In the High Court of Justice
Queen's Bench Division
Planning Court

CO Ref:
CO/4915/2014

THE QUEEN ON THE APPLICATION OF MILTON(PETERBOROUGH) ESTATES COMPANY T/A FITZWILLIAM (MALTON) ESTATE

versus
RYEDALE DISTRICT COUNCIL
and
GMI HOLBECK LAND (MALTON) LIMITED (Interested party)

Application for permission to apply for Judicial Review
NOTIFICATION of the Judge's decision (CPR Part 54.11, 54.12)

Following consideration of the documents lodged by the Claimant [and the Acknowledgement(s) of service filed by the Defendant and / or Interested Party]

Order by the Honourable Mr Justice Gilbart

Permission is hereby refused; the application is considered to be totally without merit

Reasons:

1. Ground 1
   a. While the Planning Inspector had reached certain conclusions about the sequential assessment, the Defendant Council was not bound to follow them. Its duty was to have regard to them and if it departed from them to give reasons: see *North Wiltshire District Council v Secretary of State for the Environment* (1992) 65 P & CR 137 at 145 (followed by the Court of Appeal in *Dunster Properties Ltd v The First Secretary of State & Anor* [2007] EWCA Civ 236), and *Secretary of State for Communities and Local Government v Fox Strategic Land and Property Limited* [2012] EWCA Civ 1198A decision maker must have regard to earlier decisions on cases which are comparable, but he is not bound to follow them. Mann LJ said in *N Wiltshire* :
   " An inspector must always exercise his own judgment. He is therefore free upon consideration to disagree with the judgment of another but before doing so he ought to have regard to the importance of consistency and to give his reasons for departure from the previous decision.
   b. No different principle applies to a local planning authority. Here, there was ample material provided by the Applicant for permission and by the Council's own consultants which showed why a different view from the Inspector's conclusions should be taken. The officer's report set out in detail what the Inspector had concluded , and why the officer had a different planning judgment. The Committee was entitled to accept that advice I note also that the Secretary of State for Communities and Local Government has not called in the application.
   c. Ground 1 is therefore unarguable
2. Ground 2
   a. The same point applies about the Inspector's comments. Committee had the fact before them that the LM site could function as part of the

Town centre if its permission were implemented. The impact assessments addressed the impact on the Centre with or without the LM scheme, and the cumulative impact of the two schemes together.

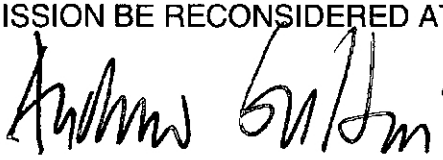
b. The Council had also received advice, which it was entitled to accept that Malton needed a larger foodstore than the LM site could accommodate.
c. Ground 2 is unarguable.

3. Ground 3
   a. The same point applies about the Inspector's comments. The officer was entitled to advise the Committee, and it to consider, that the two sites were sequentially equivalent. That was a matter of planning judgment. The advice received by the Council was that there was sufficient capacity for both stores.
   b. The Committee had put squarely before them the concerns of the Claimant about the effect on the viability of its scheme, and the advice of its consultants GVA. It was for the Committee to decide if it accepted the expressed concerns of the Claimant or of Booths. Neither the officer nor the Committee can be criticised for not accepting them.
   c. Ground 3 is unarguable
4. Ground 4
   a. The same point applies about the Inspector's comments The Committee had put before them ample material which addressed the function of the LM site, on the prospects or otherwise of investment in its development, and its relationship to the Town centre. It also had before it ample material on the level of impact upon the Town Centre with or without it.
   b. As the Interested Party points out, the is ground confuses two issues
      i. Is something a material consideration ?
      ii. Would it justify refusal.
   c. Ground 4 is unarguable.
5. Ground 5
   a. As pointed out by the Defendant and Interested party, the screening opinion did consider the cumulative effect of both schemes.
   b. This ground is unarguable
6. Ground 6
   a. The site does not lie within a Conservation Area.
   b. While it is arguable that the effect of a development on setting of a Conservation Area must be addressed under s 72 of the PLBCA 1990 and paragraphs 132-4 of NPPF, this gets the Claimants no further, because the officer's report considered the effects and found that no material harm would be caused.
   c. This ground is uarguable.
7. Overall and Costs
   a. This is a particularly notable example of an attempt to use judicial review as a vehicle for advancing claims on the planning merits of a case rather than on any real legal issue.
   b. I am not willing to award two sets of costs against the Claimant, but in my view this is a claim devoid of merit advanced in the teeth of clear legal principles. I am satisfied that the Mount Cook [2003] EWCA 1346 criteria are met.
   c. The costs of preparing the Acknowledgment of Service are to be paid by the claimant to the defendant, in the sum of £ 7,840 unless within 14 days the claimant notifies the court and the defendant, in writing, that *it objects to paying costs, or as to the amount to be paid, in either case giving reasons. If it does so, the defendant has a further [14] days to respond to both the court and the claimant, and the claimant the right to

reply within a further [7] days, after which the claim for costs is to put before a judge to be determined on the papers.

*delete where not applicable

BY VIRTUE OF CPR 54.12(7) THE CLAIMANT MAY NOT REQUEST THAT THE DECISION TO REFUSE PERMISSION BE RECONSIDERED AT A HEARING.

Signed 

For completion by the Planning Court

Sent / Handed to the claimant, defendant and any interested party / the claimant's, defendant's, and any interested party's solicitors on (date):
Solicitors:
Ref No.