

JT

Object

Sweet Pea Cottage  
Brawby  
Malton  
North Yorkshire  
YO17 6PY

14 July 2015

Mr G. Housden,  
Head of Planning and Housing,  
Ryedale District Council,  
Ryedale House,  
MALTON  
YO17 7HH

RYEDALE DM

14 JUL 2015  
DEVELOPMENT  
MANAGEMENT

4/7/15 - cm

Dear Mr. Housden,

14/00678/MOUTE

I am writing to object to the above planning application and wish my concerns to be addressed by the Ryedale Planning and Environmental Protection Officers and members of the RDC Planning Committee. My objection includes the following:

1. Objection Summary

I object on the grounds that the proposed development will **reduce the air quality in Malton** and pose a danger to public health by increasing the concentration of Nitrogen Dioxide in the breathable air.

2. Reasoning and Evidence

3. 14/00678/MOUTE - development increasing Malton air pollution

4. Background information on Ryedale air quality and health

5. Ryedale District Council and the law

6. 14/00678/MOUTE - a personal attack of pollution?

7. Objection conclusion

8. References:

(Ryedale Local Plan, NPPF, Ryedale Air Quality Action Plan including supporting evidence relating to the Local Plan, Examination Of Local Plan Strategy Submission Document.

Copy of my email to Cllr. Carl Les, Leader of NYCC sent on 6 July 2015).

Yours sincerely,

Simon Thackray

## 1. Objection Summary

I object on the grounds that the proposed development will **reduce the air quality in Malton** and pose a danger to public health by increasing the concentration of Nitrogen Dioxide in the breathable air.

## 2. Reasoning and Evidence

The concentration of NO<sub>2</sub> in the air in Malton is already in breach of EU law and complimentary measures prescribed in the Ryedale Air Quality Action Plan 2012 "*considered to be necessary to ensure that future development can be accommodated*" have not been implemented. Ryedale Air Quality Action Plan has not achieved its objectives or fulfilled its legal obligation to reduce the concentration of NO<sub>2</sub> to below the EU legal limit.

The application contradicts policy SP17 and SP18 of the **Ryedale Local Plan**:

SP17

Air Quality will be **protected and improved** by:

Locating and managing development to **reduce** traffic congestion and **air pollution**

SP18

Requiring development proposals within or adjoining the Malton Air Quality Management Area to demonstrate how effects on air quality will be mitigated and **further human exposure to poor air quality reduced**.

The applicant has submitted an updated ASA calculating an **increase in the concentration of Nitrogen Dioxide** in the Malton AQMA, posing an increased risk to the health of the public. Malton air quality is already in breach of EU limit values for the concentration of NO<sub>2</sub> so there is **no margin of tolerance**.

The application is inconsistent with paragraph 124 of the **NPPF**

124

Planning policies should **sustain compliance with and contribute towards EU limit values or national objectives for pollutants**, taking into account the presence of Air Quality Management Areas and the **cumulative impacts on air quality from individual sites in local areas**. Planning decisions should ensure that any new development in Air Quality Management Areas is consistent with the local air quality action plan.

The UK Supreme Court has quashed the Government's ineffective plans to cut illegal levels of air pollution in Britain and ordered it to deliver new ones by the end of the year. It is possible that an additional burden could be placed on the Local Authority as a result of the Supreme Court ruling on 29 April 2015.

R (on the application of Client Earth) (Appellant) v Secretary of State for the Environment, Food and Rural Affairs (Respondent) [2015] UKSC28  
On appeal from [2012] EWCA Civ 897.

In his response to my question about the potential impact of the above ruling on Ryedale, Paul Hunt, RDC Environmental Protection Officer wrote,

*"With regard to the recent Supreme Court ruling, the matter is in the hands of ministers and the Government must now submit new proposals to the EC by the end of this year. [December 31<sup>st</sup> 2015]*

*I understand that the Govt will be consulting local authorities later this year on proposals for revision of the local air quality management regime and associated technical guidance, but as of yet we do not know what the proposed changes will be."*

### **3. 14/00678/MOUTE – development increasing Malton air pollution**

Ryedale has an air quality / pollution problem that poses an immediate threat to all future development in Malton and Norton.

The Ryedale Local Plan stipulates that all development proposed near, or in the vicinity of, the Malton Air Quality Monitoring Area (AQMA), must demonstrate how effects on air quality will be mitigated and **further human exposure to poor air quality reduced**. It is not an *either / or* option. A developer cannot simply buy bikes for every house and wave its responsibility to reduce exposure to Nitrogen Dioxide.

The verb to **mitigate** is 'wishy-washy' and unhelpful but used with gay abandon in planning documents. It is indistinct and floppy, and always delivers an outcome that is less than its promise. It is always an excuse and faux-apology for inaction or below optimum measures.

'To mitigate' means ***'to lessen the impact of'***. It does NOT mean to reduce or remove the impact in a quantitative sense.

Mitigation is saying, ***"When you get run over, you will be made comfortable, despite the fact that you got run over". You will still get run over!***

In the context of this planning application, the proposed development will increase the risk of harm caused by NO<sub>2</sub> in the Malton air but will not, regardless of how many butterfly nets or electric vehicle charging points they rub, **reduce the increase** in vehicle movements created and will not put the NO<sub>2</sub> genie back in the bottle.

The harmful effects of NO<sub>2</sub> (that derive from vehicle emissions) on the lungs of young children cannot be **mitigated** against. Only **removing the cause and source** of the danger - by refusing the application – will protect the public from physical harm.

Despite the misleading use of the word *mitigation*, the planning policies are otherwise very clear. If a proposed development cannot show a reduction in, or improvement to, poor air quality, there should be NO development approval. There is no offset mechanism to **remove** NO<sub>2</sub> pollution. Hence air quality is the last bastion against over-development and inappropriately sited development.

Consequently, the unresolved pollution problem (the breach of EU objective for concentration of NO<sub>2</sub>) places the aims and objectives of the Ryedale Local Plan under scrutiny, and questions the viability and safety of concentrating approximately 1,500 new houses in Malton and Norton in the period to 2026.

The application **14/00678/MOUTE** calculates an increase in concentration of NO<sub>2</sub>, which is contrary to the policies of the Ryedale Local Plan, the NPPF and the Ryedale Air Quality Action Plan. The proposal does NOT account for the cumulative impact of ALL proposed or planned development in Malton and Norton over the lifetime of the Ryedale Local Plan and has selectively listed 'work in progress' or planned developments confined to a limited nearby area.

Notwithstanding the above contradiction, and despite the long list of treats with which the applicant will tempt New Malton Man or New Malton Woman away from his or her reliance on the motor vehicle (*with gifts of umbrellas and personal attack alarms*), the proposed development demonstrates a negative impact on, and increase to, the concentration of NO<sub>2</sub> in the Malton AQMA.

For that reason alone, the application should be refused.

A fundamental principal underpinning Local and National planning policy is that no development should be approved which will have an adverse, negative, or worsening impact on air quality and human health where a known pollution problem exists. Malton has just such a problem – it has a declared AQMA - and the guidance is clear and should be followed.

#### **4. Background information on Ryedale air quality and health:**

Ryedale's poor air quality issue is unique to Malton.

Ryedale District Council declared a Malton Air Quality Monitoring Area (AQMA) in 2009 due to the presence of Nitrogen Dioxide in breach of EU objective levels. The purpose of the Malton AQMA and the Ryedale Air Quality Action Plan was to identify, and agree, steps to reduce the level of Nitrogen Dioxide in the air to achieve compliance with EU law.

The Malton AQMA is one of only three such areas in North Yorkshire.

RDC and NYCC both contributed to the £6 million pounds it cost to create a new junction at Brambling Fields with the intention of reducing the vehicle movements through the Malton AQMA and thereby reducing the concentration of NO<sub>2</sub>. The junction has had a **small positive impact** but has not achieved the level of reduction in NO<sub>2</sub> that was anticipated. The concentration of NO<sub>2</sub> still exceeds EU objective limits in the Malton AQMA and, at best, the worst

affected areas are now teetering just below or are sitting at, the limit value. Malton has no margin of tolerance.

The Ryedale Air Quality Action Plan, published in 2012, states:

**"The Brambling Fields improvement and associated complementary measures are considered to be necessary to ensure that future development can be accommodated."**

At time of writing, NO 'associated complimentary measures'

***"Considered to be necessary to ensure that future development can be accommodated"***

have been implemented.

(See copy email to Cllr. Carl Les, Leader NYCC, 6 July 2015 attached).

#### **5. Ryedale District Council and the law:**

Ryedale has a statutory duty to reduce the concentration of Nitrogen Dioxide in the air to achieve compliance with EU law. It must achieve compliance.

Nitrogen Dioxide is a by-product of emissions from diesel engines and all new development proposals in or near an AQMA must take into account the impact of future vehicle movements resulting from the development on the concentration of NO<sub>2</sub>. This includes an assessment of the impact on air quality during the construction phase of the development and then the much bigger impact of vehicle movements to and from the site once occupied.

The applicant has submitted an updated Air Quality Assessment that anticipates *"that the proposed development will generate an additional 3,311 vehicle movements on the local road network per day"* and an increase in Nitrogen Dioxide. The figure included in the updated AQA relates to 500 new homes in a single phased development where **great emphasis** has been placed on non-car modes of transport i.e. residents will be encouraged to cycle, walk and *'muster'* around electric vehicle charging points, rather than drive their cars or 4x4s through the Malton AQMA to shop at Lidl.

#### **6. A personal attack of pollution?**

Perhaps anticipating an increase in violent crime, or acid rain (if there is a material difference), the applicant has pledged to provide future occupants of High Malton with ***"personal attack alarms and also umbrellas to encourage residents / employees to walk or cycle."***

The applicant will ***"negotiate a discount for residents and employees of the development with cycle / outdoor-wear retailers"***.

The list reads like a script from *Have I Got News For You!*

The pollution in Malton, and adverse impact on air quality and human health will be increased by this development and it is therefore in direct conflict with policies SP17 and SP18 of the Ryedale Local Plan.

The application should be refused to protect the health of the people of Malton from the harmful effects of Nitrogen Dioxide pollution caused by an increase in traffic movements in or near the Malton AQMA.

According to the guidance of the Ryedale Local Plan, NPPF and Ryedale Air Quality Action Plan, every single development proposal in or near the Malton AQMA should be subject to the same environmental protection rules.

Roddy Bushel, speaking for the applicant, agrees:

*"A planning consultant has no choice but to deal with traffic assessments according to the rules laid down by the highway authority. It is not open to any of us to adopt our own, or any other survey methods or standards.*

#### **7. Objection conclusion:**

RDC must adhere to Local and National Planning Policies and ensure that NO increase in Nitrogen Dioxide occurs in the Malton AQMA as a result of this development (should it be approved), or as a result of **the cumulative impact** on NO<sub>2</sub> concentration from all other planned, proposed or commenced developments in or near the Malton AQMA during the lifetime of the adopted Local Plan and / or as a consequence of that plan.

To paraphrase Mr Bushel: *It is not up to RDC or NYCC or Fitzwilliam (Malton) Estate or its consultants, to adopt and attempt to apply its own standards.*

Malton has a serious pollution problem; its air quality (NO<sub>2</sub> concentration) is in breach of EU limit values, which poses a danger to public health. Ryedale District Council should deliver on the promise of its Local Plan to ensure:

#### **SP17**

**Air Quality will be protected and improved by:**

**Locating and managing development to reduce traffic congestion and air pollution**

#### **SP18**

**Requiring development proposals within or adjoining the Malton Air Quality Management Area to demonstrate how effects on air quality will be mitigated and further human exposure to poor air quality reduced.**

**14/00678/MOUTE fails the test and should be refused.**

## 8. References:

### NPPF

#### 11. Conserving and enhancing the natural environment

109.

The planning system should contribute to and enhance the natural and local environment by: preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability.

124.

Planning policies should **sustain compliance with and contribute towards EU limit values or national objectives for pollutants**, taking into account the presence of Air Quality Management Areas and the **cumulative impacts on air quality from individual sites in local areas**. Planning decisions should ensure that any new development in Air Quality Management Areas is consistent with the local air quality action plan.

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## Ryedale Local Plan

### Section 7 – Environment

#### Managing Air Quality, Land and Water Resources

7.28

Ryedale generally experiences low levels of air pollution. The notable exception to this is the Malton Air Quality Management Area (AQMA), which has been identified around the Butcher Corner junction in the centre of the town. The AQMA was declared in 2009 on the basis that current and predicted nitrogen dioxide levels were in breach of air quality objectives prescribed by air quality regulations. Air quality issues exist in this location mainly as a result of traffic congestion compounded by a narrow historic street pattern, which restricts the ability of air pollutants to disperse, especially in certain weather conditions.

7.29

As the Principal Town in Ryedale, Malton and Norton will experience growth and development over the Plan Period and this does pose a challenge in terms of improving air quality and reducing vehicular emissions. The Brambling Fields strategic junction improvement is designed to reduce through traffic and HGV movement in the constricted

central road network through the towns. The Brambling Fields junction improvement and associated complementary traffic management measures are a key way in which the District Council and North Yorkshire County Council as Highway Authority are seeking to address air quality issues at Butcher Corner. Developer contributions to pay for this strategic improvement will be an important way in which development will be expected to mitigate the impact of increased traffic generation and associated air pollution.

7.30

Clearly, the type and location of new development will influence the traffic generation and the volume and pattern of vehicular movements. In identifying new development sites and managing development proposals, the Council will look to locate new development at the towns in locations which are accessible by non-car based modes of travel. The Council and North Yorkshire County Council will also aim to mitigate impacts on air quality through the provision of enhanced walking and cycling facilities and where appropriate will negotiate Travel Plan initiatives with developers to encourage reduced reliance on the car for local journeys or Initiatives to facilitate the use of low emission vehicles.

7.31

Proposals for new development in or around the AQMA will be carefully considered to ensure that an acceptable environment can be provided for the occupiers of new development. Developers promoting development which would result in an impact on air quality will be required to demonstrate that the impact on air quality is acceptable and mechanisms are in place to mitigate adverse impacts.

## **Ryedale Local Plan**

SP17

### **SECTION 7 - ENVIRONMENT**

Air Quality will be protected and improved by:

**Locating and managing development to reduce traffic congestion and air pollution and promote the use of alternative forms of travel to the private car**

**Supporting measures to encourage non-car based means of travel or the use of low emission vehicles**

**Reducing air quality emissions from buildings through renewable energy provision and sustainable building standards in line with Policy**

SP18

Requiring development proposals within or adjoining the Malton Air Quality Management Area to **demonstrate how effects on air quality will be mitigated and further human exposure to poor air quality reduced**. All development proposals within or near to the Air Quality Management Area, which are likely to impact upon air quality; which are sensitive to poor air quality or which would conflict with any Air Quality Action Plan will be accompanied by an Air Quality Assessment

**Only permitting development if the individual or cumulative impact on air quality is acceptable and appropriate mitigation measures are secured**

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Ryedale District Council supporting evidence relating to the Local Plan,  
**(Examination Of Local Plan Strategy Submission Document):**

### 8.1.3 Amenity and Safety

It is considered that this element of the plan is essential to ensure that the quality of life of the people who live, work and visit Ryedale is not compromised to an unacceptable level. This is consistent with and reflects paragraphs 120 - 125 of the NPPF whilst providing further detail appropriate for Ryedale, to ensure that new developments do not have unacceptable impacts on amenity and safety. It is considered that the policy position is clear that issues concerning land instability, pollution (including that from noise), incompatible uses, proximity to existing hazards, these will be taken into account through the appropriate legislation and consultation procedures to ensure that no development is undertaken which results in an unacceptable risk to human life, health and safety, or to property.

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### **Ryedale Air Quality action Plan 2012:**

#### The Ryedale Plan

Local Plan Strategy was adopted by Council on 14 December 2011 for formal publication and submission to the Secretary of State for examination.

The Plan will provide for the protection of air quality by:

locating and managing development to reduce traffic congestion and air pollution and promoting the use alternative forms of travel to the private car (see Action 6 – Public Transport)

supporting measures to encourage non-car based means of travel or the use of low emission vehicles

requiring development proposals within or adjoining the Malton Air Quality Management Area to demonstrate how effects on air quality will be mitigated and **further human exposure to poor air quality reduced**

only permitting development if the individual or cumulative impact on air quality is acceptable and appropriate mitigation measures are secured.

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Copy email sent to Cllr Carl Les, NYCC 6 July 2015-07-11

Dear Cllr. Les,

**Ryedale Air Quality - measures to reduce air pollution in Malton, identified by NYCC three years ago, have not been implemented.**

The Ryedale Air Quality Action Plan, published in 2012, identified measures that would reduce the concentration of Nitrogen Dioxide (NO<sub>2</sub>) in the Malton Air Quality Monitoring Area (AQMA) by restricting Heavy Duty Vehicle (HDV) movements across County Bridge. Action Plan 2a states:

*'Although HDV movements constitute a small proportion of traffic in the AQMA they make a disproportionately high contribution to NO<sub>x</sub> emissions. It is therefore anticipated that HDV restrictions would result in a significant reduction in levels of NO<sub>2</sub> in the AQMA.'*

Three years on, the minutes of the meeting of the Malton Air Quality Steering Group held in February 2015 state:

*'The report that NYCC took to its Area Committee on 12 March 2014 advised that complimentary measures be deferred for 1 year. RM [Highways and Transportation Area Manager, Richard Marr] suggested that they could start with the scheme that would give **the biggest reduction in air pollution**, namely a pilot scheme for a temporary weight restriction over County Bridge, which could potentially be put through the Area Committee in June 2015.'*

Despite the fact that the presence of Nitrogen Dioxide in the Malton AQMA was discussed at length during the 10 June NYCC Ryedale Area Committee meeting, the proposal to apply a weight restriction on Heavy Duty Vehicles travelling over County Bridge, to **'give the biggest reduction in air pollution'** in Malton, was missing.

In light of the medical evidence (\*) that exposure to even low concentrations of NO<sub>2</sub> is harmful to human health, and the scheme that was claimed would achieve the **'biggest reduction in air pollution'** in the Malton AQMA was identified three years ago, why has this measure not been implemented?

Yours sincerely,  
Simon Thackray

cc Cllr. Linda Cowling, Leader of Ryedale District Council, Cllr Lindsay Burr NYCC / RDC. Editors of: Yorkshire Post, The Press (York), Gazette & Herald, Malton & Pickering Mercury.

\*House of Commons Environmental Audit Committee - Action on Air Quality - Sixth Report of Session 2014–15 Introduction 1.3.

Photo: Malton AQMA Nitrogen Dioxide diffusion (capturing) tube, 2015. Photo: Simon Thackray.

