
Planning, Retail and Economic Statement

Units 3B and 3C, Peel Centre, Barnsley

Full planning application for external alterations to amalgamate Units 3B and 3C, construction to both units a rear extension measuring 508 sq.m, demolition of existing mezzanine floor and construction of a new mezzanine floor measuring 323 sq.m, together with permission to sell food and drink goods from up-to 1,174 sq.m from the combined and extended unit and permission for all other associated works

Application by Peel Property (Investments) Limited

Contents

1.	Introduction	1
2.	The Site, Surroundings and Relevant Planning History	4
3.	The Proposed Development	10
4.	Planning Policy Context	13
5.	Retail Policy Assessment	15
6.	Securing Sustainable Economic Growth	20
7.	Other Development Management Considerations	22
8.	Conclusion	24

Appendices

Appendix 1 - Site Location Plan (reference: AGH 997 01B)

Appendix 2 - Copies of the relevant planning permissions (reference: 2015/0987)

Appendix 3 - Council's Hearing Statement for appeal (reference: APP/R4408/W/19/3228051)

Appendix 4 - Inspectors Report for appeal (reference: APP/R4408/W/19/3228051)

1. Introduction

- 1.1. This Statement has been prepared by Savills (UK) Limited on behalf of Peel Property (Investments) Limited ('the Applicant').
- 1.2. In summary, the proposal seeks to amalgamate Units 3B and 3C for use as a new Class E foodstore to be operated by Marks & Spencer (M&S) for its Simply Food format. The proposal includes a modest extension to the rear of the new unit and a storage and staff use only mezzanine floor. Overall, across both ground and mezzanine levels, the new foodstore will measure 1,770 sq.m.
- 1.3. The description of development is as follows:

'Full planning application for external alterations to amalgamate Units 3B and 3C, construction to both units a rear extension measuring 508 sq.m, demolition of existing mezzanine floor and construction of a new mezzanine floor measuring 323 sq.m, together with permission to sell food and drink goods from up-to 1,174 sq.m from the combined and extended unit and permission for all other associated works'
- 1.4. The application site forms part of the Peel Centre, which is an existing and well-established Retail Park located on Dryden Road off Harborough Hill Road near to Barnsley town centre. Whilst the Retail Park is in an 'out of centre' retail location it is accessibly located in relation to the town centre as well as surrounding residential areas. The Local Plan identifies the retail park as a retail location serving the needs of Barnsley as a whole. The application site is an entirely sustainable location for the proposed development.
- 1.5. The Retail Park sells a wide variety of goods, including food, following planning permissions previously granted by the Council. Under the current planning permissions which control the Retail Park, there is a substantial amount of floorspace consented for the sale of food at the Park, some of which has not yet been taken up and will therefore be utilised by M&S.
- 1.6. The unused area of floorspace that can be used by M&S amounts to 921 sq.m. The proposal therefore effectively increases the area of floorspace that can be used for the sale of food by 253 sq.m.
- 1.7. As the proposal is seeking additional floorspace in the form of a mezzanine and extension, the combined effect of the application will be to increase the amount of floor space by 637 sq.m and the amount of retail sales area which can be used for the sale of food and drink by 253 sq.m. In essence, the application is a modest change.

Pre-application discussions

- 1.8. The Council, was briefed on the proposed relocation of M&S from the town centre to the Peel Centre at the pre-application stage. In summary, M&S will be closing its store at Queen Street as part of its national estate management strategy. There is no longer a requirement for general merchandise in Barnsley, as discussed in the meeting with the leaders of the Council on the 13 June. However, M&S remain committed to Barnsley and have agreed terms with Peel to open a new foodstore at the Peel Centre. In short, the opening of this proposed new store demonstrates M&S's commitment to retaining a presence in Barnsley.
- 1.9. The new store will provide an enhanced food and drink offer compared with the existing store in the town centre. Clothing and other non-food goods will be available for collection from the new store on a click and collect basis. It follows that through click and collect, M&S customers will retain the existing non-food offer currently provided in the existing store, but will also benefit from a much enhanced food offer.
- 1.10. The Peel Centre is an established retail park, in close proximity to the town centre, and identified in policy as an appropriate location for retail services. The retail park is also an established location for food retailing, and has permission to sell food from most units, including the application site. The proposal does not represent any material change in the role, character and function of the retail park as a whole and carries a number of significant benefits.

The Principal Issues

- 1.11. The principal issues are whether the proposal accords with the Development Plan and material considerations on the following matters:
- Whether the proposal complies with retail policy matters?
 - Whether the proposal secures sustainable economic growth?
 - Whether the proposal accords with the relevant development management policies particularly those relating to highways, design and drainage?
- 1.12. The existing Development Plan and material considerations, including the National Planning Policy Framework ('NPPF') and Planning Practice Guidance ('PPG') provide the LPA's and national Government's policies and guidance addressing the above issues.
- 1.13. In this case, the proposal accords with the adopted Development Plan. That is, it complies with local policies concerning retail, economic, highways, design and other matters. Where this is the case, the full weight of Section 38(6) of the Planning and Compulsory Purchase Act applies, unless material considerations indicate otherwise.
- 1.14. The relevant material considerations also indicate that permission should be granted, as the proposal accords with the NPPF and PPG. As the proposal accords with the NPPF, it benefits from the presumption in favour of sustainable development.

The Merits of the Proposal

1.15. The merits of the proposal are that:

1. The proposal is a positive investment in Barnsley that will secure sustainable economic growth, including local employment provision.
2. The proposal will secure the retention of M&S in Barnsley as it responds to changing market demands and trends in the retail sector.
3. The development will ensure the efficient reuse of previously developed land and bring existing vacant retail units back into an active and beneficial use at a location within Central Barnsley which unlike other retail park locations within the district, is close to the town centre.
4. The application complies with relevant policies addressing retail development, namely that:
 - a. The application site is in an accessible location close to the town centre and surrounding residential areas.
 - b. There are no available sites within sequentially preferable locations that are suitable for the proposed development.
 - c. By virtue of the small-scale nature of the proposal (modest increases in overall floorspace and the amount which is permitted to be used for the sale of food) there is no requirement for a retail impact assessment to be undertaken.
5. The proposed development does not result in any unacceptable impacts on highway safety and its impacts are not severe.
6. The proposal accords with all other development management policies, such as design and drainage.

1.16. Accordingly, the proposed development should be granted permission in accordance with both Section 38(6) of the Planning and Compulsory Purchase Act and the presumption in favour of sustainable development ¹.

Structure of this Statement

1.17. In order to comprehensively assess the proposed development against the relevant planning policies, the remaining sections of this Statement are structured as follows:

- | | |
|--------------------|--|
| ▪ Section 2 | The Site, Surroundings and Relevant Planning History |
| ▪ Section 3 | The Proposed Development |
| ▪ Section 4 | Planning Policy Context |
| ▪ Section 5 | Retail Policy Assessment |
| ▪ Section 6 | Securing Sustainable Economic Growth |
| ▪ Section 7 | Other Development Management Considerations |

1.18. We set out in **Section 8** our Conclusions that the proposed development accords with the Development Plan and all other material considerations.

¹ Paragraph 10 of the NPPF

2. The Site, Surroundings and Relevant Planning History

- 2.1. The application site is shown in detail on the Site Location Plan (ref: AGH 997 01B), a copy of which is included at **Appendix 1**. The site effectively comprises Peel Centre Units 3B and 3C and part of the service yard to the rear. In total the red-lined application site extends to 0.2814ha.
- 2.2. As existing, Unit 3B measures 456.3 sq.m. Unit 3C measures 469.5 sq.m at ground floor level with a storage mezzanine measuring 207.2 sq.m. Both units are currently vacant. The total internal floorspace across the two units that will be utilised as part of the proposal is therefore 1,133 sq.m.
- 2.3. The Peel Centre is located on Dryden Road to the east of and close to Barnsley town centre. It is situated in a well-established wider retail and commercial area and forms an integral part of Central Barnsley's overall retail offer. The Retail Park is accessed via a signalised gyratory junction with Harborough Hill Road (the A61). From the gyratory, routes such as Old Mill Lane connect the town centre with the Retail Park. The Park lies approximately 500m from Barnsley Railway Station.
- 2.4. To the north of the Retail Park is a partly vacant retail warehousing and a vacant yard area. To the north west, on the island created by the gyratory, is a B&M Bargains store, surrounded by Old Mill Lane and Harborough Hill Road and to the north west of this is the Asda food superstore. To the west beyond Harborough Hill Road is a large residential area and to the south and east are large areas of open space and agricultural land.
- 2.5. The Park provides a good standard of retail warehouse accommodation arranged in an 'L' shaped layout facing onto a large, level car parking area. There is also a standalone restaurant unit in the car parking area which was previously occupied by Pizza Hut and is due to be converted into a drive-thru restaurant and a tanning shop. A newly built Starbucks drive-thru coffee shop opened within the main car park in October 2021. At ground floor level, the Retail Park currently comprises over 11,000 sq.m of retail and leisure floorspace, arranged over 13 units. The current occupiers are set out in the table below.

Table 1 Peel Centre, Barnsley - Current occupiers

Unit Number	Tenant	Floorspace
1a	Halfords	733 sq.m
1b	Urban Bites	300 sq.m
1c	Subway	130 sq.m
2	The Range	2,792 sq.m
3a	Pets at Home	465 sq.m
3b	Vacant	456 sq.m
3c	Vacant	470 sq.m ²

² Please note Unit 3C has an existing mezzanine measuring 207.2 sq.m which will be utilised as part of the proposal.

5	Food Warehouse	929 sq.m
6	Quality Save	929 sq.m
7	Sports Direct	2,090 sq.m
8	Currys / PC World	1,858 sq.m
9	Vacant	307 sq.m
10	Starbucks	167 sq.m

Town Centre Connectivity

- 2.6. The Peel Centre is by some distance the closest retail park to Barnsley town centre. From the gyratory, routes such as Old Mill Lane connect the town centre with the site. It is situated only around 500m from the defined Primary Shopping Area (PSA) and railway station which can be reached via Old Mill Lane and Eldon Street, a walk of c0.9km, which is considered to be walking distance. Despite not technically being edge-of-centre in planning policy terms, it is well connected to Barnsley town centre and offers linkage opportunities, including on foot. Our opinion is that it operates as an edge-of-centre location.
- 2.7. This close relationship and evidence of walkable connectivity between the Peel Centre and the town centre has been accepted previously by the Council. The committee report for planning application references 2015/0987 & 2015/0988, which sought to alter use restrictions at the Retail Park and were approved on 3 October 2016 states that: 'It is recognised that because of its connectivity to Barnsley town centre, it would be preferable to have a fully occupied Peel Centre with an attractive offer that can successfully compete with more remote out of town destinations.' Further details of those planning permissions is provided below.

Relevant Planning History

- 2.8. A summary of the planning history is set out below. Copies of the relevant planning permissions are included at **Appendix 2**.
- 2.9. Planning Permission was granted for Unit 1 (a, b and c) on 16 June 1988 (ref. B/88/0294/BA). Condition 7 stated that that the unit shall not be used for the sale of food.
- 2.10. Outline Permission was granted on 3 April 1999 for the refurbishment, redevelopment and extension of the Peel Centre (ref. B/98/0641/BA). Three of the conditions (4, 5 and 11) limited the categories of retail goods permitted to be sold.
- 2.11. On 11 March 2004 permission was granted to vary Condition 5 (retail use) of the 1998/99 outline permission to 'reverse' the wording of the condition from listing those goods which could be sold, to instead list goods which could not be sold (ref. B/03/2180/BA).

- 2.12. This condition was then further varied on 5 August 2005 under permission reference 05/1165/BA to enable the sale of pet products. It stated:

'Other than Unit 7, no unit shall be used for the retail sale (other than related to the principal use of the premises) of food, alcoholic drink, tobacco, watches or clocks, books, newspapers or magazines, clothing or footwear, fashion accessories, jewellery, toys, perfume and toiletries, music, records, audio or video tapes, pharmaceutical goods or sports goods except where such goods are sold for use for animals'

- 2.13. On 6 August 2009 planning permission was granted for 'Use of Unit 4, The Peel Centre, for catalogue retail sales and the installation of a mezzanine floor (941 sq.m gross)'. The application enabled Argos to trade from Unit 4 (ref. 2009/0714). There are four conditions attached, Conditions 2 and 3 state:

'2) Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended), or any provision in any statutory instrument revoking and re-enacting the Order with or without modification, the premises shall only be used by a catalogue showroom retailer for sale and display of items listed within their catalogue. The following exceptions to the items that can be sold from the catalogue shall apply: pharmaceuticals, hot or cold food, groceries, sweets, alcoholic and non- alcoholic drinks, tobacco, magazines and newspapers, for which there shall be no sales permitted whatsoever.

3) The sale and display of goods shall only take place on the ground floor of the premises and there shall be no retail sales or display of goods from the mezzanine floor whatsoever. The mezzanine floor shall be used for the ancillary storage of items by the catalogue showroom retailer referred to in condition 2 only and for no other purpose.'

- 2.14. On 8 September 2014 a further variation of Condition 1 of planning permission: 05/1165/BA was approved. It permitted unrestricted non-food retail use of Units 3C, 5 and 6, with the only restriction which then remained stating that a maximum of 30% of net sales area could be used for the sale of food. The varied condition stated:

'Notwithstanding the Town and Country Planning (Use Classes) Order 1987, or any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification, with the exception of:

- a) unit 7 (to be occupied as a leisure facility and sports goods retail premises); and
- b) units 3C, 5 and 6 (which may be used for any non-food retail purpose and for the sale of food from a maximum of 30% of the net sales area of any of these individual units);
- c) no unit shall be used for the retail sale (other than related to the principal use of the premises) of food; alcoholic drink; tobacco; watches or clocks; books; newspapers or magazines; clothing or footwear; fashion accessories; jewellery; toys; perfume and toiletries; music, records, audio or video tapes; pharmaceutical goods or sports goods without the prior written consent of the Local Planning Authority except where such goods are sold for use for animals'.

- 2.15. Planning permission reference 2015/0987 was granted by Barnsley Metropolitan Borough Council on 3 October 2016 for a 'Variation of Condition 1 of planning permission B/05/1165/BA (which was previously varied by planning permission 2014/0663 to allow non-food retail use with up-to 30% food retail use, of units 3C, 5 and 6) to allow additional retail goods to be sold' from Units 2, 3A, 3B, 3C, 4, 5, 6, 7 and 8 of the Peel Centre. Planning permission reference 2015/0987 has 4 conditions attached. Condition 1 controls the retail use of the Peel Centre and the amount of available food floorspace that is available to all retail units including Units 3B and 3C. The relevant parts of Condition 1 state:

'Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, and the Town and Country Planning (General Permitted Development) Order 1995, or any equivalent provisions in any statutory instrument amending revoking and/or re-enacting either or both of those Orders...

- a. *... (2) Units 3C, 5 and 6 may be used for any non-food retail purpose and for the sale of food from a maximum of 30% of the net sales area of any of these individual units (except where (A) (3) below permits a greater area to be used for the sale of food and drink);*

(3) Not more than 1,394 sq.m. of net sales area in total, across all of Units 1A, 1B and 1C, 2, 2A, 3A, 3B and 3C, 4, 5, 6 and 8, may be used for the retail sale of food and drink (in relation to Units 3C, 5 and 6 that being (if applicable) in addition to any area permitted by A(2) above, which shall not be taken into account in calculating the net sales area permitted by this paragraph).

(B) Until the earlier of (a) the expiry of a period of 5 years from the date of this permission or (b) the date of the occurrence of that one of the circumstances mentioned in (C) (1) and (2) below as is first to occur, after which any non-food retail purpose is permitted together with the sale of food and drink, subject to the limitations within A(3) above, none of the Units 1A, 1B, 1C, 2, 3A, 3B and 8 shall be used for the retail sale (other than related to the principal use of the premises) of food (except where permitted in A(3) above) or for the sale of any of alcoholic drink; tobacco; watches or clocks; books; newspapers or magazines; clothing or footwear; fashion accessories; jewellery; toys; perfume and toiletries; music, records, audio or video tapes; pharmaceutical goods or sports goods without the prior written consent of the Local Planning Authority except where such goods are sold for use for animals, except;

By an existing tenant, defined as a retailer who is in occupation of one of these units at the date of this permission, in which case that retailer may use that unit for any non-food retail purpose (with the exception of fashion retail - clothes, shoes & jewellery, where a maximum of 10% of the net sales area of each unit would be allowed).

(C)

The circumstances referred to in (A) and (B) above are:

(1) an agreement for lease or leases have been entered into in relation to five of the six anchor / MSU retail units on the proposed Better Barnsley redevelopment scheme (unit references A1, MSU 1, 2, 4, 5 and SU16 as shown on IBI drawing reference SP_00_001); or

(2) a period of 2 years having expired since the date of this permission, without agreements for lease having been exchanged, or leases entered into, relating to two or more of those six units referred to in C(1) above;

(D)

The references to numbered units within this condition are references to the units so numbered on drawing number MH877-03'

- 2.16. For completeness, a similar permission was granted in respect of Unit 1 for Units 1A, 1B and 1C (reference 2015/0988). Condition 1 of that permission reflects Condition 1 of planning permission 2015/0987, as set out above.
- 2.17. The most relevant part of the planning history is Condition 1 of planning permission reference 2015/0987. From the condition two principal points emerge:
- a. Limitations on the goods that can be sold, including food (Parts 2 and 3). This equates to a total of 1,996 sq.m of food that can be sold across the Retail Park.
 - b. Triggers for the implementation of the permission (Parts B and C).

Confirmation of implementation planning permission reference 2015/0987

- 2.18. Planning permission reference 2015/0987 was implemented because Part (C, 2) of Condition 1 was triggered when only one Agreement for Lease had been entered into for the anchor / MSU units at Better Barnsley (now the Glassworks) following the expiration of two years. This has already been confirmed in writing by the Council at paragraphs 9.11 - 9.13 of the Council's Hearing Statement for appeal reference APP/R4408/W/19/3228051. A copy of the Hearing Statement is attached at **Appendix 3**.

Available Food Floorspace at the Peel Centre

- 2.19. In accordance with the planning history, namely planning permission reference 2015/0987, the amount of available food floorspace is 921 sq.m. The figure arises from our assessment of the amount of floorspace permitted to be used for the sale of food, and the amount that we have surveyed as being used for the sale of food as existing at the Peel Centre. There are two relevant parts to the planning history that allow for the sale of food. The first is that a 'floating quantum' of up to 1,394 sq.m can be used by any unit (or combination of units). The second is that units 3C, 5 and 6 each have their own additional and specific allocations of 30% of net sales area. The allocations are:
- Unit 3C 120 sq.m
 - Unit 5 240 sq.m
 - Unit 6 242 sq.m

- 2.20. We have calculated that Unit 5 (Food Warehouse) sells food from 778 sq.m (compared to its specific allocation of 240 sq.m) and Unit 6 (Quality Save) sells food from 297 sq.m (compared to its specific allocation of 242 sq.m). There are no other units selling food from the Retail Park. This means that unit 5 is using 538 sq.m (778 minus 240) of the 1,394 sq.m floating quantum and Unit 6 is using only 55 sq.m (297 sq.m minus 242 sq.m).
- 2.21. Of the 1,394 sq.m floating quantum, 801 sq.m is currently therefore unused. In addition to this, Unit 3C (which forms part of the application site) already has an allocation of 120 sq.m which means the proposed development has an available allocation for food sales of 921 sq.m .
- 2.22. The table below sets out the floorspace calculations:

Table 2 - Remaining Floating Floorspace Calculation

Unit	Specific Permitted / Allocated food floorspace (sq.m)	Total floorspace from which it sells food (sq.m)	Balance of Total Amount of Floorspace Available to Sell Food Across The Whole Retail Park	Total Area of Floorspace Available to Sell Food From The Unit	Balance Remaining & Carried Forward
	(A)	(B)	(C)	(D)	(E)
Unit 5	240	778	1394	(C) + (A) = (D) 1394 + 240 = 1634	(D) – (B) = (E) 1634 – 778 = 856
Unit 6	242	297	856	(C) + (A) = (D) 856 + 242 = 1098	(D) – (B) = (E) 1098 – 297 = 801
Unit 3C	120	0	801	(C) + (A) = (D) 801 + 120 = 921	(D) – (B) = (E) 921 - 0 = 921
Total Remaining Floating Floorspace					921 sq.m

3. The Proposed Development

- 3.1. The description of the development is as follows:
- 3.2. *'Full planning application for external alterations to amalgamate Units 3B and 3C, construction to both units a rear extension measuring 508 sq.m, demolition of existing mezzanine floor and construction of a new mezzanine floor measuring 323 sq.m, together with permission to sell food and drink goods from up-to 1,174 sq.m from the combined and extended unit and permission for all other associated works'*
- 3.3. The plans and drawings which accompany the application show the proposal in detail.
- 3.4. The proposal will enable two existing vacant retail units measuring 456 sq.m (Unit 3B) and 470 sq.m (Unit 3C) to be amalgamated and extended by 508 sq.m at ground floor level. Unit 3C has an existing mezzanine measuring 207 sq.m which will be replaced and extended to create a larger mezzanine measuring 323. This will create a new foodstore measuring 1,770 sq.m in total. The proposed new internal floorspace equates to 637 sq.m in total.
- 3.5. The tables below show the existing and proposed floorspace areas for the proposal.

Table 3 - Existing Floorspace

Unit	Ground (sq.m)	Mezzanine (sq.m)	
3B	456		
3C	470	207.2	
Total	926	207.2	1133.2 sq.m

Table 4 - Proposed Floorspace

Unit	Ground (sq.m)	Mezzanine (sq.m)	
3B	456		
3C	470	207.2	
Rear Extension	508		
Mezzanine Extension		116	
Dividing Wall Removal	13		
Total	1447	323.2	1770.2 sq.m

3.6. The proposal presents an opportunity for the redevelopment of brownfield land and buildings to return the currently vacant Units 3B and 3C to an active and beneficial use. The proposal carries economic benefits through investment and employment. It will also bring a new and improved foodstore to the area to improve the retail offer in Barnsley and support the surrounding residential areas in terms of foodstore provision and retail choice.

3.7. The key elements of the proposal are:

- a) External alterations
- b) Extension of the unit
- c) Creation of a mezzanine floor
- d) Sale of food and drink

a) External alterations

3.8. The external alterations are required to facilitate the amalgamation of the two units and to provide the extension to the rear of the new unit. The internal works do not require planning permission. The works will modernise the unit and enhance its appearance.

3.9. The external alterations to the existing retail unit are shown on Drawing Ref: AGH 997 04B - 'Elevations'. The old facia are being removed and / or updated. For the avoidance of repetition the proposed new elements are summarised as follows:

- a. Cladding, including the use of existing and new replacement, on the front elevation.
- b. Shopfront glazing on the front elevation.
- c. Aluminium and glazed entrance doorway, one existing doorway to be replaced with aluminium glazing so that there is a single store entrance.
- d. Cladding to the rear elevation for the extension.

b) Extension to the rear of the unit

- 3.10. The extension to the rear of the unit comprises 508 sq.m. The extension is designed so as to enable the efficient delivery of goods to the store as well as a plant enclosure. The extension to the rear will not impinge on the service yard area or create any issues for the use of the service yard for the purposes of servicing other units at the Retail Park.

c) Creation of mezzanine floor

- 3.11. The proposal also includes the demolition of the existing mezzanine and creation of a new replacement mezzanine floor measuring 323 sq.m. The overall uplift in mezzanine floorspace is 116 sq.m. The mezzanine floor will be used for storage and staff facilities only. There will be no sales from the mezzanine floor level.

d) Sale of food and drink

- 3.12. The operator requires the sale of food and drink goods from 1,174 sq.m of the net sales area. As explained above, the Retail Park can already sell food and drink goods in Units 3B and 3C from 921 sq.m. The uplift required for the new foodstore is therefore only 253 sq.m. The new planning permission will utilise the existing food and drink floorspace at the Retail Park and we will work with the Council during the application to agree the most appropriate way to document that in the planning permission.

4. Planning Policy Context

Introduction

- 4.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 directs LPAs to determine planning applications in accordance with the policies of the Development Plan unless material considerations indicate otherwise.
- 4.2. The starting point for the consideration of a proposal is an assessment against the Development Plan. If a development accords with the Plan, and it is up-to-date, then the decision should be to grant planning permission unless material considerations indicate otherwise. The NPPF and PPG are material considerations. The NPPF is the Government's national planning policies that development plans must accord with and PPG sets out how policies within the NPPF should be applied in practice.

The Development Plan

- 4.3. The Development Plan for the Barnsley comprises the Barnsley Local Plan which was adopted on 3 January 2019 (the 'Local Plan').
- 4.4. The relevant policies from the Local Plan are considered to be as follows:
- Policy SD1: Presumption in Favour of Sustainable Development
 - Policy GD1: General Development
 - Policy LG2: The Location of Growth
 - Policy T3: New Development and Sustainable Travel
 - Policy T4: New Development & Transport Safety
 - Policy D1: High Quality Design & Place Making
 - Policy TC1: Town Centres
 - Policy TC3: Thresholds for Impact Assessments
 - Policy TC4: Retail Parks
 - Policy CC4: Sustainable Drainage Systems (SuDS)
- 4.5. We comment on the above policies where applicable in the remainder of this Statement.

The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (PPG)

- 4.6. The NPPF sets out the Government's planning policies for England. Paragraph 10 sets out the guiding principle for the national policy framework and states:

'So that sustainable development is pursued in a positive way, at the heart of the Framework is a presumption in favour of sustainable development'.

4.7. Paragraph 11 states that:

"For decision-taking this means:

- ***approving development proposals that accord with an up-to-date development plan without delay; or***
- *where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*
 - i. *the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
 - ii. *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole." (Savills' emphasis)*

4.8. The remainder of the NPPF sets out planning principles that underpin plan-making and decision-taking. We refer to those considered to be most relevant below.

4.9. Paragraph 80 confirms that planning decisions should help create conditions where businesses can invest and expand. It further states that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. Significant weight should therefore be applied to supporting the proposal under the terms of the positive economic growth that it delivers.

4.10. Paragraph 82 confirms that planning decisions should recognise and address the specific locational requirements of different sectors, including retail ³.

4.11. Paragraphs 86 and 87 set out that proposals for retail development which are in edge and out of centre locations, and not accordance with an up-to-date plan should be subject to the sequential test. Only if suitable sites are not available should out of centre sites be considered.

4.12. Paragraph 87 confirms that when considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre. The policy requirement is not to consider whether a site is 'more' accessible or 'more' well connected to a centre. The question is whether a site is an accessible site which is well connected to a town centre. If it is, then preference should be given to it.

4.13. The NPPF sets a threshold for impact assessments at Paragraph 89. It states that for proposals outside of town centres, local planning authorities should require an impact assessment if the proposed development is over 2,500 sq.m, or a proportionate, locally adopted threshold.

4.14. At Paragraph 94, the NPPF states that planning decisions should consider the social, economic and environmental benefits of estate regeneration.

³ See Paragraph: 012 Reference ID:2b-012-20190722 of the PPG entitled 'Town Centres and retail'.

5. Retail Policy Assessment

Introduction

- 5.1. This section of the Statement assesses the proposal against the relevant retail policies from the Development Plan.

Retail Parks (Policy TC4)

- 5.2. The Peel Centre is identified in the Barnsley Local Plan as a retail park. Policy TC4: 'Retail Parks' is therefore the most relevant policy. It states:

'In the retail parks identified on the Policies Map, retail warehouses will be allowed. Uses other than retail warehouses will be allowed where the role, character and function of the retail park will not be adversely affected.'

Except where justified, planning permissions on these retail parks will be subject to conditions to limit:

- *The minimum size of units to at least 920 square metres. gross; and*
- *The type of goods which can be sold from the units to bulky comparison goods.'*

- 5.3. The site forms part of the spatial strategy for retailing in Barnsley as confirmed by Policy TC4. The overall policy objective of Policy TC4, as set out in the first part of the policy, is to support development of retail warehouses at the identified retail parks, such as the Peel Centre. Where uses other than bulky comparison goods are proposed, applicants must demonstrate that the role, character and function of the retail park will not be adversely affected. The sale of food is permissible in every unit at the Retail Park under the terms of planning permission reference 2015/0987. It follows that the sale of food forms part of the role, character and function of the Retail Park.
- 5.4. Given the already permitted level of food and drink food floorspace at the Peel Centre there are no new material land use considerations raised by the proposal. In the case of the appeal against refusal of application reference 2018/1308 for the new Starbucks unit, the Inspector confirmed that in permitting the use of floorspace for the sale of food, the Council has accepted such an alteration to the nature of uses would not adversely affect the role, character or function of the Retail Park (reference APP/R4408/W/19/3228051). A copy of the Inspectors Report is included at Appendix 4 for completeness. Paragraphs 12 and 13 of that Report states that:

‘12. The Council acknowledges that it has relaxed conditions originally imposed when the retail park was permitted, to allow non-food retail use with up to 30% of floorspace for food retail use. In my view, this represents an acceptance by the Council that such an alteration to the nature of the uses at the retail park would not adversely affect its role, character and function. Nevertheless, the Council argues that the proposal would have an adverse effect by introducing further non-retail warehousing use, in a unit of a size which would never be able to accommodate retail warehousing. However, the proposed use would not result in the loss of any retail warehousing space, nor would it impede or undermine the operation of any existing retail unit. Whilst there would be some loss of car parking, it has not been argued that this would harm the functioning of the retail park. Having seen the extent of parking available, I am satisfied no harm would arise in this respect.

13. Given that the extant planning permissions could see sizeable parts of one or more of the existing units given over to food retail, I see no tangible difference to the overall role, character and function of the retail park in having a food and drink use, albeit one with seating areas and a drive thru, located in a standalone building as opposed to inside an existing building. In terms of cumulative impact, at 167 sqm, the proposal would increase the total floorspace of the retail park by just over 1%, whilst the percentage of floorspace occupied by food and drink uses would increase from 3.5% to 4.7% (429 sqm to 596 sqm). This amount of development would be insignificant in the overall context of the retail park, and would have a very limited effect on its overall role, character and function.’

- 5.5. As noted by the Inspector, the land-use operation that will take place from the new foodstore has therefore already been accepted by the Council as not adversely affecting the role, character and function of the Retail Park.
- 5.6. This can be contrasted with the existing situation with the subject units being vacant. The Inspector commented at paragraph 14 of his report that “The presence of several vacant units, which I was told have been unoccupied for between 2 and 18 months with limited interest even with the added flexibility of the conditions, has a more significant effect on the role, character and function of the retail park”.
- 5.7. The proposal will therefore enhance the role, character and function of the Retail Park by returning vacant retail warehouse Units 3B and 3C to an active and beneficial use and bringing a new foodstore operator to the Park to operate alongside the existing food and drink retailers.
- 5.8. In the second part of Policy TC4, the policy states that ‘Except where justified...’ retail warehouses will be subject to conditions limiting the minimum size of units to 920 sq.m (first bullet point) and the type of goods to bulky comparison goods (second bullet point). The reference to justification can only refer to the justification required through the retail policy tests, which are the sequential test and impact assessment, which we comment on below and in the submitted Sequential Test Statement.
- 5.9. With regard to the first bullet point of Policy TC4, the proposal will enable two existing vacant retail units measuring 456 sq.m (Unit 3B) and 470 sq.m (Unit 3C) to be amalgamated. The unit will be extended by 508 sq.m at ground floor level and the new foodstore will have a 323 sq.m storage and staff mezzanine level. This will create a single unit measuring 1,770 sq.m in total.

- 5.10. It follows that the proposal will amalgamate two units which currently fall below the minimum unit size threshold of 920 sq.m set in Policy TC4 to create a single retail warehouse unit which is 849 sq.m larger than that threshold. The proposal therefore not only accords with the first bullet point of Policy TC4, but will remove an existing situation where there are two units which do not accord with the first bullet point.
- 5.11. The second bullet point of Policy TC4 only applies to a small area of floorspace. This is because 921 sq.m of the required food and drink floorspace for the 1,174 sq.m sales area of the new foodstore is already permitted by planning permission 2015/0987. This is the 'fall-back' established at the site which supports the grant of permission.
- 5.12. The minor uplift of 253 sq.m required for the new foodstore is a de minimus increase in additional food and drink floorspace that does not raise any material land use considerations above those already considered to be acceptable by the Council when granting previous planning permissions at the Retail Park. Adopting the terminology of the Inspector in the above referenced case, the amount of increase compared to the fall-back position is negligible, insignificant and will have a very limited effect on and make no tangible difference to, the overall role, character and function of the Retail Park.
- 5.13. In light of the above, as per the previous Inspector's conclusion, the proposal to increase the amount of sales area which may be used for the sale of food and drink will make no tangible difference to, nor therefore adversely affect the role, character or function of the retail park when compared to the already consented position. The proposal will amalgamate two individual units which are not compliant with the first bullet point of TC4 and create a unit which is larger than the minimum unit threshold and therefore compliant.

Sequential Test (Policy TC1)

- 5.14. Local Plan Policy TC1: Town centre states that:

'... A sequential approach will be used to assess proposals for new retail and town centre development. This will help to achieve the spatial strategy for the borough and will focus development on identified centres in the first instance. Edge of centre and out of centre development will only be allowed where it meets the requirements of NPPF...'

- 5.15. The sequential test is also required in accordance with Paragraph 86 of the NPPF. Accordingly, the application is supported by a separate Sequential Test Statement prepared by Savills which addresses the requirements of the sequential test. The Statement concludes that the proposal accords with the sequential test.

Retail Impact (Policy TC3)

- 5.16. Local Plan Policy TC3: Thresholds for Impact Assessments states:

'Proposals for retail and leisure uses will be required to provide an impact assessment if they are of a scale, role or function where they could have a negative impact on the vitality and viability of the centre and are:

Located outside the Primary Shopping Area of Barnsley Town Centre and are:

- *Within the catchment of Barnsley Town Centre, and*
- *Have a floorspace in excess of 2,500 square metres gross...*

- 5.17. The new foodstore will be able to sell food and drink from up to 1,174 sq.m of floorspace. As stated above, the Retail Park already benefits from planning permission to sell food and drink goods from 921 sq.m within Units 3B and 3C, which is the established 'fall-back'. The proposal only seeks permission to enable an additional 253 sq.m of floorspace to be used for the sale of food and drink. The additional internal floorspace created by the proposal amounts to only 637 sq.m. The requirement to undertake an impact assessment contained at Policy TC3 and Paragraph 87 of the NPPF, which sets a threshold of 2,500 sq.m, does not apply, whichever component of the proposal is considered, or even if they are considered together.
- 5.18. Policy TC3 refers to sites located outside the Primary Shopping Area of Barnsley town centre but are located within the catchment of the town centre. As stated above, it is an agreed position with the Council that due to its connectivity to Barnsley town centre it would be preferable to have a fully occupied Peel Centre with an attractive offer that can successfully compete with more remote out of town destinations. Units 3B and 3C are currently vacant and therefore the proposal will help to ensure that the Peel Centre becomes fully occupied in accordance with the above agreed preference.
- 5.19. The complementary function the Retail Park provides to the town centre, which has been recognised by the Council, demonstrates that certain proposals for improvements at the Park will not have an unacceptable impact on the town centre. In fact, the Council's previously documented position indicates that a fully occupied Peel Centre is beneficial to the town centre and therefore the proposal would have a positive impact by bringing shoppers nearer to Barnsley town centre where there are opportunities for linked trips.
- 5.20. The overall conclusion with regards to retail impact is that due to the scale of the proposal, an impact assessment is not required.

Conclusion

- 5.21. The overall conclusion is that the proposal accords with Policy TC4, as when taking account of the fall-back position, the proposed marginal increase in the amount of sales area which may be used for the sale of food and drink will make no tangible difference to the extent to which the proposed enlarged unit may be used for the sale of goods which are not bulky comparison goods. It will therefore make no tangible difference to the overall role, character and function of the Retail Park. Further, it will amalgamate two units which currently fall below the minimum unit size threshold as set out in TC4 into a singular unit above that threshold.
- 5.22. As the proposal falls below the threshold set out in Policy TC3, an impact assessment is not required and there is no conflict with this policy.

- 5.23. For the reasons set out in the separate Sequential Test Statement, the proposal accords with the sequential test, as required by Policy TC1.
- 5.24. Given that the retail policy tests are addressed and satisfied, it follows that the proposal is directly in accordance with the established retail strategy in Barnsley.

6. Securing Sustainable Economic Growth

6.1. There is an urgent need to create sustainable economic growth and job opportunities. The Government is relying on private sector investment to stimulate the economy now more than ever. This continues to be the case particularly as the future economic outlook at a national level continues to look uncertain in the post-Covid19 pandemic economic recovery.

6.2. The requirement for economic investment is a national imperative. Considerable weight should therefore be given to supporting proposals for economic development such as retailing that contribute to sustainable economic growth. That is the emphasis in the NPPF at paragraph 80.

6.3. The Barnsley Local Plan also places a significantly strong emphasis on the need to deliver sustainable economic growth. Local Plan Policy SD1 'Presumption in Favour of Sustainable Development' states that:

'When considering development proposals we will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. We will work proactively with applicants jointly to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.'

6.4. In accordance with paragraph 11 of the NPPF, where there are no other material considerations that outweigh the presumption in favour of granting planning permission for sustainable development then planning permission should be granted without delay. The Development Plan builds on this by placing emphasis on improving the economic, social and environmental conditions in the area. Clearly, development which secures investment in and re-occupation of vacant retail units, job creation and provision of new facilities which are sustainably located for local residents complies with the requirements of Policy SD1. The proposal meets all of these requirements.

6.5. Local Plan Policy LG2 'The Location of Growth' states that:

'Priority will be given to development in the following locations:

- *Urban Barnsley;*
- *Principal Towns of Cudworth, Wombwell, Hoyland, Goldthorpe (which includes Thurnscoe and Bolton on Dearne), Penistone and Royston; and Villages.*

Urban Barnsley will be expected to accommodate significantly more growth than any individual Principal Town, and the Principal Towns will be expected to accommodate significantly more growth than the villages, to accord with their place in the settlement hierarchy'

- 6.6. The application site is located within Urban Barnsley being within walking distance of the town centre, Primary Shopping Area and railway station and in a highly accessible location for surrounding and nearby residential areas. As set out above, it is widely accepted that there is a connectivity with the town centre and the Retail Park. Given this sustainable location within Urban Barnsley the application site is ideally located for the type of investment proposed and to this end fully accords with the objectives of Policy LG2.
- 6.7. The employment created by the proposed development and the associated wage generation represent a significant benefit of the proposal which weighs heavily in favour of the grant of planning permission.
- 6.8. M&S will increase the level of employment at the site as foodstore operators typically require higher staff levels due to increased service operations and customers compared to non-food retail operations. The proposed store will employ approximately 70 full and part-time staff who will primarily be recruited locally.
- 6.9. The works required to create the new foodstore unit also require the services of local building trade contractors which provides employment opportunities during the construction phase. Usually a range of skills such as steel, brick and block work and shop fitting are sourced locally, as well as cleaners and labourers.
- 6.10. From the above, it is evident that the number of jobs created by the proposed development is a material benefit. Jobs in the retail industry are flexible and socially inclusive, as they provide a range of jobs in both full and part-time positions, as well as during evenings or at weekends. Reducing barriers of entry to employment is a key part of the enabling social progress, which is encompassed within the economic and social roles performed by the planning system.
- 6.11. The proposed development therefore accords with the overarching objectives of the NPPF (and more specifically paragraph 80) which aims to support proposals that secure sustainable economic growth, as well as Development Plan Policies SD1 and SG2.

7. Other Development Management Considerations

7.1. The relevant development management considerations are:

- a) Highways and Accessibility
- b) Design
- c) Drainage

7.2. We assess each consideration in turn below.

a) Highways and Accessibility

7.3. Local Plan Policy T3 requires new development to promote sustainable travel, adhere to parking standards and for potential highways impacts to be taken into consideration as part of planning applications. Accordingly, the application is supported by a Transport Statement prepared by TTHC which addresses these matters. Local Plan Policy T4 confirms that new development must provide safe, secure and convenient access and movement. The TS also addresses this requirement. The TS confirms that the impact of the proposed development in terms of trip generation would not have a material impact on the operational performance and safety of the local highway network.

7.4. Overall, the proposed development would have no adverse impacts on the surrounding transport and highway network. There are therefore no transport or highway related issues which would prevent granting of planning permission. It follows that the proposal is acceptable in highways terms and accords with the requirements of Policies T3 and T4.

b) Design

7.5. Local Plan Policy D1 requires new development to provide high quality design and reinforce the distinctive local character and features of the area. Policy D1 sets out a number of design principles that new development should adhere to in terms of its layout and design.

7.6. The application site comprises two existing vacant retail units at an established retail park. The proposal is for the external alterations to amalgamate those two units into a single unit and provide improvements to the appearance of the unit to modernise it in readiness for the new operator. In doing so the proposal will reinforce and enhance the character and features of the Retail Park.

7.7. The improvements to the design and appearance of the unit are clearly shown on Elevation drawing reference AGH 997 212J. The proposal will enhance the existing appearance of the building by providing modern cladding across the facade of the existing building and providing a glazed frontage on the front of the foodstore.

c) Drainage

- 7.8. The application is supported by a Drainage Note which has been prepared by Beam Consulting which states that:

'It is proposed to combine existing retail units and construct an extension to the rear at Peel Retail Park, Barnsley.

The overall site impermeable area is to remain as existing. Therefore, all surface water from the hardstanding, roads and parking spaces will discharge as per the existing situation.

In addition to this only 535m² of existing impermeable hardstanding is being replaced by impermeable roofing. The total impermeable area on the existing site is approximately 44,720m², of which approximately 14,830m² is roof. The change in hardstanding to roof is relatively small compared to the existing impermeable roof and impermeable hardstanding. There is no change to the total impermeable area on site, and therefore no change to existing surface water discharge.

The surface water drainage modifications for the proposed development will comprise a piped surface water drainage system to match the existing drainage system on site. The surface water drainage system will discharge unrestricted into the existing system as per current arrangements. On this basis the surface water drainage hierarchy is effectively unchanged.

The foul drainage for the proposed development will comprise a piped foul drainage system to match the existing drainage system on site. Which is to discharge unrestricted into the existing system as per the existing situation.'

- 7.9. Overall, the new unit will connect to the existing drainage system and run off rates will be the same as existing. We therefore conclude that the policy complies with Policy CC1.

8. Conclusion

8.1. In summary, the proposal seeks to amalgamate Units 3B and 3C for use as a new Class E foodstore to be operated by M&S for its Simply Food format. The proposal includes an modest extension to the rear of the new unit and a storage and staff use only mezzanine floor. Overall, the new foodstore will measure 1,770 sq.m.

8.2. The description of the proposal is as follows:

'Full planning application for external alterations to amalgamate Units 3B and 3C, construction to both units a rear extension measuring 508 sq.m, demolition of existing mezzanine floor and construction of a new mezzanine floor measuring 323 sq.m, together with permission to sell food and drink goods from up-to 1,174 sq.m from the combined and extended unit and permission for all other associated works'

8.3. The assessment undertaken as part of this Statement and the Sequential Test Statement has demonstrated that:

- a. The proposal complies with Policy TC4 as the role, character and function is not adversely affected by the proposal, which also brings the additional benefit of removing two existing units which are below the minimum unit size threshold within TC4.
- b. No retail impact assessment is required and there is therefore no conflict with Policy TC3.
- c. The proposal satisfies the sequential test and therefore accords with Policy TC1.
- d. The proposal therefore accords with the overall retail strategy set out within the Development Plan.
- e. The proposal secures sustainable economic growth and provides opportunities for local employment, through the re-occupation of vacant retail warehouse floorspace.
- f. The proposed development accords with all other relevant policies contained within the Development Plan, including those relating to design, highways, access and drainage.
- g. The application accords with relevant material considerations, including the overarching objectives of the NPPF to deliver sustainable development. Material considerations weigh in favour of approving the application.

8.4. The proposed development will have a series of important benefits linked to the economic regeneration of the application site. These include:

- a. Positive investment in Barnsley that will secure sustainable economic growth.
- b. Creating approximately 70 employment positions at the application site.
- c. The efficient reuse of previously developed land and returning existing vacant retail units back into an active and beneficial use.
- d. Enhancing convenience goods provision in the local area, providing local residents with a greater choice of convenience goods shopping facilities.

- 8.5. In the light of the assessment undertaken:
- a. The overall conclusion is that the proposal accords with Policy TC4 as the amount of additional food sales floorspace compared to the fall-back position will be insignificant and will have no adverse effect on and make no tangible difference to, the overall role, character and function of the Retail Park. The proposal fully accords with Policy TC4.
 - b. As the proposal falls below the threshold set out in Policy TC3, an impact assessment is not required and there is no conflict with this policy.
 - c. For the reasons set out in the separate Sequential Test Statement, the proposal accords with the sequential test, as required by Policy TC1.
 - d. Given that the retail policy tests are addressed and satisfied, it follows that the proposal is directly in accordance with the established retail strategy in Barnsley and the Development Plan.
 - e. The proposal accords with the principal material considerations, namely the objective to secure sustainable development established by the NPPF.
 - f. The proposed development will have a series of important benefits linked to the economic regeneration of the application site
 - g. There are no other material considerations that should outweigh the presumption in favour of granting planning permission for sustainable development as outlined at Paragraph 10 of the NPPF.
- 8.6. Planning permission should therefore be granted in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004.

Appendices

Appendix 1
Site Location Plan (reference: AGH 997/201G)



Rev	Description	Date
This drawing is Copyright.		
The Contractor is to bring to the notice of the Architect any discrepancies contained in this drawing prior to work commencement.		
Do not scale from this drawing.		
The Contractor and his Sub-contractors are to verify all dimensions on site before making shop drawings or commencing manufacture.		
CLIENT		
PEEL LAND PROPERTY & INVESTMENTS PLC		
TITLE		SCHEME
PROPOSED		BARNSELEY RETAIL PARK
LOCATION PLAN		UNITS 3B/3C
SCALES		DATE
1 : 500		NOVEMBER 2021
JOB No.		DRAWING No.
AGH/997		AGH/997/201D
alan g haines associates		
ARCHITECTS		
2 Oustlethwaite Court		
Genn Lane		
Worsborough		
Barnsley		
S70 6NP		
Tel: (01226) 297664		
Fax: (01226) 285551		

Appendix 2

Copies of the relevant planning permissions (reference:
2015/0987)



GRANT OF PLANNING PERMISSION

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION NO. 2015/0987

To Savills (UK) Limited
Belvedere, 12 Booth Street
Manchester
Greater Manchester (Met County)
M2 4AW
United Kingdom

DESCRIPTION Variation of Condition 1 of planning permission B/05/1165/BA (which was previously varied by planning permission 2014/0663 to allow non-food retail use with upto 30% food retail use, of units 3C, 5 and 6) to allow additional retail goods to be sold.

LOCATION Units 2, 3a, 3b, 3c, 4, 5, 6, 7 and 8, The Peel Centre, Dryden Road, Barnsley, South Yorkshire, S71 1JE

Permission is granted for the proposals which were the subject of the Application and Plans registered by the Council on 12 October 2015 and described above.

The approval is subject on compliance with the following conditions:

- 1 Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, and the Town and Country Planning (General Permitted Development) Order 1995, or any equivalent provisions in any statutory instrument amending revoking and/or re-enacting either or both of those Orders:

- Unit 7 shall be occupied as a leisure facility and sports good retail premises.

(A) Until the earlier of (a) the expiry of a period of 5 years from the date of this permission or (b) the date of the occurrence of that one of the circumstances mentioned in (C)(1) and (2) below as is first to occur:

(1) Unit 4 shall only be used by a catalogue showroom retailer for sale and display of items listed within their catalogue. The following exceptions to the items that can be sold from the catalogue shall apply: pharmaceuticals, hot or cold food, groceries, sweets, alcoholic and non- alcoholic drinks, tobacco, magazines and newspapers, for which there shall be no sales permitted whatsoever (for the avoidance of doubt, after the earlier of the events referred to in (A) above has occurred, Unit 4 may be used for any non-food retail purpose and for the sale of food and drink subject to the limitations within (A) (3) below;

(2) Units 3C, 5 and 6 may be used for any non-food retail purpose and for the sale of food from a maximum of 30% of the net sales area of any of these individual units (except where (A) (3) below permits a greater area to be used for the sale of food and drink);

(3) Not more than 1,394 sq.m. of net sales area in total, across all of Units 1A, 1B and 1C, 2, 2A, 3A, 3B and 3C, 4, 5, 6 and 8, may be used for the retail sale of food and drink (in relation to Units 3C, 5 and 6 that being (if applicable) in addition to any area permitted by A(2) above, which shall not be taken into account in calculating the net sales area permitted by this paragraph).

(B)

Until the earlier of (a) the expiry of a period of 5 years from the date of this permission or (b) the date of the occurrence of that one of the circumstances mentioned in (C)(1) and (2) below as is first to occur, after which any non-food retail purpose is permitted together with the sale of food and drink, subject to the limitations within A(3) above, none of the Units 1A, 1B, 1C, 2, 3A, 3B and 8 shall be used for the retail sale (other than related to the principal use of the premises) of food (except where permitted in A(3) above) or for the sale of any of alcoholic drink; tobacco; watches or clocks; books; newspapers or magazines; clothing or footwear; fashion accessories; jewellery; toys; perfume and toiletries; music, records, audio or video tapes; pharmaceutical goods or sports goods without the prior written consent of the Local Planning Authority except where such goods are sold for use for animals, except;

By an existing tenant, defined as a retailer who is in occupation of one of these units at the date of this permission, in which case that retailer may use that unit for any non-food retail purpose (with the exception of fashion retail - clothes, shoes & jewellery, where a maximum of 10% of the net sales area of each unit would be allowed).

(C)

The circumstances referred to in (A) and (B) above are:

(1) an agreement for lease or leases have been entered into in relation to five of the six anchor / MSU retail units on the proposed Better Barnsley redevelopment scheme (unit references A1, MSU 1, 2, 4, 5 and SU16 as shown on IBI drawing reference SP_00_001); or

(2) a period of 2 years having expired since the date of this permission, without agreements for lease having been exchanged, or leases entered into, relating to two or more of those six units referred to in C(1) above;

(D)

The references to numbered units within this condition are references to the units so numbered on drawing number MH877-03.

Reason: In order to offer protection to the Better Barnsley Scheme and in accordance with saved UDP policy S3.

- 2 No outside storage shall at any time take place on the site, except within such purpose designed enclosures.

Reason: In the interests of the visual amenities of the locality in accordance with Core Strategy Policies CSP 29 and CSP 40.

- 3 No surface water shall be discharged through the petrol/oil interceptor.

Reason: To ensure the proper drainage of the site.

- 4 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 and any subsequent amendments the retail units shall not be subdivided without the prior written approval of the Local Planning Authority.

Reason: Support will be given to maintaining and enhancing the vitality and viability of Barnsley Town Centre in accordance with CSP31 'Town Centres' and saved UDP policy S3.

Informative(s)

Pursuant to article 31(1)(cc) of the Town and Country Planning (Development Management Procedure) Order 2010 (as amended), the Local Planning Authority have, where possible, made a pre-application advice service available, complied with our Planning Service Charter for Business and otherwise actively engaged with the applicant in dealing with the application.

Please be aware that the Council monitors construction sites and open land within the vicinity such sites in an attempt to prevent fly tipping (i.e. unauthorised deposit of waste on land), which is illegal under the Environmental Protection Act 1990. The penalties for fly-tipping can include:

- a fine of up to £50,000 and*
- up to six months imprisonment on conviction*

Therefore, if necessary, please ensure that all demolition waste and waste associated with the construction of the approved development is disposed of via approved methods and that documents are retained to prove this.

1	The granting of planning permission does not in any way infer that consent of the landowner is given. Therefore the consent of all relevant landowners is required before proceeding with any development including that of the Council as landowner. If it should transpire that the applicant does not own any of the land included in this consent then it is the responsibility of the applicant to seek all necessary consents and approvals of the landowner.
2	For the avoidance of doubt this planning permission shall be implemented from the date of this approval by the continued retailing of goods from the site.

Signed 
Joe Jenkinson
Head of Planning and Building Control

Dated 03 October 2016

The grant of this consent does not constitute or imply permission, approval or consent by the Local Authority for any other purpose.

NOTES:-

Appeals to the Secretary of State

If you are aggrieved by the decision of the Council to grant permission for the proposed development subject to conditions then you can appeal to the Secretary of State for the Environment, Transport and Regions under Section 78 of the Town and Country Planning Act. If you want to appeal, then you must do so within six months of the date of this notice, using a form which you can get from The Planning Inspectorate, Room 3/24 Hawk Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN.

The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State need not consider an appeal if it seems to him that the Local Planning Authority could not have granted planning permission for the proposed development or could not have granted it without the conditions it imposed, having regard to the statutory requirements, to the provisions of the development order and to any directions given under the order. In practice, the Secretary of State does not refuse to consider appeals solely because the Local Planning Authority based its decision on a direction given by him.

Purchase Notices

If either the Local Planning Authority or the Secretary of State for the Environment, Transport and Regions refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor can he render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted. In these circumstances, the owner may serve a purchase notice on the Council in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of part VI of the Town and Country Planning Act 1990.

Compensation

In certain circumstances compensation may be claimed from the Local Planning Authority if permission is refused or granted subject to conditions by the Secretary of State on appeal or on reference to the application to him. These circumstances are set out in Sections 114 and related provisions of the Town and Country Planning Act 1990.

Appendix 3

Council's Hearing Statement for appeal (reference:
APP/R4408/W/19/3228051)

BARNSLEY METROPOLITAN BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

Appeal by c/o agents

against the Planning Notice issued by

Barnsley Metropolitan Borough Council

to refuse planning permission

Erection of café/restaurant with drive through facility (Use Classes A3/A5) and
associated alterations to site layout

Peel Centre, Harborough Hill Road, Barnsley, S71 1JE

Inspectorate Reference: APP/R4408/W/19/3228051

APPEAL STATEMENT SUBMITTED ON BEHALF OF THE LOCAL PLANNING
AUTHORITY

Introduction

- 1.0 The assessment of the planning application and reasons for refusal are covered in detail in the Officer report.

Background

- 2.0 The Peel Centre is located on Dryden Road to the east of and outside Barnsley town centre. It is a retail park with the units arranged in an 'L' shape with a central, hard surfaced car park. The Peel Centre forms one of two retail parks in Barnsley Borough.
- 2.1 At ground floor level, it currently comprises approximately 13580sqm (approx. 12,400 net) of buildings containing retail and leisure uses, arranged over 11 units in 9 buildings. All buildings are over 920sqm in size, apart from a separate Pizza Hut building of approximately 430sqm (gross), granted in March 2004. There are a mixture of occupants within the site including national names such as Halfords, Bathstore, The Range, Pets at Home, Maplins, Argos, DW Sports, Currys and Pizza Hut.
- 2.2 The Retail Park is accessed via a signalised gyratory junction with Harborough Hill Road (the A61). From the gyratory, routes such as Old Mill Lane connect the town centre with the site.
- 2.3 To the north of the site is partly vacant retail warehousing. To the north west, on the island created by the gyratory, is a B&M Bargains store, surrounded by Old Mill Lane and Harborough Hill Road and to the north west of this is the Asda Superstore.
- 2.4 To the west beyond Harborough Hill Road, a dual carriageway at this point, is a large residential area and to the south and east are large areas of open space.

Planning History

- 3.0 B/98/0641/BA - Outline planning permission was granted on 3 April 1999 for the refurbishment, redevelopment and extension of the Peel Centre. Three of the conditions (4, 5 and 11) limited the categories of retail goods permitted to be sold.
- 3.1 B/03/2180/BA On 11 March 2004 permission was granted to vary Condition 5 (retail use) of the of the above outline permission.
- 3.2 B/04/0020/BA Planning Permission for the erection of a Pizza Hut was granted on 25/3/2004.
- 3.3 05/1165/BA Variation of B/03/2180 to enable the sale of pet products. It states:
- '(1) Other than Unit 7, no unit shall be used for the retail sale (other than related to the principal use of the premises) of food, alcoholic drink, tobacco, watches or clocks, books, newspapers or magazines, clothing or footwear, fashion accessories, jewellery, toys, perfume and toiletries, music, records, audio or video tapes, pharmaceutical goods or sports goods except where such goods are sold for use for animals'*
- 3.4 2009/0714 granted 06/08/2009 A further variation was granted to allow Argos to trade from Unit 4.
- 3.5 2014/0663 'variation of condition 1 of 05/1165/BA to allow any non-food retail and maximum of 30% of net sales area to be used for sale of food' relating to units 3C, 5 and 6, was approved on 08/09/2014
- 3.6 2015/1028 - Erection of a retail unit on the existing site of The Range store Granted 03/10/16 subject to a condition restricting the range of retail goods which may be sold.

- 3.7 2015/0987 –Variation of condition 1 of planning permission B/05/1165/BA (which was previously varied by planning permission 2014/0663 to allow non-food retail use with up to 30% food retail use, of units 3C, 5 and 6) to allow additional retail goods to be sold – Units 2, 3A, 3B and 3C, 4, 5, 6, 7 and 8, Peel Centre, Dryden Road, Barnsley, S71 1JE
- 3.8 2015/0988 - Variation of condition 7 of B/88/0294/BA to allow additional retail goods to be sold Granted 3/10/16
- 3.9 Significantly, the decision notices for 2015/0987 and 2015/0988 limited both the amount of retail sales in the units, to avoid impacting upon the overall retail centre character and use, AND linking the implementation of the permissions to the progress of the significant works of the town centre redevelopment (Better Barnsley, now known as Glassworks), in order to avoid impacting upon the Town Centre viability. All the extant permissions were granted under the previous two development plans: The Unitary Development Plan (adopted 2000); and the Core Strategy (adopted 2011) (The decision notices for the permissions listed above are in Appendix 1).

Comments on the Appellants Statement of Case

The Appeal Site

- 4.1 In describing the appeal site, Para 1.3 states that the appeal site lies close to Barnsley Town Centre and forms an integral part of the overall offer of the central area of Barnsley. The Council contends the site lies outside the Town Centre and is not considered to form part of the retail offer of Barnsley Town Centre (extract from Local Plan maps at Appendix 2).

Site Context

- 4.2 In Para 1.6 the appellant states correctly that there is a large residential area to the west of Harborough Hill road. However, this is physically

divorced from the site by Harborough Hill Road which is a dual carriageway at this point.

- 4.3 In Para 1.7 the appellant acknowledges that the appeal site is not edge of centre. In fact the site lies outside the Town Centre as can be seen in map at Appendix 2, which shows the Retail Park location in relation to Barnsley Town Centre, and to the Principal and Secondary shopping centres of Barnsley Town Centre. The appellants Para 1.7 continues that the site offers opportunities for pedestrians to link visits to the town centre but the Local Planning Authority contends that pedestrian access is unlikely to be used. For example, even a pedestrian accessing the site from Meadow Street (the closest residential street to the appeal site from the opposite side of Harborough Hill Road) would have to cross 8 lanes of traffic, and negotiate 3 sets of pelican crossings and 3 traffic islands to reach the retail park. A pedestrian from the town centre is even less likely to undertake a long (750m plus) walk to the Retail Park.
- 4.4 The para concludes that an exit survey undertaken in 2012 showed clear evidence of linked trips to the town centre. However, no evidence has been provided to support this statement, and no evidence has been provided that this included linked pedestrian trips. Furthermore, a 2012 survey (which has not been submitted as evidence), is unlikely to reflect any more recent changes in the shopping offer in the Retail Park or the impact of modern shopping habits which is becoming increasingly online based.
- 4.5 In Para 1.8, whilst the Council desires a fully occupied Peel Centre, development proposals would nevertheless be expected to be in accordance with the development plan and not development which would be considered to be a town centre use. The interpretation of the quoted committee report for the most recent relaxation of conditions at the retail park to *'the close relationship and linkages between the Peel Centre and the town centre has been accepted previously by the Council'* is not accepted. The committee report was addressing a situation where much

of the borough's spend was leaching out of the Borough to other out of town destinations (Appendix 3). The overall strategy of the Council is to attract that business back into the Borough, but not at the expense of the vitality and viability of the town centre. And not, in the case of the current appeal, at the expense of the appropriate provision of retail parks within the Borough.

4.6 The Pizza Hut permission was granted B/04/0020/BA granted 25/3/2004 under a previous development plan (The adopted Unitary Development Plan 2000). The Subway mentioned in Para 1.9 is not a new permission, but part of the 2015 applications which were permitted in 2016 which allowed limited retail and other uses in existing units subject to strict restrictions on level of retail etc. and timescales for implementation, linked to the development of the town centre (2015/0987 and 2015/0988).

4.7 The current application has been determined in accordance with up to date national and local policies in the adopted Local Plan (adopted 3rd January 2019). The 2019 Local Plan policies are clear about the type of goods and uses which are acceptable on a retail park. The NPPF is clear that a new build coffee shop is a town centre use, it is not one of the acceptable uses on a retail park and does not meet size requirements set out in the Local Plan Retail Policy TC4. This is discussed further below.

Consultation

5.0 Para 1.11 - It is agreed there are no objections to the proposal (subject to planning conditions in some instances), other than a policy objection.

Planning Policy Context

6.0 The appellant is correct in 1.14 in that the Local Plan was adopted part way through the determination process and the application was determined against policies in the new adopted Barnsley Local Plan.

6.1 The Government is clear in the NPPF para 47 that "Planning Law requires that applications for planning permission be determined in accordance

with the development plan, unless material considerations indicate otherwise”. Where a proposal is not in accordance with the development plan (and there are no material considerations), it should be refused. The Council is of the opinion that the proposal is not in accordance with policies in the Local Plan, no material considerations have been provided to justify departing from the Local Plan policies and therefore the application was refused.

Draft Statement of Common Ground

7.1 Paras 1.15 to 1.18 suggest that the appellants were seeking to agree to reduce the areas of disagreement between the two parties in matters of interpretation of the Councils Local Plan policies which were adopted in January 2019. The appellant appears to suggest the Council is not willing to focus the appeal on principal issues because the Council did not respond to a letter from the applicant of 18th April 2019. It was felt that as the Council’s interpretation of the relevant policies had been explained to the appellants agent on a number of occasions and was summarised in the officer report, the Council considered that the submissions did not change our interpretation of the policy position and so the Council did not consider that our actions can be considered unreasonable.

7.2 However, 18th April 2019 letter was issued after the refusal of planning permission, but before an appeal was lodged. Nothing in the letter suggests that it is seeking to reduce the areas of disagreement to produce a statement of common ground. Instead, it appeared to be a continuation of the many lengthy exchanges between the Council and the appellant which took place both during and after the determination of the application which sought to clarify the interpretation of the policies which are referred to in the reasons for refusal (correspondence between the Council and appellants agent is at Appendix 4).

7.3 A draft Statement of Common Ground should have been submitted to the Local Planning Authority with the appellants appeal documents as required by the Planning Appeals Procedural Guide dated 19th March

2019 (E3.3 on page 32 and table on page 35). However, a first draft was not received by the LPA until 1st August 2019, following reminders to the appellants agent. The Statement of Common Ground is dealt with separately.

Reasons For Refusal

8.0 The appellant notes in Paras 2.1 to 2.3 that following the refusal on 11th February 2019, the appellant wrote to the Council five weeks later on 18th March 2019 requesting the Council to amend the reasons for refusal. However, once made, a decision notice cannot be amended and in a letter to the appellant on 16th April the Council's solicitor confirmed that the reasons for refusal were valid. As with the later 18th April letter (above), the appellant appears again to suggest the Council is not willing to focus on appeal issues, despite the fact that the 18th March letter was sent to the Council before an appeal was lodged. Nothing in the letter suggests that the appellant is seeking to reduce the areas of disagreement in order to produce a statement of common ground.

Issues For The Appeal

- 9.1 It is the Council's case that the proposal does not comply with Local Plan Policy TC4 and therefore Local Plan Policy TC1 also applies.
- 9.2 Conversely, if the proposal complied with Policy TC4 then Policy TC1 would not apply. As such, to agree with the appellants case, the general must give way to the specific, but the Council is of the clear opinion that the proposal is in conflict with Policy TC4 and it is (therefore), also in conflict with Policy TC1
- 9.3 Therefore it is appropriate to address the second reason for refusal first, since this deals with the specific Policy TC4.

Reason for Refusal 2 – Policy TC4 Retail Parks

- 9.4 The appeal site is one of only two retail parks within the Barnsley Borough. The policy designation reflects the longstanding requirement to meet a

need for retail warehousing, which cannot be accommodated in the town or district centres of the Borough. Accordingly, the retail parks are allocated but not included in the hierarchy of centres set out in Local Plan Policy TC1.

- 9.5 The new Local Plan includes a Policy TC4 which identifies two retail parks in the borough (one of which is the Peel Centre) where retail warehouses will be allowed. It introduces a new test (that did not exist in the now superseded Unitary Development Plan policies and Core Strategy policies) that 'Uses other than retail warehouses will be allowed where the role, character and function of the retail park will not be adversely affected'. It goes on to state that 'Except where justified, planning permission on these retail parks will be subject to conditions to limit:

- The minimum size of units to at least 920 square metres gross; and
- The type of goods which can be sold from the units to bulky comparison goods'

The policy states that any uses other than retail warehouses will be allowed where the role, character and function of the retail park will not be adversely affected.

All existing buildings in the Retail Park are over 920sqm in size (Table at Appendix 5), other than a separate Pizza Hut building of approximately 430sqm (gross), granted in March 2004 under the Unitary Development Plan(adopted 2000) policies, as compared to the proposed unit of 167 GIA (approx. 170sqm gross).

- 9.6 At paragraph 2.14 the appellant submits case law that the Council should not expect the appellant to undertake forensic archaeology in order to understand the meaning of the policy. It appears that this argument is put forward in response to the Council's case, made during the course of the determination of the application, that our interpretation of the policy was supported by the words of the Inspector in her report on the Examination of Barnsley Local Plan. These have been quoted to the applicants during the determination of the application and an extract from the Local Plan

Inspectors report is attached at Appendix 6. In any event, given the appellants involvement in the examination hearings into the retail policies of the Local Plan, and in particular Policy TC4, the Council was confident that the appellant would be already familiar with the content of the Examination Report. Referring the appellant to a document they were already fully aware of does not constitute an invitation to undertake forensic archaeology. It simply enabled the Council to demonstrate that its interpretation of Policy TC4 was reasonable. The Inspector introduces the modification to the submitted Policy TC4 stating '*Consents have been granted to relax planning conditions which restrict the range of goods sold from some units, resulting in a wider range of goods than just bulky goods being sold at both retail parks. Consequently MM93 is necessary to set out how such proposals would be assessed and to clarify the minimum size of any new units permitted*'.

- 9.7 The Councils clear position, which it is argued, is supported by the Examination Inspector in her introduction of the modification to Policy TC4, is that the intention of the policy is to allow the continued operation of retail warehouses on the retail parks and to allow new retail warehouses to be built on them. The policy goes on to allow uses other than retail warehouses where the role, character and function of the retail park will not be adversely affected. What it does not do is allow new buildings which are not retail warehouses. The policy concludes by indicating the minimum size threshold of the units, and limitation on sale of goods that will be imposed by conditions on planning permissions on the retail parks except where justified. It is submitted that it cannot be concluded that a retail unit, which at 167sq m and which is therefore a significant departure from the minimum size threshold, and which is a town centre use, can be justified on a retail park and no such justification has been received. The provisions of the policy set out how proposals resulting in a wider range of goods than just bulky goods would be assessed. Such proposals would allow the flow of uses on the site from bulky goods to non bulky goods and back again as the market dictates (and subject to planning permission). But the appellants proposal is to create a unit that by virtue of its small

size can never be used for the sale bulky goods and it therefore at odds with the policy.

9.8 As such the Council fundamentally disagrees with the appellants conclusion at para 2.19 that the policy applies to 'retail warehouses only, not units for other uses'. The policy allows retail warehouses to be built. It allows for consideration of the change of use of retail warehouses to uses 'other than retail warehouses'. It does not allow the construction of a building that is not, and by virtue of its limited size and design could not meet any requirement of or comprise, a retail warehouse.

9.9 The intention of the policy is also to prevent the development of new retail units which are below a minimum size or extend the range of goods to be sold beyond bulky comparison goods except where justified , to quote, and emphasise, the wording of the policy. The size of the proposed unit falls well below the minimum size threshold and no such justification has been provided.

9.10 Even if it were concluded that the principle of a new retail unit of this limited site might be justified, the appellants case is not persuasive as it does not adequately address the circumstances at the retail park.

9.11 There has been a shift in the policy position since the significant relaxation of the conditions restricting the sale of goods at the Peel Centre granted in October 2016. At that time, the Unitary Development Plan policies S3 and S5, which were old but not out of date, directed retail development towards defined centres (including the Peel Centre) and stated that retail development which would create a new shopping unit/s in excess of 930m2 outside of the central or principle shopping centres, would be subject to planning conditions to control the range and type of goods to be sold, and the maximum or minimum unit size as measured by gross floor area. Accordingly , the relaxation of conditions applications which were granted in October 2016 were supported by a retail impact assessment and a sequential test, but provided the proposals met or passed these tests, there would be no retail policy objection. The conditions attached to the permissions set out a carefully crafted limitation on the implementation

of the permissions, linked to progress on the town centre redevelopment in order to avoid adverse impact on the town centre vitality and viability.

9.12 The conditions include the limitation that the permission does not come into effect until either the expiry of the period of five years from the date of the permission (permission was granted on 3 October 2016) or the date of the occurrence of one of two circumstances which include: a period of two year having expired since the date of the permission without agreements for lease having been exchanged, or leases entered into, relating to two or more of the six anchor units on the proposed Better Barnsley redevelopment scheme (now the Glassworks).

9.13 As one such agreement for lease has been exchanged, accordingly it appears that there is no limitation on those permission being implemented.

The assessment of the impact on the role, character and function of the Peel Centre Retail Park must therefore consider not just the existing role character and function of the Peel Centre Retail Park but also the role, character and function according to the extant planning permissions.

9.14 As will be seen from the decision notices attached at Appendix 1, in addition to the existing restaurant, leisure/sports good retail and Subway sandwich shop, there are significant consents for retail sale of food and drink across the units on the retail park. All of these permissions were granted under the previous two development plans and under different economic circumstances, as illustrated in Para 9.12 above. While it was the case made by the appellants at the time that those planning applications were determined that the existing leases would continue to have effect, be renewable by right and not be expected to be changed 'overnight' (see page 10 of the Planning Regulatory Board report into the applications attached at Appendix 3) those consents remain as a significant relaxation to the retail sale of goods on the retail park.

9.15 The NPPF states that applications must be determined in accordance with the development plan. The new Local Plan adopted during consideration of the appeal application introduced new policy requirements in relation to Town Centre and Retail Parks in Local Plan Policies TC1 and TC4.

However, the appellants submissions during the course of the determination of the appeal application and in their Hearing Statement do not address the relaxations allowed for in the extant planning permissions and do not adequately address the future (permitted) role, character and function of the site which needs to be addressed as part of the analysis of the effect of Local Plan Policy TC4. The cumulative effect of the extant permission for a further retail warehouse; of the old planning permissions to amend the conditions restricting goods which may be sold on the site; and of the current proposal must be considered. Since there are already significant consents for retail sale of food and drink across the units on the retail, it is considered that any further material impact on the role, character and function of the retail park would be likely to result in a situation where the 'role, character and function' of the site was predominantly not that of a retail park.

9.16 The applicants states at para 3.6c that the site is 79% retail operations. As set out above, the permitted character of the retail park has already been allowed substantial relaxation in the past. To argue, as the appellant does that on the basis of the current operators on the site (and making the assumption that vacant units would not utilise the relaxation of conditions), and the proposal amounting to only 1.2% of the total ground floor floorspace is to miss the point that the retail park has already had a substantial amount of non-bulky goods, food and drink, and leisure permissions and the cumulative effect of extant permissions and the appeal proposal would be to adversely affect the role, character and function of the retail park.

9.17 The suggestion at para 3.8d that the proposal is a complementary supporting use is to adopt the language used in relation to Planning Practice Guidance for town centres, where the emphasis is to support the vitality and viability of the centre (at NPPG para 001 Reference ID:2b-001-2019 0722 Attached at Appendix 7). There is no such guidance for retail parks and the risk of adopting such an approach of promoting complementary uses on retail parks would be to see the development of a retail offer that would compete with the town centre – whereas the retail

park allocation and policy are intended to meet a need for retail warehouses that cannot be met within the town centre.

9.18 Even if there were merit in supporting complementary supporting uses on the retail park, it is noted that the proposed café and drive through with 24 hour opening does not appear to be designed to serve users of the retail park as the majority of occupiers have only daytime opening times despite there being no planning restrictions on opening hours on the retail park. In addition, a drive through does not require a customer to get out of the car for service, and indeed encourages customers to remain in their cars. This compares to coffee sales in one of the units like eg Subway, which is designed to meet the needs of users of the Retail Park who will walk between the retail warehouses. This Subway business, opened in February 2019 and is within Unit 1 and granted permission under the previous development plan policies, reference 2015/0988. It advertises opening hours of 6am to 9pm, except on a Sunday when 9-5 despite the lack of opening restrictions in the planning permission.

9.19 The appellants submission from para 3.14 onwards addresses whether the proposal will adversely affect the role, character and function of the retail park. For the reasons set out above the Council takes the view that Policy TC4 does not allow the construction of a building that is not, and by virtue of its limited size and design could not meet any requirement of or comprise, a retail warehouse.

9.20 However even if it were accepted that Policy TC4 allows the construction of a new building of 167sq m that is not capable of comprising a retail warehouse, the Council further takes the view that the impact of the proposal on the role, character and function of the retail park must be understood in relation to the cumulative effect of the extant permission on the site. This is set out above and it is concluded that given the significant relaxations to bulky goods restrictions that have already been granted on the retail park, the cumulative effect of those permissions and the appeal proposal would be to result in an adverse effect on the role, character and function of the retail park.

9.21 The appellants appear to advance the case that provided the retail warehouses are in use for the retail sale of any goods, they are consistent with the primary purpose of a retail park comprising a collection of retail warehouses. The Council takes the view that the primary purpose of the retail park is the retail sale of bulky goods in retail warehouses. Both the current operation of the retail park and the permitted operation of the retail park subject to the extant permissions for relaxation of conditions establish a role, character and function that is only just, but predominantly, that of a retail park of retail warehouses selling bulky goods. The role, character and function also allow for the free flow of retail sales from bulky goods to the relaxed restriction on the sale of goods and back again. The grant of planning permission for a unit that cannot be operated as a retail warehouse is at odds with the role, character and function of the retail park, because of the extent of relaxations that have already been granted prior to the adoption of the Local Plan in January of this year.

9.22 Finally it is concluded that the undoubted economic benefits of allowing the appeal proposal would not outweigh the strong policy objection.

Reason for Refusal 1 – Policy TC1 Town Centres

9.23 It is the Council's position that, if a proposal does not meet the requirements of this Policy TC4 then the proposal must address the requirements of Policy TC1, which amongst other things establishes a sequential approach reflecting national policy in the NPPF – para 86 '*Local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre not in accordance with an up-to-date plan*'. Policy TC1 establishes a hierarchy of centres with Barnsley Town Centre at the top. The hierarchy does not include the Peel Centre. The policy also states that 'A sequential approach will be used to assess proposals for new retail and town centre development....out of centre development will only be allowed where it meets the requirements of the NPPF'. Accordingly, since it is the Council's case that the appeal proposal does not meet the requirements of Policy

TC4 it cannot be said to be 'in accordance with an up-to-date plan' and a sequential assessment should be applied.

9.24 The appellants were repeatedly invited to submit a sequential assessment but continued to assert their case that there was no conflict with Policy TC4 and therefore there was also no policy conflict with Policy TC1. The appellants therefore concluded that a sequential test was not required and none was submitted. The Council have consistently argued that the evidence submitted by the appellants does not adequately address the requirements of Policy TC4 and there is therefore a conflict with that policy and also with Policy TC1.

9.25 In response to Reason for Refusal 1 – Policy TC1 – Town Centres, the appellant states at para 2.7 'it is clear that...if the proposal complies with the permissive wording of (Policy TC4), then Policy TC1 (Town Centres) does not apply'. The Council are in complete agreement with this statement. The crux of the issue between us is that the Council takes the view that the proposal does not comply with Policy TC4 and therefore Policy TC1 also applies. The Council cannot agree, as the appellant states at para 2.11 that 'the logical outcome of their position is that TC1 would in that case (being the appellants case that the proposal is compliant with Policy TC4) fall away' as there is no such agreed case that the proposal is compliant with Policy TC4.

Sustainable Development

10.1 Para 8. Of the NPPF discusses what constitutes sustainable development. Achieving sustainable development means that the planning system has 3 overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):

- **an economic objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth,

innovation and improved productivity; and by identifying and coordinating the provision of infrastructure

- **a social objective** – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and
- **an environmental objective** – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

10.2 In considering an economic objective, whilst the proposal would result in investment in the retail park and limited employment, there would be less parking spaces in the retail park; and also risk weakening the town centre offer by making the out of town location more attractive. No evidence has been provided that the proposal would result in linked visits to the town centre (or that those visits would be on foot), or that users of the drive thru café would use the retail park for shopping. There is no evidence that this town centre use would be any less successful located in the Town Centre, as there is currently only one other national coffee chain within Barnsley Town Centre. Furthermore, the size of the unit is not sufficient to sell bulky goods and is more likely therefore to be used for uses more suited to town centre uses. This could have an impact on the vitality and viability of the town centre. On balance, in the opinion of the LPA the proposal would have a negative impact on the economic objective.

10.3 In considering the social objective, the proposal for a town centre use in an out of town retail park would weaken the efforts to achieve a strong, vibrant town centre for Barnsley. It would not be easily accessible by foot and as a drive thru would also encourage users to visit by cars rather than by foot or by cycle, it would therefore do little to encourage healthy

communities and on balance would have a negative impact on the social objective.

- 10.4 In considering the environmental objective, the site is already developed and would not have any additional impact on the built environment and biodiversity of the site. However, as a drive thru located outside the town centre, it is likely that the majority of users would use the car to access the site and then queue with idling engines whilst waiting to be served. As a result it is likely that there would be an environmental impact in terms of emissions and an increase in the amount of waste through disposable cups etc.as compared to a town centre site. Overall then there is likely to be a slight negative environmental impact as a result of the proposal.

Conclusion

- 11.1 The Local Planning Authority considers that the proposal for a detached small drive thru' cafe of 167sqm GIA (approximately170sqm gross) is not in accordance with the development plan. It is accepted that there have been several permissions granted under the previous two development plans which have relaxed the uses of the buildings in the retail park in terms of goods to be sold, but the ability of the buildings to function as bulky comparison goods sales and retail warehouses remains intact (subject to planning permissions where necessary). Only one permission was granted for a smaller building than 920sqm which could not function as a bulky comparison goods retail unit (Pizza Hut 2004).

- 11.2 Since these permissions were granted a new Local Plan has been adopted, which introduces a new test in Policy TC4 that proposals for uses other than retail warehouses should demonstrate that "the role, character and function of the retail park will not be adversely affected". In the opinion of the LPA this has not been demonstrated.

- 11.3 The policy goes on to indicate that except where justified, planning permission on these retail parks will be subject to conditions to restrict the

size of units to 920sqm to allow functionality as a bulky goods comparison unit and to limit the type foods sold to bulky comparison goods. In the opinion of the LPA, the proposal has not justified why this policy requirement should not be applied.

11.4 Policy TC1 establishes a hierarchy of centres with Barnsley Town Centre at the top. The hierarchy does not include the Peel Centre. The policy also states that 'A sequential approach will be used to assess proposals for new retail and town centre development...out of centre development will only be allowed where it meets the requirements of the NPPF'.

Accordingly, since it is the Council's case that the appeal proposal does not meet the requirements of Policy TC4 it cannot be said to be 'in accordance with an up-to-date plan' and a sequential assessment should be applied. As no sequential test has been submitted, the proposal does not accord with the development plan in terms of Local Plan Policy TC1.

11.5 Although it is recognised that the proposal would result in investment and a limited number of employment opportunities, both of which weigh in favour of the proposal, the Local Planning Authority considers that these limited benefits do not outweigh the harm caused to the character and function of the retail park due to the proposed building not meeting minimum size requirements for buildings on the retail park, meaning that it could not function as a bulky goods retail warehouse and that the drive thru nature would not encourage customers to visit other units in the retail park, and would not encourage sustainable transport, or encourage visits to the other retail offer in the retail park.

11.6 The LPA further considers that potential harm may be caused to the vitality and viability of Barnsley Town Centre by a town centre use being located outside the town centre. No justification or material considerations have been demonstrated which justify departing from the development plan policies or which would outweigh these concerns. The Local Planning Authority concludes therefore that the harm caused by the proposal would significantly and demonstrably outweigh the benefits and for the reasons set out in the Officer Report, the decision notice, and the

comments set out above, the Local Planning Authority respectfully requests the Inspector to dismiss the appeal.

Appendix 4
Inspectors Report for appeal (reference:
APP/R4408/W/19/3228051)



Appeal Decision

Hearing Held on 4 September 2019

Site visit made on 4 September 2019

by K Savage BA MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 October 2019

Appeal Ref: APP/R4408/W/19/3228051

Peel Centre, Harborough Hill Road, Barnsley S71 1JE

- 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 Peel Property (Investments) Limited against the decision of Barnsley Metropolitan Borough Council.
 - The application Ref 2018/1308, dated 11 October 2018, was refused by notice dated 11 February 2019.
 - The development proposed is erection of Use Class A3/A5 drive-thru unit measuring 167 sqm and associated physical works to site layout .
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Decision

1. The appeal is allowed and planning permission is granted for erection of Use Class A3/A5 drive-thru unit measuring 167 sqm and associated physical works to site layout, at Peel Centre, Harborough Hill Road, Barnsley S71 1JE, in accordance with the terms of the application Ref 2018/1308, dated 11 October 2018, and subject to the conditions in the attached schedule.

Procedural Matter

2. At the start of the Hearing, there was uncertainty as to whether the Council had correctly notified relevant parties of the time, date and venue of the Hearing. However, it was clarified that as no party had responded to the Council's letter of notification of the appeal, there were no parties to address the subsequent letter to. Given that no representations were received at either the application or appeal stage, I am satisfied that no one was prejudiced by this nor would anyone be prejudiced by my proceeding to make a decision on the appeal.

Main Issues

3. The main issues in this case are the effect of the proposal on:
 - the role, character and function of the Peel Centre Retail Park and;
 - the vitality and viability of Barnsley Town Centre.

Reasons

Policy context

4. The development plan for the area is the Barnsley Local Plan (adopted 3 January 2019) (the Local Plan) which was adopted during the course of the

application, replacing the remaining saved policies from the Unitary Development Plan (adopted 2000) and the Core Strategy (adopted 2011).

5. Two Local Plan policies are relevant to the appeal, these being TC1 and TC4. Policy TC1 sets out the hierarchy of town, district and local centres within the Borough and that a sequential approach will be used to assess proposals for new retail and town centre development to achieve the spatial strategy for the Borough. Edge-of-centre and out-of-centre development will only be allowed where it meets requirements of the National Planning Policy Framework (the Framework).
6. Policy TC4 relates specifically to retail parks and therefore applies to the appeal site. It permits retail warehousing and 'uses other than retail warehousing [...] where the role, character and function of the retail park will not be adversely affected.' The policy goes on to state that except where justified, planning permission on these retail parks will be subject to conditions to limit the minimum size of units to 920 square metres (sqm), and the type of goods sold to bulky comparison goods.

Role, character and function of the retail park

7. The Peel Centre is a retail park containing some 9 large format retail warehousing units, 2 of which are subdivided making a total of 13 units, and a large surface car park. The tenants include several national retailers. Recently, a relaxation of planning conditions limiting the type of retail permitted on the site has brought in non-bulky goods and food retailers including The Food Warehouse and Quality Save. A gym operates from one of the units and there are also two food and drink facilities consisting of a Subway sandwich shop and a Pizza Hut restaurant. It is common ground that the proposal is in an out-of-centre location. The proposal would see a standalone unit within the A3/A5 use classes erected on part of the car park, offering drive-thru facilities. The prospective occupant is the multi-national coffee chain, Starbucks.
8. The Council argues that the proposal would not accord with policy TC4 as it would create a unit of less than 920 sqm and it would adversely affect the role, character and function of the retail park. However, the supporting text to the policy, at Paragraph 15.30, states that planning permission for retail warehousing (my emphasis) will be subject to conditions to control the character of the development, the size of individual units and the range and type of goods sold. The reason given for this is that otherwise there is potential for a wider range of comparison goods to be sold which may negatively affect the vitality and viability of defined centres.
9. I have had regard to the evidence put to me, including the comments of the Inspector who conducted the examination of the Local Plan. However, it is an established principle that policies should be interpreted objectively in accordance with the language used and read in their proper context. It is clear to me, on a plain reading of the policy, that the conditions listed in the two bullet points are applicable to permissions for retail warehousing. This is evident from the restriction on the type of goods to be sold, which can only logically apply to proposals for retail warehousing, and not food and drink uses such as in the present proposal. Moreover, applying a minimum threshold of 920 sqm to non-retail warehousing uses would be perverse if the overall aim of the policy is to ensure the primary function remains as retail warehousing as it would result in unnecessary loss or a reduced percentage of retail space.

10. At the Hearing, discussion focused on the second sentence of the policy, which states: 'Uses other than retail warehousing will be allowed where the role, character and function of the retail park will not be adversely affected.' The Council argues that this sentence permits *changes of use* to other than retail warehousing within existing buildings, but not such uses within new buildings. However, there is nothing explicit either in the policy itself or the supporting text which supports this position. In simple terms, the proposal, being for a food and drink use, would fall within 'uses other than retail warehouses', and so would be supported by Policy TC4 subject to it not adversely affecting the role, character and function of the retail park.
11. The appellant advances that the proposal would form a complimentary use to the retail park, serving the needs of customers already visiting the Peel Centre. In support of this, the appellant relies on a survey from 2012 where 50% of respondents were positive towards the provision of additional food and drink facilities at the retail park. Whilst this evidence is limited and somewhat dated, it is reasonable to consider that the presence of an additional food and drink option within the retail park may draw additional customers and increase footfall to the other units.
12. The Council acknowledges that it has relaxed conditions originally imposed when the retail park was permitted, to allow non-food retail use with up to 30% of floorspace for food retail use. In my view, this represents an acceptance by the Council that such an alteration to the nature of the uses at the retail park would not adversely affect its role, character and function. Nevertheless, the Council argues that the proposal would have an adverse effect by introducing further non-retail warehousing use, in a unit of a size which would never be able to accommodate retail warehousing. However, the proposed use would not result in the loss of any retail warehousing space, nor would it impede or undermine the operation of any existing retail unit. Whilst there would be some loss of car parking, it has not been argued that this would harm the functioning of the retail park. Having seen the extent of parking available, I am satisfied no harm would arise in this respect.
13. Given that the extant planning permissions could see sizeable parts of one or more of the existing units given over to food retail, I see no tangible difference to the overall role, character and function of the retail park in having a food and drink use, albeit one with seating areas and a drive thru, located in a standalone building as opposed to inside an existing building. In terms of cumulative impact, at 167 sqm, the proposal would increase the total floorspace of the retail park by just over 1%, whilst the percentage of floorspace occupied by food and drink uses would increase from 3.5% to 4.7% (429 sqm to 596 sqm). This amount of development would be insignificant in the overall context of the retail park, and would have a very limited effect on its overall role, character and function.
14. Moreover, I saw and heard evidence of recent vacancies at the retail park following the closures nationwide of Maplin, Poundworld and Bathstore and that the appellant has a commercial need to ensure the vitality of the retail park. I recognise that such large closures have become more common in recent years, and provides some context for the Council's relaxation of the conditions to encourage new tenants and increase business. The presence of several vacant units, which I was told have been unoccupied for between 2 and 18 months with limited interest even with the added flexibility of the conditions, has a

more significant effect on the role, character and function of the retail park than would the much smaller proposed A3/A5 unit. Though not conclusive, I concur with the appellant that the additional draw of a café on the retail park may have a positive effect in attracting new retailers to the vacant units which would add to the overall vitality and viability of the retail park.

15. For the above reasons, I conclude that the proposed A3/A5 use would be an acceptable use in the retail park and would not harm its role, character or function and so would accord with Policy TC4 of the Local Plan.

Vitality and viability of Barnsley Town Centre

16. It is common ground between the main parties that Policy TC4, being a specific policy for retail parks, is of greater relevance to the proposal than the more general strategy for locating town centre uses as outlined in Policy TC1. The parties agree that in the case of the proposal complying with Policy TC4, it would not fall to be further assessed against Policy TC1. Whilst I acknowledge the parties' agreement on this, Policy TC1 is nevertheless part of the development plan and it is therefore necessary for me to consider the effect of the proposal on the vitality and viability of the town centre, both as set out in Policy TC1 and having regard to the Framework which requires local planning authorities to apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan.
17. In terms of the requirement for a sequential test, the appellant argues that the appeal site is 'locationally specific' in that it would meet the need for a complementary food and drink offer on the retail park, and being a drive thru, it is unsuited to a town centre location. However, drive thru restaurants are specifically listed as being main town centre uses in the glossary to the Framework, though I recognise that given the appellant's aim of adding to the offer on the retail park specifically, other locations would not achieve this. That said, the appellant's evidence of a specific need for a food and drink facility in this location is limited.
18. However, the Council has not identified any other sites which it considers would be sequentially preferable for the proposal, but nevertheless argues that the lack of a sequential test would lead to 'limited harm' to the vitality and viability of the town centre. Upon questioning the Council did not provide substantive evidence of what form this harm would take. The retail impact of the retail park on the town centre would no doubt have occurred when it opened, and has been considered again recently through the applications to relax the conditions. As such, the retail park already has a role and influence in terms of the retail offer in the town and commands a certain draw of customers to retailers which are often found outside the town centre due to the size requirements of their premises selling bulky goods or requiring parking. In this respect, I consider that in this case it is reasonable to take the view that the retail park offers a different form of retail offer to the town centre and that the two are not therefore in direct competition.
19. The above was apparent when I walked from the town centre to the appeal site and saw that it is not readily accessible on foot due to the indirect and hilly route which has to be followed including crossing a busy dual carriageway. Such factors mean that the retail park is likely to be mainly accessed by people driving in private motor vehicles, and is unlikely to draw large numbers of

pedestrians from the town centre. The proposal would, however, appeal to those already intent on visiting the retail park or other edge-of-centre or out-of-centre locations by private motor vehicle, which offers some basis for the inclusion of a drive thru facility. Therefore, whilst some evidence of linked trips between the retail park and town centre was put to me, my observations lead me to consider that the retail park is sufficiently distant from the town centre and its offer is not a direct threat to its vitality and viability. Given its location and scale, the A3/A5 unit would not add so significantly to the retail park offer that substantial numbers of people would be drawn away from the town centre.

20. The above view was reinforced during a walk through the town centre, which I saw was busy and vibrant with few vacant units visible and a number of cafés. In addition, I saw the significant 'Glassworks' re-development taking place in the centre, which when complete would offer considerable new food, leisure and retail facilities. I saw the indoor market forming part of this development was already complete and open, including café outlets. My impression, therefore, was of a healthy town centre which stands to improve further in the near future.
21. Whilst the Council raises concerns that the retail park could, over time, evolve to compete with the town centre as a result of proposals such as that before me, there is little to suggest this is a realistic prospect, given their relative scales, the much broader offer in the town centre, and the locational, physical and conditional limitations of the retail park. In any event, I have determined this appeal on its individual planning merits and taking into account the circumstances that exist now.
22. Given the above factors, I find that the proposed A3/A5 unit would not be of a scale whereby it would cause any significant harm to the vitality and viability of the town centre.
23. Therefore, and notwithstanding the absence of a detailed sequential test, I conclude that the proposal would accord with the town centre vitality and viability aims of Policy TC1 of the Local Plan and the Framework.

Other Matters

24. No objection is raised by the Council to the design, layout, highway impacts or effect on living conditions of nearby occupants, and nothing I heard at the Hearing leads me to different views on any of these issues.

Conditions

25. In addition to the standard three year time limit condition, a condition specifying the approved plans is necessary to provide certainty. A condition requiring provision of appropriate broadband facilities is necessary to meet the Local Plan requirement for development to be supported by suitable infrastructure.
26. Conditions for completion of parking and manoeuvring facilities and submission and adherence to a servicing management plan are necessary in the interests of highway safety, whilst a condition for the provision of cycle bays and electric vehicle charging points is necessary to promote sustainable transport.
27. A condition is also necessary to require the building to achieve sustainable design and construction standards in order to minimise resource and energy

consumption. This condition is pre-commencement as a later trigger would negate the possibility of sustainable construction methods being incorporated into the development. That the condition is pre-commencement has been agreed by the appellant.

Conclusion

28. For the reasons given, and taking all relevant matters into consideration, the proposal would accord with the development plan taken as a whole and other material considerations do not indicate a decision should be taken at variance with this. I conclude that the appeal should be allowed.

K Savage

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby approved shall be carried out strictly in accordance with the following plans and specifications as approved unless required by any other conditions in this permission: MH1124-01 REV A Site Location Plan; MH1124-02 REV A Existing Site Plan; MH1124-03 REV B Proposed Site Plan; MH1124-04 REV B Proposed ground floor plan and elevations; MH1124 Proposed External Materials.
- 3) The parking/manoeuvring facilities, indicated on the approved plans, shall be surfaced in a solid bound material (i.e. not loose chippings) and made available for the manoeuvring and parking of motor vehicles prior to the development being brought into use, and shall be retained for that sole purpose at all times.
- 4) Prior to the development being brought into use details of measures to facilitate the provision of an appropriate broadband service for the development hereby permitted, including a timescale for implementation, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 5) Prior to occupation of the development, 8 no. cycle bays and 2 no. electric vehicle charging points shall be provided as set out in Section 3.2 of the Transport Statement by Traffic, Transport and Highway Consultancy, dated September 2018. Thereafter the sustainable transport facilities shall be retained for the duration of the development.
- 6) Prior to the commencement of the development, a preliminary assessment of the buildings BREEAM rating shall be submitted for approval in writing to the Local Planning Authority. The assessment shall:
 - a) Identify what measures shall be used to achieve BREEAM standard of 'very good' or equivalent;
 - b) Where the BREEAM standard of 'very good' or equivalent standard cannot reasonably be achieved the assessment shall justify why not; and
 - c) Shall identify what standard shall be achieved.

Upon completion of the development, a certificate shall be provided to the Local Planning Authority demonstrating that the agreed standard has been achieved and the measures provided to achieve the standard shall be retained as operational thereafter.
- 7) The development shall not be brought into use until a servicing management plan has been submitted to and approved in writing by the Local Planning Authority. Once approved it shall be strictly adhered to at all times. The plan shall include for the management of all delivery vehicles, customers vehicles, pedestrians, and the use of banksmen if deemed necessary, and shall provide a regular monitoring regime and a system for identifying and correcting any issues.

APPEARANCES

For the appellant:

Paul Tucker QC	of King's Chambers, instructed by Savills Planning
Gareth Finch	Peel
Peter Whittingham	Savills
Roger Wheeldon	Retail Development Director, Peel
Leah Taylor	Development Manager, Peel

For the Local Planning Authority:

Elaine Ward	Senior Planning Officer
Helen Willows	Planning Officer
Matthew Sorby	Graduate Planner (Observing)

DOCUMENTS SUBMITTED AT THE HEARING

1. Copy of Council's letter of notification of time, date and venue of the appeal (dated 19 August 2019)

DOCUMENTS SUBMITTED FOLLOWING THE HEARING

1. Copy of conditions agreed between the main parties

