



Appeal Decision

Hearing held on 5 July 2023

Site visit made on 6 July 2023

by **C Dillon BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17th July 2023

Appeal Ref: APP/P2935/W/23/3318070

Land west of Lancaster Park, Pinewood Drive, Lancaster Park, Morpeth, Northumberland NE61 3RT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval of details required by a condition of an outline planning permission.
- The appeal is made by Euro Garages Ltd against the decision of Northumberland County Council.
- The application Ref 18/03394/REM, dated 21 September 2018, sought approval of details pursuant to condition No 3 of an outline planning permission Ref 16/00078/OUT, granted on 28 November 2016.
- The application was refused by notice dated 11 November 2022.
- The development proposed is described as a reserved matters application relating to 16/00078/OUT. Development of Phase 1 of proposals which include trunk road service area, hotel and innovation centre plus associated access, parking, landscaping and other associated infrastructure.
- The details for which approval is sought are scale, appearance, layout and landscaping.

Decision

1. The appeal is allowed, and the reserved matters are approved, namely scale, appearance, layout and landscaping details submitted in pursuance of condition No 3 attached to outline planning permission Ref 16/00078/OUT, dated 28 November 2016, subject to the attached schedule of conditions.

Application for costs

2. The appellant has sought an award of costs against Northumberland County Council ("the Council"). That application is the subject of a separate Decision.

Preliminary Matters

3. The appeal follows the Council's refusal of reserved matters for layout, scale, appearance and landscaping for part of a larger mixed use development relating to outline planning permission Ref 16/00078/OUT ("the parent").
4. An area of land shown on the submitted layout plan connecting the appeal site to the adopted highway has been excluded from the appeal site boundary shown on the submitted location plan. However, that exclusion relates to the matter of access which has already been dealt with through the parent permission. As this matter cannot be revisited through this appeal for the remaining reserved matters, the wording contained in the attached schedule of conditions clarifies the scope of my determination.

5. Since the parent permission was granted there have been changes to the Town and Country Planning Use Classes Order (1987) as amended ("the UCO"). The description of development for the reserved matters application accurately reflects that change in its reference to Use Class E.
6. The differential between the development that would arise from the reserved matters proposals in comparison to the masterplan scheme, which accompanied the parent application, has raised strong local opposition. The credentials of the component uses advanced through that outline application informed the decision that very special circumstances had been demonstrated in Green Belt terms. Crucially however, that masterplan has an illustrative status as the parent permission has not been bound to it by any planning condition or legal agreement. Despite the concerns put before me, it remains a matter of law that only concerns which directly relate to the scope of the reserved matters of layout, scale, appearance and landscaping, as defined in the Planning Practice Guidance ("the PPG"), fall within the parameters of my determination of this appeal. The fact that the Council both validated and made a formal decision on the reserved matters now before me is consistent with that legal position.
7. The hearing was adjourned pending the redrafting of planning conditions by the main parties and was closed in writing on 13 July 2023 following receipt of these.

Main Issue

8. During the hearing, the Council clarified the scope of the dispute to be one purely of design. This clarification has led to the refinement of the main issue for this appeal which I had previously conveyed to the main parties. Consequently, for the purposes of my Decision the main issue is whether or not the proposed layout, scale and appearance represent a sustainable design solution, with particular regard to local character and distinctiveness and design quality.

Reasons

9. The National Design Guide ("the NDG") states that a well-designed place comes about through making the right choices at all levels, including the form and scale of buildings. Amongst other things, it advises that is to be based on an understanding of the existing situation, including patterns of built form as well as the local vernacular and other precedents that contribute to local character, to inform the form, scale, appearance, details and materials of new development.
10. The appeal site is a broadly rectangular, flat parcel of undeveloped, uncultivated land. It is served off an existing roundabout on the recently constructed bypass for Morpeth. Although forming part of the countryside which surrounds this historic market town, and accommodating a well-trodden public right of way, the proximity of the appeal site to the A1 and bypass heavily influences the appeal site's character in both visual and audible terms.
11. The approved site access cuts through landscaped structural bunding which largely encloses and conceals the appeal site's road frontage. Upon approach and passing through this cutting the almost continuous substantial tree cover along Scotch Gill and surrounding fields to the north is revealed. This mature

vegetation is dominant in the view and highly obscures the existing 20th century residential area of Lancaster Park beyond. A less dense mix of mature trees and hedgerows effectively define the remaining limits of the site.

12. Overall, these existing site characteristics mean that the appeal site is both physically and visually very well-contained from the modern suburban edge of this part of Morpeth. Significantly, the undeveloped nature, limited visual interplay with surrounding buildings and peripheral position of this site mean that, until midway on Pottery Bank, there are no particular visual references to the particular fabric of Morpeth which positively reinforces its local distinctiveness as a Northumbrian historic market town. Rather, it is the transport corridors and surrounding agricultural use which provide the site's defining context.
13. The Council confirmed that it has based its local character assessment on Morpeth as a whole as it believes that this is a gateway site. Whereas the appellant has taken a much more focussed approach.
14. It is reasonable to interpret a gateway site as being one which serves to loudly announce arrival into and departure from a settlement or other destination. However, in this case such a gateway status for the appeal site is not conveyed in local policy. I note that this first proposed phase of development of the parent permission could provide the approach to a further phase of development. In that sense it has a very localised transitioning role to play between the main transport routes and Phase 2 of the parent permission. However, the Council's written and oral submissions have failed to convince me that the appeal site represents a genuine gateway site in either visual or functional terms when passing by or through it, and that as such the design approach needs to reinforce such a status.
15. In view of this, coupled with my findings on the site's high level of containment from the built up framework of Morpeth and the prevailing characteristics of its surrounding context, it is the appellant's more focussed, localised approach which is credible when determining the appeal proposal's contribution to creating a sense of place which is appropriate to its permitted role, whilst respecting its distinct local character. That is the basis on which I make my assessment of the reserved matters before me.
16. The PPG defines the matter of layout as covering the way in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development.
17. The uses already consented for this phase of development would, by their very nature, be heavily reliant upon attracting passing vehicles. To function both safely and effectively significant areas of parking and turning provision are both inevitable and unsurprising.
18. The areas of parking, turning and internal circulation are not unreasonable in the context of what is permissible under the parent consent. Significantly, the Local Highway Authority has not raised objections to the proposed layout in so far as it relates to highway matters. As such, the Council's argument that a vehicle dominated environment would ensue is irreconcilable with the site's context and history.

19. The site layout would clearly separate out the service station, hotel and business functions permitted through the internal road layout and landscaped areas. Buildings would be orientated to provide sufficiently active frontages and take advantage of opportunities to provide surveillance over the proposed landscaped areas. Visually, the layout would take full advantage of the existing mature tree cover along Scotch Gill as a strong verdant backdrop that would successfully connect to large areas of landscaping. The proposed internal pedestrian routes and linkages to existing networks outside the site would enable pedestrians to take advantage of those less trafficked landscaped areas to the back of the site.
20. The proposed building which would accommodate Class E uses would be located towards the back of the appeal site. It would be closest to the residential fringes of the existing surrounding built context and remaining phase of the wider site. It would accommodate uses which are deemed compatible with residential areas. Furthermore, the permitted business use of that building would not be based on attracting passing trade. Upon approach through the site this building would be suitably visible within a landscaped foreground which would be read against a heavily wooded backdrop. Given the landscape bunding largely conceals the site's road frontage there would be no significant advantage in a layout that positioned it elsewhere on the site. No harm has been demonstrated from the proposed layout in this regard.
21. Overall, I find that the proposed layout would provide a successful transition through the site from the major passing transport routes to the existing houses and subsequent phase of development beyond Scotch Gill.
22. The PPG defines the matter of scale as covering the height, width and length of each building proposed within the development in relation to its surroundings.
23. The Council has not clearly articulated any concerns about the height, width and length of each building proposed in relation to its surroundings and the impact of this. There is nothing before me which indicates that the proposed buildings would not be commensurate to their role and function. The transitioning scale through the site from the larger service station related proposals down to the more domestic scale hotel and Class E building is appropriate to the site's context. The proposed landscaped setting would ensure an appropriate massing was secured.
24. Significantly, the participating Officers were unable to point to what it was about this particular reserved matter that was unacceptable and readily accepted that they had no criticism of the scale of the proposed units. From the evidence before me, including the interested parties representations and my site observations, I have found no basis to conclude that any aspect of the scale of the appeal scheme would be harmful.
25. The PPG defines the matter of appearance as covering the aspects of a building or place within the development which determine the visual impression the building or place makes, including the external built form of the development, its architecture, materials, decoration, lighting, colour and texture. From the discussion at the hearing it is clear to me that there have been protracted negotiations between the main parties on design matters, which the appellant had thought had been satisfactorily resolved.

26. During the hearing, the Council clarified that there is no dispute between the main parties that a contemporary architectural design approach is appropriate for the appeal site. In view of my findings on local character and the permitted use of the site, there is no basis for me to find otherwise.
27. The Council's written submissions do not clearly articulate any specific concerns about the proposed architecture, materials, decoration, lighting, colour and texture and the impact of this on creating an appropriate sense of place.
28. During the hearing, when questioned about the matters of concern, the Council did not provide any clear indication of any aspects falling within the scope of appearance that would be harmful. Indeed it confirmed that external materials could be appropriately and necessarily managed through a planning condition. In doing so, the participating Officers readily accepted that they had no criticism of the appearance of the proposed units. From the evidence before me, the hearing discussion on that matter and my site observations, I have no cause to disagree with that stance.
29. The Council has failed to clearly articulate any other concerns over the functional aspects and visual impression arising from the reserved matter proposals which will define the proposed development's sense of place. The reserved matters do not give rise to any matters which would unduly constrain the uses that have been permitted by the parent permission.
30. Overall, the Council's case, as the appellant argued, heavily rests upon the premise that they have failed to 'show their workings out' in arriving at the proposed design solution before me. Furthermore, it has undertones of comparing and contrasting with the unconditioned masterplan of the parent application. In doing so, it has failed to clearly substantiate the harm cited in the decision notice.
31. Significantly, from the evidence before me, including the interested parties representations and my site observations, I have found no basis to conclude that the layout, scale or appearance of the appeal scheme that is before me would be harmful, bearing in mind the confines of the uses already permitted by the parent permission.
32. In overall conclusion therefore, the proposed layout, scale and appearance would represent a sustainable design solution, with particular regard to local character and distinctiveness and design quality.
33. Paragraph 130 of the Framework states that decisions should ensure that developments will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development and are visually attractive as a result of good architecture, layout and appropriate and effective landscaping.
34. Paragraph 134 of the Framework states that development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design. In the absence of harm, there is no conflict with the Framework's approach to design or with the NDG.
35. In the absence of harm, there is no conflict with Policies STP3, QOP1, QOP2 and QOP6 of the Local Plan and Policy DES1 of the Morpeth Neighbourhood Plan (2011-2031).

Other Matters

36. The PPG defines the matter of landscaping as the treatment of land (other than buildings) for the purpose of enhancing or protecting the amenities of the site and the area in which it is situated and includes screening by fences, walls or other means; the planting of trees, hedges, shrubs or grass; the formation of banks, terraces or other earthworks; the laying out or provision of gardens, courts, squares, water features, sculpture or public art; and the provision of other amenity features.
37. The submitted signed Statement of Common Ground ("the SoCG") evidences agreement between the main parties that the submitted landscaping proposals are acceptable, subject to a condition to secure implementation and management whilst the measures become established. From the evidence before me, including the representations received from interested parties, I have no cause to dispute that stance.
38. The main parties have set out in the SoCG their responses to other matters that have been raised by interested parties, some of whom addressed the hearing. In so far as these issues relate to the scope of the reserved matters before me and in the context of the proposed planning conditions, I have no cause to dispute the stance taken by the main parties in these regards. Therefore there are no other matters which indicate that the appeal should not succeed.
39. In view of my findings, the appeal proposal does not conflict with the development plan when read as a whole.

Conditions

40. The main parties prepared a schedule of agreed conditions as part of the SoCG. Subsequent to the discussion which took place during the condition session this was refined to ensure that these meet the prescribed tests for planning conditions set out in the Framework and PPG. This includes some unavoidable pre-commencement conditions which the appellant is agreeable to.
41. Condition No 1 is necessary to define the scope of the approval. Conditions Nos 2, 3 and 13 seek to manage the external appearance of the development in the interests of local character and visual amenity. Condition No 4 is necessary to ensure that appropriate site permeability for pedestrians is maintained and improved. Conditions Nos 5, 6, 7 and 8 are necessary to ensure satisfactory living conditions are maintained for the lifetime of this phase of the development. Conditions Nos 9 and 10 are necessary in the interests of human health and safety. Conditions Nos 11 and 12 are necessary in the interests of managing flood risk. Condition No 14 is necessary to secure appropriate archaeological mitigation for the appeal site.

Conclusion

42. For the reasons given I conclude that, subject to the conditions specified in the attached schedule, the appeal should be allowed.

C Dillon

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall not be carried out other than in complete accordance with the details contained within the following approved plans and documents relating to the Reserved Matters of layout, scale, appearance, and landscaping and strictly only in respect to the site area defined in red on Location Plan reference 1406/1a:

1406/23 Rev.L Overall Site Layout;
1406/25 Rev.J Planning Sheet 1 (West Site Layout);
1406/24 Rev.K Planning Sheet 2 (East Site Layout);
18.139/002 Rev.I Innovation Units Elevations;
18.139/003 Rev.F Hotel Elevations;
18.139/004 Rev.D Hotel Floor Plans;
18.139/005 Rev.B Innovation Units Floor Plan;
1406/18a Site Elevations Sheet 1;
1406/19a Site Elevations Sheet 2;
1406/26b Amenity Building Plans;
1406/27b Amenity Building Elevations;
1406/16 Rev A Petrol & HGV Canopies
3956/MA Rev.F Landscape Masterplan;
3956/01 Rev.F Planting Plan (1 of 4); 3956/02 Rev.F
Planting Plan (2 of 4); 3956/03 Rev.F
Planting Plan (3 of 4); 3956/04 Rev.F Planting Plan (4 of 4);
066829-CUR-00-XX-DR-D-95950 Rev.P06 S278 General Arrangement
Option 2;
066829-CUR-00-XX-DR-D-95951 Rev.P04 Dimensions
066829-CUR-00-XX-DR-D-95952 Rev.P02 Contours and Long Section
066829-CUR-00-XX-DR-D-95001 Rev.P08 Highways England S278
General Arrangement;
066829-CUR-00-XX-DR-D-95953 Rev.P01 Long Section, Main Spine Road
066829-CUR-00-XX-DR-D-95010 Rev.P02 Highways England Section
278 Bund Amendments
066829-CUR-00-XX-DR-D-72001 Rev.P13 S278 Drainage Strategy
General Arrangement (drainage details only approved);
066829-CUR-00-XX-DR-D-72002 Rev.P06 Drainage Strategy Wider Area
Strategy;

066829-CUR-00-XX-DR-D-72003 Rev.P02 Drainage Strategy Manhole Schedule;

066829-CUR-00-XX-DR-D-72005 Rev.P01 Surface Water Connection;

066829-CUR-00-XX-DR-D-72006 Rev.P02 Drainage Strategy Outfall Long section; Permeable Paving Details received 08/09/21;

Micro drainage Calculations received 19/08/21;

Memo Drain down and overtopping. Reference: 066829-CUR-00-XX-RP-D-00002-V02 Produced by Curtins dated 20/09/2021;

Euro Garages Mitford Morpeth Kingfisher Lighting Report dated 27/08/21;

Arboricultural Report dated 20/08/21;

Revised Noise Assessment NJD17-0011-001R/R2 March 2020;

Ecological Appraisal Rev R06;

Air Quality Impact Assessment (DC4031-AR1) 21 October 2022 Flood Risk Assessment (066829-CUR-00-XX-RP-D-00001)

Highways Technical Note dated 17/11/21.

2. All buildings and structures to which this approval of reserved matters relates shall be constructed using external facing and roofing materials whose details shall have first been submitted to and approved in writing by the Local Planning Authority.
3. The proposed substation and pumping station structures shown on approved drawing nos. 1406/24 Rev.J Planning Sheet 1 (West Site Layout) and 1406/24 Rev.K Planning Sheet 2 (East Site Layout) shall be constructed in full accordance with elevation details that shall have first been submitted to and approved in writing by the Local Planning Authority.
4. No building works shall commence until the following details are provided for the sections of the Parish of Mitford Public Footpath 415/013 and Parish of Mitford Footpath which are to be maintained or diverted, as shown on 416/0101406/23 Rev.L Overall Site Layout:
 - a) the proposed surface and route of the Parish of Mitford Footpath 416/010 for a length of 95m running from the application site towards Pinewood Drive, Lancaster Park; and for both routes:
 - b) full engineering details including any culvert crossings;
 - c) details of lighting; and
 - d) details of any dropped kerbs.
5. Prior to any building or fuel filling station to which this approval of reserved matters relates being brought into use, acoustic fencing shall be provided in the locations shown on approved drawing nos. 1406/23 Rev.L Overall Site Layout and 1406/24 Rev.J Planning Sheet 1 (West Site Layout) and of a height which accords with the Revised Noise Assessment produced by NJD

Environmental Associates, Report reference: NJD17-0011-001R/R2 dated March 2020. This shall be in accordance with the elevation and specification details and maintenance arrangements which shall have first been submitted to and approved in writing by the Local Planning Authority. Thereafter, the acoustic fencing shall be maintained and remain in place at all times to the satisfaction of the Local Planning Authority.

6. The methodology for a noise impact assessment relating to the effects on existing or approved noise sensitive property or properties, shall be submitted to and approved in writing by the Local Planning Authority. The results of that assessment and, where justified, a scheme of mitigation shall be submitted and approved by the Local Planning Authority thereafter. The agreed scheme of mitigation shall be implemented in full, prior to any building or fuel filling station to which this approval of reserved matters relates being brought into use. Any mitigation measures installed under the terms of this condition shall be retained at all times thereafter to the satisfaction of the Local Planning Authority.
7. During the construction period of the development phase to which this approval of reserved matters relates, there shall be no noise generating activity from mobile plant, pneumatic equipment or power tools on Sundays or Bank Holidays or outside the hours: Monday to Friday - 0800 to 1800 and Saturday 0800 to 1600.
8. During the construction period of any part of the development phase to which this approval of reserved matters relates, deliveries and collections to and from the site shall only take place between the hours:
Monday to Friday - 08:00 to 18:00 Saturday - 08:00 to 16:00. During that period of construction there shall be no such deliveries or collections on a Sunday or Bank Holiday.
9. No buildings or structures shall be constructed until a report detailing the protective measures to prevent the ingress of ground gases, including depleted Oxygen (<19%), to the CS2 standard specified in BS8485:2015+A1:2019 (Code of Practice For The Design Of Protective Measures For Methane And Carbon Dioxide Ground Gases For New Buildings), or any such document which supersedes it, have been submitted to and approved in writing by the Local Planning Authority. The report shall contain full details of the validation and verification assessment to be undertaken on the installed ground gas protection, as detailed in CIRIA C735 (Good Practice On The Testing And Verification Of Protection Systems For Buildings Against Hazardous Ground Gases) or any such document which supersedes it.
10. No building or structure shall be brought into use until a validation and verification report, which accords with the requirements of Condition 9 of this approval, has been submitted to and approved in writing by the Local Planning Authority.
11. Prior to completion of the proposed head wall, as detailed in the approved drainage strategy and associated drawings referred to in condition 1 of this approval, erosion prevention measures to the upstream banks of the watercourse shall be installed in full accordance with details to be first

submitted to and approved in writing by the local planning authority. Thereafter those erosion prevention measures shall be retained in place at all times to the satisfaction of the Local Planning Authority.

12. Prior to the first occupation of any part of the development to which this approval of reserved matters relates, a verification report for that phase of development shall be submitted to and approved in writing by the Local Planning Authority, to demonstrate that all sustainable drainage systems have been constructed as per the agreed scheme. The verification report shall include drawings for all Sustainable Drainage Systems components as built, including dimensions (base levels, inlet/outlet elevations, areas, depths, lengths, diameters, gradients); construction details (component drawings, materials, vegetation); Health and Safety file; and details of the ownership organisation or adoption details.
13. The landscaping details to which this approval of reserved matters relates shall be implemented in full accordance with a phased planting schedule and timetable which shall have first been submitted to and approved in writing by the Local Planning Authority. Any landscaping which is removed, dies, or becomes seriously damaged, defective, or diseased within 5 years of its planting shall be replaced in the same location within the next relevant planting season with landscaping of a similar size and species to that which it is replacing.
14. Prior to the commencement of development, a programme of archaeological work shall begin and be undertaken in full accordance with an approved timetable and the Written Scheme of Investigation (Mitigation Strategy for Archaeological Strip, Map and Recording: Land West of Lancaster Park, Northumberland, NE61 3SX by Allen Archaeology on behalf of Euro Garages Ltd dated 13 August 2018) up to and including the reporting stage.

APPEARANCES

FOR THE APPELLANT:

S Choongh KC of No.5 Chambers
John Wyatt BA (Hons) MTP MRTPI, of JW Planning Ltd
M Carr BA(Hons) LA (First Class), Dip LA (Dist), Dip UD, RUDP, of Pegasus Group

FOR THE LOCAL PLANNING AUTHORITY:

E Sinnamon, LLB (Hons), Dip Law, MRTPI
J Murphy, MSc, MRTPI
S Robson, BA (Hons), MA, Licentiate RTPi
D Love, BA(Hons) Environmental Planning, PGCert Wildlife and Countryside
Management, MRTPI, PIEMA
V Clarke, BA Hons Architecture, MSc Town Planning

INTERESTED PARTIES:

K Smith for Morpeth North Residents Action Group
Cllr Byard for Morpeth Town Council
C L Starkie

DOCUMENTS ACCEPTED DURING HEARING:

Copies of neighbour notification letters for application 18/03394/REM
Design and Access Statement for outline scheme 16/00078/OUT
Revised schedule of conditions.



Costs Decision

Hearing held on 5 July 2023

Site visit made on 6 July 2023

by **C Dillon BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17th July 2023

Costs application in relation to Appeal Ref: APP/P2935/W/23/3318070 Land west of Lancaster Park, Pinewood Drive, Lancaster Park, Morpeth, Northumberland NE61 3RT

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Euro Garages Ltd for a full award of costs against Northumberland County Council.
 - The appeal was against the refusal to grant approval of details of scale, appearance, layout and landscaping required by condition No 3 of outline planning permission 16/00078/OUT and described as development of Phase 1 of proposals which include trunk road service area, hotel and innovation centre plus associated access, parking, landscaping and other associated infrastructure.
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Decision

1. The application for a full award of costs is allowed in the terms set out below.

The submissions for Euro Garages Limited

2. The costs application was submitted in writing against Northumberland County Council ("the Council").
3. The applicant firmly believes that the design related concerns cited in the decision notice are not a genuine reason for refusal ("RFR"). Rather, it is the Planning Committee Members' perception that the reserved matters application ("the RMA") fails to deliver on the Council's objectives regarding the provision of an innovation centre which is an unconditioned component of the parent outline permission. The applicant asserts that the RFR was 'cobbled together' by the Officers as there were no objections based on design and neither were any such concerns raised by the Members during the committee's debate. They believe that the RFR cited on the decision notice was in response to Officer concern that the Members' real concerns would be an unlawful RFR and would be exposed as such at appeal.
4. The applicant considers that throughout the appeal the Council has sought to advance that true concern and, believes that despite the Council's concession, that approach remains evident in its costs rebuttal. The applicant also asserts that the Council has had no case to present as regards layout, scale and appearance and considers that the Hearing exposed that.
5. The applicant considers that the participating Officers have behaved unreasonably by running arguments which suggested that the RMA had not been discussed and agreed between the main parties through a process of iteration.

6. My attention has been drawn to the Council's confirmation, provided during the Hearing, that the committee report was endorsed by some of the participating Officers. As such, the applicant considers that it is unreasonable for those Officers to have argued a case that is diametrically opposed to their own professional opinion which is set out in the relevant committee report. In addition, the applicant points out that council officers are not advocates and cannot argue a case on behalf of Members regardless of whether or not they agree with it.
7. The applicant considers that the Council has acted unreasonably in refusing the RMA and this has led to costs being unnecessarily incurred in the making of their appeal. They consider that a full award of costs is justified, but that in the alternative there should be a partial award of costs insofar as they have had to spend time both in preparation and at the Hearing addressing the Council's claim that approval should be withheld on the basis of inconsistency with the outline permission.

The response by Northumberland County Council

8. The response to the costs application was made in writing. In doing so, the Council emphasises that contrary to the applicant's interpretation, there is a single RFR, which relates purely to layout, scale and appearance with reference to design. The Council states that the RFR is not on the basis of inconsistency with the outline permission and considers that its evidence does not seek to present any such arguments. Rather, it states that the decision notice could have provided greater clarity.
9. The Council firmly disagrees that the reason for refusal relates to a failure to condition or resolve issues when the parent permission was granted. It also states that because the description of the parent planning permission expressly refers to the use as an 'innovation centre' there was no requirement to condition that purpose. As that purpose was detailed by the applicant of the parent application and was accepted in the officer report the Council maintains that logically the innovation centre component should follow through to the reserved matters.
10. The Council disagrees that its evidence has conflated what Members expected at the reserved matters stage and what the parent permission required. It states that the committee meeting minutes referred to by the applicant is a reflection of the nature of questions raised between Members and Officers and is not a verbatim reflection of the debate and reasons proposed for the refusal of the RMA.
11. The Council maintains that the application was given all due and proper consideration by the Members of the Planning Committee who voted for a refusal based on layout, appearance and scale; a legally sound reason supported by policy justification. In doing so, the Council states that it has not behaved unreasonably resulting in unnecessary or wasted expense, as described in the PPG, in refusing the RMA and requests that the application for costs be dismissed in full.

Reasons

12. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance ("the PPG") advises that costs may be awarded

- against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
13. The appeal has arisen from a decision taken against the recommendation contained in the Council's Officer Report. That in itself is not unreasonable behaviour, providing that it does not go beyond the scope of the reserved matters under determination, is lawful in all other respects and is substantiated on planning grounds.
 14. The Council validated the RMA, an indication that Officers had accepted that the RMA is consistent with its parent permission. The Committee Report correctly addressed this issue in detail, seeking to ensure that Members did not err in law when making their decision.
 15. Had Committee Members had genuine cause to reject the Officer stance on the validity of the RMA before them, then they could have declined to determine the application on validity grounds, and the applicant would have had a right of appeal against that position. They did not do that.
 16. Crucially the recorded committee minutes indicate that the Committee Members were opposed to the RMA because they believed that it did not accord with what was shown on the non-conditioned, illustrative masterplan. In the interests of transparency in decision making, the Council's explanation of the scope and role of minutes taken is very concerning.
 17. Consequently, the poor transparency in the minutes, content of the Council's appeal statement and the Officers' verbal submissions meant that it was essential for me to seek clarification on the scope of the RFR cited on the Council's decision notice. Indeed this led to the refinement of both the main issue and my questioning during the hearing.
 18. The ambiguity which the RFR presents has been accepted by the participating Officers. In doing so, they confirmed that in stating the RMA 'is substantially altered from the approved outline planning application 16/00078/OUT', the RFR should have been clearer that this was in terms of design matters only. Significantly however, the design related matters of layout, scale and appearance were clearly reserved for future consideration and the parent consent was not legally bound to that masterplan. The explanation provided does not sit comfortably with that fact.
 19. During the hearing and within the Council's costs rebuttal I detected undertones of what the applicant has described as a 'compare and contrast approach' on the Council's part with what is contained in the unconditioned masterplan and agent's covering letter submitted at the outline stage.
 20. This combined with the ambiguity of the RFR, and the content of the committee report, the committee meeting minutes and Council's appeal statement all mean that it is not unreasonable to have read and interpreted the RFR as being worded in the context of everything that has gone before the decision on the RMA regarding the concerns about its consistency with the parent permission and perceived failure to deliver on the Council's expectations, which formed part of the very special circumstances that justified the development. The fact that the reserved matters scheme differs from what was put forward at the outline stage does not necessarily make it unacceptable, regardless of its

- description, as those matters were not bound by any conditions or legal agreement that would influence the treatment of the reserved matters before me.
21. Significantly, as part of this appeal, it was for the Council to explain what is unacceptable about the layout, scale and appearance as proposed. The case which was put forward was ambiguous, poorly evidenced, unsubstantiated and unconvincing.
22. In terms of the applicant's criticisms of the participating Officers, the Officers confirmed that the case had subsequently been the subject of a peer review and they were aware of their professional codes. On that basis they were comfortable in participating in the hearing and defending the RFR in the absence of any other representatives. I am satisfied that in doing so, although an unenviable position, they were careful not to prejudice their own professional integrity. I do not agree that the Officers sought to underplay the discussions which had taken place throughout the course of the application process. Rather, in light of the discussions that had clearly taken place during the determination period, it is telling that such an unenviable position clearly seriously confined the scope and strength of the case that they were able to present.
23. Overall, the evidence before me and what I discerned from the hearing session indicates to me that, at worst, the genuine driver for the Council's decision could have been Committee Members' perception, dissatisfaction and disappointment that the RMA fell short of what was anticipated at the outline stage. At best, it could have been a very frail assessment of these reserved matters by Committee Members which caused the unsubstantiated outcome for the appellant. Crucially, even at best, such action has delayed development that I have found is abundantly acceptable.
24. For the reasons given above, unreasonable behaviour of the Members of the Planning Committee, which resulted in unnecessary and wasted expense, has occurred and a full award of costs is therefore warranted in this instance.

Costs Order

25. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Northumberland County Council shall pay to Euro Garages Limited, the full costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
26. The applicant is now invited to submit to Northumberland County Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

C Dillon

INSPECTOR