
Sequential Test 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**

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1. Introduction

Introduction

- 1.1. This Sequential Test Statement has been prepared by Savills (UK) Limited on behalf of Peel Property (Investments) Limited in respect of a planning application at Units 3B and 3C of the Peel Centre in Barnsley (the 'site').
- 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 relevant planning history is set out within the Planning, Retail and Economic Statement that is also provided with the application. Paragraphs 2.19 – 2.21 confirm that up to 921 sq.m of the net sales area of Units 3B and 3C could already be used for the sale of food under the terms of permission 2015/0987. Paragraphs 2.19 – 2.21 are reproduced in full in the following 3 paragraphs for ease of reference.
- 1.4. 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

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- 1.5. 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 minus 242).
- 1.6. Of the 1,394 sq.m floating quantum, 801 sq.m is currently therefore unused. In addition to this, unit 3C within 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 (801 plus 120).
- 1.7. There is therefore both an established 'fall-back' for the sale of food from the application site and the Peel Centre is an established location for food retailing operations that have been supported by the Local Planning Authority ('LPA'). The proposal only seeks permission to increase the available 921 sq.m of floorspace for the sale of food and drink by 253 sq. m to 1,174 sq.m. This is a *de minimus* increase in additional floorspace for food and drink sales that does not raise any material land use considerations above those already considered to be acceptable by the LPA.
- 1.8. It follows that there is an established 'fall-back' that supports the grant of permission. That case is further supported by the proposal not introducing a land-use operation (i.e. food and drink retailing) into the Peel Centre that cannot already be undertaken at the site or has not already been supported by the LPA (i.e. by the existence of food and drink retailing operations at the site). Further details of the proposed development are provided in Section 3 of the Planning, Retail and Economic Statement.
- 1.9. The Council was briefed at the pre-application stage on the proposed closure of the existing M&S store at Queens Road in the town centre, and the opening of a new M&S store at the Peel Centre. As M&S explained, the decision to close their existing store follows a national portfolio review in accordance with national estate management strategy. However, M&S remain committed to Barnsley, and that commitment provides the context for the planning application. The Peel Centre is a well-established location for the sale of food and is therefore an appropriate location for M&S to open a new store.

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- 1.10. 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.
- 1.11. This Statement provides a robust application of the sequential test in order to support the LPA's determination of the application. It accompanies a suite of technical documents provided with the application.
- 1.12. A sequential test is required when a proposal for a 'main town centre use' such as retail floorspace is proposed in an edge or out-of-centre location. The purpose of the sequential test is to assess whether there are any suitable sites within or on the edge of town centres that are available for a proposal. If there are no suitable sites available within or at the edge of town centres then preference should be given to accessible sites that are well connected to a town centre.
- 1.13. The Peel Centre is in an out of centre location and therefore the sequential test applies. The notion of edge of centre locations is that they are with easy walking distance and well-connected to town centres. Despite not technically being edge-of-centre in national planning policy terms, the Peel Centre is well connected to Barnsley town centre and offers good quality linkage opportunities, including on foot. It is by some distance the closest retail warehouse location to Barnsley town centre; via the adjacent Gyratory, routes such as Old Mill Lane connect the town centre with the application site. It is situated only around 500m from the Primary Shopping Area and railway station, a walking distance of 900m.
- 1.14. 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'*.
- 1.15. The site is therefore to be preferred when it comes to considering out of centre locations and in reality

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functions as an edge of centre location given its high levels of connectivity and accessibility to Barnsley town centre.

1.16. This Statement applies the sequential test and demonstrates that it is satisfied and there are no grounds to not support the application under its terms.

1.17. It is important to note that the sequential test is one of two policies used to assess main town centre use proposals. The other being the impact assessment. As confirmed in the Planning, Retail and Economic Statement, the impact assessment does not apply to the proposal as it falls below the threshold in the development plan and National Planning Policy Framework ('NPPF').

Structure of this Statement

1.18. In order to comprehensively apply the sequential test, the remaining sections of this Statement are structured as follows:

- **Section 2** Relevant Planning Policy, Case Law and Appeal Decisions
- **Section 3** Satisfying the Sequential Test
- **Section 4** Conclusion

2. Relevant Planning Policy, Case Law and Appeal Decisions

Planning Policy

- 2.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires LPAs to determine planning applications in accordance with the policies of the development plan unless material considerations indicate otherwise.
- 2.2. 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 Planning Practice Guidance ('PPG') are material considerations. The NPPF is the Government's national planning policies that development plans are supposed to accord with and PPG sets out how policies within the NPPF should be applied in practice.

The Development Plan

- 2.3. The Barnsley Local Plan was adopted in January 2019. The relevant policy relating to the sequential test is Policy TC1, which states:

'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.'

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- 2.4. Retail parks such as the Peel Centre form part of the spatial strategy for retailing in Barnsley. This is confirmed by Policy TC4 of the Local Plan, which confirms that 'retail warehouses' will be allowed at the retail parks.
- 2.5. The proposal is for a retail warehouse and therefore benefits from the presumption of being allowed subject to certain criteria also specified at Policy TC4. In that regard, Policy TC4 confirms that '*Except where justified...*' retail warehouses will be subject to conditions limiting the minimum size of units to 920 sq. m and the type of goods to bulky comparison goods. The former does not apply as the unit size exceeds 920 sq. m. However, the latter does given the proposal seeks a minor increase in the amount of floorspace permitted to be used for the sale of food as described in Section 1. There will not be a material change in land-use operations at the site compared to those that can already take place, merely an insignificant increase in the amount of space which may be used for food and drink.

The National Planning Policy Framework and Planning Policy Guidance

- 2.6. Paragraphs 87 and 88 set out that proposals for retail development which are in edge and out of centre locations, and not in accordance with an up-to-date development plan should be subject to the sequential test. As stated above at Paragraph 1.5, 'main town centre uses' should be located within town centres, then in edge of centre locations. If suitable sites within or at the edge of centres are not available, out of centre locations may be considered.
- 2.7. Paragraph 88 confirms that when considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre.
- 2.8. Paragraph: 012 Reference ID: 2b-012-20190722 of the PPG confirms that the use of the sequential test should recognise that certain main town centre uses have particular market and locational requirements which mean that they may only be accommodated in specific locations. It follows that the market requirements of operators is an integral consideration in the application of the sequential test as it provides the basis upon which developers and landlords are seeking to respond to market opportunities.

Case Law and Appeal Decisions

- 2.9. There have been a series of Court Judgments which provide binding authority and recent appeal decisions on the application of the sequential test and policy, including the matters of how flexibility and commercial realities should be approached.
- 2.10. The key points arising from those judgments and appeal decisions are as follows:
1. The Supreme Court has confirmed¹:
 - a) An alternative site must be suitable for the development proposed by the applicant.
 - b) The question posed by the sequential test is whether an alternative site is suitable for the proposed development, not whether the proposed development could be altered or reduced so that it can be made to fit an alternative site.
 - c) In applying the sequential test, an inappropriate business decision must not be made on behalf of the developer. The test is designed for use in the “real world” in which developers seek to operate.
 - d) The issues of suitability are directed to the developer’s proposal, not some alternative scheme which might be suggested by the LPA.
 2. The High Court has confirmed that²:
 - a) The whole purpose of the sequential test is directed to what the developer was proposing, not to some other proposal which the LPA might seek to substitute for it which is something less than that sought by the developer.
 - b) The terms “suitable” and “available” generally mean “suitable” and “available” for the broad type of development which is proposed in the application by approximate size, type, and range of goods.

¹ Tesco Stores Ltd vs Dundee City Council [2012] UKSC 13

² Aldi Stores Limited vs Mansfield District Council [2016] EWHC 1670

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3. The Secretary of State has confirmed that:

- a) There is no policy requirement to consider disaggregating elements of a proposal across several sites, however a flexible approach to the consideration of alternate sites must be properly demonstrated³.
- b) The purpose of demonstrating “flexibility” is not to require the proposal to be transformed into something which is significantly different⁴.
- c) A sequentially preferable site must be one which is capable of accommodating development which is broadly similar to what is proposed⁵.

2.11. The above are important in framing the application of the sequential test under the terms of the Local Plan and the NPPF.

³ Scotch Corner (Ref: APP/V2723/V/15/3132873 & APP/V2723/V/16/3143678)

⁴ Exeter (Ref: APP/Y1110/W/15/3005333)

⁵ Tollgate (Ref: APP/A1530/W/16/3147039)

3. Satisfying the Sequential Test

Introduction

- 3.1. The preceding commentary in the above Sections confirms that the site is 'out of centre' for the purposes of retail planning policy. As a result, the sequential test (as contained at Policy TC1 of the Local Plan and Paragraph 87 of the NPPF) applies. It requires applicants to consider whether the proposal could instead be located on a relevant town centre site, then any edge-of-centre site and then, if no suitable sites are available in those areas out of centre locations may be considered.
- 3.2. The site also forms part of the spatial strategy for retailing in Barnsley as confirmed by Policy TC4 and as the proposal is for a retail warehouse, it accords with the spatial strategy. The sale of food and drink accords with that spatial strategy set out at Policy TC4 provided it is justified, which in this instance means complying with the sequential test.
- 3.3. The proposal only changes the amount of floorspace that can be used for the sale of food and drink from the site by a small amount compared to that which is already permitted under the extant planning conditions. This increase is only 253 sq. m as the application site can already be used for the sale of food and drink from 921 sq. m of sales floorspace.
- 3.4. It follows that the proposal is not of a scale that can give rise to a material alteration to the existing land-use operations permitted at the site that have already been supported by the LPA. The proposal therefore does not give rise to a conflict with spatial strategy for retailing in Barnsley. As this is the case, it is considered that the proposal is already 'justified' for the purposes of Policy TC4.
- 3.5. Further, food and drink retailing is not the predominant retail operation within the town centre. That predominant use is comparison 'high street' style retail operations with food shopping operations in Barnsley mainly located outside of the town centre's defined Primary Shopping Area in the town centre. It follows that this existing pattern of food retail shopping in Barnsley and the minor change to the amount of floorspace

that can be used for the sale of food and drink under existing permitted land-use operations at the site provides further justification to supporting the proposal under the terms of Policy TC4.

Methodology

3.6. In terms of market requirements to enable the consideration of alternative sites, an alternative site must meet the following requirements which are standard to the delivery of foodstore development:

1. In order to show flexibility, the ability to accommodate a store size of approximately 1,500 sq. m (gross) in order to meet the requirements of the proposal. A store that is not of this scale, would not represent the scale of store proposed within the application. It would not therefore be 'the proposal' as is required to be assessed under the terms of the Supreme Court decision in *Dundee*.
2. The provision of a directly accessible car park. The requirement for dedicated car parking is integral to the business model requirements (i.e. market requirements) for foodstore retailers to enable the transfer of goods from store to vehicles. If car parking requirements are unable to be met then a store would not be able to meet its customer requirements and nor would it provide competition to existing retailers.
3. Ensure that the operational requirements of the proposal can be accommodated including dedicated servicing areas to cater for the frequent delivery requirements of perishable goods by heavy goods vehicles that foodstore retailers require in order to meet essential and weekly food shopping trips by customers.
4. A clear and level rectangular ground floorplate for circulation and trolley movements to enable the display the goods in a uniform aisle format required by foodstore retailers.
5. A prominent retail location to attract custom and enable the viable operation of a national multiple retail occupier.

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- 3.7. It follows that in order to be considered a suitable alternative site, any sequentially preferable site would need to be both available and able to accommodate the above minimum requirements. A site that could not meet the above requirements would not be a site that could accommodate 'the proposal'. It would not therefore be a site that is suitable.
- 3.8. The area of focus for the application of the sequential test for the proposal is Barnsley town centre. Any other centre within the Borough would not be of a sufficient scale to accommodate and attract the foodstore operation of the scale proposed by the application.

Consideration of Alternative Sites

- 3.9. A copy of a plan from a recent survey of units within Barnsley town centre is included at **Appendix 1**. The Goad Plan does not show the full Glassworks development. A copy of the leasing plans are therefore provided at **Appendix 2** to inform a full assessment of alternative sites.
- 3.10. The survey of sites was undertaken in November 2021. The sites that are available are highlighted in red on the plan. There have been no material vacancies that have arisen in the interim period, and on the contrary further space has been taken by occupiers at the Glassworks.
- 3.11. The largest available site is the vacant unit at first floor level within the Glassworks and referenced as Unit L3, which is less than 55% of the minimum floorspace required to accommodate the proposed foodstore operation. The floorspace also does not have direct and level access to a dedicated car park and servicing area, meaning the site does not meet the operational requirements of foodstore occupiers.
- 3.12. Further, the floorspace at Unit L3 is smaller than the existing floorspace at Units 3B and 3C (936 sq. m) and is below the level of food floorspace that can already be used for the sale of food at the application site (i.e. 921 sq. m as set out at Paragraph 1.3 above). Sites that are smaller than the foodstore that can already be created at the application site without the requirement for planning permission are not realistic alternatives that can be considered to be suitable as part of the application of the sequential test for that foodstore.

- 3.13. It follows that the site is not suitable for the proposal even with a significant degree of flexibility applied.
- 3.14. The largest available site shown on the Goad plan at **Appendix 1** is the vacant office building located at the corner of Church Street and Regent Street (known as the Permanent building). The building measures 720 sq. m at ground floor level. It is therefore too small for the proposal as it is not of a sufficient scale to accommodate the proposal even with a significant degree of flexibility applied. There are also no available external areas available for car parking or servicing. The floorspace also does not lend itself to conversion to a modern foodstore of the scale proposed given its configuration as an office building. Further, it is also smaller than the foodstore that could already be created at the application site without the requirement for planning permission. It follows that the site is not suitable for the proposal, even with a significant degree of flexibility applied.
- 3.15. In terms of the existing M&S store, whilst this measures approximately 2,110 sq. m at ground floor level, it does not meet the market and operational requirements of a foodstore as set out at Paragraph 3.6 above. Principally, the store does not provide direct access to a dedicated car park to enable the transfer of goods from store to vehicles. As set out above, if car parking requirements are unable to be met then a store would not be able to meet its customer requirements and nor would it provide competition to existing retailers. The site is therefore not suitable for the proposal.
- 3.16. All other available sites within the town centre as shown on the plans at **Appendix 1** and **2**, are smaller than the sites assessed above. They therefore cannot be considered to be suitable sites, even with a significant degree of flexibility applied. They are simply too small to accommodate the scale of foodstore proposed by the application.

Conclusion

- 3.17. In the light of the above, the proposal satisfies the sequential test as required by Policy TC1 of the Local Plan and Paragraph 91 of the NPPF.

4. Conclusion

- 4.1. This Statement applies the sequential test for a foodstore development proposed at the Peel Centre in Barnsley that will be occupied by M&S as part of its Simply Food offer. A sequential test is required as the Peel Centre is in an out of centre location.
- 4.2. The application seeks planning permission to amalgamate Units 3B and 3C, extend the building to create a new foodstore. The proposal includes an extension to the rear of the new unit of 508 sq.m. A storage and staff use only mezzanine floor measuring 323 sq. m is also proposed.. The foodstore will therefore measure 1,770 sq. m in total. As far as use is concerned, permission is only required to increase from 921 sq. m to 1,174 sq. m the amount of net sales area that may be used for the sale of food and drink.
- 4.3. The amalgamation of Units 3B and 3C can take place without the requirement for planning permission and as a consequence of existing planning conditions controlling the use of the Peel Centre, up to 921 sq. m of the floorspace within the units can already be used for the sale of food and drink. There is therefore an established 'fall-back' for the sale of food from the application site. Further, the Peel Centre is an established location for food retailing operations that have been supported by the LPA.
- 4.4. This Statement applies the sequential test in a proportionate and appropriate way to assess alternative sites in Barnsley town centre. It demonstrates that the test is satisfied.
- 4.5. The Statement forms part of a suite of technical planning documents that demonstrate that the proposal is sustainable development and planning permission should be granted in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004.

Appendices

Appendix 1
Goad Plan of Barnsley Town Centre with Available Sites
Highlighted in Red (Survey Date: November 2021)

Experian Goad Plan Showing Available Site (Survey Date: November 2021)

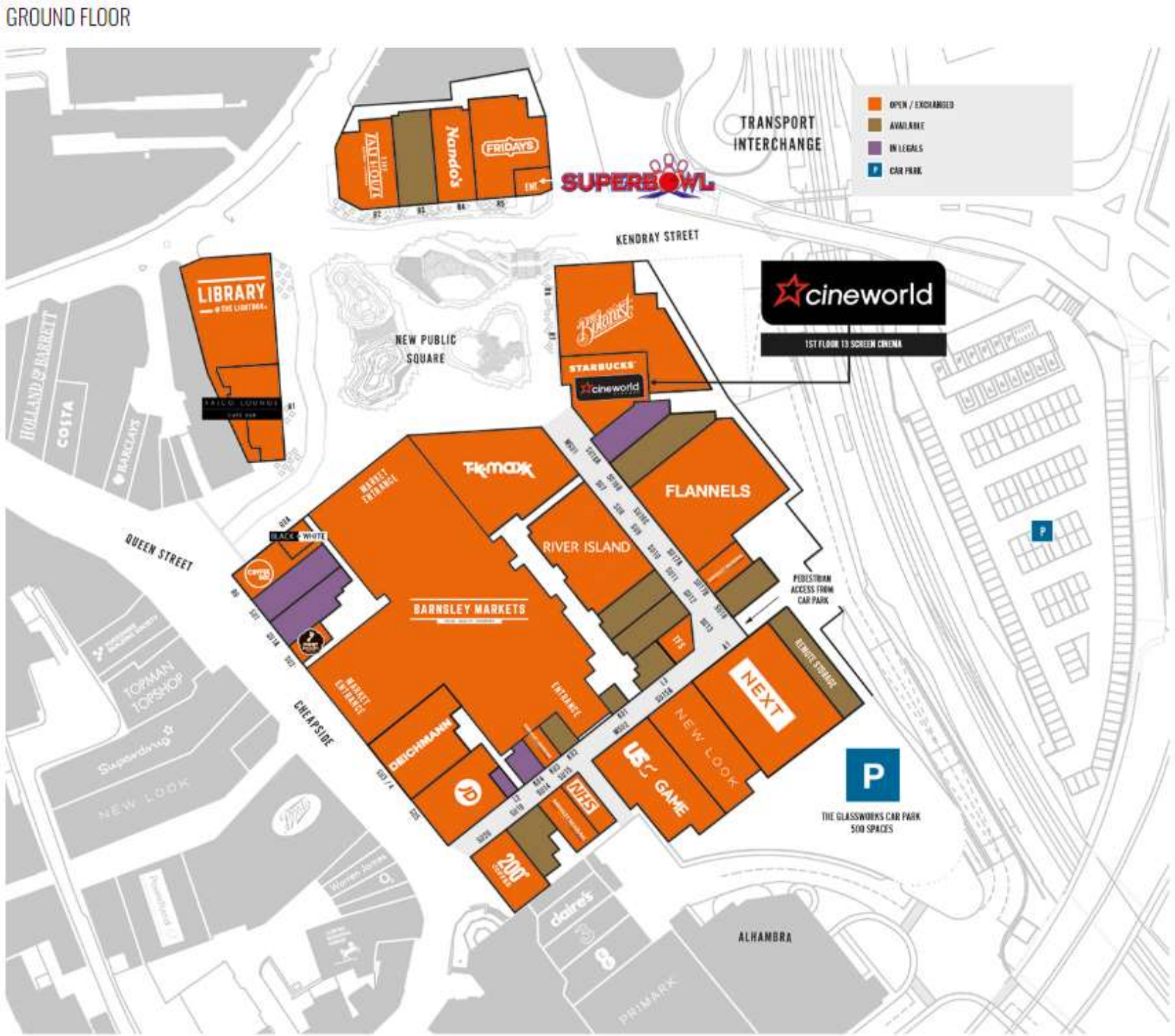


Appendix 2

The Glassworks Leasing Plans

Application by Peel Property (Investments) Limited at the Peel Centre, Barnsley
 Sequential Test Information: Glassworks Leasing Plans
 Plan Ref. PPL/PC/GLP(1)

Ground Floor Plan



Application by Peel Property (Investments) Limited at the Peel Centre, Barnsley
 Sequential Test Information: Glassworks Leasing Plans
 Plan Ref. PPL/PC/GLP(2)

First Floor Plan

FIRST FLOOR

