



Appeal Decision

Site visit made on 14 October 2025

by K Lancaster BA (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th November 2025

Appeal Ref: APP/X1355/W/25/3370478

Land in the west of Thinford Park, Thinford, Spennymoor DH6 5JQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by No Ordinary Estates Limited against the decision of Durham County Council.
 - The application Ref is DM/25/00045/FPA.
 - The development proposed is the erection of 6no. retail units (Use Class E and Sui Generis) including one ancillary drive through and associated infrastructure and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 6no. retail units (Use Class E and Sui Generis) including one ancillary drive through and associated infrastructure and landscaping at Land in the west of Thinford Park, Thinford, Spennymoor DH6 5JQ in accordance with the terms of the application, Ref DM/25/00045/FPA, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by No Ordinary Estates Limited against Durham County Council and is the subject of a separate decision.

Preliminary Matters

3. The proposed development was amended during the application. I have taken the description of development from the decision notice and appeal form as this correctly describes the scheme. I have taken the address in the banner heading above from the decision notice as this more precisely describes the location of the site.
4. The appeal site benefits from an extant planning permission¹ (the extant permission) for the erection of ground floor retail (Use Class A1) and hot food takeaway (Use Class A5) terrace with first floor office space (Use Class B1a) (Amended Description). The extant permission has been implemented. It differs from the appeal scheme in that the first-floor office accommodation has been removed. I shall return to this matter later in this decision.

Main Issue

5. The main issue is the effect of the proposed development on the vitality and viability of Spennymoor Town Centre.

¹ Planning Application Ref: DM/20/00199/FPA

Reasons

6. The appeal site comprises an area of vacant land within Thinford Park, which contains a variety of commercial uses including a gym, offices, fast food restaurants and a coffee shop. The wider surrounding area is characterised by a mix of commercial uses which include a petrol station, coffee shop, fast food restaurants and a convenience store. It is also close to Durham Gate, which is a mixed-use development site.
7. Whilst the appeal site is not allocated within the County Durham Plan, adopted 2020 (the CDP), planning permission² was granted in 2021 for the development of the appeal site to provide ground floor retail and hot food takeaway units with office accommodation to the first floor. The Council has confirmed that this permission has been implemented. The appeal proposal now seeks approval for an alternative scheme to provide six retail and sui-generis units, including a drive-thru element. The proposed building would occupy a similar footprint to the previously approved development but would no longer provide any office accommodation.
8. Policy 9 of the CDP seeks to protect the vitality and viability of town centres. Accordingly, proposals for town centre uses as defined in the National Planning Policy Framework (the Framework) not located in a defined centre, will be required to provide a sequential assessment.
9. The Framework states that main town centre uses should be located in town centres, then in edge-of-centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out-of-centre sites be considered. The Framework also advises that applicants and local authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise town centre or edge of centre sites are fully explored.
10. The appeal site is located approximately 2km from Spennymoor Town Centre, which is designated as a 'Large Town Centre'. It is not therefore disputed that this is an out-of-centre location. Although it was initially agreed that a Sequential Test was not required for the application, in light of the previous grant of planning permission, a Sequential Test³ was submitted with the appeal. This provides an updated assessment of available and suitable premises within Spennymoor Town Centre, of the sites which have been previously considered, three were no longer available⁴. So, the assessment considered a further three sites in more detail.
11. Firstly, Festival Walk, which comprises a purpose-built 1970s shopping centre, within Spennymoor Town Centre's primary shopping frontage. The Sequential Test states that only one unit was vacant in July 2025, which is a significant change from the previous assessment which found the majority of units to be vacant. The single unit which is available is not of sufficient size for the proposed development and is not therefore a sequentially preferable site.
12. Secondly, the site adjacent Spennymoor Library, which comprises a vacant site measuring approximately 89m² and is located within the secondary shopping frontage of Spennymoor Town Centre. As with Festival Walk, the site is unsuitable due to its limited size.

² Planning Application Ref: DM/20/00199/FPA

³ Dated 30 July 2025

⁴ King William Court, Former Aldi Site and Former North Eastern Public House

13. In addition, the assessment also surveyed vacant premises⁵ with the 300 metres of the primary shopping area of the Town Centre. A small number of vacant units were observed, including the Festival Walk unit mentioned above. The remaining vacancies were located outside of the primary shopping area, and too small either individually or cumulatively to accommodate the proposed development.
14. Finally, the Sequential Test considered Durham Gate, which is a large-scale housing led regeneration site, close to the appeal site on the opposite side of the A167. It is located in an out-of-town location. The appellant states that whilst the original scheme included provision for retail development, this has not been implemented. Nonetheless, I have limited evidence to be certain that there is no prospect of retail development being delivered within the wider development scheme.
15. Due to its location, Durham Gate is equally sequentially preferable, given its out-of-town location. However, Paragraph 92 of the Framework, states that when considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. This site is slightly closer to the town centre and understood to offer better accessibility. Therefore, on this basis, I find that there is a more sequentially preferable site available, albeit only very marginally. Nevertheless, this finding leads to some conflict with Policy 9 of the CDP, and I attribute this moderate weight.
16. Notwithstanding the findings of the Sequential Test, case law has established that a failure of the sequential test can be balanced against any benefits of the proposed scheme. In this particular case, the appeal site benefits from a fall-back position with planning permission having been granted and implemented for a very similar scheme. Furthermore, there would be no significant increase in the amount of town centre floorspace to be provided at the appeal site than has already been granted approval. As such, I find that there is a greater than theoretical possibility that the fallback position would take place if this appeal was to fail, and that the likelihood of this happening is such that I afford this matter significant weight.
17. For these reasons, I conclude that there are sufficient material considerations to justify determining the appeal in conflict with Policy 9 of the CDP which seeks to direct town centre uses to town centre locations. Therefore, due to the significant weight afforded to the fallback position, I conclude that the proposed development would not result in unacceptable harm to the vitality and viability of Spennymoor Town Centre.

Other Matters

18. Based on the information available, the proposal is subject to statutory Biodiversity Net Gain (BNG). The statutory framework for BNG involves the discharge of the Biodiversity Gain Condition following the grant of planning permission to ensure the objective of at least 10% net gain will be met for a development. From the evidence provided, I see no reason as to why the mandatory 10% BNG could not be delivered through the purchasing of off-site credits. Therefore, subject to the discharge of the Biodiversity Gain Condition, I am satisfied that the proposed development would not cause unacceptable harm to biodiversity.

⁵ 1 and 12 Clyde Terrace, 17a, 12 and 16 Whitworth Terrace, The Waterloo, High Street, 4-6 High Street and 43 Cheapside.

19. In terms of parking provision, the proposed development includes 38 parking spaces including parking bays for disabled parking and EV charging. It also includes provision for long stay cycling storage to the south of Unit 6. There are also existing parking spaces across the wider site. Whilst this level of provision does not accord with the requirements of Policy 21 of the CDP and the guidance contained within the Parking and Accessibility Supplementary Planning Document (2023), it does represent an increase in parking provision in relation to the extant scheme which included just 10 parking spaces. On this basis, subject to the imposition of suitably worded planning conditions, I find that the level of car and cycle parking provision would be acceptable.
20. In the Planning Committee minutes, concerns were also raised regarding the protection of existing trees and need for landscaping proposals for the site. However, I am satisfied that that subject to a pre-commencement condition requiring tree protection measures to be put in place and to require a landscaping scheme to be agreed and implemented in accordance with the approved details, that there would be no unacceptable harm to the existing trees.

Conditions

21. I have had regard to the planning conditions suggested by the Council. I have considered them against the tests in the Framework and the advice in the Planning Practice Guidance.
22. In addition to the statutory commencement condition, a condition is necessary to ensure that the development complies with the submitted plans in the interests of clarity.
23. Section 100ZA(5) of the Town and Country Planning Act 1990, sets out that if an Inspector is minded to grant planning permission subject to pre-commencement conditions, they may only do so with the written agreement of the appellant.
24. Pre-Commencement conditions requiring the submission and approval of a Construction Management Plan, a scheme for litter management and details of tree protection measures are necessary to protect the amenity of neighbouring land uses and the character and appearance of the area. Therefore, I sought the appellant's written agreement to these conditions.
25. I have imposed conditions requiring the submission of external materials and a landscaping scheme which are necessary to protect the character and appearance of the area. A condition requiring broadband connectivity is also necessary to ensure a high-quality development.
26. Conditions requiring the submission and approval of a scheme to control the emission of fumes and odour, to restrict construction hours and the opening hours of the premises are necessary to safeguard the amenity of neighbouring land uses. Further conditions requiring the provision of car and cycle parking are necessary in the interests of highway safety and to promote sustainable transport.
27. Additionally, a condition requiring the development to be carried out in accordance with the Drainage Report is necessary to ensure the adequate disposal of foul and surface water.
28. It is not necessary to impose a condition requiring the submission of a Biodiversity Gain Plan (BGP) as the deemed Biodiversity Gain Condition, under Paragraph 13

of Schedule 7A of the Town and Country Planning Act ensures that the development cannot commence until a BGP has been submitted to an approved by the local planning authority. Further details on BNG and the applicable deemed biodiversity gain condition are set out in the Planning Practice Guidance.

Conclusion

29. The proposed development would conflict with the development plan, but material considerations indicate that a decision should be made other than in accordance with it. For these reasons, I conclude that the appeal should be allowed.

K Lancaster

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos:
 - DR-A-0001 REV P03 – Location Plan
 - DR-A-2000 REV P11 – Proposed Elevations
 - DR-A-0501 REV P05 – Proposed Site Plan Showing Roof Plan
 - DR-A-1010 REV P10 – Proposed GA Plan Level – 00
 - DR-A-0500 REV P17 – Proposed Site Plan
- 3) No development, including any works of demolition, shall take place until a Construction Management Plan has been submitted to, and approved in writing by the Local Planning Authority.

The Construction Management Plan shall include as a minimum, but not restricted to, the following:

- A Dust Action Plan including measures control the emission of dust and dirt during construction;
- Details of methods and means of noise reduction and suppression;
- Where construction involves penetrative piling, detail of methods for piling of foundations including measures to suppress any associated noise and vibration;
- Details of measures to prevent mud and other such material migrating onto the highway from all vehicles entering and leaving the site;
- Designation, layout and design of construction access and egress points;
- Details of the provision of directional signage (on and off site);
- Plan based details of the position, and heights relative to ground level, of security fencing, contractor's compounds, and temporary infrastructure, including cranes, plant, and other equipment, and storage arrangements for materials;
- Details of provision for all site operatives for the loading and unloading of plant, machinery and materials, to including the timings of deliveries and the types of delivery vehicle(s) to be used;
- Details of provision for all site operatives, including visitors and construction vehicles, for parking and turning within the site during the construction period;
- Routing agreements for construction traffic;
- Details of the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;

- Waste audit and scheme for waste minimisation and recycling/disposing of waste resulting from demolition and construction works;
- Management measures for the control of pest species as a result of demolition or construction works;
- Details of measures for liaison with the local community and procedures to deal with any complaints received.

The management strategy shall have regard to BS 5228 "Noise and Vibration Control on Construction and Open Sites" (or an equivalent British Standard if replaced) during the planning and implementation of site activities and operations.

The approved Construction Management Plan shall be adhered to throughout the construction period of the development and the approved measures shall be retained for the duration of the construction works.

- 4) Prior to the commencement of the development a scheme for the management of litter associated with the premises to include additional litter bins, anti-litter signage and a litter-picking regime shall be submitted to and approved in writing by the Local Planning Authority.

The development shall thereafter be operated in accordance with the agreed details.

- 5) No development shall take place until details of protection measures for retained trees and works to trees on the western boundary have been submitted to and approved in writing by the Local Planning Authority.

No development shall commence, nor any site cabins, materials or machinery shall be brought on site, until tree and hedge protection fencing, and any other protection measures have been erected on site in accordance with the approved details.

Fencing shall be placed as indicated on the approved plan and comprise a vertical and horizontal framework of scaffolding, well braced to resist impacts, and supporting temporary welded mesh fencing panels or similar in accordance with British Standard BS 5837 2012 Trees in Relation to Design, Demolition and Construction - Recommendations (or in an equivalent British Standard if replaced). If any access is required into the root protection area of any tree or hedge this shall only take place where in accordance with the approved details. Otherwise, there shall be no access, storage, parking, excavation of trenches, or alteration of ground levels within the root protection area of any tree or hedge to be retained.

The fencing, and any other protection measures, shall be retained for the duration of the construction works.

- 6) Notwithstanding any details of materials submitted with the application, no development above damp-proof course shall commence until details of the make, colour and texture of all external walling and roofing materials have been submitted to and approved in writing by the Local Planning Authority.

Thereafter, the development shall be constructed in accordance with the approved details.

- 7) Prior to works proceeding beyond damp proof course level, details of the means of broadband connection to the site shall be submitted to and agreed in writing by the Local Planning Authority.
- Thereafter, the development shall be carried out in accordance with the agreed details.
- 8) Prior to any unit serving hot food being brought into use, a scheme for the control of the emission of fumes and smell shall be submitted to and approved in writing by the Local Planning Authority.
- All equipment detailed as part of the approved scheme shall thereafter be retained, operated and maintained in accordance with the approved details so long as the use continues.
- 9) No unit shall be brought into use until the cycle parking provision for that unit, as detailed on the approved plans, has been implemented and made available for use.
- Thereafter, the cycle parking shall be retained in accordance with the approved details and shall be made available for the parking of cycles at all times.
- 10) No unit shall be brought into use until the car parking area for that unit, as detailed on the approved plans, has been hard surfaced, sealed and marked out as parking bays in accordance with the approved plans.
- Thereafter, the car parking area shall be retained in accordance with the approved plans and shall not be used for any purpose other than the parking of vehicles associated with the development.
- 11) Notwithstanding the submitted information, prior to any unit being brought into use, a landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The landscape scheme shall include the provision of individual trees within/to the rear of car parking areas.
- The approved landscaping scheme shall thereafter be undertaken in accordance with the approved details in the first available planting season following the formation of the parking areas.
- 12) No external construction works, works of demolition, deliveries, external running of plant and equipment shall take place other than between 0800 and 1800 on Mondays to Fridays and 0800 to 1400 on Saturdays.
- No internal works audible outside of the site boundary shall take place other than between 0730 and 1800 on Mondays to Fridays and 0800 to 1700 on Saturdays.
- No construction works or works of demolition whatsoever, including deliveries, external running of plant and equipment, internal works whether audible or not outside the site boundary, shall take place on Sundays Public or Bank Holidays.
- For the purposes of this condition, construction works are defined as: the carrying out of any building, civil engineering or engineering construction work involving the use of plant and machinery including hand tools.
- 13) The units hereby permitted shall not be open for trade outside of the hours of 0600 and 2400.

- 14) The development shall take place in accordance with the Drainage Report – Ref 157C41-DR/01 – Issue 01 – 17.09.2024.

END OF SCHEDULE