated 2 August 2018.
- The development proposed is the erection of petrol filling station with sales building, canopy, car parking, 3no. fuel pumps, below ground offset fills, air/water bay, trolley compound, goods in delivery bay, bin storage and ancillary arrangements to forecourt and boundary.

Decision

1. The appeal is allowed and planning permission is granted for the erection of petrol filling station with sales building, canopy, car parking, 3 no. fuel pumps, below ground offset fills, air/water bay, trolley compound, goods in delivery bay, bin storage and ancillary arrangements to forecourt and boundary at 5 Welham Road, Norton, North Yorkshire YO17 9DP in accordance with the terms of the application, Ref: 17/01249/FUL, dated 13 October 2017, subject to the conditions set out in the schedule at the end of this decision.

Preliminary Matters

2. The local planning authority (the Council) withdrew all reasons for refusal after the appeal was submitted. However, additional concerns were raised by interested parties and Malton and Norton Town Councils (the Town Councils). The Town Councils subsequently chose to contest the appeal on a number of grounds that were considered during the course of the Hearing.
3. These grounds were addressed in the appellant's statement of case and subsequent submissions which included evidence submitted at the opening of the Hearing. The Town Councils also submitted additional evidence at the opening of the Hearing which had previously been shared with the appellant. As all late evidence was considered during a significant adjournment and continuation into a second day, I am satisfied that no parties interests were prejudiced.

4. The Ryedale Plan - Local Plan Sites Document was adopted on 27 June 2019 after the application was determined and the appeal was submitted. It was established at the Hearing that this did not alter the positions of the relevant parties and that it had been duly considered in subsequent submissions.
5. The site is within a Neighbourhood Plan area that was designated on 19 February 2019. It was established at the Hearing that the plan is still in preparation and that a draft consultation document is yet to be produced. Consequently, any aspects of this emerging plan that may be contrary to the proposal carry little weight and were, in any event, not raised at the Hearing.
6. The description of the proposed development on the appeal form is not the same as appears on the application form. It was established at the Hearing that this change was consulted upon before the application was determined. Consequently, I have used it for the purposes of this appeal.
7. A significant submission was made by Cllr Andrews in response to the appeal notification. It was established at the Hearing that the submissions, including an appeal decision¹ relating to another site, were primarily related to historic matters that were not relevant to the proposed development and that they did not represent the views of the Town Councils. I note that the circumstances of the appeal decision are not similar in all respects because of the nature of the proposal and the location of the site. Consequently, this appeal has been determined on its individual merits and the evidence before me.
8. As part of the site adjoins the southern boundary of the Norton Conservation Area, the proposed development would be within its setting. The Council accepts that no harm would result and that the overall effect would be neutral. I agree that this would be the case bearing in mind the existing mix of building types and the proposed design of the forecourt canopy. Consequently, I find that the setting of the Conservation Area would be preserved.

Main Issues

9. The main issues are the effect of the proposal on the local road network with regard to capacity and congestion, air quality with regard to nitrogen dioxide and particulate matter emissions and whether there are more suitable alternative sites with regard to flooding and retail suitability.

Reasons

10. The appeal site fronts onto Welham Road and comprises previously developed land covering an area of approximately 0.56 ha. It has a small number of temporary buildings, is covered in ruderal vegetation and has an unkempt appearance.
11. The site context is largely residential with mixed use to the north comprising a car sales business and a Lidl supermarket. The proposal would lead to the construction of a six-bay petrol filling station (PFS) with a forecourt shop and associated ancillary development, including parking bays for up to 39 cars.

¹ APP/Y2736/A/12/2174677

12. The gross internal area of the forecourt shop would be approximately 495 m². The site layout plan (30061-22-D) shows that a significant proportion of this area would be dedicated to non-retail use. It was established at the Hearing that the net retail area would be approximately 279 m² in size and this was not disputed.

Traffic

13. The main access to the site would be from Welham Road which has a 30 mph speed restriction and good visibility from the proposed access point. It was established at the Hearing that road traffic monitoring data indicates an average speed of approximately 21 mph in the vicinity of the site.
14. I observed two pedestrian crossing points with refugia to the north of the appeal site which are denoted by illuminated beacons. The first is situated near the junction with St Nicholas Street whilst the second is immediately to the north of the main entrance to the Lidl car park. A third refuge would be constructed in between the new site entrance and the junction with Spring Field Garth as part of the conditioned highway improvements associated with the proposal.
15. Whilst only a snapshot, I observed that traffic was free flowing during my site visits and that queues along Welham Road, resulting from the closure of the level crossing, cleared relatively quickly in less than 4 minutes after the barrier was raised. I observed queuing vehicles extending past the appeal site on one out of five occasions. However, given the partial closure of Church Street it is unclear whether this traffic behaviour was representative because of the abnormal road conditions.
16. The appellant maintains that the proposal would not result in a material impact because the number of additional vehicle movements generated by the proposal would be less than the existing daily fluctuation in traffic flow along Welham Road. This relies on the assumption that the proposal would lead to a 10% increase in vehicle movements with the remaining movements being drawn from existing traffic flows.
17. This assumption is disputed by the Town Councils which have pointed out that the Council was advised that it would become a 'shopping destination in its own right'. Given that the net retail floor area would be just over half the gross floor area, I find it highly unlikely that this would be the case. This is because the shop would also stock car products and accessories and have space allocated to the Wild Bean Cafe company.
18. Consequently, only a limited range of goods associated with the M&S retail offer would be available and I therefore accept that it would be a convenience outlet rather than a destination 'in its own right' where individuals would undertake a separate, planned trip. Moreover, I find it plausible that diversions of existing traffic from local supermarket locations, including Lidl, would occur in order to purchase fuel and supplement bulk shopping.
19. The 10% assumption was also disputed by Mr Boorman who owns a nearby Gulf PFS with a forecourt shop. Whilst patterns of use were summarised in evidence, I have no indication of the number of individuals who were

surveyed or whether a structured questionnaire was used that was capable of identifying planned trips where his PFS was the sole destination. The Town Councils accepted that not all the 'planned trips' were necessarily for the sole purpose of visiting the Gulf PFS at the Hearing. Given the above, I do not find the evidence against the 10% assumption convincing.

20. The appellant has considered the potential changes in traffic volume through the use of TRICS (Trip Rate Information Computer System) which is a database of trip rates for different types of development that is approved by the Department of Transport for transport planning purposes. This is a commonly used computer modelling system that is used to predict the trip generation associated with new development.
21. The local Highway Authority (HA) compared a turning count survey that the appellant undertook in February 2018 with its own traffic volume data that was collected in January 2018. This indicated an average daily flow of approximately 7,794 vehicles along Welham Road. The HA concluded that the turning count survey was 'not un-representative' of traffic flows or turning movements and that the appellant's baseline data showed similar variations in traffic flow along Welham Road.
22. The predicted changes in traffic flow are set out in three 'Transport Notes' that were submitted on 27 November 2017, 16 March 2018 and 7 June 2018. The results suggest that the proposal would result in approximately 177 new daily vehicle movements. The appellant's response to the Town Councils evidence indicated that the site would attract existing traffic from Welham Road (20%), St Nicolas Street (22.5%), Church Street (19%) and Castlegate (28.5%).
23. The robustness of the movement estimate was tested by calculating how many trips might result if data from separate, rather than combined, retail and PFS operations were considered. This indicated that the estimates were broadly similar with only minor differences. It was on this basis that the HA concluded that there would be no severe cumulative impact on the road system in relation to either capacity or congestion.
24. Notwithstanding the 10% assumption that I have already addressed, the Town Councils, and others, have disputed the level of the predicted increases on the basis that the comparator sites in the TRICS database are not sufficiently similar and the large traffic flows that have been observed at the nearby Lidl supermarket.
25. Turning to the first issue, I note that this was, in part, due to the assumption that the comparator sites were located on the edge of towns rather than the edge of town centres, as clarified in the appellant's response to the Town Councils' evidence. I accept that no market towns were selected but I nevertheless find the sites sufficiently similar to be credible comparators not least because three of them included M&S forecourt shops.
26. Turning to the second issue, the observed differences in traffic flow between 2008 and 2018 show an increase that was revised down by the Town Councils during the course of the Hearing. Whilst there was still a marked difference, this can be attributed to other causes, such as the change in the priority of the Church Street/Welham Road junction, which the Town

Councils accept has caused a change in traffic levels which has led to significant congestion.

27. I note the residents' survey of the traffic flow associated with the nearby Lidl supermarket, dated 15 August 2019. However, the recording of entry and exit flows reflects total trip generation which includes existing traffic flow. As such, this cannot be used to evaluate the number of new trips that would be generated by the proposed development. Indeed, it also fails to define the number of new trips associated with the Lidl supermarket for the same reason. Even if this were the case, the comparison is not valid because the gross floor area of the Lidl supermarket is 1,430 m² which is more than three times the floor area of the proposed development.
28. Whilst the Town Councils maintain that 177 new daily vehicle movements would be 'wholly implausible', I have no technical evidence before me to support this claim nor any specific criticism of the TRICS modelling, beyond the choice of comparator sites, to suggest that its implementation was flawed. Consequently, the key issue that falls to be determined is whether or not this increase would harm highway safety or significantly reduce the capacity of the wider road network.
29. Paragraph 109 of the National Planning Policy Framework 2019 (the Framework) states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Whilst the exact meaning of severe is not defined, the ordinary meaning of the words does not preclude a development from increasing traffic flow or adding to existing congestion. Whether this change would result in a severe impact depends on how it would affect the existing baseline.
30. I acknowledge the concerns expressed by local residents with regard to highway safety and the unreported accidents and near misses that have occurred. I observed that there was good visibility along Welham Road with the exception of the junction with Church Street when traffic turns left in a southbound direction. The visibility splay is limited by a garden boundary in such a way that drivers only have limited views of pedestrians who are using the nearby crossing.
31. However, the turning flow analysis indicates that the proposal would only lead to 11 diversions and two new trips in the morning peak along this route and 8 diversions and two new trips in the evening peak. Bearing this in mind, as well as the average traffic speed, alternative crossing points and lack of substantiated evidence of serious injury, I find that a significant impact on highway safety would not result from the proposed development.
32. Turning to the effect on road network capacity, I acknowledge the survey that was undertaken by local residents in June 2019. This comprised four observation points to the north of the appeal site that were chosen to determine the effect of the level crossing barrier closures on traffic flow. Free flowing traffic was defined as occurring when a stationary queue of traffic was no greater than four vehicles. It concluded that the survey figures were broadly comparable to the HA 2018 survey but with higher flows observed on Welham Road and St Nicholas Street.

33. The appellant highlighted a number of inconsistencies in the survey data in relation to the traffic volume comparisons that were made with the 2018 HA road survey data. The first relates to the observed morning peaks between 07:00 and 09:30 hours at all locations. The second relates to the observed evening peaks on Welham Road between 15:00 and 18:00 hours. The appellant has compared the HA 2018 survey data and found that this has been consistently underestimated in the relevant table. This was also found to be the case for the evening peaks on Church Street.
34. These inconsistencies were not disputed at the Hearing and no additional insight was offered by the Town Councils to explain why the reported 2018 HA survey data were consistently lower than the observed values at the above locations. The different values at two of the survey locations consequently casts significant doubt on the accuracy of the comparisons that were made at other times. As a result, I find the Town Councils' view that traffic flow has significantly increased since the 2018 HA survey to be lacking robust evidential weight.
35. The other key finding of the road traffic survey relates to congestion where all survey points showed frequent queuing of five or more vehicles. This showed average waiting times of up to 20 mins with two trains per hour and 40 mins with four trains per hour. A maximum value of over 70 mins was recorded at the Church Street survey point. The value was derived from an observed queue of 74 mins associated with a gate closure that occurred at 07:02 hours.
36. However, this is not consistent with the fact that the queues on Castlegate and Welham Road dispersed within three and four minutes of the barrier being raised. It is also inconsistent with the full dispersal of the next queue on Church Street within four minutes of the gate closure at 07:58 hours. This suggests that there may have been a recording or transcription error and that this value should have been excluded from the analysis as a statistical outlier.
37. I also note the presence of other extreme values in the data that range between 37-71 minutes as a result of a barrier failure at 08:12 hours on Thursday. The presence of such values has consequently skewed the calculation of the average queuing times at different locations and led to an overestimation of impact.
38. Moreover, the data tables indicate that there were only two occasions where the barrier closed four times in one hour which indicates that the calculated averages relating to four train movements per hour may not be statistically representative. This is because such a small sample size will not provide an accurate estimation of average queuing times.
39. Whilst it is clear that there are issues with congestion near the appeal site, the predicted peak hourly increases in traffic approaching the level crossing would not lead to any significant material change, let alone a severe road traffic impact. This is because the proposal would result in peak hourly increases of 14 southbound vehicles on Castlegate and 31 northbound vehicles on Welham Road, south of Church Street.

40. These flows would equate to one extra southbound vehicle heading towards the crossing on Castlegate every three and a half minutes and one extra northbound vehicle heading towards the crossing from Welham Road every two minutes. Given that the longest barrier closure documented in the WSP study² was 3 minutes 25 seconds, the scheme would only add one vehicle to the north and two vehicles to the south.
41. I understand the significant local concerns over the increase in rail services. However, the number of additional vehicles approaching the crossing as a result of the proposal would remain the same irrespective of whether there were two closures per hour or four. This would only lead to an increase in the frequency of queuing and would not alter the number of additional vehicular movements directly attributable to the proposal.
42. Much has been made of the appellant's stated view that it requires a flow of 10,000 to 15,000 vehicles a day for a PFS to be viable and the fact that flows along Welham Road would consequently need to increase. However, the appellant has pointed out that the proposal would not be entirely reliant on the passing traffic flow on Welham Road. It was estimated as only attracting up to 20% of existing flow with the rest being drawn from other parts of the road network. I find this a reasonable assumption given that Welham Road does not exist in isolation.
43. In the absence of any substantiated, technical evidence to the contrary concerning the number of new vehicle movements arising from the proposal, I find that any worsening of the current junction capacities would only be marginal and there is no substantiated evidence that wider highway safety would be impaired.
44. Given the above, I conclude that the proposal would not significantly harm the local road network with regard to capacity and congestion or lead to severe road traffic impacts. It would consequently be consistent with paragraph 109 of the Framework where permission can only be refused in the event of a severe impact.

Air Quality

45. The appeal site is located approximately 250 m to the south of an Air Quality Management Area (AQMA) that was designated in 2009 to monitor concentrations of nitrogen dioxide (NO₂). The air quality objective for this area is to ensure that NO₂ does not exceed an annual mean concentration of 40 ug/m³. The appellant considered increases in NO₂ that would result from a predicted increase of 177 daily vehicle movements. The baseline for the NO₂ analysis was taken from 13 roadside diffusion tubes, which included Butcher's corner and three locations along Castlegate.
46. The appellant also considered potential increases in particulate matter comprising PM₁₀ and PM_{2.5} emissions from the additional vehicle movements and the construction process. Although it was established at the Hearing that these are included in a periodic, statutory screening process, there was no recent local monitoring data for these pollutants because an associated AQMA has not been designated. Consequently, the appellant relied on

² Malton & Norton Infrastructure and Connectivity Improvements Study, July 2018

downscaled national monitoring data from DEFRA to provide the necessary baseline. Evidence submitted at the Hearing established that the correct grid squares had, in fact, been selected and that there was a transcription error in the original report.

47. The Town Councils questioned whether or not sulphur dioxide (SO₂) emissions should have been considered. However, it was established at the Hearing that this was primarily associated with the burning of domestic fuels and that it was not, in any event, at a level requiring routine monitoring through an AQMA.
48. A total of 10 different sensitive receptor locations along Welham Road, Knotts Terrace, St. Nicolas Street, Church Street, Castlegate, Yorkersgate and Old Maltongate were modelled. On this basis, the percentage change in the concentrations of NO₂, PM₁₀ and PM_{2.5} were all less than 0.5% using the predicted traffic flows. The appellant has highlighted the fact that this is considered a negligible impact according to IAQM guidance³.
49. The Town Councils were concerned that the assessment had not adequately considered the levels of congestion that were observed in the 2019 road traffic survey and the increased barrier closures. More specifically, they questioned whether the slower speeds of 20 km/hour were realistic given the prolonged periods of stop-go traffic that are likely to result. In response, the appellant has pointed out that the model is conservative and has generally overestimated the air quality impacts.
50. This is because the model validation showed that the predicted baseline concentration of NO₂ at NAS 12 was 29.13 ug/m³ compared to the monitored value of 27 ug/m³. More recent monitoring also indicates that this baseline decreased to 22 ug/m³ in 2018 which gives a significant margin for error as far as any potential exceedance of the 40 ug/m³ critical threshold that might be caused by the increased frequency of barrier closure is concerned.
51. The use of an average daily flow of 5,080 vehicles instead of the 7,794, as indicated by the 2018 HA survey, was also questioned. However, I note that the automatic traffic count that was undertaken for the air quality assessment was situated to the south of St Nicholas Street with no indication being given of the precise location of the count associated with the 2018 HA survey. As with the residents' 2019 traffic survey, had this been further north I have little doubt that a larger number of vehicles would have been recorded turning on to Welham Road from nearby roads. Consequently, I am not persuaded that the daily vehicle flow at the count location was inaccurate.
52. The Town Councils have questioned whether any increase in NO₂ would be contrary to policy SP17 of the *Ryedale Plan - Local Plan Strategy 2013* (LPS). I note that this policy has a general aim to protect and improve air quality but that there is no presumption against development that would lead to an increase in emissions. It simply requires the submission of an air quality assessment with proposals likely to have an impact on the AQMA. It goes on to state that development would be permitted where individual or cumulative

³ Moorcroft and Barrowcliffe (2017) Land-use Planning & Development Control: Planning for Air Quality. Institute of Air Quality Management, London

impacts are acceptable. In the absence of any technical evidence to the contrary or an objection from the local Environmental Health Officer I accept this to be the case.

53. Given the above, I conclude that the proposal would not cause significant harm to air quality, with regard to nitrogen dioxide and particulate matter emissions, and would thus be consistent with policy SP17 of the LPS.

Flood Risk Assessment

54. The appeal site is located in Flood Zone 3a which is defined in the Planning Practice Guidance 2014 (as amended) (PPG) as land having a 1 in 100 or greater annual probability of river flooding. This risk is predominantly associated with the River Derwent and its tributaries.
55. Paragraph 155 of the Framework advises that inappropriate development in areas at risk from flooding should be avoided by directing development away from areas at highest risk. Paragraph 158 goes on to advise that a sequential, risk-based approach must be taken that steers development towards areas of lower risk. This should be applied in all areas known to be at risk from any form of flooding.
56. A flood risk sequential test was undertaken by the appellant which concluded that there were no suitable potential sites available that would be at a lower risk of flooding. However, the Town Councils have suggested that a site at Eden Camp would be more suitable because it is at a lower risk of flooding and has also been subject to an application to construct a PFS.
57. The suitability of sites was considered in terms of whether they were capable of accommodating the proposed development, available for development, deliverable in terms of consistency with strategic priorities and free of constraint, such as being a greenfield site or within the green belt. In relation to flood risk, a total of 43 alternative sites were considered, amongst which was Eden Camp.
58. At the Hearing it was established that this site failed on the basis that policy SD12 of the *Ryedale Plan - Local Plan Sites Document 2019* allocated the site for B1, B2 and B8 uses. The Town Councils pointed out that there was an extant application for a PFS on the site and that it would have consequently been available to the appellant. However, the Council indicated that the application had not been determined and that such a conclusion could not be drawn. I agree and note that even if the planning application were to be approved, the site would still remain unsuitable owing to the presence of a competing PFS in close proximity.
59. Given the above and in the absence of any substantiated evidence to the contrary, I conclude that sufficient information has been submitted to satisfy the flood risk sequential assessment in line with paragraphs 155 and 158 of the Framework and policy SP17 of the LPS.

Sequential Retail Assessment

60. Paragraph 86 of the Framework requires local planning authorities to apply a sequential test to planning applications for main town centre uses. This is intended to guide such uses towards town centre locations first, then, if no

town centre locations are available, to edge-of-centre locations, and, if neither town centre locations nor edge-of-centre locations are available, to out-of-centre locations with preference for accessible sites which are well connected to the town centre. Paragraph 87 goes on to state that flexibility should be shown by both applicants and local planning authorities on issues such as format and scale so that all suitable town centre or edge-of-centre sites are fully explored. The PPG advises that when there are no suitable sequentially preferable locations, the sequential test is passed.

61. As the proposed development would be located in an edge-of-centre location, in retail policy terms, a sequential assessment was undertaken by the appellant which evaluated alternative sites in relation to their availability, suitability and deliverability. It was established at the Hearing that a total of 49 sites were initially considered which included the two out-of-centre sites at Eden Camp (A64/A169 junction) and Brambling Fields (A64/B1248 junction) highlighted by the Town Councils. It also included the Livestock Market Site (LMS), highlighted by the Fitzwilliam Estate and the York Road Industrial Estate, highlighted by Mr Boorman.
62. The Town Councils dispute the conclusion that there would be no other alternatives and maintain that the links to the strategic road network as well as the submission of a planning application for a PFS at the Eden Camp site indicate the inherent suitability of the two sites they suggest. Whilst I accept that Eden Camp and Brambling Fields have better access to the strategic road network, as does the York Road Industrial Estate, they all fail the retail sequential test because they are out-of-centre locations. The Framework is clear on this point which is why the Council stressed the need for a more detailed consideration of Wentworth Street Car Park, the former ATS site and the LMS. Bearing this in mind, I find that these out-of-centre sites are not sequentially preferable to the appeal site.
63. Turning to the more central sites, I am satisfied that they do not represent more suitable alternatives on the basis of the evidence that has been submitted for the following reasons. The Wentworth Street Car Park is owned by the Council and will be developed as a public sector hub and public car park and is thus unavailable. The former ATS site is smaller than the proposed site, partly in Flood Zone 3a and has a narrow frontage that would not meet fuel tanker access requirements. As a result, it would not be able to accommodate the proposal and would thus be unsuitable. It was suggested at the Hearing that the site might accommodate a stand-alone M&S retail offer given a lapsed residential permission. However, this is not the proposal that is before me and the Council pointed out that the site would, in any event, remain allocated for housing development.
64. The Council originally determined that the LMS was sequentially preferable to the appeal site and that insufficient evidence had been submitted to the contrary which led to the Council's second reason for refusal. Further evidence on the viability of the site was submitted which the Council accepted as sufficient in its appeal statement. The appellant contends that the site would not be suitable because of, among other things, the effect of a public right of way on the site configuration, the ability of the site to attract passing traffic and the limited accessibility of the site to petrol tankers. Moreover, the availability of the site was questioned because the owners

were only willing to offer it on a leasehold basis. Given the substantial capital investment required and the above limitations I do not accept that it is a more credible alternative.

65. The Town Councils have highlighted policy SP7 of the LPS which stresses the importance of Town Centres and their principal role in delivering retail activity. They maintain that the retail element of the proposal would be contrary to policy because it would be outside the Town Centre Commercial Limits.
66. However, the policy wording states that a local floorspace threshold of 500 m² will be applied to town centre uses outside these limits. Given that the gross floor area of the forecourt shop would only be 495 m² and the net retail area considerably lower, I find that the proposed location would be appropriate and that there would be no conflict with this policy.
67. Nor can I find any conflict with policy SP6 of the LPS which seeks to secure employment land allocations. Whilst the narrative stresses the importance of the 'Northern Arc' in accommodating new retail space, the wording of the policy does not specifically preclude the delivery of retail offers at other locations.
68. Given the above and in the absence of any substantiated evidence to the contrary, I conclude that sufficient information has been submitted to satisfy the sequential retail assessment and that the proposed site passes the test and is consequently in line with paragraph 86 of the Framework. I also conclude that there would be no conflict with policies SP6 and SP7 for the reasons given.

Other Matters

69. Additional concerns were raised by local residents to the proposed development in relation to matters relating to living conditions with regard to noise and light pollution, anti-social behaviour and vibration as well as the pollution of water courses, drainage issues and archaeology. These matters were considered either in the case officer's report or during the Hearing. I find that these concerns either do not warrant the refusal of the scheme or that they are capable of being controlled through the use of suitable conditions. Consequently, none of these matters were determinative either alone or in combination and will not be discussed further.

Conclusion

70. For the above reasons and having regard to all other matters raised I conclude that, on balance and subject to appropriate conditions, the appeal should be allowed.

Conditions

71. I have considered both the wording and grounds for the conditions suggested by the Council in accordance with the tests set out in paragraph 55 of the Framework.

72. In addition to the standard time limit condition, a condition requiring the development to be carried out in accordance with the plans is necessary to ensure that it is implemented as approved [1-2].
73. A number of conditions are necessary in order to ensure that the external appearance of building and surfaces are satisfactory and that the general appearance of the development is enhanced [3-5].
74. Conditions are also necessary to safeguard the living conditions of nearby residents with regard to noise, light, antisocial behaviour, construction activities and flooding [7-10, 16-17, 19 and 21-22].
75. A number of conditions to ensure the safe operation of the local road network are also necessary [11-15].
76. Further conditions are necessary in order to protect the aquatic environment and public sewer network [18 and 20].
77. Two electric car charging points are necessary to mitigate the air quality impact of the additional vehicle movements that the proposal would generate [6].
78. A condition to ensure the recording and deposition of any archaeological finds during construction is necessary given the prevalence of finds in the gardens of surrounding properties [23].

Roger Catchpole

INSPECTOR

CONDITIONS

- 1) The development hereby permitted shall begin no later than 3 years from the date of this decision.
- 2) The development shall be undertaken in strict accordance with the following plans: 30061-22 Rev D; 30061-23 Rev D, 30061-24 Rev D and Site Location Plan Rev A.
- 3) No construction above ground level shall commence until samples of all external facing materials and ground surfacing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved details.
- 4) No construction above ground level shall commence until details of hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - i) plans with accompanying schedules indicating the numbers, species, heights and positions of all trees and shrubs to be planted as well as the location of other soft landscaping features;
 - ii) plans with accompanying schedules indicating the location and detail of all hard landscaping, means of enclosure and retaining structures; and
 - iii) an implementation programme, including phasing of work where relevant.

The landscaping works shall be carried out in accordance with the approved details before any part of the development is brought into use in accordance with the agreed implementation programme. The completed scheme shall be maintained in accordance with an approved scheme of maintenance for the lifetime of the approved development.

- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the completion of the development and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 6) Before the development is brought into use, two, fast-charging points for electric cars shall be installed within the parking area for the forecourt shop.
- 7) The filling station, forecourt shop and ATM's shall not be used outside the times of 06:00-22:00 hours.
- 8) There shall be no deliveries or collections at the site except between 07:00 and 20:00 hours during week days and between 08:00 and 18:00 hours during weekends and public holidays.
- 9) Prior to installation, the external lighting design, specification and times of operation shall be submitted to and approved in writing by the local planning authority. The installation and operation of this equipment shall be in accordance with the approved details for the lifetime of the development hereby permitted.

- 10) Before the development is brought into use, a scheme to minimise crime and anti-social behaviour shall be submitted to and approved in writing by the local planning authority. The scheme shall be based on the recommendations of the police consultation response (dated 19 December 2017) and should include details of CCTV installations, intruder alarms, ATM security and provision for secure cycle storage for customers and employees. The scheme shall be implemented in accordance with the approved details.
- 11) Before the development is brought into use, a scheme for the management of the forecourt area, including access to existing properties shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details for the lifetime of the development hereby permitted.
- 12) Before the development is brought into use, the carriageway and any footway from which access would be gained shall be constructed to basecourse macadam level and/or block paved and kerbed and connected to the existing highway network with street lighting installed and operational. The completion of all road works, including any phasing, shall be in accordance with a programme approved in writing with the local planning authority in consultation with the Highway Authority. All works shall be implemented in accordance with the approved details.
- 13) There shall be no access or egress by any vehicles between the highway and the application site until full details of any measures required to prevent surface water from non-highway areas discharging on to the existing or proposed highway together with a programme for their implementation have been submitted to and approved in writing by the local planning authority in consultation with the Highway Authority. All works shall be implemented in accordance with the approved details.
- 14) There shall be no excavation or other groundworks, except for investigative 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 the details of the following off-site highway improvement works have been submitted to and approved in writing by the local planning authority in consultation with the Highway Authority:
 - i) Provision of tactile paving; and
 - ii) Provision of a new site entrance from Welham Road, to include right-turn lane and pedestrian crossing point across Welham Road south of the new entrance in accordance with plan 30061-22 Rev D.

The details shall include an independent Stage 2 Road Safety Audit, carried out in accordance with *HD19/15 - Road Safety Audit* or any superseding regulations, as well as a programme for the completion of the specified works. All works shall be implemented in accordance with the approved details and the development shall not be brought into use until all off-site highway improvements have been completed.

- 15) Notwithstanding the provisions of any Town and Country Planning General Permitted or Special Development Order, the areas shown on plan 30061-22 Rev D for parking spaces, turning areas and site access shall be retained for their intended purposes for the lifetime of the development hereby permitted.
- 16) No works associated with any phase of the development shall take place until a Construction Method Statement (CMS) for that phase has been submitted to, and approved in writing by, the local planning authority in consultation with the Highway Authority. The CMS shall be adhered to throughout the entirety of the construction period. The statement shall cover the following areas:
- 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) 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; and
 - viii) HGV routing to avoid Malton town centre.
- 17) The development, hereby permitted, shall be carried out in accordance with the mitigation measures and methodology set out in the Flood Risk Assessment (FRA) by Mark Heeley (dated October 2017) and as follows:
- i) finished Floor Levels for all buildings to be a minimum of 19.06 m above ordnance datum;
 - ii) no built development within 8 m of the outer edge of the Mill Beck culvert without the prior approval of the local planning authority in consultation with the Environment Agency; and
 - iii) no surface water shall be discharged to Mill Beck.
- The mitigation measures shall be fully implemented prior to the development being brought into use and in accordance with the timing or phasing arrangements embodied within the FRA. These measures shall be retained for the lifetime of the development hereby permitted.
- 18) Details of the system to be used to intercept and separate contaminated surface water run-off shall be submitted to and approved in writing by the local planning authority. This shall include detailed specifications for the containment of all fuel, oil, detergents and particulate matter which ensures that no discharge would occur to the public surface water sewer network, either during normal operating conditions or extreme weather events of up to a 1 in 100 year

frequency. All works shall be implemented in accordance with the approved details and the development shall not be brought into use until full implementation has occurred. The system shall be maintained in good working order for the lifetime of the development hereby permitted.

- 19) No development shall take place until details of the implementation, adoption, maintenance and management of the sustainable drainage system for foul and surface water drainage entering the public sewer network has been submitted to and approved in writing by the local planning authority. Those details shall include:
- i) a timetable for its implementation; and,
 - ii) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the effective operation of the sustainable drainage system throughout its lifetime.

The sustainable drainage system shall be implemented and thereafter managed and maintained in accordance with the approved details for the lifetime of the development hereby permitted.

- 20) There shall be no piped discharge of surface water from the development prior to the completion of surface water drainage works. If discharge to a public sewer is proposed then details shall be submitted to and approved by the local planning authority. The details shall include the means by which the discharge rate shall be restricted to a maximum rate of 1 litre per second. All works shall be carried out in accordance with the approved details.
- 21) Development shall not commence until a scheme restricting the rate of development flow runoff from the site has been submitted to and approved in writing by the local planning authority. The flowrate from the site shall be restricted to a maximum flowrate of 1 litre per second for up to the 1 in 100 year event. A 40% allowance shall be included for climate change effects for the lifetime of the development. Storage shall be provided to accommodate the minimum 1 in 100 year plus climate change, critical storm event. The scheme shall include a detailed maintenance and management regime for the storage facility. No part of the development shall be brought into use until the development flow restriction works comprising the approved scheme has been completed. The approved maintenance and management scheme shall be implemented for the lifetime of the development hereby permitted.
- 22) No development shall take place until an appropriate Exceedance Flow Plan for the site has been submitted to and approved in writing by the local planning authority. This must be designed to ensure that no flooding of the site or surrounding properties occurs in the event of a failure of the sustainable urban drainage system. The plan should demonstrate how rainfall would be completely contained within the drainage system (including areas designed to hold or convey water) for all events up to a 1 in 30 year extreme event. The design must ensure that flows resulting from rainfall in excess of a 1 in 100 year rainfall

event are managed in exceedance routes that avoid risk to people and property both on and off site. The plan shall be implemented for the lifetime of the development hereby permitted.

- 23) The developer shall afford access at all reasonable times during the construction phase to any archaeologist nominated by the local planning authority and shall allow that person to observe the excavations and record items of interest and deposit any resulting finds in Malton Museum.

APPEARANCES

For the Council

Ms Jill Thompson	Ryedale District Council
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For the Town Councils

Cllr John Howard	Norton on Derwent Town Council
Mr Michael Gwilliam	Malton Town Council and Norton on Derwent Town Council

For the Appellant

Mr Craig Howell-Williams	Of Counsel Instructed by Addleshaw Goddard Solicitors
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Dr Kevin Tilford BSc MSc PhD MBA	Weetwood Services Ltd
Ms Jenny Baker BEng MSc	Markides Associates
Mr Malcolm Walton BSc Dip MCIEH	Wardell Armstrong
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Interested Persons

Cllr Paul Emberley	Mayor, Malton Town Council
Cllr Sue Hawes	Malton Town Council
Cllr David Lloyd-Williams	Norton on Derwent Town Council
Cllr Dinah Keal	Norton on Derwent Town Council