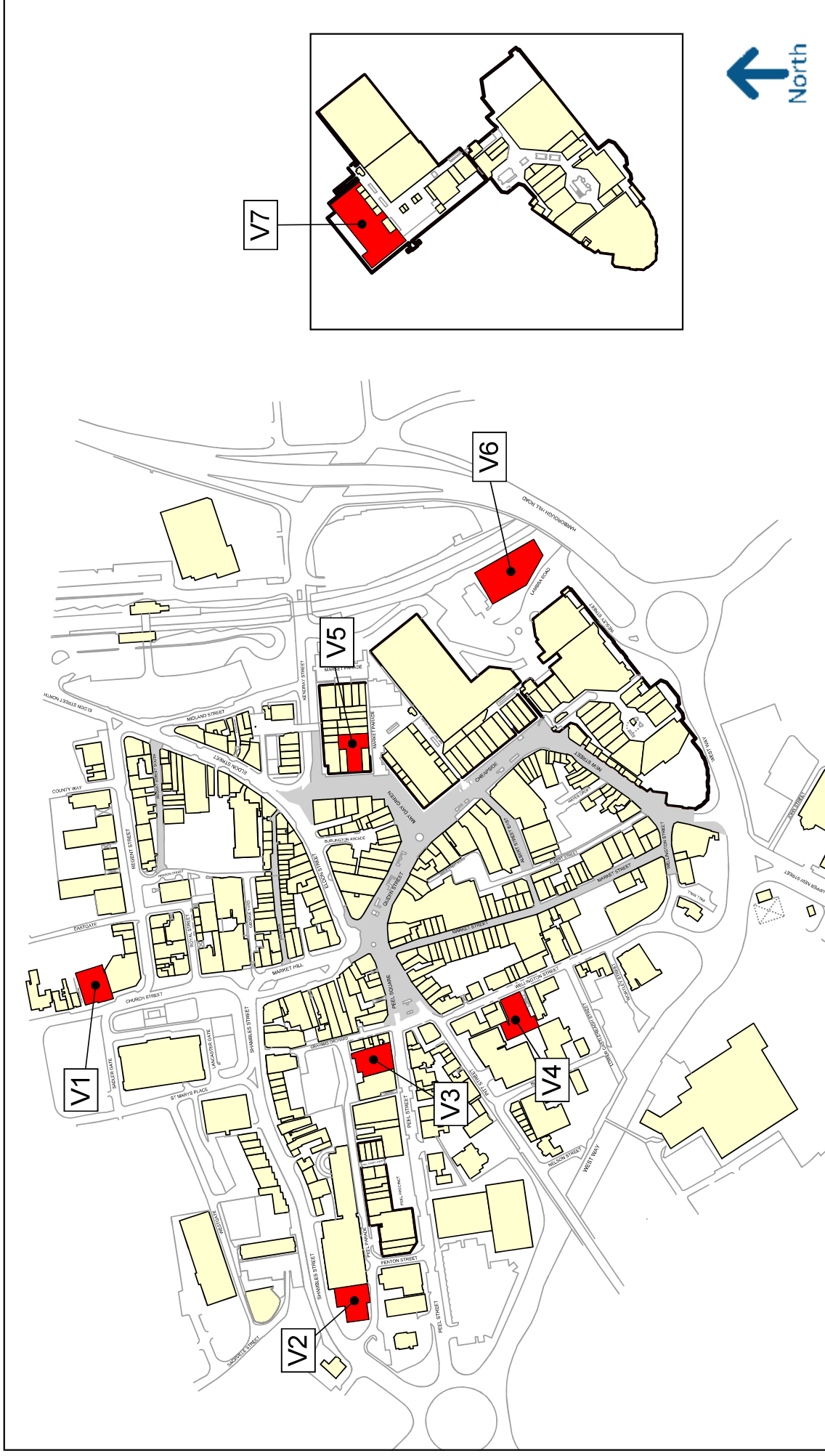
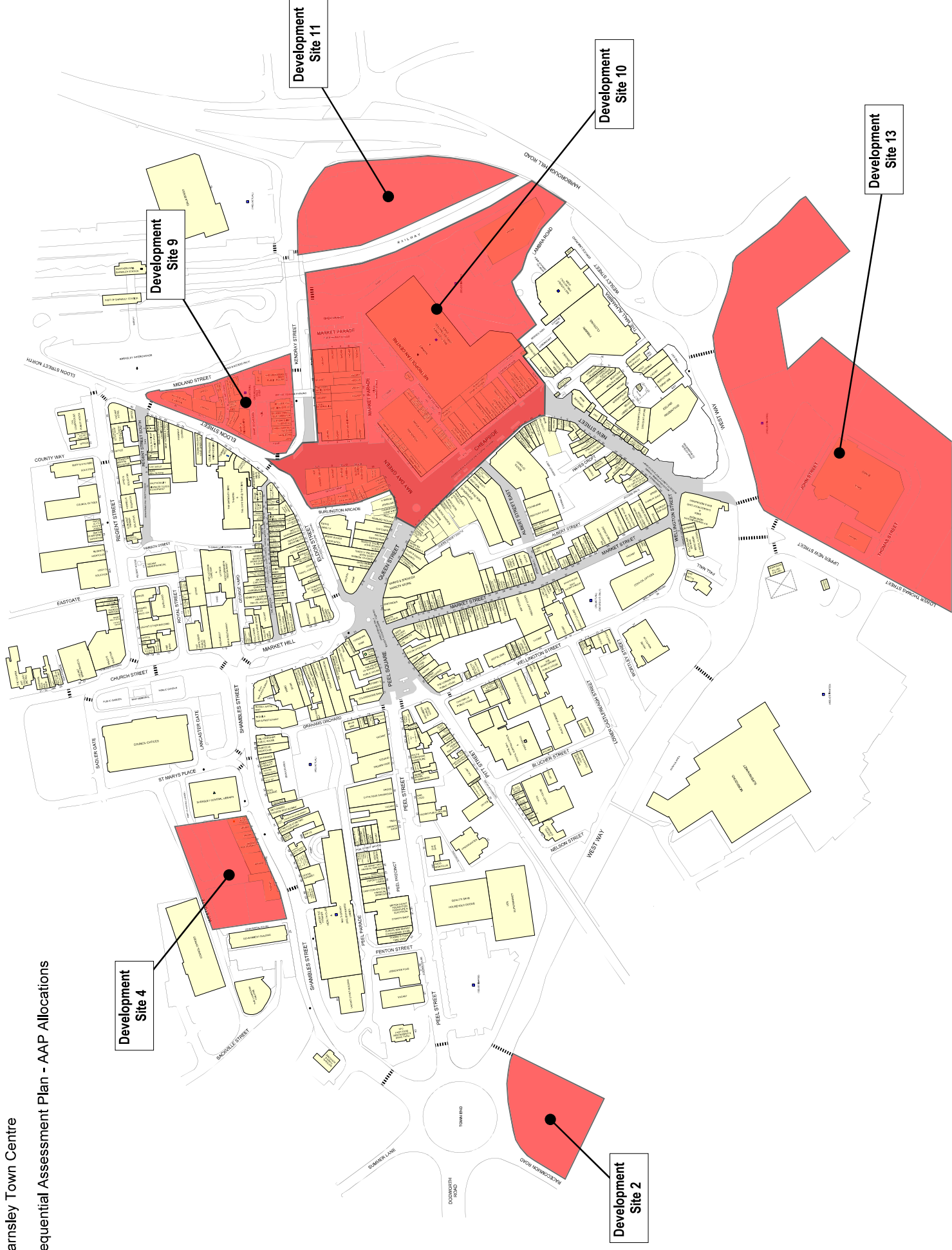


11. Sequential Test Plans – Barnsley town centre





12. Sequential Test Assessment

Introduction

- 1.1 This Appendix provides a summary of the key considerations in respect of the sequential approach. The text below assesses both the vacant units with a floor space greater than 472 sq.m and also the larger development sites allocated for retail within the Barnsley Town Centre Area Action Plan.
- 1.2 The sites taken from the Barnsley Town Centre Area Action Plan below were agreed within the pre-application scoping response provided by the Council as being the only ones required to be assessed as part of the sequential assessment.
- 1.3 Each site has been assessed in terms of its availability, suitability and viability in accordance with both local and national planning policy guidance.

Vacant Units**V1 – 25-27 Church street**

- 1.4 Site V1 was previously occupied by Barclays Bank and measures approximately 660 sq.m. It is currently being marketed and we understand is available.
- 1.5 For retail purposes, it is in a peripheral location not well related to the retail core. It is highly unlikely to be of interest to any retailer as they would be trading in relative isolation, well away from the retail footfall.
- 1.6 The unit is more of an attractive traditional style office building suited to the former banking use. It has limited opportunities to open up the frontage in anything like a sympathetic manner in order to be suitable to accommodate any form of retailer. The costs associated with refurbishing the unit to make it suitable for a retailer would be unviable for any large format national multiple retailer. In any event, the unit is not of a sufficient size to accommodate the total floorspace included within this proposal.
- 1.7 The unit is therefore not suitable or viable for the proposed development.

V2 – 60 Shambles Street

- 1.8 Site V2 forms part of a larger commercial/retail unit which continues along the length of Peel Parade and the vacant premises adjoin the Lifestyle Fitness Unit, opened in 2013. The vacant unit measures approximately 670 sq.m and is currently boarded up. It was previously used as offices.
- 1.9 For retail purposes, it is in a peripheral location not well related to the retail core. It is highly unlikely to be of interest to any retailer as they would be trading in relative isolation, well away from the retail footfall.

- 1.10** The unit is located within Development Site 3 as allocated by the AAP for a mix of uses including residential, leisure, offices and hotel. The AAP recognises that the unit has been vacant for a number of years and that the site is more suitable for a mixed-use development, requiring a sensitively designed proposal, taking into account the curvature of the road and the particular shape and size of the development site.
- 1.11** The costs associated with redeveloping the site for retail uses would be unviable for the proposed occupiers and would also be contrary to the development plan. In any event, the unit is not of a sufficient size to accommodate the total floorspace included within this proposal. It is therefore not suitable or viable for the proposal.

V3 – 3-11 Peel Street

- 1.12** Site V3 is located on Peel Street and measures approximately 640 sq.m. The site is currently vacant and is being marketed by Newbould Commercial and is therefore considered to be available.
- 1.13** At 640 sq.m, the unit is too small to accommodate the total floorspace included in this application. The proposal at The Peel Centre is aiming to ensure that otherwise long-standing vacant units are re-let. The vacant unit at Peel Street meets an entirely different requirement to the units at the application site and could not, in any event, accommodate the total level of floorspace included within the application.
- 1.14** We do not consider the unit to be suitable for the proposed development.

V4 – 7A Wellington Street

- 1.15** Site V4 measures approximately 710 sq.m and is a former nightclub, previously occupied by Rio's. We are unable to find any marketing particulars but for the purpose of this assessment, we assume that the unit is currently available.
- 1.16** For retail purposes, the site is divorced from the retail pitch, separated by dead frontage and surrounded by a number of take-away and restaurant uses. It is highly unlikely to be of interest to any retailer as they would be trading in relative isolation, well away from the retail footfall.
- 1.17** The building includes a frontage designed to incorporate traditional stone features, with four entrances surrounded by stone arches along the frontage of the unit. The previous use of the unit as a nightclub and the lack of active frontages along the street, means that the unit is not suitable in its current form to be occupied by a retailer. The costs associated with refurbishing the unit both internally and externally would be unviable for the proposed operators. In any event, the unit is not of a sufficient size to accommodate the total floorspace included within this proposal.
- 1.18** The unit is unsuitable and unviable for the proposed development.

V5 – 5-7 Metropolitan Centre

- 1.19** Site V5 is located on the ground floor of a former multi-storey office block on the eastern edge of the town centre. The whole of the ground floor is now vacant due to its location within the area allocated for the Marketplace scheme. It is a dated and now redundant scheme earmarked for demolition and redevelopment.
- 1.20** The ground floor of the scheme would require significant redevelopment and refurbishment to accommodate the proposed development, which would not be economically viable for either a developer or likely proposed occupiers. The units as currently configured would not be suitable for large format national multiple retailers and are significantly out-dated.
- 1.21** The site is not suitable or viable for the proposal and neither is the Marketplace scheme likely to become available within a reasonable timeframe.

V6 – 1 Lambra Road

- 1.22** Site V6 is located to the south east of Barnsley town centre, adjacent to Harborough Hill Road. It forms part of the site allocated for the Marketplace scheme, which is referred to in more detail below. We are unable to locate any marketing particulars for the unit and assume this is due to the site being located within a wider mixed-use redevelopment area and it therefore being unavailable.
- 1.23** The unit currently measures 1,470 sq.m and is therefore not of a sufficient size to accommodate the total floorspace included within this proposal. In any event, the unit forms part of a wider redevelopment scheme and as such, the piecemeal redevelopment of this part of the site to create units similar to those at The Peel Centre would simply be creating retail space which is poorly located and isolated from the core retail area and prime retail pitch. It would therefore not be viable and would not be in accordance with the policy aspirations of the development plan.

V7 – Barnsley Market, Metropolitan Centre

- 1.24** Site V7 forms part of the indoor section of the Barnsley Market. The unit is located on the upper floor and measures approximately 1,690 sq.m.
- 1.25** The unit is located in a tired and run-down scheme which as stated above, is earmarked for much-needed redevelopment. It is situated within a secondary commercial area of the town centre, away from the primary pedestrian movement and therefore away from key attractive areas for retailers. Furthermore, at 1,690 sq.m, the floorspace is not sufficient to accommodate the total amount of floorspace subject of this proposal.
- 1.26** The unit is therefore not suitable or viable for the proposed development.

Barnsley Town Centre Area Action Plan Sites

Development Site 2 – Town End/Race Street



- 1.27** This site is considered at best an edge-of-centre, more probably out of centre, being divorced from the town centre by West Way. It contains a part disused industrial building and is allocated for a mix of uses within the Barnsley Town Centre Area Action Plan (AAP).
- 1.28** The site is relatively small in size and would be suitable only for a small scale mixed-use scheme, with limited car parking.

Availability

- 1.29** The site currently consists of a partially disused industrial building. It is therefore currently unavailable and is unlikely to become available within a short timeframe.

Suitability

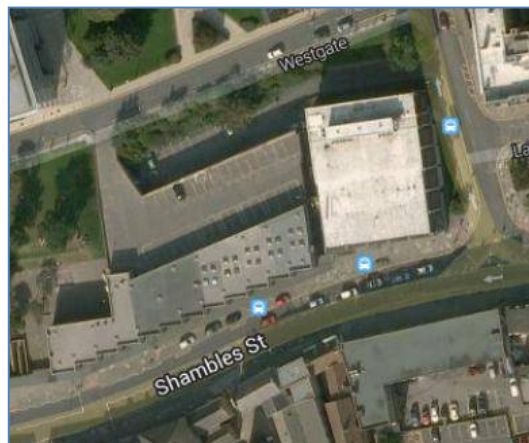
- 1.30** The site is too small to accommodate the types of large format retailers proposed to occupy the units at the application site. Additionally the AAP consultation draft states that development on the site must 'Make a positive contribution to the character and appearance of the Town End Gateway' and encourages public space improvements.
- 1.31** It is unlikely that with the scale and type of the retail proposed that this proposal at this site would be considered acceptable in improving the character and appearance of the site. It is therefore not considered suitable

Viability

- 1.32** There may be costly remediation works at the site due to the previous industrial uses which could render the redevelopment of the site for retail purposes unviable. Further significant investigative works would be required prior to any development occurring, which would be costly and therefore economically unviable, particularly when this application relates to existing and well established retail warehouse units.

- 1.33** The site is considered partially available however, due to the small size of the site and the Council's aspirations and policy directions for the site in the AAP, it is not considered suitable or viable for the proposal.

Development Site 4 – Westgate/Shambles Street



- 1.34** The site is on the periphery of the town centre and currently comprises car parking, vacant offices and vacant retail units. The site is located adjacent to the Barnsley library and measures approximately 0.3 ha.
- 1.35** The site is allocated for a mix of uses within the AAP, including offices, retail, leisure and residential. The AAP states that any future redevelopment on the site should provide an active frontage.

Availability

- 1.36** The site is currently in use and occupied by a two storey car park and row of small format commercial units. In light of the current use and uncertainty in respect of land ownership details, it is very unlikely that the site would become available within a reasonable timeframe.

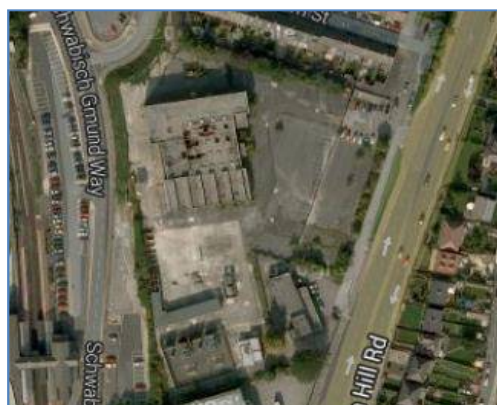
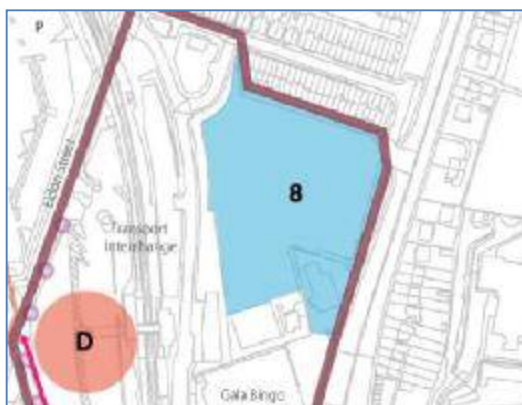
Suitability

- 1.37** The AAP allocation requires development at the site to incorporate a high quality area of open space which should relate to the historic use of the site as a tithe barn. Due to the relatively small size of the site, it would not be able to accommodate large format retail warehouse uses similar to those existing at The Peel Centre as well as the desired open space.

Viability

- 1.38** The costs associated with purchasing and demolishing existing uses and redeveloping the site for large format retail units would not be economically viable for the application or likely retailers at the Peel Centre.
- 1.39** The site is not available and due to the small size of the site and the allocation and key aspirations to incorporate open space to reflect the historic nature of the site within the AAP, it is not considered suitable or viable for the proposal.

Development Site 8 – Land between the Transport Interchange and Harborough Hill Road (Gala Bingo/Former YEB Site)



- 1.40** The site is allocated within the AAP for retail development. It measures approximately 2.4 hectares and is located on the edge of centre and divorced from the town centre by the railway line.
- 1.41** The site is partially cleared and includes the former Yorkshire Electricity Board (YEB) units and an operational electricity sub station, along with Gala Bingo. The site has extant reserved matters permission (2010/1431) for retail development, consisting of a foodstore, although no further work has been undertaken to implement the permission.

Availability

- 1.42** Due to the existing uses at the site and the current operations, the site is not considered available for the proposed development.
- 1.43** The significant difficulties with relocating the substation would require a more long term plan for development, meaning the site would not be available within a reasonable timeframe for this proposal.

Suitability

- 1.44** The site is considered to be large enough in principle, in terms of its size at 2.4 hectares but as the lengthy history of the site suggests, its suitability for retail purposes is highly questionable.
- 1.45** As outlined by the Inspector in the Cortonwood decision, despite being earmarked for retail development since the mid-1990s and benefitting from retail planning permission since 2005, development of the site has not proceeded.

Viability

- 1.46** The site history outlined above also suggests the site is not viable for retail development.
- 1.47** There are significant difficulties and viability issues with relocating the substation. The site is therefore considered not available, suitable or viable for the proposal.

Development Site 9 – Midland Street/Kendray Street/Eldon Street



- 1.48** Development Site 9 is located to the east of Barnsley town centre and is currently occupied by a range of retail and commercial uses over three-storeys. The site measures approximately 0.4ha and is constrained into a triangular shape by the surrounding roads on all three sides.
- 1.49** This site is allocated within the Barnsley AAP for a mix of uses, including retail, offices, leisure, hotel and residential. The AAP requires any development to retain active ground floor use and include the provision of public spaces.

Availability

- 1.50** The site contains an extensive range of existing buildings in active and beneficial use and it is unlikely to be available for redevelopment in the foreseeable future. The site is therefore currently unavailable and is unlikely to become available within a reasonable timeframe.

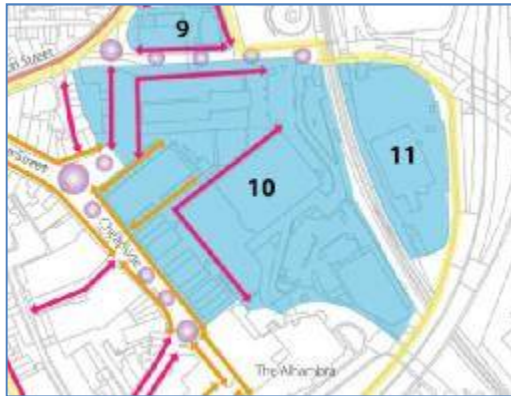
Suitability

- 1.51** The site is triangular and therefore unsuitable to create a retail park or units similar to those which exist at the Peel Centre. Furthermore, the site is insufficient in size to accommodate the proposed development and is therefore unsuitable for the proposal.

Viability

- 1.52** The site currently comprises a number of small units. The site would require comprehensive redevelopment to accommodate this large format proposal, which would render the development economically unviable.
- 1.53** The site is therefore not considered available, suitable or viable for this proposal.

Development Site 10 – Marketplace



- 1.54** The Marketplace site is located within the heart of Barnsley town centre and is the key redevelopment aspiration for Barnsley Council. Permission was granted in 2011 for a complete redevelopment of the site, to include an anchor department store and modern units to accommodate national branded retailers. The scheme fell-through in 2013 and the Council is now working towards an alternative mixed-use scheme looking at other, complementary uses for the centre.
- 1.55** The site is allocated within the Barnsley AAP for a mix of uses, including retail, offices, leisure and residential. It is currently occupied by a mix of retail and commercial use amongst the existing Barnsley market and car parking.

Availability

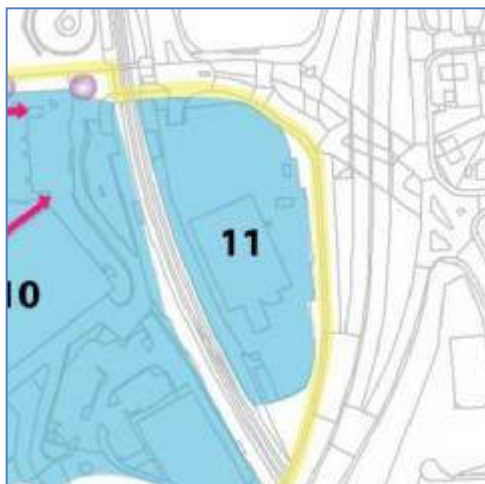
- 1.56** The site currently comprises a number of existing and operational commercial and retail premises. It is therefore currently unavailable.
- 1.57** Furthermore, there is an extant permission for the redevelopment of the Market site for a new town centre scheme. The anchor tenants pulled out of the development in 2013 (Debenhams and H&M) and the Council is currently working up a revised scheme which is unlikely to include any substantial additional retail development.
- 1.58** In any event, it is unlikely that this scheme would be completed and available for this proposal within a reasonable timescale.

Suitability and Viability

- 1.59** The site was discounted as a sequentially preferable site within the Cortonwood Appeal Decision even before it was announced that the consented retail led redevelopment would not be proceeding; due to the marketplace scheme necessitating a different format to the proposal. The Inspector identified doubts over affordability and viability for retail park retailers to locate within the Marketplace scheme. In the absence of specific information about the revised Marketplace scheme there can be no certainty that it can provide a realistic potential alternative.

- 1.60** The site is therefore considered to not be available, suitable or viable for this proposal.

Development Site 11 – Land south of Jumble Lane



- 1.61** Site 11 is located on the eastern periphery of the town centre adjacent to the railway line. The Barnsley railway station is located to the north west. The site has recently been cleared and is now used as a temporary car park.
- 1.62** The Council specifically allocates the site within the Barnsley AAP for a multi-storey car park, retail, leisure and other uses if they would support the liveliness and economic strength of the town centre. The site is divorced from the town centre by the railway line.
- 1.63** The site has a culverted dyke running through it, which may impact on the scale of the future development.

Availability

- 1.64** The site currently being used as temporary surface car parking following the demolition of the buildings on the site, although full land ownership details are currently unknown. For the purposes of this assessment however, we have assumed that the site is available.

Suitability

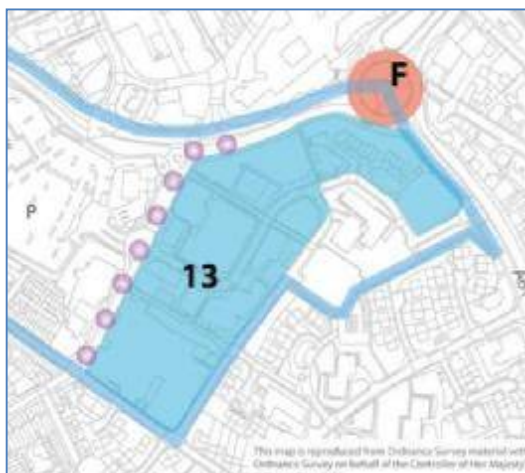
- 1.65** The site is relatively small with a culverted dyke running through it which could limit the scale of development on the site further. It is not of a sufficient size or shape to suitably accommodate a retail park of the scale that exists at the Peel Centre. The site is therefore not considered suitable for the proposal.

Viability

- 1.66** The costs associated with purchasing and redeveloping the site for a full-scale new retail park would make the scheme unviable for the applicant or any proposed operators. Furthermore, the associated concerns in relation to the culverted dyke running underneath are likely to have further cost implications.

- 1.67 Therefore, in the absence of detailed information, the site is assumed to be available, however it is not suitable or viable for the proposal.

Development Site 13 – Heelis Street/New Street



- 1.68 This 2.78 hectare site is currently occupied by a surface level car park and a mix of commercial uses.
- 1.69 Outline permission was granted in 2012 for the erection of a new 7,500 sq.m (gross) foodstore. This Permission has not yet been implemented and there are issues behind whether the proposal could viably come forward in any event.

Availability

- 1.70 The potential for higher income from the permitted foodstore compared to a retail park could cause issues with availability whilst the landowners believe there is the prospect of a foodstore being built. This was acknowledged in the Cortonwood appeal decision, where the Inspector concluded:

'The very limited evidence makes it impossible to reach a firm conclusion but there are significant questions about its availability and viability for a retail park scheme'.

Suitability

- 1.71 The site slopes steeply (with cross-falls) and it is unknown whether it would be economic to carry out the complex land levelling to make the site suitable for development.
- 1.72 The topography of the site constrains development, due to the extremely high costs of levelling the site to make it suitable for the proposal. This has been acknowledged by the Council when considering the scheme, as well as noting the site has land ownership issues.

Viability

- 1.73 The costs of levelling the site's topography are likely to render this proposal unviable. The Inspector for the Cortonwood Appeal confirmed there are significant doubts about its availability and viability for a retail warehouse scheme.

1.74 The site is therefore not considered to be available, suitable or viable for the proposal.

13. Supreme Court in Tesco Stores Ltd v Dundee City Council ([2012] UKSC 13, 21 March 2012)



Hilary Term
[2012] UKSC 13
On appeal from: [2011] CSIH 9

JUDGMENT

Tesco Stores Limited (Appellants) v Dundee City Council (Respondents) (Scotland)

before

**Lord Hope, Deputy President
Lord Brown
Lord Kerr
Lord Dyson
Lord Reed**

JUDGMENT GIVEN ON

21 March 2012

Heard on 15 and 16 February 2012

Appellants

Martin Kingston QC
Jane Munro
(Instructed by Semple
Fraser LLP)

Respondents

Douglas Armstrong QC
James Findlay QC
(Instructed by Gillespie
Macandrew LLP)

*Interveners (Asda Stores
Limited and MacDonald
Estates Group PLC)*
Malcolm Thomson QC
Kenny McBrearty
(Instructed by Brodies
LLP)

LORD REED (with whom Lord Brown, Lord Kerr and Lord Dyson agree)

1. If you drive into Dundee from the west along the A90 (T), you will pass on your left a large industrial site. It was formerly occupied by NCR, one of Dundee's largest employers, but its factory complex closed some years ago and the site has lain derelict ever since. In 2009 Asda Stores Ltd and MacDonald Estates Group plc, the interveners in the present appeal, applied for planning permission to develop a superstore there. Dundee City Council, the respondents, concluded that a decision to grant planning permission would not be in accordance with the development plan, but was nevertheless justified by other material considerations. Their decision to grant the application is challenged in these proceedings by Tesco Stores Ltd, the appellants, on the basis that the respondents proceeded on a misunderstanding of one of the policies in the development plan: a misunderstanding which, it is argued, vitiated their assessment of whether a departure from the plan was justified. In particular, it is argued that the respondents misunderstood a requirement, in the policies concerned with out of centre retailing, that it must be established that no suitable site is available, in the first instance, within and thereafter on the edge of city, town or district centres.

The legislation

2. Section 37(2) of the Town and Country Planning (Scotland) Act 1997, as in force at the time of the relevant decision, provides:

“In dealing with [an application for planning permission] the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.”

Section 25 provides:

“Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination is, unless material considerations indicate otherwise –

(a) to be made in accordance with that plan...”

The development plan

3. The development plan in the present case is an “old development plan” within the meaning of paragraph 1 of Schedule 1 to the 1997 Act. As such, it is defined by section 24 of the 1997 Act, as that section applied before the coming into force of section 2 of the Planning Etc. (Scotland) Act 2006, as including the approved structure plan and the adopted or approved local plan. The relevant structure plan in the present case is the Dundee and Angus Structure Plan, which became operative in 2002, at a time when the NCR plant remained in operation. As is explained in the introduction to the structure plan, its purpose is to provide a long term vision for the area and to set out the broad land use planning strategy guiding development and change. It includes a number of strategic planning policies. It sets the context for local plans, which translate the strategy into greater detail. Its preparation took account of national planning policy guidelines.

4. The structure plan includes a chapter on town centres and retailing. The introduction explains that the relevant Government guidance is contained in National Planning Policy Guidance 8, *Town Centres and Retailing* (revised 1998). I note that that document (NPPG 8) was replaced in 2006 by *Scottish Planning Policy: Town Centres and Retailing* (SPP 8), which was in force at the time of the decision under challenge, and which was itself replaced in 2010 by *Scottish Planning Policy* (SPP). The relevant sections of all three documents are in generally similar terms. The structure plan continues, at para 5.2:

“A fundamental principle of NPPG 8 is that of the sequential approach to site selection for new retail developments ... On this basis, town centres should be the first choice for such developments, followed by edge of centre sites and, only after this, out of centre sites which are currently or potentially accessible by different means of transport.”

In relation to out of centre developments, that approach is reflected in Town Centres and Retailing Policy 4: Out of Centre Retailing:

“In keeping with the sequential approach to site selection for new retail developments, proposals for new or expanded out of centre retail developments in excess of 1000 sq m gross will only be acceptable where it can be established that:

- no suitable site is available, in the first instance, within and thereafter on the edge of city, town or district centres;
- individually or cumulatively it would not prejudice the vitality and viability of existing city, town or district centres;
- the proposal would address a deficiency in shopping provision which cannot be met within or on the edge of the above centres;
- the site is readily accessible by modes of transport other than the car;
- the proposal is consistent with other Structure Plan policies.”

5. The relevant local plan is the Dundee Local Plan, which came into operation in 2005, prior to the closure of the NCR plant. Like the structure plan, it notes that national planning policy guidance emphasises the need to protect and enhance the vitality and viability of town centres. It continues, at para 52.2:

“As part of this approach planning authorities should adopt a sequential approach to new shopping developments with first preference being town centres, which in Dundee’s case are the City centre and the District Centres.”

That approach is reflected in Policy 45: Location of New Retail Developments:

“The City Centre and District Centres will be the locations of first choice for new or expanded retail developments not already identified in the Local Plan. Proposals for retail developments outwith these locations will only be acceptable where it can be established that:

- a) no suitable site is available, in the first instance, within and thereafter on the edge of the City Centre or District Centres; and

- b) individually or cumulatively it would not prejudice the vitality and viability of the City Centre or District Centres; and
- c) the proposal would address a deficiency in shopping provision which cannot be met within or on the edge of these centres; and
- d) the site is readily accessible by modes of transport other than the car; and
- e) the proposal is consistent with other Local Plan policies.”

6. It is also relevant to note the guidance given in NPPG 8, as revised in 1998, to which the retailing sections of the structure plan and the local plan referred. Under the heading “Sequential Approach”, the guidance stated:

“12. Planning authorities and developers should adopt a sequential approach to selecting sites for new retail, commercial leisure developments and other key town centre uses ... First preference should be for town centre sites, where sites or buildings suitable for conversion are available, followed by edge-of-centre sites, and only then by out-of-centre sites in locations that are, or can be made easily accessible by a choice of means of transport ...

13. In support of town centres as the first choice, the Government recognises that the application of the sequential approach requires flexibility and realism from developers and retailers as well as planning authorities. In preparing their proposals developers and retailers should have regard to the format, design, scale of the development, and the amount of car parking in relation to the circumstances of the particular town centre. In addition they should also address the need to identify and assemble sites which can meet not only their requirements, but in a manner sympathetic to the town setting. As part of such an approach, they should consider the scope for accommodating the proposed development in a different built form, and where appropriate adjusting or sub-dividing large proposals, in order that their scale might offer a better fit with existing development in the town centre ...

14. Planning authorities should also be responsive to the needs of retailers and other town centre businesses. In consultation with the private sector, they should assist in identifying sites in the town

centre which could be suitable and viable, for example, in terms of size and siting for the proposed use, and are likely to become available in a reasonable time ...

15. Only if it can be demonstrated that all town centre options have been thoroughly addressed and a view taken on availability, should less central sites in out-of-centre locations be considered for key town centre uses. Where development proposals in such locations fall outwith the development plan framework, it is for developers to demonstrate that town centre and edge-of-centre options have been thoroughly assessed. Even where a developer, as part of a sequential approach, demonstrates an out-of-centre location to be the most appropriate, the impact on the vitality and viability of existing centres still has to be shown to be acceptable ...”

The consideration of the application

7. The interveners’ application was for planning permission to develop a foodstore, café and petrol filling station, with associated car parking, landscaping and infrastructure, including access roads. The proposals also involved improvements to the junction with the A90 (T), the upgrading of a pedestrian underpass, the provision of footpaths and cycle ways, and improvements to adjacent roadways. A significant proportion of the former NCR site lay outside the application site. It was envisaged that vehicular access to this land could be achieved using one of the proposed access roads.

8. In his report to the respondents, the Director of City Development advised that the application was contrary to certain aspects of the employment and retailing policies of the development plan. In relation to the employment policies, in particular, the proposal was contrary to policies which required the respondents to safeguard the NCR site for business use. The Director considered however that the application site was unlikely to be re-developed for business uses in the short term, and that its re-development as proposed would improve the development prospects of the remainder of the NCR site. In addition, the infrastructure improvements would provide improved access which would benefit all businesses in an adjacent industrial estate.

9. In relation to the retailing policies, the Director considered the application in the light of the criteria in Retailing Policy 4 of the structure plan. In relation to the first criterion he stated:

“It must be demonstrated, in the first instance, that no suitable site is available for the development either within the city/district centres or, thereafter on the edge of these centres ... While noting that the Lochee District Centre lies within the primary catchment area for the proposal, [the retail statement submitted on behalf of the interveners] examines the potential site opportunities in and on the edge of that centre and also at the Hilltown and Perth Road District Centres. The applicants conclude that there are no sites or premises available in or on the edge of existing centres capable of accommodating the development under consideration. Taking account of the applicant’s argument it is accepted that at present there is no suitable site available to accommodate the proposed development.”

In relation to the remaining criteria, the Director concluded that the proposed development was likely to have a detrimental effect on the vitality and viability of Lochee District Centre, and was therefore in conflict with the second criterion. The potential impact on Lochee could however be minimised by attaching conditions to any permission granted so as to restrict the size of the store, limit the type of goods for sale and prohibit the provision of concessionary units. The proposal was also considered to be in conflict with the third criterion: there was no deficiency in shopping provision which the proposal would address. The fourth criterion, concerned with accessibility by modes of transport other than the car, was considered to be met. Similar conclusions were reached in relation to the corresponding criteria in Policy 45 of the local plan.

10. In view of the conflict with the employment and retailing policies, the Director considered that the proposal did not fully comply with the provisions of the development plan. He identified however two other material considerations of particular significance. First, the proposed development would bring economic benefits to the city. The closure of the NCR factory had been a major blow to the economy, but the re-development of the application site would create more jobs than had been lost when the factory finally closed. The creation of additional employment opportunities within the city was considered to be a strong material consideration. Secondly, the development would also provide a number of planning benefits. There would be improvements to the strategic road network which would assist in the free flow of traffic along the A90 (T). The development would also assist in the re-development of the whole of the former NCR site through the provision of enhanced road access and the clearance of buildings from the site. The access improvements would also assist in the development of an economic development area to the west. These benefits were considered to be another strong material consideration.

11. The Director concluded that the proposal was not in accordance with the development plan, particularly with regard to the employment and retailing

policies. There were however other material considerations of sufficient weight to justify setting aside those policies and offering support for the development, subject to suitable conditions. He accordingly recommended that consent should be granted, subject to specified conditions.

12. The application was considered by the respondents' entire council sitting as the respondents' Development Quality Committee. After hearing submissions on behalf of the interveners and also on behalf of the appellants, the respondents decided to follow the Director's recommendation. The reasons which they gave for their decision repeated the Director's conclusions:

“It is concluded that the proposal does not undermine the core land use and environmental strategies of the development plan. The planning and economic benefits that would accrue from the proposed development would be important to the future development and viability of the city as a regional centre. These benefits are considered to be of a significant weight and sufficient to set aside the relevant provisions of the development plan.”

The present proceedings

13. The submissions on behalf of the appellants focused primarily upon an alleged error of interpretation of the first criterion in Retailing Policy 4 of the structure plan, and of the equivalent criterion in Policy 45 of the local plan. If there was a dispute about the meaning of a development plan policy which the planning authority was bound to take into account, it was for the court to determine what the words were capable of meaning. If the planning authority attached a meaning to the words which they were not properly capable of bearing, then it made an error of law, and failed properly to understand the policy. In the present case, the Director had interpreted “suitable” as meaning “suitable for the development proposed by the applicant”; and the respondents had proceeded on the same basis. That was not however a tenable meaning. Properly interpreted, “suitable” meant “suitable for meeting identified deficiencies in retail provision in the area”. Since no such deficiency had been identified, it followed on a proper interpretation of the plan that the first criterion did not require to be considered: it was inappropriate to undertake the sequential approach. The Director's report had however implied that the first criterion was satisfied, and that the proposal was to that extent in conformity with the sequential approach. The respondents had proceeded on that erroneous basis. They had thus failed to identify correctly the extent of the conflict between the proposal and the development plan. In consequence, their assessment of whether other material considerations justified a departure from the plan was inherently flawed.

14. The respondents had compounded their error, it was submitted, by treating the proposed development as definitive when assessing whether a “suitable” site was available. That approach permitted developers to drive a coach and horses through the sequential approach: they could render the policy nugatory by the simple expedient of putting forward proposals which were so large that they could only be accommodated outside town and district centres. In the present case, there was a site available in Lochee which was suitable for food retailing and which was sequentially preferable to the application site. The Lochee site had been considered as part of the assessment of the proposal, but had been found to be unsuitable because it could not accommodate the scale of development to which the interveners aspired.

15. In response, counsel for the respondents submitted that it was for the planning authority to interpret the relevant policy, exercising its planning judgment. Counsel accepted that, if there was a dispute about the meaning of the words in a policy document, it was for the court to determine as a matter of law what the words were capable of meaning. The planning authority would only make an error of law if it attached a meaning to the words which they were not capable of bearing. In the present case, the relevant policies required all the specified criteria to be satisfied. The respondents had proceeded on the basis that the proposal failed to accord with the second and third criteria. In those circumstances, the respondents had correctly concluded that the proposal was contrary to the policies in question. How the proposal had been assessed against the first criterion was immaterial.

16. So far as concerned the assessment of “suitable” sites, the interveners’ retail statement reflected a degree of flexibility. There had been a consideration of all sites of at least 2.5 ha, whereas the application site extended to 6.68 ha. The interveners had also examined sites which could accommodate only food retailing, whereas their application had been for both food and non-food retailing. The Lochee site extended to only 1.45 ha, and could accommodate a store of only half the size proposed. It also had inadequate car parking. The Director, and the respondents, had accepted that it was not a suitable site for these reasons.

Discussion

17. It has long been established that a planning authority must proceed upon a proper understanding of the development plan: see, for example, *Gransden & Co Ltd v Secretary of State for the Environment* (1985) 54 P & CR 86, 94 per Woolf J, affd (1986) 54 P & CR 361; *Horsham DC v Secretary of State for the Environment* (1991) 63 P & CR 219, 225-226 per Nolan LJ. The need for a proper understanding follows, in the first place, from the fact that the planning authority is required by statute to have regard to the provisions of the development plan: it

cannot have regard to the provisions of the plan if it fails to understand them. It also follows from the legal status given to the development plan by section 25 of the 1997 Act. The effect of the predecessor of section 25, namely section 18A of the Town and Country (Planning) Scotland Act 1972 (as inserted by section 58 of the Planning and Compensation Act 1991), was considered by the House of Lords in the case of *City of Edinburgh Council v Secretary of State for Scotland* 1998 SC (HL) 33, [1997] 1 WLR 1447. It is sufficient for present purposes to cite a passage from the speech of Lord Clyde, with which the other members of the House expressed their agreement. At p 44, 1459, his Lordship observed:

“In the practical application of sec 18A it will obviously be necessary for the decision-maker to consider the development plan, identify any provisions in it which are relevant to the question before him and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it.”

18. In the present case, the planning authority was required by section 25 to consider whether the proposed development was in accordance with the development plan and, if not, whether material considerations justified departing from the plan. In order to carry out that exercise, the planning authority required to proceed on the basis of what Lord Clyde described as “a proper interpretation” of the relevant provisions of the plan. We were however referred by counsel to a number of judicial dicta which were said to support the proposition that the meaning of the development plan was a matter to be determined by the planning authority: the court, it was submitted, had no role in determining the meaning of the plan unless the view taken by the planning authority could be characterised as perverse or irrational. That submission, if correct, would deprive sections 25 and 37(2) of the 1997 Act of much of their effect, and would drain the need for a “proper interpretation” of the plan of much of its meaning and purpose. It would also make little practical sense. The development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by planning authorities in decision-making unless there is good reason to depart from it. It is intended to guide the behaviour of developers and planning authorities. As in other areas of administrative law, the policies which it sets out are designed to secure consistency and direction in the exercise of discretionary powers, while allowing a measure of flexibility to be retained. Those considerations point away from the view that the meaning of the plan is in principle a matter which each planning authority is entitled to determine from time to time as it pleases, within the limits of rationality. On the contrary, these considerations suggest that in principle, in this area of public administration as in others (as discussed, for example, in *R (Raissi) v Secretary of State for the Home Department* [2008] QB 836), policy statements should be interpreted

objectively in accordance with the language used, read as always in its proper context.

19. That is not to say that such statements should be construed as if they were statutory or contractual provisions. Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse (*Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759, 780 per Lord Hoffmann). Nevertheless, planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean.

20. The principal authority referred to in relation to this matter was the judgment of Brooke LJ in *R v Derbyshire County Council, Ex p Woods* [1997] JPL 958 at 967. Properly understood, however, what was said there is not inconsistent with the approach which I have described. In the passage in question, Brooke LJ stated:

“If there is a dispute about the meaning of the words included in a policy document which a planning authority is bound to take into account, it is of course for the court to determine as a matter of law what the words are capable of meaning. If the decision maker attaches a meaning to the words they are not properly capable of bearing, then it will have made an error of law, and it will have failed properly to understand the policy.”

By way of illustration, Brooke LJ referred to the earlier case of *Northavon DC v Secretary of State for the Environment* [1993] JPL 761, which concerned a policy applicable to “institutions standing in extensive grounds”. As was observed, the words spoke for themselves, but their application to particular factual situations would often be a matter of judgment for the planning authority. That exercise of judgment would only be susceptible to review in the event that it was unreasonable. The latter case might be contrasted with the case of *R (Heath and Hampstead Society) v Camden LBC* [2008] 2 P & CR 233, where a planning authority’s decision that a replacement dwelling was not “materially larger” than its predecessor, within the meaning of a policy, was vitiated by its failure to understand the policy correctly: read in its context, the phrase “materially larger” referred to the size of the new building compared with its predecessor, rather than

requiring a broader comparison of their relative impact, as the planning authority had supposed. Similarly in *City of Edinburgh Council v Scottish Ministers* 2001 SC 957 the reporter's decision that a licensed restaurant constituted "similar licensed premises" to a public house, within the meaning of a policy, was vitiated by her misunderstanding of the policy: the context was one in which a distinction was drawn between public houses, wine bars and the like, on the one hand, and restaurants, on the other.

21. A provision in the development plan which requires an assessment of whether a site is "suitable" for a particular purpose calls for judgment in its application. But the question whether such a provision is concerned with suitability for one purpose or another is not a question of planning judgment: it is a question of textual interpretation, which can only be answered by construing the language used in its context. In the present case, in particular, the question whether the word "suitable", in the policies in question, means "suitable for the development proposed by the applicant", or "suitable for meeting identified deficiencies in retail provision in the area", is not a question which can be answered by the exercise of planning judgment: it is a logically prior question as to the issue to which planning judgment requires to be directed.

22. It is of course true, as counsel for the respondents submitted, that a planning authority might misconstrue part of a policy but nevertheless reach the same conclusion, on the question whether the proposal was in accordance with the policy, as it would have reached if it had construed the policy correctly. That is not however a complete answer to a challenge to the planning authority's decision. An error in relation to one part of a policy might affect the overall conclusion as to whether a proposal was in accordance with the development plan even if the question whether the proposal was in conformity with the policy would have been answered in the same way. The policy criteria with which the proposal was considered to be incompatible might, for example, be of less weight than the criteria which were mistakenly thought to be fulfilled. Equally, a planning authority might misconstrue part of a policy but nevertheless reach the same conclusion as it would otherwise have reached on the question whether the proposal was in accordance with the development plan. Again, however, that is not a complete answer. Where it is concluded that the proposal is not in accordance with the development plan, it is necessary to understand the nature and extent of the departure from the plan which the grant of consent would involve in order to consider on a proper basis whether such a departure is justified by other material considerations.

23. In the present case, the Lord Ordinary rejected the appellants' submissions on the basis that the interpretation of planning policy was always primarily a matter for the planning authority, whose assessment could be challenged only on the basis of unreasonableness: there was, in particular, more than one way in

which the sequential approach could reasonably be applied ([2010] CSOH 128, para 23). For the reasons I have explained, that approach does not correctly reflect the role which the court has to play in the determination of the meaning of the development plan. A different approach was adopted by the Second Division: since, it was said, the proposal was in head-on conflict with the retail and employment policies of the development plan, and the sequential approach offered no justification for it, a challenge based upon an alleged misapplication of the sequential approach was entirely beside the point (2011 SC 457, [2011] CSIH 9, para 38). For the reasons I have explained, however, even where a proposal is plainly in breach of policy and contrary to the development plan, a failure properly to understand the policy in question may result in a failure to appreciate the full extent or significance of the departure from the development plan which the grant of consent would involve, and may consequently vitiate the planning authority's determination. Whether there has in fact been a misunderstanding of the policy, and whether any such misunderstanding may have led to a flawed decision, has therefore to be considered.

24. I turn then to the question whether the respondents misconstrued the policies in question in the present case. As I have explained, the appellants' primary contention is that the word "suitable", in the first criterion of Retailing Policy 4 of the structure plan and the corresponding Policy 45 of the local plan, means "suitable for meeting identified deficiencies in retail provision in the area", whereas the respondents proceeded on the basis of the construction placed upon the word by the Director of City Development, namely "suitable for the development proposed by the applicant". I accept, subject to a qualification which I shall shortly explain, that the Director and the respondents proceeded on the latter basis. Subject to that qualification, it appears to me that they were correct to do so, for the following reasons.

25. First, that interpretation appears to me to be the natural reading of the policies in question. They have been set out in paras 4 and 5 above. Read short, Retailing Policy 4 of the structure plan states that proposals for new or expanded out of centre retail developments will only be acceptable where it can be established that a number of criteria are satisfied, the first of which is that "no suitable site is available" in a sequentially preferable location. Policy 45 of the local plan is expressed in slightly different language, but it was not suggested that the differences were of any significance in the present context. The natural reading of each policy is that the word "suitable", in the first criterion, refers to the suitability of sites for the proposed development: it is the proposed development which will only be acceptable at an out of centre location if no suitable site is available more centrally. That first reason for accepting the respondents' interpretation of the policy does not permit of further elaboration.

26. Secondly, the interpretation favoured by the appellants appears to me to conflate the first and third criteria of the policies in question. The first criterion concerns the availability of a “suitable” site in a sequentially preferable location. The third criterion is that the proposal would address a deficiency in shopping provision which cannot be met in a sequentially preferable location. If “suitable” meant “suitable for meeting identified deficiencies in retail provision”, as the appellants contend, then there would be no distinction between those two criteria, and no purpose in their both being included.

27. Thirdly, since it is apparent from the structure and local plans that the policies in question were intended to implement the guidance given in NPPG 8 in relation to the sequential approach, that guidance forms part of the relevant context to which regard can be had when interpreting the policies. The material parts of the guidance are set out in para 6 above. They provide further support for the respondents’ interpretation of the policies. Paragraph 13 refers to the need to identify sites which can meet the requirements of developers and retailers, and to the scope for accommodating the proposed development. Paragraph 14 advises planning authorities to assist the private sector in identifying sites which could be suitable for the proposed use. Throughout the relevant section of the guidance, the focus is upon the availability of sites which might accommodate the proposed development and the requirements of the developer, rather than upon addressing an identified deficiency in shopping provision. The latter is of course also relevant to retailing policy, but it is not the issue with which the specific question of the suitability of sites is concerned.

28. I said earlier that it was necessary to qualify the statement that the Director and the respondents proceeded, and were correct to proceed, on the basis that “suitable” meant “suitable for the development proposed by the applicant”. As paragraph 13 of NPPG 8 makes clear, the application of the sequential approach requires flexibility and realism from developers and retailers as well as planning authorities. The need for flexibility and realism reflects an inbuilt difficulty about the sequential approach. On the one hand, the policy could be defeated by developers’ and retailers’ taking an inflexible approach to their requirements. On the other hand, as Sedley J remarked in *R v Teesside Development Corporation, Ex p William Morrison Supermarket plc and Redcar and Cleveland BC* [1998] JPL 23, 43, to refuse an out-of-centre planning consent on the ground that an admittedly smaller site is available within the town centre may be to take an entirely inappropriate business decision on behalf of the developer. The guidance seeks to address this problem. It advises that developers and retailers should have regard to the circumstances of the particular town centre when preparing their proposals, as regards the format, design and scale of the development. As part of such an approach, they are expected to consider the scope for accommodating the proposed development in a different built form, and where appropriate adjusting or sub-dividing large proposals, in order that their scale may fit better with existing

development in the town centre. The guidance also advises that planning authorities should be responsive to the needs of retailers. Where development proposals in out-of-centre locations fall outside the development plan framework, developers are expected to demonstrate that town centre and edge-of-centre options have been thoroughly assessed. That advice is not repeated in the structure plan or the local plan, but the same approach must be implicit: otherwise, the policies would in practice be inoperable.

29. It follows from the foregoing that it would be an over-simplification to say that the characteristics of the proposed development, such as its scale, are necessarily definitive for the purposes of the sequential test. That statement has to be qualified to the extent that the applicant is expected to have prepared his proposals in accordance with the recommended approach: he is, for example, expected to have had regard to the circumstances of the particular town centre, to have given consideration to the scope for accommodating the development in a different form, and to have thoroughly assessed sequentially preferable locations on that footing. Provided the applicant has done so, however, the question remains, as Lord Glennie observed in *Lidl UK GmbH v Scottish Ministers* [2006] CSOH 165, para 14, whether an alternative site is suitable for the proposed development, not whether the proposed development can be altered or reduced so that it can be made to fit an alternative site.

30. In the present case, it is apparent that a flexible approach was adopted. The interveners did not confine their assessment to sites which could accommodate the development in the precise form in which it had been designed, but examined sites which could accommodate a smaller development and a more restricted range of retailing. Even taking that approach, however, they did not regard the Lochee site vacated by the appellants as being suitable for their needs: it was far smaller than they required, and its car parking facilities were inadequate. In accepting that assessment, the respondents exercised their judgment as to how the policy should be applied to the facts: they did not proceed on an erroneous understanding of the policy.

31. Finally, I would observe that an error by the respondents in interpreting their policies would be material only if there was a real possibility that their determination might otherwise have been different. In the particular circumstances of the present case, I am not persuaded that there was any such possibility. The considerations in favour of the proposed development were very powerful. They were also specific to the particular development proposed: on the information before the respondents, there was no prospect of any other development of the application site, or of any development elsewhere which could deliver equivalent planning and economic benefits. Against that background, the argument that a different decision might have been taken if the respondents had been advised that

the first criterion in the policies in question did not arise, rather than that criterion had been met, appears to me to be implausible.

Conclusion

32. For these reasons, and those given by Lord Hope, with which I am in entire agreement, I would dismiss the appeal.

LORD HOPE

33. The question that lies at the heart of this case is whether the respondents acted unlawfully in their interpretation of the sequential approach which both the structure plan and the relevant local plan required them to adopt to new retail developments within their area. According to that approach, proposals for new or expanded out of centre developments of this kind are acceptable only where it can be established, among other things, that no suitable site is available, in the first instance, within and thereafter on the edge of city, town or district centres. Is the test as to whether no suitable site is available in these locations, when looked at sequentially, to be addressed by asking whether there is a site in each of them in turn which is suitable for the proposed development? Or does it direct attention to the question whether the proposed development could be altered or reduced so as to fit into a site which is available there as a location for this kind of development?

34. The sequential approach is described in National Planning Policy Guidance Policy 8, *Town Centres and Retailing*, para 5.2 as a fundamental principle of NPPG 8. In *R v Rochdale Metropolitan Borough Council, Ex p Milne*, 31 July 2000, not reported, paras 48-49, Sullivan J said that it was not unusual for development plan policies to pull in different directions and, having regard to what Lord Clyde said about the practical application of the statutory rule in *City of Edinburgh v Secretary of State for Scotland* 1998 SC (HL) 33 at p 44, that he regarded as untenable the proposition that if there was a breach of any one policy in a development plan a proposed development could not be said to be “in accordance with the plan”. In para 52 he said that the relative importance of a given policy to the overall objectives of the development plan was essentially a matter for the judgment of the local planning authority and that a legalistic approach to the interpretation of development plan policies was to be avoided.

35. I see no reason to question these propositions, to which Mr Kingston QC for the appellants drew our attention in his reply to Mr Armstrong’s submissions for the respondents. But I do not think that they are in point in this case. We are concerned here with a particular provision in the planning documents to which the

respondents are required to have regard by the statute. The meaning to be given to the crucial phrase is not a matter that can be left to the judgment of the planning authority. Nor, as the Lord Ordinary put it in his opinion at [2010] CSOH 128, para 23, is the interpretation of the policy which it sets out primarily a matter for the decision maker. As Mr Thomson for the interveners pointed out, the challenge to the respondents' decision to follow the Director's recommendation and approve the proposed development is not that it was *Wednesbury* unreasonable but that it was unlawful. I agree with Lord Reed that the issue is one of law, reading the words used objectively in their proper context.

36. In *Lidl UK GmbH v The Scottish Ministers* [2006] CSOH 165 the appellants appealed against a decision of the Scottish Ministers to refuse planning permission for a retail unit to be developed on a site outwith Irvine town centre. The relevant provision in the local plan required the sequential approach to be adopted to proposals for new retail development out with the town centre boundaries. Among the criteria that had to be satisfied was the requirement that no suitable sites were available, or could reasonably be made available, in or on the edge of existing town centres. In other words, town centre sites were to be considered first before edge of centre or out of town sites. The reporter held that the existing but soon to be vacated Lidl town centre site was suitable for the proposed development, although it was clear as a matter of fact that this site could not accommodate it. In para 13 Lord Glennie noted that counsel for the Scottish Ministers accepted that a site would be "suitable" in terms of the policy only if it was suitable for, or could accommodate, the development as proposed by the developer. In para 14 he said that the question was whether the alternative town centre site was suitable for the proposed development, not whether the proposed development could be altered or reduced so that it could fit in to it.

37. Mr Kingston submitted that Lord Glennie's approach would rob the sequential approach of all its force, and in the Inner House it was submitted that his decision proceeded on a concession by counsel which ought not to have been made: [2011] CSIH 9, 2011 SC 457, para 31. But I think that Lord Glennie's interpretation of the phrase was sound and that counsel was right to accept that it had the meaning which she was prepared to give to it. The wording of the relevant provision in the local plan in that case differed slightly from that with which we are concerned in this case, as it included the phrase "or can reasonably be made available". But the question to which it directs attention is the same. It is the proposal for which the developer seeks permission that has to be considered when the question is asked whether no suitable site is available within or on the edge of the town centre.

38. The context in which the word "suitable" appears supports this interpretation. It is identified by the opening words of the policy, which refer to "proposals for new or expanded out of centre retail developments" and then set out

the only circumstances in which developments outwith the specified locations will be acceptable. The words “the proposal” which appear in the third and fifth of the list of the criteria which must be satisfied serve to reinforce the point that the whole exercise is directed to what the developer is proposing, not some other proposal which the planning authority might seek to substitute for it which is for something less than that sought by the developer. It is worth noting too that the phrase “no suitable site is available” appears in Policy 46 of the local plan relating to commercial developments. Here too the context indicates 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. If they do not meet the sequential approach criteria, bearing in mind the need for flexibility and realism to which Lord Reed refers in para 28, above, they will be rejected. But these criteria are 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.

39. For these reasons which I add merely as a footnote I agree with Lord Reed, for all the reasons he gives, that this appeal should be dismissed. I would affirm the Second Division’s interlocutor.

14. Appeal decision - Cortonwood

Appeal Decision

Inquiry held on 8-10 October 2013

Site visits made on 10 and 11 October 2013

by Martin Pike BA MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 5 November 2013

Appeal Ref: APP/P4415/A/13/2197947

Alba/UPS Warehouse Unit, Cortonwood Drive, Brampton, Barnsley S73 0UF

- 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 Budenny LLP against the decision of Rotherham Metropolitan Borough Council.
 - The application Ref: RB2012/1615, dated 1 November 2012, was refused by notice dated 26 February 2013.
 - The development proposed is demolition of existing warehouse building and erection of 9,177 sq m of Class A1 retail floorspace with associated car parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing warehouse building and erection of 9,177 sq m of Class A1 retail floorspace with associated car parking and landscaping at Alba/UPS Warehouse Unit, Cortonwood Drive, Brampton, Barnsley in accordance with the terms of the application, Ref: RB2012/1615, dated 1 November 2012, subject to the conditions in the Schedule at the end of this decision.

Preliminary Matters

2. Prior to the inquiry there was agreement between Rotherham Metropolitan Borough Council ("the Council"), Barnsley Metropolitan Borough Council ("Barnsley Council") and the appellant which led to withdrawal of the reason for refusal relating to impact on the highway network, subject to appropriate mitigation being secured. Subsequently a unilateral planning obligation was submitted by the appellant that makes provision for financial contributions towards necessary off-site highway improvements and diversion of the Trans Pennine Trail in the event that the development commences.
3. Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 establishes three tests which contributions such as this should satisfy – they should be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind. The agreed statement on transport matters gives details of the highway mitigation works and states why the works are necessary and proportionate, thereby justifying withdrawal of the reason for refusal and demonstrating compliance with Regulation 122(2).

4. The second of the Council's reasons for refusal relates to the impact of the proposed development on the vitality and viability of existing town centres (including Rotherham, Wombwell and Goldthorpe) and on planned investment in Barnsley town centre. Shortly before the inquiry the part of this reason relating to investment in Barnsley town centre was withdrawn by both Rotherham and Barnsley Councils. Barnsley Council subsequently clarified that it has no objection in relation to the impact on Barnsley town centre.

Main Issues

5. The remaining main issues in this appeal are:
 - (i) whether the proposed development accords with the National Planning Policy Framework ("the Framework") on town centres, with particular regard to the sequential test and retail impact; and
 - (ii) whether the proposal accords with the presumption in favour of sustainable development at paragraph 14 of the Framework.

Reasons

6. The appeal site is part of an area allocated for business and industrial use in the 1999 Rotherham Unitary Development Plan (UDP). It comprises a 13,400 sq m high bay warehouse built in 2003 as part of the redevelopment of the former Cortonwood colliery under a mixed use permission (retail, leisure, office, industrial and residential) granted in 1991. Other than a restriction on the area used for the sale of foodstuffs, the permission imposed no limitations on the extent or type of any floorspace. The site abuts 12 non-food retail units (comprising about 27,000 sq m floorspace) built in three phases between 2001 and 2011, together with two restaurants. Abutting this 'retail park' complex is a large Morrisons superstore which opened in 1998.
7. The warehouse was designed for consumer electrical goods and less than half its capacity is currently used; the present tenant has a short term lease which expires in April 2015. The appellant argues that the changing nature and operating practices of the distribution sector means that peripheral locations such as Cortonwood are increasingly less viable for warehousing. The proposed 6 retail units would vary in size from 1,115 sq m to 2,320 sq m and the built form would appear as a continuation of the adjacent phase two units. The scheme would also help to integrate phase three, which at present is divorced from the rest of the retail park, by providing a retail frontage which would facilitate movement between phases two and three.
8. The proposed development is a main town centre use that is not in an existing centre and not in accordance with an up-to-date Local Plan. Paragraph 24 of the Framework requires a sequential test to be applied: such proposals should preferably be located in town centres, then in edge of centre locations, and only if suitable sites are not available should out of centre sites be considered. In addition, the retail impact of the development should be assessed, both on planned investment in centres in the catchment and on town centre vitality and viability.

Town centres (1) – Cortonwood catchment area

9. The first task is to define the primary catchment area (PCA) for the proposed development, as this determines the town centres to which the assessments

sought by the Framework should be directed. Both parties use existing household survey information as the starting point but, because the results for the type of comparison goods usually found on retail parks are based on small sample sizes and are not wholly robust, each consultant applies professional judgements to the data. It was accepted that the PCA is generally an area from which about 80-85% of the trade will be drawn; the relatively small amount of trade that comes from outside the PCA is represented by inflows into the catchment.

10. The main catchment area for Cortonwood is the former mining settlements of the Dearne Valley which have a combined population of about 125,000 people. There is little difference between the parties in the eastern and western extents of their respective catchments; the Council's extends slightly further to the south-west to include Chapeltown and High Green. The important difference is in the northern and southern catchment boundaries: the Council includes the urban areas of Rotherham and Barnsley, whereas the appellant does not.
11. Residents of Rotherham have a wide choice of comparison goods destinations close by. The very large (140,000 sq m) Meadowhall regional shopping centre lies just beyond the eastern edge of Rotherham urban area and is a dominant draw. Parkgate Retail World and the adjacent Great Eastern Way/Foundry Retail Park ("Parkgate/Foundry") are north-east of the town centre and provide over 60,000 sq m of comparison goods floorspace in typical retail park formats. Parkgate and Meadowhall opened at about the same time (1989/1990) and have had a major impact on Rotherham town centre, which currently provides about 20,000 sq m of comparison goods floorspace. Sheffield city centre is about 10km from the centre of Rotherham and is easily accessible by a range of transport modes.
12. Almost all residents of the Rotherham urban area lie within 10-15 minutes drive time of the town centre, Parkgate/Foundry and Meadowhall. By contrast, almost all live more than 15 minutes drive from Cortonwood, which is about 13km from the town centre. The existing non-food retail units at Cortonwood provide a very similar product range as that found at Parkgate/Foundry – indeed, 9 of the 12 retailers represented at Cortonwood are also present at Parkgate/Foundry. It is reasonable to assume that the proposed 6 units will continue this trend, either attracting retailers who trade solely from retail parks or those who trade from both retail parks and traditional town centres. In these circumstances it is most unlikely that people living in Rotherham would travel the greater distance to Cortonwood to purchase goods that they could buy from much larger, closer centres.
13. The results of the Rotherham household surveys broadly support this analysis. There are no residents of Zone 1 (the Rotherham urban area) recorded as using Cortonwood as a main destination for comparison goods. The fact that there is some response from the zone south of Rotherham tends to suggest that there are other reasons for going to Cortonwood – perhaps work related. And if, as the Council suggests, some living in the Kimberworth/Greasbrough areas chose to drive to Cortonwood to avoid the peak time congestion around Parkgate/Foundry, these settlements on the north-west fringe of Rotherham would represent the maximum extent of the Cortonwood catchment. The PCA would not extend to Rotherham town centre or Parkgate/Foundry.

14. The main non-food destination for Barnsley residents is the town centre, which has about twice as much comparison goods floorspace as Rotherham town centre. Barnsley has two main out of centre retail parks - the Peel Centre (about 12,500 sq m, close to the town centre) and Barnsley Retail Park (about 17,000 sq m including B&Q, south-east of the town at Stairfoot/Wombwell Lane). All three locations are generally more accessible to people living in Barnsley urban area than Cortonwood, which is about 10km from the town centre – moreover, most residents would drive past Barnsley Retail Park on their way to Cortonwood.
15. The Barnsley household survey results show some comparison goods spending at Cortonwood from all parts of the Barnsley retail study area. Most comes from zones 3 and 5; because these zones mainly comprise the Dearne Valley towns, it is to be expected. Smaller amounts of trade are drawn to Cortonwood from the Barnsley central zone 1 and those to the west and north (zones 2 and 4). In each zone the spending represents less than 5% of the total spend on comparison goods and does not justify the Council's contention that the entire Barnsley urban area should be included in the Cortonwood PCA. Whilst it can be argued that, because of its size and attraction, the catchment of Cortonwood should include the southern and south-eastern fringes of the Barnsley urban area¹, the PCA would not extend to Barnsley town centre.
16. Consequently the evidence points to a PCA that is broadly consistent with the appellant's catchment, which focuses predominantly on the Dearne Valley towns and is based on 85% of the non-bulky comparison goods expenditure that currently goes to Cortonwood. Arguably a more robust PCA would include Chapeltown/High Green and the southern/south-eastern fringes of Barnsley, but these areas contain only local/district centres and make little difference to the retail assessments. There is no compelling evidence that the Council's far more extensive catchment, which includes the entire Rotherham and Barnsley urban areas, is justified. Indeed the Council's acknowledgement that its catchment captures all or the vast majority of trade going to Cortonwood demonstrates that the authority has not followed the usual approach to defining the PCA.²

Town centres (2) – sequential test

17. Historically the Dearne Valley settlements evolved as discrete residential and service centres supporting local coal mines. The town centres were small, primarily providing goods and services for their mining communities rather than functioning as market towns for a rural hinterland. Following closure of the pits during the 1960s-1990s and the regeneration that has taken place since, the town centres remain small and mainly provide everyday convenience goods and services. Both main parties agree that there are no sequentially preferable town centre or edge of centre sites within the appellant's PCA that could accommodate the proposed development. Nor have any alternative and suitable out of centre sites been identified within this catchment.
18. In practice the availability of retail sites within the Dearne Valley towns is very limited. Consequently the position does not change when considering the

¹ Similar to the "sensitivity test" area identified by Mr Robeson for the appellant at Appendix 1 of "Response to Retail Matters", February 2013.

² To be robust, all further references to "the PCA" in this decision relate to a catchment area which includes Chapeltown/High Green and the southern/south-eastern fringes of Barnsley.

possibility of a different format and/or scale of development, as required by paragraph 24 of the Framework. Thus, based on my finding about the extent of the PCA, the proposed development satisfies the sequential test.

19. Notwithstanding this conclusion, it is appropriate to review the evidence promoted by the Council on what it regards as sequentially preferable sites. The Council interprets the flexibility sought by the Framework in terms of the "Planning for Town Centres" Practice Guidance (PTC), which indicates that it is appropriate to consider disaggregation – that is, whether any of the individual units proposed could be accommodated on more centrally located sites.
20. The scope of the sequential test has been clarified by the Courts since PTC was published in 2009. In *Tesco Stores Ltd v Dundee City Council* [2012 UKSC 13] it was held that "suitable" meant suitable for the development proposed by the applicant rather than (as stated in PTC) suitable to accommodate the need or demand which the proposal is intended to meet. The Council claims that the recently published draft National Planning Practice Guidance (NPPG), which represents the most up-to-date exposition of policy and refers to "suitability" in terms of the need or demand which the proposal is intended to meet, is intended to reverse the Supreme Court's decision and ensure that the sequential test regains its previous utility. But even if practice guidance could contradict a Court judgement in the manner claimed, which is most unlikely, the NPPG is currently in draft "Beta" test mode and - as stated therein - is likely to have limited weight in decision taking. At present, therefore, the *Tesco v Dundee* interpretation of "suitable" must stand.
21. The need for flexibility requires the developer to give consideration to the scope for accommodating the development in a different form, and to have assessed sequentially preferable locations on that basis. This approach was followed in *R (Zurich Assurance Ltd) v North Lincolnshire Council* [2012 EWHC 3708 (Admin)], the Court finding that it was sufficient for a developer to have assessed the possibility of relocating an out of town proposal to one or two smaller town centre sites and to conclude that the alternatives were neither suitable for its business model or commercially viable.
22. In this case there is no prospect of the retail units being developed, in full or in part, at any other location. The proposal is wholly specific to the appeal site as a means of redeveloping a partially used warehouse for a more commercially viable return. The only realistic alternative is a smaller retail scheme on the site; the appellant assessed what it regards as a "baseline" proposal comprising 87.5% of the floorspace (effectively 5 rather than 6 units) on a 2.4ha site which, it claims, is the minimum that is viable. The Council does not argue that the baseline proposal would be acceptable on this site, nor is there evidence that an even smaller scheme would be viable. Instead the Council maintains that there are sequentially preferable sites within its preferred catchment- that is, in or close to centres in Barnsley and Rotherham.
23. The Barnsley Marketplace scheme comprises redevelopment of the town centre markets complex to provide a new shopping mall anchored by a department store, multiplex cinema and replacement market. This major project is at an advanced stage – planning permission has been granted, a development agreement exists between Barnsley Council and a consortium of developers, and key retail tenants have been signed up. Whilst there would be sufficient retail floorspace to accommodate the Cortonwood proposal, it would be in a

very different format to the appeal scheme and calls into question the extent to which 'flexibility' should be applied. If potential Cortonwood retailers would be expected to take floorspace in the Marketplace scheme as currently proposed, serious doubts about affordability and viability arise; alternatively, it is not known whether the Council and developer consortium would accept adaptations to the Marketplace scheme to meet the needs of potential Cortonwood retailers. In the absence of specific information about the Marketplace scheme it is far from certain that it represents a realistic potential alternative (notwithstanding its location outside the PCA and the fact that the commercial interest of the appellant lies solely in Cortonwood).

24. Heelis Street/New Street is a sequentially preferable site on the edge of Barnsley town centre that has planning permission for a food superstore. Barnsley Council regards this as the best site available to meet the need for an additional superstore in Barnsley town centre. Although the site would be suitable for a retail park, it slopes steeply (with cross-falls) and it is not known whether it would be economic to carry out the complex cut and fill operations necessary to create the flat platform usually sought by retail park operators. The higher value associated with a foodstore scheme means that the permitted proposal (which includes undercroft parking) is better placed to deal with the gradient. And the potential for a higher income from the site casts doubt on its availability for a lower value retail park, at least while the landowners believe there is the prospect of a superstore being built. Again the very limited evidence makes it impossible to reach a firm conclusion, but there are significant questions about its availability and viability for a retail park scheme.
25. The YEB site on Harborough Hill Road is also on the edge of Barnsley town centre. Despite being earmarked for retail development since the mid-1990s and benefitting from a retail planning permission since 2005, development has not proceeded. More importantly, it could only accommodate just over half the floorspace proposed at Cortonwood. Thus even adopting the need for flexibility it cannot be regarded as suitable. And the Council's argument that the remaining floorspace could go to a similar-size edge of centre site at Parkgate district centre, over 20km away, would require a level of disaggregation which goes far beyond the remit of current retail policy. All the other sites raised by the Council could only accommodate a much smaller proportion of the proposed floorspace and do not merit serious consideration.
26. To conclude on the sequential issue, there are no sites within the PCA which are suitable, available and viable to accommodate the proposed development. There are two potential sites at Barnsley, within the wider catchment preferred by the Council, but there are significant doubts that either represents a realistic alternative. All other opportunities would require a level of disaggregation that far exceeds current policy, particularly in light of *Tesco v Dundee*. Consequently the sequential test is satisfied.

Town centres (3) – retail impact

27. The first part of the impact test requires an assessment of impact on existing, committed and planned investment in centres in the catchment area of the proposal (paragraph 26 of the Framework). No party claims that the development would have any impact on investment planned at centres within the PCA. The only possible impact on planned investment in the much wider catchment preferred by the Council concerns the Barnsley Marketplace

- scheme; however the previous objections on this issue from both Rotherham and Barnsley Councils have been withdrawn. In the absence of any evidence of adverse impact on investment, this part of the test is satisfied.
28. The second part of the impact test relates to town centre vitality and viability, including matters such as local consumer choice and trade in town centres. Looking firstly at centres within the PCA, the main concern is the impact on the district centres of Wombwell and Goldthorpe.
29. Wombwell is the largest centre in Barnsley borough outside Barnsley itself and, being nearest to Cortonwood, is potentially the one most likely to be affected. The 2010 Barnsley Smaller Centres Study (SCS) found that Wombwell is a popular and well used local centre with a good diversity of town centre uses. The Council predicts that the impact of the proposed development on Wombwell would be a loss of 12% of comparison goods trade in 2017, the assessment year; the comparable figure from the appellant is 5%. The difference stems not from the amount of expenditure that would be diverted from Wombwell to Cortonwood, which is broadly agreed, but from the appellant's substantially higher estimate of the total amount of comparison goods expenditure in the centre. There is no robust evidence which enables the base comparison goods expenditure in Wombwell to be reliably determined.
30. In any event a range of factors must be taken into account, as PTC advises. Firstly, impact should be considered on the overall vitality and viability of a town centre; when convenience goods turnover is added in, the percentage impact on Wombwell falls significantly. Secondly the health and other specific circumstances of a centre are important. Wombwell was found in the SCS to have a better than average vitality and viability index and a relatively low vacancy rate. 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. Thus the proposal would not be introducing a new choice for Wombwell shoppers but an enhancement to the existing out of centre offer. In these circumstances the impact of the development on Wombwell is likely to be relatively small and certainly not significantly adverse (the test in the Framework).
31. Goldthorpe is more remote from the main retail centres and the SCS says it functions predominantly as a convenience centre for a very local catchment. This was confirmed on my site visits, for it appeared to have fewer and smaller comparison goods shops than Wombwell. Doncaster and Barnsley are the main comparison goods destinations for Goldthorpe shoppers, with Cortonwood being used less than Meadowhall for this purpose. As at Wombwell, the Council predicts a 12% diversion of comparison goods trade from Goldthorpe to Cortonwood as a result of the appeal proposal, whereas the appellant believes the loss would be 5%. However, reflecting its main function and the greater distance to large foodstores, the SCS shows that convenience goods turnover at Goldthorpe is much higher than at Wombwell. This results in the proposal having a much smaller impact (I estimate less than 4% based on the Council's figures) on the overall vitality and viability of Goldthorpe town centre.
32. It is acknowledged that Goldthorpe is a less robust centre than Wombwell, the health check revealing merely average vitality and viability and (more recently) a higher than average number of vacancies. Nevertheless the SCS concludes

that the level of vitality and viability in Goldthorpe is not of concern in terms of its role and performance. The Masterplan for Goldthorpe seeks a reduction in the linear extent of retail activity along the main Doncaster Road and identifies a site for a new foodstore which, if built, would help retain convenience goods expenditure and bolster the primary function of the centre. Given the small impact on the overall amount of trade, the average town centre vitality and viability and the steps being taken to regenerate what is mainly a convenience destination, the proposed expansion of comparison goods floorspace at Cortonwood is unlikely to have a significant adverse impact on Goldthorpe.

33. The Council acknowledges that at all other Dearne Valley centres, including Wath upon Dearne and Hoyland, the impact on comparison goods expenditure alone (which is not the proper test) is unlikely to result in a significant adverse impact on town centre vitality and viability. Consequently the impact test is satisfied in respect of all centres within the PCA. The owner of Cortonwood retail park argues that the impacts would be greater than predicted as a result of a higher sales density figure, but the floorspace turnover was agreed with the Council and seems comparable to most similar retail parks in the borough.
34. The Council's main concern is the impact on Rotherham town centre, which I have found to be outside the PCA. The Council accepts that there is no evidence of the current Cortonwood retail park causing any harm to Rotherham town centre, or that any retailer has relocated from the town centre to Cortonwood. Nevertheless the authority argues that there would be a loss of 7% comparison goods trade to the appeal proposal which, because of the town centre's poor health and fragility, would represent a significant adverse impact. This analysis appears to fly in the face of two important characteristics of trade diversion – the principle that "like affects like" and geography/distance.
35. The Council's 7% trade diversion from Rotherham town centre assumes a similar loss of expenditure to that lost at Parkgate/Foundry despite the facts that Parkgate/Foundry have identical formats to Cortonwood and carry mostly the same retailers, are closer to Cortonwood (and on a main route from Rotherham to Cortonwood), and have about three times the comparison goods floorspace as the town centre. Logically these factors would point to an appreciably higher loss of trade from Parkgate/Foundry than from Rotherham. The appellant suggests a minimal town centre diversion and an impact on the comparison goods sector in Rotherham of less than 1%; it also predicts a much greater diversion from both Parkgate/Foundry and the existing stores at Cortonwood. These estimates better reflect established principles and, overall, I believe the appellant's analysis is likely to be closer to the actual outcome.
36. Factors such as a low score on the Council's measure of vitality and viability and its selection as a Portas Pilot town clearly demonstrate that Rotherham has been in decline and suffered from poor health. PTC and the draft NPPG advise that in centres that are experiencing falling rents, high levels of vacancy and declining footfall, even very modest levels of trade diversion can lead to a significant adverse impact. There is evidence of large rent falls in Rotherham, though other signs are less clear cut. The raw data on footfall since 2003 indicates a decline from a 2007 pre-recession peak, though footfall has increased each year since 2010. Vacancies are difficult to assess: whilst the headline figure of 20% appears high, it is based on outdated GOAD plans which do not reflect the planned retrenchment of the town centre and its geographic

shift northwards. It was apparent on my site visit that the southern and western fringes of the defined town centre now perform a very limited shopping role, whereas the primary frontages have very few vacancies and appear well used.

37. My observations support the appellant's view that Rotherham has responded to the competition from Parkgate/Foundry and Meadowhall by differentiating itself and finding a niche based on its core strengths – its popular markets, its good public transport accessibility and its wide mix of town centre uses. This has led to a concentration of comparison goods retailers in the value/discount sector of the market and the growth of small independent retailers. As a consequence, recent signs are more positive. The latest surveys show greater satisfaction amongst shoppers, vacancies in the prime shopping area are relatively low, and the town centre will be considerably enhanced by the new, larger Tesco superstore being built on a site abutting the northern town centre boundary. Overall I gained the impression of a town centre that has undergone a painful process of retrenchment and adaptation in the face of severe external competition and is beginning to emerge in better shape as a result of focusing on its core strengths. Such a strategy is consistent with the advice at paragraph 7.24 of PTC.
38. In circumstances where a much greater trade diversion is likely to be felt by the existing retail parks than is predicted by the Council, and where conditions in Rotherham town centre are not as bleak as portrayed by the Council, I believe that the adverse impact on town centre vitality and viability is likely to be very small and not "significant". Thus even if it was determined that Rotherham should be included in the catchment, which I do not accept, the impact test is satisfied. And while greater expenditure would be diverted from other centres outside the catchment, including Barnsley and Meadowhall, there is no evidence of there being a significant adverse impact at these locations.
39. Because the sequential and impact tests are satisfied, I conclude that the proposed development accords with the policies in the Framework relating to town centres.

Presumption in favour of sustainable development

40. Paragraph 14 of the Framework states that, firstly, proposals which accord with the development plan should be approved without delay, and secondly, where the development plan is absent, silent or out of date, permission should be granted unless any adverse impacts would significantly outweigh the benefits when assessed against the Framework as a whole. Thus the starting point for decision-taking is assessment against the development plan.
41. None the Rotherham Unitary Development Plan (UDP) retail policies relevant to this appeal have been saved. Policy EC3.3 is the only relevant saved policy; this relates to other development on sites (including Cortonwood) allocated for business and industrial use. The policy permits such development subject to certain amenity and environmental criteria, and where the development would be ancillary to the primary use of the area or would provide significant employment. It is also necessary to demonstrate that there are no suitable alternative locations available for the proposed development, that no land use conflicts are likely to arise, and that the proposal significantly increases the range and quality of employment opportunities in the area.

42. No party is claiming any conflict with policy EC3.3. The current warehouse operation employs about 30 persons; when operating at full capacity the employment was about 85 persons. The proposed retail units would employ approximately 160 persons full time, though with part time working the actual number would increase by at least 50%. Consequently the development would provide "significant" employment and satisfy the other job-based criteria in an area which suffers from high levels of unemployment. Subject to the highway improvements addressed by the S106 obligation, it would not give rise to any land use conflicts.
43. The remaining EC3.3 test is the availability of suitable alternative locations. There was some uncertainty at the inquiry about whether "suitability" should relate to alternative employment locations or whether it meant suitable in the context of the retail development being proposed. But it matters little. No other employment sites have been suggested, while alternative retail locations were considered under the sequential testing and none has been identified as suitable and available. Thus there is compliance with policy EC3.3. This means that, on employment grounds, the development should be approved under the first strand of paragraph 14 of the Framework. But in the absence of saved retail policies the second strand is also engaged; this requires the adverse impacts of the development to be weighed against the benefits.
44. It is pertinent to reflect on the population that an enlarged Cortonwood would serve. It lies in the middle of the broad arc of towns that make up the Dearne Valley; by retaining in the PCA some of the comparison goods trade that predominantly goes to the surrounding towns, there would be fewer journeys outside the catchment. Not only does the Dearne Valley have a large resident population, but that population is set to increase in coming years as a result of new housing to be built under ongoing regeneration initiatives. Thus there is considerable merit to the appellant's argument that the development would be sustainable. Indeed, the Council acknowledges that Cortonwood is an accessible and sustainable location for new retail floorspace in preference to more sporadic out of centre locations.³
45. Emerging plans are a material consideration. The Council is nearing completion of the first part of its replacement for the UDP, the Rotherham Local Plan Core Strategy (RLPCS). The publication Core Strategy was released in June 2012 and the examination hearings began on 22 October 2013. The RLPCS identifies Cortonwood as one of the three main shopping centres in the borough but, in accordance with national policy, it is excluded from the town centres to which new retail development should be directed under policy CS12. This policy sets out a sequential approach and impact assessment for out of centre retail uses which is mostly consistent with the Framework.
46. The Council is concerned that the proposal would substantially exceed the identified need for comparison (non-bulky) goods floorspace in Rotherham town centre over the RLPCS period. But there are no sites available in the town centre; in any event, that need will largely be met by the new Tesco superstore. Moreover, the absence of need does not represent a policy conflict. And as Cortonwood lies on the boundary of Rotherham borough, much of the demand it serves comes from the part of Dearne Valley in Barnsley borough.

³ This is stated in a response to representations made on proposed Further Changes to the emerging Core Strategy; whilst not a formal statement of Council policy, it presumably sets out current officer thinking.

Conclusions

47. As a result of a significant increase in local employment, the proposal accords with UDP employment policy EC3.3 and, thereby, with the development plan. On retail grounds there is no sequentially preferable site in the PCA, nor would the development have a significant adverse impact on the vitality and viability of any town centre in the PCA; consequently the retail policies of the Framework are satisfied. There is also compliance with the Framework if the wider catchment area preferred by the Council is used. In addition, there would be sustainability benefits to Dearne Valley residents by reducing the distance that is currently travelled for comparison goods shopping.
48. Of course the trade would be drawn from somewhere. The main impact would be felt by out of town locations which are not protected by retail policy; in any event there is no compelling evidence that these centres would be significantly affected. And though Rotherham borough's quantum of need for non-bulky comparison goods floorspace would be exceeded, no harm would result; instead, some of the trade that currently leaks out of the Dearne Valley towns would be clawed back.
49. None of the other matters raised adds significantly to the case against the proposal. In these circumstances the benefits of the development clearly outweigh the limited adverse impacts and, under the presumption in favour of sustainable development at paragraph 14 of the Framework, planning permission should be granted. Accordingly the appeal succeeds.

Conditions

50. The conditions agreed between the parties have been considered in light of the discussion at the inquiry, the advice in Circular 11/95: *The use of conditions in planning permissions* and subsequent Government advice. Where appropriate the wording has been varied to accord more closely with that advice or in the interests of clarity and consistency.
51. To ensure that the development is built to a high standard which harmonises with its surroundings it is necessary for the Council to approve details of the materials of construction and landscaping of the site, and to require plants that fail within 5 years to be replaced. The provision of car parking, a pedestrian crossing and a pedestrian link to the site boundary are required in the interests of highway and pedestrian safety. For the same reason, and to ensure that the hard surfaces are appropriately drained, it is necessary to specify the means of construction of the vehicle circulation areas.
52. To promote sustainable transport choices it is necessary for cycle parking to be installed and for a Travel Plan to be in place before each retail unit is open for trading. A condition preventing the sale of food from the retail units is necessary to maintain the vitality and viability of nearby town centres. And in the interests of proper planning it is necessary for the development to be carried out in accordance with the approved plans.

Martin Pike

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Timothy Leader	of Counsel	instructed by Directors of Legal and Democratic Services, Rotherham and Barnsley Metropolitan Borough Councils
<i>He called</i>		
Dr J England	MBE	Director, England & Lyle
BA(Hons), DipTP, MRTPI		

FOR THE APPELLANT:

Christopher Lockhart-Mummery	QC	instructed by Martin Robeson
<i>He called</i>		
Mr M Robeson		Managing Director, Martin Robeson Planning Practice
BA FRTPI FRICS FRSA		

DOCUMENTS SUBMITTED DURING THE INQUIRY

SUBMITTED BY THE APPELLANT

- G1 Plan showing drive times
- G2 Extract from Board Report relating to new Tesco superstore, Rotherham
- G3 Extract from Dr England's book "Retail Impact Assessment"
- G4 Goldthorpe Masterplan Report and extract from Barnsley Council website
- G5 Plan of walking distance from Rotherham town centre to Liquid & Envy site
- G6 Opening submissions for Appellant
- G7 Note on proper approach to the sequential test
- G8 Catchment Areas plan
- G9 Agreed statement on transport matters
- G10 Closing submissions for Appellant

SUBMITTED BY ROTHERHAM COUNCIL

- H1 Opening statement for Council
- H2 Extracts from draft National Planning Practice Guidance
- H3 Audit Commission Report 2004: Rotherham MBC - Regeneration
- H4 List of conditions
- H5 Portas Review Pilots application form
- H6 Rotherham Core Strategy – extracts from Focused Change representations, Council's response and Additional Proposed Changes
- H7 Population statistics for South Yorkshire local authorities
- H8 Floorspace of new Tesco superstore, Rotherham
- H9 Schedule of retail units in Rotherham town centre
- H10 Rotherham town centre footfall data
- H11 Closing submissions for Council

SUBMITTED BY THE INSPECTOR

- I1 Consent Order quashing Secretary of State permission for superstore at Worksop

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) No development shall take place until details of the materials to be used in the construction of the retail units hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 3) Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, as amended, the retail premises (Use Class A1) hereby permitted shall not be used for the sale of food.
- 4) The permission hereby granted shall relate to the area outlined in red on the approved site plan and the development shall only take place in accordance with the submitted details and specifications as shown on the following approved plans: Drawings 11192-PA-01 Rev A, 11192-PA-04 Rev J, 11192-PA-05 Rev E, 11192-PA-07 Rev A, 11192-PA-09 Rev A.
- 5) Development shall not begin until details of a Zebra crossing in the approximate position shown on the attached plan (Ref: Plan 6, Location of Proposed Zebra Crossing in Agreed Statement on Highway Matters) have been submitted and approved in writing by the local planning authority. The approved details shall be implemented prior to the development being brought into use.
- 6) Before the first retail unit is open for trading, that part of the site to be used by vehicles shall be constructed with either
 - (a) a permeable surface and associated water retention/collection drainage, or
 - (b) an impermeable surface with water collected and taken to a separately constructed water retention/discharge system within the site.

The area shall thereafter be maintained for its intended purpose.
- 7) Before the first retail unit is open for trading the car parking area shown on the approved site plan (drawing 11192-PA-04 Rev J) shall be provided, marked out and thereafter shall not be used for any purpose other than the parking of vehicles.
- 8) Before the first retail unit is open for trading full details of the type and position of cycle parking shall be submitted to and approved in writing by the local planning authority and installed and ready for use.
- 9) Before each retail unit is open for trading a Travel Plan shall have been submitted by the occupier and approved in writing by the local planning authority. The local planning authority shall be informed of and give prior approval in writing to any subsequent improvements or modifications to each Travel Plan following submission of progress performance reports as timetabled in the monitoring programme.
- 10) Before the first retail unit is open for trading details of a pedestrian link up to the south-western site boundary to enable a link with a prospective footway at the adjacent car park shall submitted to and approved in

writing by the local planning authority and the approved details shall be implemented.

- 11) No development shall take place until a detailed scheme of landscape works has been submitted to and approved in writing by the local planning authority. The landscape scheme shall be prepared to a minimum scale of 1:200 and shall clearly identify (through supplementary drawings where necessary):
- the extent of existing planting, including those trees or areas of vegetation that are to be retained and those it is proposed to remove;
 - the extent of any proposed changes to existing ground levels;
 - any constraints in the form of existing or proposed site services or visibility requirements;
 - areas of structural and ornamental planting that are to be carried out;
 - the positions, design, materials and type of any boundary treatment to be erected;
 - a planting plan and schedule detailing the proposed species, siting, quality and size specification and planting distances;
 - a written specification for ground preparation and soft landscape works;
 - the programme for implementation;
 - written details of the responsibility for maintenance and a schedule of operations, including replacement planting, that will be carried out for a period of 5 years after completion of the planting scheme.

The landscape works shall thereafter be implemented in accordance with the approved landscape scheme within a timescale agreed in writing by the local planning authority.

- 12) Any plants or trees which within a period of 5 years from completion of planting die, are removed or damaged or that fail to thrive, shall be replaced. Assessment of requirements for replacement planting shall be carried out on an annual basis in September of each year and any such planting (and rectification of defective work or materials discovered) shall be carried out before 31 December of that year.

15. High Court in Zurich Assurance Limited vs North Lincolnshire and Simons Developments (2012)

Case No: CO/4764/2012

Neutral Citation Number: [2012] EWHC 3708 (Admin)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT IN LEEDS

Leeds Combined Court,
1 Oxford Row, Leeds, LS1 3BG

Date: 20/12/2012

Before:

MR JUSTICE HICKINBOTTOM

Between:

THE QUEEN on the application of
ZURICH ASSURANCE LIMITED trading as
THREADNEEDLE PROPERTY INVESTMENTS

Claimant

- and -

NORTH LINCOLNSHIRE COUNCIL

Defendant

- and -

SIMONS DEVELOPMENTS LIMITED

Interested
Party

Paul G Tucker QC and Anthony Gill (instructed by Nabarro LLP) for the Claimant
Vincent Fraser QC and Alan Evans (instructed by Legal Services Department,
North Lincolnshire Council) for the Defendant
Christopher Katkowski QC and Graeme Keen (instructed by Gordons LLP)
for the Interested Party

Hearing date: 17 December 2012

Judgment

Mr Justice Hickinbottom:

Introduction

1. The Claimant (“Zurich”) is the owner of the Foundry Shopping Centre, which lies within the primary shopping area in the centre of Scunthorpe, the largest town in North Lincolnshire. The shopping centre comprises 19,000 sq m of retail floorspace in 45 units.
2. The Interested Party (“Simons”) has an option to purchase the Trent Valley Garden Centre, Doncaster Road, Gunness (“the Site”), which is about 2.5 kilometres from Scunthorpe town centre.
3. On 26 March 2012, the Defendant (“the Council”), which is the relevant local planning authority, granted planning permission to Simons to demolish the garden centre and its associated structures, and construct a retail park with four retail units and associated access roads, car parking, servicing area and landscaping.
4. In this claim, issued on 8 May 2012, Zurich challenges that decision, with the permission of His Honour Judge Gosnell sitting as a judge of this court granted on 23 July 2012.
5. At the substantive hearing, Zurich was represented by Paul Tucker QC and Anthony Gill, the Council by Vincent Fraser QC and Alan Evans, and Simons by Christopher Katkowski QC and Graeme Keen.

Factual Background

6. The Site has been a garden centre since the mid-1980s: on 17 January 1985, planning permission was granted for a change of use of the land, and to erect appropriate buildings. That permission was subject to a condition (Condition 2) that limited the goods that could be sold to a prescribed list which, in general, excluded food and clothes. However:
 - i) full planning permission was granted on 3 April 1986 to retain a restaurant, lounge and patio area;
 - ii) outline planning permission was granted on 9 August 1990 to erect buildings to create a non-food retail warehouse park (although that was never implemented, and has of course long since lapsed); and
 - iii) there is significant evidence that the Site has in fact been used for very wide retail use – far wider than allowed by Condition 2 – for some considerable time (e.g. the Secretary of State’s decision letter of 9 August 1990 refers to the garden centre having “already some... 4,500 sq m of retail floorspace used for the sale of a wide range of goods”).
7. On 22 August 2011, Simons made a further application for planning permission for a new retail park on the Site, initially proposing six retail outlets, but later reduced to four namely one large unit (4,645 sq m) and three smaller units. Accompanying the application was a screening opinion dated 22 July 2011 under Regulation 4 of the Town and Country Planning (Environmental Impact Assessment) (England and

Wales) Regulations 1999 (SI 1999 No 293), to the effect that a full environmental impact assessment was unnecessary. The application was validated by the Council on 31 August 2011.

8. Two letters of objection were lodged by planning consultants representing Zurich (Indigo Planning Limited, “Indigo”). However, on 14 December 2011, the application was considered by the Council’s Planning Committee, which resolved in favour of granting it subject to the completion of a satisfactory Section 106 planning obligation. The application was referred to the Secretary of State, who indicated that the matter would not be called-in for decision by him.
9. On 23 December 2011, a letter before claim was sent to the Council by an informal group of local businesses and residents opposed to the project, known as “Keep Scunthorpe Alive” (“KSA”), challenging the decision to grant permission; and further letters of objection were sent by Indigo. As a result, the Council’s case officer (Mr David Wordsworth) prepared a further report for the committee which, rather than merely updating the earlier report to deal with the objections received, was a comprehensive report covering all of the ground again including the contents of the objections to which I have referred (“the Main Report”) with an addendum of its own responding to two late, further letters of objection from Indigo and KSA (“the Addendum Report”). It is therefore unnecessary for me to consider the earlier report further.
10. On 7 March 2012, on the basis of the Main Report and the Addendum Report, the Council’s Planning Committee reconsidered the application, and again resolved to grant permission subject to referral and a satisfactory Section 106 obligation, in the following terms:

“Resolved - (a) That the committee is mindful to grant permission for the development; (b) that the application be referred to the Secretary of State in accordance with statutory procedures to enable him to consider whether or not to intervene; (c) that in the event of the Secretary of State deciding not to intervene, the Head of Development Management be authorised to grant permission subject to the completion of a formal agreement under Section 106 of the Town and Country Planning Act 1990 providing for off-site highway improvements, Scunthorpe town centre protection, protected species translocation and maintenance and a contribution towards improving the existing footpaths in the vicinity of the site, and to the conditions contained in the report, and (c) [sic] that if the obligation is not completed by 7 June 2012, the Head of Development Management be authorised to refuse the application on the grounds of the adverse impact upon the vitality and viability of Scunthorpe town centre, adverse impact upon highway safety and levels of congestion within the locality, adverse impact upon protected species and their habitat, and non-compliance with Policy EC16 of PPS 4, policies T2 and T6 of the North Lincolnshire Local Plan, and policies C14, C25 and CS17 of the North Lincolnshire Core Strategy.”

(The voting being equal on the above matter, ... the chairman used his second and casting vote in favour of the motion).”

That resolution very much followed the wording of the officer’s formal recommendation at pages 63-4 of the Main Report.

11. The Secretary of State did not call-in the decision. A Section 106 agreement was completed, and full planning permission granted, on 26 March 2012.
12. It was a condition of the grant of planning permission (Condition 38) that the first tenant of the large unit should be a retail company within the Marks and Spencer plc group of companies (“Marks & Spencer”). Marks & Spencer had had a 949 sq m shop in High Street, Scunthorpe from 1931 to early 2011 when it closed, commercial non-viability being given as the reason for closure.
13. It is that grant of planning permission on 26 March 2012 that Zurich now challenges.

Legal Principles

14. This case hinges largely upon criticisms of the officer’s Main and Addendum Reports to the Council’s Planning Committee, seen in the light of national and local planning policy. The relevant legal principles relating to such reports and policy were agreed by the parties, and are uncontroversial.
15. Each local planning authority delegates its planning functions to a planning committee, which acts on the basis of information provided by case officers in the form of a report. Such a report usually also includes a recommendation as to how the application should be dealt with. With regard to such reports:
 - i) In the absence of contrary evidence, it is a reasonable inference that members of the planning committee follow the reasoning of the report, particularly where a recommendation is adopted.
 - ii) When challenged, such reports are not to be subjected to the same exegesis that might be appropriate for the interpretation of a statute: what is required is a fair reading of the report as a whole. Consequently:

“[A]n application for judicial review based on criticisms of the planning officer’s report will not normally begin to merit consideration unless the overall effect of the report significantly misleads the committee about material matters which thereafter are left uncorrected at the meeting of the planning committee before the relevant decision is taken” (Oxton Farms, Samuel Smiths Old Brewery (Tadcaster) v Selby District Council (18 April 1997) 1997 WL 1106106, per Judge LJ as he then was).
 - iii) In construing reports, it has to be borne in mind that they are addressed to a “knowledgeable readership”, including council members “who, by virtue of that membership, may be expected to have a substantial local and background knowledge” (R v Mendip District Council ex parte Fabre (2000) 80 P & CR

500, per Sullivan J as he then was). That background knowledge includes “a working knowledge of the statutory test” for determination of a planning application (Oxton Farms, per Pill LJ).

16. The principles relevant to the proper approach to national and local planning policy are equally uncontroversial:
- i) The interpretation of policy is a matter of law, not of planning judgment (Tesco Stores Ltd v Dundee City Council [2012] UKSC 13).
 - ii) National planning policy, and any relevant local plan or strategy, are material considerations; but local authorities need not follow such guidance or plan, if other material considerations outweigh them.
 - iii) Whereas what amounts to a material consideration is a matter of law, the weight to be given to such considerations is a question of planning judgment: the part any particular material consideration should play in the decision-making process, if any, is a matter entirely for the planning committee (Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 WLR 759 at page 780 per Lord Hoffman).

The Relevant National and Local Guidance

17. At the relevant time, national planning policy was contained in Planning Policy Statement 4: Planning for Sustainable Economic Growth (“PPS4”), supplemented by Planning for Town Centres: Practice Guidance on Need, Impact and Sequential Approach (“the PPS4 Practice Guidance”), both published by the Secretary of State for Communities and Local Government. (For the sake of completeness, it should be said that PPS4 was replaced on 27 March 2012, i.e. the day after the relevant planning decision in this case. However, the National Planning Policy Framework, which replaced PPS4, has no relevance to this claim.)
18. PPS4 identifies the Government’s overreaching objective for a prosperous economy as “sustainable economic growth” (paragraph 9). To help achieve that, the Government’s more particular objectives for planning include building prosperous communities by improving the economic performance of towns, delivering more sustainable patterns of development, and promoting the vitality and viability of towns and other centres as important places for communities (including the focusing of new economic growth and development of main town centre uses in existing centres) (paragraph 10).
19. One policy to that end is the requirement for sequential assessment for planning applications for main town centre uses that are not in an existing centre and not in accordance with an up-to-date development plan (Policy EC14.3). Such sequential assessments must be performed in accordance with Policy EC15, which provides:
- “15.1 In considering sequential assessments required under Policy EC14.3, local planning authorities should:
- a. ensure that sites are assessed for their availability, suitability and viability.

- b. ensure that all in-centre options have been thoroughly assessed before less central sites are considered.
- c. ensure that where it has been demonstrated that there are no town centre sites to accommodate a proposed development, preference is given to edge of centre locations which are well connected to the centre by means of easy pedestrian access.
- d. ensure that in considering sites in or on the edge of existing centres, developers and operators have demonstrated flexibility in terms of:
 - i. scale: reducing floorspace of their development;
 - ii. format: more innovative site layouts and store configurations such as multi-storey developments with smaller footprints;
 - iii. car parking provisions; reduced or reconfigured car parking areas; and
 - iv. the scope for disaggregating specific parts of a retail or leisure development, including those which are part of a group of retail or leisure units, onto separate, sequentially preferable, sites. However, local planning authorities should not seek arbitrary sub-division of proposals.

15.2 In considering whether flexibility has been demonstrated under policy EC15.1.d above, local planning authorities should take into account any genuine difficulties which the applicant can demonstrate are likely to occur in operating the proposed business model from a sequentially preferable site, for example where a retailer would be limited to selling a significantly reduced range of products. However, evidence which claims that a class of goods proposed to be sold cannot be sold from the town centre should not be accepted.”

- 20. Policy EC16.1 requires planning applications for main town centre uses that are not in a centre and not in accordance with an up-to-date development plan to be assessed against a number of identified impacts on centres, including “the impact of the proposal on town centre vitality and viability...” (Policy 16.1.b). Policy EC10.2 requires such applications also to be assessed against a number of other considerations, including the impact on economic and physical regeneration (Policy EC10.2.d) and the impact on local employment (Policy EC 10.2.e).
- 21. Policy EC17 is of particular importance in this claim. It provides as follows:
 - “EC17.1 Planning applications for main town centre uses that are not in an existing centre and not in accordance with an up to

date development plan should be refused planning permission where:

- a. the applicant has not demonstrated compliance with the requirements of the sequential approach (policy EC15); or
- b. there is clear evidence that the proposal is likely to lead to significant adverse impacts in terms of any one of impacts set out in policies EC10.2 and 16.1 (the impact assessment), taking account of the likely cumulative effect of recent permissions, developments under construction and completed developments.

EC17.2 Where no significant adverse impacts have been identified under policies EC10.2 and 16.1, planning applications should be determined by taking account of:

- a. the positive and negative impacts of the proposal in terms of policies EC10.2 and 16.1 and any other material considerations; and
- b. the likely cumulative effect of recent permissions, developments under construction and completed developments.

EC17.3 Judgments about the extent and significance of any impacts should be informed by the development plan (where this is up to date). Recent local assessments of the health of town centres which take account of the vitality and viability indicators in Annex D of this policy statement and any other published local information (such as a town centre or retail strategy), will also be relevant.”

22. The effect of Policy EC17, and the requirements it places on a local authority applying it, are clear – and again uncontentious as between the parties to this claim.
- i) Where a planning application is for development of main town centre uses not in a centre and not in accordance with an up-to-date development plan, then it is for the applicant to demonstrate compliance with the requirements of the sequential approach (confirmed in paragraph 5.6 of the PPS4 Practice Guidance).
 - ii) The question as to whether the applicant has demonstrated compliance is logically binary, i.e. it is capable of only one of two answers, “yes” or “no”. Compliance has either been demonstrated, or it has not.
 - iii) If it has been demonstrated, and no significant adverse impacts have been identified under Policies EC10.2 or 16.1, then the application is determined by the planning committee performing a balancing exercise, taking account of the positive and negative impacts of the proposal in terms of those two policies and any other material considerations. That balancing exercise takes place within the four corners of the policy: the policy requires it to be performed.

- iv) If it has not been demonstrated, or if it has been demonstrated but there is clear evidence that the proposal is likely to lead to significant adverse impacts set out in Policies EC10.2 and 16.1, then the policy is that the application should be refused. However, that national policy (of refusing an application in these circumstances) is capable of being displaced if the planning committee considers that it is outweighed by other material considerations. That too requires the committee to perform a balancing exercise, but this exercise is performed outside the four corners of the policy: it is required because of the *nature* of the policy, not because of its *terms*. However, one negative factor that must be taken into account in this exercise is of course the fact that it is the national policy to refuse an application in these circumstances.
23. That is the relevant national policy. Turning to local policy, the development plan for North Lincolnshire comprises three elements:
- i) The Yorkshire and Humber Plan (Regional Spatial Strategy to 2026): The Localism Act 2011 enables the revocation of regional policies, but that has not been fully implemented yet. Policy YH4 identifies Scunthorpe as a sub-regional town which should be the prime focus for facilities (including retail shopping) in the region.
- ii) Those parts of the North Lincolnshire Local Plan that were saved by a direction of the Secretary of State dated 17 September 2007: Policy S8 (Out-of-centre Retail and Leisure Development) reflects the national sequential approach, by only permitting out-of-centre retail development where (amongst other things):
- a clear need for the development can be demonstrated;
 - a developer can demonstrate that there are no sites for the proposed use within or at the edge of the town centre that are suitable, viable for the proposed use and likely to be available within a reasonable time period; and
 - the proposal will have no adverse impact on the vitality and viability of existing district centres and the rural economy;
- iii) The Council's Core Strategy, adopted in June 2011 as part of the North Lincolnshire's local development framework, which sets out the spatial planning framework to 2026.
24. Mr Tucker particularly relied upon the Core Strategy. It stresses (paragraphs 10.7 and 10.9):
- “The improvement of Scunthorpe town centre is priority for both the Sustainable Community Strategy and the [Local Development Framework]....
- As part of the Scunthorpe Urban Renaissance Programme the town centre will be subject to considerable change and

redevelopment that reinforces its role as North Lincolnshire's main centre as well as enhancing its role regionally."

25. Policy CS14.1 states:

"To fulfil its sub-regional role, identified in the [Regional Spatial Strategy], Scunthorpe town centre will be main location for all new retail, leisure, cultural and office development.... New development should make a positive contribution to improving the town centre's viability and vitality, support the creation of a comfortable, safe, attractive and accessible shopping environment, and improve the overall mix of land uses in the centre and its connectivity to adjoining areas."

26. Directly reflecting PPS4 and the sequential approach required by that national policy, paragraph 10.25 provides:

"New retail development is an important part of the continued growth in North Lincolnshire. In particular it will have an important role to play in helping to regenerate Scunthorpe town centre. In choosing the location of new retail development, it should be done in line with the sequential test as set out in PPS4, which is as follows:

- Existing centres, where the development is appropriate in relation to the role and function of the centre, then
- Edge of centre locations, which are well-connected to the existing centre and where the development is appropriate to the role and function of the centre, and then
- Out of centre sites that are well serviced by a choice of means of transport."

Application of the Policies to this Application

27. In respect of Simons' August 2011 application, the planning committee had the benefit of advice from two consultants in retail development, HOW Planning LLP ("HOW", instructed by Simons) and England & Lyle (instructed by the Council itself).
28. HOW and England & Lyle agreed that the proposed development would not have any significant adverse impact on Scunthorpe town centre, the predicted diversion of trade being no more than 5.5% (see Main Report, at page 59).
29. On the other hand, there was evidence that the development would bring significant economic benefits to the area, with estimates of a claw back of retail trade of £20m, and the creation of approximately 300 part-time and full time jobs (Main Report, page 49). The evidence of the Council's Head of Economic Development and Area Renaissance included the following (Main Report, page 62):

“Whilst we recognise that there may be some negative impact on the town centre of the development, the employment growth, increased local disposable income and stemming the leakage of retail spend outside of North Lincolnshire will result in a net positive impact on Scunthorpe and North Lincolnshire.

It is recognised that female unemployment is currently rising faster than male unemployment in North Lincolnshire. The additional new jobs created, due to their part-time nature, will provide needed employment opportunities particularly for female unemployed.

A global, well-respected firm such as [Marks & Spencer] will provide Scunthorpe with a positive marketing opportunity and may help raising the profile and aspiration of not only Scunthorpe as a town but of North Lincolnshire as a whole.”

30. With regard to the sequential test, HOW concluded that there were no sequentially preferable sites within or on the edge of Scunthorpe. However, England & Lyle examined the potential for the proposed Marks & Spencer store to be split into (i) a non-food (clothes and household goods) store which might be accommodated in a 3,884 sq m unit in Cole Street in the town centre, previously occupied by T J Hughes, and (ii) a food-only store which might be accommodated in the unit in the High Street formerly occupied by Marks & Spencer. The advisers considered that, if the T J Hughes unit was to be discounted, then “there needs to be a clearer justification as to why it is not suitable for use by Marks & Spencer” (paragraph 8.8 of November 2011 Report). Furthermore, if the proposed Marks & Spencer retail operation could be accommodated thus, “the sequential assessment does not adequately assess whether the floorspace of the other retail units could be located on separate sequentially preferable sites to comply with Policy EC15” (paragraph 8.14).
31. HOW responded that Marks & Spencer did not have a business model of stores limited to clothes and household goods, and they considered that they needed a store offering a full range of their goods to make it commercially viable.
32. England & Lyle were still cautious. In their response to HOW’s further comments, they said:

“There may be advantages in creating a critical mass of retail development on the application site but these advantages should be treated as positive benefits of the scheme, not part of the sequential approach. Policy EC17 justifies refusal of planning permission where an applicant has not demonstrated compliance with the requirements of the sequential approach. In this instance we suggest that it is better for the Council to make its own judgement about whether sequentially preferable sites are available, suitable and viable for retail development – including the former T J Hughes unit, West Street car park, land surrounding Church Square, Winterton Road, Glebe Pit and Brigg Road. We would simply comment that, regarding the former T J Hughes unit, the argument seems to be that it

would not be viable for Marks & Spencer to operate a store selling clothing and homewares, and have a separate Simply Food store. But the qualitative need that has been claimed is for an improved retail offer in clothes shopping. It may be viable for Marks & Spencer to operate a store selling clothes and food in the T J Hughes unit, which is significantly larger than the former [Marks & Spencer] store in the High Street. The Council needs to be satisfied that the business model proposed by Marks & Spencer is the most appropriate one for Scunthorpe, such that it justifies an out-of-centre location.”

33. In fact, by that stage, of the possible alternatives mentioned, the T J Hughes unit was the only available site in the town centre, the issue consequently focusing on whether that site was suitable and viable.
34. It was the view of Marks & Spencer, shared by the applicant Simons, that splitting their proposed operation between the T J Hughes unit and other premises was not commercially viable. The Main Report of the officer accepted that justification for not splitting the Marks & Spencer operation, but it did not accept that the smaller units could not be disaggregated, in the following terms:

“The applicants have stated that the closure of [Marks & Spencers’] in-centre operation in 2010 on viability grounds, which was a more typical clothing and food offer, demonstrates that this is a challenging catchment for the retailer from a commercial perspective. This position has led [Marks & Spencer] to establish that ‘to create a commercially viable store within the catchment area, a clothing, homeware, food and hospitality offer needs to be provided under one roof in order to give shoppers a comprehensive brand offer and critical mass of retailing that would make them want to return, and therefore seeks to ensure that the store remains commercially viable’. Furthermore, whilst [Marks & Spencer] do trade from convenience goods focused Simply Food units, they do not have a business model comprising solely clothing and homeware goods. This additional justification provided by the applicants does explain how the viability of the [Marks & Spencer] business model is an important consideration, and justifies why neither the T J Hughes site or the Southgate units are suitable given that the clothing and food offer at the [Marks & Spencer] town centre site failed to be viable.” (page 55).

“In summary, the applicants have adequately justified the sequential approach taken by assessing sites within and on the edge of Scunthorpe town centre for their availability, suitability and viability. On the issue of disaggregation, whilst the applicants have provided a justification why the [Marks & Spencer] (unit 1) cannot be disaggregated, they have not demonstrated flexibility in terms of disaggregating the smaller units of the proposal (units 2, 3 and 4) onto separate, sequentially preferable sites. For this reason it is felt that the

sequential test has not been passed and therefore fails to comply with all the requirements of policy EC15 of PPS4.”
(page 57)

35. It is common ground between the parties that Simons, as the applicant, failed to demonstrate compliance with the requirements of the sequential approach in Policy EC15, for the reasons given in that report, i.e. that it had failed to demonstrate the flexibility required by Policy EC15.1.d.iv, in that it had not demonstrated that the three smaller units could not be disaggregated into separate, sequentially preferable sites.

The Grounds of Challenge

36. Zurich, through Mr Tucker, relied upon six grounds of challenge.
37. I can deal with two grounds very shortly, because Mr Tucker properly conceded that, in this court, they are bound to fail by dint of authority binding on me. They were Grounds 5 and 6 in the Statement of Facts and Grounds, namely:
- i) Ground 5: The Highways Contribution Planning Obligation: The Section 106 agreement included an obligation to pay the sum of £300,000 for capacity road improvements. It was submitted that the committee erred because they were not advised that they could only take this proposed obligation into account if it was justified by Regulation 122(2) of Community Infrastructure Levy Regulations 2010 (SI 2010 No 949). However, Mr Tucker accepted that, on the current state of the law and in particular Derwent Holdings v Trafford Metropolitan Borough Council [2011] EWCA Civ 832, even if he were to persuade me that that was so, that would not be a basis upon which the planning permission challenged could be quashed.
 - ii) Ground 6: Legal Error in the Screening Opinion: It was submitted that the screening opinion dated 22 July 2011 (referred to in paragraph 7 above) was unlawful, as it relied upon future documentation which did not exist at the time of the opinion. However, it was not suggested that there was any evidence that, if the opinion had been prepared in accordance with the correct procedure, the resulting decision in relation to the planning permission would have been any different. Consequently, Mr Tucker conceded that, as the challenge advanced was based upon a procedural not substantive defect, following R (Berky) v Newport City Council [2012] EWCA Civ 378, that basis of challenge would be bound to fail in this court.
38. In those circumstances, whilst preserving the Claimant’s position, Mr Tucker did not actively pursue either ground. I formally dismiss them.
39. Mr Tucker did actively rely on four other grounds, which I will deal with in turn.

Ground 1: Misapplication of Policy EC17

40. As I have indicated (paragraph 22(ii) above), the question as to whether an applicant has demonstrated compliance with the requirements of the sequential approach is capable of only one of two answers, “yes” or “no”. If it has not demonstrated

compliance, then there is a presumption raised by Policy EC17 that the application will be refused. In this case it is common ground that Simons failed to demonstrate compliance with the requirements of the sequential approach in the manner I have described (paragraphs 34-5 above).

41. However, Mr Tucker submitted that the planning committee were led into error by the officer's Main Report which, at page 62, said:

"PPS4 is clear in its advice that local planning authorities must consider both the sequential approach and impacts upon retail centres when determining out-of-centre retail development proposals. The applicants have followed the sequential approach and assessed whether sites are suitable, viable or available but have not displayed flexibility by looking at the issue of disaggregation, particularly with regard to the smaller units (units 2, 3 and 4). Consequently policy EC15 of PPS4 is not fully complied with."

42. That reference to the policy not being "fully" complied with is repeated in the Addendum Report, at page 1, which says in response to the further letters of objection:

"In response, it should be noted that it is accepted that the retail proposal at [the Site] does not fully comply with the sequential approach..."

That report goes on to say, at page 3, that:

"In this case, it is felt that the economic benefits of the development are material considerations which outweigh the development plan and any non-compliance with the sequential test under the provisions of PPS4".

43. Mr Tucker submitted that those passages displayed a fundamental misunderstanding and misapplication of Policy EC17 – because the policy does not admit of partially meeting of the sequential test. The committee, instead of being told in unequivocal terms that where there was (any) failure to meet the sequential test the national policy directed refusal of the application, were led to believe that the partial breach of the test should merely be weighed against the positive material considerations, notably the economic benefits of the development. That was a legal error with regard to the proper approach to Policy EC17, as a result of which the planning permission should be quashed.
44. Forcefully as that submission was made, I do not find it compelling. The passages relied upon must be seen in their full context: I am not persuaded that the Main and Addendum Reports, when viewed fairly as a whole, do betray any misunderstanding or misapplication of Policy EC15.
45. The Main Report shows the following.

- i) Mr Tucker accepted – as he had to do – that the relevant PPS4 national policies are comprehensively and accurately set out on pages 21 and following of the Main Report. On page 24, Policy EC17.1 is accurately set out, thus:

“Planning applications for main town centre uses that are not in an existing centre and not in accordance with an up-to-date development plan should be refused planning permission where... the applicant has not demonstrated compliance with the requirements of the sequential approach (Policy EC15)...”.

That is repeated on page 51.

- ii) Policy EC15 is set out in full on page 54; and that test is immediately applied to the circumstances of this case on pages 55-7. The conclusion of the report on that issue, set out in the passage quoted above (paragraph 34) was that “the sequential test has not been passed...”. That conclusion is clear and unequivocal.
- iii) However, that is not the end of the planning committee’s exercise; because, having found that the applicant had not satisfied the sequential test (thereby giving rise to a national policy presumption of refusal), the committee still had to decide whether there are any other material considerations which displace that presumption. The report proceeds, properly, to consider the other material considerations, both positive and negative: the impact of the development on Scunthorpe town centre and other retail centres within the catchment area (pages 57-9), highway issues (pages 59-61), residential amenity (pages 61-2), economic considerations (page 62) and ecology (page 62).
- iv) There is then a section headed “Balance of Considerations”, which includes the first quoted passage upon which Mr Tucker relies. That needs to be placed in its particular context: it forms part of the following passage:

“Under the provisions of Section 70(2) of the Town & Country Planning Act 1990 local planning authorities are required, when determining applications, to have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations. Government guidance and the contents of Planning Policy Statements are material considerations but local planning authorities need not follow Government guidance if other material considerations outweigh this.

PPS4 is clear in its advice that local planning authorities must consider both the sequential approach and impacts upon retail centres when determining out-of-centre retail development proposals. The applicants have followed the sequential approach and assessed whether sites are suitable, viable or available but have not displayed flexibility by looking at the issue of disaggregation,

particularly with regard to the smaller units (units 2, 3 and 4). Consequently policy EC15 of PPS4 is not fully complied with.

Under policy EC17.1a of PPS4 planning applications that fail to demonstrate compliance with the sequential approach (policy EC15) should be refused.” (emphasis added).

- v) The report then proceeds to consider the other material considerations to which it has already referred, of which it considers that the economic benefits of the development should be attributed particular weight in a period of serious economic downturn:

“The attraction that a [Marks & Spencer] store and other retailers would have in potentially stimulating the local economy is a key driver in reducing the leakage of expenditure to neighbouring centres such as Doncaster and Meadowhall”

The other particular factor which is identified is “the fall back position of the existing use of the site, which enables 4,500 sq m gross of retailing from the site”. I return to this factor below (paragraphs 65 and following below: see especially paragraph 68).

- vi) There is then consideration of how the adverse impact on the town centre, albeit not significant, might be diminished by a Section 106 obligation (again referred to below: paragraphs 79 and following below: see especially paragraph 84).
- vii) The final conclusion (and the report’s recommendation) was:

“It is considered that the positive benefits outweigh the negative and what negative impacts have been identified have been mitigated to an acceptable degree. Consequently the recommendation is one of approval subject to the conditions and the completion of a Section 106 agreement”.

- 46. It may be that a Parliamentary or other legal draftsman might have drafted some of those passages differently – but, in my judgment, it is clear what is going on here. The applicant having failed to persuade the officer that the sequential test is passed, the officer performs the exercise which he must perform to see whether the presumption of refusal mandated by PPS4 is outweighed by other material considerations (see paragraph 22(iv) above). With respect to Mr Tucker’s submission, it is evident that, as part of that exercise, the national policy directing refusal in these circumstances is clearly taken into account, expressly, in the italicised passage set out in paragraph 45(iv) above. I agree with Mr Katkowski’s submission: *at this stage*, when the positive and negative factors are being balanced to determine whether the presumption is displaced, the extent and consequences of the breach of the sequential provisions may be relevant. That is so because, as well as the breach of

those provisions raising a presumption of refusal, the extent of the breach may be relevant to the question whether the presumption so raised is overcome in the circumstances of the particular case. The scope of the breach in this case comprised the failure on Simons' part to demonstrate that the three smaller units could not be disaggregated into separate, sequentially preferable sites (see paragraph 35 above).

47. The officer considered that the presumption of refusal was displaced in this case by, at least primarily, the economic benefits that this development would bring to the area (briefly described in paragraph 29 above). That was a conclusion based on planning judgment to which the officer was entitled to come, and which the planning committee were entitled to follow.
48. I do not consider that the Addendum Report takes matters any further. The references, early in the report, to the proposal not "fully" complying with the sequential approach and the economic benefits of the scheme outweighing "the non-compliance with this part of PPS4" appear to me to be no more than a references back to the wording of the main report, rather than a new decision. Mr Tucker relied upon the words "with this part of PPS4" which, he submitted, showed that the officer had improperly suggested that there could be partial compliance with the sequential approach; but, as I have described, the officer had, by this stage, moved on. He had previously unequivocally indicated that the national policy sequential approach had been breached, and was now considering whether other material considerations outweighed the policy directive to refuse the application. In that exercise, it was appropriate for him to consider the nature and scope of the breach of that policy.
49. The report then goes on to list the material factors once again, before concluding that:

"In this case it is felt that the economic benefits of the development are material considerations which outweigh the development plan and any non-compliance with the sequential test under the provisions of PPS4."
50. The final conclusion of the Addendum Report, much in the terms of the conclusion to that in the Main Report, is set out in the penultimate paragraph. Taken as a whole, the Addendum Report says, in substance, that the fresh representations do not change the picture: the officer makes the same conclusion on the same grounds as he does in the Main Report.
51. In my judgment, the committee was not tempted into any forbidden line of thinking, on the basis that there had been a partial compliance with the sequential approach. I appreciate that, contrary to that which was urged by Judge LJ in Oxton Farm (see paragraph 15(ii) above), I have responded to Mr Tucker's submissions on Ground 1, which were based upon a somewhat detailed textual analysis, in kind. In this case, the officer's reports are robust enough to bear that analysis. In any event, in relation to this ground, Mr Tucker has failed by some distance to persuade me that the overall effect of the report was significantly to mislead the planning committee about material matters. In my judgment, the approach of the officer, followed by the committee, was correct, and lawful.
52. For those reasons, I do not find that the first ground is made good.

Ground 2: Misapplication of the Sequential Test

53. In applying the sequential test, an applicant must demonstrate that it has applied an appropriate degree of flexibility including, by virtue of Policy 15.1.d.iv, the disaggregation of specific parts of the proposal into separate, sequentially preferable sites. The PPS4 Practice Guidance states (at paragraph 6.33):

“While there is no policy requirement to demonstrate need, an operator claiming that it is unable to be flexible about its chosen ‘business model’ would be expected to demonstrate why a smaller store or stores could not meet a similar need.”

As indicated in this passage, the burden of demonstrating this falls on the applicant.

54. In this case, submitted Mr Tucker, Marks & Spencer merely asserted that to disaggregate their proposed operation into a non-food store (which could be accommodated in the T J Hughes unit) and a food-only store (which could be accommodated separately elsewhere, for example in the old Marks & Spencer High Street unit) was not viable. There was no evidence upon which the officer or committee could have been satisfied, as they purported to be, that the applicant had demonstrated flexibility in accordance with the terms of Policy 15.1.d.iv.
55. Mr Fraser submitted that this ground adds nothing of substance to Ground 1; because, in relation to that ground, it is uncontentious that Simons failed to demonstrate the flexibility required by Policy EC15.1.d.iv, in that it had not demonstrated that the three smaller units could not be disaggregated into separate, sequentially preferable sites. There is therefore a breach of the sequential approach, in any event. It would add nothing of substance if there were a second breach of that same requirement, in relation to the disaggregation of the proposed Marks & Spencer operation.
56. There is obvious force in that submission with regard to the policy-internal question of whether there is a breach of the sequential approach, which triggers the policy directive to refuse the application; because that is a binary question. However, whether there is a further breach may be relevant to the balancing exercise required thereafter, in which the question of whether other material considerations outweigh the policy presumption of refusal. In that exercise, for the reasons I have given (see paragraph 46 above), the scope of the breach or breaches might be relevant. I therefore need to consider the merits of this ground.
57. However, I am unpersuaded by those merits, for the following reasons.
58. I have recited the relevant background (see paragraphs 33 and following above). The Main Report (at page 55) makes clear that the only available Scunthorpe town centre opportunity for Marks & Spencer was the T J Hughes unit. In terms of the whole of its proposed operation at the Site, that unit was discounted by Marks & Spencer on account of its size, its total floorspace being 3,884 sq m as opposed to the 4,645 sq m proposed in the development at the Site. The T J Hughes unit could only possibly be appropriate by “disaggregation”, i.e. splitting the non-food part of the proposed store from the food part and house them in separate premises. However, in sequential assessments, Policy EC15.1.a requires planning authorities to ensure that sites are assessed for, not only availability, but also viability and suitability. Marks & Spencer

considered such a proposal for split premises neither suitable for their commercial requirements or business model, nor commercially viable. Its position was that this was a commercially challenging catchment for retailers – evidenced by their commercial failure in early 2011 at the (admittedly small) High Street store – and to create a commercially viable store a full range of goods needed to be provided under one roof with a critical mass of retailing.

59. It was that evidence of non-viability that the officer accepted as an explanation as to why Marks & Spencer did not consider a split site in the town centre was feasible. Further, at the planning committee meeting on 7 March 2012, a representative from Marks & Spencer gave evidence that:

“... the company’s position remained unchanged. It would only develop sites that it considered commercially viable and there were no such sites in Scunthorpe town centre”.

60. In my judgment, it is simply incorrect to say that there was no evidence before the officer and committee that (i) the T J Hughes unit was too small to create an economically viable Marks & Spencer food and non-food store, or (ii) it was not economically viable to split the operation into two parts, one of which might be housed in the T J Hughes unit. The evidence was that Marks & Spencer had considered the T J Hughes unit, and in their opinion they could not use that unit (or, indeed, any unit in Scunthorpe town centre) for an economically viable operation. For that reason, they had no interest in any available site other than the Site, as the representative at the hearing made clear. That was evidence that the committee could properly take into account. It is unrealistic to expect a commercial operator to reveal its precise commercially sensitive and valuable calculations as to why it considers possible alternatives to the development proposal not to be commercially viable; and it is unnecessary for them to do so to enable a planning authority to come to a view on viability.

61. It is also important to mark that developers, and planning authorities, work in the real world. Marks & Spencer had assessed the only available town centre alternative to the Site, and had concluded that a development that was smaller than that proposed, or one with a more restricted range of goods, was neither commercially viable nor suitable for their commercial requirements. On the basis of that assessment, emphasised by their representative who spoke at the planning committee hearing, the officer and committee knew that, if this planning permission was refused, then Marks & Spencer would not locate into Scunthorpe town centre. As Lord Reed said in Tesco v Dundee, at [29]:

“Provided the applicant has [given consideration to the scope for accommodating the development in a different form and to have thoroughly assessed sequentially preferable locations]... the question remains... whether an alternative site is suitable for the proposed development, not whether the proposed development can be altered or reduced so that it can be made to fit an alternative site”:

to which Lord Hope perceptively added, at [38]:

“[T]he context indicates 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. If they do not meet the sequential approach criteria, bearing in mind the need for flexibility and realism to which Lord Reed refers..., they will be rejected. But these criteria are 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.”

62. Working in the real world, the committee were entitled (and, indeed, bound) to take into account the evidence that any arrangement in which Marks & Spencer used the T J Hughes unit (the only available unit in Scunthorpe town centre) would not be commercially viable, and that, because of that lack of viability, Marks & Spencer would not locate to Scunthorpe town centre in the event that this application for the Site was refused. On the basis of that evidence, in the committee’s view, the applicant had demonstrated flexibility in terms of the sequential approach so far as the possible disaggregation of the Marks & Spencer operation was concerned. They were entitled to come to that conclusion on that evidence.
63. For those reasons, I am quite satisfied that there was evidence upon which the committee could be satisfied (as, in the event, they were) that Simons had demonstrated flexibility in accordance with the terms of Policy 15.1.d.iv so far as the disaggregation of the Marks & Spencer operation is concerned.
64. This ground therefore fails.

Ground 3: Fall Back as an Immaterial Consideration

65. Mr Tucker submitted that, because such a comparison may be a material consideration, a planning committee should compare the development for which planning permission is sought on the one hand, with what the applicants could do with the land and premises on the basis of the planning position as it stands without that planning permission (“the fall back position”). However, such a comparison is only proper if there is a realistic possibility of the fall back position happening. Those propositions, which I accept, derive from Snowden v Secretary of State for the Environment [1980] JPL 749.
66. In this case, the fall back position used stems from Section 4 of the England & Lyle Report of November 2011. The report, after referring to the fact that the garden centre “trades freely as open Class A1 retail floorspace...” (paragraph 4.1) and reciting the Secretary of State’s decision letter in 1990 (quoted at paragraph 6(iii) above), says:

“Our interpretation of the planning status of the existing garden centre is that there is an established open A1 retail use of the existing building which has a floorspace of 4,500 sq m gross. The planning consent is subject to conditions on the range of goods allowed to be sold. The consent represents a fall back

position that is relevant to the current application. A retail development with a total floorspace of up to 4,500 sq m gross could be developed on the site. This could apply to either the Marks & Spencer store or the other retail units.”

67. That is reflected in the officer’s Main Report, at page 50:

“... The planning status of the existing garden centre is that there is an established A1 retail use of the existing building which has a floorspace of 4,500 square metres gross. The planning permission is subject to conditions on the range of goods allowed to be sold. Whilst the goods sold at the Trent Valley Garden Centre do not now conform with the list or the condition, and the range of goods sold for a number of years is much wider than the condition allows, the permission does represent a fall back position that is current to the relevant planning application in that a retail development with a total floorspace of up to 4,500 square metres gross could be developed on the site.”

68. That is the fall back position that appears to be taken into account as a material consideration on page 63 of the Main Report:

“Other material considerations to be attributed weight include: the economic benefits that the scheme would have during this serious economic downturn; additionally, *the fall back position of the existing use of the site , which enables 4,500 square metres gross of retailing from the site...*” (emphasis added).

69. Mr Tucker submitted that the way in which the fall back position was taken into account erred in law, in two respects.
70. First, he submitted that the officer and committee were wrong to take into account the fall back position, of any form of open Class A1 retailing use, in the absence of a lawful development certificate issued under Section 191 of the Town and Country Planning Act 1990. That provision enables an application to be made to the relevant local planning authority for a certificate of lawfulness of existing use or development, to ascertain “whether any existing use of buildings or land is lawful” (section 191(1)(a)). Mr Tucker submitted that, without such a certificate, the comparison cannot in law amount to a material consideration.
71. I do not accept that proposition. Before the committee, there was significant evidence that the Site had had open Class A1 use of the Site for many years: there was, for example, the evidence of the Secretary of State’s decision letter of 9 August 1990 (see paragraph 6(iii) above) and the opinion of the Council’s own planning advisers that there was established open A1 retail use of the existing 4,500 sq m building on the Site (see paragraph 66 above). It was open to the committee to take into account that evidence, and give it the weight that they considered appropriate.

72. The second error was, contended Mr Tucker, that the committee were not advised that they could only take the fall back position into account if it were a realistic possibility that the fall back scenario would happen.
73. Mr Fraser and Mr Katkowski submitted that the “fall back position” here was not a true fall back position at all, because the comparator used was not something that might happen to use of the land in the future but rather the use to which it is currently being put as a garden centre enterprise. I do not accept that submission. It is clear from the passages I have quoted above (paragraph 66) from both the officer’s Main Report (“... a retail development with a total floorspace of up to 4,500 square metres gross *could be developed* on the site” (emphasis added)), and the planning adviser’s report from which it was derived (“A retail development with a total floorspace of up to 4,500 sq m gross *could be developed* on the site” (again, emphasis added)), that the comparator was not simply the garden centre continuing to sell a wide range of goods, but the Site being prospectively “developed” with a total retail floorspace of up to 4,500 sq m gross (i.e. with a development of similar size and planning use to the current garden centre). Unlike the adviser’s report, the officer’s report does not suggest that that prospective development would be restricted to a Marks & Spencer store, or three smaller retail units, as proposed in the development of the Site with which this permission is concerned. But it is clear from the language used, that the Main Report was looking at the prospect of the land being developed with such a retail development, even if this application were not granted.
74. Curiously, the Addendum Report is in slightly different terms from page 63 of the Main Report, referring to “the fall back position of the existing use of the site, which enables 4,500 square metres gross of retailing *in the garden centre building*” rather than “... *from the site...*”, which is more suggestive of another retailer trading from the existing building on the Site rather than a redevelopment. Nevertheless, in the Claimant’s favour, I accept that the reports together suggest a comparator involving a redevelopment.
75. However, I remain unpersuaded by Mr Tucker’s ground of challenge. The prospect of the fall back position does not have to be probable or even have a high chance of occurring; it has to be only more than a merely theoretical prospect. Where the possibility of the fall back position happening is “very slight indeed”, or merely “an outside chance”, that is sufficient to make the position a material consideration (see Samuel Smith Old Brewery (Tadcaster) v Secretary of State for Communities and Local Government [2009] EWCA Civ 333 at [20]-[21] per Sullivan LJ). Weight is, then, a matter for the planning committee.
76. In this case, the report did not address the gamut of possibilities for use of the Site if this application were not granted. However, in addition to the possibility that the garden centre would continue to use the Site for 4,500 sq m of open Class A1 retail use, it was obviously a possibility that they would use the existing use to redevelop the Site for a building of similar size with a similar use for some retailer. The officer’s Main Report suggested no more than that. It did not suggest the prospect that Marks & Spencer would use the existing buildings or limited redevelopment of the site to trade.
77. In any event, although Mr Tucker submitted that the planning decision was a close thing – the chair used his casting vote (see paragraph 10 above) – it is clear from the

Addendum Report that the material considerations which in practice outweighed the negative material considerations (including the development plan and non-compliance with the sequential approach) were, perhaps understandably, the economic benefits that the scheme would bring (see paragraph 3 of the Addendum Report, which states that in terms).

78. In all the circumstances, I am not persuaded that, in relation to this ground, the officer's report significantly misled the committee about material matters.
79. Consequently, this ground fails.

Ground 4: The Proposed Restriction on Letting

80. Mr Tucker submitted that the Section 106 obligation with regard to protection of the town centre – by imposing the restriction on tenants of town centre retail premises taking lettings in the new development that it did impose – did not reflect the degree of protection required by the resolution on the planning committee.

81. That resolution (set out at paragraph 10 above), on this point, was brief. The committee resolved to grant permission, authorising the Head of Development Planning to grant permission subject to the completion of a Section 106 agreement

“... for off-site highway improvements, *Scunthorpe town centre protection*, protected species translocation and maintenance and a contribution towards improving the existing footpaths in the vicinity of the site, and to the conditions contained in the report...” (emphasis added).

82. If the obligation was not completed within three months, the Head of Development Management was authorised to:

“... refuse the planning application on *the grounds of the adverse impact upon the vitality and viability of Scunthorpe town centre*, adverse impact upon highway safety and levels of congestion within the locality, adverse impact upon protected species and their habitat, and non-compliance with Policy EC16 of PPS 4, policies T2 and T6 of the North Lincolnshire Local Plan, and policies C14, C25 and CS17 of the North Lincolnshire Core Strategy.” (emphasis again added).

83. Mr Tucker submitted that the sanction for non-completion of the agreement showed the great seriousness with which the committee viewed the obligation for the protection of the town centre that was to be contained in it, described by Mr Tucker as the matter which tipped the balance for the grant of permission; but I do not find any great force in that submission. The Section 106 obligations were of course an important part of the planning consent; but the obligations were many and various, and I do not consider that the resolution suggests that the proposed agreement concerning protection of the town centre was any more balance-tipping than, say, the obligation to pay the Council a sum within 14 days in respect of vole translocation (which appears as paragraph 4.2.5 of the Section 106 agreement). The draconian

sanction of non-compliance after three months was, in the usual way, to ensure swift compliance and prompt commencement of the development.

84. Mr Tucker relied upon the history of how this provision arose. As I have indicated, both HOW and England & Lyle were agreed that the proposed development would not have a significant adverse impact on Scunthorpe town centre (see paragraph 28 above). However, England & Lyle's advice to the Council was nevertheless to consider conditions that would protect the town centre from any adverse impact that the development might entail. They raised the possibility of the smaller units being restricted by a bulky goods condition or, if the committee considered that unnecessary, conditions "on the maximum size of units, the prevention of subdivision and on the amount of convenience goods floorspace allowed in the scheme" (see Addendum Report, page 3).

85. However, the officer's Main Report addressed the issue in a different way (page 63):

"England & Lyle considered if a bulky goods condition would be a way of protecting Scunthorpe's town centre, however the applicants have stated that such a condition would make the development unviable. The developer proposes to enter into an agreement under section 106... which, amongst other things, will give greater certainty to [the Council] that Scunthorpe's town centre would not have its vitality or viability reduced by the proposed development to a degree that would cause harm. A list of over 30 town centre retailers has been compiled and are referred to as regulated tenants with the Section 106 agreement. The developer has agreed that only one regulated tenant will be able to occupy any of the smaller units (2, 3 or 4) for the first five years of the development opening and that retailer must retain a town centre presence for the first five years of the development opening. Whilst it is accepted that there will be some impact upon the town centre, the legal agreement carries significant weight in minimising the less than significant impact that is predicted."

86. The officer's recommendation was therefore that the Council enter into a Section 106 obligation with the owner/developer that prohibited the occupiers of town centre shops from letting any of the development units – which would, of course, be very substantial comfort in respect of the vitality and viability of the town centre – subject to just one exception, namely that one of those town centre unit owners could also occupy a development unit, provided that that retailer also maintained a town centre presence for the first five years. All of that was to be done through the Section 106 agreement between owners/developers and the Council.

87. In the event, that agreement contained the following covenant by the owner/developer (paragraph 4.1):

"... not to let a Unit to a Regulated Tenant during the Regulated Period SAVE THAT in the case of one Unit only there shall be permitted one first letting to a Regulated Tenant where such tenant shall prior to the date of his Occupation

covenant with the Owner and/or Developer (as the case may be) that it will Maintain Representation in the Town Centre for a continuous period of five years commencing from the date of his Occupation.”:

“Regulated Tenant” is defined in terms of a list of 32 town centre traders. “Regulated Period” is “a period of five years commencing on the date when the first Unit opens to the public for trade” (paragraph 3).

88. Mr Tucker’s submission was succinct. The resolution of the committee was made on the basis that only one town trader would be allowed to let one of the smaller units in the development (Condition 38 required Marks & Spencer, who were not in the town centre, to let the large unit: see paragraph 12 above), on the basis that that tenant would also be required to maintain its presence in the town centre for five years; but the Section 106 agreement did not give the Council the ability to enforce that restriction. The Council could only require there to be a covenant between the owner/developer and the relevant tenant. It could not enforce that covenant against the tenant - only the owner/developer could do so. The planning consent was therefore granted without the requisite protection required by the committee having been obtained.
89. However, again I am unpersuaded by this ground, which amounts to an argument that the officer who entered into paragraph 4.1 of the Section 106 agreement did so without due authority. The resolution itself merely required the completion of a Section 106 agreement “for... Scunthorpe town centre protection”: it did not specify how that was to be achieved. In the event, in accordance with the recommendation of the officer’s report, the Section 106 agreement forbade 31 of the 32 relevant retailers from letting any unit in the development: that, of course, was the heart of the protection given to the town centre. However, Mr Tucker complains that the restriction on the 32nd retailer is not as tight as it might have been.
90. For my own part, I am not convinced that the covenant between the owner/developer and the tenant would not be enforceable by the Council, for whose obvious benefit the covenant is made – although I did not hear full argument on that point, and express no concluded view nor do I found my rejection of this ground on that basis.
91. But, leaving that aside:
 - i) The planning committee knew that the restriction was to be included in a Section 106 agreement between the owner/developer and the Council, and so were aware that the relevant tenant would not be a direct party to that agreement.
 - ii) The fact that the restriction is not as legally watertight or certain of enforcement as it might have been does not make the planning permission unlawful. The real protection for the town centre lay in the unchallenged restriction that prevented all but one of the town centre retailers letting a unit in the development at all, and ensured that three out of the four units in the development (including the larger unit, required by Condition 38 to be let to Marks & Spencer) would be let to retailers who had no presence in the town centre at all. There is no evidence that the committee intended there to be a

guaranteed legally watertight and enforceable right in the Council to ensure that any tenant taking advantage of that exception would maintain a particular presence in the town centre. Indeed, no such guarantee could possibly have been given. Further, in none of the reports was there any consideration of the extent of presence that might be required to be maintained in the town. That suggests that the resolution left the precise form of the proposed restriction to the officer dealing with the Section 106 obligation. The fact that Mr Tucker believes that he could have drafted a better provision on behalf of the Council – and I have no reason to doubt him – does not, as a matter of law, invalidate the grant of planning permission.

92. For those reasons, Mr Tucker has not persuaded me that, by imposing a restriction on tenants of town centre retail premises taking lettings in the new development, the Section 106 obligation failed to reflect the degree of protection of the town centre required by the resolution on the planning committee. This final ground, too, consequently fails.

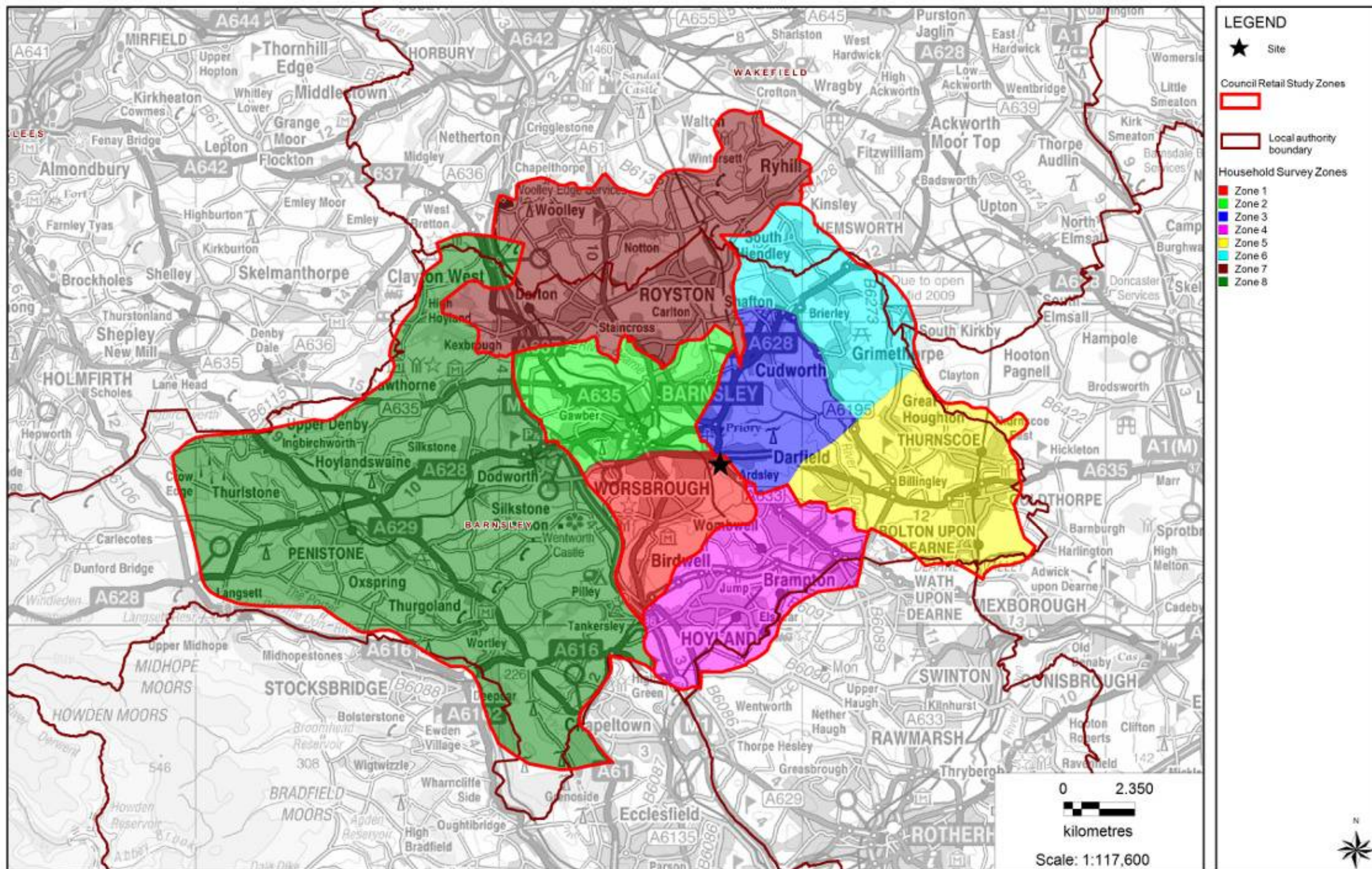
Conclusion

93. By reason of the above, I do not consider any of the grounds of challenge are made good; and I dismiss the claim.

16. Study Area Plan

BARNSLEY

NEW HOUSEHOLD SURVEY ZONES WITH COUNCIL'S HISTORIC CATCHMENT AREA ZONES



17. Trade Draw Impact Tables



Peel Property (Investments) Limited
Peel Centre, Barnsley

Application to vary condition 1 of planning permission 05/1165/BA to allow additional categories of goods to be sold from vacant Units 3C, 5 and 6

Retail Impact Tables

Table 1a - Population

	2013	2018
Zone 1	24,279	24,931
Zone 2	46,574	48,555
Zone 3	17,911	18,518
Zone 4	37,171	38,719
Zone 5	34,805	35,934
Zone 6	12,473	13,294
Zone 7	42,777	43,824
Zone 8	28,008	29,008
Total	243,998	252,783

Table 1b - Expenditure Per Capita

	2013	2018
Zone 1	2,436	3,094
Zone 2	2,677	3,400
Zone 3	2,491	3,164
Zone 4	2,544	3,231
Zone 5	2,400	3,049
Zone 6	2,423	3,078
Zone 7	2,604	3,308
Zone 8	2,841	3,609

Table 1c - Total Available Expenditure

	2013	2018
Zone 1	59.14	77.14
Zone 2	124.68	165.10
Zone 3	44.62	58.59
Zone 4	94.56	125.12
Zone 5	83.53	109.55
Zone 6	30.22	40.92
Zone 7	111.39	144.95
Zone 8	79.57	104.68
Total	627.72	826.05

Notes:

Data from Retail Assessment by Turleys for application ref. 2014/0075 for conversion of Stairfoot B&Q to food retail for Sainsbury's as follows:

Population forecast and per capita expenditure estimates for each of the post code sectors that comprise the Study Area have been obtained from Pitney Bowes Report Data (2011 estimates).

Expenditure per capita identified to grow at 4.9% per annum, as identified by Pitney Bowes Retail Expenditure Guide (August 2013)

Population growth based on Pitney Bowes AnySite Report Data based on ONS forecasts

Total available expenditure calculated by multiplying the population by the per capita expenditure in each zone

Peel Property (Investments) Limited**Peel Centre, Barnsley**

Application to vary condition 1 of planning permission 05/1165/BA to allow additional categories of goods to be sold from vacant Units 3C, 5 and 6

Retail Impact Tables**Table 2a - Existing Turnover of the Units**

Unit	Gross Floorspace	Net Floorspace	Sales Density	2013 Turnover	2018 Turnover
3C	472	378	3,000	1.13	1.24
5	929	743	3,000	2.23	2.44
6	929	743	3,000	2.23	2.44
Total	2,330	1,864	-	5.59	6.11

Notes

Gross to Net: 80%

Floorspace Efficiency: 1.80%

Sales density based on averages for the top 20 retail park retailers

Table 2b - Proposed Turnover of the Units

Unit	Gross Floorspace	Net Floorspace	Sales Density	2013 Turnover	2018 Turnover
3C	472	378	5,000	1.89	2.06
5	929	743	5,000	3.72	4.06
6	929	743	5,000	3.72	4.06
Total	2,330	1,864	-	9.32	10.19

Notes

Sales density based on averages for the top 20 retail park retailers for Open A1 non-food retailers

Table 2c - Uplift in Turnover of Proposal

Unit	Gross Floorspace	Net Floorspace	Sales Density	2013 Turnover	2018 Turnover
3C	472	378	-	0.76	0.83
5	929	743	-	1.49	1.63
6	929	743	-	1.49	1.63
Total	0	0	-	3.73	4.08

Notes

Uplift calculated by deducting the total proposed turnover in Table 2b by the existing turnover in Table 2a

Peel Property (Investments) Limited
Peel Centre, Barnsley
Application to vary condition 1 of planning permission 05/1165/BA to allow additional categories of goods to be sold from vacant Units 3C, 5 and 6
Retail Impact Tables

Table 3 - 2013 Comparison Market Share and Turnover

Zone	Destination	Zone 1		Zone 2		Zone 3		Zone 4		Zone 5		Zone 6		Zone 7		Zone 8		Total
		£m	%	£m	%	£m	%	£m	%	£m	%	£m	%	£m	%	£m	%	£m
	Within Study Area																	
1	Stairfoot Local Centre	0.3	0.6%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.3
	Out-of-Centre																	
	Tesco Extra, Wombwell Lane	1.1	1.9%	2.3	1.8%	1.7	3.9%	1.0	1.0%	1.8	2.1%	0.8	2.5%	0.9	0.8%	0.4	0.5%	9.9
	Wombwell Lane Retail Park	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.4	0.4%	0.4	0.5%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.8
	Other	1.9	3.2%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	1.9
	Sub-total	3.0	5.0%	2.3	1.8%	1.7	3.9%	1.3	1.4%	2.2	2.6%	0.8	2.5%	0.9	0.8%	0.4	0.5%	12.6
	TOTAL ZONE 1	3.3	5.6%	2.3	1.8%	1.7	3.9%	1.3	1.4%	2.2	2.6%	0.8	2.5%	0.9	0.8%	0.4	0.5%	12.9
2	Barnsley Town Centre	25.0	42.3%	56.3	45.1%	16.3	36.5%	17.2	18.2%	15.1	18.0%	9.7	32.1%	37.5	33.7%	16.3	20.5%	193.4
	Edge-of-Centre																	
	Morrisons, Lower Thomas Street	1.0	1.7%	1.8	1.4%	0.4	0.8%	0.0	0.0%	0.0	0.0%	0.3	1.0%	0.3	0.3%	1.4	1.8%	5.2
	Out-of-Centre																	
	Asda, Old Mill Lane	1.9	3.2%	6.7	5.3%	2.5	5.6%	0.1	0.1%	0.0	0.0%	1.5	5.0%	8.4	7.5%	1.7	2.2%	22.8
	The Peel Centre	0.0	0.0%	0.1	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.1%	0.0	0.0%	0.0	0.0%	0.1
	Other	0.0	0.0%	1.3	1.1%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.2	0.2%	0.0	0.0%	1.6
	Sub-total	1.9	3.2%	8.1	6.5%	2.5	5.6%	0.1	0.1%	0.0	0.0%	1.6	5.2%	8.6	7.7%	1.7	2.2%	24.4
	TOTAL ZONE 2	28.0	47.3%	66.1	53.0%	19.1	42.9%	17.3	18.3%	15.1	18.0%	11.6	38.3%	46.4	41.7%	19.5	24.5%	223.0
3	Cudworth District Centre	0.0	0.0%	0.0	0.0%	1.8	3.9%	0.0	0.0%	0.0	0.0%	0.3	1.1%	0.2	0.2%	0.0	0.0%	2.3
	Lundwood Local Centre	0.0	0.0%	0.0	0.0%	0.1	0.2%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.1
	TOTAL ZONE 3	0.0	0.0%	0.0	0.0%	1.8	4.1%	0.0	0.0%	0.0	0.0%	0.3	1.1%	0.2	0.2%	0.0	0.0%	2.4
4	Wombwell District Centre	0.1	0.2%	0.4	0.4%	0.4	1.0%	2.4	2.5%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.1%	3.4
	Hoyland District Centre	0.0	0.0%	0.0	0.0%	0.0	0.0%	3.7	3.9%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	3.7
	Hoyland Common Local Centre	0.1	0.2%	0.0	0.0%	0.0	0.0%	1.9	2.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.2	0.2%	2.2
	Out-of-Centre	0.2	0.4%	0.0	0.0%	0.1	0.2%	2.8	3.0%	0.6	0.7%	0.2	0.6%	0.1	0.1%	0.0	0.0%	4.0
	TOTAL ZONE 4	0.5	0.8%	0.4	0.4%	0.5	1.2%	10.7	11.3%	0.6	0.7%	0.2	0.6%	0.1	0.1%	0.2	0.3%	13.2
5	Goldthorpe District Centre	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	1.9	2.3%	0.0	0.0%	0.0	0.0%	0.0	0.0%	1.9
	Bolton on Dearne Local Centre	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	1.5	1.8%	0.0	0.0%	0.0	0.0%	0.0	0.0%	1.5
	Darfield Local Centre	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.2	0.2%	1.8	2.1%	0.0	0.0%	0.0	0.0%	0.0	0.0%	2.0
	Thurnscoe Shepherd Lane / Houghton Road Local Centre	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	1.3	1.6%	0.0	0.0%	0.0	0.0%	0.0	0.0%	1.3
	Other	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.5	0.6%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.5
	TOTAL ZONE 5	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.2	0.2%	7.0	8.4%	0.0	0.0%	0.0	0.0%	0.0	0.0%	7.2
6	Grimethorpe Local Centre	0.0	0.0%	0.0	0.0%	0.1	0.2%	0.0	0.0%	0.0	0.0%	2.1	6.9%	0.0	0.0%	0.0	0.0%	2.2
	Other	0.0	0.0%	0.0	0.0%	0.1	0.2%	0.0	0.0%	0.0	0.0%	0.2	0.7%	0.0	0.0%	0.0	0.0%	0.3
	TOTAL ZONE 6	0.0	0.0%	0.0	0.0%	0.1	0.3%	0.0	0.0%	0.0	0.0%	2.3	7.7%	0.0	0.0%	0.0	0.0%	2.5
7	Royston District Centre	0.0	0.0%	0.4	0.4%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	1.9	1.7%	0.0	0.0%	2.4
	Mapplewell Local Centre	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.9	0.8%	0.0	0.0%	0.9
	Darton Local Centre	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.2	0.2%	0.0	0.0%	0.2
	TOTAL ZONE 7	0.0	0.0%	0.4	0.4%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	3.1	2.8%	0.0	0.0%	3.5
8	Penistone District Centre	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.6	0.5%	6.8	8.5%	7.3
	Dodworth Local Centre	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	3.1	3.8%	3.1
	Other	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.3	0.3%	0.3
	TOTAL ZONE 8	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.6	0.5%	10.1	12.7%	10.6
	Total within Study Area	31.8	53.7%	69.2	55.5%	23.4	52.4%	29.5	31.2%	24.8	29.7%	15.2	50.2%	51.3	46.1%	30.2	37.9%	275.3
	Outside Study Area																	
	W ath-upon-Dearne	0.0	0.0%	0.0	0.0%	0.0	0.0%	1.9	2.0%	1.4	1.7%	0.0	0.0%	0.0	0.0%	0.0	0.0%	3.3
	W akefield Area	0.0	0.0%	1.3	1.0%	0.0	0.1%	0.4	0.4%	0.0	0.0%	3.3	11.0%	15.5	13.9%	0.5	0.6%	20.9
	Sheffield Area	15.2	25.7%	36.1	29.0%	9.9	22.1%	32.9	34.8%	18.8	22.5%	2.8	9.3%	22.9	20.5%	32.7	41.1%	171.3
	Rotherham Area	1.4	2.4%	0.0	0.0%	0.6	1.4%	3.4	3.6%	3.9	4.7%	0.0	0.0%	0.0	0.0%	0.4	0.5%	9.7
	Brampton Area	4.9	8.3%	3.4	2.8%	3.4	7.6%	15.1	16.0%	16.6	19.9%	1.2	3.8%	2.0	1.7%	2.8	3.5%	49.4
	Other	0.6	1.0%	4.7	3.7%	2.8	6.3%	3.2	3.4%	10.4	12.5%	4.2	13.8%	5.9	5.3%	5.9	7.4%	37.7
	Sub-total	22.1	37.3%	45.5	36.5%	16.7	37.4%	56.9	60.1%	51.2	61.2%	11.5	37.9%	46.2	41.4%	42.3	53.1%	292.2
	Total Outside Study Area	22.1	37.3%	45.5	36.5%	16.7	37.4%	56.9	60.1%	51.2	61.2%	11.5	37.9%	46.2	41.4%	42.3	53.1%	292.2
	Special Forms of Trading	5.3	9.0%	9.9	8.0%	4.6	10.2%	8.2	8.6%	7.6	9.0%	3.6	11.9%	13.9	12.5%	7.1	9.0%	60.2
	TOTAL	59.1	100.0%	124.7	100.0%	44.6	100.0%	94.6	100.0%	83.5	100.0%	30.2	100.0%	111.4	100.0%	79.6	100.0%	627.7

Notes:
Data from Retail Assessment by Turleys for application ref. 2014/0075 for conversion of Stairfoot B&Q to food retail for Sainsbury's, based on a telephone survey of local shopping patterns

Peel Property (Investments) Limited

Peel Centre, Barnsley

Application to vary condition 1 of planning permission 05/1165/BA to allow additional categories of goods to be sold from vacant Units 3C, 5 and 6
Retail Impact Tables

Table 4 - 2018 Comparison Market Share and Turnover

Zone	Destination	Zone 1		Zone 2		Zone 3		Zone 4		Zone 5		Zone 6		Zone 7		Zone 8		Total
		£m	%	£m	%	£m	%	£m	%	£m	%	£m	%	£m	%	£m	%	
	Within Study Area																	
1	Stairfoot Local Centre	0.46	0.60%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.46
	<i>Out-of-Centre</i>																	
	Tesco Extra, Wombwell Lane	1.47	1.90%	2.97	1.80%	2.29	3.90%	1.25	1.00%	2.30	2.10%	1.02	2.50%	1.16	0.80%	0.52	0.50%	12.98
	Wombwell Lane Retail Park	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.50	0.40%	0.55	0.50%	0.00	0.00%	0.00	0.00%	0.00	0.00%	1.05
	Other	2.47	3.20%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	2.47
	Sub-total	3.86	5.00%	2.97	1.80%	2.29	3.90%	1.75	1.40%	2.85	2.60%	1.02	2.50%	1.16	0.80%	0.52	0.50%	16.42
	TOTAL ZONE 1	4.32	5.60%	2.97	1.80%	2.29	3.90%	1.75	1.40%	2.85	2.60%	1.02	2.50%	1.16	0.80%	0.52	0.50%	16.88
2	Barnsley Town Centre	32.63	42.30%	74.46	45.10%	21.39	36.50%	22.77	18.20%	19.72	18.00%	13.13	32.10%	48.85	33.70%	21.46	20.50%	254.41
	<i>Edge-of-Centre</i>																	
	Morrisons, Lower Thomas Street	1.31	1.70%	2.31	1.40%	0.47	0.80%	0.00	0.00%	0.00	0.00%	0.41	1.00%	0.43	0.30%	1.88	1.80%	6.82
	<i>Out-of-Centre</i>																	
	Asda, Old Mill Lane	2.47	3.20%	8.75	5.30%	3.28	5.60%	0.13	0.10%	0.00	0.00%	2.05	5.00%	10.87	7.50%	2.30	2.20%	29.85
	The Peel Centre	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.04	0.10%	0.00	0.00%	0.00	0.00%	0.04
	Other	0.00	0.00%	1.82	1.10%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.29	0.20%	0.00	0.00%	2.11
	Sub-total	2.47	3.20%	10.73	6.50%	3.28	5.60%	0.13	0.10%	0.00	0.00%	2.13	5.20%	11.16	7.70%	2.30	2.20%	32.20
	TOTAL ZONE 2	36.49	47.30%	87.51	53.00%	25.14	42.90%	22.90	18.30%	19.72	18.00%	15.67	38.30%	60.45	41.70%	25.65	24.50%	293.51
3	Cudworth District Centre	0.00	0.00%	0.00	0.00%	2.29	3.90%	0.00	0.00%	0.00	0.00%	0.45	1.10%	0.29	0.20%	0.00	0.00%	3.03
	Lundwood Local Centre	0.00	0.00%	0.00	0.00%	0.12	0.20%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.12
	TOTAL ZONE 3	0.00	0.00%	0.00	0.00%	2.40	4.10%	0.00	0.00%	0.00	0.00%	0.45	1.10%	0.29	0.20%	0.00	0.00%	3.14
4	Wombwell District Centre	0.15	0.20%	0.66	0.40%	0.59	1.00%	3.13	2.50%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.10	0.10%	4.63
	Howland District Centre	0.00	0.00%	0.00	0.00%	0.00	0.00%	4.88	3.90%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	4.88
	Howland Common Local Centre	0.15	0.20%	0.00	0.00%	0.00	0.00%	2.50	2.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.21	0.20%	2.87
	<i>Out-of-Centre</i>	0.31	0.40%	0.00	0.00%	0.12	0.20%	3.75	3.00%	0.77	0.70%	0.25	0.60%	0.14	0.10%	0.00	0.00%	5.34
	TOTAL ZONE 4	0.62	0.80%	0.66	0.40%	0.70	1.20%	14.14	11.30%	0.77	0.70%	0.25	0.60%	0.14	0.10%	0.31	0.30%	17.59
5	Goldthorpe District Centre	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	2.52	2.30%	0.00	0.00%	0.00	0.00%	0.00	0.00%	2.52
	Bolton on Dearne Local Centre	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	1.97	1.80%	0.00	0.00%	0.00	0.00%	0.00	0.00%	1.97
	Darfield Local Centre	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.25	0.20%	2.30	2.10%	0.00	0.00%	0.00	0.00%	0.00	0.00%	2.55
	Thurnscoe Shepherd Lane / Houghton Road Local Centre	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	1.75	1.60%	0.00	0.00%	0.00	0.00%	0.00	0.00%	1.75
	Other	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.66	0.60%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.66
	TOTAL ZONE 5	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.25	0.20%	9.20	8.40%	0.00	0.00%	0.00	0.00%	0.00	0.00%	9.45
6	Grimethorpe Local Centre	0.00	0.00%	0.00	0.00%	0.12	0.20%	0.00	0.00%	0.00	0.00%	2.82	6.90%	0.00	0.00%	0.00	0.00%	2.94
	Other	0.00	0.00%	0.00	0.00%	0.12	0.20%	0.00	0.00%	0.00	0.00%	0.29	0.70%	0.00	0.00%	0.00	0.00%	0.40
	TOTAL ZONE 6	0.00	0.00%	0.00	0.00%	0.18	0.30%	0.00	0.00%	0.00	0.00%	3.15	7.70%	0.00	0.00%	0.00	0.00%	3.33
7	Royston District Centre	0.00	0.00%	0.66	0.40%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	2.46	1.70%	0.00	0.00%	3.12
	Mapplewell Local Centre	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	1.16	0.80%	0.00	0.00%	1.16
	Darton Local Centre	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.29	0.20%	0.00	0.00%	0.29
	TOTAL ZONE 7	0.00	0.00%	0.66	0.40%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	4.06	2.80%	0.00	0.00%	4.72
8	Penistone District Centre	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.72	0.50%	8.90	8.50%	9.62
	Dodworth Local Centre	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	3.98	3.80%	3.98
	Other	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.31	0.30%	0.31
	TOTAL ZONE 8	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.72	0.50%	13.29	12.70%	14.02
	Total within Study Area	41.43	53.70%	91.63	55.50%	30.70	52.40%	39.04	31.20%	32.53	29.70%	20.54	50.20%	66.82	46.10%	39.67	37.90%	362.37
	Outside Study Area																	
	Wath-upon-Deane	0.00	0.00%	0.00	0.00%	0.00	0.00%	2.50	2.00%	1.86	1.70%	0.00	0.00%	0.00	0.00%	0.00	0.00%	4.36
	Wakefield Area	0.00	0.00%	1.65	1.00%	0.06	0.10%	0.50	0.40%	0.00	0.00%	4.50	11.00%	20.15	13.90%	0.63	0.60%	27.49
	Sheffield Area	19.83	25.70%	47.88	29.00%	12.95	22.10%	43.54	34.80%	24.65	22.50%	3.81	9.30%	29.72	20.50%	43.02	41.10%	225.39
	Rotherham Area	1.85	2.40%	0.00	0.00%	0.82	1.40%	4.50	3.60%	5.15	4.70%	0.00	0.00%	0.00	0.00%	0.52	0.50%	12.85
	Brampton Area	6.40	8.30%	4.62	2.80%	4.45	7.60%	20.02	16.00%	21.80	19.90%	1.55	3.80%	2.46	1.70%	3.66	3.50%	64.98
	Other	0.77	1.00%	6.11	3.70%	3.69	6.30%	4.25	3.40%	13.69	12.50%	5.65	13.80%	7.68	5.30%	7.75	7.40%	49.59
	Sub-total	28.77	37.30%	60.26	36.50%	21.91	37.40%	75.20	60.10%	67.04	61.20%	15.51	37.90%	60.01	41.40%	55.59	53.10%	384.29
	Total Outside Study Area	28.77	37.30%	60.26	36.50%	21.91	37.40%	75.20	60.10%	67.04	61.20%	15.51	37.90%	60.01	41.40%	55.59	53.10%	384.29
	Special Forms of Trading	6.94	9.00%	13.21	8.00%	5.98	10.20%	10.76	8.60%	9.86	9.00%	4.87	11.90%	18.12	12.50%	9.42	9.00%	79.16
	TOTAL	77.14	100.00%	165.10	100.00%	58.59	100.00%	125.12	100.00%	109.55	100.00%	40.92	100.00%	144.95	100.00%	104.68	100.00%	826.05

Notes

Calculated from Table 3 (2013 Market share) multiplied by forecast expenditure in each zone at 2018 from Table 1c

Peel Property (Investments) Limited

Peel Centre, Barnsley

Application to vary condition 1 of planning permission 05/1165/BA to allow additional categories of goods to be sold from vacant Units 3C, 5 and 6

Retail Impact Tables

Table 5a - Weighted Market Share for assessing trade diversion

Zone	Destination	Weighting	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
	Within Study Area									
1	Stairfoot Local Centre	0.75	0.45%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
	<i>Out-of-Centre</i>									
	Tesco Extra, Wombwell Lane	1.50	2.85%	2.70%	5.85%	1.50%	3.15%	3.75%	1.20%	0.75%
	Wombwell Lane Retail Park	3.00	0.00%	0.00%	0.00%	1.20%	1.50%	0.00%	0.00%	0.00%
	Other	1.00	3.20%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
	Sub-total		6.05%	2.70%	5.85%	2.70%	4.65%	3.75%	1.20%	0.75%
	TOTAL ZONE 1		6.50%	2.70%	5.85%	2.70%	4.65%	3.75%	1.20%	0.75%
2	Barnsley Town Centre	1.00	42.30%	45.10%	36.50%	18.20%	18.00%	32.10%	33.70%	20.50%
	<i>Edge-of-Centre</i>									
	Morrisons, Lower Thomas Street	1.50	2.55%	2.10%	1.20%	0.00%	0.00%	1.50%	0.45%	2.70%
	<i>Out-of-Centre</i>									
	Asda, Old Mill Lane	1.50	4.80%	7.95%	8.40%	0.15%	0.00%	7.50%	11.25%	3.30%
	The Peel Centre	3.00	0.00%	0.00%	0.00%	0.00%	0.00%	0.30%	0.00%	0.00%
	Other	1.00	0.00%	1.10%	0.00%	0.00%	0.00%	0.00%	0.20%	0.00%
	Sub-total		4.80%	9.05%	8.40%	0.15%	0.00%	7.80%	11.45%	3.30%
	TOTAL ZONE 2		49.65%	56.25%	46.10%	18.35%	18.00%	41.40%	45.60%	26.50%
3	Cudworth District Centre	0.75	0.00%	0.00%	2.93%	0.00%	0.00%	0.83%	0.15%	0.00%
	Lundwood Local Centre	0.75	0.00%	0.00%	0.15%	0.00%	0.00%	0.00%	0.00%	0.00%
	TOTAL ZONE 3		0.00%	0.00%	3.08%	0.00%	0.00%	0.83%	0.15%	0.00%
4	Wombwell District Centre	0.75	0.15%	0.30%	0.75%	1.88%	0.00%	0.00%	0.00%	0.08%
	Hoyland District Centre	0.75	0.00%	0.00%	0.00%	2.93%	0.00%	0.00%	0.00%	0.00%
	Hoyland Common Local Centre	0.75	0.15%	0.00%	0.00%	1.50%	0.00%	0.00%	0.00%	0.15%
	<i>Out-of-Centre</i>									
	Morrisons, Cortonwood, Brampton	1.50	0.60%	0.00%	0.30%	4.50%	1.05%	0.90%	0.15%	0.00%
	TOTAL ZONE 4		0.90%	0.30%	1.05%	10.80%	1.05%	0.90%	0.15%	0.23%
5	Goldthorpe District Centre	0.75	0.00%	0.00%	0.00%	0.00%	1.73%	0.00%	0.00%	0.00%
	Bolton on Dearne Local Centre	0.75	0.00%	0.00%	0.00%	0.00%	1.35%	0.00%	0.00%	0.00%
	Darfield Local Centre	0.75	0.00%	0.00%	0.00%	0.15%	1.58%	0.00%	0.00%	0.00%
	Thurnscoe Shepherd Lane / Houghton Road Local Centre	0.75	0.00%	0.00%	0.00%	0.00%	1.20%	0.00%	0.00%	0.00%
	Other	1.00	0.00%	0.00%	0.00%	0.00%	0.60%	0.00%	0.00%	0.00%
	TOTAL ZONE 5		0.00%	0.00%	0.00%	0.15%	6.45%	0.00%	0.00%	0.00%
6	Grimethorpe Local Centre	1.00	0.00%	0.00%	0.20%	0.00%	0.00%	6.90%	0.00%	0.00%
	Other	1.00	0.00%	0.00%	0.20%	0.00%	0.00%	0.70%	0.00%	0.00%
	TOTAL ZONE 6		0.00%	0.00%	0.40%	0.00%	0.00%	7.60%	0.00%	0.00%
7	Royston District Centre	1.00	0.00%	0.40%	0.00%	0.00%	0.00%	0.00%	1.70%	0.00%
	Mapplewell Local Centre	1.00	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.80%	0.00%
	Darton Local Centre	1.00	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.20%	0.00%
	TOTAL ZONE 7		0.00%	0.40%	0.00%	0.00%	0.00%	0.00%	2.70%	0.00%
8	Penistone District Centre	0.75	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.38%	6.38%
	Dodworth Local Centre	0.75	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	2.85%
	Other	1.00	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.30%
	TOTAL ZONE 8		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.38%	9.53%
	Total within Study Area		57.05%	59.65%	56.48%	32.00%	30.15%	54.48%	50.18%	37.00%
	Outside Study Area									
	W ath-upon-Deerne	1.00	0.00%	0.00%	0.00%	2.00%	1.70%	0.00%	0.00%	0.00%
	W akefield Area	1.00	0.00%	1.00%	0.10%	0.40%	0.00%	11.00%	13.90%	0.60%
	Sheffield Area	1.00	25.70%	29.00%	22.10%	34.80%	22.50%	9.30%	20.50%	41.10%
	Rotherham Area	1.00	2.40%	0.00%	1.40%	3.60%	4.70%	0.00%	0.00%	0.50%
	Brampton Area	1.00	8.30%	2.80%	7.60%	16.00%	19.90%	3.80%	1.70%	3.50%
	Other	1.00	1.00%	3.70%	6.30%	3.40%	12.50%	13.80%	5.30%	7.40%
	Sub-total		37.40%	36.50%	37.50%	60.20%	61.30%	37.90%	41.40%	53.10%
	Total Outside Study Area		37.40%	36.50%	37.50%	60.20%	61.30%	37.90%	41.40%	53.10%
	Special Forms of Trading	0.75	6.75%	6.00%	7.65%	6.45%	6.75%	8.93%	9.38%	6.75%
	TOTAL		101.20%	102.15%	101.63%	98.65%	98.20%	101.30%	100.95%	96.85%

Notes

Weighting factors are used to calculate trade diversion. Destinations with similar characteristics to the application site (i.e. retail parks) receive a higher weighting to reflect 'like affects like' principles.

Table 5b - Weighting Factors

Destination	Weighting
Town Centre	1.00
District / Local Centre	0.75
Food Superstore	1.50
Retail Park	3.00
Standalone Retail Warehouse	2.50
Internet	0.75
Other Destinations	1.00

Peel Property (Investments) Limited

Peel Centre, Barnsley

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Retail Impact Tables

Table 6 - Weighted and Scaled Comparison Market Share for Assessing Trade Diversion

Zone	Destination	Weighting	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
	Within Study Area									
1	Stairfoot Local Centre	1.00	0.44%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
	<i>Out-of-Centre</i>									
	Tesco Extra, Wombwell Lane	1.50	2.82%	2.64%	5.76%	1.52%	3.21%	3.70%	1.19%	0.77%
	Wombwell Lane Retail Park	2.50	0.00%	0.00%	0.00%	1.22%	1.53%	0.00%	0.00%	0.00%
	Other	1.00	3.16%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
	Sub-total		5.98%	2.64%	5.76%	2.74%	4.74%	3.70%	1.19%	0.77%
	TOTAL ZONE 1		6.42%	2.64%	5.76%	2.74%	4.74%	3.70%	1.19%	0.77%
2	Barnsley Town Centre	1.25	41.80%	44.15%	35.92%	18.45%	18.33%	31.69%	33.38%	21.17%
	<i>Edge-of-Centre</i>									
	Morrisons, Lower Thomas Street	1.50	2.52%	2.06%	1.18%	0.00%	0.00%	1.48%	0.45%	2.79%
	<i>Out-of-Centre</i>									
	Asda, Old Mill Lane	1.50	4.74%	7.78%	8.27%	0.15%	0.00%	7.40%	11.14%	3.41%
	The Peel Centre	2.50	0.00%	0.00%	0.00%	0.00%	0.00%	0.30%	0.00%	0.00%
	Other	1.00	0.00%	1.08%	0.00%	0.00%	0.00%	0.00%	0.20%	0.00%
	Sub-total		4.74%	8.86%	8.27%	0.15%	0.00%	7.70%	11.34%	3.41%
	TOTAL ZONE 2		49.06%	55.07%	45.36%	18.60%	18.33%	40.87%	45.17%	27.36%
3	Cudworth District Centre	1.00	0.00%	0.00%	2.88%	0.00%	0.00%	0.81%	0.15%	0.00%
	Lundwood Local Centre	1.00	0.00%	0.00%	0.15%	0.00%	0.00%	0.00%	0.00%	0.00%
	TOTAL ZONE 3		0.00%	0.00%	3.03%	0.00%	0.00%	0.81%	0.15%	0.00%
4	Wombwell District Centre	1.00	0.15%	0.29%	0.74%	1.90%	0.00%	0.00%	0.00%	0.08%
	Hoyland District Centre	1.00	0.00%	0.00%	0.00%	2.97%	0.00%	0.00%	0.00%	0.00%
	Hoyland Common Local Centre	1.00	0.15%	0.00%	0.00%	1.52%	0.00%	0.00%	0.00%	0.15%
	<i>Out-of-Centre</i>									
	Morrisons, Cortonwood, Brampton	1.50	0.59%	0.00%	0.30%	4.56%	1.07%	0.89%	0.15%	0.00%
	TOTAL ZONE 4		0.89%	0.29%	1.03%	10.95%	1.07%	0.89%	0.15%	0.23%
5	Goldthorpe District Centre	1.00	0.00%	0.00%	0.00%	0.00%	1.76%	0.00%	0.00%	0.00%
	Bolton on Deame Local Centre	1.00	0.00%	0.00%	0.00%	0.00%	1.37%	0.00%	0.00%	0.00%
	Darfield Local Centre	1.00	0.00%	0.00%	0.00%	0.15%	1.60%	0.00%	0.00%	0.00%
	Thurnscoe Shepherd Lane / Houghton Road Local Centre	1.00	0.00%	0.00%	0.00%	0.00%	1.22%	0.00%	0.00%	0.00%
	Other	1.00	0.00%	0.00%	0.00%	0.00%	0.61%	0.00%	0.00%	0.00%
	TOTAL ZONE 5		0.00%	0.00%	0.00%	0.15%	6.57%	0.00%	0.00%	0.00%
6	Grimethorpe Local Centre	1.00	0.00%	0.00%	0.20%	0.00%	0.00%	6.81%	0.00%	0.00%
	Other	1.00	0.00%	0.00%	0.20%	0.00%	0.00%	0.69%	0.00%	0.00%
	TOTAL ZONE 6		0.00%	0.00%	0.39%	0.00%	0.00%	7.50%	0.00%	0.00%
7	Royston District Centre	1.00	0.00%	0.39%	0.00%	0.00%	0.00%	0.00%	1.68%	0.00%
	Mapplewell Local Centre	1.00	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.79%	0.00%
	Darton Local Centre	1.00	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.20%	0.00%
	TOTAL ZONE 7		0.00%	0.39%	0.00%	0.00%	0.00%	0.00%	2.67%	0.00%
8	Penistone District Centre	1.00	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.37%	6.58%
	Dodworth Local Centre	1.00	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	2.94%
	Other	1.00	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.31%
	TOTAL ZONE 8		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.37%	9.83%
	Total within Study Area		56.37%	58.39%	55.57%	32.44%	30.70%	53.78%	49.70%	38.20%
	Outside Study Area									
	Wath-upon-Deane	1.00	0.00%	0.00%	0.00%	2.03%	1.73%	0.00%	0.00%	0.00%
	Wakefield Area	1.00	0.00%	0.98%	0.10%	0.41%	0.00%	10.86%	13.77%	0.62%
	Sheffield Area	1.00	25.40%	28.39%	21.75%	35.28%	22.91%	9.18%	20.31%	42.44%
	Rotherham Area	1.00	2.37%	0.00%	1.38%	3.65%	4.79%	0.00%	0.00%	0.52%
	Brampton Area	1.00	8.20%	2.74%	7.48%	16.22%	20.26%	3.75%	1.68%	3.61%
	Other	1.00	0.99%	3.62%	6.20%	3.45%	12.73%	13.62%	5.25%	7.64%
	Sub-total		36.96%	35.73%	36.90%	61.02%	62.42%	37.41%	41.01%	54.83%
	Total Outside Study Area		36.96%	35.73%	36.90%	61.02%	62.42%	37.41%	41.01%	54.83%
	Special Forms of Trading		6.67%	5.87%	7.53%	6.54%	6.87%	8.81%	9.29%	6.97%
	TOTAL		100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

Notes

Weighted and scaled market shares are used for calculating trade diversion only

Calculated as weighted market share for each destination divided by total weighted percentage to adjust market shares back to 100% (Table 5a)

Peel Property (Investments) Limited

Peel Centre, Barnsley

**Application to vary condition 1 of planning permission 05/1165/BA to allow additional categories of goods to be
Retail Impact Tables**

Table 7a - Pattern of Trade Diversion at 2018 of Proposal

	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8	Total
Proportion of Trade from Zone	25.59%	17.60%	13.54%	10.38%	16.87%	6.06%	6.87%	3.10%	100.00%
Turnover from Zone (£m)	1.04	0.72	0.55	0.42	0.69	0.25	0.28	0.13	4.08

Notes

Proportion of trade from zone Savills estimate based on telephone survey results of existing shopping patterns

Turnover from zone calculated as % from zone multiplied by proposal uplift turnover from Table 2c

Table 7b - Trade Draw to Proposal at 2018 (£m)

Destination	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8	Total
Within Study Area									
Stairfoot Local Centre	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<i>Out-of-Centre</i>									
Tesco Extra, Wombwell Lane	0.03	0.02	0.03	0.01	0.02	0.00	0.00	0.00	0.12
Wombwell Lane Retail Park	0.00	0.00	0.00	0.01	0.01	0.00	0.00	0.00	0.02
Other	0.03	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.03
Sub-total	0.06	0.02	0.03	0.01	0.03	0.01	0.00	0.00	0.17
TOTAL ZONE 1	0.07	0.02	0.03	0.01	0.03	0.01	0.00	0.00	0.17
Barnsley Town Centre	0.44	0.32	0.20	0.08	0.13	0.05	0.09	0.03	1.32
<i>Edge-of-Centre</i>			0.00	0.00	0.00	0.00	0.00	0.00	
Morrisons, Lower Thomas Street	0.03	0.01	0.01	0.00	0.00	0.00	0.00	0.00	0.05
<i>Out-of-Centre</i>									
Asda, Old Mill Lane	0.05	0.06	0.05	0.00	0.00	0.00	0.03	0.00	0.19
The Peel Centre	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Other	0.00	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.01
Sub-total	0.05	0.06	0.05	0.00	0.00	0.00	0.03	0.00	0.20
TOTAL ZONE 2	0.51	0.40	0.25	0.08	0.13	0.05	0.13	0.03	1.57
Cudworth District Centre	0.00	0.00	0.02	0.00	0.00	0.00	0.00	0.00	0.02
Lundwood Local Centre	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL ZONE 3	0.00	0.00	0.02	0.00	0.00	0.00	0.00	0.00	0.02
Wombwell District Centre	0.00	0.00	0.00	0.01	0.00	0.00	0.00	0.00	0.02
Hoyland District Centre	0.00	0.00	0.00	0.01	0.00	0.01	0.00	0.00	0.02
Hoyland Common Local Centre	0.00	0.00	0.00	0.01	0.00	0.00	0.00	0.00	0.01
<i>Out-of-Centre</i>									
Morrisons, Cortonwood, Brampton	0.01	0.00	0.00	0.02	0.01	0.01	0.00	0.00	0.05
TOTAL ZONE 4	0.01	0.00	0.01	0.05	0.01	0.03	0.00	0.00	0.10
Goldthorpe District Centre	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.00	0.01
Bolton on Dearne Local Centre	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.00	0.01
Darfield Local Centre	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.00	0.01
Thurnscoe Shepherd Lane / Houghton Road Local Centre	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.00	0.01
Other	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL ZONE 5	0.00	0.00	0.00	0.00	0.05	0.00	0.00	0.00	0.05
Grimethorpe Local Centre	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Other	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL ZONE 6	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Royston District Centre	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01
Mapplewell Local Centre	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Darton Local Centre	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL ZONE 7	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.01
Penistone District Centre	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.01
Dodworth Local Centre	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Other	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL ZONE 8	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.01
Total within Study Area	0.59	0.40	0.31	0.14	0.21	0.08	0.14	0.05	1.91
Outside Study Area									0.00
Wath-upon-Deane	0.00	0.00	0.00	0.01	0.01	0.01	0.00	0.00	0.03
Wakefield Area	0.00	0.01	0.00	0.00	0.00	0.00	0.04	0.00	0.05
Sheffield Area	0.26	0.20	0.12	0.15	0.16	0.09	0.06	0.05	1.09
Rotherham Area	0.02	0.00	0.01	0.02	0.03	0.01	0.00	0.00	0.09
Brampton Area	0.09	0.02	0.04	0.07	0.14	0.04	0.00	0.00	0.40
Other	0.01	0.03	0.03	0.01	0.09	0.01	0.01	0.01	0.21
Sub-total	0.39	0.26	0.20	0.26	0.43	0.15	0.11	0.07	1.87
Total Outside Study Area	0.39	0.26	0.20	0.26	0.43	0.15	0.11	0.07	1.88
Special Forms of Trading	0.07	0.04	0.04	0.03	0.05	0.02	0.03	0.01	0.28
TOTAL	1.04	0.72	0.55	0.42	0.69	0.25	0.28	0.13	4.08

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**Application to vary condition 1 of planning permission 05/1165/BA to allow additional categories of goods to be
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Notes

Trade draw to proposal calculated by multiplying the amount of Turnover from Zone (Table 7a) by the weighted and scaled market share for each destination from Table 6

Table 7c - Turnover at 2018 after Proposal (£m)

Destination	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8	Total
Within Study Area									
Stairfoot Local Centre	0.46	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.46
<i>Out-of-Centre</i>									
Tesco Extra, Wombwell Lane	1.44	2.95	2.25	1.24	2.28	1.02	1.16	0.52	12.86
Wombwell Lane Retail Park	0.00	0.00	0.00	0.50	0.54	0.00	0.00	0.00	1.03
Other	2.44	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.44
Sub-total	3.79	2.95	2.25	1.74	2.82	1.02	1.16	0.52	16.25
TOTAL ZONE 1	4.25	2.95	2.25	1.74	2.82	1.02	1.16	0.52	16.71
Barnsley Town Centre	32.20	74.15	21.19	22.69	19.59	13.09	48.76	21.43	253.09
<i>Edge-of-Centre</i>									
Morrisons, Lower Thomas Street	1.29	2.30	0.46	0.00	0.00	0.41	0.43	1.88	6.77
<i>Out-of-Centre</i>									
Asda, Old Mill Lane	2.42	8.69	3.24	0.12	0.00	2.05	10.84	2.30	29.66
The Peel Centre	0.00	0.00	0.00	0.00	0.00	0.04	0.00	0.00	0.04
Other	0.00	1.81	0.00	0.00	0.00	0.00	0.29	0.00	2.10
Sub-total	2.42	10.67	3.24	0.12	0.00	2.13	11.13	2.30	32.00
TOTAL ZONE 2	35.98	87.11	24.89	22.82	19.59	15.62	60.32	25.61	291.94
Cudworth District Centre	0.00	0.00	2.27	0.00	0.00	0.45	0.29	0.00	3.01
Lundwood Local Centre	0.00	0.00	0.12	0.00	0.00	0.00	0.00	0.00	0.12
TOTAL ZONE 3	0.00	0.00	2.39	0.00	0.00	0.45	0.29	0.00	3.13
Wombwell District Centre	0.15	0.66	0.58	3.12	0.00	0.00	0.00	0.10	4.61
Hoyland District Centre	0.00	0.00	0.00	4.87	0.00	-0.01	0.00	0.00	4.86
Hoyland Common Local Centre	0.15	0.00	0.00	2.50	0.00	0.00	0.00	0.21	2.85
<i>Out-of-Centre</i>									
Morrisons, Cortonwood, Brampton	0.30	0.00	0.12	3.73	0.76	0.23	0.14	0.00	5.29
TOTAL ZONE 4	0.61	0.66	0.70	14.09	0.76	0.22	0.14	0.31	17.49
Goldthorpe District Centre	0.00	0.00	0.00	0.00	2.51	0.00	0.00	0.00	2.51
Bolton on Deame Local Centre	0.00	0.00	0.00	0.00	1.96	0.00	0.00	0.00	1.96
Darfield Local Centre	0.00	0.00	0.00	0.25	2.29	0.00	0.00	0.00	2.54
Thurnscoe Shepherd Lane / Houghton Road Local Centre	0.00	0.00	0.00	0.00	1.74	0.00	0.00	0.00	1.74
Other	0.00	0.00	0.00	0.00	0.65	0.00	0.00	0.00	0.65
TOTAL ZONE 5	0.00	0.00	0.00	0.25	9.16	0.00	0.00	0.00	9.41
Grimethorpe Local Centre	0.00	0.00	0.12	0.00	0.00	2.82	0.00	0.00	2.94
Other	0.00	0.00	0.12	0.00	0.00	0.29	0.00	0.00	0.40
TOTAL ZONE 6	0.00	0.00	0.17	0.00	0.00	3.15	0.00	0.00	3.32
Royston District Centre	0.00	0.66	0.00	0.00	0.00	0.00	2.46	0.00	3.12
Mapplewell Local Centre	0.00	0.00	0.00	0.00	0.00	0.00	1.16	0.00	1.16
Darton Local Centre	0.00	0.00	0.00	0.00	0.00	0.00	0.29	0.00	0.29
TOTAL ZONE 7	0.00	0.66	0.00	0.00	0.00	0.00	4.05	0.00	4.71
Penistone District Centre	0.00	0.00	0.00	0.00	0.00	0.00	0.72	8.89	9.61
Dodworth Local Centre	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.97	3.97
Other	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.31	0.31
TOTAL ZONE 8	0.00	0.00	0.00	0.00	0.00	0.00	0.72	13.28	14.01
Total within Study Area	40.84	91.23	30.40	38.90	32.32	20.46	66.68	39.63	360.46
Outside Study Area									
Wath-upon-Deame	0.00	0.00	0.00	2.49	1.85	-0.01	0.00	0.00	4.34
Wakefield Area	0.00	1.64	0.06	0.50	0.00	4.50	20.11	0.63	27.44
Sheffield Area	19.56	47.68	12.83	43.39	24.49	3.72	29.66	42.97	224.30
Rotherham Area	1.83	0.00	0.81	4.49	5.12	-0.01	0.00	0.52	12.76
Brampton Area	6.32	4.60	4.41	19.95	21.66	1.51	2.46	3.66	64.58
Other	0.76	6.08	3.66	4.24	13.61	5.64	7.67	7.74	49.39
Sub-total	28.39	60.01	21.71	74.94	66.61	15.36	59.90	55.52	382.42
Total Outside Study Area	28.39	60.00	21.71	74.94	66.61	15.36	59.90	55.52	382.42
Special Forms of Trading	6.87	13.17	5.93	10.73	9.81	4.85	18.09	9.41	78.88
TOTAL	76.10	164.39	58.04	124.69	108.86	40.67	144.67	104.55	821.98

Notes

Turnover at 2018 post proposal calculated as forecast 2018 turnover (Table 4) minus trade diversion (Table 7b).

Peel Property (Investments) Limited

Peel Centre, Barnsley

**Application to vary condition 1 of planning permission 05/1165/BA to allow additional categories of goods to be sold from vacant Units 3C, 5
Retail Impact Tables**

Table 8: Impact of the Proposal

Destination	Pre-Development Turnover 2013	Pre-Development Turnover 2018	Diversion to Proposal (£m)	Turnover Post Proposal at 2018 (£m)	Impact of Proposal at 2018 (%)
Within Study Area					
Stairfoot Local Centre	0.33	0.46	0.00	0.46	1.0%
<i>Out-of-Centre</i>					
Tesco Extra, Wombwell Lane	9.92	12.98	0.12	12.86	0.9%
Wombwell Lane Retail Park	0.76	1.05	0.02	1.03	1.8%
Other	1.87	2.47	0.03	2.44	1.3%
Sub-total	12.55	16.42	0.17	16.25	1.0%
TOTAL ZONE 1	12.88	16.88	0.17	16.71	1.0%
Barnsley Town Centre	193.4	254.41	1.32	253.09	0.5%
<i>Edge-of-Centre</i>					
Morrisons, Lower Thomas Street	5.2	6.82	0.05	6.77	0.8%
<i>Out-of-Centre</i>					
Asda, Old Mill Lane	22.76	29.85	0.19	29.66	0.6%
The Peel Centre	0.08	0.04	0.00	0.04	0.0%
Other	1.57	2.11	0.01	2.10	0.4%
Sub-total	24.41	32.20	0.20	32.00	0.6%
TOTAL ZONE 2	223.01	293.51	1.57	291.94	0.5%
Cudworth District Centre	2.33	3.03	0.02	3.01	0.5%
Lundwood Local Centre	0.07	0.12	0.00	0.12	0.7%
TOTAL ZONE 3	2.4	3.14	0.02	3.13	0.5%
Wombwell District Centre	3.43	4.63	0.02	4.61	0.4%
Hoyland District Centre	3.65	4.88	0.02	4.86	0.4%
Hoyland Common Local Centre	2.18	2.87	0.01	2.85	0.4%
<i>Out-of-Centre</i>					
Morrisons, Cortonwood, Brampton	3.96	5.34	0.05	5.29	0.9%
TOTAL ZONE 4	13.22	17.59	0.10	17.49	0.6%
Goldthorpe District Centre	1.91	2.52	0.01	2.51	0.5%
Bolton on Dearne Local Centre	1.48	1.97	0.01	1.96	0.5%
Darfield Local Centre	1.97	2.55	0.01	2.54	0.5%
Thurnscoe Shepherd Lane / Houghton Road Local Centre	1.33	1.75	0.01	1.74	0.5%
Other	0.47	0.66	0.00	0.65	0.6%
TOTAL ZONE 5	7.16	9.45	0.05	9.41	0.5%
Grimethorpe Local Centre	2.16	2.94	0.00	2.94	0.0%
Other	0.3	0.40	0.00	0.40	0.3%
TOTAL ZONE 6	2.46	3.33	0.00	3.32	0.1%
Royston District Centre	2.39	3.12	0.01	3.12	0.2%
Mapplewell Local Centre	0.91	1.16	0.00	1.16	0.2%
Darton Local Centre	0.23	0.29	0.00	0.29	0.2%
TOTAL ZONE 7	3.53	4.72	0.01	4.71	0.2%
Penistone District Centre	7.33	9.62	0.01	9.61	0.1%
Dodworth Local Centre	3.05	3.98	0.00	3.97	0.1%
Other	0.25	0.31	0.00	0.31	0.1%
TOTAL ZONE 8	10.64	14.02	0.01	14.01	0.1%
Total within Study Area	275.3	362.37	1.91	360.46	-
Outside Study Area					
Wath-upon-Deane	3.26	4.36	0.03	4.34	0.6%
Wakefield Area	20.91	27.49	0.05	27.44	0.2%
Sheffield Area	171.28	225.39	1.09	224.30	0.5%
Rotherham Area	9.73	12.85	0.09	12.76	0.7%
Brampton Area	49.37	64.98	0.40	64.58	0.6%
Other	37.65	49.59	0.21	49.39	0.4%
Sub-total	292.19	384.29	1.87	382.42	0.5%
Total Outside Study Area	292.19	384.29	1.88	382.42	-
Special Forms of Trading	60.23	79.16	0.28	78.88	0.4%
TOTAL	627.73	826.05	4.08	821.98	-

Notes

2013 turnover from Table 3

2018 turnover from Table 4

Diversion to proposal from Table 7b

Turnover post proposal from Table 7c

% impact calculated as diversion divided by 2018 pre-development turnover