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RETAIL STATEMENT

UNIT 3, PROPOSED CORTONWOOD SHOPPING PARK, CORTONWOOD

HELICAL RETAIL LTD

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Introduction

1. On 12th September 2014 Helical Retail Ltd were granted planning permission for the demolition of the existing UPS warehouse unit at Cortonwood Drive, Rotherham and the erection of nine A1 retail units with mezzanine floors (Ref: RB2014/0612). This permission was subsequently subject to a non-material amendment application (RB2014/1262: granted in October 2014), which accommodated various changes to the layout of the proposed retail park. Subsequent to that a minor-material amendment application (RB2015/0510), formulising further changes to the scheme's layout, was granted on 5th August 2015. This permission is the operative consent. This resultant development will act as an extension to the adjacent existing retail parks.

2. Condition 6 of the permission prevents the primary use of any of the permitted retail units to be for the sale of food.[1]

3. Marks & Spencer has expressed firm interest in operating its 'Simply Food' operation from the scheme. A letter from Marks & Spencer confirming their intent to occupy Unit 3 is provided at Appendix 1. They have confirmed that this would be additional to stores that currently trade in Barnsley and within Rotherham's administrative area. The purpose of this Statement is therefore to provide an appropriate review of the proposal against planning policies so as to support the necessary amendment to Condition 6, allowing Unit 3 to be occupied primarily for the sale of food.

Approach to Assessment

4. The adopted Core Strategy (September 2014) sets out (in Policy CS12) two retail tests for proposals that are on the edge of or outside an existing centre.

5. Firstly, relevant proposals on the edge of or outside designated centres need to be subject to a *"sequential assessment"* to demonstrate that there are no suitable and available sites within, or then on the edge of, town, district or

[1] The conditions provides that, *"Notwithstanding the provision of the Town and Country Planning (Use Classes) Order 1987 (as amended) none of the retail premises (Use Class A1) hereby permitted shall be used primarily for the sale of food*".

local centres, and secondly, that for such proposals of 500m² or more, there shall be an assessment of the impact of the proposal on:

- existing, committed and planned public and private investment in centres in the core catchment area of the proposal, and
- the vitality and viability of centres, including local consumer choice and trade.

Whilst the proposed development is in an out-of-centre location the Core Strategy recognises the role of the Cortonwood retail parks *"which provide employment as well as shopping opportunities"* and that they *"… will continue to play an important role for communities in meeting their shopping and service needs"*.[2]

6. Impact assessment is normally limited to schemes having a gross floorspace of 2,500m² or more. This is the 'default threshold' set out at paragraph 23 of the NPPF. However, Rotherham's Core Strategy has set a local threshold for assessment at 500m² gross. But it explains that, *"This threshold does not imply that proposals above 500m² are of an inappropriate scale or that they should not receive permission"*. It is also explained that requirements for sequential and impact testing should be *"proportionate to the scale and nature of the proposal"*.[3]

7. For these and other reasons, we have prepared a Retail Statement rather than a Retail Assessment to reflect the appropriate and proportionate extent of review necessary in this situation. However, the review of matters that now follow are now more than adequate to allow the local planning authority to come to an informed and positive decision.

Space to be Assessed

[2] From paragraph 5.4.40.
[3] From paragraph 5.4.50.

8. The gross internal area of proposed Unit 3 will be 1,022m². As the condition relates to the 'primary use of the premises for the sale of food' rather than a restriction based on a specified sales area, we have chosen to assess the effects of sales from the whole premises, i.e. 1,022m² gross, rather than seeking to estimate some lower, assumed retail sales area devoted to the sale of food. Our approach therefore provides a 'worst case basis'. In terms of impact assessment, it is convention that expenditure available for, and the sale of, 'convenience goods', are reviewed rather than solely foodstuffs. The relevant store convenience goods area is likely to be marginally larger than the area devoted to *"the sale of food"* but for the purpose of this assessment we have based our work on the standard convention using *"convenience goods"*.[4] We do not see any relevant distortions arising.

Turnover of the Proposal

9. The design or assessment year is set at 2019. This is consistent with the advice in the National Planning Policy Framework that impact should be assessed *"up to five years from the time the application is made"*,[5] and allows for a period of up to three years following the opening of the store for trade. The latter allows for a 'settling down' period consistent with the advice in the Planning Practice Guidance (PPG). This explains that the design year should be selected to reflect the time when *"the proposal has achieved a 'mature' trading pattern. This is conventionally taken as the second full calendar year of trading after opening of each phase of a new retail development, but it may take longer for some developments to become established"*.

10. On the basis of assessing a total area of 1,022m², we have derived the relevant likely turnover from company accounts as published in Mintel's UK Retail Rankings 2014 (page 18) which states that in 2012/2013 M&S's store based food sales had an average density of £9,279 per m^2. Therefore we

[4] These include some non-food but regularly bought items such as newspapers and magazines, greetings cards and some health and beauty items.
[5] From paragraph 26.

assess turnover of the proposed floorspace at £9.48m.[6] It is robust to use the same figure at the 2019 assessment year because the published year on year sales density has been falling for the last three years due to factors including increased popularity of online-shopping and strong competition in the market generally. Therefore £9.48m in 2019 can be considered to be the worst case scenario when assessing impact.

11. Set against this should be the turnover of the floorspace that is displaced. In our assessment for the approved scheme we adopted a trading density of £4,000 pm². Thus the trade diversion from main retail centres as a whole ought to be adjusted in order to take this into account. We provide commentary on the reduced net effect at the end of our assessment (see at paragraph 27). However, proceeding on the basis that this deduction is ignored, again ensures a worst case scenario.

Expenditure in the Catchment Area

12. It is considered that the proposed convenience floor space will complement the comparison goods retail offer at Cortonwood's retail parks. It will form part of the critical mass of the wider development, rather than act as a primary destination in its own right. On this basis it is therefore appropriate to assume the primary catchment area of the proposal to be the same as that preferred in the assessment of the recently permitted scheme. This was the subject of considerable discussion at the 2013 Inquiry. The generally agreed area is shown on the plan attached at Appendix 2. It does not include the urban areas of Barnsley or Rotherham. Rather it is focused on the belt of Dearne Valley towns.

13. In order to understand the impact on existing food or convenience goods floorspace in the catchment area, it is first helpful to identify the scale of available convenience goods expenditure from the population of this area. This can act as a check in terms of establishing that there is adequate local

[6] i.e. 1,022m² × £9,279= £9.48m.

available expenditure to draw from when set in the context of relevant existing floorspace.

14. Pitney Bowes' AnySite Report (April 2014) provides convenience goods expenditure per person at 2011 (in 2011 prices) for each of the primary catchment area's four sub-zones. These figures therefore need to be grown to 2014 (our base year) and 2019 (assessment year) using the rates set out in the Pitney Bowes' Retail Expenditure Guide (2013/14) (at page 32). Non-store based special forms of trading (e.g. mail order and non-store based internet sales) have been removed using the relevant years' figure from the Retail Expenditure Guide (2013/14) (page 28) i.e. a 2.3% deduction at 2014, and a 2.4% deduction at 2019. The total available convenience goods expenditure in the catchment area is then calculated using the population figures for each zone for 2014 and 2019 provided in the AnySite Report. The outcome is shown at Table 1.[7]

Table 1: Total Available Catchment Area Convenience Goods Expenditure (with non-store based special forms of trading removed)

Zone	**2014 Convenience Expenditure (£m)**	**2019 Convenience Expenditure (£m)**
1	119.53	130.15
2	22.12	26.79
3	39.08	41.93
4	27.18	30.02
TOTAL	**207.90**	**228.90**

[7] Detailed workings are set out at Appendix 3.

15. We have then undertaken a broad-brush assessment of the total turnover of existing convenience goods floorspace located within the catchment area. This exercise is set out in the Table at Appendix 4. It shows that existing floorspace trades (on the basis of company average or other assumed benchmark trading densities) at less than £180m.

16. This comparison confirms that there is more than adequate capacity to accommodate the proposal in the context of the retail geography of the catchment area. Whilst this does not prove a lack of harmful impact on town centre trade, it provides helpful assistance to the exercise.[8]

17. However, it has already been established[9] that the approved extension to Cortonwood's retail parks will also attract spending from residents living outside the catchment area. At the Inquiry it was accepted that an additional 15% of comparison goods expenditure currently came from outside the catchment area at the then base year and that this would increase to 17% with the development in place. We have adopted similar additions for the present analysis since the proposal will operate as an integral part of Cortonwood's overall retail destination.

18. Thus by 2019 there will be an overall total of £267.81m of available convenience expenditure of which the proposed M&S store would take only 3.5%. Not only is there more than adequate capacity in the catchment area to support the proposal, but at its scale, the proposal ought not have a significant influence on the overall retail trading dynamic across the area.

Diversion of Trade to the Proposal

19. The next step in a conventional assessment would be to distribute existing available expenditure at 2014 to stores within and beyond the catchment area and to 'grow' that spending to 2019. However, for the purpose of this review, where the turnover of the proposal is modest in the context of the scale of

[8] Capacity or quantitative need is not a national or local policy consideration that needs to be tested to inform decision-taking.
[9] See for instance at paragraphs 9, 10 and 16 of the 2013 appeal decision.

available spending, a more proportional approach has been adopted.[10] We have identified that the vast majority of locally spent, available convenience goods expenditure currently goes to the various locations as set out, within and beyond the catchment area, in the Tables at Appendices 4 and 5 respectively. The map at Appendix 2 shows most of their respective locations. Our review provides us with enough information about the retail geography of the area's locations of superstores and supermarkets and town and district centre offers from which we can draw realistic assumptions about the likely sources of trade diverted to the proposal.

20. Cortonwood's retail parks are primarily a comparison shopping destination and will remain so with the Helical scheme. The existing Morrisons and the proposal would together act as the food and convenience shopping provision at the overall retail park. The Morrisons superstore has a draw primarily from catchment area residents many of whom do not combine food shopping with other purchases. This focus is reinforced by the existence of large Morrisons superstores on the edge of Barnsley Town Centre and at Parkgate. In contrast, the proposal will have a greater role in being a shopping destination that is shared with existing comparison goods customers at the retail park. Trade diversion effects will therefore be more widely drawn.

21. However, that is not to say that the M&S would not also compete directly with the Morrisons. Shoppers would be offered a choice of premium quality and essential items and some Morrisons shoppers, whilst continuing to use that store, will also purchase items from the proposed store. Indeed, the M&S Annual Report (2014) confirms that the *"Simply M&S range of everyday essentials continues to grow – accounting for 11% of total sales"*. Whilst the Morrisons' store has a much larger sales area and provides predominantly a bulk or main food shopping destination, the proposal would, whilst competing in some respects with this role, will also have a particular function for those already purchasing other goods at the retail park. We consider that the majority of the proposal's customers will not use the store as a destination in

[10] As suggested in the Core Strategy; see our paragraph 6 above.

its own right. As the M&S Annual Report (2014) explains, *"41% of our food customers shop 'for tonight'"* and at Cortonwood many will be combining their purchases with other shopping. Thus, in addition to the joint use with Morrisons, much of the proposal's trade would come from customers buying smaller quantities of items as part of their overall shopping trip (i.e. lunch, snacks and drinks) and those shopping there after purchasing other goods at the retail park in order to have access to items for dinner that evening as well as procuring other requisites.

22. In this regard therefore, the non Morrisons' diversion would somewhat mimic the general pattern of assessed effects arising from the recently permitted retail park at Cortonwood. As the wider development would claw back trade currently going primarily to Parkgate, Meadowhall, various retail parks and to a much lesser extent, town centres, the pattern of diversions from the proposed store will reflect this in its role as a complementary adjunct to these comparison goods shopping trips. Therefore trade will be diverted from supermarkets and superstores in, or near, those locations, i.e. the M&S and Morrisons at Parkgate Shopping Park, the nearby Asda at Taylors Lane, Parkgate, the M&S at Meadowhall, and at the Barnsley Retail Park (Wombwell Lane), the Tesco Extra and recently permitted nearby Sainsbury's.[11]

23. Although the catchment area contains a number of district centres with convenience goods functions, these almost exclusively serve their local communities. They are not anchored by major comparison goods stores.

24. The PPG explains that, *"As a guiding principle impact should be on a like-for-like basis in respect of that particular sector. Retail uses tend to compete with the most comparable competitive facilities"*. In this regard it is necessary to study the context rather than just the individual store to understand shopping behaviour. For example, car borne shopping is not as dominant across most of these locations as at Cortonwood.

[11] Permission was granted in October 2014 for the conversion of the B&Q store and related relaxation allowing the sale of food.

25. The nearest district centre is at Wombwell. It is also the most healthy of the catchment area's centres. Its retail structure was considered at the 2013 Inquiry. The Inspector found that, *"It has a significant number of strengths and performs strongly as a local centre for its immediate hinterland. Moreover, it maintains this strength despite competition from two out of centre retail parks close by, both with large superstores – Cortonwood and Stairfoot / Wombwell Lane"*.[12] It was demonstrated to be quite distinct from Cortonwood and characterised by many retailers who choose not to locate on retail parks. In terms of food retailing it provides modest supermarkets, i.e. a Tesco Express and a Fultons. Their function is to Wombwell District Centre, what the proposal will be to Cortonwood, i.e. largely dependent on existing shoppers using the overall retail location for broader shopping purposes.

26. With the benefit of our assessment, Table 2 presents likely sources of trade diversion to support the proposal.

Table 2: Trade Diversion to the Proposal (2019)

Location	Diversion to M&S
Morrisons, Cortonwood	£2.57m
Parkgate, including M&S and Morrisons	£1.28m
Tesco Extra, Barnsley Retail Park and Sainsbury's commitment	£1.14m
Other Out of Centre (including Tesco at Wath)	£0.99m
Barnsley Out of Centre Superstores	£0.86m
Meadowhall, including M&S	£0.71m
Barnsley Town Centre, including M&S	£0.50m
Rotherham Out of Centre Superstores	£0.43m
Rotherham new Tesco	£0.43m
Wombwell District Centre	£0.29m
Rotherham Town Centre	£0.14m
Other District Centres (within Catchment Area)	£0.14m
Total	**£9.48m**

27. Of significance is that only £1.07m of the store's £9.48m turnover is assessed as being diverted from town and district centres.[13] All other sources of trade have no policy protection. When individual impacts on centres are assessed

[12] From paragraph 30.
[13] The new Tesco at Rotherham is considered (including by the Council) as an edge of, rather than town centre, store.

against their 2019 likely turnovers, there is no location where an effect could be considered harmful.[14] For instance, the diversions from Barnsley and Rotherham of £0.50m and £0.14m reflect impacts on those centres as a whole of 0.1% and 0.1% respectively.[15] Such effects would be imperceptible. These imperceptible effects should also be reviewed in the context that the proposal removes (or nets out) around £4m of comparison goods trade that would have otherwise occurred (see paragraph 11 above). This would reduce any effects further. They also need to be seen in the context of there being some underlying growth, of around 2.5% per annum, in the comparison goods sectors of those centres.[16]

Impact on Planned Public and Private Investment

28. The only identified existing, committed and planned public and private investment potentially relevant to this assessment is that of the Marketplace project in Barnsley Town Centre. The Marketplace project was originally a large urban regeneration scheme within Barnsley Town Centre that was consented in September 2011 to include retail and commercial floorspace totalling approximately 48,000m². However, it became apparent (in the lead up to the 2013 Inquiry) that the scheme could not be funded. Instead a much more modest proposal is now being formulated.[17] Whilst this current project is an important part of the regeneration strategy for Barnsley Town Centre, it has already been established[18] but the significant 9,177m² (gross) extension to Cortonwood's retail parks would not prejudice the delivery of the earlier proposal. It would not be conceivable that the introduction of a 1,022m²

[14] The 2013 Appeal decision confirms that it is the effect on the centre as a whole that falls to be assessed, not a particular goods sector; see paragraph 30.

[15] Total centre turnovers for Barnsley, Rotherham and Wombwell at 2017 (in 2010 prices) were considered to be £484.51m, £129.76m and £14.48m respectively. (Table 5 of Retail Assessment Update, Cortonwood Drive, MRPP (7 August 2013)). The difference between 2017 and 2019 and expression in 2010 rather than 2011 prices will serve to underestimate the effects at 2019 in 2011 prices as used in this Statement.

[16] See, for instance, Experian's Retail Planner, Briefing Paper (October 2014) which Appendix 3 (page 19) provides an estimate of 2.6% for average per capita annual growth in comparison goods spending for the period 2015-21 adjusted for goods not sold or sourced from stores.

[17] Paragraph 17.9 of the emerging Barnsley Local Plan (Consultation Draft 2014) explains that, *"Details of the new scheme are not yet available but we understand that it will include a new indoor Market Hall of around 8,000m² and up to 21,000m² of retail and leisure floorspace"*.

[18] At the 2013 Appeal.

(gross) complementary, convenience-led facility into the permitted retail park (in lieu of permitted comparison goods floorspace) could change that position.

29. In any event, the emerging proposal is not yet 'planned investment' since it is a scheme in a consultation draft of a Local Plan. In this regard the PPG explains that a 'key consideration' to the assessment of such impact includes *"the policy status of the investment (i.e. whether it is outlined in the Development Plan)"*.

30. Marks & Spencer have also advised us that M&S has invested in all of its local stores in recent years and that the opening of the store in question would not prevent any future long term investment in their existing portfolio, including their current store in Barnsley Town Centre.

Sequential Test

31. As explained above at paragraph 5, the Core Strategy requires relevant retail developments to pass what is known as the sequential test.

32. The 'proposed development' is not a Section 55(1) activity since it is neither a building operation nor a material change of use.[19] It arises from an application to alter the wording of a condition limiting the type of already permitted retail activity that can take place. Granting the application will not have the effect of creating any additional retail floorspace. This is not therefore an exercise where a retail site is being sought for new development. It is therefore submitted that there can be no requirement to sequentially test the proposal.

33. However, even if sequential testing were relevant, the Core Strategy confirms that such testing should be *"proportionate to the scale and nature of the proposal"*.[20] The recently published Planning Practice Guidance (March 2014) is more explicit adding that *"the application of the test should be proportionate <u>and appropriate for the given proposal</u>"* (our emphasis).

[19] Of the Town and Country Planning Act 1990.
[20] From paragraph 5.4.50.

34. The application of the sequential test has also been clarified by case law. In the Dundee Judgment the Supreme Court considered *"the question whether the word 'suitable' means 'suitable for the development proposed by the applicant', or 'suitable for meeting identified deficiencies in retail provision in the area"*.[21] The Judge opined that "*the issue of suitability is directed to the developer's proposals, not some alternative scheme which might be suggested by the planning authority. I do not think that this is in the least surprising, as developments of this kind are generated by the developer's assessment of the market that he seeks to serve… [the sequential test is] designed for use in the real world in which developers wish to operate, not some artificial world in which they have no interest doing so*".[22]

35. The Supreme Court therefore held that, in applying the sequential test, one is to consider *"whether an alternative site is suitable for <u>the proposed development</u>, not whether the proposed development can be altered or reduced so that it can be made to fit an alternative site"*[23] (emphasis added).

36. The application of the Dundee judgment to English law was confirmed in the North Lincolnshire (Zurich) judgment where it was also explained that *"it is important to mark that developers, and planning authorities, work in the real world"*.[24]

37. In accordance with Paragraph 24 of the NPPF, and as clarified generally in the 'Dundee' Judgment, it is necessary when undertaking a sequential assessment to consider *"the proposed development's"* format and scale. This is also where operational and market requirements fall to be recognised. The main reason for introducing the M&S Simply Food store is to improve the customer experience of those already shopping at Cortonwood's retail parks and as permitted to be extended. Our assessment of retail impact confirms that the principal role and function of the proposal will be as an adjunct to the

[21] From paragraph 21 of the Supreme Court's judgment in Tesco Stores Ltd v Dundee City Council, 21st March 2012.
[22] From paragraph 38 of the Dundee judgment.
[23] From paragraph 29 of the Dundee judgment.
[24] R v North Lincolnshire Council ex p. Zurich Assurance (17th December 2012). It is of interest that this judgment involved a M&S store where the business had made a fundamental objection to a sequential test candidate site.

main comparison function of the overall retail park as extended, relying on a high level of linked trips, albeit also offering a convenient additional local facility for M&S' brand of premium food goods

38. In this regard, the PPG now recognises such situations and confirms that, *"… the sequential test should recognise that certain main town centre uses have particular market and locational requirements which mean they may only be accommodated in specific locations"*.

39. It is therefore considered that the sequential test requirements, if they are applicable, are met.

Conclusions

40. Our assessment has been cast on the basis of relevant worst case scenarios including of the total floorspace to be considered as well as the exclusion of mitigating effects by not netting out the displaced non-food floorspace.

41. It has shown that compared with nearly £230m of available catchment area convenience goods expenditure, only about £180m is likely to be retained locally. The proposal, in taking only 3.5% of that available expenditure, would not have a significant influence on retail dynamics across the Dearne Valley catchment area.

42. The proposal would primarily serve as an adjunct to those undertaking comparison goods shopping across Cortonwood's existing and proposed retail parks. Whilst some trade would be diverted from the nearby Morrisons, the store would primarily be used for purchases of food and drink as part of a visit to Cortonwood and to buy items for consumption later that day.

43. The pattern of non-Morrison's trade diversion would mimic that assessed for the recently permitted retail park, with most coming from supermarkets and superstores within or near to the existing retail parks, e.g. at Parkgate and Wombwell Lane.

44. As a result, overall diversion from Barnsley and Rotherham's town centres (both at 0.1%) would be imperceptible. The 2% overall impact on Wombwell would not be harmful, particularly in the context of it having been acknowledged by the Cortonwood Inquiry Inspector, to *"perform strongly … despite competition from two out of centre retail parks close by, both with large superstores"*.[25]

45. There is no prospect of the proposal harming planned investment in Barnsley town centre. This was not promoted as an issue in respect of the overall retail park scheme in 2013. Thus a complementary food outlet forming only part of that scheme cannot conceivably have an adverse effect. In any event, the current scheme has not advanced far in the plan making process.

46. As the proposal is not for the creation of new retail floorspace, the sequential test does not apply.

47. However, even if sequential testing was necessary, the Dundee Supreme Court judgment requires the test to focus on the developer's proposal, not whether it might be significantly changed to fit another site. The operator's purpose in seeking representation at Cortonwood relates to providing a service to those undertaking comparison goods shopping there and, at the same time, offering greater choice, diversity and competition in the food retailing sector to the local community. As the Planning Practice Guidance explains, with *"particular market and locational requirements"* applying, the test is met.

48. The proposal has therefore been shown to be acceptable against the Core Strategy's relevant policy (CS12) and planning permission should be granted with Condition 6 (of planning permission RB2014/0612) amended to read:

> "*Notwithstanding the provision of the Town and Country Planning (Use Classes) Order 1987 (as amended) none of the retail premises (Use*

[25] From paragraph 30 of the appeal decision.

Class A1) hereby permitted shall be used primarily for the sale of food other than Unit 3 as shown on the approved plan 14592 – PA04 J".