

APP/A1720/C/23/3336046:
Appellant's Statement of Case

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Section 1
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TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED BY THE PLANNING & COMPENSATION ACT 1991) – SECTIONS 174 and 177

TOWN AND COUNTRY PLANNING (ENFORCEMENT) (INQUIRIES PROCEDURE) (ENGLAND) RULES 2002

Planning Appeal against Planning Refusal

Enforcement Notice Appeal against Enforcement Notice issued by Fareham Borough Council

Appeal by

Titchfield Festival Theatre

Land at 71-73 St Margarets Lane, Titchfield PO14 4BG

STATEMENT OF CASE FOR THE APPELLANT

APPEAL REFERENCES:

APP/A1720/C/23/3336046

1 March 2024

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1. INTRODUCTION

- 1.1. This appeal is made under Sections 174 and 177 of the Town and Country Planning Act 1990 on behalf of Titchfield Festival Theatre.

- 1.2. On 22 November 2023 an Enforcement Notice was issued and served on the Appellant alleging consisting of “Without the benefit of planning permission, the material change of use of the Land to theatre use (sui generis); and an engineering operation to excavate and create an underground area beneath the land”. The alleged breach relates to land of which the Appellant is registered proprietor under title number NN143623, at 71-73 St Margaret’s Lane, Titchfield, PO11 4BG. See **Appendix 1**

2. SITE DESCRIPTION

- 2.1. Titchfield Festival Theatre (TFT) is a well-respected community theatre company that has grown in combination with the historic strong association of the Titchfield area with William Shakespeare. He is believed to have lived in the village and taught at a former local grammar school with the assistance of his patron the Earl of Southampton.
- 2.2. Historically, TFT started performances in Titchfield Abbey, and then occupied various sites in Titchfield (Parish Rooms, Great Barn, The Recreation Ground, Queens Head plus the Thatched Barn in Brook Lane Warsash) until taking over the lease of 73 St Margaret's Lane in 2010. The planning history to the Site is set out at paragraph 3 below. In 2021, TFT purchased the whole site from Welbro who had been using No 71 lawfully as a warehouse. At that time 71 St Margaret's Lane was separated from 73 St Margaret's Lane by a 1.5m gap. In 2022 planning permission (P/22/0255/FP) was granted to connect 71 and 73 together with alterations to the roof.
- 2.3. At the time of writing, TFT is the registered proprietor of both 71 and 73, ('the Site') pursuant to a transfer dated 30th November 2021. The Site lies on the north-eastern side of St Margaret's Lane, approximately 200m from the St Margaret's roundabout on the A27, and outside of the urban settlement boundary within the Meon Valley Strategic Gap. **Appendix 2**
- 2.4. St Margaret's Lane is a semi-rural lane with a mix of residential, commercial and agricultural uses in the vicinity.
- 2.5. The land on which the Site is located slopes from East to West with the front of the site approximately 2m. higher than the rear.
- 2.6. Development of the TFT Site has been to a very high environmental standard including significantly increasing insulation levels, the installation of 100kw

of solar panels and battery storage, a bio-mass boiler fuelled with sustainably sourced wood pellets and a rain-water recycling system.

- 2.7. The Enforcement Notice in question relates to the land identified within the red edging in the plan below:



- 2.8. The area identified has in previous correspondence between both parties, been referred to as separate areas known as unit B and C, and references in this statement to those corresponding with the below. The area of the building not edged with red is known as unit A. Units A and B together form 73 St Margaret's Lane, and unit C number 71.



Background

- 2.9. TFT is a not-for-profit company and attracts a broad age range to its membership and audience figures. TFT do not charge a fee to join and is solely funded through their own box office receipts. The company also has an expanding Youth Theatre.
- 2.10. Current active membership is over 800 with an audience mailing list in excess of 8,000. The company employs professional Directors for its productions and owns its own technical equipment, seating, wardrobe and properties. The company does not rely on sponsorship and grants (either national or local) to ensure it continues its activities. TFT is recognised as a Charity by The Charity Commission.
- 2.11. TFT, because it is not a small amateur company, have always required considerable space for their productions, rehearsal and storage. The company has a large wardrobe, property stock and a vast amount of technical equipment including their own seating. Area B was utilised as well as off-site facilities.
- 2.12. Enshrined within the objects of the constitution TFT has the following wording:

The charity's objects ('the objects') are:

- a) *The advancement of the arts, in particular the dramatic and performing arts, and the development of public appreciation of such arts by the provision of a theatre and facilities for the presentation of public performances*
- b) *To advance public education in the arts, including the theory that William Shakespeare lived and worked in Southern Hampshire.*

2.13. As a community-based theatre and educational charity, in addition to producing and performing plays for the public itself, TFT have encouraged and provided facilities for:

- More than 800 Associates, that are the active members of the theatre assisting with directing, acting, crew, technician support, box office, front of house and bar functions. The site currently employs 14 people.
- 8,000 Patrons.
- Titchfield Festival Youth Theatre Limited, that has over 350 children attending the theatre for classes every week. They use the stages for their performances.
- Titchfield Youth Theatre which includes 55 members aged 4-16
- Titchfield Youth Associates which has 35 members aged 14-21
- Act Your Age, a small group of senior actors who tour care homes, and schools.
- South Coast Symphonia, a 40 piece orchestra.
- Fareham Men's Shed who have their workshop and community hub within the Arden theatre.
- Swanwick Lions, who are supported with storage space.
- Locks Heath Rotary Club who are supported with storage space.
- 1st Park Gate Sea Scouts, who are supported with storage.
- Titchfield Festival Theatre Productions Limited, that works on outreach into local schools, supplies costumes and props to other groups.

2.14. The operation of TFT provides a positive indirect contribution to the local economy. It is supported by a local landlord who says that takings do increase on show weeks, probably by as much as 10 to 15%. The landlord will speak at the hearing.

2.15. Bearing the above in mind, it becomes apparent that for TFT to be situated anywhere else other than Titchfield defeats the company's objects. Shakespeare is now so closely associated with Titchfield that the Festival

Theatre is becoming almost part of everyday life much the same as the Festival Theatre at Stratford was in the early beginnings before it became the Royal Shakespeare Company.

3. PLANNING HISTORY

- 3.1. The planning history of the TFT Site is summarised below. The Statement of Case adopts the same identification lettering used by Fareham Borough Council ('FBC') in their Notice with parts of the building described as units or areas A, B and C. See plan at **Appendix 3**.
- 3.2. P/12/0050/CU - Retrospective application for continued use of Area A for D2 and theatre purposes and Area B for storage use. Temporary permission granted - Appeal lodged against temporary permission and allowed with restrictive conditions 20 February 2013 (Areas A & B) **Appendix 4**
- 3.3. P/17/1024/FP - Mansard roof and alterations to front elevation. Approved 26 September 2017 (Area A)
- 3.4. P/18/1336/FP - Mansard roof, alterations to elevations and external fire escape (alternative to P/17/1024/FP). Approved 7 January 2019 (Area A)
- 3.5. P/19/0510/FP - Rear, side & roof extensions, change of use of storage area to 567 seated theatre and industrial unit to ancillary backstage & changing rooms - Refused 21 August 2019 (Areas A, B & C)
- 3.6. P/19/1035/CU - Change of use of Unit B to a mixed use of storage and theatre rehearsal space, with ground floor workshop (sui generis use). Extended hours of use. Refused 5 March 2020 (Area B) **Appendix 5**
- 3.7. P/22/0255/FP - Extensions to warehouse building and raising of the existing roof to provide additional and improved accommodation. Approved 17 March 2022 (Area C)
- 3.8. P/22/0255/MA/A - Non-Material Amendment to approved application (Area C)

- 3.9. P/22/1338/VC - Variation of Condition 2 (list of approved drawings) of approved application P/22/0255/FP- Extensions to warehouse building and raising of the existing roof to provide additional and improved accommodation. Approved 10 October 2022 (Area C)
- 3.10. P/23/0249/VC - Variation of Condition 1 (Approved Plans) of P/22/1338/VC to increase roof height. Approved 28th March 2023 (Area C)
- 3.11. P/23/0538/FP - Extension to existing loading bay to provide additional theatre storage - Under Consideration (Area B)

Summary of Planning History

- 3.12. Area A (also known, along with Area B, as 73 St Margaret's Lane) has planning permission for conversion from a Warehouse (B8) to theatre use (Sui Generis). This was granted in 2012. A condition controlling the temporary use of the site for Theatre use was subsequently appealed and the appeal upheld permitting the permanent theatre use (P/12/0050/CU). (APP/A1720/A/12/2186833).
- 3.13. Area B has planning permission for storage use falling within Use Class B8. This use was permitted at the same time as that for Area A in 2012 (P/12/0050/CU). Since 2010 this area has been used for a mix of theatre use, storage and community uses.
- 3.14. Area C (also known as 71 St Margaret's Lane or 'Welbro') has permission for the erection of a building to provide workshop and storage accommodation, which was permitted in 1963 (FBC.3312/1). Area C was most recently used as a warehouse by a company called Welbro. Up until recently this unit was separated from number 73 with a 1.5 metre gap.

- 3.15. TFT purchased the Welbro site in 2021 and in 2022 planning permission was granted in to connect Area B to Area C (P/22/0255/FP) together with alterations to the roof.
- 3.16. The current situation is as follows: -
- 3.16.1 Planning application P/22/0255/FP has been implemented and units B and C have been connected externally. Internally the western external wall of Area B and the eastern external wall of Area C have been removed and Area B has been extended to connect with Area C. In accordance with planning permission, this has created one large building on the site (Units A, B and C). The warehouse use previously carried out in Area C has ceased and 'Welbro' have vacated the site. See plans at **Appendix 26**.
- 3.16.2 The site of Areas A, B & C now comprise one building. There are the two pre-existing theatres, the Oak Theatre with a capacity of 200 seats and the Acorn Theatre with a capacity of 100 seats within Area A. This is as permitted under the 2012 appeal (**Appendix 4**). Area B has at all material times since 2012 been in use for scenery storage for plays in the Acorn and Oak theatre, performance rehearsals and for performances in the Oberon (a large studio space with seating).
- 3.16.3 The limited extension of Area B into Area C has facilitated the creation of a third theatre "the Arden Theatre". The Arden theatre opened in August 2023 and has been in use since that date, hosting performances like Les Misérables and The Lion the Witch and The Wardrobe. The number of seats in the new theatre is 463 with 'backstage' facilities provided in Area C. Access to the Theatre is via an existing doorway on the eastern side of the building. TFT are unaware of any complaint relating to noise, parking or anything else relevant to planning considerations during that time.

- 3.16.4 The remainder of Unit C is used for ancillary purposes related to the theatre purposes including rehearsal space and changing rooms.
- 3.16.5 There are minor external changes to the building for example re-alignment of windows however these have not been identified within the enforcement notice.
- 3.16.6 Externally, the site has space for the parking of up to 43 cars (see plan at **Appendix 6**). In addition to this there is parking available in the garden centre opposite (40 spaces) and at the Holiday Inn (up to 90 spaces). See plan at **Appendix 7**. The highways statement provides more detail.
- 3.16.7 A planning application will be submitted to provide additional parking off St Margaret's Lane in a field opposite the site that TFT has an option to lease for 10 years. This would provide 97 spaces opposite the theatre.
- 3.16.8 Historically TFT have tried to secure use of the field on the western side of the site for car parking. However, Hampshire County Council who own the field will not support the proposal. Also, historically TFT have sought to use the unoccupied car park owned by Hampshire County Council off the St Margaret's roundabout.

Other relevant planning permissions

- 3.17. P/12/0120/FP and P/13/0575/FP - Locks Heath Free Church - Alterations and extensions to existing church to provide new worship area, provision of an auditorium that could be used for conferences, an activity hall for third parties with additional car parking. In this case, while the application was refused on other grounds, officers did not agree that the proposal should be subject to a 'sequential test' given the community use of the location. An inconsistent approach is being applied to Titchfield Festival Theatre. **Appendix 8 and 8a.**

Current Operation

- 3.18. At present there are three theatres operating from the site

Acorn - Capacity 96

Oak - Capacity 188

Arden - Capacity 463

- 3.19. The TFT winter brochure is attached at **Appendix 9** Showing the planned productions from January to October 2024. It is the Theatres intention to provide productions on 150 days in 2024.

Timeline of the Development of Titchfield Festival Theatre Unit B

- 3.20. The proof of evidence from Kevin Fraser will provide a timeline for the use of unit B from 2010 up until the creation of the Arden Theatre. This will include a history from the date of purchase and will include plans showing how the layout of unit B changed over the period as it became increasingly linked to the use of unit A
- 3.21. The proof of evidence by Kevin Fraser will demonstrate that over the past 12 years, Area B of 73 St Margaret's Lane has been continuously in a use ancillary to the lawful permitted use of unit A. More specifically for scenery storage, rehearsal space, a meeting space for the Fareham 'Men's Shed' a community use and for performances in the Oberon rehearsal room. Current plans of the building are attached at **Appendix 26**.

4. MATTERS ASSERTED TO CONSTITUTE THE BREACH

- 4.1. The breach alleges that a material change of use of the land to a theatre use has occurred within the last ten years. Further, that an engineering operation to excavate and create an underground area beneath the Land has occurred within the last four years.

5. REASONS FOR ISSUING THE ENFORCEMENT NOTICE

- 5.1. The reasons given are in paragraph 4 of the notice are: -

"It appears to the Council that the above breach of planning control has occurred within the last 10 years.

The development is contrary to Policies DS1, R2, D2, TIN1 and TIN2 of the Fareham Local Plan 2037 and is unacceptable in that:

The theatre is a main town centre use located outside the urban area in an unsustainable and poorly accessible location. The development fails to promote sustainable and active travel modes, offer a genuine choice of mode of travel and reduce the need to travel by motorised vehicle.

It has not been demonstrated that the development meets a demonstrable need for the use in this location and that there are no alternative sites in the centres or parades that are available, suitable or viable that could be considered sequentially preferable to the development site. It has not been demonstrated that the development would not cause significant harm to or have a significant adverse effect on the vitality or viability of, the Borough's centres or parades.

The development would result in a significant increase in noise from patrons arriving and leaving the building which would have an unacceptable adverse environmental impact on neighbouring occupants. Furthermore, in the absence of details of acoustic insulation measures for the building, the noise emanating from the building would have an unacceptable adverse environmental impact on neighbouring occupants; and

Parking provision at the site is not acceptable which would have an unacceptable impact on highway safety.

The Council do not consider that planning permission should be given, because planning conditions could not overcome these objections to the development."

6. STEPS FOR COMPLIANCE

6.1. The steps to be taken in paragraph 5 of the notice are: -

- (i) Cease the use of the Land as a theatre;
- (ii) Backfill the excavated underground area beneath the Land with a suitable inert material (such as compacted aggregate, soil, or similar) to ground level;
- (iii) Dismantle the stage;
- (iv) Remove the seating;
- (v) Dismantle the lighting rig and PA or other sound equipment; and
- (vi) Remove the resultant materials from carrying out steps (iii), (iv) and (v) from the land except to the extent that those materials are solely being stored on the Land.

7. TIME FOR COMPLIANCE

7.1. The time for compliance as detailed in section 6 are: -

Step (i): two months after this Notice takes effect; and

Steps (ii) – (vi): three months after this Notice takes effect.

8. ENFORCEMENT HISTORY

8.1. On 8th June 2023 Fareham Borough Council issued two Planning Contravention Notices in respect of alleged unauthorised material change of

use operations at the Application Site. Notice A related to 71 St Margaret's Lane (identified as Area A) and Notice B to 72 and 73 (identified as Area B) and responses were provided on 3rd July.

- 8.2. The Council's response on 18th July identified the following outstanding issues:

Area A – which the Council did not expand on and commented that their solicitor would contact TFT regarding this. No further communication was received.

Areas B and C – engineering works to create a pit for the stage to accommodate a 450- seat capacity theatre, and material change of use to theatre.

- 8.3. Importantly, the Council invited the theatre to make a Certificate of Lawfulness application to regularise the position at Unit B on the basis that it has been in operation with a mixed use (within use class Sui Generis) for over 10 years, acquiring immunity from enforcement action.

- 8.4. In 2023 the Council served a Planning Contravention Notice in relation to the Application Site. The Council invited a formal application to regularise the use of the Site in planning terms.

- 8.5. Responses to all PCN's are attached at **Appendix 10**

9. PLANNING POLICY CONTEXT

9.1. National Legislation/Policy/Guidance

- Town and Country Planning Act 1990
- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG) See **Appendix 23**

9.2. Fareham Local Plan 2037 (see **Appendix 11** for policies)

- DS1 - Development in the Countryside
- DS2 - Development in the Strategic Gaps
- DS3 - Landscape
- R2 - Out-of-Town Proposals for Town Centre Uses
- R4 - Community and Leisure Facilities
- TIN1 - Sustainable Transport
- TIN2 - Highway Safety and Road Network
- D1 - High Quality Design and Placemaking
- D2 - Ensuring Good Environmental Conditions

9.3. Supplementary Planning Documents

- Fareham Borough Council Non-Residential Parking Standards SPD

10. GROUNDS FOR THE PLANNING ENFORCEMENT APPEAL

10.1. The following grounds support the appeal: -

Ground A - *That planning permission should be granted.*

10.2. In considering whether planning permission ought to be granted for the deemed planning application, the main issues are:

- whether the site is a suitable location for the use, having regard to its accessibility by sustainable modes of transport,
- the effect of the development on the vitality or viability of the Borough's centres or parades,
- the effect of the development on the living conditions of neighbouring occupiers with regard to noise and disturbance, and
- whether the development makes adequate provision for parking provision in terms of highway safety.
- Whether the site is a suitable location for the use, having regard to its accessibility by sustainable modes of transport.

10.2. Accessibility and sustainability issues are covered in the proof of evidence prepared by Tom Fisher from Paul Basham Associates.

10.3. It is not disputed that the site is located outside of the urban settlement boundary as recognised within the Fareham Local Plan, therefore, it is important to have regard to policy DS1: Development in the Countryside of the Council's Local Plan. Policy DS1 states: -

'a) Proposals for development in the countryside, which is defined as land outside the Urban Area boundary as shown on the Policies map, will be supported where the proposal:

Note only the relevant caveats of the policy have been detailed below: -

b) Is for development associated with an existing lawful dwelling, or is proposed on previously developed land and appropriate for the proposed use, or

c) Is for retail, community and leisure facilities, tourism or specialist housing where it can be demonstrated that there is a local need for the facility that cannot be met by existing facilities elsewhere; or

d) Is for a new small-scale employment development to convert or extend an existing building, or replace a redundant or derelict structure, or

i) Can demonstrate a requirement for a location outside of the urban area'

10.4. Consideration has been given to part b) of the policy which relates to previously developed land. The development relates to internal work within an existing. As such it is considered that the development has taken place on previously developed land. Policy DS1 aims to resist encroachment of development into non-urban unsustainable areas. However, as the transport statement points out there is already an acceptance of the Theatre use in this location. In addition, if the new theatre is not run on the same nights as the other two then the increase in vehicle movements is not significant as such the site is considered appropriate for its use.

10.5. The theatre could be considered a community and leisure facility and therefore, consideration has also been given to part c) of policy DS1 which states development for community and leisure facilities or tourism will be supported where it can be demonstrated that there is a local need for the facility that cannot be met by existing facilities elsewhere.

10.6. Below is a list of existing Theatres in the Solent Area: -

- Berry Theatre - Hedge End,
- The Point -Eastleigh,
- Kings Theatre - Portsmouth,
- New Theatre Royal - Portsmouth,
- Groundlings Theatre - Portsmouth,
- The Guildhall - Portsmouth.
- Guildhall- Southampton,
- Turner Sims- Southampton,
- Mayflower - Southampton,
- The Maskers- Southampton.
- MAST -Southampton,
- Plaza - Romsey,
- The Station-Hayling Island, The Spring- Havant

10.7. In Fareham

- Ashcroft Theatre (which FBC will no longer support)
- Fareham Live – No opening date other than 2024
- Titchfield Festival Theatre.
- The Great Barn -The company already operate from Titchfield providing Shakespeare plays.

10.8. In Gosport

- None

10.9. A map showing the broad location of the *nearby* Theatres is shown at **Appendix 12**. It should be noted that the nearest Theatre to the West is the Berry Theatre at West End and to the East, in Portsmouth. It is evident that there is a cultural hole within the centre of the map where there is a dearth of Theatres.

- 10.10. In addition to this under the new local plan there are approximately 1000 new houses proposed within the Western Wards (Area from Meon Valley to the western edge of Fareham Borough). To the north in Whiteley a further 3000 new houses are proposed (Winchester Local Plan) and at a later stage Welbourne (approx. 6000 houses) (to the north of Fareham will start to be developed. See local plan policy - **Appendix 13**. The local plan does not propose any additional theatres.
- 10.11. There are no late night buses to or from the western wards or Whiteley to Fareham centre. To enable usage of The Ashcroft and Fernham Hall neither are there any leisure or community facilities being proposed. This will be covered in the proof of evidence covered by Tom Fisher from Paul Basham Associates.
- 10.12. It is argued therefore that there is a need for an additional Theatre as such the development would comply with part c) of policy DS1 of the Local Plan.
- 10.13. Also, as part of policy DS1, proposals will need to demonstrate that they: -
- j) Protect and enhance landscapes, sites of biodiversity or geological value and soils, and*
 - Recognise the intrinsic character and beauty of the countryside and, if relevant, do not significantly affect the integrity of a Strategic Gap, and*
 - k) Maintain the character of the undeveloped coast, and*
 - l) Demonstrate a preference for the development of poorer quality agricultural land rather than that of higher quality'.*
- 10.14. As the proposal does not extend the building beyond the existing footprint, there is not conflict with criteria j) - m)

The effect of the development on the vitality or viability of the Borough's centres or parades,

10.15. Theatres are recognised in the Fareham Local Plan (hereinafter referred to as the local plan) and the National Planning Policy Framework 2023 as a main town centre use. Therefore, policy R2 of the Local Plan which relates to Out-of-Town Proposals for Town Centre Uses is relevant. Policy R2 states:

-

'Proposals for main town centres uses outside of the Borough's centres or parades will be permitted where they can demonstrate there is no significant harm, to the centres and parades where:

- a) the proposal meets a demonstrable need for the use in the proposed location, a full sequential test has been carried out demonstrating that there are no sites in the centres or parades that are available, suitable or viable; and*
- b) appropriate levels of parking are provided; and*
- c) the site is located inside the defined urban area and is accessible, particularly by public transport; and*
- d) the scale and design of the buildings are appropriate to their surroundings in line with Policy D1; and*
- e) the proposal would not have any unacceptable environment, amenity;*
- f) or traffic implications in line with Policy D2.*

Where a proposal for main town centre use over 500 m² (gross), or an extension which increases overall floorspace beyond 500 m² (gross) is proposed outside of the defined retail centres, an impact assessment shall be carried out in accordance with the NPPF in order to demonstrate that there is no significant adverse effect on the vitality or viability of existing or proposed retail centres and parades'.

10.16. In relation to the Sequential Test the inspectors' attention is drawn to paragraph 93 of the NPPF which states: *This sequential approach should not be applied to applications for small scale rural offices or other small scale*

rural development. There is no definition in the JLP, PPG or the Framework of 'small scale rural development'.

10.17. In relation to 'small scale' it is important to consider: -

- Two theatres already exist on site which could be used together and would cater for approximately 300 people. The new theatre if operated at full capacity would cater for 465 people. If the other theatres do not operate on the same day, then the increase is only 165 people. This is not considered significant.
- Existing parking could accommodate the use (On site, holiday inn and garden centre).
- Potential future parking would remove the need for the holiday inn and potentially the garden centre.
- Due to the distance from Fareham Town Centre and other centres it is unlikely to have any material impact on Town and district shopping centres.
- There are no external alterations to the building.
- With regard to unsustainability the site is already a destination in a rural area, which is generally less accessible and where travel by car would be the primary means of travel.
- It should be noted that policy R2 (**Appendix 11**) of the local plan does not refer to paragraph 93 nor is there a definition of small scale in relation to policy R2. If it is the council's contention that the threshold of 500 m² refers to small scale then I draw the inspector attention to paragraph 11.7 of the Fareham Retail and Commercial Leisure Study Update Report 2020 (**Appendix 25**). It is clear that the reason for reducing the threshold to 500m² was for the retail impact on the shopping centres not for leisure uses. The supporting paragraphs to policy R2 only refer to retail not leisure. **Appendices 11 and 14**

On this basis it is argued that the development is small scale and therefore sequential test is not required.

10.18. If it is considered that a sequential test is required then it is important to have regard to the following: -

- 1) I draw the inspectors attention to the comments by officers and planning policy that the sequential test was required for Titchfield only. In granting the permission the sequential test was considered under the policy at the time under policy CS3 of the previous local plan and the now withdrawn PPS4. The case officers report (**Appendix 15**): -

The proposed use is a town centre use, as defined in PPS4 and should ideally be located in one of the Borough's centres, unless it can be demonstrated why other similar venues in town and local/district centres are inappropriate. In light of this, a sequential test has been undertaken by the applicant, which looks at alternative sites across the Borough. Whilst the list is not exhaustive, it is considered appropriate that the Titchfield Festival Theatre look for units primarily in Titchfield and the surrounding area. The test considers other venues such as Ferneham Hall, the Ashcroft Centre, community centres, church halls and other industrial buildings. These venues are discounted on the basis of one or more of the following issues; their limited availability, cost, limited space, inadequate facilities and inappropriate location. It has been established that there is little in the way of usable units of the size required within the vicinity of Titchfield and therefore, re-use of this unit would appear to be one of the few options available to the applicant. The former warehouse offers adequate space for performance and ancillary facilities. The location of the use outside existing centres, while not considered the most sustainable of locations, is considered the best practicable solution available to the applicant, given the significant lack of viable or available alternatives. In light of the above, the proposal

would not adversely impact upon the vitality or viability of existing centres, in accordance with Policy CS3 of the Core Strategy.

Although it is 12 years since the permission the situation has not changed. TFT are still very much a local community theatre. In addition the offices which manage the theatre production are already on site, together with storage and rehearsal rooms. TFT want to keep all facilities in one place. The applicants sequential test from 2012 has been included. **Appendix 16.**

- 2) I also draw the inspectors attention to a planning application in 2012 at Locks Heath Free Church for a 500 seat auditorium was considered by planning officers not to require a sequential test. See Appendix 17 for decision notice and officers report. The site is not in an established centre or parade. Notwithstanding this the officers stated that a sequential test was not required for the following reasons: -

The scale of the auditorium has been called into question by objectors to the scheme and it is suggested that the building will compete with Town Centre facilities such as Ferneham Hall, such that the proposal should be subject to a 'sequential test' to justify its provision and location. Officers do not agree with this view. First the primary function of the auditorium is to provide for increasing congregation size. Whilst there are those who raise issue with how 'local' the Church is, nonetheless it is evident that the majority of attendees are from the western wards area. Some travel from Whiteley and from Fareham but the majority are what might reasonably be considered as 'local'. The area continues to be subject to further residential growth and there is no reason to believe that the enlarged capability of the building will not be ultimately used by those mainly from the surrounding wards so that the primary function of the building is to serve those people and not to 'compete' with similar facilities elsewhere.

Although the application was refused a subsequent resubmitted application) was permitted on the basis that the applicant states that *no commercial organisations will be hiring the worship area for non-church activities*. However, the authority did not place a restrictive condition on the use (see decision notice at **Appendix 8a**). As such the churches web site (now known as Waypoint Church) are advertising the use of the auditorium for commercial use.

- 3) In considering the sequential test, the inspectors attention is drawn to two appeal decisions relating to the sequential test and also that the NPPF does not require consideration of the disaggregation of sites.

Tesco Stores Ltd v. Dundee City Council (see **Appendix 18**)

In considering the sequential approach regard must be had to the Supreme Court decision in Tesco Stores Ltd v. Dundee City Council [2012] UKSC13, which is a material consideration in its application. This case considers the meaning of 'suitable' whereby the judgement held that 'suitable' relates directly to the development proposed by the applicant, subject to a reasonable level of flexibility and realism being shown by the developers. LPAs should not require development to be altered or reduced so that it can be made to fit an alternative site, as to do so may be to make an inappropriate business decision on behalf of the developer. The Dundee judgment is important in that it considers the focus of the local planning guidance relevant to that proposed development. It notes the focus: "...is upon the availability of sites which might accommodate the proposed development and the requirements of the developer..." (paragraph 27).

Rushden Lakes- appeal ref APP/G2815/V/12/2190175 (see **Appendix 19**)

The key point is that sites must be available now and disaggregation of uses is not required.

- 10.19. Paragraph 7.23 of the local plan states that - *The Council will be pragmatic as to the level of evidence required in support of such proposals as this should be proportionate to the nature of the proposal under consideration.* As of the date of this statement the council have not indicated the level of evidence required or even if a sequential test is required.
- 10.20. Notwithstanding the above, a sequential test in accordance with policy R2 has been considered as part of the appeal. The sequential test requires: -
- (i) assessing whether there are any available sites that are suitable in sequentially preferable locations;
 - (ii) acknowledging the market and locational requirements of the uses concerned;
 - (iii) ensuring the assessment is proportionate and appropriate to the given proposal; and
 - (iv) being flexible to demonstrate whether more central sites have been fully considered.
- 10.21. Accordingly, the principal issue is whether there are any suitable sites in an established centre or parades that are available now and can meet the same market and locational requirements to provide the space needed for the scheme proposed. The space required would be equivalent to a warehouse of approx. 700 -1000 m² to provide for the main auditorium, rehearsal space and storage space. In addition, that there is sufficient car parking at or near that location.
- 10.22. Fareham has the following centres and parades which are identified in in paragraph 7.4 of the Local Plan 2037.

Fareham Town Centre

- 10.23. Fareham has recently reviewed the town centre uses as part of the new local plan and it is not proposed to add any further community facilities (apart from the revamped Fernham Hall, now Fareham Live). The main additional development is an allocation for 800 houses though this is a generic allocation.

District Centres

- 10.24. There are three district centres identified in the Fareham Local Plan 2027. These are at Locks Heath, Stubbington and Portchester. The local plan defines the extent of the centres in the local as blue as shown the plans at **Appendix 20**. The key issue is the blue line is shown tightly drawn around the buildings offering little space for development. Certainly not for a warehouse type size.
- 10.25. Welbourne is a new housing development to the north of Fareham. This has yet to be developed.

Local Centres and Small Parades

- 10.26. As with district centres the local centres and parades would be too small to facilitate a theatre of the size required.
- 10.27. It is argued therefore that there are no sites available for a theatre of this size within centres and parades and therefore the sequential test is met. In light of the above and in particular with the existence on site the appellant would like clarification from the council on the extent of any required sequential test.

Vitality Or Viability

- 10.28. As the proposal is for a scheme in excess of 500 m² an impact assessment shall be carried out in accordance with the NPPF in order to demonstrate that there is no significant adverse effect on the vitality or viability of existing or proposed retail centres and parades.
- 10.29. It should be noted that the figure of 500m² in the local plan is far lower than the figure within the NPPF paragraph 94 (see **Appendix 23**) which is 2,500m².

Vitality and Viability considerations

- 10.30. With the imminent closure of the Ashcroft Centre there would be only one Theatre in Fareham (Fareham Live) that TFT would potentially be in competition with. Together with any impact on ancillary consumer choice and trade in terms of pubs and restaurants. The key elements to consider are:
- Consumer offering. The consumer offering at TFT would be different from Fareham Live. See list of events for TFT at **Appendix 9**. Fareham Live is not yet open but it will be managed by Trafalgar Entertainments. A list from one of their other venues is provided at **Appendix 21** as well as the last acts to perform at Ferneham Hall before it closed **Appendix 22**. As can be seen Fareham Live offer professional acts run in a much larger venue (700 seats). The letter of support from the Theatres Trust (see **Appendix 27**) confirms that the offerings are different.
 - TFT is a charity and is a well-respected community theatre company. Producing over 30 shows per annum in house. It is a not for profit charity and attracts a broad age range to its membership and audience figures. It has a full constitution allowing its members to choose its officers. TFT does not charge a fee to join and is solely funded through

its own box office receipts and commercial activity. Current active membership is over 805 with an audience mailing list of over 8,000. The company employs professional directors for its productions and owns its own technical equipment, seating, wardrobe and properties. The company does not rely on sponsorship, grants (either national or local) or donations to ensure it continues its activities.

- In terms of sustainability, it should be noted that the last bus to Fareham from areas to the west of TFT (western wards) is 19:45 and the last one from Fareham to the western wards is 18:42. (This will be covered in the proof of evidence covered by Tom Fisher from Paul Basham Associates). Therefore, anyone from the western wards wanting to see an event at Fareham Live would have to travel by car.
- The nearest train station to Fareham Live is Fareham Station which is a 20 minute (0.9) mile walk. Although trains run later than the buses the nearest station is at Swanwick which would require a taxi service or a car ride to most residential properties in the western wards.
- Analysis from TFT indicates that visitors to the theatre tend to eat in restaurants/pubs along The Avenue, Mill Lane and centre of Titchfield. Cast members all eat in these locations. None of this is taking trade from the centre but increasing it locally. TFT are also providing a nearby entertainment venue to the local Hotels most of which are located in the western area of Fareham Borough (Holiday Inn, Premier Inn, Solent Hotel, Travel Inn).
- As two theatres and associated community activities already exist on the site it would not make commercial sense to split the theatres across two sites and as the space is available on the site then the most practical option is to extend on the site. As mentioned earlier in this statement, historically unit B has always been used in association with the theatre, Unit C has replaced Unit B. The new theatre would also provide additional theatre space in the western wards and areas beyond the Fareham area to the west.

- Two theatres already exist and subject to suitable conditions then the operation of the third theatre would have a negligible impact on Fareham Town Centre. There is a benefit to Titchfield.

Conclusion to sequential test and vitality and viability

- 10.31. The sequential test has identified that there are no suitable, available or viable alternatives that could be considered sequentially preferable to the proposed development. In addition, operation at TFT entails that the Arden Theatre would not affect the vitality and viability of Fareham Town Centre.
- 10.32. The NPPF at paragraph 85 (**Appendix 23**) requires planning decisions to help create the conditions in which businesses can invest, expand and adapt, stating that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. There are now 14 full time employees at the site of which 5 are as result of the new Arden Theatre.
- 10.33. Paragraphs 88 and 89 (**Appendix 23**) specifically give support to a prosperous rural economy, with the former requiring planning decisions to enable the sustainable growth and expansion of all types of business in rural areas, including through the conversion of existing buildings. The new theatre encourages economic growth and would benefit local businesses and hotels as evidenced by appellant and third-party letters of support. The proposal would accord with the Framework objectives in respect of rural enterprise.

The effect of the development on the living conditions of neighbouring occupiers with regard to noise and disturbance

- 10.34. These matters will be covered in the proof of evidence prepared by Rueben Peckham of 24 Acoustics. The proof will cover: -

- Break-out of noise to the community from the auditorium;
- Noise impact associated with the additional traffic accessing the site for rehearsals/ performances;
- Noise impact associated with the access and egress of patrons arriving at and leaving the venue.

10.35. There is no formal technical guidance that provides a definitive means of assessing the noise impact from these activities. Objective and subjective assessment will be undertaken. This will be based on guidance from the Institute of Acoustics' publication 'Good Practice Guide on the Control of Noise from Pubs and Clubs' which addresses the management of noise from similar sources to those experienced at the Arden Theatre. In addition, in the absence of specific technical guidance from Fareham Borough Council, reference will be made to Manchester City Council's guidance 'Planning and Noise' which provides objective means of assessing noise impact from music noise in particular.

Whether the development makes adequate provision for parking provision in terms of highway safety.

10.36. These matters will be covered in the proof of evidence prepared by Tom Fisher of Paul Basham associates.

10.37. The statement will refer to the following documents: -

- Fareham Borough Non-Residential Parking Standards Supplementary Planning Document – September 2015.
- Hampshire Parking Strategy and Standards – 2002 – Now Withdrawn.
- NPPF – December 2023.
- Manual for Streets- 2007.

- Inclusive Mobility – A guide to best practice on Access to Pedestrian and Transport Infrastructure – December 2021.
- Guidelines for Providing Journeys on Foot IHT – 2000 - Fareham Local Cycling and Walking Infrastructure Plan – 2022
- Hampshire County Council Technical Guidance Note 3 2021-

Other matters

Impact on the Character and Appearance of the Area and the Meon Strategic Gap

- 10.38. The application site is recognised within the Council's Local Plan as being located within the countryside and within the Meon Strategic Gap. Policy DS2 of the Local Plan states development must recognise the intrinsic character and beauty of the countryside and not significantly affect the integrity of a Strategic Gap.
- 10.39. In this instance, the development has resulted in the conversion of an existing commercial building that had previously been used for manufacture and then storage. The unauthorised use and the engineering operations have not resulted in any significant changes to the external appearance of the building when compared to the permission previously granted for additions and alterations to Area C. For these reasons it is not considered the development has a harmful impact on the character of the surrounding countryside or the integrity of the Strategic Gap.
- 10.40. Strategic policy R4 (appendix 11) supports development proposals for Community and Leisure Facilities (includes cultural) subject to the following caveats (only and a) and d) considered relevant: -
- There is a need for the facility. This is evidenced by the amount of support for the Theatre which includes a petition.

- The site is accessible to the local community it serves. The site is clearly accessible to the people of Titchfield and the Western Wards.

10.41. In terms of the NPPF (**Appendix 23**) the following paragraphs are relevant

- Para 96. Planning policies and decisions should aim to achieve healthy, inclusive and safe places and beautiful buildings which:
 - a) promote social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other – for example through mixed-use developments, strong neighbourhood centres, street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods, and active street frontages.
- Para 97 d) ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community.

10.42. It is argued that the new theatre would meet the aims of policy RT4 and the paragraphs of the NPPF.

Conclusion to ground A

10.43. The sequential test has demonstrated that there are no alternative sites in the existing centres or parades which could have accommodated the facility. Furthermore, the impact assessment, has demonstrated that the development does not have a significant adverse effect on the vitality or viability of existing or proposed retail centres and parade.

10.44. The increase in theatre capacity and the noise from within the building will not result in significant increase in noise from patrons arriving and leaving the building detrimental to the living conditions of the occupiers of the neighbouring residential properties.

- 10.45. Adequate provision of accessible and available parking spaces is available. There is no unacceptable harm to the safety of users of the highway.
- 10.46. Therefore, the development would comply with policies DS1, R2, R4, D2, TIN1 and TIN2 of the Fareham Local Plan 2037 and as such planning permission should be granted for the development as it exists. This includes the: -
- Retention of the basement area if deemed to require planning permission.
 - Hours of operation to match unit A.
 - The new entrance in the eastern flank loading bay.
 - The use of unit C for Theatre related purposes.
 - An increase in the number of days per year to 150.

Other Grounds of Appeal

Ground B: *that those matters have not occurred – This Ground is no longer pursued in view of the response by Fareham Borough Council.*

- 10.48 It was asserted that the Council have mis-identified the use of the Site which is more accurately described as a mix of theatre, storage and community uses (Sui Generis) since the date of the latest permission for the site. This was evident from the 2019 application (which was an application the uses identified above – see Appendix 5). The Council rejected the 2019 application but chose not to take any action against the use of Area B. It is now four years later and the use has continued/is continuing. The Appellant submitted that this is a case where the alleged breach of planning control in the Notice is inaccurate and that the breach alleged should properly have been particularised as a breach of condition.
- 10.49 Fareham Borough Council's position appears to be that the creation of the Arden theatre that uses Area B for seating and most of the stage area,

together with Area C that is principally a back-stage area supporting the Arden theatre taken together amounts to the use of both Areas B and C as a theatre. If that is correct then, as identified by the Inspector in the CMC agenda, it follows that both areas A and B both fall within Ground D and (in particular Area B) is immune from enforcement action in respect of any breach of planning control.

Ground E *the Enforcement Notice was not properly served. This Ground is no longer pursued.*

- 10.50 While Fareham Borough Council were made fully aware by the Appellant of the correct parties to serve the enforcement notice on, and inexplicably chose to serve the notice on the wrong people, no prejudice has been identified.

Ground F - Ground (f): *the steps required by the Notice to be taken, or the activities required by the Notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.*

- 10.51 Paragraph 5 of the enforcement notice sets out what is required to remedy the alleged breach and requires the Appellants to cease using the Site in a Theatre (Sui Generis) use and to remove furniture and technical equipment associated with the alleged unlawful use, as well as infill the alleged unauthorised excavation works.

- 10.52 The complete removal of the seating and technical rigs at The Arden Theatre would exceed what is necessary to remedy any breach of planning control which may be constituted by those matters set out in the Notice. If the appeal is only dismissed on lack of parking, then if in the future the appellant is able to provide suitable parking, then a 'mothballed' theatre could be re-opened.

10.53 Alternatively, if the key issues for the inspector are noise and parking then the use of units B and C for ancillary theatre purposes including rehearsals and storage would not generate noise or car parking. On this basis there would be no need to remove the elements listed in the enforcement notice.

10.54 Should the ground (a) not succeed, lesser steps such as ceasing the use of part of Area C (and possibly B) as an operational theatre whilst allowing the equipment to be stored in situ would constitute a lesser step that would remedy any breach of planning control.

10.55 Further, given that the Council has erroneously identified the entirety of the Appeal Site as in theatre use, those rooms and areas used for community groups, storage and the Appellant's youth theatre programme, should be allowed to continue in such use.

10.56 Furthermore, requirement (ii) of the Notice, to *'Backfill the excavated underground area beneath the Land with a suitable inert material (such as compacted aggregate, soil, or similar) to ground level'* is an unnecessary requirement and lesser steps, such as limiting use of that area as storage would overcome the Council's concerns. The currently required steps are likely to create a water drainage issue.

10.57 **What has not been asked for in the enforcement notice**

- (i) The re-instatement of the wall between units B and C
- (ii) The removal of any internal alterations to unit C
- (iii) The fenestration changes to unit C

It is presumed therefore that these matters amount to enforcement.

Ground G: *the time given to comply with the Notice is too short.*

- 10.58 Insofar as paragraph 6 of the Notice is concerned, it is submitted that given the need for the Appellants to source specialist contractors skilled in the removal of technical theatre equipment, as well as materials necessary to infill the alleged unauthorised excavation works, the period of two months to cease the use of the Site and three months for the other steps is manifestly short of what should reasonably be allowed. In the circumstances, given the likely upheaval associated with the works, the Appellants submit that a period of 9 months would be more appropriate to comply with this aspect of the Notice.
- 10.59 Details of the time required to complete the work are set out in (**Appendix 24**)

List of appendices referred to in the statement

Appendixes	Description
1	Enforcement Notice
2	Site Location
3	Units A, B, C
4	2012 Appeal
5	2019 Application
6	On site car parking
7	Other nearby parking
8	Locks Heath Free Church decision Locks Heath Free Church decision 2013 documents
9	2024 Programme TFT
10	Response to PCN's
11	Local Plan Policies
12	Nearby Theatres
13	Housing Policy
14	Paragraphs 7.22 and 7.23 of Fareham Local Plan
15	TFT Officer report and policy comments 2012 application
16	TFT Sequential Test from 2012 application
17	Locks Heath Free Church Officer report and refusal 2012
18	Tesco Stores Ltd v Dundee Council
19	Rushden Lakes Retail Park Appeal decision
20	District plan maps
21	Trafalgar entertainment programme
22	Ferneham Hall programmer prior to closing
23	NPPF
24	Work Programme
25	Fareham Retail study
26	Plans
27	Letter from Theatres Trust

2

Appendix 1

Section 2
Appendix 1
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FAREHAM
BOROUGH COUNCIL

Havant
BOROUGH COUNCIL

Southampton, Fareham & Havant Legal Partnership
Southampton City Council
Civic Centre
Southampton SO14 7LY

The Secretary
Titchfield Festival Theatre Limited
71-73 St Margarets Lane
Titchfield
Fareham
PO14 4BG

Direct dial: 023 8083 2264
Please ask for: Hilary Hudson
Our Ref: HH/ENV-057341
Your ref:
Date: 22 November, 2023

Dear Madam,

Town & Country Planning Act 1990 - Section 172

Enforcement Notice: Land at 71-73 St Margarets Lane, Titchfield, Fareham, PO14 4BG

The Council has issued an Enforcement Notice relating to the above land and I now serve on you a copy of that Notice in view of your interest in the land. Copies of the Notice have been served on those persons listed on the attached sheet.

There is a right of appeal to the Secretary of State (at The Planning Inspectorate) against the enforcement notice. Unless an appeal is made, as described below, the notice will take effect on 29th December 2023 and you must then ensure that the required steps, for which you may be held responsible, are taken within the period(s) specified in the notice.

Please see the enclosed information sheet from The Planning Inspectorate which tells you how to make an appeal.

If you decide that you want to appeal against the enforcement notice you must ensure that you send your appeal soon enough so that normally it will be delivered by post/electronic transmission to the Secretary of State (at The Planning Inspectorate) before 29th December 2023.

Under section 174 of the Town and Country Planning Act 1990 (as amended) you may appeal on one or more of the following grounds:-

- (a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;
- (b) that those matters have not occurred;
- (c) that those matters (if they occurred) do not constitute a breach of planning control;
- (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
- (e) that copies of the enforcement notice were not served as required by section 172;
- (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
- (g) that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

Not all of these grounds may be relevant to you.

If you appeal under Ground (a) of Section 174(2) of the Town and Country Planning Act 1990 this is the equivalent of applying for planning permission for the development alleged in the notice and you will have to pay a fee of £924. You should pay the fee to Fareham Borough Council (made payable to Fareham Borough Council). Joint appellants need only pay one set of fees.

If you decide to appeal, when you submit it, you should state in writing the ground(s) on which you are appealing against the enforcement notice and you should state briefly the facts on which you intend to rely in support of each of those grounds. If you do not do this when you make your appeal the Secretary of State will send you a notice requiring you to do so within 14 days.

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 7 of the notice and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period specified in paragraph 6 of the notice. Failure to comply with an enforcement notice, which has taken effect, can result in prosecution and/or remedial action by the Council.

Yours faithfully



Hilary Hudson
Solicitor

**If you would like this letter sent to you in another format or language,
please contact the number at the top of this letter.**

Enforcement Notice: Land at 71-73 St Margarets Lane, Titchfield

Enforcement Notice served on the following:

- Graham Paul Alexander, 3 Acorn Business Centre, Northarbour Road, Cosham, Portsmouth, PO6 3TH
- Keith Edward Welch, 3 Acorn Business Centre, Northarbour Road, Cosham, Portsmouth, PO6 3TH
- Ian Charles Welch, 3 Acorn Business Centre, Northarbour Road, Cosham, Portsmouth, PO6 3TH
- MK Trustees UK Limited t/a JLT Premier Pensions at Lakeside House, Shirwell Crescent, Furzton, Milton Keynes, MK4 1GA
- The Secretary, Titchfield Festival Theatre Limited, The Great Barn, The Lodge, Mill Lane, Titchfield, Fareham, Hampshire, PO15 5RB
- The Secretary, Titchfield Festival Theatre Limited, 71-73 St Margarets Lane, Titchfield, Fareham PO14 4BG
- The Secretary, Unity Trust Bank plc, Four Brindleyplace, Birmingham, B1 2JB
- Assistant Director Legal Services and Monitoring Officer, Hampshire County Council, The Castle, Winchester, SO23 8UJ

FAREHAM

BOROUGH COUNCIL

IMPORTANT: THIS COMMUNICATION AFFECTS YOUR PROPERTY

**TOWN AND COUNTRY PLANNING ACT 1990
(AS AMENDED BY THE PLANNING AND COMPENSATION ACT 1991)**

ENFORCEMENT NOTICE

ISSUED BY: FAREHAM BOROUGH COUNCIL ("the Council")

1 THIS NOTICE is issued by the Council, because it appears to them that there has been a breach of planning control, within paragraph (a) of section 171A(1) of the above Act, at the land described below. They consider that it is expedient to issue this Notice, having regard to the provisions of the development plan and other material planning considerations. The Annex at the end of the notice and the enclosures to which it refers contain important additional information.

2 THE LAND TO WHICH THE NOTICE RELATES

Land at 71-73 St Margarets Lane, Fareham, PO14 4BG, shown edged red on the attached plan ("the Land").

3 THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL

Without planning permission,

- the material change of use of the Land to theatre use (*sui generis*); and
- an engineering operation to excavate and create an underground area beneath the Land.

4 REASONS FOR ISSUING THIS NOTICE

It appears to the Council that the material change of use of the Land to a theatre use has occurred within the last ten years.

It appears to the Council that the engineering operation to excavate and create an underground area beneath the Land has occurred within the last four years.

The development is contrary to Policies DS1, R2, D2, TIN1 and TIN2 of the Fareham Local Plan 2037 and is unacceptable in that:

FAREHAM

BOROUGH COUNCIL



71/73 St Margarets Lane
Titchfield

Scale 1:1,000



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- a) The theatre is a main town centre use located outside the urban area in an unsustainable and poorly accessible location. The development fails to promote sustainable and active travel modes, offer a genuine choice of mode of travel and reduce the need to travel by motorised vehicle;
- b) It has not been demonstrated that the development meets a demonstrable need for the use in this location and that there are no alternative sites in the centres or parades that are available, suitable or viable that could be considered sequentially preferable to the development site. It has not been demonstrated that the development would not cause significant harm to, or have a significant adverse effect on the vitality or viability of, the Borough's centres or parades;
- c) The development would result in a significant increase in noise from patrons arriving and leaving the building which would have an unacceptable adverse environmental impact on neighbouring occupants. Furthermore, in the absence of details of acoustic insulation measures for the building, the noise emanating from the building would have an unacceptable adverse environmental impact on neighbouring occupants; and
- d) Parking provision at the site is not acceptable which would have an unacceptable impact on highway safety.

The engineering operation to excavate and create an underground area beneath the Land is not in itself harmful but is associated with and necessary to the material change of use of the Land to use as a theatre. Its continued presence undermines the ability of the Land to be restored to a lawful use.

The Council does not consider that planning permission should be given, because planning conditions could not overcome these objections to the development.

5 WHAT YOU ARE REQUIRED TO DO

- (i) Cease the use of the Land as a theatre;
- (ii) Backfill the excavated underground area beneath the Land with a suitable inert material (such as compacted aggregate, soil, or similar) to ground level;
- (iii) Dismantle the stage;
- (iv) Remove the seating;
- (v) Dismantle the lighting rig and PA or other sound equipment; and

- (vi) Remove the resultant materials from carrying out steps (iii), (iv) and (v) from the Land except to the extent that those materials are solely being stored on the Land.

6 TIME FOR COMPLIANCE

- Step (i): two months after this Notice takes effect; and
- Steps (ii) – (vi): three months after this Notice takes effect.

7 WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on 29th December 2023, unless an appeal is made against it beforehand.

Dated: 22nd November 2023

Signed

DIRECTOR OF GOVERNANCE, LEGAL & HR
RICHARD IVORY, Solicitor
Southampton, Fareham & Havant Legal Services Partnership
Southampton City Council
Civic Centre
Southampton SO14 7LY

ANNEX

YOUR RIGHT OF APPEAL

You can appeal against this notice, but any appeal must be received, or posted in time to be received, by the Secretary of State before the date specified in paragraph 7 of the notice. The enclosed information sheet from The Planning Inspectorate sets out how to do this. Read it carefully.

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 7 of the notice and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period(s) specified in paragraph 6 of the notice. Failure to comply with an enforcement notice, which has taken effect, can result in prosecution and/or remedial action by the Council.

Customer Support Team
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Direct Line 0303-444 5000
Email enquiries@planninginspectorate.gov.uk

THIS IS IMPORTANT

If you want to appeal against this enforcement notice you can do it:-

- on-line at the Appeals Casework Portal_ (<https://acp.planninginspectorate.gov.uk/>); or
- sending us enforcement appeal forms, which can be obtained by contacting us on the details above.

You MUST make sure that we RECEIVE your appeal BEFORE the effective date on the enforcement notice.

Please read the appeal guidance documents at <https://www.gov.uk/appeal-enforcement-notice/how-to-appeal>.

In exceptional circumstances you may give written notice of appeal by letter or email. You should include the name and contact details of the appellant(s) and either attach a copy of the Enforcement notice that you wish to appeal or state the following:

- the name of the local planning authority;
- the site address; and
- the effective date of the enforcement notice.

We MUST receive this BEFORE the effective date on the enforcement notice. This should immediately be followed by your completed appeal forms.

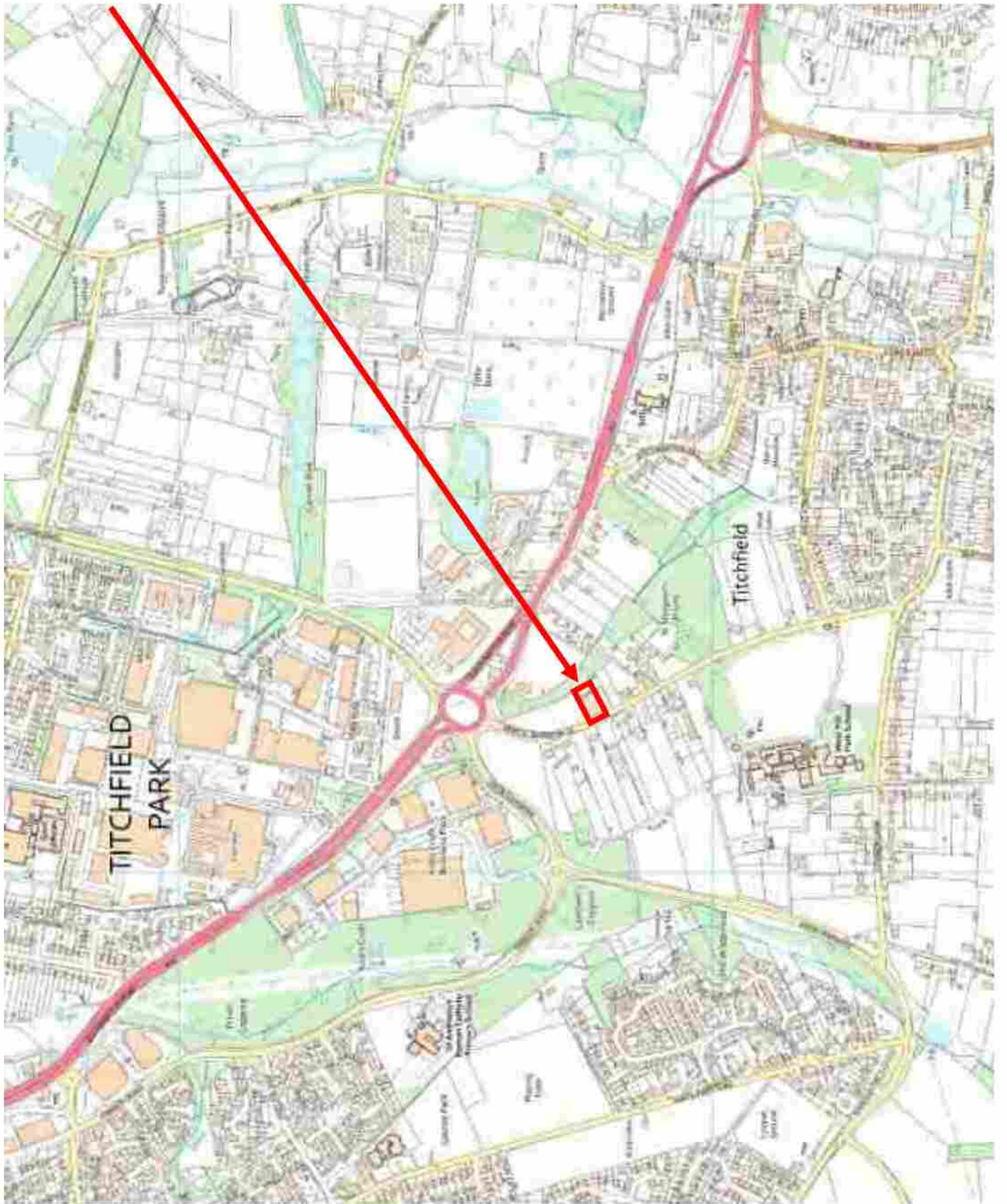
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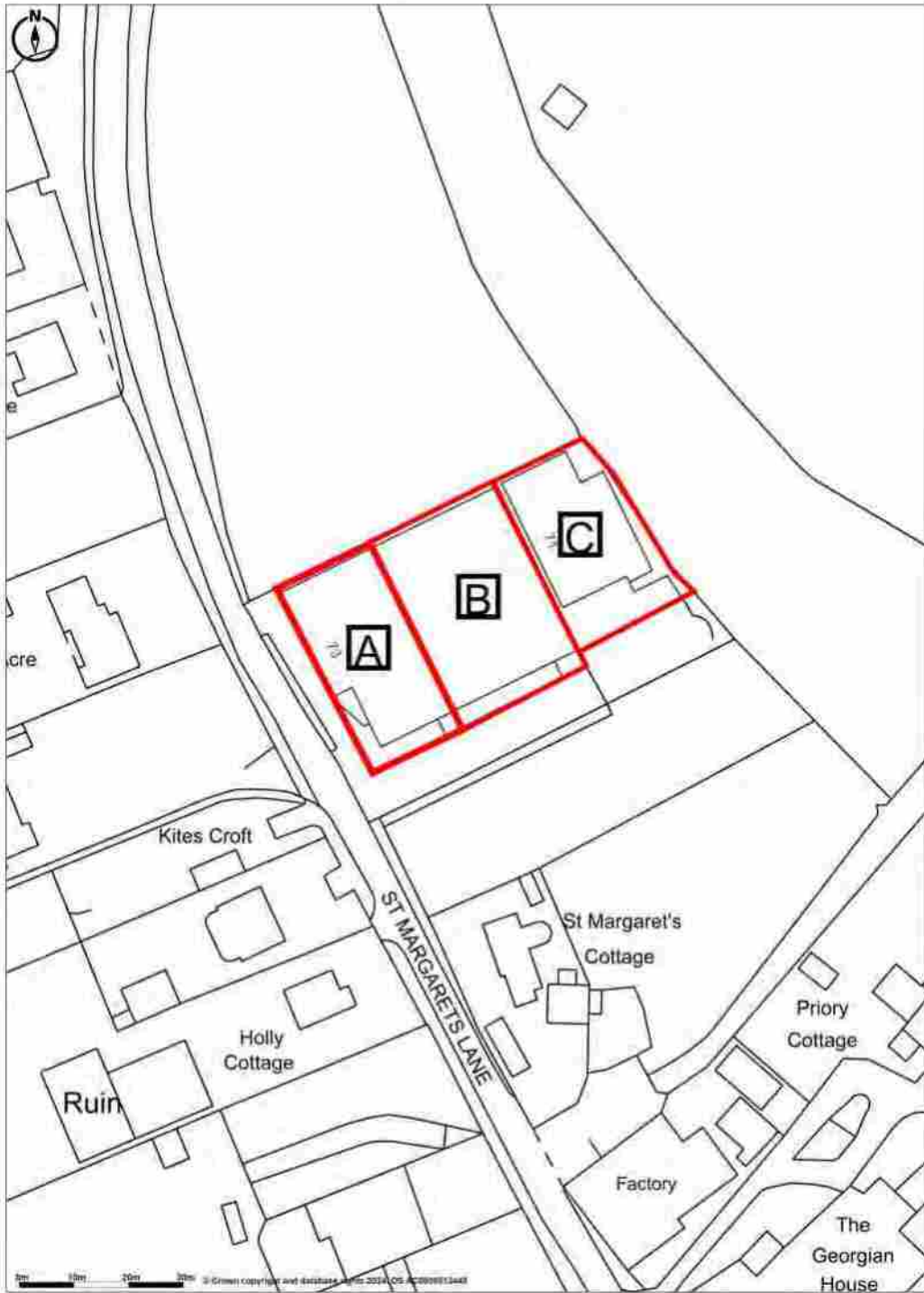


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Appeal Decision

Hearing held on 7 February 2013

Site visit made on 7 February 2013

by J C Chase MCD Dip Arch RIBA MRTPI

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

Decision date: 20 February 2013

Appeal Ref: APP/A1720/A/12/2186833

73 St Margarets Lane, Titchfield, Fareham, Hampshire, PO14 4BG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Titchfield Festival Theatre Ltd against the decision of Fareham Borough Council.
 - The application, Ref P/12/0050/CU dated 1 November 2011, was approved on 2 May 2012 and planning permission was granted subject to conditions.
 - The development permitted is the use of unit A for D2 and theatre purposes and unit B for storage use.
 - The condition in dispute is No 1 which states that: The use hereby permitted shall cease on or before the 2 May 2013, unless a further planning permission has been granted before the expiry of such period.
 - The reason given for the condition is: to retain planning control over the development hereby permitted and to enable the monitoring of car parking, highway safety impacts, the number of people in attendance of events and the impact of the activity on adjoining residential amenity, to enable the grant of temporary planning permission to be reviewed; in accordance with Policies CS5 and CS17 of the Fareham Borough Core Strategy.
-

Decision

1. The appeal is allowed and the planning permission Ref P/12/0050/CU for the use of unit A for D2 and theatre purposes and unit B for storage use at 73 St Margarets Lane, Fareham, Hampshire, PO14 4BG granted on 2 May 2012 by Fareham Borough Council, is varied by deleting condition No 1.

Procedural Matters

2. For the avoidance of doubt, the appellants confirmed at the Hearing that the condition in dispute is No 1, and both parties agreed that the description of the development is that shown on the Council's decision notice. These details are contained in the title box, above. The appellants also confirmed that the parking area falls within the curtilage of the site over which they have a lease. The Council raise no objection to the storage use of Unit B, and there is no reason for this decision to come to a different view about this aspect.

Main Issues

3. The main issues are whether there is any harmful effect on highway safety/free flow of traffic and the living conditions of nearby residents, which could not be overcome by restrictive planning conditions, and whether a trial period is necessary to assess the extent of that harm.

Reasons

4. The appeal premises are within a semi-rural area, with a mix of residential, commercial and agricultural uses in the vicinity. The building has the utilitarian character of an industrial unit with ancillary offices, and it is indicated that the former factory ceased operation about 3 years before the appellants took occupation, with the theatre use starting approximately 15 months before planning permission was granted in May 2012. Whilst the exterior of the building has not been altered, the factory space has been subdivided to provide an auditorium, rehearsal rooms, and ancillary theatrical functions. The rear part of the building (Unit B) is used for warehousing.
5. With respect to highway matters, the Council's Core Strategy, adopted in 2011, requires that new development does not adversely affect the safety and operation of the road system (Policy CS5) and that appropriate parking should be provided to take account of the accessibility and context of the scheme (Policy CS17). It is indicated that the County parking standard is 1 space per 5 seats for theatre development which, at 210 seats, would generate a need for 42 spaces. The site is able to accommodate 30 cars in accessible spaces. Whilst the parking standard is couched in terms of maximum provision, the acceptability of a reduced number is subject to whether any overflow arising could be accommodated without harm to highway safety.
6. There are no parking controls in this part of St Margarets Lane, and it was observed that the road is relatively narrow, with a single pavement to the north of the site, and elsewhere a narrow verge. There is the potential for parked cars to obstruct both the road and footpath, to the detriment of highway and pedestrian safety, especially as there is a long bend in the vicinity of the site which restricts forward visibility. However, the appellants contend that the demand for parking from patrons generally falls below the normal on-site capacity of the property, and in other cases it is possible to accommodate it by double banking, with a supervised scheme of managed parking to comply with condition 3 of the planning permission.
7. From the representations at the Hearing, and the observation during the site visit, it is accepted that it would be physically possible to accommodate approximately 35 cars within the site, provided a managed scheme is in operation, and such management is a practical possibility in circumstances where the patrons would arrive and leave within a limited time frame. Whilst this is less than the maximum parking standard, it is likely that the demonstrable unattractiveness of the street for safe parking would discourage its use for any overflow and, in any event, the highway authority would have the opportunity to impose parking controls, if found to be necessary. In practice, it is more likely that any additional parking would take place at alternative premises where the appellants have made informal arrangements, or in other parts of the village where vehicles could be safely accommodated. There is the opportunity to minimise any obstruction of the street by cars queuing to enter the site by efficient handling of the supervised parking arrangements.
8. Overall, there is reason to consider that, subject to the other conditions imposed on the planning permission, this aspect of the development would comply with Policies CS5 and CS17, and it would not have an unduly harmful effect on highway safety or the free flow of traffic.

9. Turning to the impact on residential amenity, there are dwellings in the vicinity of the site, the nearest of which are diagonally opposite. In this location, it is likely that the departure of patrons at the end of the performance could create some disturbance. However, this would be mitigated by the limited number of cars accommodated, and by the restricted opening hours and performance days, which are subject to planning conditions and licensing arrangements. In addition, any activity would arise on the public side of the nearest dwellings. Amongst other matters that have been raised, a planning condition prevents deliveries taking place before 8.00 hours and, whilst some light pollution is likely to occur, the evidence does not indicate that it is at an unacceptably high level.
10. Whilst the Council's nominated policies do not specifically refer to neighbours' amenity, the protection of this aspect is a normal objective of the planning system, and is required within the core principles of the National Planning Policy Framework. There are adequate grounds to consider that the development would meet this requirement, and any disturbance arising out of the theatre use can be adequately controlled by planning conditions so as to avoid being unduly harmful to the living conditions of nearby residents.
11. It is generally undesirable to grant a temporary permission for a development which is intended to be permanent, because of the uncertainty arising, and its effect on the commitment to the project. In this instance it is accepted that the scheme involves an existing industrial building, which remains available for its previous use, and the appellants have demonstrated a willingness to take a risk on obtaining planning permission, as the operation was started before an application was made. Nonetheless, it is likely that the time limit will discourage further investment and disrupt future performance plans. A condition restricting the term of the permission should not be applied in these circumstances unless it is the only means of establishing the level of harm arising out of the development.
12. There is reason to consider that this is not the case. Assessment of the impact on traffic and parking, and on residential amenity, are normal functions of the planning system, and the proposal is not so unusual that they would not be susceptible to professional judgement and experience, along with the application of policies and guidance. In any event, there had already been a period of 15 months before permission was granted when the impact of the operation could have been fully established. Whilst a further trial period might give an opportunity to assess the effect of restrictive planning conditions, there is a lack of clear evidence that the harm assessed prior to the grant of permission was of such a nature or extent that conditions were likely to be ineffective. A trial period is not necessary to assess the extent of the harm, and condition 1 should be deleted.

John Chase

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Mr K Fraser	Chairperson Titchfield Festival Theatre (TFT)
Mr A Causer	Trustee TFT
Mr J Hall	On behalf of TFT

FOR THE LOCAL PLANNING AUTHORITY:

Mr A Sebbinger BA, MSc(Geog), Senior Planning Officer, Fareham BC
MSc(TP), MRTPI

INTERESTED PERSONS PARTICIPATING IN DISCUSSION:

Mr D Noyce
Mr J Sluggett
Mr J Stuart

DOCUMENTS

- 1 Correspondence from Welbro Project Management Ltd and Holiday Inn Fareham concerning overspill parking availability
- 2 Letter from Dr M Dunton dated 1 February 2013
- 3 Extract from Hampshire Parking Standards

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Change of use of unit B to a mixed use of B8/D2 and theatre purposes and variation of condition 8 of P/12/0050/CU relating to use and hours of operation

73 St Margarets Lane, Titchfield

PLANNING STATEMENT



Client: Mr Fraser
Date: September 2019
Ref: F/364/3/ID

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2.0 PLANNING HISTORY	3
3.0 PLANNING POLICY	4
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1.0 INTRODUCTION

1.1 Southern Planning Practice Ltd has been instructed by Titchfield Festival Theatre, a registered charity and well known community asset, to submit a planning application for the change of use of unit B at 73 St Margarets Lane, Titchfield to a mixed use of B2/D2 and theatre purposes and variation of condition 8 of P/12/0050/CU relating to use and hours of operation.

The Site and Surroundings

1.2 The proposal relates to a warehouse/industrial building now utilised by Titchfield Festival Theatre. The property consists of a three storey office block fronting onto St Margarets Lane which is used for admin functions for the Theatre and a large warehouse structure behind (Unit A) which is the main theatre. To the rear of the theatre building is another large building (unit B) authorised for B1/B8 use (office/light industrial/storage). The frontage of the building has recently undergone a considerable change to allow it to look less office like and more inviting to patrons and the public in general.



- 1.3 The building is located within an area defined as countryside and the Meon Strategic Gap by the adopted Fareham Borough Core Strategy. The site is bound by a building to the east, by fields to the north and south and by St Margarets Lane to the west.
- 1.4 The area is mixed use in character with commercial uses including a garden nursery, furniture workshop and builders' yard in the locality and residential development to the south and to the west, across St Margarets Lane.
- 1.5 To the north is a hotel and industrial developments at Kites Croft and Segensworth. To the rear of the site is a separate industrial unit in the form of a warehouse and offices. To the south there is a field beyond which is a residential dwelling and light industrial units.
- 1.6 At present Unit A comprises 2 theatres one accommodating 200 seats and the other 100 seats together with ancillary areas. To the rear is a commercial unit currently in B1/B8 use (office/light industrial/storage). Beyond that is a further commercial unit in separate ownership and in B8 use.



2.0 PLANNING HISTORY

2.1 The following planning history is relevant to this application:

P/19/0510/FP

Proposal: Rear, Side & Roof Extensions, Change Of Use Of Storage Area To 567 Seated Theatre And Industrial Unit To Ancillary Back Stage & Changing Rooms

Decision Date: 21/08/2019

Status: Refuse

P/17/1024/FP

Proposal: Mansard Roof and Alterations to Front Elevation

Decision Date: 26/09/2017

Status: Approve

P/12/0050/CU

Proposal: Retrospective Application for Continued Use of Unit A for D2 and Theatre Purposes and Unit B for Storage Use

Decision Date: 02/05/2012

Status: Appealed: Allowed

2.2 There following condition attached to the appeal permission is relevant: -

8. The use of Unit B, identified on the OS Sitemap received by the Local Planning Authority on 23rd January 2012 shall only be used for purposes defined as falling within Classes B1 or B8 of the Town and Country Planning Use Classes Order 1987 (as amended). The use for such purposes shall be limited to between the hours of 08:00-18:00 Monday to Friday, 09:00-13:00 on Saturday and not at all on Sundays and Bank Holidays.

3.0 PLANNING POLICY

3.1 Government Policy

- National Planning Policy Framework

3.2 Approved Fareham Borough Core Strategy

- CS1 - Employment provision
- CS5 - Transport Strategy and Infrastructure
- CS14 - Development Outside Settlements
- CS17 - High Quality Design
- CS22 - Development in Strategic Gaps

3.3 Development Sites and Policies: -

- DSP1: Sustainable development
- DSP2: Environmental impact
- DSP3: Impact on living conditions
- DSP9 Economic Development Outside of the Defined Urban Settlement Boundaries
- DSP17 Existing Employment Sites and Areas
- DSP51 Parking

3.4 Community use including theatres falls within the definition of economic development. Therefore, the appropriate policy is: -

Policy DSP 9 (Economic Development Outside of the Defined Urban Settlement Boundary). The policy states: -

Proposals for the expansion or intensification of existing employment sites/area outside of the defined urban settlement boundaries will only be permitted where:

- I. Development is essential to the operation of the existing businesses; and*
- II. Development can be accommodated within the curtilage of the existing site.*

All new development, expansion and intensification outside of the defined urban settlement boundaries should:

iii. not be of a disproportionate scale to the operational requirements of the employment site;

iv. not have an unacceptable adverse impact on the strategic and local road network; and

v. not have an unacceptable environmental impact.

New buildings should be well designed to respect the character of the area and, where possible, should be grouped with existing buildings.

They should avoid the loss of significant trees, should not have an unacceptable impact on the amenity of residents, and should not result in unacceptable environmental or ecological impacts or detrimental impact on the character or landscape of the surrounding area.

4.0 THE PROPOSAL

4.1 The proposal is in effect a regularisation of the current use of the unit B which is used for the following:-

- Scenery storage for the theatre (Theatre Use)
- Rehearsals space for the theatre (Theatre Use)
- Scenery storage for other theatres (B8 use)
- The provision of the 'Men's Shed' a community use (D2 use)

4.2 There would be no internal or external changes to the building.

4.3 Access would be either through the main entrance to the theatre or through the roller shutter doors on the eastern side of the building.

4.4 There would be no change to car parking demand/useage as the activities currently exist.

4.5 At present there is an hours restriction on unit B of 0800 – 1800 Monday to Friday and 0900 – 1300 hours Saturday and not at all on Sundays and bank holidays. There is a need to vary the hours to match those of the theatre use namely 0900 – 2300 Monday to Saturday and 1000 – 2200 Sundays and Bank Holidays. This is so that:-

- Scenery can be moved between the two units in readiness for stage shows.
- The Men's Shed can carry on running courses at weekends.
- The Men's shed assist with scenery production which is sometimes undertaken in evenings and weekends.
- As the theatre is amateur rehearsals often take place in evenings and weekends.

5.0 PLANNING ASSESSMENT

5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires development to be approved in accordance with the development plan, unless material considerations indicate otherwise. The Planning System: General Principles states that where there are other material considerations, the Development Plan should be the starting point and other material considerations should be taken into account.

5.2 The main issue relate to the loss of employment space. However, in the officer report into the recently refused application for the new theatre the comments were as follows: -

The proposal would result in the loss of approximately 600 square metres of commercial floorspace. The site is not designated as an employment area that should be protected and therefore the loss of the commercial floorspace would not conflict with Local Plan Policies.

5.3 On this basis it is considered that the principal of the use is acceptable

5.4 In terms of the proposed mixed use for the building the proposal would only regularise the current use of unit B. Again with the extended hours this would only reflect the current situation with regard to scenery movements between the theatre and the storage area, rehearsals and the use by the Men's Shed.

6.0 CONCLUSION

- 6.1 The principle of the re-use of the commercial units for community and theatre uses accords with policy CS1 of the Core Strategy and DSP 9 of the Development sites and Policies Document therefore the principle is acceptable
- 6.2 There would be no external or internal changes to the building.
- 6.3 As the use of the building currently exists there would be no increased demand for car parking or traffic generation.
- 6.4 The increase in hours only reflects the current situation and therefore there would be no discernible change in relation to impact on neighbouring properties.
- 6.5 It is considered that the proposal complies with both local and national policies and therefore favourable support should be given to this application.

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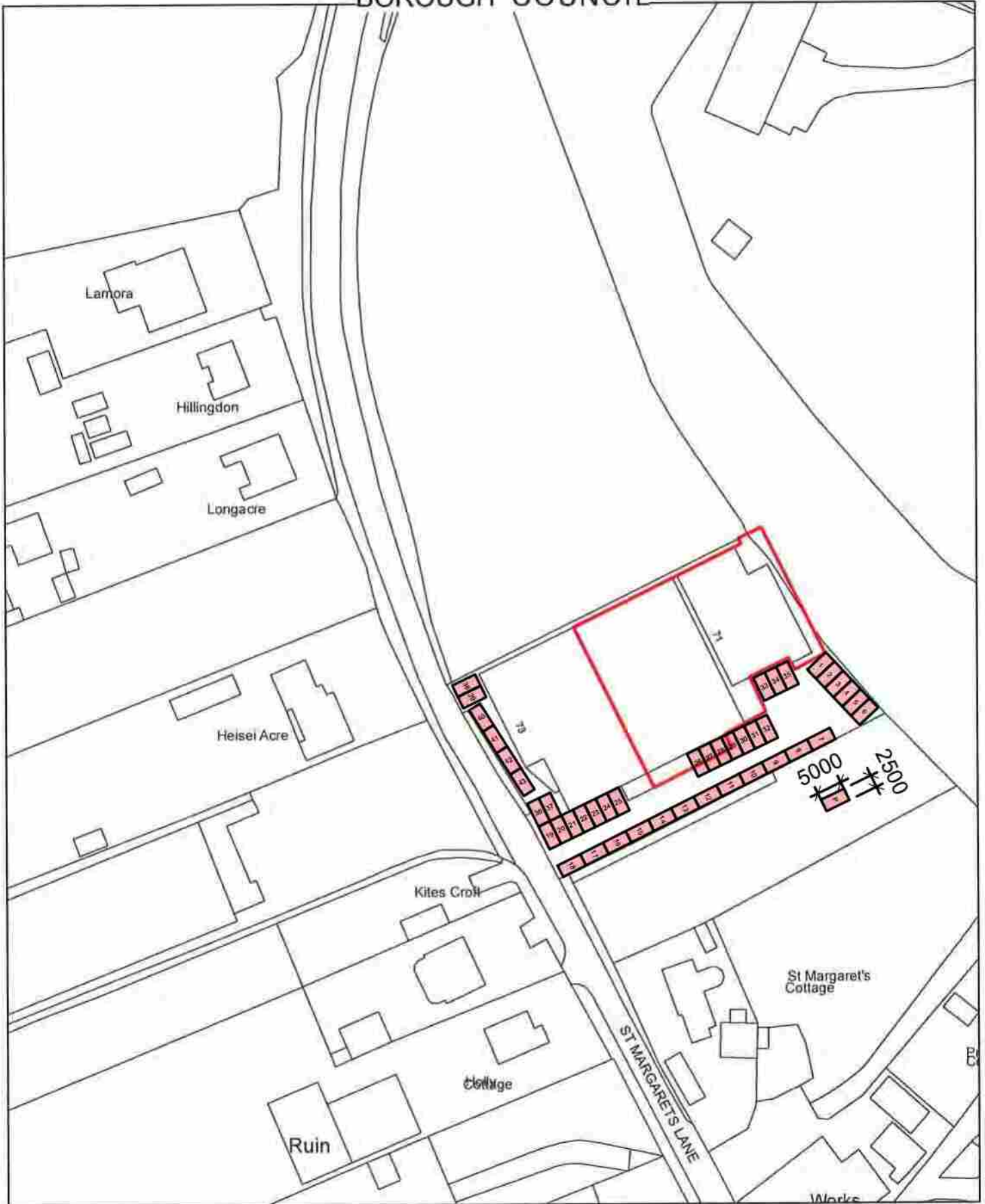
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71/73 St Margaret's Lane
Titchfield

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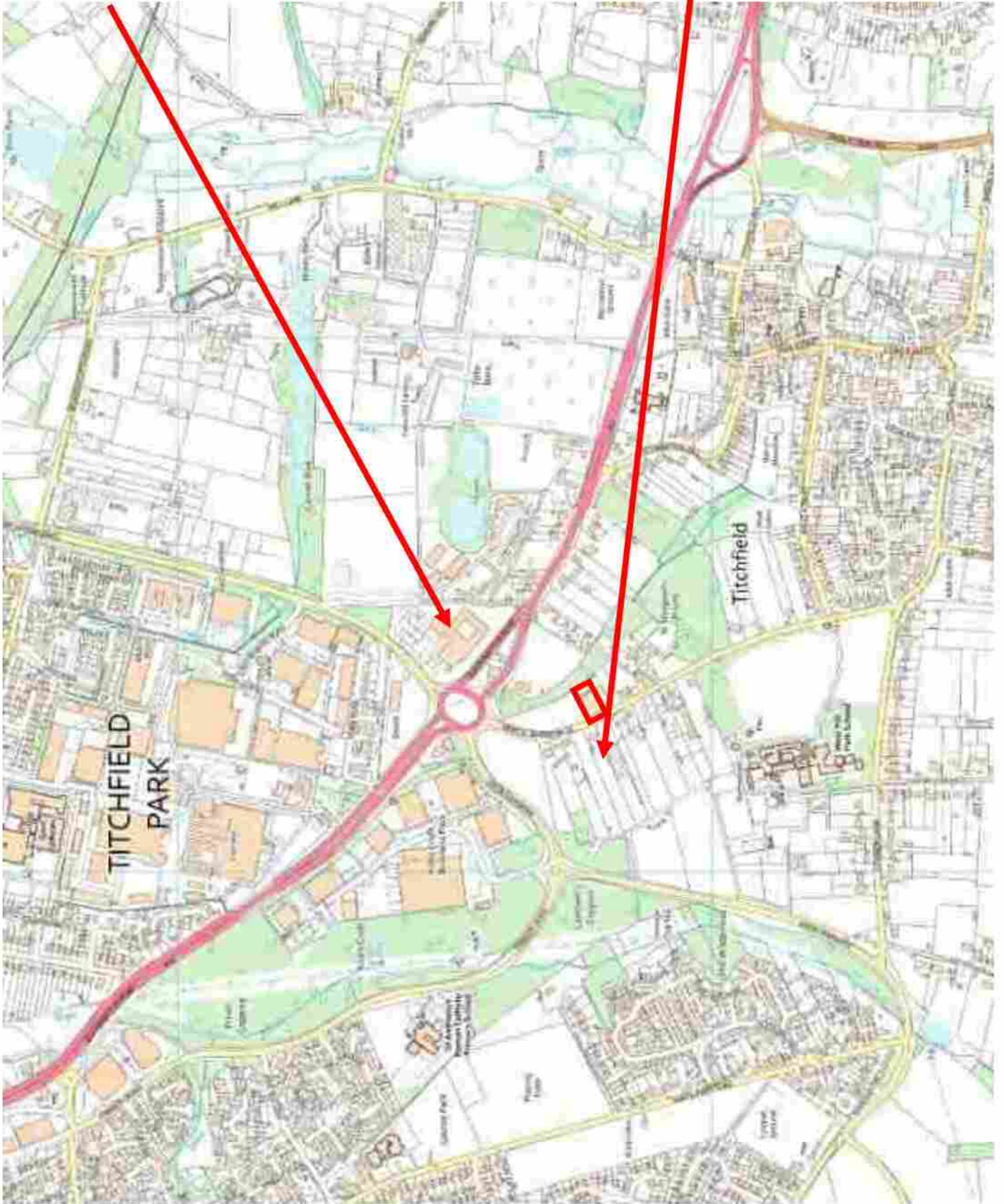
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Rowan & Edwards Ltd
21 Plymouth Road
Tavistock
Devon
PL19 8AU

For Locks Heath Free Church

Ref No : [P/13/0575/FP](#)

TOWN & COUNTRY PLANNING ACT 1990 TOWN & COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) ORDER 2010

LOCKS HEATH FREE CHURCH 255 HUNTS POND ROAD TITCHFIELD COMMON FAREHAM ALTERATIONS AND EXTENSIONS TO EXISTING CHURCH TO PROVIDE NEW WORSHIP AREA, ACTIVITY HALL WITH ADDITIONAL CAR PARKING

Application Received : 2nd July 2013

In pursuance of their powers under the above mentioned Act the Council, as the Local Planning Authority, hereby PERMIT the development described above, in accordance with your application.

Subject to the following conditions:

1. The development hereby permitted shall be begun before the expiry of three years from the date of this permission.
REASON: To comply with the procedures set out in the Town and Country Planning (Development Management Procedure) Order 2010 and Section 92 of the Town and Country Planning Act 1990.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:

P100
P102
P103B
P104B
P105
P106
P107
P108A
Noise Impact Assessment July 2013
Reason: For the avoidance of doubt and in the interests of proper planning. Reason: For the avoidance of doubt and in the interests of proper planning.
3. The extension hereby approved shall not be brought into use until the approved parking and turning areas have been constructed in accordance with the approved details and made available for use. These areas shall thereafter be kept available for the parking and



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turning of vehicles at all times unless otherwise agreed in writing by the local planning authority following the submission of a planning application made for that purpose.

REASON: In the interests of highway safety; in accordance with Policy CS17 of the Adopted Fareham Borough Core Strategy.

4. No development shall take place until a detailed landscaping scheme identifying all existing trees, shrubs and hedges to be retained together with the species, planting sizes, planting distances, density, numbers and provisions for future maintenance of all new planting, including all areas to be grass seeded and turfed, has been submitted to and approved by the local planning authority in writing.

REASON: In order to secure the satisfactory appearance of the development; in the interests of the visual amenities of the locality; in accordance with Policies DG4 of the Fareham Borough Local Plan Review and Policy CS17 of the Adopted Fareham Borough Core Strategy.

5. The landscaping scheme, submitted under Condition 4 above, shall be implemented within the first planting season following the commencement of the development or as otherwise agreed in writing with the Local planning authority and shall be maintained in accordance with the agreed schedule. Unless otherwise first agreed in writing, any trees or plants which, within a period of five years from first planting, are removed, die or, in the opinion of the local planning authority, become seriously damaged or defective, shall be replaced, within the next available planting season, with others of the same species, size and number as originally approved.

REASON: To ensure the provision, establishment and maintenance of a standard of landscaping; in accordance with the approved designs in accordance with Policy DG4 of the Fareham Borough Local Plan Review and Policy CS17 of the Adopted Fareham Borough Core Strategy.

6. No development shall take place until details of materials to be used in the construction of the external surfaces of the extension, along with the surfacing materials to be laid within the site have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

REASON: In order to secure the satisfactory appearance of the development; in accordance with Policy CS17 of the Fareham Borough Core Strategy and Policy DSP2 of the Development Sites Policies Plan.

7. The extension hereby permitted shall not be brought into use until details of all external lighting has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

REASON: In order to secure the satisfactory appearance of the development; to preserve the amenities of nearby residential properties; in accordance with Policy CS17 of the Fareham Borough Core Strategy and Policies DSP2 and DSP3 of the Development Sites Policies Plan.

8. The extension hereby permitted shall not be brought into use until noise attenuation measures have been carried out in accordance with the approved Noise Impact Assessment and shall thereafter be retained at all times.

REASON: In order to protect the amenities of the occupiers of nearby residential properties; in accordance with Policy CS17 of the Fareham Borough Core Strategy and Policy DSP3 of the Development Sites Policies Plan.



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9. No work relating to the construction of the development hereby approved (including works of preparation prior to operations) shall take place until details of measures to be taken to prevent spoil and mud from vehicles leaving the site during construction works being deposited on the public highway have been submitted to and approved by the Local Planning Authority in writing. The approved measures shall be fully implemented before development commences and shall be retained for the duration of the construction period.
REASON: In the interests of highway safety; in accordance with Policies CS5 and CS17 of the Fareham Borough Core Strategy and Policy DSP3 of the Development Sites Policies Plan.
10. No work relating to construction of the development hereby approved (including works of preparation prior to operations) shall take place outside the following hours: 0800-1800 hours Monday to Friday, 0800-1300 hours Saturday, nor on Sundays or recognised public holidays, unless otherwise agreed by the Local Planning Authority in writing.
REASON: In order to protect the amenities of the occupiers of adjoining properties; in accordance with Policy CS17 of the Fareham Borough Core Strategy and Policy DSP3 of the Development Sites Policies Plan.
11. No development shall take place until the local planning authority have approved details of how provision is to be made on site for the parking and turning of operatives vehicles and the areas to be used for the storage of building materials, plant, excavated materials and huts associated with the implementation of the permitted development. The areas and facilities approved in pursuance to this condition shall be made available before construction works commence on site (other than construction of the site access) and shall thereafter be kept available at all times during the construction period, unless otherwise agreed in writing with the local planning authority.
REASON: In the interests of highway safety; in order to secure the health and wellbeing of the trees and vegetation which are to be retained at the site; and to ensure that the residential amenities of the occupiers of nearby residential properties is maintained during the construction period; in accordance with Policy DG4 of the Fareham Borough Local Plan Review.
12. No development shall commence on site until details of sewage and surface water drainage works to serve the development hereby permitted have been submitted to and approved in writing by the local planning authority. The extension shall not be occupied until the drainage works have been completed in accordance with the approved details.
REASON: In order to ensure adequate drainage is provided to serve the permitted development in accordance with Policy CS15 of the Adopted Fareham Borough Core Strategy.
13. No development shall take place until a scheme of tree protection, in accordance with BS5837, has been submitted to and approved by the local planning authority in writing and which shall take into account trees both on and off site which may be affected. The agreed scheme shall be implemented before any of the substantive development is commenced and shall be retained throughout the development period until such time as all equipment, machinery and surplus materials have been removed from the site. Within the areas so fenced nothing shall be stored or placed and the ground levels shall not be altered.
REASON: To ensure that the trees, shrubs and other natural features to be retained are adequately protected from damage to health and stability during the construction period; in



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accordance with Policy DG4 of the Fareham Borough Local Plan Review and Policy CS17 of the Adopted Fareham Borough Core Strategy.

14. No development shall take place until a ground gas assessment has taken place that investigates for the presence of hazardous ground gases including methane, carbon dioxide, hydrogen sulphide and oxygen. The monitoring should be in accordance with current best practice such as CIRIA C665 (2007) Assessing Risks posed by Hazardous Ground Gases to Buildings.

Where required, a strategy of remedial measures and detailed foundation drawings to address identified risks shall be submitted to and approved in writing by the Local Planning Authority.

Prior to the extension being brought into use the agreed scheme of remedial measures shall be fully implemented. Remedial measures shall be inspected and validated to confirm that the remedial works have been implemented in accordance with the agreed remedial strategy and drawings and shall include photographic evidence of the measures and as built drawings.

REASON: To ensure that any contamination of the site is properly taken into account before development takes place; in accordance with Policy DG4 of the Fareham Borough Local Plan Review.

15. The presence of any previously unidentified contamination that becomes evident during the development of the site shall immediately be brought to the attention of the local planning authority. No further development shall be carried out on the relevant part of the site, unless otherwise agreed in writing by the local planning authority, until the results of and an investigation and risk assessment and, where required, a detailed scheme for remedial works to mitigate the contamination, eliminate risks to receptors and ensure the site is suitable for the proposed development has been submitted to and approved by the local planning authority. The scheme shall also include details of how the completion of the remedial works will be validated and, where appropriate, maintained and monitored.

REASON: To ensure that any contamination of the site is properly taken into account before development takes place; in accordance with Policy DG4 of the Fareham Borough Local Plan Review.

16. In the event that piling is carried out a detailed method statement should be submitted to and agreed by the Local Planning Authority prior to commencement of the works.

REASON: To ensure that any contamination of the site is properly taken into account before development takes place; in accordance with Policy DG4 of the Fareham Borough Local Plan Review.

17. The extension hereby approved shall not be used outside the hours of 0600 and 2300 hours unless for a church related service.

REASON: In order to protect the amenities of the occupiers of adjoining properties; in accordance with Policy CS17 of the Fareham Borough Core Strategy and Policy DSP3 of the Development Sites Policies Plan.

18. The development shall be carried out in accordance with the approved Phase 1 Habitat



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Survey, unless otherwise agreed in writing with the Local Planning Authority.

REASON: In the interests of nature conservation; in accordance with Policy C18 of the Fareham Borough Local Plan Review.

19. No development shall take place until details of vehicular signage and safety barriers to be erected within the site have been submitted to and approved in writing with the Local Planning Authority in writing. The approved signage and barriers shall thereafter be erected before the extension hereby approved is first brought into use and shall be retained at all times.

REASON: In the interests of highway safety; in accordance with Policy CS5 of the Fareham Borough Core Strategy.

20. The rear doors to the auditorium shall be self closing and alarmed for emergency use only. The doors shall be kept in this condition at all times, unless otherwise agreed in writing with the Local Planning Authority.

REASON: In the interests of residential amenity; in accordance with Policy CS17 of the Fareham Borough Core Strategy and Policy DSP3 of the Development Sites Policies Plan.

21. The extension hereby approved shall not be brought into use until details of secure cycle parking has been submitted to and approved by the local planning authority in writing. The details shall specify the precise size, siting and design of the cycle provision to be made. The approved details shall be fully implemented prior to the extension first being brought into use and thereafter retained at all times.

REASON: In order to facilitate alternative modes of transport to the motorcar; in accordance with Policy CS17 of the Adopted Fareham Borough Core Strategy.

Further Information:

1. (i) Your attention is drawn to the enclosed Warning Notice relating to development not in accordance with approved plans. The protocol for 'Dealing with variations to Planning Permission' is available from the Civic Offices or in the Council's web site www.fareham.gov.uk

(ii) You are also reminded that where a decision contains conditions which are required to be discharged before development commences, to commence development before those conditions are discharged means that the development is not pursuant to the planning permission and is therefore UNAUTHORISED DEVELOPMENT.

2. Ground gas assessments should be undertaken in accordance with current best practice guidance such as Ciria C665 (2007) Assessing Risks posed by Hazardous Ground Gases to Buildings or Wilson, Card and Haines (2008) The Local Authority Guide to Ground Gas.

This assessment should be carried out by or under the supervision of a suitably qualified competent

person. This person should be a chartered member of an appropriate professional body and have experience in investigating contaminated sites.

In reaching this decision Fareham Borough Council has had regard to paragraphs 186 and 187 of the National Planning Policy Framework and takes a positive and proactive approach to



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development proposals focused on solutions. Fareham Borough Council work with applicants and their agents in a positive and proactive manner offering a pre-application advice service and updating applicants/agents of issues that may arise in dealing with the application and where possible suggesting solutions.

The Council adopted its Community Infrastructure Levy (CIL) Charging Schedule on 1 May 2013. If the development to which this permission relates attracts the payment of CIL, the parties liable for the payment will receive a CIL Liability Notice shortly or, in the case of an outline permission, shortly after the approval of the last reserved matter associated with the permission. The Council's CIL Charging Schedule and a CIL Guide for Developers and Landowners can be found on the Council's web site.



Lee Smith

10th June 2014

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Your Entitlement to Appeal:

If you are aggrieved by the decision of the Local Planning Authority to refuse permission or consent or at the imposition of conditions then, subject to the following provisions, you may appeal to the DCLG. The ways you can do so are set out above.

Please note that only the applicant possesses the right to appeal. There is no third party right of appeal for neighbours and other objectors.

Restrictions on Your Right to Appeal:

There is a time limit for lodging your appeal, although the Secretary of State may override this. The applicant has the following time in which to lodge an appeal for these classes:

- * Planning applications (but see below for Householder Applications)(appeal under Section 78 of the Town and Country Planning Act 1990 (TCPA)),
- * Listed building consent applications (appeal under Sections 20 or 21 of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCAA)) and
- * Applications for Certificates of lawful use or development (appeals under Section 195 of the TCPA).

Should be lodged within 6 months of the date of the decision notice, or within 6 months of the expiry of the period of 8 weeks from the date the application was received or such extended period as agreed between the appellant and the Planning Inspectorate.

*** Householder Applications - If you want to appeal against a decision to refuse planning permission for a householder application then notice of appeal should be lodged within 12 weeks of the date of the decision notice.**

* Advertisement applications (appeal under Regulation 15 of the Town and Country Planning (Control of Advertisement) Regulations 1989) should be lodged within 8 weeks of the date of the decision notice.

* Application for consent to carry out works to a tree(s) the subject of a Tree Preservation Order (appeals under Sections (78)I of the TCPA) should be lodged within 28 days of the date on the decision notice, and

* Applications for a Certificate of Appropriate Alternative Development (appeals under Section 17 of the Land Compensation Act 1961) should be lodged within 1 month of the date of the certificate or notice of refusal to issue a certificate.

The Secretary of State may decide he will not consider an appeal. This might happen if the proposed development has been subject of an appeal which has been dismissed within the last two years, or where the Local Planning Authority could not have granted permission (or not without the conditions imposed) having regard to the statutory requirements, to the provisions of the Development Order and to any directions given under the Order.



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2. Your Right to Serve a Purchase Notice

If the Local Planning Authority or the DCLG refuses planning permission to develop land or grant listed building consent for works, or grants permission or consent subject to conditions, the owner may serve a notice on the Council in whose area the land is situated, requiring the Council to purchase his interest in the land. The owner will need to establish that he can neither put the land to a beneficial use by the carrying out of any works or development which would have been or would be permitted (see Part VI, Chapter 1 of the TCPA for the former class of applications and Section 32 of the Planning (Listed Building and Conservation Areas) Act 1990 for the latter class of applications.

3. Other ways to complain

If you are aggrieved at the way the Council has dealt with your application the Planning Officer who has been dealing with it will be pleased to explain the reasons for the Council's decision and endeavour to resolve the matter for you. If you are not satisfied, you may wish to put your complaint in writing or e-mail customerservices@fareham.gov.uk. Details of the complaints procedure can be obtained from the Customer Services Manager at the Civic Offices (telephone 01329.236100) or from our website www.fareham.gov.uk.

4. Other Consents You May Need

This decision relates solely to the town planning requirements under the Acts and Orders mentioned at the head of the decision notice. It does not grant any other consent or permission. In particular, the following may require consent:

i. Works requiring Building Regulations consent - If you have not already done so, you should contact the Council's Building Control Partnership at the Civic Offices, Telephone: 01329 236100 Ext 2441.

ii. Works or structures in the vicinity of a public sewer - If in doubt you should contact The Development Control Manager, Southern Water Services Ltd, Southern House, Sparrowgrove, Otterbourne, Winchester, Hampshire SO21 2SW Tel 0845 278 0845. You may inspect the Public Sewer Map held in the Council's Building Control Business Unit to find out if a public sewer crosses the site of the proposed development. (Buildings are not normally allowed within 3.0metres of a public sewer, although this may vary, depending upon the size, depth, strategic importance, available access and ground conditions appertaining to the sewer in question).

iii. Works affecting neighbours - (e.g.: work on an existing wall shared with another property, building on the boundary with a neighbouring property or excavating near neighbouring buildings). The Party Wall Act 1996 requires certain measures to be taken and leaflets explaining the specific requirements are available at the Council Offices.



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IMPORTANT WARNING

Please read the content of this warning notice on receipt of your planning permission decision notice.

The Council is pleased to enclose your conditional planning permission decision notice.

FEES FOR DISCHARGING PLANNING CONDITIONS

There is a fee payable to the Council when you submit details pursuant to planning conditions. The fee is £97 per request to discharge conditions (or £28 if the discharge of condition relates to a planning permission for extending or altering a dwellinghouse or other development in the curtilage of a dwelling). By way of clarification if details are submitted to discharge a number of conditions at the same time then just one fee of either £97 or £28 would be payable. If details to discharge conditions are submitted on a number of separate occasions then a fee of either £97 or £28 would be payable on each occasion. The fee must be paid when the request is made.

All requests for discharging planning conditions should be made in writing and ideally on the national application form designed for this purpose (which can be downloaded from the following site www.fareham.gov.uk/pdf/developmentc/appformlist.pdf (No. 27 on the list of forms), or otherwise please contact our Customer Service Centre, Planning Reception on 01329 236100 for a paper copy.

If you choose to send a covering letter rather than fill in the national application form you must ensure that all the relevant information requested in the application form is contained within your covering letter.

PRE-DEVELOPMENT CONDITIONS

Please note that there maybe conditions attached to this planning permission which are required to be discharged **before** development commences.

There have been several occurrences recently where developments have commenced before planning conditions have been discharged.

I must advise you that should you commence the development prior to all of the pre-development conditions being discharged the development will be treated as unauthorised development.

Should development commence before the pre-development conditions are discharged planning enforcement and or injunctive action to secure the cessation of the development will be considered.



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DEVELOPMENT NOT IN ACCORDANCE WITH APPROVED PLANS

There have been many instances recently where development has not been undertaken strictly in accordance with the approved plans.

If there is any variation from the approved plans for whatever reason, unless it is so insignificant that it can be considered de minimis (of no consequence), it is likely that it will require the submission of a new planning application. This will involve significant work and additional cost to both the developer and the Local Planning Authority.

A protocol for dealing with variations to planning permissions was agreed by the Planning Development Control Committee 16 March 2005 and copies are available from the Civic Offices or on the Council's web site www.fareham.gov.uk

Please ensure that the development you undertake is the development for which you have been granted planning permission. If your working drawings do not match the stamped approved planning drawings a new planning application will be required unless the variation is **very** small.

The ultimate decision on whether or not any change will require planning permission rests with the Local Planning Authority.

Development which is not in accordance with the approved plans is unauthorised development and likely to attract Planning Enforcement Action.

**THIS WARNING IS DESIGNED TO ASSIST AND PREVENT LATER DIFFICULTIES
PLEASE HEED THE ADVICE IN THE PROTOCOL.**



Lee Smith

10th June 2014

OFFICER REPORT FOR COMMITTEE

Date: 24/09/2013

P/13/0575/FP

LOCKS HEATH FREE CHURCH

TITCHFIELD COMMON

AGENT: ROWAN & EDWARDS
LTD

ALTERATIONS AND EXTENSIONS TO EXISTING CHURCH TO PROVIDE NEW
WORSHIP AREA, ACTIVITY HALL WITH ADDITIONAL CAR PARKING

LOCKS HEATH FREE CHURCH 255 HUNTS POND ROAD TITCHFIELD COMMON
FAREHAM PO14 4PG

Report By

Kim Hayler (2367)

Amendments

As amended by Layout Plan received 21 August 2013

Site Description

Locks Heath Free Church is located on the northeast side of Hunts Pond Road south of the junction with Prelate Way. The Church was permitted in 1998 and comprises a single building set back on its site with the main area of car parking between the building and the Hunts Pond Road frontage.

To the northwest a Greenway links Hunts Pond Road with Ascot Close to the rear. A belt of mature oak trees run along the rear (northeast) boundary of the site. The trees to the rear of the existing church are protected by Fareham Tree Preservation Order No.154 and are located just outside of the site boundary.

The Hunts Pond Road frontage is quite open to view. When approached from the south the existing Church building is set against the backdrop of trees and of adjacent residential dwellings. The properties in Ascot Close to the rear are sited in excess of 50 metres from the site boundary and the nearest property in Hunts Pond Road is sited 12 metres from the site boundary.

Description of Proposal

The development proposals seek the extension of the Church site to the southeast to enable the construction of a multipurpose building incorporating a 'sanctuary' (described as an 'auditorium' in the previous application), activity hall, small meeting rooms, coffee shop and administrative area. The new building would be linked to the existing building. Additional car parking is proposed on the southeast side of the site and would be set back from the Hunts Pond Road frontage.

The applicants state that the application is principally for a D1 use (for, or in connection with, public worship or religious instruction) with ancillary functions.

The whole site would amount to 0.8 hectares in area with the additional land comprising approximately 0.56 hectares of that. The floor area of the existing building measures 692 metres square and the floor area of the proposed new building would measure 1660 square

metres. The new building would measure 9.5 metres high and would be set back from the Hunts Pond Road frontage roughly in line with the existing Church building.

The existing car parking area to the front of the Church would be extended across the front of the new building and sweep around to an extended area to the southeast of the new building. The total proposed on site car parking provision would be 152 spaces. The overspill area proposed in the previous, refused, application has been removed from the proposal.

Policies

The following policies apply to this application:

Approved Fareham Borough Core Strategy

CS5 - Transport Strategy and Infrastructure

CS9 - Development in Western Wards and Whiteley

CS14 - Development Outside Settlements

CS15 - Sustainable Development and Climate Change

CS17 - High Quality Design

Fareham Borough Local Plan Review

DG4 - Site Characteristics

Relevant Planning History

The following planning history is relevant:

<u>P/12/0120/FP</u>	ALTERATION TO EXISTING BUILDING AND PROVISION OF NEW AUDITORIUM, ACTIVITY HALL AND CAFE WITH ASSOCIATED CAR PARKING AND CHANGE OF USE OF LAND OPPOSITE NETLEY ROAD FOR USE AS OVERSPILL CAR PARK
	REFUSE 23/07/2012

Representations

Two hundred and forty one representations received in support of the proposal:

- Attention is drawn to the planned further development in the western wards of Fareham which will justify the expansion
- Meets planning policies
- Valuable facility for the community
- Important for young people

Forty representations received in objection to the proposal raising the following concerns:

- Scale and capacity are too great and little altered from previous application
- Antisocial activities on Friday nights
- Still insufficient car parking for large events
- Traffic hazard of site egress close to pinch point on Hunts Pond Road
- Will have to be used commercially in order to cover the build costs
- General traffic along Hunts Pond Road is a problem with new developments accessed from it
- Inappropriate development for what is a countryside location

- Development not needed by the local community as a whole
- Harmful to immediate local residents by reason of noise and disturbance
- This is mainly a residential area
- Loss of Green space
- Current building is not always in use - could the uses not be spread over time as opposed to adding more space for very limited functions?
- Changes to the roof design and small parking area are insufficient to reduce the traffic impact of the development
- High level of noise and disturbance from existing uses
- The sanctuaries are still auditoriums by a different name
- The transport assessment suggests that the largest events would be 300 people so why is it necessary to have a higher capacity building?
- Not a high quality design as required by Policy CS17 of the Core Strategy
- The majority of users travel from outside of the immediate area
- Sports facilities are not needed as this need is adequately covered elsewhere.

One petition received with 224 signatures objecting to the proposal on the following grounds:

- The proposal is not in keeping with the area and fails to take into account the possible destruction on the environment and the reduction in quality of life for the neighbourhood in general;
- Inadequate parking on the site for the development would create havoc in the area around the church;
- The proposal will open the gate to allow green land to be developed at any cost.

Consultations

Director of Planning and Environment (Highways) - This is a proposal to approximately double the capacity of the existing church premises with more than a threefold increase in on-site car parking, improvements to the site access arrangements and the provision of a Travel Plan to seek to maximise sustainable travel to and from the site.

It is considered the overall proposals for parking, access, traffic impact and site management are now acceptable and thus, subject to the commitment to the contents of an agreed Travel Plan and the installation of pedestrian barriers, no highway objection is raised to the application.

Director of Planning and Environment (Arboriculture) - No objection subject to conditions

Director of Planning and Environment (Ecology) - I recently commented on a previous scheme at this site, and the updated ecological information has been provided to reflect the changes to the proposals in this new scheme, and the time lapse between the previous survey and this submission. My comments remain the same as previously.

I have no particular concerns about the proposals. I would, however, suggest that the recommendations of the ecological report are secured by condition.

I would suggest that if external lighting is to form part of the development, an appropriate scheme is secured by condition.

Finally, if a landscape planting plan is to be secured by condition, I would again suggest that the condition wording incorporates the need for the planting to be native, locally appropriate,

and of benefit to wildlife.

Environment Agency - No objection.

Southern Water - No objection subject to informatives.

Hampshire Constabulary (Crime Prevention Design Advisor) - The proposal shows a pedestrian access from the footpath (running along the northern boundary) into the grounds. This provides an opportunity for a short cut through the car park, which increases the vulnerability of the car park to crime. Therefore, in the first instance I would recommend that this access is removed and the boundary treatment continued along the entire length of the footpath. However, if this is not desirable I would recommend the installation of gates across this access so that access to the church grounds can be controlled if necessary. The gates should be: of robust construction, at least six feet high, constructed in such a fashion that they do not aid climbing over the gate and fitted with a key operated lock.

The proposal shows several cycle stores and a cycle parking area. The two cycle stores are not well over looked (one can easily be accessed from the footpath) therefore, I recommend the provision of lockable cycle stores. The cycle parking area is very close to the footpath to provide some protection for the cycles I recommend the installation of cycle anchor points. Any planting should be such that it does not restrict the visibility of the cycle stores.

The proposed building has a number of doors located on the rear elevations. These doors have very little natural surveillance which increases their vulnerability to crime; as a result they should be of a design of increased surveillance.

Director of Regulatory and Democratic Services (Contamination) - The application did not include any information relating to land contamination. A previous application included a site investigation report. This along with conversations with the consultant who wrote the report identified an issue with ground gases and a ground gas assessment was recommended by the consultants. This will need to be required as a condition and it will be necessary to remove the permitted development rights so any further additions can be required to include gas protection if necessary or to protect any installed remedial measures.

Director of Regulatory and Democratic Services (Environmental Health) - In December 2012 Environmental Health received a complaint regarding noise from youths hanging around by the door of the church. A complaint about noise from children attending the youth club at the church was received in May 2012, and two earlier complaints about the same were received in February and October 2010. Other than the complaints being made, no further action was taken as no further contact was forthcoming from the complainants.

At the time of writing this consultation response I note that over 250 representations had been made by members of the public. However, only 36 are from local residents (living within 150m or so of the church) and of those 36, 17 have made objections on noise grounds.

The applicant has commissioned a noise impact assessment. I agree with the surveys undertaken by Vanguardia and the recommendation to incorporate sound insulation within the architectural design of the building based on providing sufficient attenuation for a worst case internal sound pressure level of 95 dB(A).

It is understood that the three sets of rear doors to the auditorium and the activity hall are to

be self closing and alarmed for emergency use only, and to be steel acoustic fire doors complete with perimeter and threshold seals. This should be made a condition of any planning approval in order to ensure minimal noise break-out from this source.

It is understood that the earlier proposed cafe is now to be a coffee shop. As a result, the potential for odour (and noise) complaints will be reduced. Should the use of the coffee shop change in the future it may be necessary for odour (and noise) control equipment to be installed.

Planning Considerations - Key Issues

Introduction

Planning permission was refused (P/12/0120/FP refers) on 23 July 2012 for the alteration to the existing building and provision of a new auditorium, activity hall and cafe with associated car parking and change of use of land opposite Netley Road for use as overspill car parking.

The application was refused at the Planning Committee meeting on 18 July 2012 for the following reason:

The proposed development is contrary to Policies CS5, CS14 and CS17 of the adopted Fareham Borough Core Strategy in that:

On the basis of the information submitted, the scale of the proposed development, particularly the incorporation of a 500 seat auditorium, and its use by separate commercial organisations goes beyond a facility that is necessary to serve the local community.

Whilst the provision of additional car parking to the south is recognised, the proposed car park is too distant from the proposed facilities and other opportunities exist to park closer to the site on the public highway. The scale of the proposed development, in conjunction with the existing building, would therefore lead to parking on nearby roads to the detriment of highway safety and the amenities of local residents. Furthermore on the basis of the submitted information, the local planning authority are concerned as to how the additional car parking area could be made available and controlled when there is pressure to use it by the Church, users of the sports pitches and those attending the allotments. This will further exacerbate problems with vehicles parking on the highway.

The current application has been submitted in order to seek to overcome the previous reasons for refusal. The main changes can be summarised as follows:

- the applicant confirms that the community uses and church based uses which take place within the church premises today will not alter and will be carried over to the new and extended premises;
- the applicant states that no commercial organisations will be hiring the worship area for non-church activities;
- additional car parking will be provided immediately alongside the site rather than at a distance from it.

Principle of Development

Within the Fareham Borough Local Plan Review the application site is identified as on land, outside of the built up area, but suitable for community, education and recreation uses. The proposed extension to the Church is considered to fall within the definition of a 'community'

use so that it is considered to comply with saved policy.

Policy CS9, referring to development within the Western Wards and Whiteley identifies the provision of some 1480 further new dwellings up to 2026; it also encourages the provision of community facilities to serve this projected local growth. This application meets this policy objective in that it provides flexible community facilities for an increasing local population.

The previous planning application was refused in part because the Members of the Planning Committee considered that the proposal for a 500 seat auditorium and its use would go beyond that necessary to serve the local community. The applicant had also highlighted the fact that the building could be let out for larger functions including conferences and concerts unrelated either to the church or the local community.

Whilst the floor area of the buildings proposed are essentially the same as the previous scheme, the submission clarifies that the proposed use is for Class D1 of the Use Classes Order. More specifically the uses undertaken within the new buildings will be the same as those current uses in the existing church building. These include:

Children craft activities,
Youth work programme
Childrens programme
Sporting activities
Sports and games for children,
Parents and toddlers,
Parenting courses,
Marriage courses
Child protection courses
Counselling and peer group
After schools club
Summer Holiday children's club
'Alpha courses',
Reading schemes,
Children's holiday club,
Youth clubs,
Seniors club,
Luncheon club,
Pre-school,
Debt counselling,
Housing association meetings with local residents.

It is considered that any condition restricting the use of the building should also, for clarity, be explicit that the use shall not include letting of space to other hirers for non church/ community uses. A further condition would be appropriate to restrict the use of the 'coffee shop' such that it is not used independently as a day to day facility for the general public.

The applicants advise that the church is already used for larger events with up to 300 attendees, for example at the Children's Christmas service, and these will continue within the more spacious premises.

Scale and Design of the Development:

Although the scale of the development was referred to in the previous refusal in relation to

the auditorium and its possible use by commercial organisations there was no direct reference to design. Notwithstanding, the applicants have amended the building, the most notable change being the roof form of the auditorium which has been hipped to the northwest and south east.

Some local objectors are of the view that the alterations to the design are insufficient to warrant any change of position, however, as stated there was no previous objection to the design of the extended building.

The building is not set directly against residential properties; to the north residential properties would be separated from the new building and car parking by the existing church building. To the east the building would be screened by mature trees and would measure in excess of 60 metres from the nearest residential properties in Ascot Close. To the west the building would be sited some 50 metres from residential properties on the opposite side of Hunts Pond Road, behind the proposed car parking areas.

The building is functional and is designed to achieve specific purposes including an auditorium; the building has been designed to minimise impact upon local residents by reducing openings and where necessary keeping openings within elevations set away from the nearest residents.

Hampshire Constabulary (Crime Prevention Design Advisor) recommends gating the pedestrian access from the footpath running along the northern boundary of the site, along with making provision for secure cycle parking. At the moment the pedestrian access already exists between the site and the footpath and the proposal will not change the situation. The provision of secure cycle parking can be secured through the imposition of a planning condition.

Officers are satisfied that the design is appropriate and of high quality having regard for the functional constraints involved.

As with the previous application, the building has been designed to achieve good levels of energy efficiency which will exceed regulations through matters such as:

- Air source heat pumps to improve energy use
- Building information board to be a learning resource for building users
- Drinking water dispensers (mains supplied) and cooled to improve the health of users
- A pulsed output from the main incoming water meter, connected to the Building Management System, to detect any leaks and avoid water wastage
- A sanitary area water supply shut off valve activated by proximity detection to reduce water wastage
- Lighting controlled by proximity detection and time control to improve energy usage

Nonetheless, due to the charitable status of the applicants, the added costs of materials and design features and the cost of assessment and monitoring the project cannot realistically meet the aims of Policy CS15 of the Core Strategy to achieve 'excellent' status under BREEAM (Building Research Establishment Environmental Assessment Method) for non-residential developments from 2012. Under the circumstances Officers are of the view that with the variability of the use of the building together with the costs involved that must be borne, this is a case where the full achievement of the BREEAM status would be an unreasonable burden.

Parking/highway matters

The existing car park has a capacity of 48 cars. The current application proposes reconfiguring the existing car park and providing additional car parking at the site to accommodate a total of 152 cars.

Local residents point out that significant problems continue to arise, particularly on Sundays, when there is insufficient car parking available on the site, or in combination with parking at the local St.John's School (25 spaces by arrangement with Hampshire County Council). Attendees of the Church overspill into the local roads, causing problems for local residents and safety hazards on the more busy roads, particularly Hunts Pond Road. Objectors note that the proposal now includes expanded car parking on the site of the Church but consider that the total 152 spaces is insufficient given the capacity of the building.

The Director of Planning and Environment (Highways) is satisfied that the proposed car parking in terms of its location and numbers is acceptable subject to the provision of the Travel Plan particularly to address events when large numbers of people are present.

Concern is also raised about the position of the proposed egress from the site and the impact of this and the overall increased traffic level upon Hunts Pond Road. The implications of the proposals upon the highway network have been considered by the Director of Planning and Environment (Highways) who advises that the development would not cause material harm to highway safety.

Noise and Disturbance:

A number of nearby residents have raised the issue of noise and disturbance from evening and night time uses, particularly youth events, where behaviour is rowdy when events such as the youth club turn out.

Members will note from the comments of the Director of Regulatory and Democratic Services (Environmental Health) that complaints have been received but that these have been infrequent and have not been followed up by the complainants. The issue was not considered to be sufficient to justify a reason for refusal on the last application.

The principal elements of the proposals have not changed in that the design is such as to take the main entrance to the complex further south away from the closest dwellings. Noise issues are often encountered outside buildings where such uses are undertaken; whether or not the application is permitted the current uses will continue. The new building will provide more internal space for activities to occur but the design and attenuation measures will prevent disturbance from uses within the building.

Officers do not believe the increased size of the building will in itself lead to increased incidents of noise disturbance outside the building during unsociable hours.

Conclusion

The site for the proposed extension and car parking to the church is located outside of the defined urban area but within an area identified as suitable for community uses.

In refusing the previous application, Members were concerned that the scale of the

proposed building was likely to lead to use by outside commercial organisations, suggesting that the building was beyond that necessary to serve the local community. Members were also concerned about the proposed overspill car park being too distant from the site, which they considered would lead to additional parking on the highway.

The application seeks to address the previous reasons for refusal by confirming that the building will be used only for church and community related uses and additional car parking is now located immediately alongside the buildings.

Officers believe that the proposed development addresses the concerns raised previously by Members and for these reasons it is recommended that the application be permitted subject to the imposition of appropriate conditions.

PERMISSION

Use as a place of worship/church hall together with non-commercial community uses and for no other use within Class D1; Details of Materials; Details of drainage; Submission of landscape details; Implementation and maintenance of agreed landscape scheme; Details of hard surfacing area including car park; laying out and retention of car parking; Details of all external lighting to be agreed and implemented before use commences; Travel Plan to be agreed and implemented; Tree protection measures in accordance with submitted and approved method statement; No event or other use, excluding specifically church related, within the building shall finish later than 11pm; Noise attenuation measures as agreed beforehand to be implemented before use commences; gas protection measures; noise conditions; compliance with terms of Phase I Habitat Survey; Details of areas for site offices, construction vehicles, and storage of materials during construction; Means of preventing mud from leaving the site during construction; details of vehicular signage to be agreed, control rear doors, coffee shop to be used ancillary to church use only; details of safety barriers to be approved; secure cycle provision

Background Papers

P/12/0120/FP

Updates

The first paragraph under site description should read the Church was permitted in 1988, not 1998.

For point of clarification, the distance between the application site boundary and the rear garden boundaries of properties in Ascot Close to the rear range from 12 - 15 metres and the distance between the proposed extension and the houses in Ascot Close ranges between 37 - 40 metres.

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Locks Heath Free Church
255 Hunts Pond Road
Scale 1:1,250



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Appendix 9

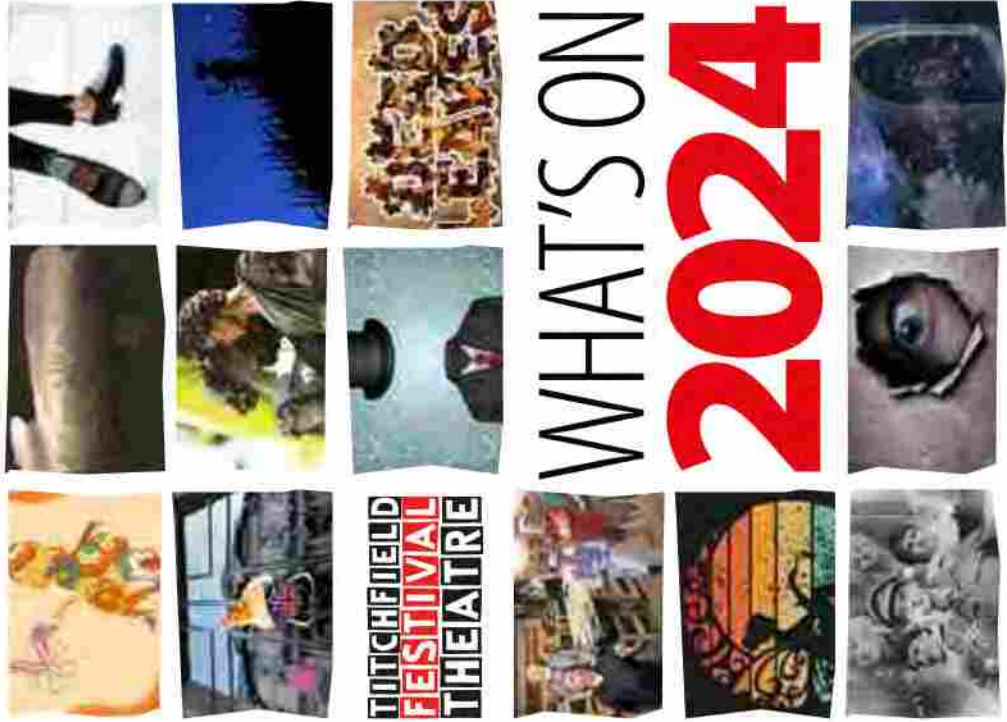
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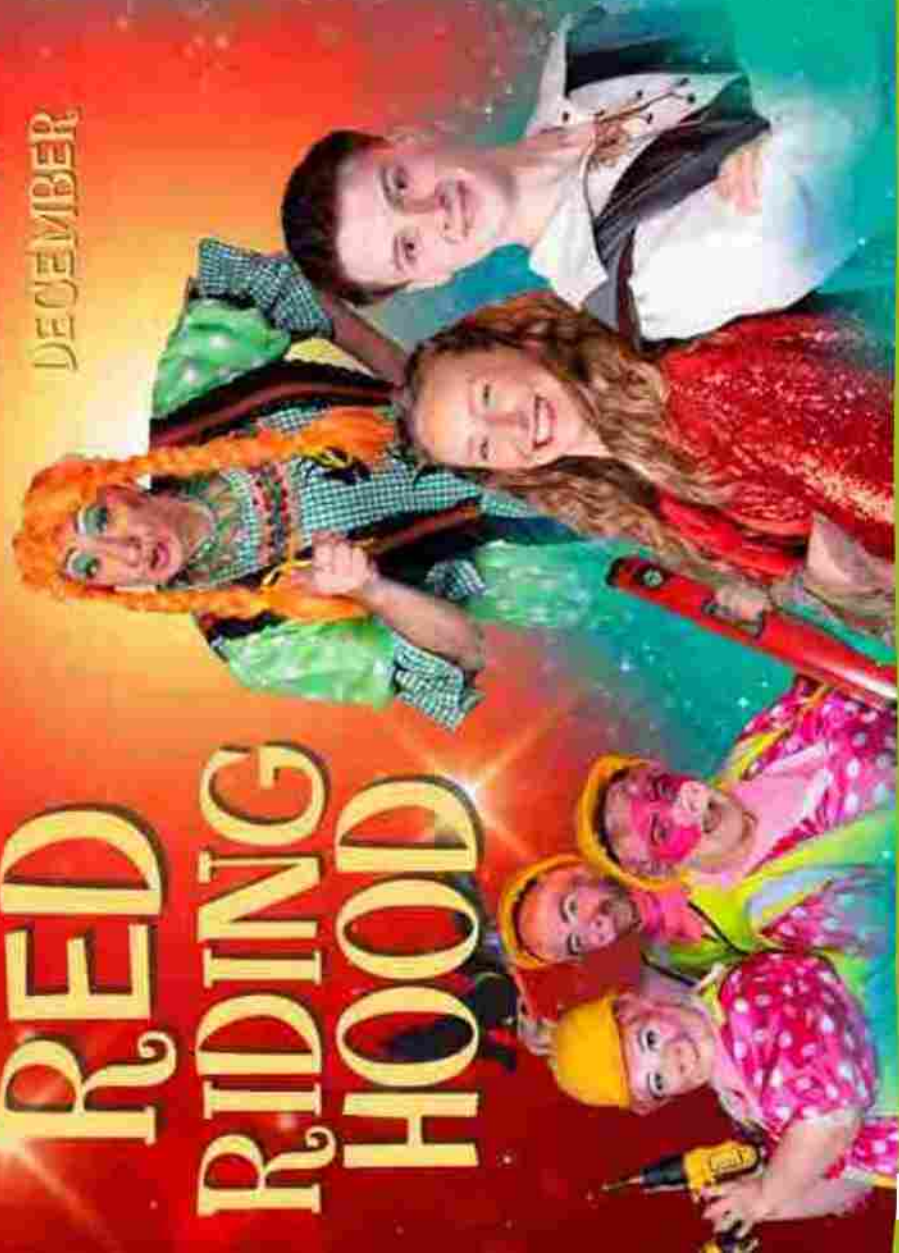
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RED RIDING HOOD

15TH - 23RD
DECEMBER



Follow the thrilling story of our red-cloaked heroine, in the must-see pantomime of 2023. As the Big Bad Wolf threatens the village of Boosemburg, Little Red and her mum, Widow Streaky set out to find missing Granny, with songs, laughter and your favourite pantomime gags. See the classic fairy tale like you've never seen it before, reimagined with a twist or two in a brand new adaptation by Director Sassy Harvey and the same team that brought you *The Nutcracker*, *Goose Girl* and *Sleeping Beauty*.



15-23 DEC @ 7PM & 16, 17, 22, 23 DEC @ 1PM, & 17 @ 6PM





Join Mr Maddens and his energetic sidekick Mr Poppy along with the children of St Bernadettes in their quest to create the most spectacular nativity play ever seen. Based on the film, with stunning sets, dazzling choreography, and a generous dose of humour, Nativity! the musical is the perfect holiday treat for the whole family.



5-13 JAN 2024 @ 7.30PM & 6, 7 & 13 @ 2.30PM

WWW.TITCHFIELDFESTIVALTHEATRE.COM



Treat yourself to a relaxing picnic on a balmy summer night in the beautiful setting of Titchfield Abbey, with some of the world's best ever music captured by South Coast Symphonia supported by the Festival Theatre Chorus and invited soloists.

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A GREAT DAY OUT



[BOXOFFICE:03836663366](tel:03836663366)



Experience the sensational world of intrigue, incompetence and infidelity at No.10 in this brand new comedy. A captivating journey as Dominic 'Comings', on his final day at No.10, finds himself entangled with a farcical cast of characters battling for power, prestige and passion. Witness an unbelievable web of lies and scandal unfolding against the backdrop of recent lockdown revelations.



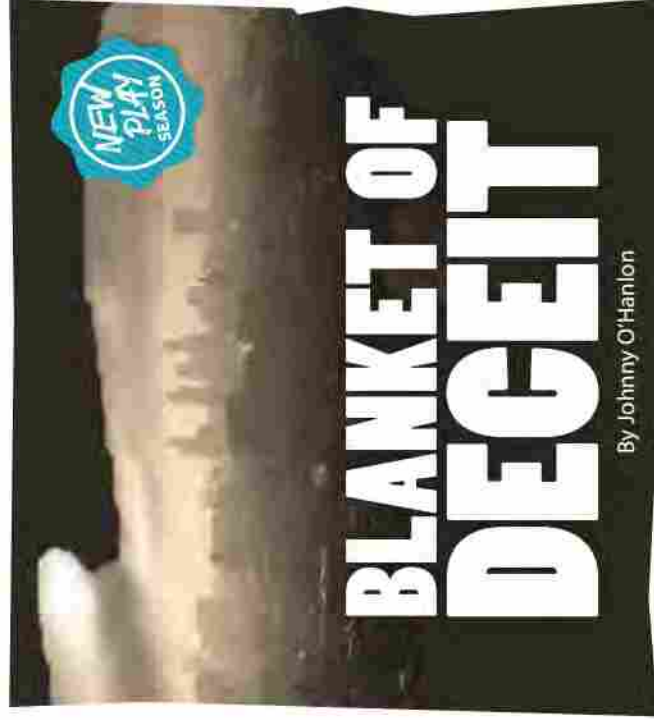
15-20 JAN 2024 @ 7.30PM

WWW.TITCHFIELDFESTIVALTHEATRE.COM



22-27 JAN 2024 @ 7.30PM

BOXOFFICE03336663366



"THERE'S DEFINITELY, NO LOGIC TO HUMAN BEHAVIOUR". BJORK

Alex and Martin are Police Detectives in North London, outsiders within their own force. They seem an odd pairing to be working together, but their differences help them investigate a strange incident at a London train station, where a young woman has been seen with a child, clearly not her own. Alex and Martins gradually uncover a disturbing criminal operation. This new crime drama, based on true events, sets out to explore the dark underbelly of modern city life.



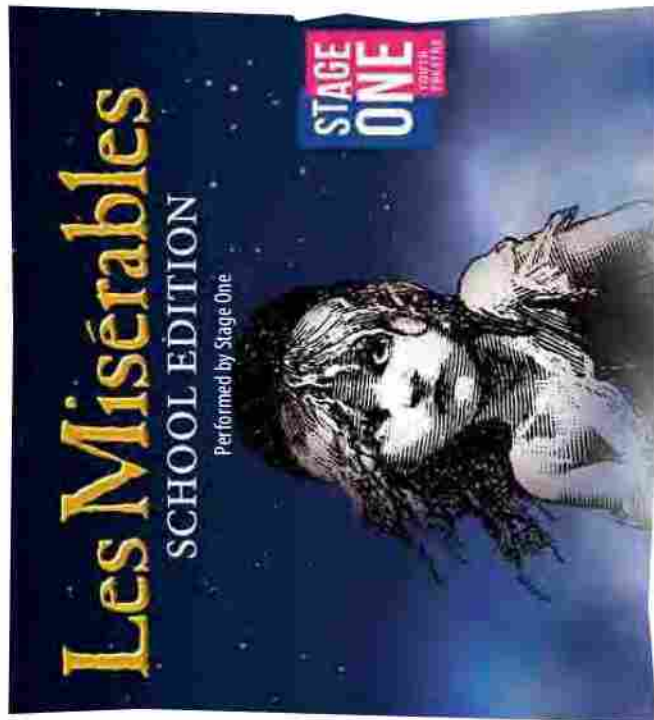
ORLANDO, A YOUNG NOBLEMAN WHO IS DRAWN INTO A LOVE AFFAIR WITH QUEEN ELIZABETH I. FOR A TIME, LIFE AT COURT IS INTERESTING ENOUGH, BUT ORLANDO EARNS FOR SOMETHING MORE.

As he strives to make his way as a poet and lover, his travels keep him at the heart of a dazzling tale where gender and gender preferences shift regularly, usually with hilarious results. Orlando takes a spectacularly gleeful romp through four centuries of gender-defining history that brings Virginia Woolf's epic story to life.



5-10 FEB 2024 @ 7:30PM

WWW.TITCHFIELDFESTIVALTHEATRE.COM



In 19th century France, Jean Valjean is released from years of unjust imprisonment, but finds nothing in store for him but mistrust and mistreatment. He breaks his parole in hopes of starting a new life, initiating a life-long struggle for redemption as he is relentlessly pursued by police inspector Javert, who refuses to believe Valjean can change his ways. Finally, during the Paris student uprising of 1832, Javert must confront his ideals after Valjean spares his life and saves that of the student revolutionary who has captured the heart of Valjean's adopted daughter.

15-17 FEB 2024 @ 7:30PM & 17 @ 2:30PM



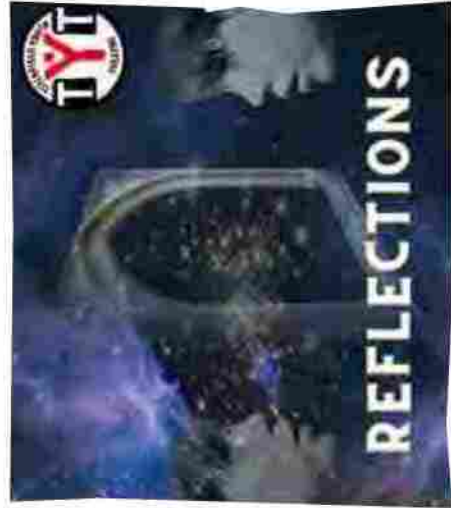
BOXOFFICE:03836663366



"SOMETHING IS WRONG – IT'S LIKE THEY BEEN REPLACED!"

After a school trip, Sam seems different. They've always been a little strange but now the rumours about them have grown. What happened out there? A modern horror story. National Theatre connections entry performed by Titchfield Youth Associates

THIS PLAY CONTAINS STRONG LANGUAGE. SUITABLE FOR 14+



Join TYT for a celebration of short plays, dealing with the mysterious, the bewildering and the downright absurd twists of life.



"YOU GOT TO CONCENTRATE AIN'T YA, WITH TWO JOBS"

Francis Henshall is in a spot of bother. Not only is he a minder to the gangster Roscoe Crabbe he's also managed to get himself another job working for upper class criminal Stanley Stubbers. But Roscoe Crabbe is dead, killed by Stanley Stubbers. So, who is Roscoe Crabbe? This chaotic farce, set in 1960's Britain based on 'The Servant of Two Masters' is a laugh out loud mix of satire, slapstick and one-liners.

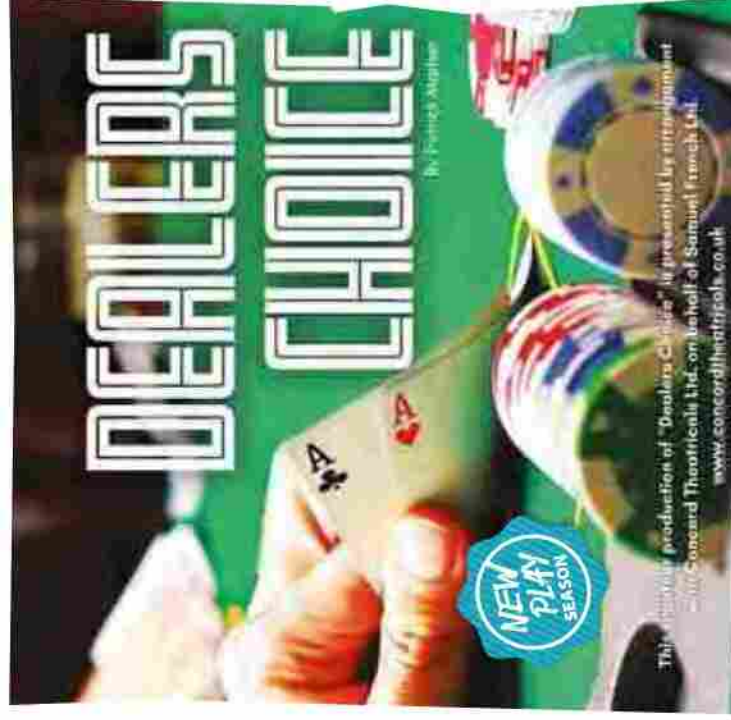


Mens Shed – a brand new play centered around six diverse characters – different chaps with different views but all with one thing in common: their love of the shed. The oil in the ointment occurs when a letter is recorded, challenging the right of it being a 'men only' institution. The turmoil and heartache is shared by the boys and, in response, the WI join forces and save the day.



11–16 MAR 2024 @ 7.30 PM & 16 @ 2.30 PM

WWW.TITCHFIELDFESTIVALTHEATRE.COM



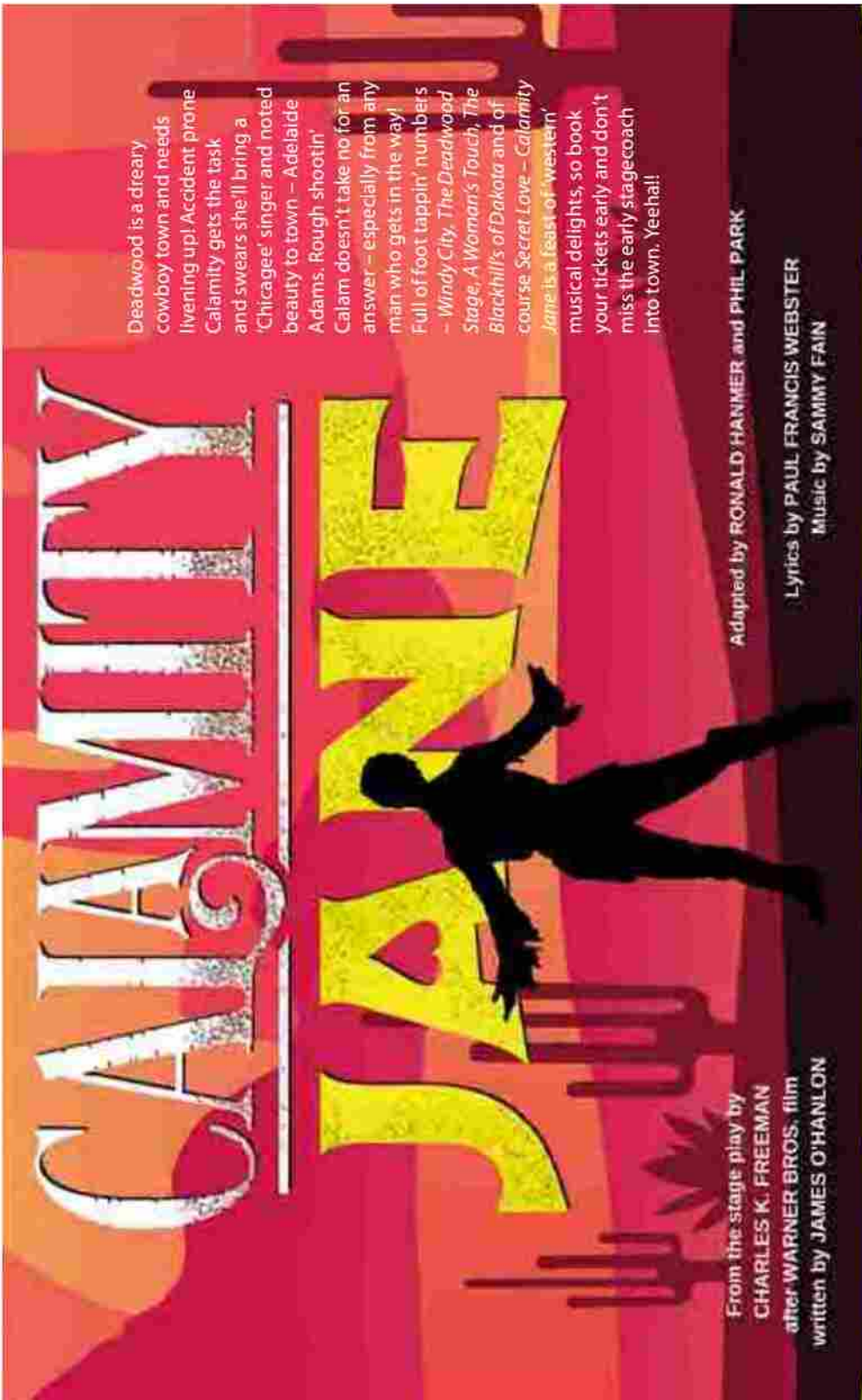
5 work colleagues meet regularly on Sunday nights to play poker. What drives them? Money? Competition? Desperation? Find out in this award-winning play.

25–30 MAR 2024 @ 7.30 PM

BOXOFFICE@03336663366



CALAMITY JANE



From the stage play by
CHARLES K. FREEMAN
after WARNER BROS. film
written by JAMES O'HANLON

Deadwood is a dreary
cowboy town and needs
livening up! Accident prone
Calamity gets the task
and swears she'll bring a
'Chicago' singer and noted
beauty to town – Adelaide
Adams. Rough shootin'
Calam doesn't take no for an
answer – especially from any
man who gets in the way!
Full of foot tappin' numbers
– *Windy City*, *The Deadwood*
Stage, *A Woman's Touch*, *The*
Blackhill's of Dakota and of
course *Secret Love* – *Calamity*
Jane is a feast-of-western'
musical delights, so book
your tickets early and don't
miss the early stagecoach
into town. Yeeha!

Adapted by RONALD HANMER and PHIL PARK

Lyrics by PAUL FRANCIS WEBSTER
Music by SAMMY FAIN



5-13 APR 2024 @ 7.30PM & 6, 7 & 13 APR @ 2.30PM





Act 2 Theatre Company return to Titchfield Festival Theatre's Great Barn to present Shakespeare's *Romeo & Juliet* – transforming this classic tale into Verona's powder keg of blood-lust and rage, with death threats proudly shouted in the streets, and a young couple, tragically become the next sacrifice in this brutal tale. Act 2 Theatre Company are final year students on the Acting for Stage & Screen course at Havant & South Downs College, and this will see them embark upon creating a contemporised and reimagined production, of one of Shakespeare's classics, in their final production at HSDC.



A double bill of Will Shakespeare themed plays dealing with the chaotic machinations of people caught up in the whirlwind of ideas skewed by mistaken identities, vengeance, and love.



Set during the vibrant and psychedelic backdrop of the 1967 Summer of Love, 'A *Midsummer Night's Dream*' unfolds as four young lovers venture into an enchanted forest, ensnared in a complex web of romantic entanglements by mischievous fairies. Love potions and groovy actors blur the lines between reality and dreams in this timeless comedy. As flower children navigate a world of cosmic mischief, the play captures the magic of love amidst an era of revolution and transformation.

25-27 JUN & 1-4 JUL @ 7.30PM
& 30 @ 2.30PM



Viola shipwrecked and with the help of the flamboyant captain, disguises herself as a man, Cesario (it's surprising, what moustaches hide!) and enters the service (and wanting the service) of Duke Orsino. She thinks her twin brother (Twin? You'll need some good imagination here), Sebastian, drowned, but he goes and turns up. Yup, it's bonkers!

28-30 MAY & 2-6 JUN @ 7.30PM
& 2 @ 2.30PM



SHAKESPEARE IN THE GREAT BARN



The shocking story of a 17th Century murder in Leeds is to be retold on the stage of the Great Barn, Titchfield. A haunting and disturbing drama, this rarely performed play is considered by many to be one of the finest one-act tragedies in early-modern drama. A relentless, violent story of one man's fall, includes gambling addiction, domestic abuse, and demonic possession.

22-25 & 29-30 JUN 2024 @ 7.30PM & 28 @ 2.30PM



CHAUCER 5 TALES AS NEVER SEEN BEFORE.

A lively and fast-moving comic adaptation featuring five of Chaucer's Canterbury Tales. This modernised version, has the story tellers going to a festival and the Superhero, aging hippy, insurance salesman, WAG and builder, make unusual companions who each tell their stories. It's funny, at times rude and lewd and very silly. Join us for Chaucer Upcycled.

18-22, 26-27 AUG @ 7.30PM & 25 @ 2.30PM



Educating Rita follows Rita, a 26-year-old working class Liverpudlian hairdresser who is dead set on "becoming educated and knowing what matters", and Frank, a middle-aged upper class man with a penchant for drinking to survive his mundane existence as a failed poet come University lecturer. Written by the same British playwright who also created Blood Brothers and Shirley Valentine.



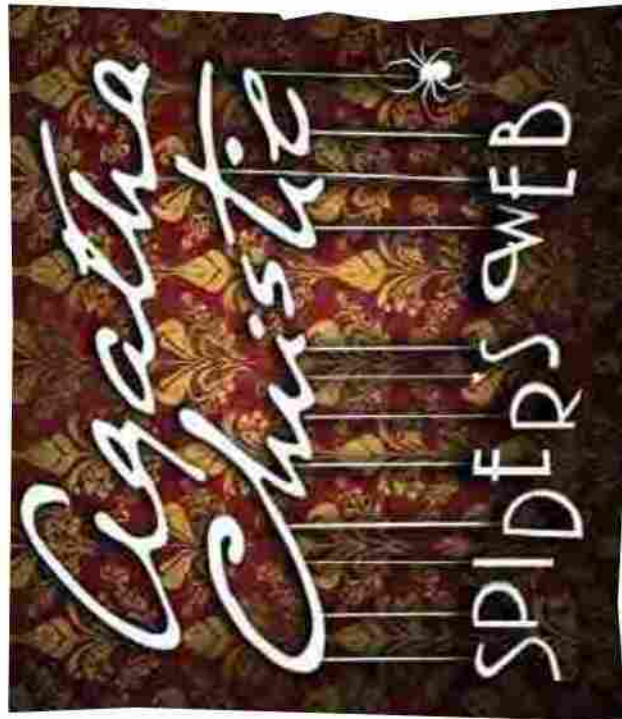
20

SHAKESPEARE AT THE BARN

22-27 APR 2024 @ 7.30 PM



21



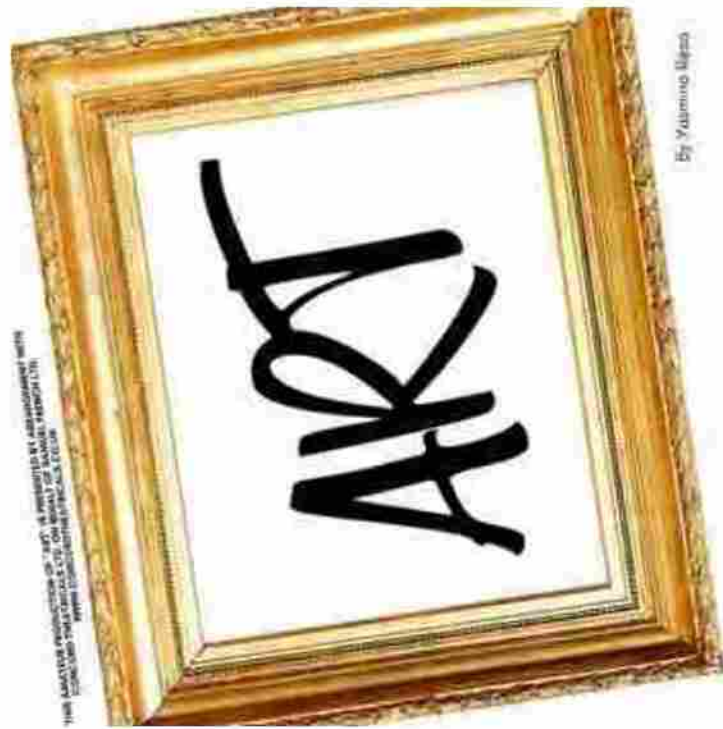
Clarissa, wife of a diplomat, is adept at spinning tales of adventure, but when a murder takes place in her drawing room she finds life drama much harder to cope with. Desperate to dispose of the body before her husband comes home with an important foreign politician, Clarissa persuades her three house guests to become accessories and accomplices. It seems that the murdered man was not unknown to certain members of the house party (but which ones?), and the search begins for the murderer and the motive, while at the same time trying to persuade a police inspector that there has been no murder at all.



8-18 MAY 2024 @ 7.30PM & 12 @ 2.30PM. NO SHOW MON.

WWW.OAKTHEATRETHEATRE.COM

*THE AMATEUR PRODUCTION OF 'ART' IS PRESENTED BY ARRANGEMENT WITH
FOCUS/AND THEATREWORKS LTD. ON BEHALF OF SAVOY THEATRE LTD.
WWW.SAVOYTHEATRE.CO.UK



By Yasminza Mirza

WHAT HAPPENS WHEN A FRIEND BUYS A PAINTING THAT IS AN ENTIRELY WHITE CANVAS – IS IT ART?

Serge thinks it is, but can his friends agree without a dangerous rift occurring? ART, a bright thought-provoking comedy, will have you rethinking what art really is.

20-25 MAY 2024 @ 7.30PM

BOXOFFICEMOJO.COM



TITCHFIELD FESTIVAL THEATRE ARE DELIGHTED TO INTRODUCE OUR BRAND NEW

CHILDREN'S

THEATRE SEASON FOR UNDER 6YRS

An original adaptation of the popular stories, come join our storyteller in the Acorn Theatre for an interactive show with songs, dancing and theatre skills for all the family.

LITTLE RED HEN

Come along and see if the farm animals help Little Red Hen in her garden.

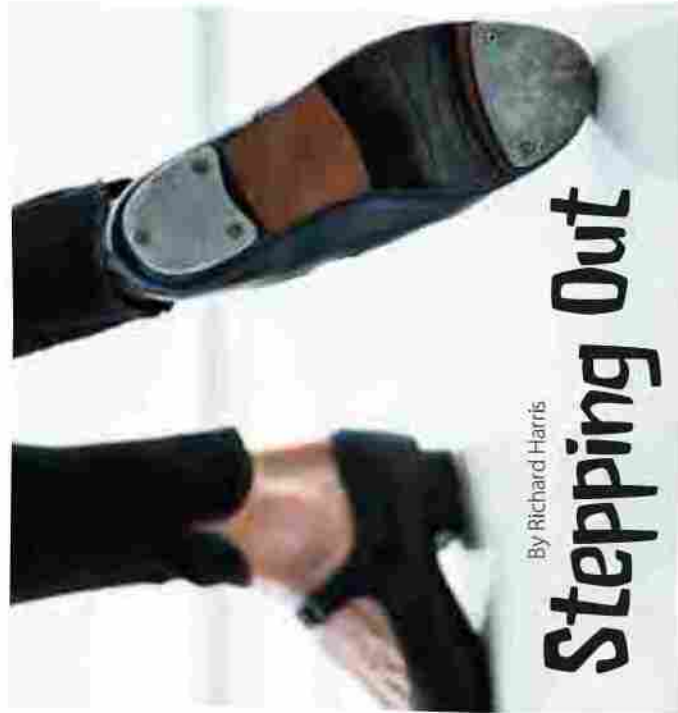
3 & 4 APRIL 2024 @ 11AM & 1PM



THE GINGERBREAD MAN

"Run, run as fast as you can, you can't catch me, I'm the gingerbread man."

28 & 29 MAY 2024 @ 11AM & 1PM



By Richard Harris

Stepping Out

After leaving Broadway, Ex dancer Mavis now runs a dance studio teaching an eclectic bunch of 'have a go' tappers their time steps. After an invitation from a prominent dance school to perform in their charity showcase, Mavis must navigate her way through the ups and downs that erupts between this group of women (And 1 man) as she gets them stage ready worthy of a any chorus line? Join us for a journey of Love, Loss and Laughter and definitely a few left feet.

24
FUN FOR ALL THE FAMILY.

10-15 JUN 2024 @ 7.30PM & 15 @ 2.30PM

Oak Theatre

WWW.TITCHFIELDFESTIVALTHEATRE.COM

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25



IMPORTANCE OF BEING EARNEST

By Oscar Wilde

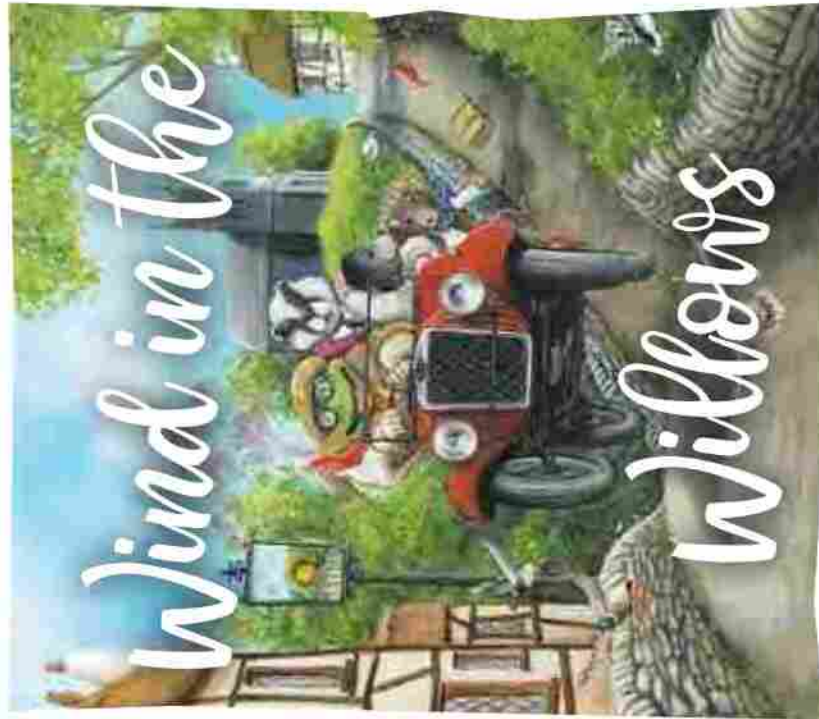
'A TRIVIAL COMEDY FOR SERIOUS PEOPLE'

Hold onto your handbags as you join John and Algernon in a theatrical romp through Victorian high society. Filled with Wilde's wicked wit, this hilarious play explores the ideas of love, truth and identity. A comedy of manners that will have you laughing so hard, your corsets might burst!



21-29 JUN 2024 @ 7.30PM & 23 @ 2.30PM

WWW.TITCHFIELDFESTIVALTHEATRE.COM



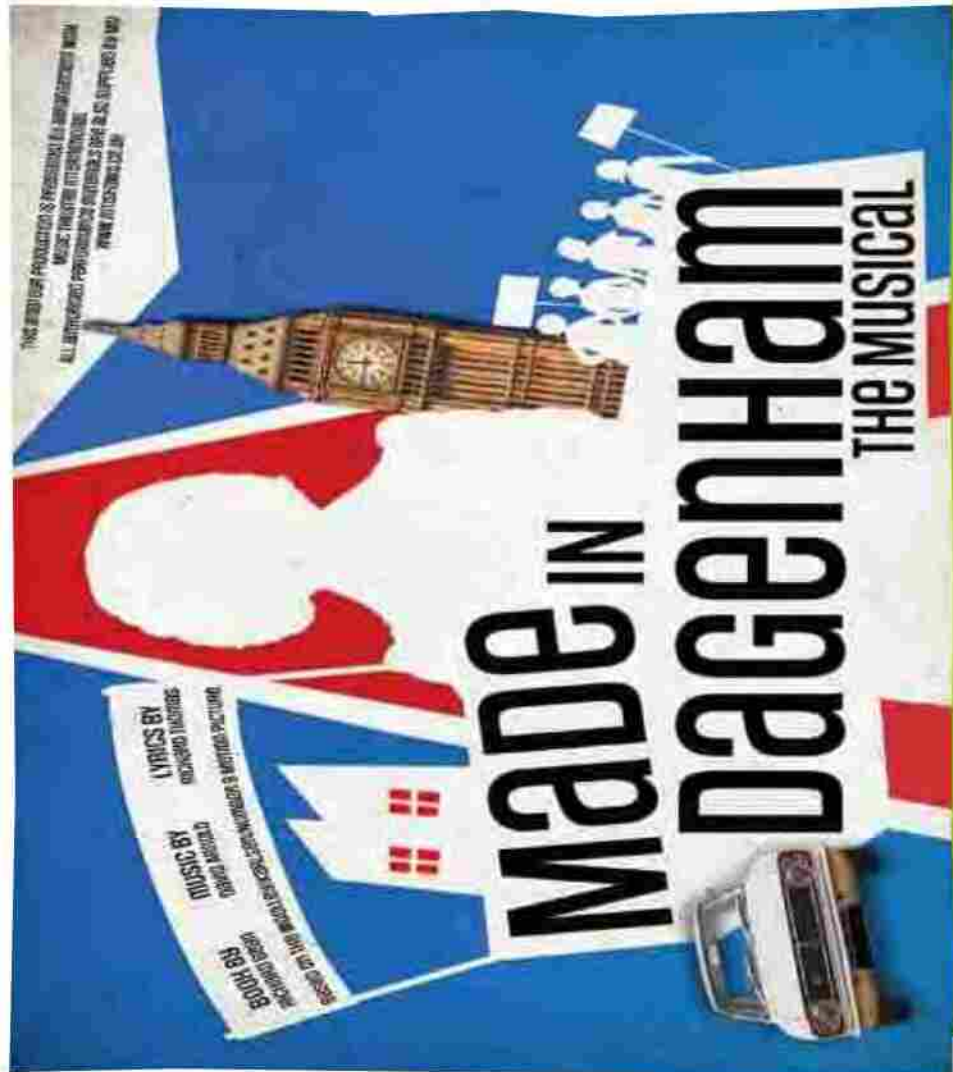
Wind in the Willows

An enchanting adaptation of Kenneth Grahame's legendary animal adventure story, with Mole, Ratty, Toad and Badger and many other enchanting creatures battling the evil weasel army.



12-20 JUL 2024 @ 7PM & 13, 14, 20 @ 2.30PM

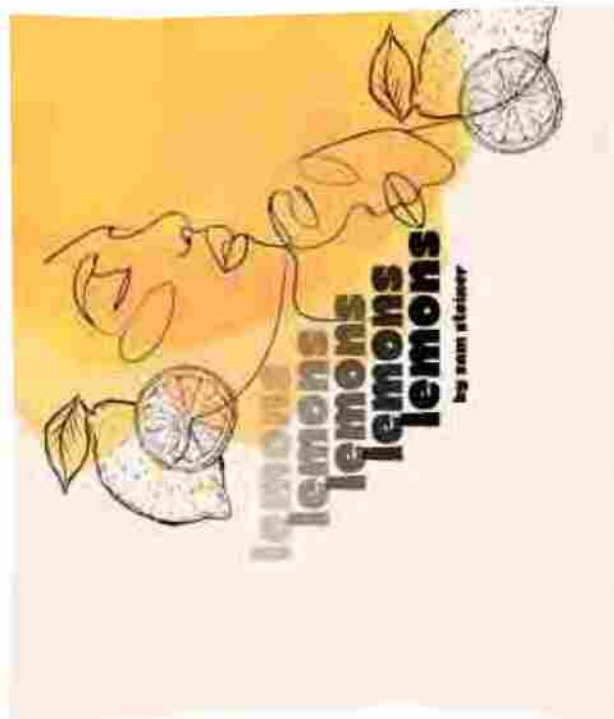
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Inspired by a true story and based on the hit movie, *Made in Dagenham* is an uplifting British musical comedy about friendship, love and the importance of fighting for what is right.

Essex, 1968. Like millions of other working women, each morning Rita O'Grady is just trying to get her husband out of bed, get the kids off to school and get to work at the factory on time. But life is about to change forever when it's announced that the girls in the stitching room of Ford's Dagenham car plant will have their pay grade dropped to 'unskilled'. Quickly drawing on a strength she never knew she had, Rita leads her friends in a battle against the might of Ford and the corruption of the Union supposed to protect them. As the girls' inspiring journey gets bigger than anyone could have imagined, the pressure is too much for some, but can Rita keep up the fight and the happy home she's worked so hard for?

Funny, touching and timeless, *Made in Dagenham* shows how ordinary people can do extraordinary things when they stand together.



The average person will speak 123,205,750 words in a lifetime. But what if there were a limit? What would you say if you only had 140 words to use in a day? *Lemons Lemons Lemons*. *Lemons Lemons Lemons* imagines a world where we're forced to say less. It's about what we say and how we say it; about the things we can only hear in the silence; about dead cats, activism, eye contact and lemons, lemons, lemons, lemons. This charming play from Sam Steiner is about the beauty and preciousness of language; a perfectly imperfect love story that will leave you wanting to say every word that has been left unsaid.



23-28 SEPT @ 7.30PM

2-12 OCT @ 7.30PM & 6 @ 2.30PM



Melissa French is dead. After her body is discovered in the dark of the woods and the police delve into her past, Melissa's family and friends begin to realise how little they knew her. As secrets are discovered and lies are revealed, Melissa's life begins to be unravelled. Nothing stays buried forever.



23-28 SEPT @ 7.30PM

2-12 OCT @ 7.30PM & 6 @ 2.30PM



This sensitive production of "The Curious Incident of the Dog in the Night-Time" is presented by arrangement with Corgis and Theatreworks Ltd. All Rights Reserved. www.theatrefestival.co.uk

THE CURIOUS INCIDENT

OF THE DOG IN THE NIGHT-TIME

A dog, a pitchfork and a yearning for answers. This story revolves around Christopher Boone, a brilliant but socially challenged 15-year-old boy with a unique perspective on the world.

When he discovers his neighbour's dog murdered, he embarks on a journey to solve the mystery, defying his own limitations and uncovering dark family secrets along the way. The play delves into the mind of an extraordinary protagonist, using innovative staging and visuals to convey his sensory experience. It's a touching exploration of love, trust, and the power of human resilience in the face of adversity.

Adapted by Simon Stephens

Based on the Novel by Mark Haddon

TITCHFIELD FESTIVAL THEATRE

TICKETS

We run a ticketless scheme and tickets can be purchased or refunded by calling our Box Office on 01329 600010 or online at www.titchfieldfestivaltheatre.com

SEAT PRICES

- £12 Monday to Thursday
- £12 Matinees and Sundays
- £14 Friday and Saturday

CONCESSIONS

These are cumulative per ticket:

£1 off Concessions includes:

Children, Seniors 60+, full time education (including teachers and lecturers), student cards, NHS workers/Careers/registered disabled/HM Forces, Police and Fire Service.

£1 off Party 4+; £1 Book more than one show.

Special rates are available for parties of 10+ & school parties please enquire at the Box Office.

ST MARGARETS VENUE

We have three theatres The Acorn Studio, The Oak Theatre and The Arden Theatre, situated at 73 St. Margarets Lane, Titchfield PO14 4BG.

The theatre is accessible by car. We are located on St Margarets Lane approximately 250 metres south of St Margarets roundabout on the A27. The Theatre is clearly signed as our frontage can be seen from the road.

For satellite navigation systems our post code is PO14 4BG.

The Theatre is also accessible by an hourly bus. Bus number X4 & X5 Portsmouth/Southampton/Gosport. The bus stop is located a short walk away, approximately four minutes walk.

The nearest railway station is Fareham or Swanwick, with a taxi and bus service available outside both stations.

Accessible taxi services are located in Swanwick and Park Gate
Tel Nos. 01329 314432.

We have two licensed bars which sell a selection of wine, beer, soft drinks and hot drinks as well as snacks and ice-creams.

INFORMATION & PRICING

DISABLED ACCESS

We welcome any disabled patrons but please let us know beforehand that you are coming. St Margarets Lane has a disabled lift for access to all theatres and disabled toilets.

PARKING

We have ample parking in and around the site. **PLEASE DO NOT PARK IN THE LANE**

– IT IS NARROW AND DANGEROUS.

We have room on site for 34 cars, some of which are designated for the disabled. Additional parking is available in the garden centre opposite (for evening performances) and at the nearby Holiday Inn (6 minutes walk from the site). Patrons must register their vehicles at the hotel reception or face a fine. TFI will not be held responsible for any parking fines.

GREAT BARN VENUE

We hold our annual Bard at the Barn—Shakespeare Festival at the 15th Great Barn situated at Mill Lane, Titchfield PO15 5RB. The Barn seats 170 with its own raked seating, bar and café area. This is accessible by car.

We are located on Mill Lane approximately 250 metres north of the Titchfield Mill and 50 metres south of The Abbey Garden Centre. The Barn is clearly signed as our frontage can be seen from the road. Drive up the long driveway and the barn is situated at the top of the driveway. There is ample space for parking spaces on site for over 100 cars.

For satellite navigation systems our post code is PO15 5RB.

New members are always warmly welcome, joining and taking part is free for everyone. Absolutely no previous experience required.

For enquiries about hiring our venues call 01329 556156. For ticket enquiries, exchanges, block bookings etc, call 01329 600010.

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Appendix 10 and 10a

Section 11
Appendix 10 and 10a
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Response to Planning Contravention Notice dated 8 June 2023 served by Southampton City Council

(PCN Reference: HH/ENV-054525)

Town and Country Planning Act 1990 (as amended by the Planning Compensation Act 1991) ("the 1990 Act")

in relation to Land at 71-73 St Margaret's Lane, Titchfield, Fareham.

("the Site")

Our client: Titchfield Festival Theatre Limited

1. State your full name

Kevin Fraser as a director of and on behalf of Titchfield Festival Theatre Limited.

2. State the nature of your interest in the land

As a Director for Titchfield Festival Theatre Limited, freeholder.

3. State the full name and address, where applicable of:

a. The freeholder of the Land and date purchased;

Titchfield Festival Theatre Limited purchased the freehold of numbers 71 and 73 St Margaret's lane on 30th November 2021.

b. The lessee of the Land and date lease commenced;

c. The mortgagee of the Land (together with Account Number/Mortgage Roll Number);

Unity Trust Bank (see enclosure 1).

d. Any other person with an interest in the Land and what that interest is. That will include anyone you allow on site.

This question goes beyond the powers of s171C(1) as not everyone who is allowed on to site accrues an interest in the Land.

e. State your interest in the land e.g. operator, contractor, tenant, freeholder, leaseholder, mortgagee, occupier etc.

Leaseholder.

f. Please provide the names and addresses of any other persons with an interest including any persons occupying the Land.

No individual persons have an interest in the Land.

4. Does anyone occupying the land have any:

a. Health needs

b. Welfare needs; or

c. Educational needs

that the local planning authority should be aware of when considering whether to take any further enforcement action?

If so, please provide details of such needs

d. Are there any children below the age of 16 on the site?

e. if your answer is 'yes' to question 5d) do they attend a local school.

The entirety of this question 4 goes beyond the powers of s 171C(2) and (3).

5. With regard to current occupants are you aware of other people who may claim a sufficient interest in the land to justify service of a copy of the notice?

This question goes beyond the powers of s171C - it is a matter for Southampton City Council to decide on whom a planning contravention notice should be served.

6. For how long have been occupying Area B as shown on the attached plan? (Please supply evidence of occupation).

Since October 2010.

7. For how long have you been occupying Area C as shown on the attached plan? Please supply evidence of occupation.

Since July 2022.

8. What is the current use of Area B shown on the attached plan?

For use relating to the theatre located at 73 St Margarets Lane, Titchfield, PO14 4BG.

9. For how long has the use of Area B described in your answer to question 8 been taking place? Please supply any evidence of the duration of this use.

Since October 2010 when Area B was acquired by Titchfield Festival Theatre Limited.

10. Prior to the current use of Area B described in your answer to question 8 above, what was the use of Area B?

Unknown.

11. For how long did the previous use of Area B described in your answer to question 10 above taken place? Please supply any evidence of the duration of this previous use.

Unknown.

12. What is the current use of Area C shown on the attached plan?

For use relating to the theatre located at 73 St Margarets Lane, Titchfield, PO14 4BG.

13. For how long has the use of Area C described in your answer to question 12 been taking place? Please supply any evidence of the duration of this use.

Since being occupied by Titchfield Festival Theatre Limited.

14. Prior to the current use of Area C described in your answer to question 12 above, what was the use of Area C?

Unknown.

15. For how long did the previous use of Area C as described in your answer to question 14 above take place? Please supply any evidence of the duration of this previous use.

Unknown.

I hereby state that the answers set out in this Reply Form are to the best of my knowledge a full, true, and correct Statement of all the information required by the said Notice.

Print Name MR K FRASER

Signed



Date 3RD July 2023

Southampton, Fareham and Havant Legal
Partnership
Southampton City Council
Civic Centre
Southampton
SO14 7LY

By email only to: rwright@fareham.gov.uk

3rd July 2023

Your Reference: DP/PET/19/71575/B
Our Reference: RST/T4090-13

Direct Line: 0117 930 9577
Direct Fax: 0117 929 3369
Email: rstanton@thrings.com

Dear Mr Wright

Planning Contravention Notice Re: Land at 71-73 St Margarets Lane, Titchfield, Fareham.

I am instructed by Titchfield Festival Theatre Limited who received two Planning Contravention Notices dated 8th June 2023 ("PCNs") in respect of the use of the 71-73 St Margarets Lane, Titchfield, Fareham.

My client's interest in 71 St Margaret's Lane stems from a lease granted by the former proprietors (trading as Paultons Properties) on 29th September 2010 (see enclosure A to this letter). From that date they occupied 73 and they purchased numbers 71 and 73 on 30th November 2021; please see Enclosure B to this letter for an email from their solicitors confirming the completion of that transaction.

We have set out the responses to the PCN in the attached document in so far as my client is able to answer them. We have not dealt with the period prior to 29th September 2010 which pre-dates my client's occupation of the number 73 for the reasons outlined above. Given the nature of the information requested in the PCNs, we trust the Council is interested in the period of occupation of the Property from 29th September 2010 onwards.

Given my client has only occupied the Property from that date, there are a number of questions that my client is unable to answer as they fall outside of their first-hand knowledge.

Please acknowledge receipt of this correspondence.

Yours sincerely,



Rebecca Stanton

Solicitor

Thrings LLP

The Paragon • Counterslip • Bristol • BS1 6BX • Tel: 0117 930 9500 • Fax: 0117 929 3369 • DX: 7895 Bristol
Email: solicitors@thrings.com • www.thrings.com Also in Bath, London, Romsey and Swindon

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Appendix 11

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- 11.30 Well-designed places, buildings and spaces are:
- designed and planned for long-term stewardship by landowners, communities and local authorities from the earliest stages; and
 - robust, easy to use and look after, and enable their users to establish a sense of ownership and belonging, ensuring places and buildings age gracefully; and
 - adaptable to their users' changing needs and evolving technologies; and
 - well-managed and maintained by their users, owners, landlords and public agencies.

Policy D1: High Quality Design and Place Making

Development proposals and spaces will be of high quality, based on the principles of urban design and sustainability to ensure the creation of well designed, beautiful and safe quality places.

Development proposals will be permitted where compliance with the following key characteristics of high quality design, has been demonstrated:

- i. **Context** - where proposals appropriately respond to the positive elements of local character, ecology, history, culture and heritage; and
- ii. **Identity** - where proposals create places that are attractive, memorable, distinctive and of strong character; and
- iii. **Built form** - where proposals create a three-dimensional pattern or arrangement and scale of development blocks, streets, buildings and open spaces, that are coherent, attractive and walkable; and
- iv. **Movement** - where proposals create attractive, safe and accessible corridors that incorporate green infrastructure and link with key services and facilities along existing and future desire lines, which promote social interaction and activity; and
- v. **Nature** - where proposals positively integrate existing and new habitats and biodiversity within a coherent and well managed, connected structure; and
- vi. **Public spaces** - where proposals create public spaces that are attractive, safe, accessible and provide a focus for social interaction, and promote healthy activity and well-being; and
- vii. **Uses** - where proposals provide or are well related and connected with, a mix of uses that provide the day to day needs of users; and
- viii. **Homes and buildings** - where proposals provide a variety of dwelling sizes and tenures, have sufficient space and are well related to public space; and
- ix. **Resources** - where proposals reduce the use of natural resources, conserve and enhance and integrate habitats and ecosystems and are adaptable over time, minimising waste; and
- x. **Lifespan** - where proposals are designed and constructed to create enduring high-quality buildings, spaces and places that are attractive and functional, which weather well and can be adapted to users' needs with efficient management and maintenance.



How this policy works

- 11.31 The quality of buildings, spaces and places will be assessed at all scales and having regard to all users. Quality design will be at the heart of the Council's decisions, from the location of new development at a strategic level through to the design and appearance of buildings and spaces, their details, landscaping and how they are to be managed and maintained for the long term.
- 11.32 The Council will use the criteria set out in policy D1 and detailed and explained in paragraphs 11.5-11.30 to assess whether development proposals are acceptable. The Council will need to understand how a proposal has met the criteria. There will be an expectation for applicants to demonstrate their approach within submitted supporting documents such as a Design and Access Statements for major developments or those in Conservation Areas, responding to each criterion as necessary.
- 11.33 The extent of analysis and explanatory material should be proportionate to the nature, size and sensitivity of the site and the proposal.
- 11.34 This policy should be considered in conjunction with more detailed related policies set out in the Plan. In particular, Policy NE6: Trees, Woodland and Hedgerows, Policy CC2: Managing Flood Risk and Sustainable Drainage Systems, Policy CC3: Coastal Change Management Areas, Policy CC4: Renewable and Low Carbon Energy, Policy D4: Water Quality and Resources, Policy TIN1: Sustainable Transport and Policy TIN4: Infrastructure Delivery.
- 11.35 In addition to Local Plan policies, the Council will have regard to the Fareham Borough Design Guide SPD and other existing and future SPDs in the assessment and determination of planning applications where they apply.
- 11.36 Where appropriate within the Local Plan period, the Council will develop additional design guidance relating to specific sites, settlements or Borough wide. Such guidance could include site or area-wide masterplans, design codes or guidance related to specific issues, such as parking and sustainable construction. These will be developed in conjunction with local residents and the wider community, where applicable, and in conformity with any relevant existing or future national or sub-regional policy or guidance. This includes Building for Healthy Life 12¹²⁶, BREEAM Assessment, which will be used as an assessment tool for major new development and the National Model Design Code and the future revised Manual for Streets.
- 11.37 The Council will also make use of Design Review Panels, where appropriate, to provide independent guidance and assessment of proposals, depending on the scale, context and relationship to important heritage or ecological assets.
- 11.38 Building Regulations take into account all regulated emissions arising from new residential development (heating, fixed lighting and ventilation) and energy efficiency standards, but the Council will support planning applications that exceed Building Regulations requirements. In respect of non-residential standards, developments will be supported that meet BREEAM standards or an agreed equivalent industry standard assessment process, where viable. Developers that propose a scheme to meet

¹²⁶ Building for Healthy Life: Design Toolkit for neighbourhoods, streets, homes and public spaces (Homes England July 2020)



BREEAM standards in order to demonstrate the sustainability benefits of their proposals should submit a post construction assessment and BREEAM certificate to the local planning authority to demonstrate compliance. The requirement for BREEAM standards will be considered as part of a review of the next Local Plan.

- 11.39 It is expected that with climate change, there is to be an increase in temperatures. New development is therefore encouraged to be designed and laid out as such that it provides natural ventilation and making use of Green Infrastructure such as urban street trees to alleviate the urban heat island effect and the risk of overheating from rising temperatures.

High Quality Design and Ensuring Good Environmental Conditions

Why this policy is needed

- 11.40 New development should be designed to ensure that the environmental conditions of internal and external space support and promote good health and well-being for all users.
- 11.41 Good environmental conditions include appropriate levels of space, light, privacy, heating, cooling and water quality, whilst avoiding excessive and unacceptable impacts from noise, ground, air, water and light pollution or contaminants.
- 11.42 Potential solutions to overcome identified excessive environmental conditions must be acceptable in their own right having regard to local plan policies. For example, such solutions should not have an adverse visual impact in the landscape or streetscape or result in overbearing or overshadowing effects.
- 11.43 Proposals for residential accommodation¹²⁷ should provide a suitable living environment for existing and future occupiers and users, including appropriate external amenity space in line with the requirements of the Fareham Borough Design Guide SPD. Developments that do not achieve acceptable living standards are often symptomatic of overdevelopment, poor design, an inappropriate location for housing or a combination of these. New developments with habitable rooms should secure adequate internal space to comply with the national described space standards in accordance with Policy D5¹²⁸. New development should also receive adequate daylight and sunlight¹²⁹ to create satisfactory living and working accommodation. This is particularly important in certain residential rooms such as bedrooms and living rooms.
- 11.44 Applicants for new residential development should be aware of the requirements of Policy HP7: Adaptable and Accessible Dwellings in Chapter 5, which outlines adaptability/accessibility standards on new dwellings. Policy HP7 also requires a percentage of dwellings for large scale development¹³⁰ as Category 3 of Part M (Access to and Use of Buildings) of the Building Regulations (2015 edition). Category 1 is the minimum for residential development.

¹²⁷ 'Residential accommodation' goes beyond the definition of a C3 use class 'dwellinghouse'. Whilst not exhaustive this can also include hotels, residential institutions and houses of multiple occupancy (HMOs).

¹²⁸ [Nationally Described Space Standards](#) (MHCLG – March 2015 and as amended)

¹²⁹ Where necessary, in addition to guidance set out in the Fareham Borough Design Guide SPD, the use of 'Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice', Building Research Establishment (Sep 2011) or a suitable and agreed computer model will be used to assess the potential impact upon daylight, sunlight and shadowing.

¹³⁰ Schemes of over 100 dwellings (gross)



Policy PD: Ensuring Good Environmental Conditions

Development must ensure good environmental conditions for all new and existing users of buildings and external space.

Development proposals, including changes of use, will be permitted where they:

- a) Do not have an unacceptable adverse impact on the environmental conditions of future occupiers and users or on adjacent/nearby occupants and users through ensuring appropriate outlook and ventilation and providing adequate daylight, sunlight and privacy; and
- b) Do not, individually, or cumulatively, have an unacceptable adverse environmental impact, either on neighbouring occupants, adjoining land, or the wider environment; and
- c) Can demonstrate that the future occupants and users of the development site will not be unacceptably adversely impacted from existing activities in the surrounding area.

How this policy works

- 11.45 Proposals for new development will be assessed through appropriate and suitably qualified internal and external persons, using industry accepted methodologies, systems and procedures to determine the future environmental conditions resulting from proposals. Proposals that are assessed to be likely to have a significant adverse impact on occupiers' or users' health and well-being will not be permitted. Assessments will also be required where there is the potential for unacceptable adverse impact from existing activities that may impact on the development site. This includes but is not limited to flightpaths, commercial uses and the highway network.
- 11.46 Adverse environmental impacts include, but are not limited to, contamination, noise, heat, liquids, vibration, light or air pollution, or excessive wind (including dust, smoke, fumes or odour).

Coordination and Piecemeal Development

Why this policy is needed

- 11.47 Coordination of development within and adjacent to existing settlements and as part of area wide development strategies and masterplans is vital to ensure that developments are sustainable, appropriately planned and designed. It can ensure that land and other resources are used efficiently, avoid duplication, located optimally, connect people, places and habitat, and equalise value. It can also avoid piecemeal development and associated sterilisation of land and development delivery.
- 11.48 Circumstances where coordination is required include:
- Connecting separate site ownership and associated development through pedestrian cycle and vehicle corridors, increasing permeability and avoiding segregated cul-de-sac forms;
 - Ensuring integration and connection of existing and new biodiversity and habitats;

DESIGN



- The provision of open space, sport and play facilities;
- Shared parking and servicing arrangements;
- Provision of infrastructure including drainage, energy, health, education, shops and community space;
- Phasing of development over time.

11.49 The Council requires, through policy and relevant SPDs, delivery of open space, affordable housing and other infrastructure and / or financial contributions resulting from the number of residential units proposed. The Council will consider and assess planning applications and pre-application stage proposals and advise applicants as to whether the scale, design, layout and mix of units, having regard to Policy D1 and the context of the site, is of an appropriate yield to ensure the effective use of land and not result in the avoidance of financial and other contributions required by the Policy TIN4.

Policy (1): Coordination of Development and Piecemeal Proposals

Where proposals come forward that are part of a wider development site, supporting information will be expected to demonstrate that the proposal will not prejudice the appropriate development of the adjoining site(s) in accordance with Local Plan policies, and that the proposal maximises place-making opportunities. Development proposals that prevent or limit the potential for appropriately developing an adjoining site, or which do not maximise connectivity, permeability and efficiency opportunities or address mitigation and infrastructure needs relating to the wider development, will not be permitted.

Where piecemeal development could delay or prevent the comprehensive development of a larger site, a legal agreement will be sought, to ensure that any permitted development does not prejudice the development of adjacent land.

Applications which seek to evade infrastructure provision (including affordable housing) by not fully maximising the use of the site or by putting forward piecemeal development will not be supported.

How this policy works

11.50 Proposals for new development will be assessed to ensure that uncoordinated and piecemeal development is avoided. The Council, separately or in combination with developers will demonstrate, through suitably scaled and detailed masterplans, parameter plans and design codes, or other suitable process and product, how development parcels and separate land ownerships should be developed comprehensively. The Council will use conditions of planning consent together with appropriately worded legal agreements, to deliver all aspects of a wider development.

The Water Environment

Why this policy is needed

11.51 The sustainable management and improvement of the Borough's water environment is highly important. An improved water environment will have benefits for Fareham's residents, visitors and business and positively contribute towards conserving and enhancing the natural environment including biodiversity net gain. The most recent



accord with the Development Strategy and other evidence which supports the Local Plan. To support this approach, development outside of the urban areas will be managed to resist encroachment of development into non-urban unsustainable areas.

- 3.32 However, it is recognised that countryside locations can be suitable for some forms of development, particularly tourism sites such as for camping and caravanning, leisure facilities such as playing fields and water-based facilities, and small-scale housing development where the character of the surrounding area can be protected. Community facilities, including cemeteries, which stand on the edge of the urban area can provide important facilities for the community. In addition, the open character of these sites can provide important views from the built form into the open countryside beyond.
- 3.33 In addition, many existing employment, educational, community and leisure uses are already located in the countryside. A policy is needed to allow the continuation of these uses where they perform a function to the community and/or provide jobs. The focus will be on retaining, maintaining and improving existing facilities outside of the urban area, which are valued by the community so they can meet changing needs as necessary and where possible and appropriate, locating any new community facilities inside the urban area.
- 3.34 The NPPF also states that planning policies should recognise the wider benefits from the countryside including the economic and other benefits of the best and most versatile agricultural land. Further, footnote 58 in the NPPF outlines that 'where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality'.
- 3.35 It is important that when determining applications for housing and economic development, the benefits of protecting the Best and Most Versatile (BMV) agricultural land are considered against the need for development. The Borough would not be able to meet its identified housing and employment needs on previously developed (brownfield) land, and greenfield sites of lower agricultural quality, alone. For this reason, the allocation of residential development on BMV agricultural land in this Plan has been necessary to meet the identified housing and employment need. As such, it is vital the Council seeks to protect the remaining BMV agricultural land within the Borough.
- 3.36 In addition, the countryside provides settlement distinction (and in some cases areas have been protected more specifically through the identification of a Strategic Gap), and the open countryside often contains valued landscapes that can be particularly sensitive to change or development. These two policy areas are dealt with separately within this chapter.

Strategic Policy DS1: Development in the Countryside

Proposals for development in the countryside, which is defined as land outside the Urban Area boundary as shown on the Policies map, will be supported where the proposal:

- a) Is for development associated with an existing lawful dwelling, or
- b) Is proposed on previously developed land and appropriate for the proposed use, or
- c) Is for retail, community and leisure facilities, tourism or specialist housing where it can be demonstrated that there is a local need for the facility that cannot be met by existing facilities elsewhere; or
- d) Is for a new or replacement building, conversion and/or extension within



- an existing educational facility (as identified on the Policies map) and would not result in the loss of playing fields and/or sports pitches unless it can be demonstrated that these facilities are no longer required or they can be adequately replaced elsewhere on site or,
- e) Is for housing development either allocated or compliant with one of the following policies; HP1, HP2, HP4, HP6 or HP11, or
 - f) Is for employment development compliant with one of the following policies: E1 or E5, or
 - g) Is for a new small-scale employment development to convert or extend an existing building, or replace a redundant or derelict structure, or
 - h) Provides infrastructure that meets an overriding public need. or
 - i) Can demonstrate a requirement for a location outside of the urban area.

In addition, proposals will need to demonstrate that they;

- j) Protect and enhance landscapes, sites of biodiversity or geological value and soils, and
- k) Recognise the intrinsic character and beauty of the countryside and, if relevant, do not significantly affect the integrity of a Strategic Gap, and
- l) Maintain the character of the undeveloped coast, and
- m) Demonstrate a preference for the development of poorer quality agricultural land rather than that of higher quality.

How this policy works

- 3.37 Policy DS1 establishes the principles of the types of development that may be deemed acceptable within the countryside (i.e. outside of urban areas), so that only the developments that recognise the intrinsic character and beauty of the countryside will be supported. These proposals may include developments which support small-scale residential development, sites solely for affordable housing, employment uses or countryside recreation, leisure and tourism uses.
- 3.38 Applying the brownfield first approach to development enshrined in national policy, the development of previously developed land and under-utilised buildings will be supported particularly if this would help to meet housing or employment needs. Where proposals fall outside of criterion a-h in the policy, evidence of the need for the proposal to be located outside of the urban area will be required. This should include justification of the need for a countryside location for the proposed use of the land, and an assessment of alternative options that have been considered.
- 3.39 Policy DS1 signposts to a number of housing policies that are featured in the Housing Policies chapter (Chapter 5) where residential development may be deemed acceptable. Applicants must refer to those policies in addition to Policy DS1 in order to understand how any application will be judged.
- 3.40 This policy seeks to support proposals for new community, leisure, education facilities that meet an identified need which cannot be met by existing facilities. Such facilities could combine several functions and provide useful social and recreational activities.
- 3.41 The policy aims to support existing businesses and new employment proposals outside of urban areas. To allow for flexibility in the local economy, proposals for additional employment development that contributes to the local economy, such as start-up business accommodation or live-work units, will be supported. Employment uses will



often only require minor alterations to the exterior structure of a building, thereby maintaining its traditional appearance in the countryside.

- 3.42 All proposals will be judged in terms of their location, scale and design. They will be tested against all other relevant policies in the plan, including, but not limited to, policy DS2 on Strategic Gaps, DS3 on Landscape and policy D1 on Design. Any such new development will need to be respectful of the landscape and character of the area, the amenity of any neighbouring development and must not have an adverse effect on traffic or noise. All proposed development shall consider its relationship to and its impact on the local road network. Where it is likely that the proposed development will attract visitors, the site will need to be accompanied by a Travel Plan in accordance with Policy TIN1 of this Plan.

Settlement identity

Why we need this policy

- 3.43 The need to respect settlement boundaries and protect the identity of our key settlements has been a strong influence on planning decisions to date. The primary purpose of identifying Strategic Gaps is to prevent the coalescence of separate settlements and help maintain distinct community identities. Strategic Gaps do not necessarily have intrinsic landscape value but are important in maintaining the settlement pattern, defining settlement character and providing green infrastructure opportunities.
- 3.44 Two Strategic Gaps have previously been established in the Borough; one in the Meon valley and the other between the settlements of Fareham and Stubbington. The Council has reviewed the Strategic Gaps alongside the preparation of this Plan, and the evidence is available to view to support the Plan¹¹. Strategic gaps have been retained but the policy and the spatial designation has been tightened to focus on preventing settlement coalescence. As mentioned in para 3.10, this work has been undertaken in response to the NPPF and recent planning appeals where the function, and strength of, the Strategic Gaps were questioned.
- 3.45 The review of the Strategic Gap designations within the Borough has considered it important to retain the Strategic Gaps in the Borough. The Meon Gap plays a vital role in helping to maintaining the separation of Titchfield from settlements to the west and east of the valley, preventing sprawl from both Fareham and Titchfield Common/Titchfield Park and protecting the countryside setting of Stubbington. The Meon Gap is also identified to be of strategic significance to the South Hampshire sub-region by the PFSH Spatial Position Statement (2016) as it demarks the boundary of the Portsmouth and Southampton Housing Market Areas.
- 3.46 Retaining the open farmland gap between Fareham and Stubbington is critical in preventing the physical coalescence of these two settlements together with maintaining the sense of separation. Three boundary changes are proposed at this time, as the evidence has shown that the boundary of this strategic gap could be redrawn whilst retaining its important function of preventing settlement coalescence;
- Slight increase in the strategic gap south of HMS Collingwood
 - Reduction in strategic gap extent from land to the south of Oakcroft lane

¹¹ Fareham Landscape Assessment – Part Three (2017) and Technical Review of Areas of Special Landscape Quality and the Strategic Gaps (2020)



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- Removal of the strategic gap from the developable area of allocation policy HA55 Land South of Longfield Avenue, as detailed on the masterplan.

Further to the east, retaining the gap will help maintain the separation of Stubbington and Lee-on-the-Solent from Fareham and Bridgemark along with maintaining the separate identity of Peel Common.

Strategic Policy DS2: Development in Strategic Gaps

In order to prevent the coalescence of urban areas and to maintain the separate identity of settlements, Strategic Gaps are identified as shown on the Policies map between the following areas:

- 1) Fareham / Stubbington and the Western Wards (Meon Gap)
- 2) Fareham / Bridgemark and Stubbington / Lee-on-the-Solent (Fareham-Stubbington Strategic Gap)

Development proposals will not be permitted where they significantly affect the integrity of the gap and the physical and visual separation of settlements or the distinctive nature of settlement characters.

How this policy works

- 3.47 The principle of major development within the Strategic Gaps is not established. Any development proposals will need to demonstrate how they could be developed in a manner which meets the tests within the policy. Information on settlement identity, location and scale of development as well as how any edge treatments could retain the physical and visual separation of settlements will be required.

Landscape

Why this policy is needed

- 3.48 Despite its modest scale, the Borough of Fareham contains a rich and varied pattern of landscapes that has evolved from historical, physical and human influences, including prehistoric colonisation, roman influences, farming practices of the middle ages and the growth of the wrought iron and brickworks industries. This has produced a landscape of mixed character ranging from areas of unspoilt countryside, transitional landscapes on the fringes of built-up areas and along roads, to the true urban landscapes, or townscapes, of the Borough's towns and settlements.
- 3.49 The NPPF states that planning policies should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes in a manner commensurate with their statutory status or identified quality in the development plan. As a response to this, this Local Plan has identified eight Areas of Special Landscape Quality which represent the most valued landscapes in the Borough, and in line with the NPPF, these should be protected and enhanced. These are shown in Figure 3.3. This is not an exhaustive list of valued landscapes and the policy also provides applicants with an indication of how landscape value could be argued for any part of the Borough.
- 3.50 Two recent planning appeal decisions demonstrated how valued landscapes could help to determine planning decisions. Both decisions were on sites located in the Lower Meon



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- 3.50 Two recent planning appeal decisions demonstrated how valued landscapes could help to determine planning decisions. Both decisions were on sites located in the Lower Meon



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Valley (Land west of Old Street, Stubbington APP/A1720/W/18/3200409 and Land east of Posbrook Lane, Titchfield APP/A1720/W/18/3199119) and the Inspectors recognised the high-quality landscape concluding that the Lower Meon is a valued landscape.

- 3.51 With this in mind, the Council proposed the designation of valued landscapes as part of the Issues and Options consultation in the summer of 2019. The responses to this part of the consultation suggested numerous parts of the Borough held a value for residents and other respondents. Responses suggested that green spaces, coastal areas, open spaces, historic areas and treed landscapes were all valued in the Borough.
- 3.52 Chalklands are an important component of the landscape in the north-east of the Borough occurring in a broad sweeping band focussed around the scarp face of Portsdown Hill and its flanks. Lowland mosaic landscapes account for the majority of the Borough's non-urban landscapes and tend to include a mix of farmland and woodland. A distinction can be made in landscape terms between the open landscapes of the coastal plain such as at Wicor and in the Chilling area and those that lie further inland to the north and west of the Borough, but nonetheless they all symbolise a degree of special landscape quality.
- 3.53 The Meon valley is the main river valley landscape within the Borough, although the character varies along the length of the valley floor and sides. Open floodplain farmland also exists in the Wallington river valley whilst the Hamble valley is characterised by both open and enclosed valley sides.
- 3.54 The 2017 Landscape Assessment, alongside the Technical Review of Areas of Special Landscape Quality and the Strategic Gaps (2020) recognise the intrinsic character and quality of these largely undeveloped areas and so these have been used to shape the revised development strategy and are proposed as Areas of Special Landscape Quality for the new Local Plan.
- 3.55 In addition, recognising that all parts of the Borough have some landscape quality and may be sensitive to landscape change, the following policy, which was consulted upon in early 2020, demonstrates how landscape should be dealt with in terms of development management.

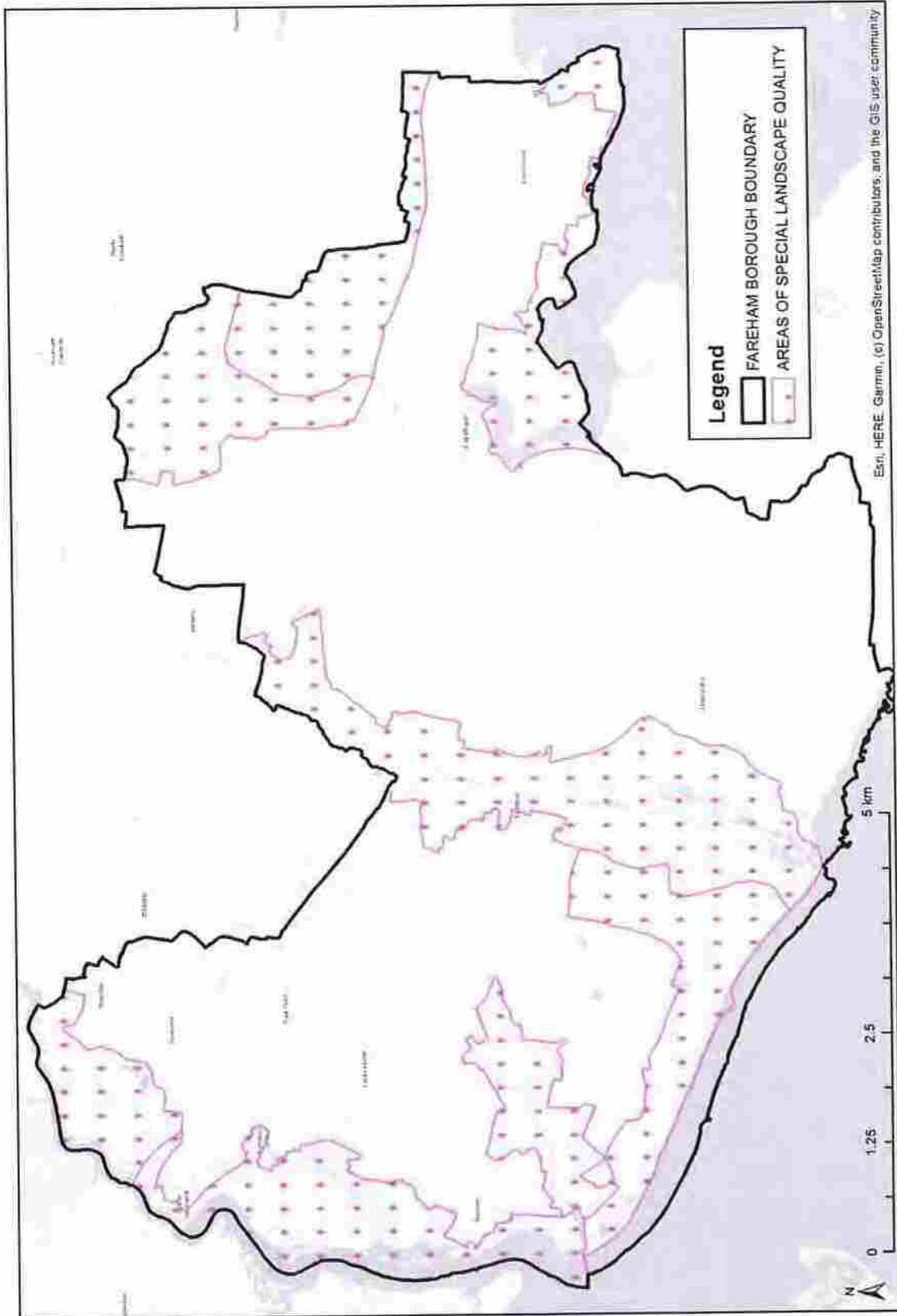


Figure 3.3 Areas of Special Landscape Quality in Fareham Borough.



Strategic Policy DS3: Landscape

Areas of Special Landscape Quality have been identified in the Borough and are shown on the Policies map. Development proposals shall only be permitted in these areas where the landscape will be protected and enhanced.

Development in the countryside shall recognise the intrinsic character and beauty of the countryside, paying particular regard to:

- a) Intrinsic landscape character, quality and important features;
- b) Visual setting, including to/from key views;
- c) The landscape as a setting for settlements, including important views to, across, within and out of settlements;
- d) The landscape's role as part of the existing Local Ecological network;
- e) The local character and setting of buildings and settlements, including their historic significance;
- f) Natural landscape features, such as trees, ancient woodland, hedgerows, water features and their function as ecological networks; and
- g) The character of the Borough's rivers and coastline, which should be safeguarded.

Major development proposals must include a comprehensive landscaping mitigation and enhancement scheme to ensure that the development is able to successfully integrate with the landscape and surroundings. The landscaping scheme shall be proportionate to the scale and nature of the development proposed and shall have regard to the enhancement opportunities specified in the Council's Landscape Sensitivity Assessment¹².

How this policy works

- 3.56 The criteria within the policy (points a-g) are derived from the Guidelines for Landscape and Visual Impact Assessment (GLVIA 3) published by the Landscape Institute.
- 3.57 Development proposals within Areas of Special Landscape Quality are expected to submit a proportionate Landscape Assessment, that demonstrates the proposal satisfies the specific development criteria contained within the Council's Landscape Sensitivity Assessment for the character area in which the development is located.
- 3.58 In referring to the Council's Landscape Sensitivity Assessment, this relates to Part 2 of the Landscape Assessment where each Landscape Character Areas (LCA) is further broken down into Local Landscape Character Areas (LLCA) and described in terms of sensitivity to development and ability to accommodate change. This sensitivity relates to four elements; the area as part of the Borough's landscape resources, the area as part of the visual environment enjoyed within the Borough (its visual amenity), the area as part of the setting and identity of urban areas within the Borough and fourthly, as part of the Green Infrastructure Network within the Borough. After providing a

¹² Part 2 of the Landscape Assessment, available here

https://www.fareham.gov.uk/PDF/planning/local_plan/DraftLocalPlanEvidenceBase/EV40-FarehamLandscapeAssessment_FINAL.pdf



DEVELOPMENT STRATEGY

sensitivity assessment of each LLCA in the four categories, development criteria and enhancement opportunities are provided. While any Landscape Sensitivity Assessment should consider the sensitivity assessment for each potential affected LLCA, the main focus of the assessment should be on addressing the considerations noted for proposed development and the extent to which the enhancement opportunities can be accommodated within the proposals.



DEVELOPMENT STRATEGY

accord with the Development Strategy and other evidence which supports the Local Plan. To support this approach, development outside of the urban areas will be managed to resist encroachment of development into non-urban unsustainable areas.

- 3.32 However, it is recognised that countryside locations can be suitable for some forms of development, particularly tourism sites such as for camping and caravanning, leisure facilities such as playing fields and water-based facilities, and small-scale housing development where the character of the surrounding area can be protected. Community facilities, including cemeteries, which stand on the edge of the urban area can provide important facilities for the community. In addition, the open character of these sites can provide important views from the built form into the open countryside beyond.
- 3.33 In addition, many existing employment, educational, community and leisure uses are already located in the countryside. A policy is needed to allow the continuation of these uses where they perform a function to the community and/or provide jobs. The focus will be on retaining, maintaining and improving existing facilities outside of the urban area, which are valued by the community so they can meet changing needs as necessary and where possible and appropriate, locating any new community facilities inside the urban area.
- 3.34 The NPPF also states that planning policies should recognise the wider benefits from the countryside including the economic and other benefits of the best and most versatile agricultural land. Further, footnote 58 in the NPPF outlines that 'where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality'.
- 3.35 It is important that when determining applications for housing and economic development, the benefits of protecting the Best and Most Versatile (BMV) agricultural land are considered against the need for development. The Borough would not be able to meet its identified housing and employment needs on previously developed (brownfield) land, and greenfield sites of lower agricultural quality, alone. For this reason, the allocation of residential development on BMV agricultural land in this Plan has been necessary to meet the identified housing and employment need. As such, it is vital the Council seeks to protect the remaining BMV agricultural land within the Borough.
- 3.36 In addition, the countryside provides settlement distinction (and in some cases areas have been protected more specifically through the identification of a Strategic Gap), and the open countryside often contains valued landscapes that can be particularly sensitive to change or development. These two policy areas are dealt with separately within this chapter.

Strategic Policy DS1: Development in the Countryside

Proposals for development in the countryside, which is defined as land outside the Urban Area boundary as shown on the Policies map, will be supported where the proposal:

- a) Is for development associated with an existing lawful dwelling, or
- b) Is proposed on previously developed land and appropriate for the proposed use, or
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- d) Is for a new or replacement building, conversion and/or extension within



- an existing educational facility (as identified on the Policies map) and would not result in the loss of playing fields and/or sports pitches unless it can be demonstrated that these facilities are no longer required or they can be adequately replaced elsewhere on site or,
- e) Is for housing development either allocated or compliant with one of the following policies;
HP1, HP2, HP4, HP6 or HP11, or
 - f) Is for employment development compliant with one of the following policies: E1 or E5, or
 - g) Is for a new small-scale employment development to convert or extend an existing building, or replace a redundant or derelict structure, or
 - h) Provides infrastructure that meets an overriding public need. or
 - i) Can demonstrate a requirement for a location outside of the urban area.

In addition, proposals will need to demonstrate that they;

- j) Protect and enhance landscapes, sites of biodiversity or geological value and soils, and
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How this policy works

- 3.37 Policy DS1 establishes the principles of the types of development that may be deemed acceptable within the countryside (i.e. outside of urban areas), so that only the developments that recognise the intrinsic character and beauty of the countryside will be supported. These proposals may include developments which support small-scale residential development, sites solely for affordable housing, employment uses or countryside recreation, leisure and tourism uses.
- 3.38 Applying the brownfield first approach to development enshrined in national policy, the development of previously developed land and under-utilised buildings will be supported particularly if this would help to meet housing or employment needs. Where proposals fall outside of criterion a-h in the policy, evidence of the need for the proposal to be located outside of the urban area will be required. This should include justification of the need for a countryside location for the proposed use of the land, and an assessment of alternative options that have been considered.
- 3.39 Policy DS1 signposts to a number of housing policies that are featured in the Housing Policies chapter (Chapter 5) where residential development may be deemed acceptable. Applicants must refer to those policies in addition to Policy DS1 in order to understand how any application will be judged.
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- 3.41 The policy aims to support existing businesses and new employment proposals outside of urban areas. To allow for flexibility in the local economy, proposals for additional employment development that contributes to the local economy, such as start-up business accommodation or live-work units, will be supported. Employment uses will



often only require minor alterations to the exterior structure of a building, thereby maintaining its traditional appearance in the countryside.

- 3.42 All proposals will be judged in terms of their location, scale and design. They will be tested against all other relevant policies in the plan, including, but not limited to, policy DS2 on Strategic Gaps, DS3 on Landscape and policy D1 on Design. Any such new development will need to be respectful of the landscape and character of the area, the amenity of any neighbouring development and must not have an adverse effect on traffic or noise. All proposed development shall consider its relationship to and its impact on the local road network. Where it is likely that the proposed development will attract visitors, the site will need to be accompanied by a Travel Plan in accordance with Policy TIN1 of this Plan.

Settlement identity

Why we need this policy

- 3.43 The need to respect settlement boundaries and protect the identity of our key settlements has been a strong influence on planning decisions to date. The primary purpose of identifying Strategic Gaps is to prevent the coalescence of separate settlements and help maintain distinct community identities. Strategic Gaps do not necessarily have intrinsic landscape value but are important in maintaining the settlement pattern, defining settlement character and providing green infrastructure opportunities.
- 3.44 Two Strategic Gaps have previously been established in the Borough; one in the Meon valley and the other between the settlements of Fareham and Stubbington. The Council has reviewed the Strategic Gaps alongside the preparation of this Plan, and the evidence is available to view to support the Plan¹¹. Strategic gaps have been retained but the policy and the spatial designation has been tightened to focus on preventing settlement coalescence. As mentioned in para 3.10, this work has been undertaken in response to the NPPF and recent planning appeals where the function, and strength of, the Strategic Gaps were questioned.
- 3.45 The review of the Strategic Gap designations within the Borough has considered it important to retain the Strategic Gaps in the Borough. The Meon Gap plays a vital role in helping to maintaining the separation of Titchfield from settlements to the west and east of the valley, preventing sprawl from both Fareham and Titchfield Common/Titchfield Park and protecting the countryside setting of Stubbington. The Meon Gap is also identified to be of strategic significance to the South Hampshire sub-region by the PFSH Spatial Position Statement (2016) as it demarks the boundary of the Portsmouth and Southampton Housing Market Areas.
- 3.46 Retaining the open farmland gap between Fareham and Stubbington is critical in preventing the physical coalescence of these two settlements together with maintaining the sense of separation. Three boundary changes are proposed at this time, as the evidence has shown that the boundary of this strategic gap could be redrawn whilst retaining its important function of preventing settlement coalescence;
- Slight increase in the strategic gap south of HMS Collingwood
 - Reduction in strategic gap extent from land to the south of Oakcroft lane

¹¹ Fareham Landscape Assessment – Part Three (2017) and Technical Review of Areas of Special Landscape Quality and the Strategic Gaps (2020)



- Removal of the strategic gap from the developable area of allocation policy HA55 Land South of Longfield Avenue, as detailed on the masterplan.

Further to the east, retaining the gap will help maintain the separation of Stubbington and Lee-on-the-Solent from Fareham and Bridgemary along with maintaining the separate identity of Peel Common.

Strategic Policy DS2: Development in Strategic Gaps

In order to prevent the coalescence of urban areas and to maintain the separate identity of settlements, Strategic Gaps are identified as shown on the Policies map between the following areas:

- 1) Fareham / Stubbington and the Western Wards (Meon Gap)
- 2) Fareham / Bridgemary and Stubbington / Lee-on-the-Solent (Fareham-Stubbington Strategic Gap)

Development proposals will not be permitted where they significantly affect the integrity of the gap and the physical and visual separation of settlements or the distinctive nature of settlement characters.

How this policy works

- 3.47 The principle of major development within the Strategic Gaps is not established. Any development proposals will need to demonstrate how they could be developed in a manner which meets the tests within the policy. Information on settlement identity, location and scale of development as well as how any edge treatments could retain the physical and visual separation of settlements will be required.

Landscape

Why this policy is needed

- 3.48 Despite its modest scale, the Borough of Fareham contains a rich and varied pattern of landscapes that has evolved from historical, physical and human influences, including prehistoric colonisation, roman influences, farming practices of the middle ages and the growth of the wrought iron and brickworks industries. This has produced a landscape of mixed character ranging from areas of unspoilt countryside, transitional landscapes on the fringes of built-up areas and along roads, to the true urban landscapes, or townscapes, of the Borough's towns and settlements.
- 3.49 The NPPF states that planning policies should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes in a manner commensurate with their statutory status or identified quality in the development plan. As a response to this, this Local Plan has identified eight Areas of Special Landscape Quality which represent the most valued landscapes in the Borough, and in line with the NPPF, these should be protected and enhanced. These are shown in Figure 3.3. This is not an exhaustive list of valued landscapes and the policy also provides applicants with an indication of how landscape value could be argued for any part of the Borough.
- 3.50 Two recent planning appeal decisions demonstrated how valued landscapes could help to determine planning decisions. Both decisions were on sites located in the Lower Meon



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DEVELOPMENT STRATEGY



Valley (Land west of Old Street, Stubbington APP/A1720/W/18/3200409 and Land east of Posbrook Lane, Titchfield APP/A1720/W/18/3199119) and the Inspectors recognised the high-quality landscape concluding that the Lower Meon is a valued landscape.

- 3.51 With this in mind, the Council proposed the designation of valued landscapes as part of the Issues and Options consultation in the summer of 2019. The responses to this part of the consultation suggested numerous parts of the Borough held a value for residents and other respondents. Responses suggested that green spaces, coastal areas, open spaces, historic areas and treed landscapes were all valued in the Borough.
- 3.52 Chalklands are an important component of the landscape in the north-east of the Borough occurring in a broad sweeping band focussed around the scarp face of Portsdown Hill and its flanks. Lowland mosaic landscapes account for the majority of the Borough's non-urban landscapes and tend to include a mix of farmland and woodland. A distinction can be made in landscape terms between the open landscapes of the coastal plain such as at Wicor and in the Chilling area and those that lie further inland to the north and west of the Borough, but nonetheless they all symbolise a degree of special landscape quality.
- 3.53 The Meon valley is the main river valley landscape within the Borough, although the character varies along the length of the valley floor and sides. Open floodplain farmland also exists in the Wallington river valley whilst the Hamble valley is characterised by both open and enclosed valley sides.
- 3.54 The 2017 Landscape Assessment, alongside the Technical Review of Areas of Special Landscape Quality and the Strategic Gaps (2020) recognise the intrinsic character and quality of these largely undeveloped areas and so these have been used to shape the revised development strategy and are proposed as Areas of Special Landscape Quality for the new Local Plan.
- 3.55 In addition, recognising that all parts of the Borough have some landscape quality and may be sensitive to landscape change, the following policy, which was consulted upon in early 2020, demonstrates how landscape should be dealt with in terms of development management.

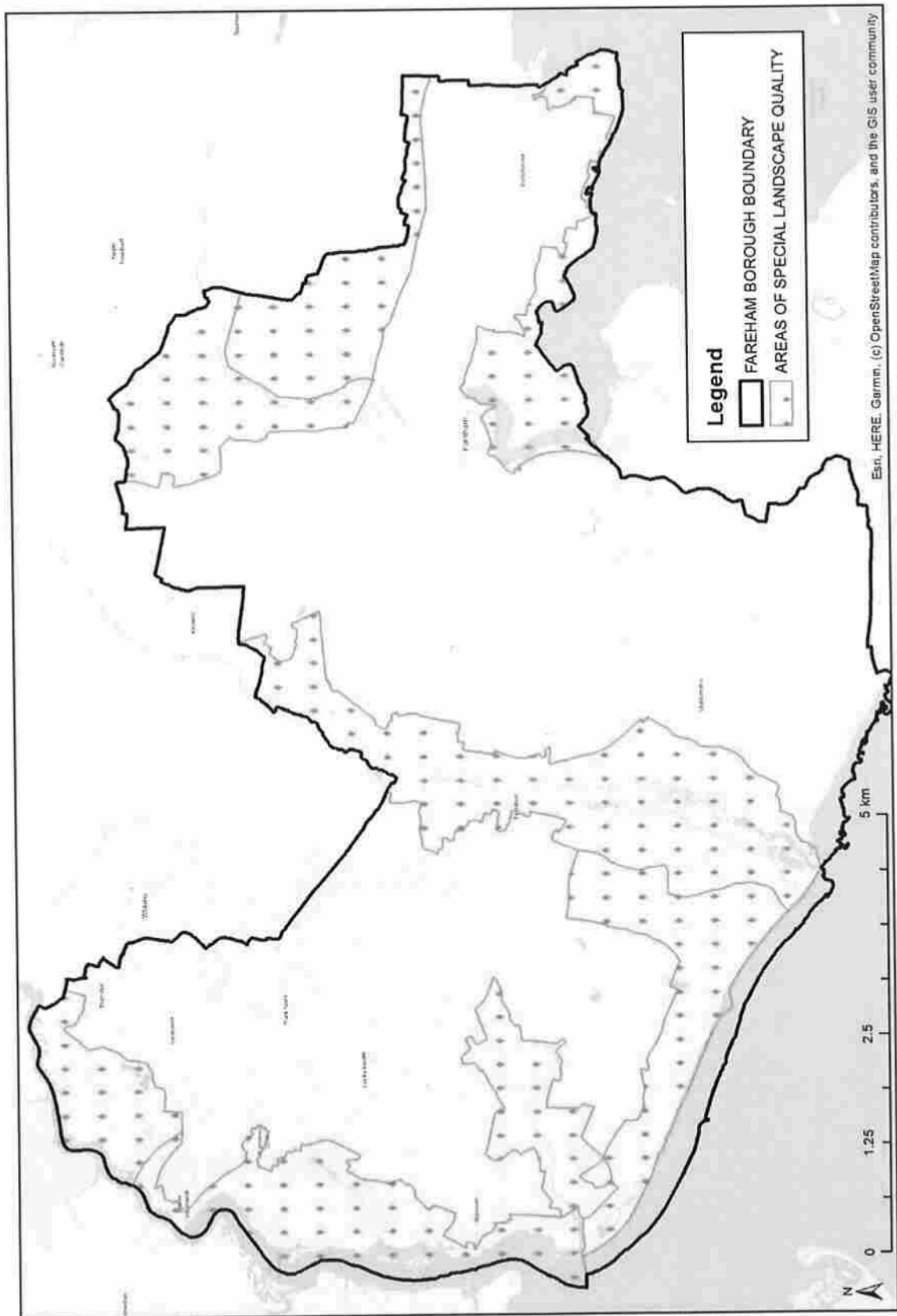


Figure 3.3 Areas of Special Landscape Quality in Fareham Borough.



Strategic Policy DS3: Landscape

Areas of Special Landscape Quality have been identified in the Borough and are shown on the Policies map. Development proposals shall only be permitted in these areas where the landscape will be protected and enhanced.

Development in the countryside shall recognise the intrinsic character and beauty of the countryside, paying particular regard to:

- a) Intrinsic landscape character, quality and important features;
- b) Visual setting, including to/from key views;
- c) The landscape as a setting for settlements, including important views to, across, within and out of settlements;
- d) The landscape's role as part of the existing Local Ecological network;
- e) The local character and setting of buildings and settlements, including their historic significance;
- f) Natural landscape features, such as trees, ancient woodland, hedgerows, water features and their function as ecological networks; and
- g) The character of the Borough's rivers and coastline, which should be safeguarded.

Major development proposals must include a comprehensive landscaping mitigation and enhancement scheme to ensure that the development is able to successfully integrate with the landscape and surroundings. The landscaping scheme shall be proportionate to the scale and nature of the development proposed and shall have regard to the enhancement opportunities specified in the Council's Landscape Sensitivity Assessment¹².

How this policy works

- 3.56 The criteria within the policy (points a-g) are derived from the Guidelines for Landscape and Visual Impact Assessment (GLVIA 3) published by the Landscape Institute.
- 3.57 Development proposals within Areas of Special Landscape Quality are expected to submit a proportionate Landscape Assessment, that demonstrates the proposal satisfies the specific development criteria contained within the Council's Landscape Sensitivity Assessment for the character area in which the development is located.
- 3.58 In referring to the Council's Landscape Sensitivity Assessment, this relates to Part 2 of the Landscape Assessment where each Landscape Character Areas (LCA) is further broken down into Local Landscape Character Areas (LLCA) and described in terms of sensitivity to development and ability to accommodate change. This sensitivity relates to four elements; the area as part of the Borough's landscape resources, the area as part of the visual environment enjoyed within the Borough (its visual amenity), the area as part of the setting and identity of urban areas within the Borough and fourthly, as part of the Green Infrastructure Network within the Borough. After providing a

¹² Part 2 of the Landscape Assessment, available here
https://www.fareham.gov.uk/PDF/planning/local_plan/DraftLocalPlanEvidenceBase/EV40-FarehamLandscapeAssessment_FINAL.pdf



DEVELOPMENT STRATEGY

sensitivity assessment of each LLCA in the four categories, development criteria and enhancement opportunities are provided. While any Landscape Sensitivity Assessment should consider the sensitivity assessment for each potential affected LLCA, the main focus of the assessment should be on addressing the considerations noted for proposed development and the extent to which the enhancement opportunities can be accommodated within the proposals.



Commercial Leisure Study (2019) recommends that an impact assessment is required for any development (over 500 sq.m.) to demonstrate that the proposal will not have a negative impact on any relevant centre.

Policy R2: Out-of-Town Proposals for Town Centre Uses

Proposals for main town centres uses outside of the Borough's centres or parades⁴⁶ will be permitted where they can demonstrate there is no significant harm, to the centres and parades where:

- a) the proposal meets a demonstrable need for the use in the proposed location, a full sequential test has been carried out demonstrating that there are no sites in the centres or parades that are available, suitable or viable; and
- b) appropriate levels of parking are provided; and
- c) the site is located inside the defined urban area and is accessible, particularly by public transport; and
- d) the scale and design of the buildings are appropriate to their surroundings in line with Policy D1; and
- e) the proposal would not have any unacceptable environment, amenity or traffic implications in line with Policy D2.

Where a proposal for main town centre use over 500 sq.m (gross), or an extension which increases overall floorspace beyond 500 sq.m (gross) is proposed outside of the defined retail centres, an impact assessment shall be carried out in accordance with the NPPF in order to demonstrate that there is no significant adverse effect on the vitality or viability of existing or proposed retail centres and parades.

How this policy works

- 7.21 A sequential test as set out in the National Planning Practice Guidance⁴⁷ will be required for main town centre use proposals which are located outside of the Borough's centres or parades.
- 7.22 Conditions may be attached to permissions for new out-of-town shopping units to restrict the range of goods sold and to control the size of units (including mezzanines). Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on the viability or vitality of the defined centre(s), then proposals will not be supported.
- 7.23 The policy sets a local threshold for the preparation of impact assessments. This threshold is considered necessary as it will enable the Council to monitor and maintain the overall vitality and viability of the Borough's centres which are generally more vulnerable to proposals for edge and/or out-of-centre stores. Applications will be assessed on a case by case basis depending on the scale, location and format of the new retail proposals. The Council will be pragmatic as to the level of evidence required in support of such proposals as this should be proportionate to the nature of the proposal under consideration.

⁴⁶ The centres and parades as identified in the Retail Hierarchy (Policy R1)

⁴⁷ Paragraphs 010 to 018 of NPPG: Ensuring the vitality of town centres



Community and Leisure Facilities

Why this is policy needed

- 7.28 The Local Plan has a key role in ensuring community and leisure facilities are maintained and improved, and also that there are opportunities for new facilities where there is a need in the Borough. The NPPF requires local planning authorities to provide social, recreational and cultural facilities and services that communities need and should do so through planning positively for the provision and use of shared spaces, community facilities and other local services to enhance the sustainability of communities and residential environments.
- 7.29 Community facilities make an essential contribution to the health, well-being, and education of residents, as recognised in paragraph 92 of the NPPF. Access to community and leisure facilities can provide substantial physical health benefits and can lead to improved mental health through increased social interaction. Any growth in jobs and homes should be supported by adequate infrastructure provision, which includes community and leisure facilities. It is important that these facilities and services are locally available and accessible to all.
- 7.30 The NPPF requires local councils to guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs, and ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community.

Strategic Policy R4: Community and Leisure Facilities

Development proposals for new or extended community and leisure facilities will be supported where they meet the following criteria:

- a) It is demonstrated that there is a need for the facility that cannot be met by existing facilities elsewhere; and
- b) Appropriate consideration has been given to the shared use, re-use and/or redevelopment of existing buildings in the local community; and
- c) The proposals represent the provision of facilities that are of equal or better quality and function to existing facilities being replaced; and
- d) The site is accessible and inclusive to the local communities it serves.

Where proposals for community and leisure facilities are considered to be main town centre uses⁴⁹, and are proposed outside of the identified centres, Policy R2 shall apply.

Development proposals that would result in the loss of community or publicly owned or managed facilities will be permitted where:

- i. The facility is no longer needed and no alternative community use of the facility is practical or viable; or
- ii. Any proposed replacement or improved facilities will be appropriate to meet the communities' needs or better in terms of quality, function and accessibility.

⁴⁹ As defined in the NPPF



How this policy works

- 7.31 A key strategic priority of the Plan is to create places that encourage healthy lifestyles through the provision of leisure and cultural facilities, recreation, and open space and the opportunity to walk and cycle to destinations. Therefore, in assessing the location of new or replacement facilities, safe and easy accessibility by foot, cycle and public transport will be important considerations.
- 7.32 The definition of community and leisure facilities as included in paragraph 93 of the NPPF is wide ranging and includes:
- Local shops
 - Meeting places
 - Sports venues
 - Open space
 - Cultural buildings
 - Public houses
 - Places of worship
- 7.33 The Council completed a Community Facilities Needs Assessment⁵⁰ for each of the Community Action Team (CAT) areas in the Borough. The need assessment resulted in the provision of several new and improved community facilities⁵¹ for the Borough. This assessment has informed the development of the Infrastructure Delivery Plan which supports this Plan. Community Facilities identified by the Council and other service providers have been included within the IDP and where applicable (in the case of large sites) have been included within site allocation policies.
- 7.34 Community and leisure facilities may be appropriate in residential areas where they do not have a demonstrably harmful impact on the amenities of nearby residential properties and other uses in terms of noise and traffic generation, or on the character of the surrounding area. Where a new or improved community or leisure facility would cause unacceptable impact, for example with regard to neighbouring amenity, which cannot be resolved by reasonable measures, the use will not be permitted.
- 7.35 The Council will continue to work with partners and developers to explore opportunities to improve or expand upon existing community facilities particularly in instances where additional provision is required as identified in the Infrastructure Delivery Plan (IDP), but where it may not be financially viable to provide a new facility. This could take the form of small changes to allow for multiple uses of an existing building or more significant additions or changes.
- 7.36 Where edge of centre and out of town centre community and leisure facilities uses are proposed that fall within the definition of a 'town centre' use, a sequential test will be required to assess alternatives in accordance with the NPPF.
- 7.37 The availability of community run services and facilities are important for the vitality of social wellbeing of communities. The loss of such facilities can have severe consequences, particularly when there is no alternative provision nearby. However, it is recognised that there may be instances where a community or leisure facility is no longer fit for purpose. In such cases, applicants will be expected to demonstrate that there is no

⁵⁰ The CFNA's were carried out between 2009 and 2014

⁵¹ Including a new community centre in Portchester



longer a need for the facility in its current location and that alternative use is either unpractical or unviable.



Strategic Policy TIN1: Sustainable Transport

New development should reduce the need to travel by motorised vehicle through the promotion of sustainable and active travel modes, offering a genuine choice of mode of travel.

Development will be permitted where it:

- a) Contributes to the delivery of identified cycle, pedestrian and other non-road user routes and connects with existing and future public transport networks (including Rapid Transit), giving priority to non-motorised user movement; and
- b) Facilitates access to public transport services, through the provision of connections to the existing infrastructure, or provision of new infrastructure through physical works or funding contributions; and
- c) Provides an internal layout which is compatible for all users, including those with disabilities and reduced mobility, with acceptable parking and servicing provision, ensuring access to the development and highway network is safe, attractive in character, functional and accessible.

How this policy works

- 10.5 Applications should be supported by a Travel Plan¹¹⁸ that will identify measures to facilitate and encourage the use of sustainable and active travel modes, thereby reducing the need to travel by motor vehicle. The Highway Authority Local Cycling and Walking Infrastructure Plan (LCWIP) identifies a network of key walking and cycling routes across the Borough and recommends actions along those routes where improvements are needed. Applications will be required to contribute to the delivery of the LCWIP to raise the profiles of cycling and walking as viable alternatives to driving, contributing to the objective of reducing the level of car usage in Fareham.
- 10.6 Sustainable transport and active travel modes are an essential consideration when developing a site and determine how the site will function in terms of travel patterns. To encourage the uptake and continued use of sustainable modes of transport, the location, design and layout of development will need to show significant prominence and priority being given to pedestrian and cycle movements and then to sustainable transport initiatives, maximising the catchment area and integration with bus or other public transport networks. New cycle routes within and off-site should comply with the latest Department for Transport (DfT) cycle design guidance LTN 1/20 and should include improvements to existing cycle routes where the existing provision is substandard.
- 10.7 Developments should be designed with accessibility, permeability and integration with existing networks in mind, considering all users, ensuring provision of, or access to, local services and facilities. Where applicable, LCWIP routes are identified within site allocation policies to enable measures to ensure new developments generate as little

¹¹⁸ <https://www.hants.gov.uk/transport/developers/travelplans>



additional vehicular movement on the existing road networks as possible are considered from the outset.

- 10.8 For a site to be considered sustainable outside of existing urban area boundaries in respect of accessibility, it will need to be demonstrated that the intended use and occupiers have a reasonable prospect of a choice of modes of transport to key destinations. Where it is proposed to improve the transport credentials of a site by means of contributions to the transport infrastructure serving it, it would need to be demonstrated that the suggested measures were feasible, viable and sustainable.
- 10.9 It is essential that new developments provide safe and suitable internal layouts and access to the highway network and provide an internal layout that minimises the likelihood of conflict between road users, whether vehicular, pedestrian or cyclist. Where new accesses or additional use of existing unsatisfactory access(es) or minor roads are required, the Highway Authority will need to be satisfied that it is safe and that the appropriate visibility for all highway users can be provided.
- 10.10 Where appropriate, relevant and in accordance with other policies in this Plan, the Council will seek, by means of legal agreements, implementation through section 278 agreements, or financial contributions through section 106 towards improvements to local transport networks and cycling and walking routes. Contributions may take the form of improvements to infrastructure such as road junctions, cycle and walking routes, enhancement to existing bridleways and footpaths, or the provision of additional or improved public transport services such as Bus Rapid Transit or Rail.
- 10.11 All development should afford appropriate parking provision, and cycle storage facilities in terms of amount, design and layout, in accordance with the adopted Fareham Residential Car and Cycle Parking Standards Supplementary Planning Document (SPD) and Non-Residential Parking Standards SPD.

Highway Safety and Road Network

Why this policy is needed

- 10.12 Fareham Borough Council (Local Planning Authority) and Hampshire County Council (Highway Authority) jointly have a responsibility to consider the impact of development proposed through the Local Plan on the highway network. As Highway Authority, the County Council is responsible for the upkeep, improvements and expansion of the highway network within Hampshire borders. The primary focus of the highway authority within Fareham is to:
- Maintain the function of the M27 and A27 for strategic connectivity;
 - Maintain and where appropriate improve the safety and capacity of the networks linking local communities to the A27 and beyond;
 - Further develop the concept and provision of public transport including Bus Rapid Transit within the Borough and with links to adjoining areas; and,
 - Promote access to local services and facilities by sustainable transport modes (public transport, walking and cycling).
- 10.13 The Local Plan has a responsibility to consider the impact of development on the highway network. Paragraphs 111 and 112 of the NPPF state that new development should not undermine highway safety or have a severe adverse effect on the highway network. In



line with the Highway Authority advice, proposals for new development should consider alternative mitigation options which follow a sequential approach to assess their impact on the local road network. They should consider the role they can play in reducing car use and transport emissions starting with measures to avoid the need to travel, promote sustainable travel measures, public transport and finally where the above measures cannot avert the need, implement localised junction improvements to include highway capacity for motor vehicles.

- 10.14 The Local Plan is supported by a Strategic Transport Assessment (STA). The TA models the transport impacts of the development proposed through the Local Plan, test measures to mitigate severe negative impacts, and consider whether the level of proposed development is appropriate. The TA is based on a sub-regional model assessing the impact of the Local Plan development in combination. It is imperative that all proposals are supported by suitable evidence to show that any significant impacts from the development on the transport network, or on highway safety, can be cost effectively mitigated to an acceptable degree.

Policy TIN2: Highway Safety and Road Network

Development will be permitted where:

- a) There is no unacceptable impact on highway safety, and the residual cumulative impact on the road networks is not severe; and
- b) The impacts on the local and strategic highway network arising from the development itself or the cumulative effects of development on the network are mitigated through a sequential approach consisting of measures that would avoid/reduce the need to travel, active travel, public transport, and provision of improvements and enhancements to the local network or contributions towards necessary or relevant off-site transport improvement schemes.

How this policy works

- 10.15 This Local Plan is accompanied by a Strategic Transport Assessment which has identified locations on the road network where mitigation measures are needed to address the cumulative impact on the highway network from the scale and location of development proposed in the Local Plan up to 2037. These junctions are listed in table 7 of the Infrastructure Delivery Plan.
- 10.16 Where applications are shown to impact on one or more of these junctions identified in the Strategic Transport Assessment, contributions will be sought to deliver mitigation schemes in line with Policy TIN2.
- 10.17 The Council is mindful that the Strategic Transport Assessment document represents a strategic level assessment and that it is only when development schemes come forward as a planning application that the detailed transport assessment work can be prepared to determine the specific impact of development. As a result, some of the transport infrastructure schemes may need amending or removing as more detailed assessment work is undertaken.



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- 10.18 Developments which generate a significant amount of vehicular movement, or where there are potential cumulative negative effects on the highway network as a result of proposed developments in close vicinity of each other, will require an individual Transport Assessment to assess the likely impacts of the proposal¹¹⁹. The Highways Authority will require a Transport Assessment for sites larger than 50 residential units or 2,500 sqm of commercial floorspace, or where there are potential cumulative effects with sites lower than these thresholds.
- 10.19 The Transport Assessment should reflect the scale of the development being proposed, the impact on the strategic and local highway network and identify measures which can be put in place to reduce its impact to an acceptable degree. Local requirements should also be taken into consideration; information on these requirements can be viewed on the Fareham Borough Council website. The Council will seek mitigation by means of on-site delivery or financial contributions through legal agreements (section 278 agreements or section 106 agreements) towards improvements to local transport network improvements.

Safeguarded Routes

Why this policy is needed

- 10.20 Fareham Borough Council is working with neighbouring authorities (Portsmouth City Council, Gosport Borough Council, Havant Borough Council and Hampshire County Council), to address the performance and sustainability constraints on the existing transport network and build upon the success of the existing Rapid Transit services. This is to support housing and employment growth, not only in Fareham but the South-East Hampshire region.
- 10.21 With a focus on serving both key current and future anticipated commuting markets, and in response to the need to enhance the transport network and public transport proposition in the sub-region, proposals for further development of the Rapid Transit offer are being developed. The aim is to deliver improved cross-mode and cross-authority integration with the introduction of fast and reliable Rapid Transit services that are recognised to genuinely offer an enhanced service and experience from conventional bus services.
- 10.22 To deliver the vision for Rapid Transit across the Borough and sub-region, the Council and Highway Authority will need to protect and enhance the routes and links to Rapid Transit services.

Policy TIN3: Safeguarded Routes

Development will not be permitted:

Where proposals may compromise the ability of the Highway Authority to deliver public transport highway interventions at the safeguarded locations as shown on the Policy map at: Delme Roundabout, the A27 from Delme Roundabout to Portsmouth boundary, Quay Street Roundabout and Fareham Bus Station.

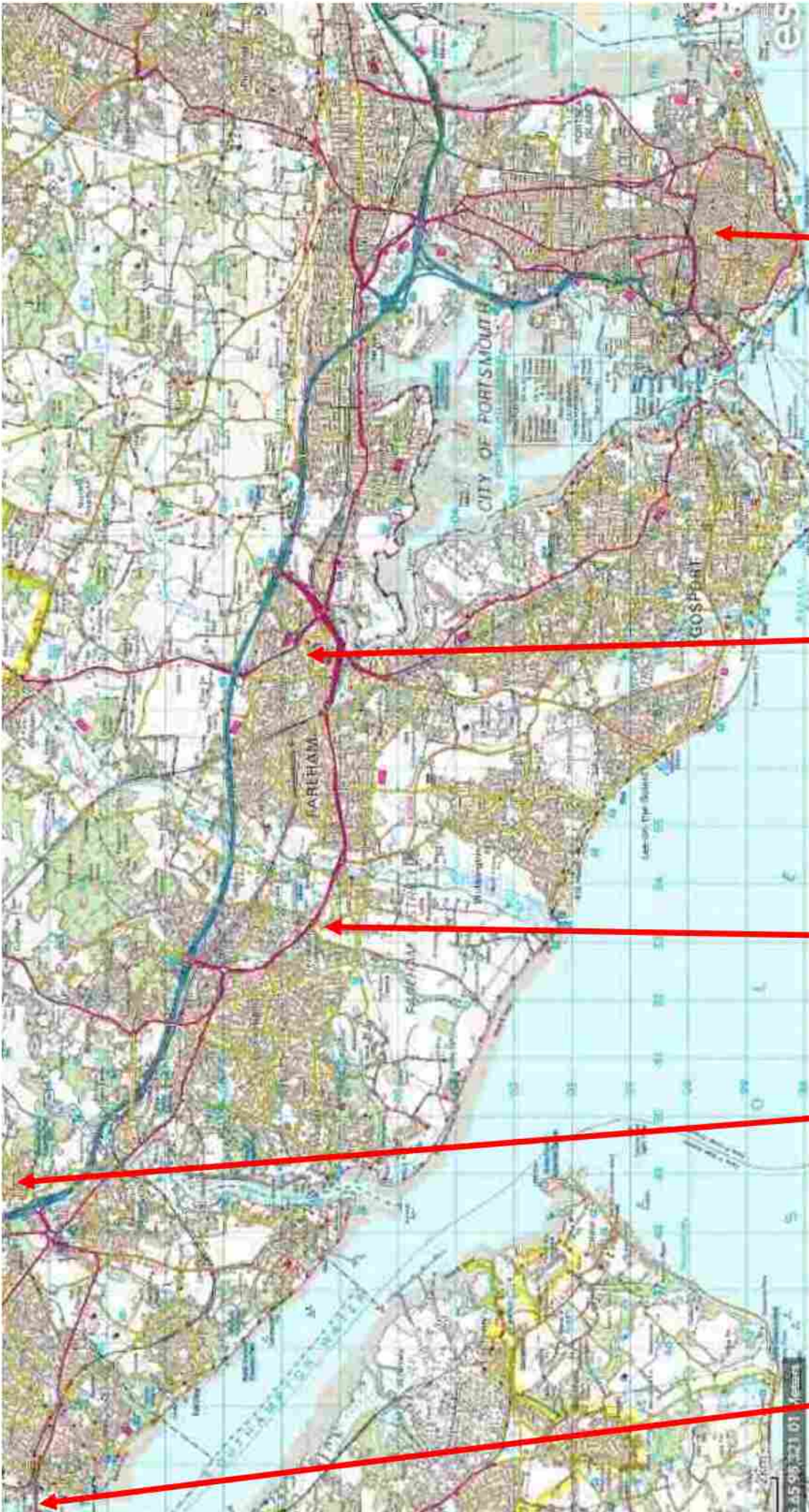
¹¹⁹ <https://www.hants.gov.uk/transport/developers/transportassessments>

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Strategic Policy H1: Housing Provision

The Council will make provision for at least 9,560 net new homes across the Borough during the Plan period of 2021-2037, phased as follows,

- At least 420 dwellings (averaging 210 dwellings per annum) between 2021/22 and 2022/23,
- At least 9,140 dwellings (averaging 653 dwellings per annum) between 2023/24 and 2036/37.

Housing will be provided through;

- 141 dwellings completed in 2021/22
- An estimated 5,291 homes on sites that already have planning permission, including at Welborne Garden Village;
- An estimated 321 homes on sites with resolutions to grant planning permission as of 01 April 2022;
- Approximately 2,711 homes on sites allocated in policies HA1, HA3, HA4, HA7, HA9, HA10, HA12, HA13, HA15, HA17, HA19, HA22-HA24, HA26-HA56;
- Approximately 684 homes on specified brownfield sites and/or regeneration opportunities in Fareham Town Centre, as identified in policies FTC5-9 and BL1;
- An estimated 1,120 homes delivered through unexpected (windfall) development.

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- 7.21 Conditions may be attached to permissions for new out-of-town shopping units to restrict the range of goods sold and to control the size of units (including mezzanines). Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on the viability or vitality of the defined centre(s), then proposals will not be supported.
- 7.22 The policy sets a local threshold for the preparation of impact assessments. This threshold is considered necessary as it will enable the Council to monitor and maintain the overall vitality and viability of the Borough's centres which are generally more vulnerable to proposals for edge and/or out-of-centre stores. Applications will be assessed on a case by case basis depending on the scale, location and format of the new retail proposals. The Council will be pragmatic as to the level of evidence required in support of such proposals as this should be proportionate to the nature of the proposal under consideration.

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OFFICER REPORT FOR COMMITTEE

Date: 28/03/2012

P/12/0050/CU

TITCHFIELD FESTIVAL
THEATRE

TITCHFIELD

AGENT: TITCHFIELD FESTIVAL
THEATRE

RETROSPECTIVE APPLICATION FOR CONTINUED USE OF UNIT A FOR D2 AND
THEATRE PURPOSES AND UNIT B FOR STORAGE USE

73 ST MARGARETS LANE FAREHAM PO14 4BG

Report By

Jim Bennett ext. 2412

Introduction

Titchfield Festival Theatre was set up in 2001 to perform plays in Titchfield Abbey, a facility lost to the company in 2006, following which the adjoining Great Barn was used. The company then moved to The Thatched Barn in Warsash, the lease on which was withdrawn in August 2010. The retrospective nature of the application results from withdrawal of the lease on The Thatched Barn, as a full season of plays were planned and in rehearsal, with 73 St Margarets Lane an available alternative.

Site Description

The proposal relates to a former warehouse/industrial building, located within an area defined as countryside and the Meon Strategic Gap by the adopted Fareham Borough Core Strategy. The site is bound by a building to the east, by fields to the north and south and by St Margarets Lane to the west. The area is mixed use in character with commercial uses including a garden nursery, furniture workshop and builders yard in the locality and residential development to the south and to the west, across St Margarets Lane.

Description of Proposal

The application is made retrospectively for continued use of a former industrial/warehouse building (Unit A) for D2 (assembly and leisure) and theatre purposes and Unit B for continued storage use. Unit A has been used for approximately 17 months for the purpose applied for. Just over half of the unit would be used as a theatre, comprising 648 sq.m of stage, stalls (210 seats) and other facilities at ground floor level and 159 sq.m of ancillary accommodation at first floor level. The remaining 649 sq.m (Unit B) would be retained as B1/B8 (office/light industrial/storage). Access to 30 no. off street parking spaces is provided directly off St Margarets Lane. Two overflow parking areas are indicated at the Holiday Inn and Kites Croft Business Park.

The application is made on the basis that the hours of operation of operation of the D2/theatre use (Unit A) would be between 09:00 and 23:00 Monday to Saturday and between 10:00 and 22:00 on Sundays and Bank Holidays on a total of 140 days/nights per annum.

Policies

The following policies apply to this application:

Approved Fareham Borough Core Strategy

CS1 - Employment Provision

CS3 - Vitality and Viability of Centres

CS5 - Transport Strategy and Infrastructure

CS6 - The Development Strategy

CS17 - High Quality Design

CS20 - Infrastructure and Development Contributions

Relevant Planning History

The following planning history is relevant:

P/10/0879/CU - Sub-division of units for B1/B8 use, community theatre use and provision of overflow car parking on land opposite - Withdrawn November 2010 due to deficiencies in the information submitted with the application.

P/98/0184/CU - Change of use to mixed use of site for office, warehouse and light industrial - Permission April 1998, subject to condition that it should not be used or deliveries received before 0800 hours and after 1800 hours Monday to Friday and 09:00 hours to 13:00 hours on a Saturday and not at all on Sundays and Bank Holidays.

Representations

Neighbouring residents have been notified by letter and a site notice posted for the requisite period. One letter and one petition (from five local addresses) have been received, objecting to the proposal on the following grounds:

- The retrospective nature of the application is criticised
- Impact upon the free flow of traffic
- Poor pedestrian links to the site
- Detriment to highway safety
- Parking provision is insufficient and poorly laid out
- It is claimed that a third party is using the site as a delivery address
- It is suggested that someone is living at the site in a caravan
- Noise and disturbance caused by traffic, patrons leaving the site and loud music from events within the building
- Light pollution
- Unauthorised display of signs and advertisements
- The number of seats applied for (210) exceeds the number approved by Licensing (170)
- The applicant is not complying with the terms of their Premises License
- If minded to approve, contributions should be requested to improve highway safety
- If minded to approve, hours of operation need to be imposed

One hundred and seventy four letters have been received, supporting the proposal for the following reasons:

- Titchfield Festival Theatre is an asset and a benefit to Fareham
- The proposal constitutes an appropriate re-use of a previously vacant building
- The facility has educational and training benefits
- The site is accessible and reduces the requirement to travel further afield for patrons
- The parking and access situation is well managed and marshalled

- The Theatre needs a long term home to relieve the recent cycle of relocations

Consultations

Director of Planning and Environment (Highways): The proposal would not result in any capacity concerns nor any highway safety issues regarding continued use of the existing vehicular accesses. The proposal complies with the adopted parking standards, as the site accommodates 30 spaces, which is within the maximum standard and two overflow parking areas are indicated, both of which are within a reasonable walking distance. However, both overflow parking areas make use of third party land and the consequences of the use continuing without these overflows and potential impact for on-street parking along St Margarets Lane must be assessed. Typical average attendances do not generate significant parking demands and those that are generated can be accommodated within the existing site. There are only a small number of annual occasions where parking demands cannot be accommodated on site, thereby requiring the use of the overflow parking arrangements. Consideration must be given to the likely infrequency of demand outstripping spaces and the likelihood of vehicles parking on-street. Considering the use has been in operation for some time, there is little evidence that the theatre has or would result in detriment to highway safety or to the free flow of traffic. Notwithstanding this, the applicant should provide some form of written guarantee from the third parties that the land is available for parking. It is recommended that details of a parking management plan, is secured via condition. It would also be recommended that the occupation of the premises for D2 purposes is restricted only to the Titchfield Festival Theatre.

In terms of the parking layout, the majority of the parking spaces other than the disabled spaces are independently accessible. The car park should be laid out as per the drawings within an agreed time frame to maximise efficiency of use, to be ensured by condition.

The site benefits from a mixed B1/B8 use class permission, of which 50% of the floor area has been converted to a theatre. There have been various previous occupiers, undertaking different activities, each of which would have similar trip generation and patterns. Using the information provided by the applicant and undertaking a comparison using TRICS, whilst there are a few differences, the broad outcomes are the same, with it agreed that the permitted use would be more intensive than the theatre use. The HCC Transport Contributions Policy would therefore not be applicable.

The sustainability of the location should be considered alongside other policy matters. Subject to the above no highway objections are raised.

Director of Planning and Environment (Strategic Planning): No objections, as the proposal is unlikely to undermine the vitality of existing centres or the availability of employment sites.

Director of Regulatory and Democratic Services (Environmental Health): No objections, subject to a condition that the proposed hours of use should be applied to both Units A and B, to include no night time deliveries and no work on a Sunday or Bank Holiday. In addition, a condition requiring sound proofing of the rehearsal rooms and the rear doors and to ensure the treated rehearsal room doors and rear doors are closed during rehearsals/performances, as far as is reasonably practicable, is recommended to prevent any future potential noise nuisance.

Planning Considerations - Key Issues

The Principle of Development

The proposed use is a town centre use, as defined in PPS4 and should ideally be located in one of the Borough's centres, unless it can be demonstrated why other similar venues in town and local/district centres are inappropriate. In light of this, a sequential test has been undertaken by the applicant, which looks at alternative sites across the Borough. Whilst the list is not exhaustive, it is considered appropriate that the Titchfield Festival Theatre look for units primarily in Titchfield and the surrounding area. The test considers other venues such as Ferneham Hall, the Ashcroft Centre, community centres, church halls and other industrial buildings. These venues are discounted on the basis of one or more of the following issues; their limited availability, cost, limited space, inadequate facilities and inappropriate location. It has been established that there is little in the way of usable units of the size required within the vicinity of Titchfield and therefore, re-use of this unit would appear to be one of the few options available to the applicant. The former warehouse offers adequate space for performance and ancillary facilities. The location of the use outside existing centres, while not considered the most sustainable of locations, is considered the best practicable solution available to the applicant, given the significant lack of viable or available alternatives. In light of the above, the proposal would not adversely impact upon the vitality or viability of existing centres, in accordance with Policy CS3 of the Core Strategy.

The proposal will result in the loss of 648sq.m of light industrial/warehouse (B1/B8) floorspace. However, Policy CS1 of the Core Strategy allows for the redevelopment of employment sites to other uses that contribute towards economic development. PPS4 (Planning for Sustainable Economic Growth) defines economic development as that "within the B Use Classes, public and community uses and main town centre uses". As a community use, the proposal falls within the definition of economic development and as such its use is consistent with the policies of the Core Strategy. It is also noted that the unit had been vacant for a considerable period of time and given the economic downturn, the level of vacant employment buildings elsewhere in the Borough and the quality and location of this particular unit, it is unlikely that it would have found an alternative B use class occupant, in the short to medium term. The re-use of Unit A for a community use and retention of Unit B in storage/distribution use, is considered to be of benefit to the wider community and would be in accordance with the provisions of Policy CS1 of the Core Strategy and PPS4.

In light of the above, the principle of the development is considered to be acceptable.

Impact on character of the area

The proposal does not involve any external alterations to the building and in this respect it would have no impact upon the key characteristics or appearance of the area. Some signage has recently been erected on the premises, which would need to be considered under an appropriate application for advertisement consent, pending the outcome of the planning application. It is accepted that the character of the area may be affected by activities associated with the proposed change of use, reflected in the presence of vehicles within the parking areas and the comings and goings of patrons, performers and staff, before and after events. However, the nature of such impacts would not have any long term effects on the character or appearance of the area and the short term impacts of the proposal are considered fully in the following sections. The proposal complies with the design and character impact provisions of Policy CS17 of the Core Strategy

Impact on adjoining residential amenity

The Environmental Health Section confirm that the premises is the subject of a premises licence issued in March 2011. Several conditions of the licence relate to the prevention of public nuisance eg noise level control and monitoring; signs asking people to be quiet on leaving; a limit on the number of events per year; no discos or karaoke; the requirement to provide marshalling of the car park and a limit to the number of people attending any event. The theatre has been operational now for over a year and since the theatre received their premises licence, very few nuisance complaints have been received by the Environmental Health Section. They report that in July and August 2011, three complaints of loud music were received, two of these were associated with a private party at the unit. In October and December 2011, a total of two complaints were received regarding noise from deliveries to the site between 05:00 and 06:00 hours. In February 2012 a further complaint was received regarding a lorry delivery of pamphlets at 05:30 hours. A noise complaint file has been opened on the premises, but Environmental Health suggest incidents are happening infrequently. In light of this the Environmental Health Section have no objections to the proposal, subject to conditions.

While the premises has attracted complaints regarding occasional deliveries at early hours of the morning, the main concern of notified parties is with regard to the intensity of site usage, particularly associated with the comings and goings of patrons, cast and crew, before and after performances. A schedule of the Theatre's upcoming events shows performances on 34 nights during the 74 days between 14th March and 26th May 2012, all starting at 19:30. It is perhaps not arrival of people for performances, rather their departure between 22:00 and 23:00, which creates the greatest potential for disruption to adjoining residential amenity. The applicant states that cast and crew utilise the Holiday Inn car park, so their movements should not be too disruptive, being on foot. Nevertheless, the departure of patrons from the on-site car park after performances and the associated noise and disturbance, may have implications for adjoining residents. The applicant states that the car park is marshalled, in accordance with the terms of the license and that it is generally cleared of vehicles within 12 minutes following performances. The premises is licensed to run events for a total of 140 nights of entertainment a year. The window of potential disturbance, while concentrated, is quite narrow and should be considered against the fall-back position, where the whole building is used for B1/B8 purposes, accessed by bigger, albeit fewer vehicles, throughout the working day. The proposal's impact must also be considered on the basis that no dwelling shares a common boundary with the site, the distance of the car parking area to the nearest dwelling is 24m across St Margaret's Lane, that the presence of existing boundary treatments assists with prevention of headlight glare and disruption and that the premises is located on a main vehicular thoroughfare into the village, which is subject to a significant level of traffic movement.

In light of the above and subject to imposition of conditions to control the proposed hours of use and to ensure appropriate sound attenuation measures are incorporated into the building, in addition to the restrictions placed on operation of the premises under the terms of its license, officers do not consider the proposal will have any significant adverse impact on adjoining residential amenity.

Highway Impacts

Theatre use results in different movement patterns than industrial/warehouse use, typically being away from peak network periods, when it is recognised that the A27/St Margaret's Lane roundabout experiences significant congestion. The Director of Planning and Environment (Highways) does not consider the proposal would result in any capacity concerns, nor any safety issues with the continued use of the existing vehicular accesses.

In terms of the parking layout, the majority of the parking spaces other than the disabled spaces are independently accessible. The fact that these spaces are not independently accessed, whilst perhaps creating an inconvenience if a vehicle is boxed in is not necessarily a highway problem. The proposal would only constitute a problem in highway terms if vehicles spill out of the defined parking areas onto St Margaret's Lane, of which there is little evidence. While some photo evidence has been submitted by residents, if regular overflow parking is taking place on-street at this time of year, the adjoining verges would be cut-up, of which there is no evidence. The Director of Planning and Environment (Highways) has liaised directly with the Director of Regulatory and Democratic Services (Traffic and Design Manager) who is unaware of any specific/known issues with parking along St Margaret's Lane, that could be linked to the theatre. Notwithstanding this, if the theatre was aware of a particularly busy night they could liaise with Director of Regulatory and Democratic Services (Traffic and Design Manager) to provide temporary traffic management measures (such as the yellow 'no waiting' traffic cones) and could be included within a parking management plan. If permitted, the car park should be laid out as per the drawings within an agreed time frame.

The HCC 2002 Parking Standards set a maximum of 1 space per 5 seats, therefore for 210 seats, a maximum provision of 42 spaces would be required. The site can accommodate 30 spaces, which is within the maximum standard. PPG13 (Transport) includes the maximum standard approach, which allows a developer to provide as many parking spaces as they wish, on the proviso that it does not result in highway safety issues that cannot be resolved through the implementation of waiting restrictions. There are presently no restrictions on parking along St Margaret's Lane and thus there is the potential for parking to occur on-street. To alleviate the likelihood of on-street parking, two overflow parking areas are indicated; at the Holiday Inn and Kites Croft Business Park, both of which are within a reasonable walking distance, although the attractiveness of these routes, especially in poor weather is queried by notified parties. The applicant points out that cast and crew use the Holiday Inn car park, some 350m away to the north, in order to reserve on-site parking primarily for use by theatre patrons. Typical average theatre attendances do not appear to generate significant parking demands and those that are generated can be accommodated within the existing site. Only a small number of annual occasions generate parking demands which cannot be accommodated on site, thereby requiring the use of the overflow parking arrangements by patrons. Considering the use has been in operation for some time, there is little evidence that this proposal has or would result in detriment to highway safety or to the free flow of traffic by way of parking occurring along St Margaret's Lane. Notwithstanding this, the applicant has been requested to provide a written guarantee from the third parties upon who's land over flow parking would take place that this land is available. It is recommended that full details of a parking management plan is secured via condition. In addition a condition should be imposed to ensure the identified overflow parking or an acceptable alternative is available to the theatre, in the interests of highway safety. Subject to these conditions, the proposal complies with the highway and parking related provisions of Policies CS6 and CS17 of the Core Strategy.

Conclusion

The principle of the proposed change of use is considered acceptable, for the reasoning outlined in the report above. The proposal complies with the saved policies of the Fareham Borough Local Plan Review (2000), the Adopted Fareham Borough Core Strategy (2011) and the provision of PPS4 and is accordingly recommended for approval.

Reasons For Granting Permission

The development is acceptable taking into account the policies of the Development Plan as set out in this report. The proposal is not considered likely to result in any significant adverse impact on the amenity of adjoining occupiers, the character of the area, highway safety employment land availability or viability of existing centres. There are no other material considerations that are judged to have sufficient weight to justify a refusal of the application, and where applicable conditions have been applied in order to satisfy these matters. The scheme is therefore judged to be in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and thus planning permission should therefore be granted.

Recommendation

PERMISSION: Time Limit, Approved Plans, Parking Management Plan, Ensure identified overflow parking or acceptable alternative is available, Use restricted only to the Titchfield Festival Theatre, Approved Parking Layout marked out within 3 months, Unit A hours of operation 0900 - 2300 Monday to Saturday, 1000 - 2200 Sundays and Bank Holidays on a total of 140 days/nights per annum, Sound proofing/attenuation; Unit B hours of operation 0800 - 1800 Monday to Friday and 0900 - 1300 hours Saturday and not at all on Sundays and bank Holidays.

Background Papers

File: P/10/0879/CU

73 ST MARGARETS LANE



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73 ST MARGARET'S LANE
SCALE 1:1250

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ONLINE COMMENTS

on Planning Application to Fareham Borough Council

Submitted By:

Planning Policy Consultation
Planning and Environment Department
Civic Offices

Application:
Consultee No:

P/12/0050/CU
2

Printed: February 7, 2012 8:51 AM

RETROSPECTIVE APPLICATION FOR CONTINUED USE OF UNIT A FOR D2 AND THEATRE
PURPOSES AND UNIT B FOR STORAGE USE

73 ST MARGARETS LANE FAREHAM

COMMENTS:

Submitted Online: February 6, 2012 12:00 AM
Internet Ref: ECH257

Jim,

There are two main issues with this proposal. Firstly the use is a town centre use, as defined in PPS4 and should ideally be located in one of the Borough's centres and secondly the proposal will result in the loss of 648sq.m of B8 floorspace.

The planning statement that accompanies this application does include a sequential test which looks at alternative sites across the Borough.

Whilst the list is not particularly exhaustive it is considered appropriate that the Titchfield Festival Theatre look for units primarily in Titchfield and its outskirts. I agree with the notion that there appears very little in the way of usable units of the size required within the vicinity of Titchfield and therefore, the re-use of this unit would appear to be one of the few options available to the applicant. The location of the use outside of the Centres is considered to be appropriate given a significant lack of alternatives.

The unit sits in a Category B employment area within the countryside.

The Core Strategy allows for the redevelopment of employment sites to other uses that contribute towards economic development. PPS4 defines economic development as "development within the B Use Classes, public and community uses and main town centre uses". The proposal would therefore seem to fall within the definition of economic development and as such its use is consistent with the policies of the Core Strategy.

It is also worth noting that the unit in question has been vacant for a considerable period of time. Given the economic downturn, the level of vacant employment buildings elsewhere in the Borough and the quality and location of this particular unit it is considered unlikely that this

ONLINE COMMENTS

on Planning Application to Fareham Borough Council

unit would have found an alternative B use class occupant, especially in the short term. The re-use of the building is considered to be of benefit to the surrounding area.

My only concern would be parking issues, given the lack on site and the "over-spill" is off site in areas not owned by the applicant. I trust this issue will be considered by our Highways team.

Regards,

Mark Chevis

Senior Planner (Strategic Sites & Design) & Sustainability Co-ordinator

Fareham Borough Council

mchevis@fareham.gov.uk

01329 824551

-----Original Task-----

Subject: Fareham Borough Council: Planning Consultation
for P/12/0050/CU

Priority: Normal

Start date: Fri 27/01/2012

Due date: Fri 10/02/2012

Status: Not Started

% Complete: 0%

Actual work: 0 hours

Requested by: Rowe, Sara



For Mr Kevin Fraser

Ref No : [P/12/0050/CU](#)

Titchfield Festival Theatre
Mr Kevin Fraser
Friends Farm 15 Swanwick Lane
Southampton
Hants
SO31 7DX

**TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) ORDER
2010**

73 ST MARGARETS LANE FAREHAM

**RETROSPECTIVE APPLICATION FOR CONTINUED USE OF UNIT A FOR D2 AND THEATRE
PURPOSES AND UNIT B FOR STORAGE USE**

Application Received : 23rd January 2012

In pursuance of their powers under the above mentioned Act the Council, as the Local Planning Authority, hereby PERMIT the development described above, in accordance with your application.

Subject to the following conditions:

1. The use hereby permitted shall cease on or before the 2nd May 2013, unless a further planning permission has been granted before the expiry of such period.

REASON: To retain planning control over the development hereby permitted and to enable the monitoring of car parking, highway safety impacts, the number of people in attendance of events and the impact of the activity on adjoining residential amenity, to enable the grant of temporary planning permission to be reviewed; in accordance with Policies CS5 and CS17 of the Fareham Borough Core Strategy.

2. The development hereby permitted shall be carried out in accordance with the OS Sitemap, Car Parking Diagram and drawing no. 1009/02 received by the Local Planning Authority on 23rd January 2012, unless otherwise agreed in writing by the Local Planning Authority.

Reason: For the avoidance of doubt and in the interests of proper planning.

3. Within one month of the date of this permission a Parking Management Plan shall be submitted in writing to the Local Planning Authority. The Parking Management Plan shall be fully implemented within two weeks of approval by the Council.

REASON: In the interests of highway safety; in accordance with Policies CS5 and CS17 of the Adopted Fareham Borough Core Strategy.

Lee Smith



4. Notwithstanding the provisions of the Town and Country Planning Use Classes Order 1987 (as amended), Unit A identified on the OS Sitemap received by the Local Planning Authority on 23rd January 2012, shall only be used for theatre purposes and purposes ancillary to theatre use. The use shall only be carried out by The Titchfield Festival Theatre, unless the prior written approval of the Local Planning Authority has been obtained, following the submission of a planning application for that purpose.

REASON: To retain planning control over the development hereby permitted and to ensure the impact of the activities of multiple users of the site does not disrupt adjoining residential amenity or impact upon highway safety, in accordance with Policies CS5 and CS17 of the Fareham Borough Core Strategy.

5. Within three months of the date of this permission, the car parking and turning areas shall be laid out within the site in accordance with the approved Car Parking Diagram received by the Local Planning Authority on 23rd January 2012, to enable 30 cars to be parked and for vehicles to turn so they may enter and leave the site in a forward gear. These areas for the parking and turning of vehicles shall thereafter be retained and kept available at all times.

REASON: In the interests of highway safety; in accordance with Policies CS5 and CS17 of the Adopted Fareham Borough Core Strategy.

6. The use of Unit A, identified on the OS Sitemap received by the Local Planning Authority on 23rd January 2012, for the purpose of public entertainment, shall only take place between the hours of 09:00-23:00 Monday to Saturday, 10:00-22:00 on Sundays and Bank Holidays.

REASON: In order to protect the amenities of occupiers of nearby residential properties.

7. Public performances shall only take place in Unit A and shall be limited to a maximum of 140 performances per annum.

REASON: In order to protect the amenities of occupiers of nearby residential properties.

8. The use of Unit B, identified on the OS Sitemap received by the Local Planning Authority on 23rd January 2012 shall only be used for purposes defined as falling within Classes B1 or B8 of the Town and Country Planning Use Classes Order 1987 (as amended). The use for such purposes shall be limited to between the hours of 08:00-18:00 Monday to Friday, 09:00-13:00 on Saturday and not at all on Sundays and Bank Holidays.

REASON: In order to protect the amenities of occupiers of nearby residential properties.

9. No deliveries shall be taken at or despatched from Unit A, Unit B or from the application site, outside of the hours of 08:00 to 23:00.

REASON: To protect the amenities of the occupiers of the nearby residential properties.

10. Within one month of the date of this permission, a scheme for sound attenuation shall be submitted to the Local Planning Authority in writing. The scheme shall include acoustic measures to be installed within the building to mitigate against potential noise and

Lee Smith



disturbance to properties. The building on the site shall be attenuated in accordance with the approved details within one month of the date of their approval. Thereafter, the attenuation measures shall be retained. The attenuated doors along with all external doors shall be kept closed during performances, events and rehearsals.

REASON: In order to protect the amenities of the occupiers of the residential dwellings.

Further Information:

1. With regard to condition no. 3, the submitted Parking Management Plan, must incorporate clearly mapped site location plans of the overflow parking areas, include written guarantees from the third parties that the identified land or an acceptable alternative is available for overflow parking, indicate how the marshalling system for on-site parking will operate and include details of what measures will be employed to prevent on-street parking and stopping during events. Thereafter, the agreed Parking Management Plan shall be adhered to and, where necessary, alterations to the agreed measures submitted to the Local Planning Authority for approval in writing.
2. With regard to condition no. 10 above, the applicant is advised that soundproofing should be applied to internal rehearsal room doors and the external doors on the north west and south east elevations of the premises.
3. (i) This permission is granted for a temporary period for the following reasons:-

To enable the monitoring of car parking, highway impacts, the impact of activity on adjoining residential amenity and the character of the area to be undertaken, taking into account the policies of the Development Plan and national guidance. There are no other material considerations that are judged to have sufficient weight to justify a refusal of the application, and where applicable conditions have been applied in order to satisfy these matters. The scheme is therefore judged to be in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and thus planning permission should be granted for a temporary period.

(ii) In determining this application the following policies of the Development Plan were taken into account:

- CS1 - Employment Provision
- CS3 - Vitality and Viability of Centres
- CS5 - Transport Strategy and Infrastructure
- CS6 - The Development Strategy
- CS17 - High Quality Design
- CS20 - Infrastructure and Development Contributions

4. (i) Your attention is drawn to the enclosed Warning Notice relating to development not in accordance with approved plans. The protocol for 'Dealing with variations to Planning Permission' is available from the Civic Offices or in the Council's web site www.fareham.gov.uk
- (ii) You are also reminded that where a decision contains conditions which are required to be discharged within specific time limits, failure to comply with those conditions means that

Lee Smith



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the development is not pursuant to the planning permission and is therefore
UNAUTHORISED DEVELOPMENT.

Lee Smith

2nd May 2012



NOTIFICATION

to Applicants of:

- 1 Your right of Appeal
- 2 Your right to serve a Purchase Notice
- 3 Other ways to complain
- 4 Other Consents you may need

1. Your right of appeal

You may be entitled to appeal against this decision to the Secretary of State for the Department of Communities and Local Government (DCLG).

The Planning Inspectorate have introduced an online appeals service which you can use to make your appeal online. You can find the service through the Appeals area of the Planning Portal - see www.planningportal.gov.uk/pes. The Inspectorate will publish details of your appeal on the internet (on the Appeals area of the Planning Portal). This may include a copy of the original planning application form and relevant supporting documents supplied to the local authority by you or your agent, together with the completed appeal form and information you submit to the Planning Inspectorate. Please ensure that you only provide information, including personal information belonging to you that you are happy will be made available to others in this way. If you supply personal information belonging to a third party please ensure you have their permission to do so. More detailed information about data protection and privacy matters is available on the Planning Portal. Alternatively, you may request paper copies from the following addresses:

Write to and obtain forms from:

The Planning Inspectorate, Customer Support Unit, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN. Telephone 0117 372 6372

*Please note that in each case the forms must be completed and returned to the above address with a copy to **Regulatory Services (Development Control), Fareham Borough Council, The Civic Offices, Civic Way, Fareham, PO16 7AZ.***

You can also appeal if a decision has not been issued within the period shown below:

for these Applications Types	Time from receipt
Planning Permission, Listed Building or Conservation Area Consent	8 weeks
Certificates of Lawful Use or Development	8 weeks
Advertisement Consent	8 weeks
Fell or lop trees subject of a Tree Preservation Order	8 weeks
Non-material minor amendment to a planning permission	28 days

IMPORTANT - If the development is the subject of planning enforcement action this may reduce the time period for submission of an appeal - Please contact the Planning Office for further advice.

Please ensure that the correct form is used for each of the application types listed above.

Lee Smith



Your Entitlement to Appeal:

If you are aggrieved by the decision of the Local Planning Authority to refuse permission or consent or at the imposition of conditions then, subject to the following provisions, you may appeal to the DCLG. The ways you can do so are set out above.

Please note that only the applicant possesses the right to appeal. There is no third party right of appeal for neighbours and other objectors.

Restrictions on Your Right to Appeal:

There is a time limit for lodging your appeal, although the Secretary of State may override this. The applicant has the following time in which to lodge an appeal for these classes:

- * Planning applications (but see below for Householder Applications)(appeal under Section 78 of the Town and Country Planning Act 1990 (TCPA)),
- * Listed building consent applications (appeal under Sections 20 or 21 of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCAA)) and
- * Applications for Certificates of lawful use or development (appeals under Section 195 of the TCPA).

Should be lodged within 6 months of the date of the decision notice, or within 6 months of the expiry of the period of 8 weeks from the date the application was received or such extended period as agreed between the appellant and the Planning Inspectorate.

*** Householder Applications - If you want to appeal against a decision to refuse planning permission for a householder application then notice of appeal should be lodged within 12 weeks of the date of the decision notice.**

* Advertisement applications (appeal under Regulation 15 of the Town and Country Planning (Control of Advertisement) Regulations 1989) should be lodged within 8 weeks of the date of the decision notice.

* Application for consent to carry out works to a tree(s) the subject of a Tree Preservation Order (appeals under Sections (78)I of the TCPA) should be lodged within 28 days of the date on the decision notice, and

* Applications for a Certificate of Appropriate Alternative Development (appeals under Section 17 of the Land Compensation Act 1961) should be lodged within 1 month of the date of the certificate or notice of refusal to issue a certificate.

The Secretary of State may decide he will not consider an appeal. This might happen if the proposed development has been subject of an appeal which has been dismissed within the last two years, or where the Local Planning Authority could not have granted permission (or not without the conditions imposed) having regard to the statutory requirements, to the provisions of the Development Order and to any directions given under the Order.

Lee Smith



2. Your Right to Serve a Purchase Notice

If the Local Planning Authority or the DCLG refuses planning permission to develop land or grant listed building consent for works, or grants permission or consent subject to conditions, the owner may serve a notice on the Council in whose area the land is situated, requiring the Council to purchase his interest in the land. The owner will need to establish that he can neither put the land to a beneficial use by the carrying out of any works or development which would have been or would be permitted (see Part VI, Chapter 1 of the TCPA for the former class of applications and Section 32 of the Planning (Listed Building and Conservation Areas) Act 1990 for the latter class of applications.

3. Other ways to complain

If you are aggrieved at the way the Council has dealt with your application the Planning Officer who has been dealing with it will be pleased to explain the reasons for the Council's decision and endeavour to resolve the matter for you. If you are not satisfied, you may wish to put your complaint in writing or e-mail comps@fareham.gov.uk, using the Council's formal complaints procedure. This will ensure the details of your complaint are thoroughly investigated by an independent officer and an informed decision made as to whether your application was correctly dealt with. Details of the complaints procedure may be obtained from the Customer Services Manager at the Civic Offices (telephone 01329.236100). Should you remain unsatisfied at the conclusion of the Council's investigation, you may ask the Local Government Ombudsman to investigate the details of your complaint. Leaflets outlining the process of these procedures are available at the Civic Offices.

4. Other Consents You May Need

This decision relates solely to the town planning requirements under the Acts and Orders mentioned at the head of the decision notice. It does not grant any other consent or permission. In particular, the following may require consent:

i. Works requiring Building Regulations consent - If you have not already done so, you should contact the Council's Building Control Partnership at the Civic Offices, Telephone: 01329 236100 Ext 2441.

ii. Works or structures in the vicinity of a public sewer - If in doubt you should contact The Development Control Manager, Southern Water Services Ltd, Southern House, Sparrowgrove, Otterbourne, Winchester, Hampshire SO21 2SW Tel 0845 278 0845. You may inspect the Public Sewer Map held in the Council's Building Control Business Unit to find out if a public sewer crosses the site of the proposed development. (Buildings are not normally allowed within 3.0metres of a public sewer, although this may vary, depending upon the size, depth, strategic importance, available access and ground conditions appertaining to the sewer in question).

iii. Works affecting neighbours - (e.g.: work on an existing wall shared with another property, building on the boundary with a neighbouring property or excavating near neighbouring buildings). The Party Wall Act 1996 requires certain measures to be taken and leaflets explaining the specific requirements are available at the Council Offices.

Lee Smith



IMPORTANT WARNING

Please read the content of this warning notice on receipt of your planning permission decision notice.

The Council is pleased to enclose your conditional planning permission decision notice.

FEES FOR DISCHARGING PLANNING CONDITIONS

There is a fee payable to the Council when you submit details pursuant to planning conditions. The fee is £85 per request to discharge conditions (or £25 if the discharge of condition relates to a planning permission for extending or altering a dwellinghouse or other development in the curtilage of a dwelling). By way of clarification if details are submitted to discharge a number of conditions at the same time then just one fee of either £85 or £25 would be payable. If details to discharge conditions are submitted on a number of separate occasions then a fee of either £85 or £25 would be payable on each occasion. The fee must be paid when the request is made.

All requests for discharging planning conditions should be made in writing and ideally on the national application form designed for this purpose (which can be downloaded from the following site www.fareham.gov.uk/pdf/developmentc/appformlist.pdf (No. 27 on the list of forms), or otherwise please contact Regulatory Services: Development Control 01329 236100 ext. 2437 for a paper copy.

If you choose to send a covering letter rather than fill in the national application form you must ensure that all the relevant information requested in the application form is contained within your covering letter.

PRE-DEVELOPMENT CONDITIONS

Please note that there maybe conditions attached to this planning permission which are required to be discharged **before** development commences.

There have been several occurrences recently where developments have commenced before planning conditions have been discharged.

I must advise you that should you commence the development prior to all of the pre-development conditions being discharged the development will be treated as unauthorised development.

Should development commence before the pre-development conditions are discharged planning enforcement and or injunctive action to secure the cessation of the development will be considered.

Lee Smith



DEVELOPMENT NOT IN ACCORDANCE WITH APPROVED PLANS

There have been many instances recently where development has not been undertaken strictly in accordance with the approved plans.

If there is any variation from the approved plans for whatever reason, unless it is so insignificant that it can be considered de minimis (of no consequence), it is likely that it will require the submission of a new planning application. This will involve significant work and additional cost to both the developer and the Local Planning Authority.

A protocol for dealing with variations to planning permissions was agreed by the Planning Development Control Committee 16 March 2005 and copies are available from the Civic Offices or on the Council's web site www.fareham.gov.uk

Please ensure that the development you undertake is the development for which you have been granted planning permission. If your working drawings do not match the stamped approved planning drawings a new planning application will be required unless the variation is **very** small.

The ultimate decision on whether or not any change will require planning permission rests with the Local Planning Authority.

Development which is not in accordance with the approved plans is unauthorised development and likely to attract Planning Enforcement Action.

**THIS WARNING IS DESIGNED TO ASSIST AND PREVENT LATER DIFFICULTIES
PLEASE HEED THE ADVICE IN THE PROTOCOL.**

Lee Smith

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PLANNING STATEMENT
73 St Margarets Lane, Titchfield PO14 4BG
and
Titchfield Festival Theatre (TFT)

Sequential Test

TFT is a well respected community theatre company. It is a not for profit company and attracts a broad age range to its membership and audience figures. TFT do not charge a fee to join like other community groups and is solely funded through their own box office receipts. Current active membership is over 183 with an audience mailing list of over 4000. The company employs professional Directors for its productions and owns its own technical equipment, seating, wardrobe and properties. The company does not rely on sponsorship, grants (either national or local) or donations to ensure it continues its activities. TFT has enjoyed the support of local FBC Councillors and Hampshire County Councillors in the past and has supported The Mayor of Fareham's Charity fund raising and rotary fund raising. It is recognised as a Charity by The Charity Commission.

TFT because it is not a small amateur company have always required considerable space for their productions, rehearsal and storage. The company has a large wardrobe, property stock and a vast amount of technical equipment including their own seating. The company also has an expanding Youth Theatre.

Enshrined within the Objects of it's Constitution TFT has the following wording.

C Objects.

The charity's objects ('the objects') are:

a) The advancement of the arts, in particular the dramatic and performing arts, and the development of public appreciation of such arts by the provision of a theatre and facilities for the presentation of public performances

b) To advance public education in the arts, including the theory that William Shakespeare lived and worked in Southern Hampshire.

Bearing the above in mind it becomes apparent that for TFT to be situated anywhere else other than Titchfield defeats the company's Objects. Shakespeare is now so closely associated with Titchfield that the Festival Theatre is becoming almost part of everyday life much the same as the Festival Theatre at Stratford was in it's early beginnings before it became the Royal Shakespeare Company.

The company has applied the sequential approach when looking for and at other sites.

(A) Town centre sites

There are two immediate town centre areas which immediately spring to mind.

Ferneham Hall

The use of Ferneham Hall is precluded due to the lack of available time within their own programme for TFT's programme. (TFT produce at least 12 shows per annum) The costs involved in hiring Ferneham Hall would be prohibitive. TFT's equipment would be made redundant and finally no rehearsal space is available.

The Ashcroft Centre

The Ashcroft is basically too small. Its stage area has no wing space, storage area and no rehearsal areas. Again The Ashcroft administration would find it difficult to accommodate the number of shows TFT produce annually. Once again costs are prohibitive for the service provided.

There are no other town centre sites available. Church Halls are generally unavailable and would not suite the needs of the company and there are no other areas large enough to accommodate the company.

Fareham town centre is well served by Ferneham Hall for its immediate entertainment needs though the programme is limited to medium sized musical companies and one night stands. The Ashcroft provides a more drama orientated programme but on a very small scale. Fareham does suffer from a lack of available bus and transport services in the evening which means most patrons have to drive into the town centre to attend venues.

(B) Edge of town Sites.

There are several areas on the edge of Fareham that could potentially have been of use. These are mostly situated on large industrial sites (Fort Fareham, Wallington) but rents on the whole were either too high or the lease period available was very short. There are several community centres (Titchfield, Crofton, Portchester and Sarisbury) however each one of these has regular groups hiring their facilities and would not be able to accommodate an ongoing programme such as TFT's. They also lack storage facilities and work areas. In fact two of them (the Portchester and Sarisbury centres) have had to part company with their drama companies for this very reason. It should also be noted that the Chairperson of TFT sits on the board at the Titchfield Community Centre and therefore has an intimate knowledge of the running of that particular centre.

(C) Out of Town Sites

TFT have also been based out side the centre of Fareham or the local urban areas. From it's early beginnings it was based at Titchfield Abbey before English Heritage decided to take this facility away. During this period however TFT proved that a substantial audience did exist for good quality drama of a classical nature. This company has continued to provide this service building up an enviable position in ten years existence compared with that of many other amateur drama groups in the Borough. Out of town sites are no more difficult to get to for patrons as town centre sites, especially considering the lack of late night transport. Wherever the theatre is situated in the borough the public transport system would be inadequate since the system stops after a certain time.

Buildings in general are cheaper in these fringe areas and have character compared to the normal warehouse which is what essentially a theatre space is. TFT have operated in out of town Barns, Schools and the open air.

It is clear from the site now used that this is the best type of building for the company to occupy. It is large enough to hold a fully functional theatre with good access to major roads. It has some parking with enough additional parking available for overspill parking at nearby sites. It is located on a semi industrial site on the edge of a small urban area with very few dwellings in the immediate vicinity.

Background

TFT was set up as a Limited Company in 2001 to perform plays in Titchfield Abbey. This grade 1 Ancient monument was controlled by a local group which leased the area each summer to the company. The Company built up a considerable following achieving some 7-8,000 people coming through the site per season (early June – end August) Eventually in 2006 English Heritage took the site back into their portfolio and imposed a very large rental figure for the company to use the site. This was clearly not going to be viable since the site had been rented on a much lower rent to the company. The company then approached Portsmouth Football Club (PFC) who had acquired The Great Barn on an adjacent site. The Great Barn makes an ideal covered theatre space although little if no amenities were available. Portsmouth Football Club agreed to this as part of their community outreach programme and part of their plan to ‘woo’ the local community to aid them in obtaining planning permission for their new Football Academy. TFT had a very successful year at the Great Barn and produced several productions at the site. The company also renewed some of the electrics and engaged in dialogue with English Heritage (Richard Massey) and Fareham Borough Council (FBC, Mike Maude Roxby) about putting planning permission forward to allow the site permanently to be used as a theatre site. Planning Permission was submitted with the initial blessing of PFC and this was agreed by FBC with some restrictions. PFC unfortunately was not given permission to use the land for their new training academy and all permissions to use the Great Barn were regretfully withdrawn. Since then TFT have successfully operated from a grade 2 listed Thatched Barn in nearby Warsash. 12 productions per annum were produced and this gave a regular income. The Thatched Barn Theatre had a capacity of 90 and besides the barn TFT also rented a cowshed and storage space in total some 2405 sq ft. The lease however was withdrawn in August 2010 due to security and insurance reasons on the site.

At this point TFT then became homeless with a full season of plays already planned and in rehearsal. The need to quickly find an effective theatre space was paramount.

TFT began negotiations with the owners of the Great Barn in Titchfield since this had once again been put on the market and after some considerable negotiation it was agreed that TFT could lease the barn for 5 years. However this was subject to ratification by the owners of the barn. The owners then decided to break off negotiations and withdrew the barn for rent.

Planning Proposal

TFT are currently homeless and need to secure a new home preferably in the Borough of Fareham and in particular Titchfield. TFT have secured a 10 year lease on 73 St Margarets Lane which currently has planning permission for use as a B1 and B8 unit

The unit which is some 15663 sq ft has two large roller doors to its south elevation and because of this could easily be divided into two units each of about equal size- Unit 73 A and 73B.

Unit A would be changed to Leisure D2 use and used as the basis for a new 210 seat theatre, rehearsal space etc all of which would be installed within the new unit A. Much of the existing building can be utilised without disturbance to neighbours, roadways and services. Considerable work would need to be undertaken to ensure all existing and new access and exits were fit for disabled and wheelchair users.

Planning Framework

73 St Margarets Lane lies in a Category B employment area. However under FBC's current Planning Framework the redevelopment of premises is permissible for mixed – use development, particularly if the development did not adversely affect residential amenity, the character of the area or have unacceptable environmental or traffic implications. The proposal put forward would have no affects on the above. If allowed the change of use would have a positive affect

- (A) It would bring a much needed amenity to the area so that residents did not have to travel into Fareham for entertainment
- (B) Puts to good use a warehouse that has been left empty for at least 3 years and which tended to attract an undesirable element, adding to the security of the area
- (C) It allows and aids the continued development of Titchfield as a particular site of interest to the worldwide Shakespearean lobby and could bring much needed employment opportunities to the borough.
- (D) There are no environmental problems. There could be an advantage by using the buildings vast roof space to generate electricity via solar panels allowing the company to be self sufficient in power and adding to the grid. There would also be less congestion caused by vehicle trips into the town centre as the proposed theatre is closer to larger residential areas who are within 10 minutes walking (Titchfield, Titchfield Common, Park Gate, Locks Heath)
- (E) The area is well served by the A27 which at the time the theatre would be in operation, is at a quiet period and would therefore take pressure off town centre roads at that time.

Conversion of the existing unit to two units would not in our opinion contravene FBC's current Planning Framework regarding units reserved for employment. Although there may be a slight decrease in actual physical area in one class of employment area (B1/B8), it should be noted that the existing unit has been unoccupied for nearly 3years.

By dividing the unit into two it is felt by local Estate Agents that the unit 2B (which will be kept as a B1/B8 unit) is more likely to be occupied by a small to medium sized business looking to expand at a reasonable cost and they have several looking for a 4-7,000sq ft units who may be interested in the new unit to be created. It should be noted that the complete unit had been empty for over 3 years and unused and did attract an undesirable element. It was a regular haunt for youths to drink alcohol and reportedly drug use. The previous occupants were all of an industrial nature with the unit being purpose built to house Seldon Masts , a metal mast manufacturer. The unit under current Planning

The unit lies within easy walking distance of the Titchfield Common and Titchfield residential areas both have good local bus services which are within easy reach of the proposed theatre site.

Although it should be noted that bus services tend to cease after 9.00pm.

Hampshire County Council regulations currently state that 1 parking space is required for every 5 seats in the theatre. The unit currently has a total of 30 parking spaces available in the evening. (During the daytime we allow our parking areas to be shared with our neighbours relieving the need for our industrial based neighbours from having to park in the highway). This gives a total audience capacity for parking on site of 150. Further parking, if needed has been secured at The Holiday Inn nearby and at the Estee Lauder site at nearby Kites Croft Business Park both of these overspill areas are accessible via well lit paved roadways.

The unit does not lie within a conservation area or need an ecological or biodiversity study. However we have attached our own Environmental and Biodiversity Statement to this application.

Current Licensing

The company currently have a Premises License granted to it allowing for 12 productions each of 10 days plus 5 nights for concerts plus the ability to apply for up to 15 nights covered by Temporary Events Notices (TENS). In total some 140 nights of entertainment. There are some restrictions noted within this license (monitoring of the site and no rock concerts). The company have worked within these guidelines and restrictions comfortably within the last year.

There have been no traffic incidents involving the theatre, no patrons have been allowed to park on the verges of St Margarets Lane (even though it should be noted that there are no highway restrictions in place). Audiences arrive and leave quickly and quietly and on average have departed the site within 12 minutes of a production ending. (A regular log is kept by the theatre of the following: number of cars on site, show start, show end, time last patrons car left site, ambient decibel reading, 3 x monitored decibel readings during show, time building locked up)

The theatre company adheres to good health and safety practices and carries out regular Health and Safety and Fire Risk Assessments, all of which are kept on site.

Conclusion

There is no reason why this unit cannot be used as a base for a growing amateur theatre company who will inevitably help business and leisure activities in Titchfield and be of **no cost** to the taxpayer. Unlike Ferneham Halls which is heavily subsidised by Fareham Borough Council and the Ashcroft theatre by Hampshire County Council..

Much has been said about the lack of parking and yet there is clearly more than adequate parking available at local sites. Theatres in Portsmouth and Southampton have absolutely no parking facilities and yet they operate unhindered. Moreover since we are being told by central government to cut emissions, coupled with the high cost of fuel, the local nature of this theatre will attract more people from the Titchfield area to the site. If local bus companies could be persuaded to run later services then this would dovetail with central government environmental aspirations and cut down on the need for journeys from outlying areas and lessen the need for parking. Hampshire County Council has been completely unhelpful in their position over large areas of land they own in the vicinity, a very small part of which could have doubled the parking area on the site. At some point they may relent but currently their policy is to keep the areas for agriculture.

There are only a very few houses along St Margarets Lane none border on the site and as yet there have been no complaints about noise emanating from the entertainments being produced. Good records are kept of noise at the unit and attendance numbers. (far more in fact than for any industrial site that would be permitted under current use).

It should also be noted that a number of community groups now use the theatre and several more have applied for use of space. The theatres Youth group which meets once a week on Saturday continues to grow and will soon have to appoint further tutors to cater for the increased numbers. All this points to a vibrant social and community hub which has developed over the last year and continues to develop in tandem with the already very busy nearby Community Centre.

Finally under current government guidelines local authorities are positively encouraged to allow the re use and conversion of industrial land and buildings to other uses that would benefit the community. (Planning Policy Guidance 4:Para 21; Re-Use Of Urban Land and Planning Policy Statement 7 para 18; Re-use of buildings in the countryside.

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OFFICER REPORT FOR COMMITTEE

Date: 18/07/2012

P/12/0120/FP

LOCKS HEATH FREE CHURCH

TITCHFIELD COMMON

AGENT: HARRINGTON DESIGN
ARCHITECTS

ALTERATION TO EXISTING BUILDING AND PROVISION OF NEW AUDITORIUM,
ACTIVITY HALL AND CAFE WITH ASSOCIATED CAR PARKING AND CHANGE OF USE
OF LAND OPPOSITE NETLEY ROAD FOR USE AS OVERSPILL CAR PARK

255 HUNTS POND ROAD LOCKS HEATH FREE CHURCH TITCHFIELD COMMON PO14
4PG

Report By

Kim Hayler - Ext. 2367

Site Description

Locks Heath Free Church is located on the northeast side of Hunts Pond Road south of the junction with Prelate Way. The Church was permitted in 1998 and comprises a single building set back on its site with the main area of car parking between the building and the Hunts Pond Road frontage.

To the northwest a Greenway links Hunts Pond Road with Ascot Close to the rear. A belt of mature oak trees run along the rear (northeast) boundary of the site. The trees to the rear of the existing church are protected by Fareham Tree Preservation Order No.154. The trees to the rear of the application site are located just outside of the site boundary (as identified in the submitted arboricultural report and as confirmed by the applicant).

The Hunts Pond Road frontage is quite open to view. When approached from the south the existing Church building is set against the backdrop of trees and of adjacent residential dwellings. The properties in Ascot Close to the rear are sited in excess of 50 metres from the site boundary and the nearest property in Hunts Pond Road is sited 12 metres from the site boundary.

Description of Proposal

The development proposals seek the extension of the Church site to the southeast to enable the construction of a multipurpose building incorporating an auditorium, activity hall, small meeting rooms, cafe and administrative area. The new building would be linked to the existing building. The whole site would amount to 0.64 ha. with the additional land comprising approximately 0.42 ha. of that. The floor area of the existing building measures 692 metres square and the floor area of the proposed new building would measure 1660 square metres. The new building would measure 9.5 metres high and would be set back from the Hunts Pond Road frontage roughly in line with the existing Church building.

Similarly the existing car parking area to the front of the Church would be extended across the front of the new building and a second access point on to Hunts Pond Road provided. The total proposed on site car parking provision would be 88 spaces. The application also proposes overflow car parking approximately 120 metres to the south of the extended Church site on part of the existing recreation land where there is already a vehicular access.

The area can accommodate up to 136 spaces as clarified in the submitted Transport Assessment (TA).

Policies

The following policies apply to this application:

Approved Fareham Borough Core Strategy

CS14 - Development Outside Settlements

CS15 - Sustainable Development and Climate Change

CS17 - High Quality Design

CS5 - Transport Strategy and Infrastructure

CS9 - Development in Western Wards and Whiteley

Fareham Borough Local Plan Review

DG4 - Site Characteristics

Relevant Planning History

The following planning history is relevant:

FBC.4227/19 - Erection of Church - Permission 21 December 1988

Representations

Three hundred and twenty three letters of support have been received commenting as follows -

- Increased facilities would enable more of the youth of the area to enjoy positive activities in a safe environment
- The facilities are required for both the spiritual and social needs of the people of the area and are open to church and non church members
- Bigger premises are needed because of the success of the existing in meeting local needs and increasing housing areas
- Uses cater for mums and toddlers, pre-school, children's clubs, teenagers, families and the elderly
- Some 600 people's needs are catered for each week
- The outreach from the site has impacts beyond the site itself
- Additional car parking would help to ease local issues. Extra car parking is a benefit as the existing car park is used by local residents and local mums visiting the school behind the church which itself has only limited parking. Off site car parking is being proposed for big events
- Existing facilities overcrowded
- The design of the building is good and in keeping with the surrounding development
- The new main entrance to the building will be set further away from local residents than at present
- If local property owners are affected now this in fact demonstrates that the existing facility is inadequate
- The influx of new families into new development in the area is the greatest cause of pressure on the infrastructure not the use of a facility such as this which will provide for more off road parking
- This is an investment in the community; a contribution to the 'Big Society'

The Fareham Society has commented as follows -

- The proposal would contribute to a variety of community uses in the area and will be welcomed by many, although the extension is larger than the existing church
- The more intensive use will cause some disturbance on the local road network and to nearby residential properties
- The impact and disturbance will have to be weighed in the balance against in particular the benefits offered to non church going residents
- Controls such as hours of use would have to be set in place
- Clarification is required in respect of the proposed larger functions such as the type and length
- Concern is raised over what guarantees would be in place over the availability of the development for community uses
- Concern is further raised as to how users will be deterred from using nearby streets for parking.

Forty eight letters of objection have been received and a petition of 242 signatories raising the following concerns -

- Loss to local environment. The complex will be large and visually out of character with the area.
- The building is too high. Whilst the building is only slightly higher than the existing, the height of the existing is taken from the apex of a pitch; the proposed building will have a wide flat roof which will have a greater impact visually. The scale of the building is 'industrial' and out of context with the suburban surroundings
- The scale of the facilities is such that it goes far beyond being a local community church
- Harm to quality of life in the neighbourhood in general
- Inadequate car parking will cause havoc in the local area around the church. The proposed development is too large for the site. Taking Hampshire County Council Standards 120 additional car parking spaces will be required with only 42 being provided. Over 167 spaces should be provided in total
- Object to use of part of playing field for car park since this would come under church control
- Noise and disturbance particularly from youth club and particularly at the start and finish (10pm) of the event but also from other uses which will only increase with the extension of the onsite facilities. The potential accommodation of multiple activities possibly finishing at different times will increase the potential disturbance 'window'. Music noise from the existing building already causes disturbance. This will be increased with the new proposals
- Noise disturbance by cars. The large numbers of people that may exit the facility at the same time is likely to cause problems
- Light disturbance from car park floodlights
- It is understood that fewer car parking spaces have been proposed due to concerns over the visual impact that this would have. If the visual impact of necessary parking would be harmful then it follows that the development is overlarge
- Public transport in the area is not good which will result in high attendance via the motor car
- Visitors to the church will have no option but street parking if the overflow car park is also used by users of the allotments and the recreation ground
- The appropriate use of the 'special events' car parking would rely upon many factors such as ensuring that the facility is made available for appropriate events, the provision of wardens, the suitability of the grassed area during certain weather conditions and most importantly the willingness of visitors to use the facility and walk to the venue. Figures

suggest that the overflow car park may be required for use more regularly than suggested with the potential for damage to the playing field

- Plans do not show cycle parking commensurate to the stated likely usage
- It is suggested that the proposed use is one suitable to a town centre so that the 'sequential test' should be applied in this case. No case has been made for the overriding need for the auditorium in this location
- Policy R4 of the saved Local Plan Policies identifies the site as part of a larger area allocated for sports, recreation, community and education uses. The proposal may be viewed as a community use but the application does not confirm how the other elements of the allocation will be delivered. It might be argued that a different part of the overall allocation site would prove less harmful to residents
- Is the proposal for the community or is it a business venture?
- Other community proposal such as the scout hut in Warsash Road were rejected because of the impact on character of the area - should the same not apply here?
- Other community users were prevented from parking on the recreation ground because the field is set aside for recreation uses - should the same not apply here?
- The proposed overflow car park is at a pinch point in the road
- Potential impact on trees. The screening impact of the trees is overplayed because these are now overmature and may need to be removed with a few years for safety reasons. This may be accelerated by the development process and will leave the site exposed. The building proposals leave insufficient space for replacements to be planted in advance
- Drainage of surface water to soakaways is insufficient for such a large building
- To pay for the project the complex would need to be used more regularly than at present with even more disruption to local residents
- The highway engineer comments that the proposal caters for natural growth in population and will not affect local traffic flow is incorrect
- If there is an element of evangelism in the use of the building (which has been confirmed) then the building will effectively serve the church rather than the community and be discriminatory since not all members of the community are of the same faith or any faith

Three letters has been received following advertising of the supportive information submitted by the applicants raising the following additional matters:

- Although the good works of the Church are recognised, nonetheless:
- The scale is too great
- Nearby properties were built in 1980 or earlier and therefore predate the church
- Many of the newer developments served by the church are not in Titchfield Common but 1
- 3 miles away, so that visitors to the church will almost certainly not walk
- Many local community groups find accommodation in the many other existing venues in the area
- The quoted 'enquiries' to the church for possible accommodation do not themselves justify the scale of the building
- Most of the letters of support do not come from those who live next to the church
- If coaches bring attendees to large events how will these be accommodated?

Consultations

Environment Agency - No comments to make on the proposal

Director of Planning & Environment (Ecology) - No objection subject to the works being carried out in accordance with the approved mitigation and enhancement measures and a condition securing details of lighting to be agreed.

Director of Planning & Environment (Arboriculture) - There are no arboricultural grounds for refusal and therefore no objection is raised subject to conditions.

Director of Regulatory and Democratic Services (Environmental Health) - In general, no issues are raised.

Director of Regulatory and Democratic Services (Contaminated Land) - No objection subject to condition.

Director of Planning & Environment (Highways) - The transport statement (TS) has been agreed. Trip generation from the existing site has been determined by way of a survey undertaken over the course of a week. This information has been used to estimate likely trip generation from the proposed facilities. Given the small number of sites available on TRICS (Trip Generation Analysis) and that the proposed church is not to significantly change the nature of the existing site, this approach is acceptable. Based on a comparison of trip rates for the existing and proposed church as included within the TS, it is evident that there will be an immaterial increase in vehicular trips during the AM and PM network peak periods so that the proposal will have no impact upon existing congestion. Whilst there will be an increased number of daily vehicle movements, these will occur off peak and thus will not be detrimental to the capacity of the local highway network. Notwithstanding the above, the increase in movements are acknowledged to be an absolute worst case, with it recognised that there is an existing church and with there being no immediate plans other than through natural growth to add to the congregation. However even considering the worst case, it is clear that the significant levels of movements are at off peak times (notably Friday and Sunday evenings) and outside of these times the number of daily movements will be low. There would be no highway concerns through the increased number of movements.

Eighty eight parking spaces would be provided in front of the proposed building whilst 136 further spaces will be provided within a further overflow parking area located a short distance south of the church. The combination of these two parking areas (224 spaces in total) would provide more than adequate parking provision for the church. Furthermore it is recognised that the overflow parking could accommodate other uses in Hunts Pond Road, for example the allotments and playing fields.

It is recommended that the Travel Plan (TP) incorporates a major events plan that sets out how these events are to be managed (ie. marshalling of car parking, clear sign posting, pre-advertising parking locations, active monitoring and post event de-briefing).

With regards to physical highway networks, the existing vehicular access into the site is to be retained along with a further access formed to the south to create an IN and Out arrangement (the existing is to be the In, the new access the Out). There is a scheme of traffic calming to the south of the Out access, however the access is a distance from this and there is clear visibility along Hunts Pond Road hence the formation of this additional access would not be anticipated to have any safety consequences.

With respects to the access serving the overflow car park, there is a dropped kerb in place and a gated access and it is noted that this field has been used for overflow parking in the past. It would seem that the nature of the use of this access may well change and a more frequent use may result. It should also be clarified if this access is to be used solely by the church or by other groups at other times (ie. The playing fields or allotments). Even so

movements, for the church at least, would be tidal in nature, hence the limited existing width would not seem as problematic although width improvements may be sought if the access is to be used more frequently. At the very least, improvements to visibility, particularly the provision of 2 x 2 metre intervisibility splays for emerging vehicles and those on the unsegregated foot/cycleway would be beneficial. Vehicular visibility splays should also be indicated although splays of 2.4 x 43 metres should be achievable with very limited consequences for the existing hedgerow. It is also suggested that the width of the access to the overspill parking be increased to 5 metres and surfaced for this width to 10 metres into the site.

The HCC Transport Contributions Policy would in principle apply given that this proposal would result in an increased number of multi modal trips, although these would be variable and have very minimal impacts upon existing peak time congestion. The submitted TS does review the accessibility of the site and the availability of sustainable transport infrastructure, and this does not identify any particular deficits. The TS does also identify on-site improvements to encourage less car dependency, which includes the Travel Plan and cycle parking. There are also very few relevant schemes in the HCC TCP List of Preferred Local Transport Schemes against which any contribution could be applied that would satisfy the tests within the CIL regulations. On that basis and on this occasion, it would be inappropriate to apply TCP.

Southern Water - No objection subject to condition and an informative.

Planning Considerations - Key Issues

The main considerations in this case are:

Principle of development;

Design/scale of development;

Parking/highway matters;

Impact on amenities of neighbours.

Principle of development

Within the Fareham Borough Local Plan Review the current expansion of the site is identified as land, outside of the built up area, but suitable for community, education and recreation uses. The proposed extension to the Church is considered to fall within the definition of a 'community' use so that it is considered to be in line with current policy.

Policy CS9, referring to development within the Western Wards and Whiteley identifies the potential provision of some 1480 further new dwellings up to 2026; it also encourages the provision of community facilities to serve this projected local growth. In principle this supports the aims of the planning application which are broadly to cater for an increasing local population and to provide flexible community facilities.

Some local residents have questioned whether the development may be truly viewed as a 'community' use since it is primarily for the Church and will therefore serve the interests of the Church rather than the Community. Considerable concern has been raised at the potential letting of the building to uses which are clearly unrelated to the church or local community (for example providing the auditorium as a conference hall). The applicants believe that if the building is not in use by the church or other community uses why should it not be used for other uses? This will in turn generate income providing funding towards the community and other work the Church undertakes.

The Church has demonstrated that the current church building is operated flexibly to the benefit of the wider community and that a significant proportion of the users are not directly linked to the Church. An example of these regular users is as follows:

Children craft activities,
Sports and games for children,
Parents and toddlers,
Parenting courses,
'Alpha courses',
Reading schemes,
Children's holiday club,
Youth clubs,
Seniors club,
Luncheon club,
Pre-school,
Debt counselling,
Housing association meetings with local residents.

The Church's aspirations for the proposed extension remain in line with its established community involvement. The Church has received a number of enquiries from other users, such as those listed below, however currently these could not be accommodated within the existing building:

Keep fit classes,
Women's institute,
Toddler cookery club,
Age concern,
Antenatal classes,
Counselling room,
Aerobics class,
Floristry class,
Ballet dancing lessons,
Slimming/healthy eating club,
National childbirth trust.

A large number of objections have been received from residents in the local area and these objections have been set out in some detail earlier in the report. One of the key concerns raised relates to the nature of the uses within the building and the effects of additional traffic and parking within the locality. This aspect has been the subject of considerable debate between Planning Officers and the applicants.

The applicants stress that the existing church at the site acts as both a place of worship and a community asset, providing a wide range of activities and events for all ages. The applicants believe that at present more than 90% of those attending activities live within the Western Wards. The applicants emphasise that their ambitions for the new building remain first and foremost as a place of worship and to provide accommodation to run a range of community activities and events.

A list of the existing and suggested activities and events are set out above. In the opinion of Officers these uses are appropriate being community uses or activities and events you would reasonably expect to run in close proximity to the community they serve. If Members concur with the view of Officers it would be appropriate to list the nature of activities and events which would be acceptable within the building within a Section 106 Planning

Obligation.

Officers acknowledge the concerns of local residents that the facility may host events unrelated to the Church and community which draw in large numbers of people. Officers also acknowledge the Church's aim to principally provide a place of worship and a community facility for a wide range of people of all ages. To ensure an appropriate balance is maintained Officers believe it is appropriate for the Planning Committee to control the uses undertaken in the building to ensure clarity for both the applicants and local residents.

At one extreme the Planning Committee may wish to prevent any uses within the proposed building other than those listed above. An opposing approach would be to allow an entirely flexible use of the building with the only requirement being to ensure that the overflow parking is available and marshalled where it is clear that the on site car parking is unlikely to be adequate.

A further option could be to allow some use by non-church and non-community uses but to limit the maximum number of attendees. The maximum number of attendees could be limited to 40 which is unlikely to lead to car parking problems within the locality.

To ensure an appropriate balance is maintained Officers recommend the final option and if Members share this opinion then it is suggested that this is also controlled through the legal agreement.

The extended facilities are to accommodate the projected future congregation of the Church and for wider community use. The new auditorium space will open opportunities to accommodate other large events as well as church services, in many cases, events that are planned by the local community and schools. This may be viewed, not as competing or taking away from venues such as the Ferneham Hall but rather bringing such events back into the community in a more sustainable fashion. Indeed the auditorium is not to be provided with any 'backstage' area so that it cannot compete with the scale and type of production housed within the Ferneham Hall.

The provision of the larger auditorium and associated rooms will allow for the more flexible use of the existing building and the ability to accommodate the many potential users already turned away because of lack of space or time as set out in the Church's supporting document. The provision of the single sports hall will be clearly a facility with potential to extend the community involvement in the site although it is not of a sufficient size to host sporting events and is therefore much more of a local facility.

The scale of the auditorium has been called into question by objectors to the scheme and it is suggested that the building will compete with Town Centre facilities such as Ferneham Hall, such that the proposal should be subject to a 'sequential test' to justify its provision and location. Officers do not agree with this view. First the primary function of the auditorium is to provide for increasing congregation size. Whilst there are those who raise issue with how 'local' the Church is, nonetheless it is evident that the majority of attendees are from the western wards area. Some travel from Whiteley and from Fareham but the majority are what might reasonably be considered as 'local'. The area continues to be subject to further residential growth and there is no reason to believe that the enlarged capability of the building will not be ultimately used by those mainly from the surrounding wards so that the primary function of the building is to serve those people and not to 'compete' with similar facilities elsewhere.

As stated above, the site does form part of an area allocated in part for community uses to which the application proposals comply and that there is no reason to consider that the Church will not continue to perform its community functions and involvement in similar fashion in the future.

Design/scale of development

The design of the building is a matter of concern to some objectors who point out that it is 'industrial' in scale and that although it is only slightly higher than the existing Church the highest part of the existing building is a ridge whereas the proposed building would project an expanse of flat roof. They therefore consider that the building is out of keeping with this primarily residential area. Whilst Officers acknowledge these views the following should be considered:

The proposed auditorium would measure approximately 9.5 metres in height; is not rectangular in form but is in fact octagonal; when viewed three dimensionally;

The building is not set directly against residential properties; to the north residential properties would be separated by the existing church building. The existing Church building will set a transition development to the existing residential properties in that direction. To the east the building would be screened by mature trees and would measure some 63 metres from the nearest residential properties in Ascot Close. To the west the building would be sited some 50 metres across from residential properties on the opposite side of Hunts Pond Road, behind the proposed car parking areas. To the south the land is open, albeit there is a 1.8 metre high close boarded fence on the southern boundary. Additional landscaping is also proposed along this southern boundary, intended not to screen but to create a soft edge to the building when viewed from the countryside.

The building is functional and is designed to achieve specific purposes including an auditorium; the flat roofed design of this reduces its height and the building has been designed to minimise impact upon local residents by reducing openings and where necessary keeping openings within elevations set away from the nearest residents.

The building has been designed to achieve good levels of energy efficiency which will exceed regulations through matters such as:

- Air source heat pumps
- Proximity and time controlled lighting
- Pulsed output from incoming water meter connected to Building Management system to detect leaks
- Proximity activated shut of valve to sanitary area water supply

Nonetheless, due to the charitable status of the applicants, the added costs of materials and design features and the cost of assessment and monitoring the project cannot realistically meet the aims of Policy CS15 of the Core Strategy to achieve 'excellent' status under BREEAM (Building Research Establishment Environmental Assessment Method) for non-residential developments from 2012. Under the circumstances Officers are of the view that with the variability of the use of the building together with the costs involved that must be borne, this is a case where the full achievement of the BREEAM status would be an unreasonable burden.

Officers are satisfied that taking into account such matters as its greater visual separation

from the adjacent residential development, its context in relation to the existing church building, its octagonal form and landscaping etc. the building will be an acceptable form of development.

Parking/highway matters

Local residents point out that significant problems arise, particularly on Sundays, when there is insufficient car parking available on the site, or in combination with parking at the local St.John's School (25 spaces by arrangement with Hampshire County Council) and attendees of the Church overspill into the local roads, causing problems for local residents and safety hazards on the more busy roads, particularly Hunts Pond Road.

The Church accepts that there are current problems and proposes that the application development will help to alleviate these issues. Currently 46 car spaces are available at the site. The proposed development would increase this to 88. It is envisaged that, at current attendance levels, the 88 spaces together with the 25 spaces at St.John's School will be sufficient to alleviate most existing on street parking issues. However, in addition to this the Church is negotiating a long term lease for the use of an area of land further south on Hunts Pond Road (opposite the northern end of the allotments) for overflow car parking to accommodate around 136 cars. The land has an existing vehicular access on to Hunts Pond Road.

The Church advises that the parking would be used as overspill parking which could include Sunday services and events that might include Weddings/Funerals, school concerts and shows. The Church has indicated that it would envisage up to 35 large events (excluding Sundays) only per year, which is less than 1 per week. The Church would marshal the parking for these events and, under heads of agreement put forward for the lease of the land, would restrict the use to parking; would undertake not to erect any buildings or structures; would allow use by other users such as those hiring the sports pitches, archers, and allotment holders but with priority to Church events. The Church would lay out the parking area using plastic mesh reinforcement (details to be agreed) so as to maintain the open space appearance. Parking spaces would not be marked out so as to avoid despoiling the appearance of the land, however submitted plans identify that the proposed 136 spaces can be achieved to a proper standard.

In light of the less predictable nature of the use of the overspill area for parking by users other than the church the priority offered to the Church is seen as being appropriate. Negotiations concerning the use of the overspill car park land are separate from the planning considerations relating to the application, which should be determined on its merits, nonetheless, officers consider that in light of the importance of the of the provision of the overflow parking, this should be secured through a legal agreement.

The Highway Engineer has indicated that the proposed access arrangements to the main site are acceptable but that improvements to the width of and visibility from the overspill parking access need to be agreed. Plans have been submitted identifying the provision of the required access visibility. This clarifies that the improvements can be achieved by cutting back the existing hedgerow only rather than through removal and replanting.

Some local residents have pointed out that the grass surface of the overspill car park may not survive the increased use particularly in bad weather. As already indicated, the applicants have confirmed that the area will be provided with surface reinforcement. A condition to agree detailed surfacing and access point details is recommended.

Parking problems arising as a result of the use of the church are existing. The proposed development seeks to address the problems by providing a negotiated overspill parking area to cater for larger events and to provide a longer term solution to growing congregation attendance. The overspill parking will also assist in providing parking opportunities for other nearby users. Highway advice is that the solutions are acceptable. Furthermore it is considered appropriate to limit the number of larger events to 35 a year (excluding Sundays) and to church, community and charity events only which would be secured through a legal agreement.

Impact on the amenities of neighbours

A number of local residents have raised concern about potential noise and disturbance both from outside and inside the new building. They cite problems currently experienced with the existing building.

A Preliminary Noise Impact Assessment Report has been submitted and agreed by the Director of Regulatory and Democratic Services (Environmental Health).

The noise attenuation of the building is a matter that can be stipulated and agreed and it is noted that the new building is now set further from the affected residential properties than the existing building. It is also noted that openings in the new building have been restricted in the elevations facing the residential properties to the rear.

One of the main concerns raised is noise from the youths attending the Friday youth club, particularly outside the building. It must be borne in mind that the youth club will continue regardless of the outcome of this application. The proposals do, however, move the focus of the building further to the south through the repositioning of the main entrance. This may impact positively on the level of disturbance from the youth club use but clearly the use will continue. Officers do not consider this to be sufficient argument to reject the current application.

As with parking, local perception of noise disturbance is that it is already a problem. The proposed development will contribute towards the improvement of the situation through the changed focus of activity on the site and through improved sound attenuation in the new building. The Director of Regulatory and Democratic Services (Environmental Health) is satisfied with the measures to be put in place as part of the development.

The entrance to the overflow parking area would not be positioned directly opposite residential properties. The use of the extended parking area in front of the church would be controlled by a condition restricting the hours of use of the proposed building. Furthermore the parking spaces are separated by a landscape buffer along Hunts Pond Road. In light of the foregoing, Officers are satisfied that the amenities of the local residents in Hunts Pond Road would not be compromised by the users of the car park.

In light of the separation distances between the proposed building and nearby residential properties, officers do not consider the development would impact on neighbouring properties in relation to privacy, light and outlook.

Other matters

Drainage - representations have drawn attention to the proposed disposal of surface water to soakaways and the inadequacy of this means of drainage to cater for a building of this

scale. Neither Southern Water nor the Environment Agency has raised objection. The submitted Flood Risk Assessment identifies that groundwater and percolation tests indicate that the site can be adequately drained naturally through the use of soakaways and permeable surfacing to the proposed car park area. This is in line with Government Guidance which seeks to ensure that drainage is handled as close to source as possible to avoid drainage/flooding issues elsewhere. Details are proposed via condition.

Trees - Representations express concern that the existing tree belt is now overmature, that the development will inevitably accelerate their loss and that the proposals leave no scope for advance replacement. Notwithstanding this the trees do provide a screen and a backdrop to the development and will continue to do so for some time. The Arboricultural Officer has not raised an objection subject to appropriate conditions.

Ecology - No significant issues relating to the site or the development.

Conclusion

The proposal involves a substantial extension to an existing church/ community facility on the edge of the urban area.

Officers are satisfied that in planning policy terms the extension of the facility on the southern side of the existing building is acceptable. Furthermore Officers consider that the provision of a sensitively designed car park which is available for other uses in the locality (e.g. those using the football pitches or allotment gardens) is acceptable in planning terms.

In visual terms Officer's are satisfied that the proposed building and associated works would not materially harm the character of the area or the amenities of local residents.

Careful consideration has been given to the proposed uses on the site and the arrangements for car parking. Subject to the completion of the Section 106 Agreement and the imposition of conditions to secure the matters set out within this report, Officer's consider this matter to be satisfactorily addressed.

Notwithstanding the objections received Officer's consider the proposal is acceptable, subject to the matters below within the recommendation.

Reasons For Granting Permission

The proposed development is directly related to the existing use of the adjoining land to the north. The site is on land allocated for community and other uses to which the proposal complies. The proposed development is broadly in line with Local Policy and with Government aims to encourage the provision of local facilities for and by local people. The proposals will expand a much used community facility. The design of the building is appropriate to its proposed function and will not be viewed in direct juxtaposition to residential dwellings. Car parking provision will provide for large events so that the existing on street parking issues should be alleviated. There are no other material considerations that are judged to have sufficient weight to justify a refusal of the application, and where applicable conditions have been applied in order to satisfy these matters. The scheme is therefore judged to be in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and thus planning permission should therefore be granted.

Recommendation

Subject to the applicant/owner entering into a planning obligation under Section 106 of the

Town and Country Planning Act 1990 on terms drafted by the Solicitor to the Council to secure:

- (i) the provision, laying out, maintenance, access improvement to and scheme of management (incorporating allowance for use by local recreational groups and allotment holders) of the proposed overspill car park; and to ensure it is made available before the building is first brought into use and thereafter kept available at all times;
- (ii) uses considered appropriate (as listed in principle of development section of report);
- (iii) no more than 35 large events (excluding Sundays) per year restricted to church related events as detailed under point (ii);
- (iv) maximum number of attendees (unrelated to church, community and charity uses) limited to 40 at any one time.

PERMISSION

Details of Materials; Details of drainage; Submission of landscape scheme; Implementation and maintenance of agreed landscape scheme; Details of hard surfacing area including car park to main site and overspill car park; Details of all external lighting to be agreed and implemented before use commences; A framework Travel Plan shall be submitted and approved before the development is first brought into use and the conclusions implemented, with a view to demonstrating what measures will be undertaken to reduce dependence upon private cars visiting the site; Not more than 35 large events per calendar year excluding Sundays and other Church calendar events; Details of proposed car park marshalling measures to be submitted to and approved before use of building commenced; Tree protection measures in accordance with submitted and approved method statement; No event or other use, excluding specifically church related, within the building shall finish later than 11pm; Width of access and visibility splays associated with the approved overspill car park to be submitted and approved and provided before the use of the approved building is commenced; Noise attenuation measures as agreed beforehand to be implemented before use commences; Should evidence of below ground gas be found during excavation and foundation development a full ground gas shall be undertaken and the conclusions implemented and any necessary mitigation measures fully implemented before any further works are commenced; noise conditions; compliance with terms of Phase I Habitat Survey; Details of areas for site offices, construction vehicles, and storage of materials during construction; Means of preventing mud from leaving the site during construction.

Notes for Information

Formal application to Southern Water required for discharge to public sewer system

Background Papers

P/12/0120/FP

Updates

The applicant has contacted Officer's in relation to the recommended maximum number of attendees (unrelated to church, community and charity uses) and has asked if the following could be reported to Members:

'In response to the recommendation to limit the number of unrelated church/community/charity activities to 40 attendees, the church would ask for Councillors to consider granting more flexibility. The church understands (and is committed to) the need to ensure the facility remains focused on its primary purpose, but it is also aware that such a restriction would limit potential use and income from not-for-profit organisations and other

potential users when the building is otherwise not being used. The suggested figure of 40 attendees is a figure which is too large to occupy the new small meeting room (Green Room) and too small to occupy the larger auditorium or activity room. In order to provide a measure of flexibility, would the Councillors consider increasing the maximum number of non-church/community/charity event attendees from 40 to 150 - a number still easily accommodated by the 220+ car parking spaces.'



FAREHAM BOROUGH
COUNCIL

www.fareham.gov.uk



255 Hunts Pond Road
Scale 1:1250

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For Mr Mark Madavan

Mr Mark Willis
1 Broadbridge Business Centre Delling Lane
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United Kingdom
PO18 8NF

Ref No : [P/12/0120/FP](#)

**TOWN & COUNTRY PLANNING ACT 1990
TOWN & COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) ORDER 2010**

**255 HUNTS POND ROAD LOCKS HEATH FREE CHURCH TITCHFIELD COMMON
ALTERATION TO EXISTING BUILDING AND PROVISION OF NEW AUDITORIUM, ACTIVITY
HALL AND CAFE WITH ASSOCIATED CAR PARKING AND CHANGE OF USE OF LAND
OPPOSITE NETLEY ROAD FOR USE AS OVERSPILL CAR PARK**

Application Received : 26th March 2012

In pursuance of their powers under the above mentioned Act the Council, as the Local Planning Authority, hereby REFUSE to permit the development described above in accordance with your application.

Reasons:

1. The proposed development is contrary to Policies CS5, CS14 and CS17 of the adopted Fareham Borough Core Strategy in that:

On the basis of the information submitted, the scale of the proposed development, particularly the incorporation of a 500 seat auditorium, and its use by separate commercial organisations goes beyond a facility that is necessary to serve the local community.

Whilst the provision of additional car parking to the south is recognised, the proposed car park is too distant from the proposed facilities and other opportunities exist to park closer to the site on the public highway. The scale of the proposed development, in conjunction with the existing building, would therefore lead to parking on nearby roads to the detriment of highway safety and the amenities of local residents. Furthermore on the basis of the submitted information, the local planning authority are concerned as to how the additional car parking area could be made available and controlled when there is pressure to use it by the Church, users of the sports pitches and those attending the allotments. This will further exacerbate problems with vehicles parking on the highway.

2. This decision relates to the following plans:

Lee Smith



Drawing nos:

100 revision A

101 revision A

102

103 revision A

104 revision A

105

106 revision A

107 revision A

108 revision A

Levels plan

W00217-101 revision P08

Lee Smith

23rd July 2012



NOTIFICATION to Applicants of:

- 1 Your right of Appeal
- 2 Your right to serve a Purchase Notice
- 3 Other ways to complain
- 4 Other Consents you may need

1. Your right of appeal

You may be entitled to appeal against this decision to the Secretary of State for the Department of Communities and Local Government (DCLG).

The Planning Inspectorate have introduced an online appeals service which you can use to make your appeal online. You can find the service through the Appeals area of the Planning Portal - see www.planningportal.gov.uk/pcs. The Inspectorate will publish details of your appeal on the internet (on the Appeals area of the Planning Portal). This may include a copy of the original planning application form and relevant supporting documents supplied to the local authority by you or your agent, together with the completed appeal form and information you submit to the Planning Inspectorate. Please ensure that you only provide information, including personal information belonging to you that you are happy will be made available to others in this way. If you supply personal information belonging to a third party please ensure you have their permission to do so. More detailed information about data protection and privacy matters is available on the Planning Portal. Alternatively, you may request paper copies from the following addresses:

Write to and obtain forms from:

The Planning Inspectorate, Customer Support Unit, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN. Telephone 0117 372 6372

*Please note that in each case the forms must be completed and returned to the above address with a copy to **Department of Planning and Environment (Development Management), Fareham Borough Council, The Civic Offices, Civic Way, Fareham, PO16 7AZ.***

You can also appeal if a decision has not been issued within the period shown below:

for these Applications Types	Time from receipt
Planning Permission, Listed Building or Conservation Area Consent	8 weeks
Certificates of Lawful Use or Development	8 weeks
Advertisement Consent	8 weeks
Fell or lop trees subject of a Tree Preservation Order	8 weeks
Non-material minor amendment to a planning permission	28 days

IMPORTANT - If the development is the subject of planning enforcement action this may reduce the time period for submission of an appeal - Please contact the Planning Office for further advice.

Please ensure that the correct form is used for each of the application types listed above.

Lee Smith



Your Entitlement to Appeal:

If you are aggrieved by the decision of the Local Planning Authority to refuse permission or consent or at the imposition of conditions then, subject to the following provisions, you may appeal to the DCLG. The ways you can do so are set out above.

Please note that only the applicant possesses the right to appeal. There is no third party right of appeal for neighbours and other objectors.

Restrictions on Your Right to Appeal:

There is a time limit for lodging your appeal, although the Secretary of State may override this. The applicant has the following time in which to lodge an appeal for these classes:

- * Planning applications (but see below for Householder Applications)(appeal under Section 78 of the Town and Country Planning Act 1990 (TCPA)),
- * Listed building consent applications (appeal under Sections 20 or 21 of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCAA)) and
- * Applications for Certificates of lawful use or development (appeals under Section 195 of the TCPA).

Should be lodged within 6 months of the date of the decision notice, or within 6 months of the expiry of the period of 8 weeks from the date the application was received or such extended period as agreed between the appellant and the Planning Inspectorate.

*** Householder Applications - If you want to appeal against a decision to refuse planning permission for a householder application then notice of appeal should be lodged within 12 weeks of the date of the decision notice.**

* Advertisement applications (appeal under Regulation 15 of the Town and Country Planning (Control of Advertisement) Regulations 1989) should be lodged within 8 weeks of the date of the decision notice.

* Application for consent to carry out works to a tree(s) the subject of a Tree Preservation Order (appeals under Sections (78)I of the TCPA) should be lodged within 28 days of the date on the decision notice, and

* Applications for a Certificate of Appropriate Alternative Development (appeals under Section 17 of the Land Compensation Act 1961) should be lodged within 1 month of the date of the certificate or notice of refusal to issue a certificate.

The Secretary of State may decide he will not consider an appeal. This might happen if the proposed development has been subject of an appeal which has been dismissed within the last two years, or where the Local Planning Authority could not have granted permission (or not without the conditions imposed) having regard to the statutory requirements, to the provisions of the Development Order and to any directions given under the Order.

Lee Smith

23rd July 2012



2. Your Right to Serve a Purchase Notice

If the Local Planning Authority or the DCLG refuses planning permission to develop land or grant listed building consent for works, or grants permission or consent subject to conditions, the owner may serve a notice on the Council in whose area the land is situated, requiring the Council to purchase his interest in the land. The owner will need to establish that he can neither put the land to a beneficial use by the carrying out of any works or development which would have been or would be permitted (see Part VI, Chapter 1 of the TCPA for the former class of applications and Section 32 of the Planning (Listed Building and Conservation Areas) Act 1990 for the latter class of applications).

3. Other ways to complain

If you are aggrieved at the way the Council has dealt with your application the Planning Officer who has been dealing with it will be pleased to explain the reasons for the Council's decision and endeavour to resolve the matter for you. If you are not satisfied, you may wish to put your complaint in writing or e-mail comps@fareham.gov.uk, using the Council's formal complaints procedure. This will ensure the details of your complaint are thoroughly investigated by an independent officer and an informed decision made as to whether your application was correctly dealt with. Details of the complaints procedure may be obtained from the Customer Services Manager at the Civic Offices (telephone 01329.236100). Should you remain unsatisfied at the conclusion of the Council's investigation, you may ask the Local Government Ombudsman to investigate the details of your complaint. Leaflets outlining the process of these procedures are available at the Civic Offices.

4. Other Consents You May Need

This decision relates solely to the town planning requirements under the Acts and Orders mentioned at the head of the decision notice. It does not grant any other consent or permission. In particular, the following may require consent:

i. Works requiring Building Regulations consent - If you have not already done so, you should contact the Council's Building Control Partnership at the Civic Offices, Telephone: 01329 236100 Ext 2441.

ii. Works or structures in the vicinity of a public sewer - If in doubt you should contact The Development Control Manager, Southern Water Services Ltd, Southern House, Sparrowgrove, Otterbourne, Winchester, Hampshire SO21 2SW Tel 0845 278 0845. You may inspect the Public Sewer Map held in the Council's Building Control Business Unit to find out if a public sewer crosses the site of the proposed development. (Buildings are not normally allowed within 3.0metres of a public sewer, although this may vary, depending upon the size, depth, strategic importance, available access and ground conditions appertaining to the sewer in question).

iii. Works affecting neighbours - (e.g.: work on an existing wall shared with another property, building on the boundary with a neighbouring property or excavating near neighbouring buildings). The Party Wall Act 1996 requires certain measures to be taken and leaflets explaining the specific requirements are available at the Council Offices.

Lee Smith



IMPORTANT WARNING

Please read the content of this warning notice on receipt of your planning permission decision notice.

The Council is pleased to enclose your conditional planning permission decision notice.

FEES FOR DISCHARGING PLANNING CONDITIONS

There is a fee payable to the Council when you submit details pursuant to planning conditions. The fee is £85 per request to discharge conditions (or £25 if the discharge of condition relates to a planning permission for extending or altering a dwellinghouse or other development in the curtilage of a dwelling). By way of clarification if details are submitted to discharge a number of conditions at the same time then just one fee of either £85 or £25 would be payable. If details to discharge conditions are submitted on a number of separate occasions then a fee of either £85 or £25 would be payable on each occasion. The fee must be paid when the request is made.

All requests for discharging planning conditions should be made in writing and ideally on the national application form designed for this purpose (which can be downloaded from the following site www.fareham.gov.uk/pdf/developmentc/appformlist.pdf (No. 27 on the list of forms), or otherwise please contact the Department of Planning and Environment: Development Management 01329 236100 ext. 2437 for a paper copy.

If you choose to send a covering letter rather than fill in the national application form you must ensure that all the relevant information requested in the application form is contained within your covering letter.

PRE-DEVELOPMENT CONDITIONS

Please note that there maybe conditions attached to this planning permission which are required to be discharged **before** development commences.

There have been several occurrences recently where developments have commenced before planning conditions have been discharged.

I must advise you that should you commence the development prior to all of the pre-development conditions being discharged the development will be treated as unauthorised development.

Should development commence before the pre-development conditions are discharged planning enforcement and or injunctive action to secure the cessation of the development will be considered.

Lee Smith



DEVELOPMENT NOT IN ACCORDANCE WITH APPROVED PLANS

There have been many instances recently where development has not been undertaken strictly in accordance with the approved plans.

If there is any variation from the approved plans for whatever reason, unless it is so insignificant that it can be considered de minimis (of no consequence), it is likely that it will require the submission of a new planning application. This will involve significant work and additional cost to both the developer and the Local Planning Authority.

A protocol for dealing with variations to planning permissions was agreed by the Planning Development Management Committee 16 March 2005 and copies are available from the Civic Offices or on the Council's web site www.fareham.gov.uk

Please ensure that the development you undertake is the development for which you have been granted planning permission. If your working drawings do not match the stamped approved planning drawings a new planning application will be required unless the variation is **very** small.

The ultimate decision on whether or not any change will require planning permission rests with the Local Planning Authority.

Development which is not in accordance with the approved plans is unauthorised development and likely to attract Planning Enforcement Action.

**THIS WARNING IS DESIGNED TO ASSIST AND PREVENT LATER DIFFICULTIES
PLEASE HEED THE ADVICE IN THE PROTOCOL.**

Lee Smith

23rd July 2012

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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.

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Department for
Communities and
Local Government

Roy Pinnock
SNR Dentons UK LLP
One Fleet Place
LONDON
EC4M 7WS

Our Ref: APP/G2815/N/12/2190175
Your Ref: MFXB/95642.00002

11 June 2014

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77
APPLICATION BY LXB RP (RUSHDEN) LIMITED
LAND ADJACENT SKEW BRIDGE SKI SLOPE, NORTHAMPTON ROAD,
RUSHDEN
APPLICATION REF: EN/12/00010/FUL**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Harold Stephens BA MPhil Dip TP MRTPI FRSA, who held a public local inquiry on 25-28 June, 2-5 July and 9-12 July 2013 into your client's hybrid planning application comprising: a full application for the erection of a home and garden centre, retail units, drive thru restaurant, gatehouse, lakeside visitor centre, restaurants, boathouse, together with proposals for access and an outline application for the erection of a hotel, crèche and leisure club with some matters reserved (appearance); plus removal of ski slope and associated levelling, landscaping, habitat management and improvement works, vehicular access and servicing proposals together with the provision of car and cycle parking and a bus stop (application Ref. EN/12/00010/FUL dated 20 December 2011).
2. On 7 January 2013, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your client's application be referred to him instead of being dealt with by the local planning authority, East Northamptonshire District Council ("the Council").

Inspector's recommendation and summary of the decision

3. The Inspector recommended that planning permission should be granted subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's recommendations. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to the IR.

Jean Nowak, Decision Officer
Planning Casework
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Procedural matters

4. For the reasons set out in IR1.5, the Secretary of State agrees with the Inspector that no procedural unfairness arose as a consequence of the submission on the last day of the inquiry of a Unilateral Planning Obligation concerning the provision of an improved bus service (IR1.4-1.5).
5. The Secretary of State has had regard to correspondence submitted too late to be considered by the Inspector, as set out in Annex B to this letter. He has carefully considered these representations but, as they do not raise new matters that would affect his decision, he has not considered it necessary to circulate them to all parties. Furthermore, the Secretary of State wrote to the main inquiry parties on 10 March 2014, inviting comment on the Planning Guidance which was published on 6 March and on any material change in circumstances, fact or policy, which may have arisen since the close of the inquiry which the parties considered relevant. The responses received were circulated for further comment on 7 April. A list of the representations received is set out in Annex C to this letter. The Secretary of State has carefully considered these but is satisfied that they do not raise any new material considerations sufficient to affect the decision in this case. Copies of the representations listed in Annexes B and C can be made available on written request to the address at the foot of the first page of this letter.
6. The Secretary of State notes (IR1.12 and 8.2) that planning permission for a business park was granted in 2002 on the whole of the previously developed land, and that this permission, along with succeeding permissions which remain extant, include a pedestrian and cycle bridge across the A45 and a condition requiring an Access and Management Plan for the ski lake and its immediate environs.
7. The Secretary of State agrees with the Inspector that the Environmental Statement, in conjunction with the supplementary environmental information (as set out in IR1.22), meets the requirements of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 and provides the data and information required to adequately assess the impacts on the environment of the proposed development (IR1.23).

Policy considerations

8. In determining these applications, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan consists of the North Northamptonshire Core Spatial Strategy 2008 (NNJCS) and the saved policies of the East Northampton Local Plan (1996) (LP). The Secretary of State considers that the development plan policies most relevant to this case are those set out at IR1.26-1.31. He notes that the Minerals and Waste Core Strategy DPD identifies the application site as a "Sand and gravel safeguarding area" (Policy CS10); but agrees with the Inspector that, given that the principle of development on the site is already established through earlier consents, the site's current designation as a

Minerals Safeguarding Area under Policy CS10 is less relevant in this case (IR1.33).

9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework); the associated Planning Guidance; and the Nene Valley Strategic Plan.
10. In determining this application, the Secretary of State has also had regard to the Emerging Draft North Northamptonshire Joint Core Strategy 2011-2031, which he notes envisages an enhanced role for Rushden (IR1.34), and the emerging Four Towns Plan (IR1.35). However, for the reasons given in IR8.6, he agrees with the Inspector that little weight can be afforded to these plans.

Main issues

Development plan and sustainable development

11. For the reasons in IR8.8-8.9, the Secretary of State agrees with the Inspector that the application is not in accordance with the NNJCS spatial strategy, particularly Policies 1 and 12 (IR8.9 and 8.13-8.14). However, he also agrees with the Inspector that there are other parts of the NNJCS with which the application is wholly in accordance, including The Vision for North Northamptonshire (IR8.10). He agrees with the Inspector that the development would assist in meeting the vision by delivering jobs for which there is a step-change requirement; delivering investment in services and facilities which would assist in making North Northamptonshire a “*more self-sufficient area*” and better able to meet the needs of the growing population in the south of that area; regenerating Rushden; and enhancing the environment of Rushden Lakes and the Nene Valley (IR8.10). He also agrees that the proposals accord with most of the objectives for realising the vision in the NNJCS, notably 1, 2, 3, 5, 6, 7, 8 and 9; and that the proposals are also in broad compliance with Policies 5, 8 and 13 (IR8.12).
12. The Secretary of State agrees with the Inspector that a founding principle of the NNJCS is to increase the self sufficiency of North Northamptonshire (IR8.11); and he notes that paragraph 3.11 of the NNJCS and Policy 12 expressly provide for applications to be considered on their merits against tests which recognise the importance of retaining expenditure there (IR8.11). The Secretary of State also agrees with the Inspector (IR8.15) that, for the reasons in IR8.16-8.29, Policies 1 and 2 of the NNJCS are out of date; and, for the reasons in IR8.22-8.28, that Policy 12 of the NNJCS is also out of date (IR8.22). The Secretary of State also agrees with the Inspector that the NNJCS has failed to deliver the growth necessary to enhance the self sufficiency of the area (IR8.30); and that, in so far as the adopted LP contains/relies on the allocation of the application site as an employment commitment, it is also not up-to-date. The Secretary of State also notes that the North Northamptonshire Joint Planning Unit (NNJPU) has not been able to agree a retail strategy for the emerging NNJCS (IR8.32-8.33).

Conclusion on development plan

13. For the reasons set out above and in IR8.34, the Secretary of State agrees with the Inspector that, while the proposal would accord with a number of

development plan policies and objectives, it would not wholly accord with the NNJCS spatial strategy and therefore would not be in accordance with the development plan as a whole. However, he also agrees with the Inspector that the key policies and provisions in the adopted development plan are out-of-date; and that, applying paragraphs 18 to 219 of the Framework as a whole, the proposal amounts to sustainable development which, as local people have themselves indicated, would achieve positive improvements in the quality of the built and natural environment and in their quality of life.

Vitality of town centres

14. For the reasons given in IR8.37-8.42, the Secretary of State agrees with the Inspector's conclusions on the need and scale tests.

Sequential test

15. The Secretary of State agrees with the Inspector that the application site is out of centre and that the sequential test would be satisfied if "suitable [in or edge of centre] sites are not available", albeit that that involves consideration of the question of "flexibility" (IR8.43). Furthermore, having regard to the arguments put forward by the Inspector at IR8.44-8.48, the Secretary of State agrees with his conclusion at IR8.48 that the sequential test relates entirely to the application proposal and whether it can be accommodated on an actual alternative site (eg a town centre site). The Secretary of State agrees with the Inspector's conclusions on the sequential test in IR8.48. He notes that the Framework requires developers to demonstrate flexibility on issues such as format and scale (IR8.49); and that the new Planning Guidance asks decision-makers to consider whether there is scope for flexibility in the format and/or scale of a proposal, making it clear that it is not necessary to demonstrate that a potential town centre or edge of centre site can accommodate precisely the scale and form of development being proposed, but rather to consider what contribution more central sites are able to make individually to accommodate the proposal.
16. Having regard to this, and for the reasons in IR8.50, the Secretary of State agrees with the Inspector that the applicant has demonstrated flexibility on format and scale and that the whole scheme could not realistically be moved to another location. He agrees with the Inspector that there is no requirement to disaggregate (IR8.47 and 8.51) and, for the reasons in IR8.51, he also agrees that it would be inappropriate for a significant part of the Rushden Lakes scheme to be located in Northampton (8.51).
17. For the reasons in IR8.52-8.53, the Secretary of State agrees with the Inspector (IR8.54) that it is sensible to identify an area of search for sequentially superior sites encompassing zones 9-11; and, for the reasons in IR8.55-8.57, he agrees (IR8.58) that there is no suitable and available sequentially superior site.

Impact test

18. The Secretary of State agrees with the Inspector's conclusions in IR8.59 with regard to the impact test.

(i) Existing, committed and planned public and private investment

19. For the reasons in IR8.61, the Secretary of State agrees with the Inspector that there is no evidence that any planned investment in Wellingborough is being actively progressed, that any plans have reached further than embryonic stage, or that any developer is committed. The Secretary of State has had regard to GL Hearn's letter of 28 March on behalf of Kennedy Wilson, the owners of the Swansgate Shopping Centre in Wellingborough (as listed at Annex C), but he does not consider this suggests the situation regarding planned investment in Wellingborough has changed since the close of the inquiry. He also notes that Wellingborough Chamber of Commerce and Wellingborough Borough Council fully support the Rushden Lakes proposal (IR8.61).
20. With regard to Northampton, having carefully considered the Inspector's reasoning and conclusions regarding the Grosvenor Centre in IR8.62-8.65, the Secretary of State agrees with his conclusion in IR8.66 and, like the Inspector, is not persuaded that a grant of planning permission at Rushden Lakes would preclude future investment at the Grosvenor Centre on the grounds of viability (IR8.66).
21. For the reasons in IR8.67, and having regard to Corby Borough Council's letter of 25 March (as listed in Annex C), the Secretary of State agrees with the Inspector that there is no compelling evidence of any significant adverse effect on planned investment in Corby; and he notes that all the retail impact analysis demonstrates that the measured effect on Corby is very small. For the reasons given at IR8.68, and having regard to Maples Teesdale's letters of 31 March and 14 April 2014 on behalf of PR Kettering Ltd (as listed in Annex C), the Secretary of State also agrees with the Inspector that, although there is some policy support for improvements in Kettering, there is no evidence of any scheme being progressed for comprehensive redevelopment as set out in the Area Action Plan or that the situation regarding planned investment there has changed significantly since the close of the inquiry.

(ii) Impact on town centre vitality and viability

22. For the reasons in IR8.70, the Secretary of State agrees with the Inspector that it is unlikely that substantial numbers of people living in Northampton and beyond would be drawn to Rushden Lakes. He also agrees (IR8.71) that, at present, there is significant leakage of comparison goods expenditure from Rushden, its home zone and all the other zones in North Northamptonshire; that Rushden and the other towns in North Northamptonshire are failing to provide sufficient choice and quality in their comparison goods offer; and that their residents travel further afield for comparison goods shopping counter to the fundamental strategic objective of the NNJCS to retain more of such expenditure within North Northamptonshire. The Secretary of State also agrees with the Inspector that, for the reasons given in IR8.72, this outflow of expenditure results in an overall disbenefit to the local community.
23. The Secretary of State also agrees with the Inspector (IR8.73) that it is relevant to note that, over half way through the NNJCS period, the growth earmarked for Wellingborough has not been achieved and that, in the context for considering the retail impact of Rushden Lakes, Terraces B and C are no

larger than the amount of floorspace that the NNJCS allocates to Wellingborough to increase retention of trade within North Northamptonshire.

24. For the reasons in IR8.74-8.79, the Secretary of State agrees with the Inspector that the Local Authority Consortium's estimated turnover is too high to be realistic (IR8.79); and that its judgement is based on disproportionate differentials between town centres and out of centre retail parks (IR8.82). The Secretary of State also agrees with the Inspector that, for the reasons given at IR 8.86, the effect on Corby, Kettering and Northampton town centres would not be significant (IR8.86), and that, although the effect on Wellingborough is more finely balanced, Wellingborough Borough Council has not withheld its support for Rushden Lakes on the grounds of adverse retail impact.

Conclusion on vitality of town centres

25. For the reasons set out above, the Secretary of State agrees with the Inspector's conclusion at IR8.87 that consideration of the terms of the Framework and the Planning Guidance does not indicate that planning permission should be refused in this case (IR8.87).

Sustainable transport and accessibility to jobs, leisure facilities and services by public transport, walking and cycling; and reducing the need to travel, especially by car

26. For the reasons in IR8.88–8.92, the Secretary of State agrees with the Inspector that, in terms of paragraph 34 of the Framework, the decision maker should look to what is practicable in the particular circumstances of the site and its location (IR8.90); that the sequential test in paragraph 24 of the Framework contains a preference for well-connected sites, not an absolute requirement (IR8.91); and that there is a very full Statement of Common Ground reflecting extensive agreement on transport matters (IR8.92).
27. The Secretary of State agrees with the Inspector that the new footbridge would reconnect the town with the Lakes, joining together the employment, residential and retail uses and that the appellant's 2km walking catchment area is reasonable (IR8.93). He also notes that the Ramblers Association has welcomed the improved pedestrian and cyclist access (IR8.95); and he agrees that cycling use would increase with improved connections planned not just by the appellant but also in conjunction with the WEAST development at Wellingborough and the continuing improvements planned along the Nene Valley (IR8.96).
28. On the basis of the evidence before him, and for the reasons in IR8.99, the Secretary of State agrees with the Inspector that the application site is not as accessible as might be expected for a development of its size and type, although the enhancements to bus provision proposed by the appellant would significantly improve accessibility (IR8.99). He agrees with the Inspector that it is necessary to provide a new half hourly bus service seven days a week as provided in the Unilateral Planning Obligation as this is more likely to activate modal shift from cars to public transport (IR8.99). He notes that Northamptonshire County Council expects the new bus service to continue long term and to be self-funding; and he agrees with the Inspector that, with the new bus service provision in place, there would be a strong linkage both to the

town centre and to a significant number of towns within the local area - providing an appropriate and sustainable alternative to the use of the private car in accordance with the aspirations of national planning policy (IR8.100).

29. The Secretary of State agrees with the Inspector that the proposed improvements to the Skew Bridge Roundabout would be beneficial for users of the road network (IR8.101).
30. For the reasons in IR8.102, the Secretary of State agrees with the Inspector that the proposals would bring significant benefits in terms of trip reduction and carbon saving (IR8.102).
31. For the reasons set out above, the Secretary of State agrees with the Inspector (IR8.103) that the proposals would be consistent with Government policy for promoting more sustainable transport, as set out in the Framework.

Protected species and biodiversity

32. For the reasons in IR8.105-8.111, and having particular regard to the views of Natural England, the Secretary of State agrees with the Inspector that the proposed development would bring significant nature conservation benefits.

Other benefits

33. The Secretary of State agrees with the Inspector (IR8.112) that the proposal would result in significant tourism and recreation benefits (IR8.113-8.114); and would also create a significant number of jobs (IR8.115-8.116). He also notes (IR8.117) that there is considerable public support for the proposals (IR8.117); and he agrees with the Inspector that the proposed layout of the development would maximise the enjoyment of the Lakes.

The planning balance

34. Having carefully considered the Inspector's analysis and comments, the Secretary of State agrees that a number of benefits would result from the proposed development, including the creation of jobs and the provision of the boathouse and recreational access to the Lakes (IR8.130). He agrees with the Inspector that these are important community benefits and that the boathouse would contribute to the development of tourism in the Nene Valley (IR8.130). He notes that the Wildlife Trust has confirmed that its involvement would secure improved opportunities for bird-watching, walking, angling and boating, and that access would be managed and provided through the land it manages to link up with the greenways of the wider Nene Valley (IR8.130). He agrees with the Inspector that this would all accord with Policy 5 of the NNJCS and the Nene Valley Strategic Plan (IR8.130).
35. The Secretary of State agrees with the Inspector that the other benefits of the proposed development include: the regeneration of the previously developed site to the benefit of the self-sufficiency of the town and surrounding areas; the provision of jobs and benefit to the local economy; the enhancement of the environment and ecological benefit; the provision of leisure and recreation facilities; enhanced tourist facilities; connection of the town with the countryside via the new pedestrian and cycle links, including the provision of a bridge over

the A45; considerable vehicle mileage savings by access to a quality local shopping destination in circumstances where currently long journeys are needed, thereby minimising the need to travel; and improved public transport provision (IR8.132). However, he also agrees with the Inspector that the application site is not as accessible as might be expected for a development of its size and type, while also agreeing that the proposed enhancements to bus provision would significantly improve accessibility (IR8.99).

36. The Secretary of State agrees with the Inspector that the applicant has demonstrated flexibility on format and scale (IR8.50); that the whole scheme could not realistically be moved to another location (IR8.50); and that there is no suitable and available sequentially superior site (IR8.58). He also agrees that at present there is significant leakage of comparison goods expenditure from Rushden, its home zone and all the other zones in North Northamptonshire; that Rushden and the other towns in North Northamptonshire are failing to provide sufficient choice and quality in their comparison goods offer, whether in centre or edge/out of centre (IR8.71). He also agrees that, for most of the town centres, the impact of the proposed development on their vitality and viability would not be significant, although in the case of Wellingborough the effect would be more finely balanced (IR8.86). For the reasons set out in IR8.131, he agrees with the Inspector that the proposal is sustainable development and, like the Inspector, he ascribes significant weight to this in the planning balance.
37. While the proposal would accord with a number of development plan policies and objectives, the Secretary of State agrees that it would not wholly accord with the NNJCS spatial strategy, particularly Policies 1 and 12, and therefore would not be in accordance with the development plan as a whole (IR8.34). However, he agrees with the Inspector that the key policies and provisions in the adopted development plan are out-of-date (IR8.34); and that the proposal would ensure a better life for the people of Rushden and North Northamptonshire (IR8.34). He is satisfied that the failure to accord with the development plan as a whole would not significantly and demonstrably outweigh the benefits of the scheme when assessed against the policies of the Framework taken as a whole.

Conditions and planning obligations

38. The Secretary of State has considered the annex of conditions attached to the IR and the reasons for the suggested conditions set out at IR8.118-8-120. He is satisfied that the proposed conditions are reasonable and necessary and meet the tests of paragraph 206 of the Framework.
39. The Secretary of State agrees with the Inspector's reasoning and conclusions on the Planning Obligation Agreement and the Unilateral Planning Obligation in IR8.121-8.129. For the reasons set out in IR8.129, he agrees with the Inspector that it is necessary to provide a new half hourly bus service seven days a week as provided in the Unilateral Planning Obligation. Overall, he agrees with the Inspector that the provisions in the Planning Obligation Agreement and the Unilateral Planning obligation are necessary and meet the tests of Regulation 122 of the CIL Regulations 2010 and paragraph 204 of the Framework (IR8.129).

Overall conclusions

40. The Secretary of State concludes that while the proposal would accord with a number of development plan policies and objectives it would not wholly accord with the NNJCS spatial strategy, particularly Policies 1 and 12, and therefore would not be in accordance with the development plan as a whole. However, he considers that the key policies and provisions in the adopted development plan are out-of-date. He also concludes that the benefits of the proposed development are not clearly outweighed by adverse impacts, and that there are no other material considerations which indicate that planning permission should be refused.

Formal Decision

41. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby grants full planning permission for: the erection of a home and garden centre, retail units, drive thru restaurant, gatehouse, lakeside visitor centre, restaurants, boathouse, together with proposals for access and outline planning permission for the erection of a hotel, crèche and leisure club with some matters reserved (appearance); plus removal of ski slope and associated levelling, landscaping, habitat management and improvement works, vehicular access and servicing proposals together with the provision of car and cycle parking and a bus stop (application Ref. EN/12/00010/FUL dated 20 December 2011) subject to the conditions listed at Annex A to this letter.
42. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
43. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

44. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
45. A copy of this letter has been sent to East Northamptonshire District Council, Northampton Borough Council, Kettering Borough Council, Corby Borough Council, Wellingborough Council, Deloittes, Peter Bone MP, Derek Clark MEP, Philip Hollobone MP, Andy Sawford MP, Michael Ellis MP, and Brian Binley MP. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Jean Nowak

Authorised by Secretary of State to sign in that behalf

Annex A

CONDITIONS

Time limits

- 1) Application for approval of details of the appearance (hereinafter called "the reserved matters") in relation to the part of the site edged yellow on Drawing 2654-70 Rev A , (hereinafter called "the outline development") must be made to the Local Planning Authority before the expiration of three years from the date of this permission.
- 2) The outline development shall be begun before the expiry of two years from the date of approval of the last of the reserved matters to be approved.
- 3) The development of the site (other than the outline development) for which detailed permission is hereby granted shall be begun before the expiration of three years from the date of this permission.
- 4) The application for the approval of the reserved matters shall be submitted to the Local Planning Authority before the expiry of 3 years from the date of this permission.

Plans, Drawings and Documents

- 5) The development hereby permitted shall not be carried out except in accordance with the following approved drawings and plans:

Plan 1 (Rev A) Site Plan 1:5000; Plan 2: Blue Land Site Location Plan 1:12500; Plan 3: General Location 1:2500; 10714-C106-D5 Levels Strategy Plan (FRA); 10714-C120-D2 Existing Levels (FRA); 2654-50 Rev B Proposed site plan; 2654-51 Garden Centre Elevations; 2654-52 Garden Centre Section; 2654-53 Retail Terrace A Elevations; 2654-54 Retail Terrace B Elevations; 2654-55 Retail Terrace C Elevations; 2654-56 Retail Detail Elevations; 2654-57 Anchor Store Typical Section; 2654-58 Retail Terrace Typical Section; 2654-59 Retail Terrace C Elevation in context; 2654-60 Restaurant Plan, Elevations, Section; 2654-61 Drive-thru Plan, Elevations, Section; 2654-62 Visitor Centre Floor Plan; 2654-63 Visitor Centre Elevations; 2654-64 Rev A Boathouse Floor Plan; 2654-65 Boathouse Elevations; 2654-66 Gatehouse Building Floor Plan; 2654-67 Gatehouse Building Elevations; 2654-70 Rev A Parts subject to Outline Application; 2654-71 Garden Centre Plan; 2654-72 Retail Terrace A Plans; 2654-73 Retail Terrace B Plans; 2654-74 Retail Terrace C Plans;

- 6) All reserved matters and other schemes and details that are required to be submitted pursuant to the conditions attached to this planning permission shall accord substantially with: the submitted Environment Statement [dated 20.12.11]; Environment Statement Addendum (June 2012); Flood Risk Assessment [version F4] [dated May 2012]; Transport Assessment [dated Dec 2011]; Addendum to TA - Highways Agency (March 2012); Addendum

to TA – NCC (March 2012); Design and Access Statement (amended) with Addendum; Waste Management Strategy and Waste Audit.

- 7) Development shall not commence until a delivery strategy and phasing plan have been submitted to and approved in writing by the Local Planning Authority for the development. The development shall be carried out in accordance with the approved delivery strategy and phasing plan.
- 8) The development floorspace shall not exceed:
 - (a) 43,289 square metres gross internal floorspace (inclusive of the external sales and display space associated with the garden centre) within Use Class A1 of the Town and Country Planning Use Classes Order
 - (b) 26,747 square metres net sales area (of which no more than 929 sqm shall be used for the sale of convenience goods)
 - (c) a 112 bed hotel, a creche (181 square metres gross internal floorspace) and a Leisure Club (1,456 square metres gross internal floorspace)
 - (d) two lakeside restaurants (each being 464 square metres gross internal floorspace) and a drive-thru restaurant/coffee shop (186 square metres gross internal floorspace)
 - (e) a lakeside visitor centre and a boathouse (each being 289 square metres gross internal floorspace).
 - (f) 12 metres in height from finished floor level to parapet level (and 14m including rooftop plant enclosure).

Archaeology

- 9) Development shall not take place on any phase approved under condition 7 of this permission until a scheme for the implementation of a programme of archaeological recording has been submitted to and approved in writing by the Local Planning Authority for that phase. The recording must be carried out by an appropriately qualified and experienced archaeological consultant or organisation. The scheme shall be implemented before construction commences at the site on any phase approved by condition 7 of this permission.

Drainage

- 10) No development shall commence until a foul water strategy has been submitted to and approved in writing by the Local Planning Authority. No building shall be occupied until the works have been carried out in accordance with the foul water strategy so approved.

- 11) No infiltration of surface water into the ground shall be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approved details.
- 12) Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water from parking areas and vehicle manoeuvring areas shall be passed through an oil separator designed and constructed to have a capacity and details compatible with the site being drained or other approved pollution prevention device, e.g. porous paving. Roof water shall not pass through the interceptor(s).
- 13) No development shall take place until a detailed surface water drainage scheme for the site, including phasing, based on the submitted drainage strategy has been submitted to and approved in writing by the Local Planning Authority. The drainage strategy should demonstrate that the surface water run-off generated up to and including the 1% critical storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. Any attenuation required shall include an allowance for climate change. The scheme shall subsequently be implemented for each phase of the site in accordance with the approved details and accompanying phasing plan. The scheme shall also include:
 - (a) Demonstration that the NPPF and CIRIA hierarchy of drainage has been followed
 - (b) Detailed surface water design drawings and supporting calculations
 - (c) Consideration of overland flood flows
 - (d) Overland floodwater should be routed away from vulnerable areas.
- 14) No development shall take place in any phase of the development under condition 7 until a detailed scheme for the ownership and maintenance of the surface water drainage assets, for the lifetime of the development, relating to that phase has been submitted to and approved in writing by the Local Planning Authority and the maintenance plan shall be carried out in full thereafter.

Highways

- 15) No development hereby permitted shall take place until details of the following schemes have been submitted to and approved in writing by the Local Planning Authority in consultation with Northamptonshire County Council (acting as Local Highway Authority) and the Highways Agency:
 - (a) details of the form of the junctions/links at:
 - (i) the eastern end of the link road (which links Crown Way and Northampton Road) at its junction with Northampton Road;

- (ii) the Northampton Road/Brindley Close junction; and
 - (iii) the Northampton Road exit from the A45 Skewbridge roundabout
- (b) details of a publicly adoptable pedestrian/cycle bridge over the A45 dual carriageway connecting the A5001 Northampton Road, Rushden with the new adoptable site access road as shown on drawing 110277/SK/46 Rev A
 - (c) details of the improvements to the A45/Northampton Road/Crown Way junction (Skew bridge) as shown on drawing 110277/SK/46 Rev A
 - (d) details of improvements to the footways of the A5001 Northampton Road and the U35247 Crown Way, Rushden to form a shared use footway/cycle track with appropriate dropped crossings between the proposed Toucan crossing on Northampton Road and the East Northamptonshire Greenway access off Crown Way, Rushden

and no part of the development hereby permitted shall be brought into use until the schemes listed at (a) to (d) have been completed in accordance with the approved plans. The works shall be retained as approved thereafter.

Travel Plans

- 16) The development hereby permitted shall be operated at all times in accordance with the submitted Draft Framework Travel Plan forming part of the Transportation Assessment.
- 17) No unit shall be occupied until a Travel Plan for that unit has been submitted to and approved in writing by the Local Planning Authority in accordance with the Draft Framework Travel Plan forming part of the Transportation Assessment. The unit shall thereafter be operated in accordance with the approved travel plan and agreed actions under condition 19.
- 18) The development shall not be occupied until the expiry of 3 months from the date on which notice has been given in writing to the Local Planning Authority and Northamptonshire County Council (as Local Highway Authority) of the appointment of a Travel Plan Manager.
- 19) An annual Travel Plan review, identifying performance against the objectives of the Draft Framework Travel Plan and Travel Plans approved under condition 17, shall be submitted in writing to the Local Planning Authority every year for 5 years, beginning 12 months from first retail occupation, to be approved in writing. Any agreed actions shall be implemented by the Travel Plan Manager.

- 20) If the last Travel Plan review under condition 19 identifies that the targets in the approved Draft Framework Travel Plan are not being achieved, the Travel Plan review period under condition 19 shall be extended by a further 12 months, during which the Travel Plan Manager will work with the Local Planning Authority to agree measures that will secure improved performance against those targets and the timescale for implementing and monitoring them. The agreed measures shall be implemented by the Travel Plan Manager thereafter.

Landscaping

- 21) No development shall take place until a landscaping scheme for the site (including boundary treatment) has been submitted to and approved in writing by the Local Planning Authority. This landscaping scheme shall be implemented in accordance with the approved details in the first planting season following the occupation of the development. Any trees or plants which within a period of five years of planting die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species (or as otherwise agreed in writing by the Local Planning Authority). The submitted landscaping scheme shall include details of how the landscaping will be phased to reflect the phasing of development under condition 7).

Miscellaneous

- 22) No development shall take place until full details of the repair works to the "Bailey Bridge" and the programming of such works shall be submitted to and approved by the Local Planning Authority in writing. The repair works shall be completed before any part of the development hereby permitted is brought into use.
- 23) An easement of 3 metres should be provided either side of the pipeline as shown on the Gas Main Survey Drawing 17469 dated August 2012. At no time shall any non demountable buildings or structures be erected within this corridor.
- 24) No development shall take place until a scheme and timetable for the provision of 12 fire hydrants has been submitted to and approved in writing by the Local Planning Authority. The provision of fire hydrants shall be made in accordance with the approved scheme and timetable and retained thereafter.

Biodiversity

- 25) No ground clearance works, tree felling, or vegetation removal shall take place during the main bird breeding season (April – June inclusive). If any such works are scheduled for March, July or August, a suitably qualified ecologist must carry out a comprehensive search of the affected area for nesting birds before the works commence. If active nests are found, ground clearance, tree felling or vegetation clearance around the nest (including a buffer area determined by the ecologist), shall not be permitted until the

breeding attempt has ended as confirmed by the ecologist in writing to the Local Planning Authority.

- 26) No ground clearance works shall be undertaken within 100 metres of the heronry in the SSSI shown on plan GIS034A Ecological Constraints Drawing between the period January – June each year. If any such works are scheduled for July and August a suitably qualified ecologist must carry out a comprehensive search of the affected area for nesting herons before the works commence. If active nests are found, ground clearance, tree felling or vegetation clearance within 100 metres of the heronry shall not be permitted until the breeding attempt has ended as confirmed by the ecologist in writing.
- 27) The Skew Bridge Lake contained in the application site shall not be used by motorised craft at anytime except for safety boats. Within the Skew Bridge Lake, boating shall be limited to the area shaded green shown on plan GIS034A Ecological Constraints Drawing between the 1st November and 31st March in any year.
- 28) No watercraft shall be permitted in a 30 metre watercraft exclusion zone around the western island on Skew Bridge Lake shown on plan GIS034A Ecological Constraints Drawing either during the construction phase or the ongoing operational phase of the development, to avoid disturbance to places of rest and shelter used by otters. No boating activity shall be permitted on Delta Lake, to avoid disturbance of the bird interest of the SSSI/SPA/Ramsar site.
- 29) No development shall take place until a detailed Access and Habitat Management Plan related to Skew Bridge Lake and Delta Pit Lake, (based on the submitted outline access and habitat management plan) including access to the land around these lakes, has been submitted to and approved in writing by the Local Planning Authority in consultation with Natural England. The approved Plan shall be implemented before any part of the development becomes operational and implemented and maintained thereafter in accordance with the approved details.
- 30) No development shall take place until a detailed plan of the measures to be taken to avoid harm to reptiles during the development and to provide appropriate mitigation measures shall be submitted to and approved in writing by the Local Planning Authority.
- 31) A clerk of works with appropriate ecological qualifications and experience (as agreed with the Local Planning Authority) shall be appointed to ensure development is undertaken in compliance with the Construction and Environment Management Plan and Access and Habitat Management Plan. The clerk of works shall be in attendance at the site during all working hours during which construction is being carried out.
- 32) No development shall take place until a list of construction operations that could cause disturbance to the wintering bird interest of the SSSI/SPA/Ramsar site has been provided to and approved in writing by the

Local Planning Authority in consultation with Natural England. Such construction operations shall not be undertaken during the October to March (inclusive) period without prior agreement in writing by the Local Planning Authority (in consultation with Natural England) of suitable methodologies and mitigation to minimise disturbance to the wintering bird interest of the SSSI/SPA/Ramsar site and the subsequent implementation of agreed measures.

- 33) From the commencement of development there will be an annual monitoring survey in the area covered by the Access and Habitat Management Plan for reptiles, bats, otters, wintering and breeding birds which will continue on an annual basis until 5 years after the completion of all the development hereby permitted. The results of the monitoring survey shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Natural England. Should the monitoring survey show any significant decline in the populations on any of the above species due to the development then an additional management action plan to rectify the position shall be submitted to and approved in writing by the Local Planning Authority in consultation with Natural England. The approved additional management action plan shall be implemented in full from the date of approval.

Lighting

- 34) Before the commencement of development a scheme for the external lighting of the development (both for the construction and operational phases) shall be submitted to and approved in writing by the Local Planning Authority, to include a layout plan with beam orientation and schedule of equipment in the design (luminaire type; mounting height; aiming angles, luminaire profiles, a lighting contour map, and details of the timer controls including proposed hours of use) on the basis that:
- (a) all external lighting shall be of a type, fixed in a location and directed in a manner that avoids glare being directed towards the designated areas of wildlife especially to the SSSI and SPA/Ramsar Site;
 - (b) light trespass shall not exceed a level of 5 Lux beyond 5 metres from the boundary of the site;
 - (c) the means of illumination of the subject of this consent shall not be of a flashing or intermittent nature.

The approved scheme shall be installed, maintained and operated in accordance with the approved details. There shall be no other external lighting at the development other than as so approved.

Contamination

- 35) Development shall not commence on any phase approved under condition 7 of this permission until that phase has been subject to a detailed scheme for investigation and recording of contamination of the land and risks to the

development, its future uses and surrounding environment. A detailed written report on the findings including proposals and a programme for the remediation of any contaminated areas and protective measures to be incorporated into the buildings shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include proposals for the disposal of surface water during remediation. The remediation works shall be carried out and a validation report shall be submitted to and approved in writing by the Local Planning Authority in accordance with the approved proposals and programme. If during the course of the development further evidence of any type relating to other contamination is revealed, work at the location will cease until such contamination is investigated and remediation measures, approved in writing by the Local Planning Authority have been implemented.

- 36) No development shall take place until a detailed scheme has been submitted to and approved in writing by the Local Planning Authority specifying the provisions to be made to protect the site from landfill gas arising from the development. No part of the development shall be brought into use until the approved scheme has been implemented and it shall be maintained thereafter.

Waste Management

- 37) No occupation shall take place until a waste management strategy for the development has been submitted to and approved in writing by the Local Planning Authority. The strategy shall provide details (including accompanying layout and design plans) of the following:
- (a) responsible person (including contact details);
 - (b) description of the development (proposed buildings, site area, curtilage, future use, and occupancy);
 - (c) estimation of the type and quantity of wastes anticipated to be produced during occupation of the development;
 - (d) identification of appropriate neighbourhood waste management design features (internal and /or external) and facilities;
 - (e) how adequate space and access provisions for waste management features and facilities will be provided and maintained;
 - (f) neighbourhood waste management facility capacity;
 - (g) how the provision of facilities and design features
 - (i) complement and contribute towards existing waste management infrastructure network and sustainable waste management, and

- (ii) the provision made for ongoing facility management and maintenance, including the collection and use of recycled and composted materials.

The development shall be carried out in accordance with the approved strategy.

Flood Risk

- 38) The development hereby permitted permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) (dated May 2012, Rev F4) undertaken by Campbell Reith, including the following mitigation measures detailed within the FRA:
 - (a) Provision of compensatory flood storage as set out on Drawing No. C102 (Rev D9) and Drawing No. C103 (Rev D8);
 - (b) Finished floor levels are set no lower than 40.20 m above Ordnance Datum (AOD).

The mitigation measures for each phase of the development under condition 7 shall be fully implemented prior to occupation of such phase, and subsequently operated and maintained in accordance with the phasing arrangements set out within the FRA, or within any other period as may subsequently be approved, in writing, by the Local Planning Authority.

- 39) No development shall be carried out in the area of the site identified as pre-development flood zones 2 and 3 as shown in the approved FRA until a scheme for the phasing of the floodplain compensation has been submitted to and approved in writing by the Local Planning Authority. The floodplain compensation scheme as shown on the FRA Drawing No. C102 (Rev D9) and Drawing No. C103 (Rev D8) shall be carried out in accordance with the approved phasing plan.
- 40) No development shall take place in each phase of the development under condition 7 until a detailed scheme for the maintenance of the areas of floodplain compensation, for the lifetime of the development, relating to that phase has been submitted to and approved in writing by the Local Planning Authority. The floodplain compensation shall be maintained in accordance with the approved details thereafter.

Construction and Environment Management

- 41) No development shall take place on any phase approved under condition 7 of this permission until a Construction and Environment Management Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction phase on any phase approved under condition 7 of this permission. The statement shall provide for:

- (a) The overall strategy for managing environmental impacts which are likely to arise during the construction phase
- (b) The parking of site operatives and visitors vehicles
- (c) Loading and unloading of plant and materials
- (d) Management of construction traffic and access/haul routes
- (e) Condition surveys and maintenance of all access/haul routes
- (f) Storage of plant and materials used in constructing the development
- (g) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
- (h) Wheel cleaning facilities
- (i) Measures to control the emission of water pollution, sediment, dust and dirt during construction
- (j) A scheme for recycling/disposing of waste from demolition and construction works
- (k) A signage strategy for construction traffic.

Unit size, subdivision and mezzanines

- 42) The anchor unit 'B8' in Terrace B as identified on Plan 2654-50 Rev B shall not exceed a maximum floor area of 5,574 sqm gross internal area (including mezzanine floor area).
- 43) The anchor unit 'C1' in Terrace C as identified on Plan 2654-50 Rev B shall not exceed a maximum floor area of 5,574sqm gross internal area (including mezzanine floor area).
- 44) None of the units shown within Terraces A, B or C or the Garden Centre identified on Plan 2654-50 Rev B shall be amalgamated with other units (or subdivided to form separate units).
- 45) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting or amending that Order with or without modification), no mezzanine or other form of internal floor to create a first floor level shall be constructed in Terrace A or the Garden Centre as shown on Plan 2654-50 Rev B.

Range of goods

- 46) Excluding Unit B8 and Unit C1 in Terrace B and Terrace C as identified on Plan 2654-50 Rev B:
- (a) no more than 4,183 sqm gross internal ground floor area shall be occupied by retailers whose operation is predominantly the sale of clothing and footwear (but not so as to restrict the sale of sports clothing and footwear)
 - (b) prior to the occupation of any retail unit notice must be given to the Local Planning Authority in writing identifying the retailer and the predominant nature of the goods proposed to be sold, and the total internal ground floor area which will, upon occupation, then be occupied by retailers whose operation is predominantly the sale of clothing and footwear (not including sports clothing and footwear)
- 47) Notwithstanding the provisions of the Town and County Planning (Use Classes) Order 1987 (as amended), or any Order revoking and re-enacting that Order, the following shall apply
- (a) The use of the Garden Centre and Retail Terrace A hereby approved shown on Plan No. 2654-50 rev B shall not be used for the sale of goods and services other than the following:
 - Core Garden Centre Goods and Services including:
 - (i) Good and services related to gardens and gardening;
 - (ii) Horticultural products, trees, plants, shrubs, house plants and flowers of any type;
 - (iii) Garden equipment, tools and accessories;
 - (iv) Barbeques and their accessories;
 - (v) Outdoor garden furniture;
 - (vi) Sheds, garden buildings and outdoor garden play equipment;
 - (vii) Fencing, trellis and landscaping materials;
 - (viii) Conservatories;
 - (ix) Conservatory furniture, furnishing and accessories;
 - (x) Swimming pools and associated equipment;
 - (xi) Aquatics, water garden equipment and their accessories;

(xii) Books – including gardening, leisure, hobby, travel, sports and coffee table books and other literature other than fiction;

(xiii) Soft furnishings;

(xiv) Restaurant, coffee shop and children's play area

Non-Core Garden Centre Goods and Services including:

(xv) Pictures, frames and prints;

(xvi) Pets, pet accessories, pet care and advice;

(xvii) Hobbies, toys and crafts;

(xviii) Baskets, wicker work and country crafts;

(xix) Christmas decorations, trees and gifts;

(xx) China, glass and gifts;

(xxi) Home table top items and kitchen accessories;

(xxii) Outdoor and country pursuits and equipment e.g. fishing, equestrian, hiking, climbing etc;

(xxiii) Camping equipment and supplies;

(xxiv) Outdoor clothing and footwear;

(b) Within the Garden Centre hereby approved shown hatched in green on Plan No. 2654-50 rev B, the areas identified as 'Outside Plant Area' and 'Covered Plan Sales' shall not be used other than as the plant and external sales and display area for the Garden Centre. No more than 50% of the internal sales floorspace of the Garden Centre building shall be used for the sale of Non-Core Garden Centre Goods and Services.

Sustainability

48) No building works shall start on any building until a scheme detailing measures to be incorporated into that building so as to achieve at least the Building Research Establishment (BREEAM) rating "very good" as set out in the Sustainable Design and Energy Statement December 2011 shall be submitted to and approved by the Local Planning Authority in writing. A post construction BREEAM assessment/report shall be submitted to and approved in writing by the Local Planning Authority, no later than 6 months after first occupation of each building, as constructed, to confirm the performance of that building against the BREEAM "very good" rating (including any necessary measures to ensure that each building secures

BREEAM "very good" rating). The buildings shall be operated in accordance with the approved details thereafter.

- 49) No development shall take place until a Low Zero Carbon (LZC) Implementation Strategy has been submitted to and approved in writing by the Local Planning Authority. The submitted strategy shall be prepared by an independent energy specialist to demonstrate a combination of LZC energy sources for the development in accordance with the Energy Statement dated Nov 2011, in order to achieve a target of meeting at least 30% of the demand for energy on site. Reasons for excluding potential technologies should be given including technical and economic viability assessments supporting actual target if less than 30%. The development shall be implemented and operated in accordance with the approved strategy.

Annex B

Correspondence submitted after the close of the inquiry or too late to be considered by the Inspector

Correspondent	Date
Alison Reeves	8 July 2013
Graham Dilley	13 July 2013
Mike Lee	17 July 2013
Allan Thomas	18 July 2013
Steven Tuttle	18 July 2013
Vicki Kempson	19 July 2013
Julie Millington	19 July 2013
Kate Ilott	21 July 2013
Brian Capell	23 July 2013
Zoe Withnall	24 July 2013
Richard Poluter – Shrink Polymer Systems UK	29 July 2013
Margaret Gudz	29 July 2013
Peter Bone MP (on behalf of Brian Capell)	7 August 2013
Helen Danzig – Yes2Rushden lakes	five undated letters - received 27 September, 21 November, and (two) 26 November 2013
Timothy Collier	Undated – received 15 October 2013
Alan Piggot - Wellingborough Chamber of Commerce	26 November 2013
Peter Bone MP and Andy Sawyer MP	29 November 2013
David Jenney – Rushden Sea Cadets, Chele Heights – Nene Valley Scouts, and Maurice Weight – Marine Volunteer Service Rushden	29 November 2013
Rushden Town Council (Sarah Peacock) and Irthlingborough Town Council	Undated letter and letter dated November - received 2 December 2013
Higham Ferrers Town Council, Chelveston-cum Caldecott Parish Council, Irchester Parish Council, Irsham Parish Council and Little Harrowden Parish Council	2 December 2013
Lloyd Cattell	4 December 2013
David Oliver, and Councillor Steven North - East Northamptonshire Council	6 December 2013
Lorna Wiltshire - Rushden Town Centre Partnership and	7 December 2013

Adrian House - Rushden Chamber of Commerce Raunds Town Council, Swanwick Parish Council and Thrapston Town Council	10 December 2013
Brian Binley MP, Michael Ellis MP and Cllr David Mackintosh - Northampton Borough Council	10 January 2014
Roy Pinnock - Dentons	21 January 2014
John Adams - Deloitte	7 February 2014
S P Boyes Northampton Borough Council	10 February 2014
Roy Pinnock - Dentons	13 February 2014
Vanetta Peck	14 February 2014
Jayne Clayton	14 February 2014
John Percival	24 February 2014
John Adams - Deloitte	25 February 2014
Sue Bridge – Northampton Borough Council	27 February 2014
Kevin Steel	27 February 2014
Ursula Hanzlik	5 March 2014
Richard Howlett	12 March 2014
Mark Jones – Wellingborough Traders Group	14 March 2014
R J Reynolds	16 March 2014
Brenda Sowden	20 March, and 8 and 22 April 2014
John Percival	24 March 2014
Simon Moore	24 March 2014
Avril Chick	25 March 2014
Eileen Maddison	25 March 2014
G M Harris	11 April 2014
Anne Woodcock	23 April 2014
John Markham – Northamptonshire Enterprise Partnership	25 April 2014

Annex C

Correspondence submitted on the Planning Guidance published 6 March 2014 and any material change in circumstances arising since the close of the inquiry

Correspondent	Date
Douglas Ford	19 March 2014
Terry Begley – Corby Borough Council	25 March 2014
Roy Pinnock - Dentons	26 March 2014
David Oliver - East Northamptonshire Council	27 March 2014
S Mitcham – Higham Ferrers Town Council	27 March 2014
David Brown – GL Hearn	28 March 2014
David Mackintosh – Northampton Borough Council	28 March 2014
Sue Bridge - Northampton Borough Council	28 March 2014
Rob Harbour – Kettering Borough Council	31 March 2014
John Adam - Deloitte	31 March 2014
Michael Ellis MP	31 March 2014
Chad Sutton – Maples Teesdale	31 March 2014
Sharn Matthews & Steven North - East Northamptonshire Council	11 April 2014
Chad Sutton – Maples Teesdale	14 April 2014
John Adams - Deloitte	14 April 2014
Roy Pinnock - Dentons	14 April 2014



Report to the Secretary of State for Communities and Local Government

by Harold Stephens BA MPhil Dip TP MRTPI FRSA

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

Date: 14 November 2013

Town and Country Planning Act 1990

Application by LXB RP (Rushden) Limited

Local Planning Authority: East Northamptonshire Council

Inquiry held on 25 -28 June, 2-5 and 9-12 July 2013

Land adjacent Skew Bridge ski slope, Northampton Road, Rushden NN10 6AP

File Ref: APP/G2815/V/12/2190175

Inspector's Report

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File Ref: APP/G2815/V/12/2190175

Land adjacent Skew Bridge ski slope, Northampton Road, Rushden NN10 6AP

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 20 December 2012.
- The application is made by LXB RP (Rushden) Limited to East Northamptonshire Council.
- The application Ref EN/12/00010/FUL is dated 20 December 2011.
- The development proposed is a hybrid planning application comprising a full application for the erection of a home and garden centre, retail units, drive thru restaurant, gatehouse, lakeside visitor centre, restaurants, boathouse, together with proposals for access and an outline application for the erection of a hotel, creche and leisure club with some matters reserved (appearance) plus removal of ski slope and associated levelling, landscaping, habitat management and improvement works, vehicular access and servicing proposals together with the provision of car and cycle parking and a bus stop.
- The reason given for making the direction was that the Secretary of State considers that the proposals may conflict with national policies on important matters.

Summary of Recommendation: That the application be approved and planning permission granted subject to conditions.

1. BACKGROUND AND PROCEDURAL MATTERS

1.1 I held an Inquiry at the Council Offices, Cedar Drive, Thrapston, into an application by LXB RP (Rushden) Limited on 25-28 June, 2-5 and 9-12 July 2013. I held an evening session of the Inquiry at Huxlow Science College, Finedon Road, Irthlingborough on 9 July 2013. This was very well attended with some 200 people present and 28 interested persons gave their views about the proposal. I made accompanied site visits on the 9 July 2013 to the application site and to alternative sites which were suggested as sequentially superior to the application site. I also visited a number of other sites on an unaccompanied basis on 30 and 31 July 2013. I held a Pre Inquiry Meeting in connection with this Inquiry to discuss procedural and administrative arrangements. The Pre Inquiry Meeting was held at the Council Offices on 1 March 2013.¹

1.2 On the information available at the time of making the direction, the statements of case and the evidence submitted to the Inquiry, the following are the matters on which the SoS needs to be informed for the purpose of his consideration of the application:

- (a) *the extent to which the proposed development is consistent with the development plan for the area and would deliver a sustainable form of development;*

¹ INQ4

- (b) *the extent to which the proposed development accords with the National Policy Framework (NPPF), in particular Section 2, which relates to ensuring the vitality of town centres;*
- (c) *the extent to which the proposed development is consistent with Government advice in promoting more sustainable transport (Section 4 of the NPPF); promoting accessibility to jobs, leisure facilities and services by public transport, walking and cycling; and reducing the need to travel, especially by car;*
- (d) *the extent to which the proposed development is consistent with Government advice, particularly in relation to giving appropriate weight to protected species and to biodiversity interests within the wider environment (Section 11 of the NPPF);*
- (e) *whether any permission should be subject to any conditions and, if so, the form these should take; and*
- (f) *whether any planning permission granted should be accompanied by any planning obligations under section 106 of the 1990 Act and, if so, whether the proposed terms of such obligations are acceptable.*

1.3 At the Inquiry, a library of Core Documents was provided jointly by the Applicant, East Northamptonshire Council (ENC) and other parties. The SoS has been supplied with all of these documents. They include details of the application, local plan policies, local strategies and guidance together with specific technical information. There is a Statement of Common Ground, (SoCG),² a Section 106 Planning Obligation Agreement,³ a Section 106 Unilateral Planning Obligation⁴ and a List of Suggested Conditions.⁵ The Applicant, the Council and other parties have also provided a separate list of documents which each submitted to the Inquiry. Copies of all the proofs of evidence, appendices and summaries have been supplied to the SoS. The library of Core Documents and the other document lists are set out at the end of this report.

1.4 The SoS should be aware that there was a concern expressed about procedural fairness in the closing submissions made on behalf of Legal and General, a Rule 6 party.⁶ Throughout the Inquiry the transport proposals and in particular the delivery of these proposals were considered at length. The Applicant's proposed the No 49 bus route would be extended so as to serve the site. In addition, it was originally proposed that the site would also be served by a new bus service linking the town centres of Wellingborough, Rushden and Higham Ferrers running between 0700 hours and 1900 hours Monday to Saturday. Following suggestions that the bus service ought to run

² INQ3

³ INQ5

⁴ INQ6

⁵ ENC15

⁶ LG16 paragraphs 5.17-5.29

7 days a week and more frequently on weekdays a unilateral planning obligation was submitted which secured an hourly Sunday bus service (0900 hours to 1700 hours) as well. Legal & General complained that this new transport evidence was advanced by the Applicant on the last day of the Inquiry just before closing submissions were made, claiming that they could not test the viability of the Sunday service which is secured only for 3 years.

- 1.5 I took the view that the Applicant in submitting the Unilateral Planning Obligation was responding to criticism of the transport case which it had put forward and that I (and the SoS) must consider the overall package of proposals put forward before the Inquiry closed. Legal & General accepted my ruling. Moreover, I did offer to adjourn the Inquiry to allow Legal & General the opportunity to recall its highway witness to deal with the new transport evidence but this was declined. Whilst the arrangements were not ideal I am satisfied that Legal & General was given a fair and reasonable opportunity to recall its highway witness to address the issue but chose not to do so. As a result I consider no procedural unfairness arose. I said I would draw the matter to the SoS's attention in my Report. Legal & General said it was content with that.

The Site and Surroundings

- 1.6 The site lies to the west of Rushden within the River Nene valley, with the river and the gravel pit lakes at its northern boundary and the A45 as the southern boundary. It is a site of some 30 ha including the former Skew Bridge ski lake and Delta Pit lake as well as the land surrounding the lakes. The developable area of the site covers 12.5 ha which sits between the A45 and Skew Bridge ski lake. It is accessed from the A45 roundabout known as Skew Bridge Roundabout. The site is currently vacant and is characterised by open ground, a considerable amount of which is cleared with the remaining being covered with scrub and the hardstanding of previously demolished buildings. The former ski slope is still on the site, although it is overgrown.
- 1.7 The part of the site required for operational development for the proposals is previously developed land in poor condition. It has been subject to trespass for several years – for quad biking and motor bike use – which have degraded the character, appearance and nature conservation qualities of the land. Parts of the site fall within the Upper Nene Valley Gravel Pits Site of Special Scientific Interest (SSSI)⁷ and Skew Bridge Lakes Local Wildlife Site.⁸ The SSSI is also designated as a wetland of international importance under the Ramsar Convention and a Special Protection Area (SPA) as a site of European importance for bird conservation under the EC Birds Directive. The wider SPA remains a key area for the environment, tourism, housing and recreational development within Northamptonshire.

⁷ INQ3 Annex D Figure 2

⁸ INQ3 Annex D Figure 3

- 1.8 There are no archaeological sites of interest identified within the site. The site has previously been subject to open cast mining which is likely to have removed any traces of archaeological remains. There are also no notable heritage assets in close proximity to the site. The site does not currently offer any public rights of way and the site and the A45 act as physical barriers between Rushden town centre and the Nene Valley river corridor.
- 1.9 The site also lies within the recently designated Nene Valley Improvement Area (NIA), which covers approximately 41,000 ha running through the heart of Northamptonshire to the eastern fringes of Peterborough. It includes the River Nene and its tributaries, gravel pits, reservoirs and much of the floodplain within the valley itself. The NIA is intended by DEFRA, as designating body, to deliver a step change in nature conservation, where local organisations have come together with a shared vision for the natural environment. This partnership will plan and deliver significant improvements for wildlife and people through the sustainable use of natural resources, restoring and creating wildlife habitats, connecting local sites and joining up local action.

Planning History

- 1.10 The site has a relatively long planning history. Details of the planning applications for planning permission which have been submitted on the application site prior to the submission of the current application are set out in the SoCG.⁹ A brief summary of the planning history is provided in the following two paragraphs.
- 1.11 From the 1950's the ground at Skew Bridge was excavated for sand and gravel and the abandoned workings flooded to form the current lakes. In the 1960s a ski club was set up at the site and a 60.96m (200ft) - long dry ski slope was later added. The site became a well-known leisure destination locally. The ski/country club continued to be used by the community until the club building was destroyed by fire in 1988. The site has not been in productive use since then. Through the 1960s and 1970s permissions were granted for offices and weighbridge, plant and vehicle storage and workshops and garages associated with the extraction of sand and gravel. During the 1970s permissions were granted for the siting of seasonal caravans and permissions for a petrol service station, cafeteria, workshop and overnight accommodation for commercial vehicles were granted in the 1980s. Applications for the same development but including a retail store were refused. Permissions were also granted in the 1990s for leisure facilities, go karting and concrete manufacture.
- 1.12 Planning permission on the whole of the previously developed land, was first granted in 2002 for a business park (51,000 sq metres of business use, 3,600

⁹ INQ3 Section 7

sq metres of commercial and leisure use with some ancillary retail, a 175 bed hotel plus a 100 boat marina and lock/weir). This, and succeeding permissions, included a pedestrian and cycle bridge across the A45, and a condition requiring an Access and Management Plan for the ski lake and its immediate environs. This permission remains extant, following the approval of an extension of time application in 2012.

The Proposals

- 1.13 This is a hybrid application for a mixed retail and leisure scheme at Rushden Lakes. The application seeks (a) detailed approval for the erection of a home and garden centre, retail units, drive thru restaurant, gatehouse, lakeside visitor centre, restaurants and boat house, together with proposals for access; removal of ski slope and associated site levelling, landscaping, habitat management and improvement works, vehicular access and servicing proposals together with the provision of car and cycle parking and a bus stop; and (b) outline approval for a hotel, crèche and leisure club (with appearance reserved).
- 1.14 The floorspace areas for which permission is sought, and have been subject to assessment, are set out in the SoCG.¹⁰ In summary, the detailed scheme is for a 6,886 sq m Home and Garden Centre (with a 1,716 sq m heated planting area and 3,185 sq m uncovered planting area), 31,502 sq m of retail units in 3 retail "terraces", drive-thru restaurant, gatehouse, lakeside visitor centre, restaurants and boat house, together with proposals for access. The 3 retail terraces comprise a 4,546 sq m garden centre related terrace, a 13,935 sq m terrace for national multiple, lifestyle, home, sports, clothing stores and a 13,021 sq m terrace for national clothing/general merchandise. There are two lakeside restaurants of 464 sq m each, a visitor centre of 289 sq m, a boathouse of 289 sq m, a drive thru restaurant of 186 sq m, a 112 bed hotel (4,987 sq m), a 1,465 sq m leisure/health club and a 181 sq m crèche.
- 1.15 The Design and Access Statement (DAS) accompanying the application contains a thorough analysis of the site and the access arrangements together with the proposed layout of the development. The supporting Architects's Design Statement outlines the alternative options which have been considered and explains the evolution of the scheme proposals and how this works with the site topography and landscape features. These documents are contained within the Supporting Documents folder.
- 1.16 In addition to the proposed buildings details above, 1,300 car parking spaces would be created with hard and soft landscaping. Enhanced access to the two lakes within the application area is facilitated and the provision of links to the wider footpath and cycle network along the Nene Valley and the adjoining urban areas including a pedestrian/cycle bridge across the A45. Coach and

¹⁰ INQ3 paragraph 3.1.2

bus stop facilities are integrated into the design to allow ease of access. Details of the parking and bus infrastructure are set out in further detail in the Transport Assessment submitted with the application.

- 1.17 The proposed concept for the layout of the development revolves around the sensitive integration of lifestyle and leisure in a lakeland setting. The siting of the proposed buildings has been designed to minimise visual impact and integrate sensitively into their context and landscape. The garden centre is located to the west of the site with the retail terraces A and B aligned perpendicular to this forming a boundary with the A45 making the best use of the change in levels and natural screening. Retail terrace C is located opposite terrace B diagonally facing Skew Bridge ski lake maximising the opportunity for unobstructed views of the lake and SSSI.
- 1.18 The Visual Impact Assessment and accompanying Landscape Design Strategy explain how the proposals have been informed by the existing landscape character and setting. The lake edge would be extended into the site both physically and visually and the restaurants, visitor centre and boathouse, forming the main leisure elements of the scheme, would take advantage of this by their location on the lake side. The main car parking area would be framed within the main terraces and would provide a significant landscape opportunity but has also been informed by the flood mitigation strategy. The hotel and leisure club and crèche would be set back from the site entrance to reduce their visual and physical impact. The massing and scale of the buildings have been designed to minimise their visual impact. The buildings would not exceed 2 storeys with the exception of the hotel which would be 3 storeys.
- 1.19 There is an existing access road into the site (Claudius Way). It is proposed that the eastern end of this road would be upgraded to form the main access into the site. It is proposed to improve Skew Bridge roundabout in order to enhance the capacity and cater for traffic growth in the area as well as the development proposals.
- 1.20 A full list of the plans submitted with the application and on which the decision should be based is to be found in document APP25 and copies of these plans are to be found in the folder entitled Plans and Drawings. The reader's attention in particular is drawn to the proposed site plan 2654-50 Rev B, the illustrative Context Plan 1033-ICP-002 Rev A and the Illustrative Master Plan 1033-IMP-001 Rev B.
- 1.21 Several documents were submitted in support of the proposals¹¹ including a DAS (amended) with Addendum; a Planning Statement (amended) and Supplementary Planning Statement; a Sustainable Design and Energy

¹¹APP26

Statement; a Rushden Lakes Consultation assessment; an Economic Benefits Study; a Landscape Design Statement and Addendum; a PPS4 Assessment; a Transport Assessment with Addendum; a Flood Risk Assessment and a Waste Management Strategy and Waste Audit. Copies of all of these documents are enclosed in the Supporting Documents folder.

Environmental Impact Assessment (EIA)

1.22 Under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, the Rushden Lakes proposals are Schedule 2 development (under category 10 of Schedule 2 (2) being an 'urban development project'). The site area exceeds the relevant threshold (0.5 ha) and both the Applicant and the LPA are agreed that the proposals would have significant environmental effects. No Screening Opinion was issued by the LPA. An Environmental Statement (ES) was prepared by JR Consulting and comprises the following:

- A Non Technical Summary (NTS) (December 2011);
- Environmental Statement main text and accompanying figures and appendices December 2011
- Addendum to the ES (March 2012) – to reflect the Applicant's decision to amend the description of the development (in respect of site access and removal of a lock and a marina, with the latter being replaced by a slipway and visitor centre). An updated NTS was also included, together with relevant amended appendices and figures.
- Addendum to the ES (June 2012) – to reflect the Applicant's decision to amend the description of the development (in respect of the proposed quantity of retail floorspace). An additional chapter on community effects and an updated NTS were also included, together with relevant amended appendices and figures.

1.23 The ES explains that the scope of the EIA is based on that agreed in respect of earlier submissions and planning approvals, updated to take account of material changes to the nature and overall scale/layout of the proposals, together with changes to any parts of the site (including the existing SSSI/SPA being designated as a Ramsar site) and to other relevant material considerations. The scope of the ES was also informed through ongoing discussions with all statutory consultees, the LPA and other interested parties. The conditions which secure, among other things, the mitigation envisaged by the ES and recommended by the statutory consultees in light of it, are at ENC15. Overall I consider that the ES, in conjunction with the supplementary information, meets the requirements of the EIA Regulations and provides the data and information required to adequately assess the impacts on the environment of the proposed development.

Planning Policy and Guidance

- 1.24 The planning policies which are relevant in this case are agreed between the main parties and are set out set out at Appendix 3 of the SoCG.¹²
- 1.25 The statutory development plan includes the North Northamptonshire Core Spatial Strategy 2008 (NNJCS), which largely sets strategic - rather than development management - policies for the North Northamptonshire Area. The East Northampton Local Plan (1996) (LP) is the most recent site-specific development plan document for the application site and policies were saved by a Direction made by the SoS on 21 September 2007.

North Northamptonshire Core Spatial Strategy (2008) (NNJCS)

- 1.26 The following NNJCS policies are relevant to the proposed development:
- Policy 1: Strengthening the Network of Settlements
 - Policy 5: Green Infrastructure
 - Policy 8: Delivering Economic Prosperity
 - Policy 11: Distribution of Jobs
 - Policy 12: Distribution of Retail Development
 - Policy 13: General Sustainable Development Principles
- 1.27 Policy 1 of the NNJCS indicates that smaller towns such as Rushden will provide secondary focal points for development within the urban core of the 3 growth towns of Corby, Kettering and Wellingborough. It states the emphasis for development will be on the regeneration of the town centres *"in order to provide jobs and services, deliver economic prosperity and support the self sufficiency of the network of centres"*.
- 1.28 Policy 5 of the NNJCS indicates that a net gain in green infrastructure will be sought through the protection and enhancement of assets and the creation of new multi functional areas of green space that promote recreation and tourism, public access, green education, biodiversity, water management, the protection and enhancement of the local landscape and historic assets and mitigation of climate change, along with green economic uses and sustainable land management. Proposals affecting the Upper Nene Valley Gravel Pits proposed Special Protection Area will need to satisfy the tests of the Habitats Regulations in order to determine site specific impacts of development and to be able to identify and avoid or mitigate against impacts where identified.
- 1.29 Policy 8 of the NNJCS establishes a target of 47,400 net jobs to be created during the plan period and Policy 11 allocates the need for sites within East Northamptonshire to accommodate 5,220 net jobs across all sectors. Policy 9

¹² INQ3

establishes that development will be distributed to strengthen the network of settlements set out in Policy 1. Development in the open countryside will be strictly controlled and priority will be given to the reuse of suitable previously developed land and buildings.

- 1.30 Policy 12 focuses on the distribution of retail development and supports the strengthening of Corby, Kettering and Wellingborough town centres setting minimum net increases in comparison shopping floorspace. It also states:

"Development of an appropriate scale that enhances the retail offer of Rushden town centre will be supported. Where retail development, for which there is an identified need, cannot be accommodated within the defined town centre areas, a sequential approach will be followed with preference first to well-connected edge of town-centre locations followed by district and local centres including those in sustainable urban extensions, and then existing retail areas that are well served by a choice of means of transport"

- 1.31 Policy 13 sets out a checklist of key issues that need to be considered in relation to all development proposals in order to create more sustainable communities in North Northamptonshire. Many of these issues are addressed in more recent guidance and so it is not necessary to elaborate on these.

East Northamptonshire Local Plan (LP) (1996) (Saved Policies 2007)

- 1.32 The LP was adopted in 1996 and is an old style development plan. The majority of the LP policies are now superseded, replaced by policies in the NNJCS. No relevant policies in respect of the Rushden Lakes site have been saved, although the adopted Proposals Map identifies much of the site as existing commitments (permissions). It identifies the majority of the developable part of the site as having extant commitments for industrial and commercial uses (1.3ha, east of the former ski slope) and recreation and leisure uses (5.5 ha, west of the former ski slope), including bowling alley, sports hall, multi-screen cinema and fast food outlet.

Northamptonshire Minerals and Waste Development Framework Document – Core Strategy Development Plan Document (2010)

- 1.33 The Minerals and Waste Core Strategy DPD identifies the application site as a "Sand and gravel safeguarding area" (Policy CS10). This requires that development of a significant nature will have to demonstrate that the sterilisation of proven mineral resources of economic importance will not occur as a result of the development, and that the development would not pose a serious hindrance to future extraction in the vicinity. However, given that the principle of development on the site is already established through earlier consents, the site's current designation as a Minerals Safeguarding Area under Policy CS10 is less relevant in this case.

Emerging Joint Core Strategy (Emerging Draft NNJCS) (2012)

- 1.34 The NNJCS has been under review since 2009. An initial "options and issues" consultation on the Emerging Draft NNJCS 2011-2031¹³ was undertaken in the Summer 2012 and responses to this initial consultation are being considered by the 4 participating LPAs. The final options have not been agreed by the LPAs and there is no date set for formal statutory consultation on the plan. However, it is noteworthy that the Emerging Draft NNJCS while silent on the matter of town centre policy does envisage an enhanced role for Rushden, designating this as a Growth Town which would provide a focus for major co-ordinated regeneration and growth in employment, housing, comparison retail development and higher order facilities serving one or more districts.
- 1.35 The Four Towns Plan¹⁴ will become the new site specific Development Plan Document covering the Rushden area. However, this is at an early stage of preparation and is expected to progress closely behind the Emerging Draft NNJCS 2011-31.

National Planning Policy Framework (NPPF) (2012)

- 1.36 The NPPF was published in March 2012. The NPPF [7] identifies three dimensions to sustainable development – economic, social and environmental. NPPF [14] outlines the presumption in favour of sustainable development. NPPF [24] states that LPAs should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. Further, NPPF [26] states:

"When assessing applications for retail, leisure and office development outside of town centres which are not in accordance with an up to date Local Plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set threshold. This should include an assessment of:

- *the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and*
- *the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made."*

¹³ CDA7.11

¹⁴ CDA6.8

- 1.37 NPPF [27] states that applications should be refused where they fail to satisfy the sequential test or are likely to have significant adverse impact on one or more of the above factors. Section 4 is relevant and deals with promoting sustainable transport. Section 11 of the NPPF is also relevant in that it deals with conserving and enhancing the natural environment.

Planning for Town Centres – Practice guidance on need, impact and the sequential approach (2009) (PG)

- 1.38 Planning for Town Centres: Practice guidance on need, impact and the sequential approach was published in support of Planning Policy Statement 4 (PPS4) in December 2009. Whilst PPS4 has been replaced by the NPPF the PG has not and therefore remains relevant. Guidance relating to sequential site assessments is contained in part 6 and assessing impact is contained in part 7.

THE CASE FOR THE APPLICANT - LXB RP (RUSHDEN) LIMITED

INTRODUCTION

- 2.1 It is important at the outset to be clear what *the proposed scheme* is and what it is not. The scheme is not simply a retail proposal. The Applicant's evidence has made clear the mixed use composition of the proposals and it is apparent from the evening session of the Inquiry that the public wholly understands, buys-into and supports the unique range of uses that are proposed. This is so much more than a retail park. That said, our opponents have focussed on the retail elements of the scheme. A refrain throughout this Inquiry has been that Rushden Lakes would be "half the size of Northampton". But that seriously misconstrues the proposed development. In terms of floorspace, Terraces A, B & C would be only 21% of the *comparison goods* floorspace of "greater Northampton" i.e. the town centre and, in terms of turnover the more popular out of centre retail parks.¹⁵ Of course, if *convenience goods* floorspace is considered then Rushden Lakes would become even smaller by way of comparing it to Northampton. No sensible person could characterise Rushden Lakes as "half the size of" what is after all the county town.¹⁶
- 2.2 The largest single element of the scheme is the garden centre. As Mr Burnett explained the significant garden centre component, which accounts for 27% of the overall size of the scheme, means that Rushden Lakes is nothing like

¹⁵ Mr Burnett, EiC, Day 2.

¹⁶ Whilst Rushden Lakes provides other facilities, it does not of course compare to the scale, range or attraction of a regional centre like Northampton. Mr Burnett's table 2.7 and Mr Goddard's Appendix 14 show that Northampton has 588 shops and a total retail floorspace of 136,295 sqm, in addition to its civic, employment, cultural and other attractions.

Northampton in terms of either scale or character.¹⁷ Mr Chase, who has extensive experience of garden centre developments considered the garden centre to be an important element of the proposal.¹⁸ The garden centre which anchors Terrace A would differentiate it from other schemes and destinations. As Mr Denness confirmed the garden centre is not a use that would locate in a town centre.¹⁹ This seems obvious and had already been explained to the Inquiry by Mr Chase.²⁰

- 2.3 Terraces B & C would contain 2 anchors, which are “*medium sized units*” not large “*flagship*” stores, and 11 other shops. As was seen in the cross examination of Mr Denness, the anchor which it is anticipated would be occupied by Marks & Spencer is half, or even less, than the size of a “*flagship*” store from which Marks & Spencer would be able to display and retail their entire catalogue of goods; although Rushden Lakes would retail fashion, it would be unlikely to include furniture. In similar vein, were Debenhams to take the other anchor – not that there is any actual evidence that they would – they would be able to accommodate a department store literally at the lowest end of the range of store size that they look for, in other words the smallest department store size. Mr Chase was clear that Terraces B & C cannot properly be described as completely open A1.²¹ It is proposed that they be subject to restrictions both in terms of user and size. As Mr Burnett explained, the restrictions would mean that almost half (47%) of the floorspace in Terraces B & C could not be used to sell clothing or footwear.
- 2.4 Similar points can be made in response to assertions about the size of Rushden Lakes in comparison to either Corby - which appears in any event to be irrelevant to the determination of the application - or Kettering or Wellingborough. All three are towns with a far wider range of functions and services when compared to the application proposal which makes their scale completely different to Rushden Lakes. *The “hierarchy” of towns is not based on simply the amount of comparison goods floorspace they contain.* Kettering, and to a lesser extent Corby, has had significant out of centre retail development as well.²² The focus should be on the likely performance and effects of Rushden Lakes.
- 2.5 The Inquiry has been skewed towards the interests of Northampton. Local residents who have attended sessions of the Inquiry must have been mystified – and it is clear from the evening session of the Inquiry that the

¹⁷ EiC, Day 2.

¹⁸ c/ex, Day 2.

¹⁹ EiC, Day 9.

²⁰ EiC, Day 2.

²¹ c/ex, Day 2.

²² For details see Mr Burnett Table 2.7 and Mr Goddard Appendix 14.

public is utterly bewildered - as to why its proceedings have been dominated by Northampton. Two of the Consortium's witnesses together with much of the evidence of Mr Goddard, and Legal & General's witnesses were focussed on Northampton, leaving one witness - Miss Garbutt - multi-tasking on behalf of Kettering and Corby. Their fundamental argument is that Northampton has an overriding claim on the retail development that LXB wishes to build at Rushden Lakes. It should be built in Northampton instead, to the exclusion of Rushden.

- 2.6 Even assuming that the market would be remotely interested in this, all that would be achieved is a continuation and significant worsening of the already unsustainable outflows of expenditure and with it, people and their cars, whether from Rushden and the rest of Zone 10 or more widely from across North Northamptonshire and the towns of Wellingborough, Kettering and Corby. In reality we have heard too much from the Northampton lobby because Mr Goddard's figures have so obviously but so illogically loaded impact onto the town centre, and because LXB is a convenient scapegoat for Legal & General, someone to blame for their failure to progress the redevelopment of the Grosvenor Centre or even to invest significantly in the existing centre over very many years, long before Rushden Lakes came along.

Issue (a): The extent to which the proposed development is consistent with the development plan for the area and would deliver a sustainable form of development.

- 2.7 The development plan comprises the North Northampton Core Spatial Strategy (NNJCS). The Applicant's case is that the application proposals are consistent with the development plan but that relevant policies of the development plan, and in particular Policy 12, are out of date and consequently the application falls to be determined against the terms of the NPPF.
- 2.8 At the outset it is important to recognise that despite the reliance placed by the Consortium on Policy 12 of the NNJCS, Mr Goddard rightly conceded in cross examination that Policy 12 does not and cannot impose an additional hurdle for LXB over and above the sequential and impact tests in the NPPF.²³ He agreed that if you conclude that the sequential and impact tests are passed, then in retail terms the proposal is acceptable and planning permission should be granted.
- 2.9 Mr Rhodes explained that whilst the proposals were not anticipated by the Development Plan, they are consistent with its strategic objectives and with the tests that it sets for retail planning applications. His evidence is set out at paragraphs 5.20- 5.26 of his main proof and section 3 of his rebuttal, as well

²³ c/ex, Day 7.

as his EiC in relation to paragraph 3.11 of the NNJCS.²⁴ There is no dispute that a founding principle of the NNJCS is to increase the self sufficiency of North Northamptonshire. This is clear from the NNJCS at page 19 (vision), page 20 (objectives 3, 4 and 7), page 25 (Policy 1), page 23 (key spatial themes) and paragraphs 2.5, 3.2, 3.6, 3.18 as well as Policy 12 itself. The NNJCS Inspector endorsed and understood the importance of these objectives but recognised in his report at paragraph 23 a risk that the preferred strategy of the plan may not achieve them – hence the addition of paragraph 3.11 to the NNJCS in order for it to be found sound. That paragraph, and Policy 12 itself, expressly provide for other applications, such as Rushden Lakes to be considered on their merits against tests which recognise the importance of retaining expenditure in North Northamptonshire.

- 2.10 Miss Garbutt agreed that the key spatial themes of the NNJCS were to retain local spending, to encourage greater self-sufficiency and to meet needs as locally as possible.²⁵ She also agreed that the objective of the NNJCS in planning for significant new floorspace in Corby, Kettering and Wellingborough fitted with the strategy of retaining expenditure in North Northamptonshire. Plainly, the NNJCS allocations themselves would inevitably result in a step change and the retention of expenditure currently flowing to Northampton. Miss Garbutt therefore agreed that the spatial strategy of the NNJCS involved taking expenditure away from Northampton or, the other side of the same coin, retaining it in North Northamptonshire. The fact that one effect of Rushden Lakes would be a contribution to that objective should not be a criticism of Rushden Lakes but a recognition that it contributes to meeting a key objective of the NNJCS.
- 2.11 Before turning to summarise the case that Policy 12 of the NNJCS is out of date, it is the Applicant's case that Policy 12 is met nonetheless. This can be explained in a straightforward manner. The policy contains four paragraphs. The first of these sets out a minimum net increase in comparison floorspace for the three growth towns (Kettering, Corby and Wellingborough) and so does not set out a decision-taking test for a proposal such as the LXB one (out of centre at Rushden). The second paragraph supports retail development in Rushden town centre and so it too does not set out a decision-taking test for a proposal such as the LXB one. The third paragraph sets out some form of sequential approach but this does not include out of centre sites; the paragraph does not say that out of centre sites should be refused - it is silent on the matter and so it too does not set out a decision-taking test for a proposal such as the LXB one.
- 2.12 The fourth paragraph begins with a statement that: "*The scale of retail development should be appropriate to the role and function of the centre where it is to be located.*" But LXB's proposal is not for development in a

²⁴ Day 4.

²⁵ c/ex, Day 6.

centre and so this sentence cannot set a decision-taking test for a proposal such as the LXB one. In any event the last sentence of the policy appears to be the sentence that actually sets the decision-taking test – it begins with the word: “Accordingly” – which should mean, that a proposal which meets its tests is accordingly consistent with the terms of the Policy. Those terms are two-fold: (i) a retail impact test, which the Applicant contends is met, and (ii) that there should not be harm to “*the ability of North Northamptonshire to retain expenditure.*”

2.13 Rushden Lakes undoubtedly complies with this test, indeed the essence of the case made by the Consortium and Legal & General is that LXB comply with this too well as the proposal would retain expenditure currently flowing out of North Northamptonshire to Northampton. Other aspects of the NNJCS which relate to the issues other than retail e.g. nature conservation, leisure and recreation, are all complied with as explained in Section 3 of Mr Rhodes’ proof. There is no tenable argument to the contrary.

2.14 Policy 12 of the development plan is, nevertheless, out of date. Mr Burnett explained clearly why the NNJCS is out of date in this regard and both Mr Nutter and Mr Rhodes expressly agreed with his evidence:²⁶

- (1) Unlike Policy 12, the NPPF [23] – 6th bullet states that “*it is important that needs for retail [and other main town centre uses] are met in full and not compromised by limited site availability*”;
- (2) Policy 12 refers to “*retail development, for which there is an identified need*” and this is inconsistent with the NPPF because the latter does not require Applicants to show a need for retail development. Miss Garbutt said that need was relevant, but eventually conceded that need was not actually a test in the NPPF;²⁷ this disjunction has arisen because Policy 12 was written on the basis of the 2005 PPS6 (see NNJCS 3.100 and Footnote 16) when there was a need test.
- (3) Policy 12 refers to: “*Development of an appropriate scale*” and that: “*The scale of development should be appropriate...*” but as Miss Garbutt accepted there is not a scale test in the NPPF;²⁸ there was such a test in PPS6 (2005) which was continued through into PPS4 (Policy EC16 – see the 5th bullet point as quoted in 7.16 on page 52 of the 2009 PG) but the NPPF has dropped it. The single test of such matters now is simply whether the proposal would cause significant

²⁶ r/ex, Day 3. Mr Rhodes explained the reasons in full in his main proof at paragraphs. 5.8 -12 and his rebuttal at Section 2.

²⁷ c/ex, Day 6.

²⁸ c/ex, Day 6.

retail impact: NPPF [26] and [27]. If it is concluded that the proposal would not, there is no freestanding, additional, test of scale as well.

- (4) The sequential test in Policy 12 does not acknowledge that planning permission can be granted for out of centre sites whereas the NPPF [24] does (provided that the sequential test is satisfied); the sequence and type of locations in Policy 12 is also out of step with the NPPF.
- (5) The impact test in NPPF [27] asks whether there are likely to be "significant" adverse impacts. Policy 12 is not consistent with the NPPF because it sets a lower threshold and merely focuses upon adverse impact per se. Miss Garbutt's answer in cross examination that Policy 12 was "slightly more stringent" than the NPPF and that it was for the Inspector to decide which to apply underscored the Consortium's flawed approach.²⁹ Policy 12 is to be given weight according to its degree of consistency with the NPPF (see NPPF [215]) and it is obvious that the NPPF should prevail in the case of conflict.³⁰
- (6) The NNJCS does not contain and is not based on a presumption in favour of sustainable development; the plan-making part of the presumption NPPF [14] is that "*Local Plans should meet objectively assessed needs with sufficient flexibility to adapt to rapid change, unless ...*"; the 3rd core planning principle in the NPPF [17] is that: "*Every effort should be made objectively to identify and then meet the ...development needs of an area, and respond positively to wider opportunities for growth*" and, as mentioned already, the NPPF [23 – 6th bullet], does not allow "*limited site availability*" as an excuse for failing to meet retail needs "in full". All these, and much else besides, are wholly new statements of national policy for plan-making which simply did not exist at the time, years ago, when the NNJCS was drawn up. Of course the NNJCS was found to be "sound" by the Inspector who examined it but it was found to be sound on the basis of a very different set of national policy imperatives from those newly-stated in the NPPF. As Mr Rhodes explained, this is more than a technicality. The NPPF calls for a different, positive approach to plan making, setting out to identify and then meet needs. Plans prepared without this mind-set are not going to be consistent with the NPPF.
- (7) The North Northamptonshire Joint Planning Unit (JPU) has "self-certified" that Policy 12 and the NNJCS are up to date. However, in the light of the above, that conclusion is not only superficial and self-serving, but plainly wrong.

²⁹ c/ex, Day 6.

³⁰ Miss Garbutt herself applied the NPPF test rather than Policy 12 to a proposal for out of centre retailing in Kettering in May of this year: see Mr Rhodes's Appendix 6, paragraph 7.30.

(8) As Mr Rhodes points out,³¹ the joint authorities have been promulgating a review of the NNJCS since 2009 which is inconsistent with any claim that it is up to date. He explains also that its housing strategy does not meet the requirements of the NPPF³² and that the NNJCS is not based upon evidence of deliverability, which is a key requirement of the NPPF.³³ In addition, and importantly, the NNJCS is based upon 3 Growth Towns but the joint authorities now consider that Rushden should also be a Growth Town.³⁴ Whatever this means in detail it is plainly a significant change in the principles which underpin the strategy. The NNJCS Review is at an early stage but that is not the point. Instead the point is that the joint authorities recognise that a major plank of the NNJCS no longer fits the reality of the situation on the ground.

2.15 Additionally, Mr Rhodes considered that the NNJCS was out of date not merely because its wording is inconsistent with the NPPF, but also because the strategy of Policy 12 and in wider terms the NNJCS as a whole has failed to deliver the growth necessary to enhance the self-sufficiency of the area. Mr Burnett explained in chief (see also APP32) that over half way through the NNJCS period (2004 to 2021) no town centre floorspace had been built in any of the three growth towns as against the "minimum" net increases set out in Policy 12 and paragraph 3.101 of the NNJCS to achieve a "step-change" (paragraph 3.101) "in order to increase trade retention in North Northamptonshire" (paragraph 3.102). In fact what has happened is that all additional floorspace has been out of centre especially at Kettering, and to a lesser extent, Corby. The nearest of the three growth towns to Rushden Lakes, Wellingborough, has had no additional floorspace whether in, edge or out of centre.

2.16 As Mr Rhodes explained,³⁵ an interpretation of the NNJCS based only on an assertion that retail development must be focussed in the Growth Towns, would mean that the NNJCS was not only a plan with no resilience, but also that it is a plan which has failed. Whilst the NNJCS allocated 51,500 sqm net comparison retail floorspace to the 3 Growth Towns in order to meet retail needs of the area and to reduce the outflow of spending from the North Northamptonshire catchment area, virtually none of that floorspace has been developed. Whilst the Plan was only adopted 5 years ago, the strategy of encouraging and supporting retail development in the 3 Growth Towns has been in place since at least the MKSRS in 2005 and failed to deliver through the period of economic boom. More importantly, the evidence has not

³¹ See paragraph 2.2(1) in Mr Rhodes's Rebuttal

³² See paragraph 2.2 (3) in Mr Rhodes's Rebuttal

³³ See paragraph 2.2 (4) in Mr Rhodes's Rebuttal

³⁴ See paragraph 2.2 (5) in Mr Rhodes's Rebuttal

paragraph

³⁵ Proof paragraph 5.26

demonstrated any real expectation that any significant town centre development is about to be delivered or is being *actively* progressed.

- 2.17 Mr Rhodes drew attention to the last sentence of NNJCS paragraph 3.11: *"The town centres are, however, constrained and while emphasis will be on their regeneration, other complementary sites may be required either edge of town or out of town to fulfil the growth strategy and meet the need for early investment."* Mr Rhodes' point is that the Inspector realised that the NNJCS is ambitious and that there needed to be recognition that it could well prove unachievable either in terms of principle or timing, and hence the Inspector recommended that this sentence be added. Mr Goddard argued originally that the sentence was meant to and does relate only to office development but this is untenable especially once one has read paragraph 23 of the Inspector's report³⁶ in full including its reference to what is now paragraph 3.101 of the NNJCS, and most tellingly the sentence appears at the end of a paragraph in the NNJCS paragraph 3.11 which explicitly deals with "leisure, retail, and employment uses." Mr Goddard rightly conceded in cross examination that the whole paragraph applies to these types of development, including retail.³⁷
- 2.18 Accordingly, not only does Policy 12 expressly allow other developments to be tested and accepted if they meet those tests, this appears to be a deliberate mechanism to ensure that the NNJCS was able to deliver on its growth and self-containment objectives, rather than simply stalling and failing. If the Inspector and the SoS find that the (two) tests set by Policy 12 are met, the application can be approved as being consistent with the development plan.
- 2.19 There is no room in this case for a prematurity argument. In response to Mr Katkowski's questions about what to do "betwixt and between", Miss Garbutt agreed that if Policy 12 is found to be out of date then NPPF [14] tells decision-makers to grant planning permission, if the presumption is not displaced, and not to wait for a new plan.³⁸ The "decision-taking" part of NPPF [14] states in terms that the "presumption in favour of sustainable development" "means" "whererelevant policies [in the development plan] are out-of-date, granting permission unless..."
- 2.20 Additionally, in response to the Mr Richard's cross examination, she acknowledged that the NNJPU had not been able to agree a retail strategy for the emerging NNJCS and that an impasse had been reached.³⁹ When it was suggested that the NNJPU had decided that the SoS needed to arbitrate, informed by the Inspector's report, Miss Garbutt replied *"that's where we've got to, the application has forced the issue to be decided in this arena"*. There

³⁶ CD7.4

³⁷ Day 7.

³⁸ c/ex, Day 6.

³⁹ c/ex, Day 6.

is simply no possibility of these strategic issues being resolved via an Examination of a plan because there is a fundamental stumbling block – the constituent authorities of the NNJPU cannot even agree on the contents of a plan to submit for Examination. This means that it is foolish to contend that the issue of whether Rushden Lakes should proceed is one that can and should and (per Mr Jones) must only be determined as part of the plan-making process. Two of the four constituent authorities (ENC and Wellingborough) favour the idea while the other two (Kettering and Corby) do not. It falls to the SoS to break the deadlock and once he has then the new NNJCS can be progressed taking on board his decision. There is no other option.

Issue (b): The extent to which the proposed development accords with the National Policy Framework (NPPF), in particular Section 2, which relates to ensuring the vitality of town centres.

INTRODUCTION

2.21 The application meets the retail policy tests set out in Section 2 of the NPPF.

(i) Relevant policy

2.22 The NPPF [24, 26 and 27] sets out the tests which apply to making the decision whether to permit Rushden Lakes. They are well-known and comprise the sequential test and the retail impact test. The whole of NPPF [23] (all eleven bullet points) deals explicitly and exclusively with "*planning policies*" and what should happen: "*In drawing up Local Plans...*" Although highly relevant to determining whether the NNJCS is up to date, the NPPF [23] does not purport to, and does not, set any tests for decision-taking. The paragraph stresses the "town centres first" approach to plan-making and that is all well and good *but* when it comes to making a decision on a planning application then one has to turn to NPPF [24, 26 and 27] which deal explicitly with assessing applications. These paragraphs embody how to apply the town centres first approach when taking a decision, literally so in the sequential test which of course starts with town centres and the whole point of the retail impact test is to protect town centres from significant adverse impacts. In other words, if a proposal meets these tests then necessarily it is consistent with the town centres first approach. Therefore, if one wants to know how to go about making a Local Plan one turns to NPPF [23] and if one wants to know how to go about making a decision, one turns to NPPF [24, 26 and 27]. It's as simple as that.

2.23 One cannot, and as a matter of law must not, read across from the plan-making paragraph 23 some form of additional test for decision-taking that a proposal must honour the hierarchy of town centres (the notion of a hierarchy is referred to in the 2nd bullet point of NPPF [23]) still less some form of test of "appropriate scale" which is not mentioned anywhere in NPPF [23]. As explained in relation to Policy 12, if the tests are passed, an

application will be consistent with the NPPF. It is assumed that the authors of the NPPF drew the tests precisely so that they would enable decision making consistent with the objectives of the NPPF.

- 2.24 The PPS4 Practice Guidance (PG) is not, and never has been, policy. To the extent that it gives advice in relation to matters no longer part of national planning policy in the NPPF, the PG is irrelevant. Prime examples of this are (1) disaggregation, and (2) scale. Both of which are discussed at length in the PG because both were then part of national policy. But neither exists any longer and so what the PG has to say about them is of no current relevance whatever. In any event, the PG is not to be read as if it was a legal treatise. It was only ever intended to be "how to" guidance and must not be read as if it sets mandatory "you must and can only" rules. In this regard it is important to have in mind the recent decision in the **Telford** case.⁴⁰ In short, the frequent and many references to the PG at this Inquiry must be approached with caution.
- 2.25 Furthermore, the PG is shortly to be replaced and so quite why so much time has been taken up at the Inquiry debating its terms when they are set to disappear is mystifying. Mr Goddard's answer to Mr Katkowski's in cross examination that the PG "will continue to be good practice for practitioners"⁴¹ (later echoed by Mr Jones) was ingenious but plain wrong. SoS will soon publish replacement guidance, at least in draft, after which the PG will be cancelled. Mr Goddard might wish to promote its virtues as a consultant and as its lead author but the Government will have decided not to. It's as simple as that. Indeed, the first stage of the Taylor Review concluded that none of the existing guidance is fully fit for purpose.⁴² We will have to wait and see what the new guidance will say but whatever it says it cannot amount to a statement of national policy – that is for the NPPF and the NPPF alone.
- 2.26 Although Mr Goddard accepted that Policy 12 of the NNJCS does not (and cannot) impose additional retail tests over and above the sequential and impact tests in the NPPF, he sought to introduce additional tests by the backdoor arguing that the strategy of the NNJCS was critical to the

⁴⁰ *Telford and Wrekin Borough Council v Secretary of State for Communities and Local Government* [2013] EWHC 1638 (Admin), especially [17], *per* Turner J: "This Framework succeeded and replaced earlier national policy set out in PPS4 which also contained a sequential test but one which was expressed in different terms than those now to be found in the Framework. Curiously, however, notwithstanding that PPS4 has been superseded, the Practice Guidance which related to it remains extant, applicable and unaltered. It follows that the Practice Guidance is drafted so as to be particularly apt in its application to policy wording which has since been replaced. Nevertheless, this is not to say that the Practice Guidance should be disregarded. After all, the broad policy objectives underlying the sequential test remain even if the wording is different. However, any decision maker would be entitled (and indeed well advised) to use the Practice Guidance conscious of the fact that, in some parts of its detail, it is directed towards a differently formulated policy test."

⁴¹ *c/ex*, Day 7.

⁴² See Mr Rhodes' rebuttal, paragraph 5.3.

- application of the sequential and impact tests.⁴³ His approach is wrong and it distorts national retail policy.
- 2.27 First, the wording of national policy is clear and it does not contain the additional test of scale that the Consortium's witnesses sought to read into it. The NPPF imposes 2 tests for retail development – the sequential test and the impact test. If those tests are met, then the proposal is acceptable in retail terms. It is that straightforward. Indeed, it is hard to see any logic in refusing a planning permission on the grounds of a proposal's scale when it is clear that the proposal meets the sequential test and would not have significant adverse impacts. Scale in itself is not relevant. Its only relevance is that a large scale development may potentially give rise to adverse retail impacts, but whether or not it does so still needs to be established by the evidence.
- 2.28 Similarly, the closely related notion of a hierarchy of town centres (which in turn founds the objectors' arguments about scale) does not feature in the sequential or retail impact tests. The odd thing about the hierarchy argument is that if for example Rushden Lakes was close to Northampton (the regional centre and county town) rather than Rushden it would inevitably have a greater impact on the vitality and viability of Northampton town centre. The arguments about scale and hierarchy are properly to be regarded as "false tests" which simply do not exist in the NPPF.
- 2.29 Secondly, as Mr Goddard accepted,⁴⁴ a plan cannot cater for all eventualities. Where an application is made that was not contemplated at the plan-making stage, the decision-maker should simply apply relevant policy to determine the application on its merits. That is precisely what Roger Tym recommended in their February 2011 report in relation to Rushden Lakes. It is also what LXB says Policy 12 of the NNJCS provides and what paragraph 3.11 of the supporting text intends.⁴⁵ So much one would have thought is obvious, first principles planning.
- 2.30 Finally, it is significant that in the emerging NNJCS, Rushden is given the status of a Growth Town in draft Policy 10. Miss Garbutt agreed that Growth Towns should be the focus of higher order facilities and major retail development.⁴⁶ She also agreed that the NNJPU Planning Manager who wrote the Joint Committee report of 31 January 2013⁴⁷ had considered the consultation comments and concluded that: "*there is a robust evidence base and rationale for the approach taken within the emerging NNJCS, which identifies Rushden as a Growth Town.*"⁴⁸ *It is recommended that this approach*

⁴³ c/ex, Day 7.

⁴⁴ c/ex, Day 7.

⁴⁵ CD7.6, page 93

⁴⁶ c/ex, Day 6.

⁴⁷ CD7.13

⁴⁸ For a detailed account see paragraphs. 4.35-4.45 of Mr Rhodes's proof

is continued.”(paragraph 3.16) This cannot be dismissed by arguing that as the new NNJCS is at an early stage it carries little weight. The important point is not the status of the emerging new NNJCS and the stage that it has reached but rather that the expert advice is, as just set out, that Rushden warrants recognition as a Growth Town – and the joint authorities agree with this. Further, Mr Lewin agreed that the Inspector can report to the SoS that Northampton Borough Council (NBC) has not objected to Rushden acquiring Growth Town status.⁴⁹ In short, with or without a new policy status, the evidence has identified that Rushden has and is programmed to achieve comparable levels of growth to the other Growth Towns.⁵⁰

2.31 Mr Jones’ thesis that if Rushden Lakes is permitted it would set a precedent that would spell the end of the plan-led system is without foundation. *If* the NNJCS is up to date and the application is not in accordance with relevant retail policies, NPPF [24] and [26] require decision-makers to consider the application against the sequential and impact tests. There is no precedent created, other than doing what the NPPF requires. Similarly, if relevant retail policies in the NNJCS are not up to date NPPF [14] would apply and the only precedent would be the proper application of the presumption in favour of sustainable development.

2.32 As to NPPF [14], Mr Jones accepted in cross examination that paragraph 8.6 of his proof misstates the presumption in NPPF [14].⁵¹ This is an important and often misunderstood point: it is not necessary for an Applicant to show that any adverse effects of a proposal are outweighed by the benefits; NPPF [14] is straightforwardly a presumption in favour of granting permission *unless* it can be established that any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. Mr Jones’ answer that his wording reflected a “*normal balancing exercise*” that seemed “*reasonable*” to him misses the point – the presumption is as set out in NPPF [14] not as seems reasonable to Mr Jones.

(ii) Existing retention and outflow

2.33 The existing retention rates for comparison goods expenditure show that Rushden (“home” zone 10) retains only 37.5% compared to Kettering’s home zone which retains 76%, Corby (65%) and Wellingborough (53%)⁵² (CDA7.6 Table 6.7 on page 44). Mr Burnett highlighted the important fact that out of centre retail parks account for a significant proportion of the expenditure retained by each of these zones – for example, Kettering has a retention rate of 76%, but only 44% of comparison goods expenditure is retained by the town centre: see 9.31 on page 81 of CDA7.6 from which it can be seen that

⁴⁹ c/ex, Day 6.

⁵⁰ See Mr Rhodes’ speaking note for full detail of the evidence on this point

⁵¹ Day 9.

⁵² Mr Burnett EiC, Day 2.

similar points arise with regards to Wellingborough town centre (36%) and Corby (42%).

- 2.34 Therefore at present, there is considerable leakage of comparison goods expenditure from Rushden, its home zone and all the other zones in North Northamptonshire. Rushden and the other towns in North Northamptonshire are presently failing to provide sufficient choice and quality in their comparison goods offer whether in centre or edge/out of centre and consequently their residents travel further afield for comparison goods shopping counter to the fundamental strategic objective of the NNJCS to retain more of such expenditure within North Northamptonshire. Wellingborough's poor performance means that the southern part of North Northamptonshire is particularly poorly served and that the strategy to enhance self containment must apply to even greater effect. (See the references in Mr Rhodes' Speaking Note (APP22) section e to various passages in the 2011 Study (CDA7.6) paragraphs 6.23, 6.30, 9.7, 9.9, 9.31, 9.32 and 9.67 which all relate to Wellingborough's very low market share.)
- 2.35 The outflow of expenditure has numerous adverse consequences – it means that residents regularly have to spend their time driving to Northampton (16 miles) or further – this not only wastes time, money and carbon, it adds to congestion and exports local job opportunities. It also means that the local area forgoes the opportunity to apply local expenditure to achieve a high quality of local development, such as Rushden Lakes. More importantly still, it means that the quality of local life is diminished. These themes came through very powerfully indeed in local residents' exceptionally well thought-through and moving presentations at the evening session of the Inquiry.

(iii) Progress made with NNJCS allocations

- 2.36 Reference has already been made to Mr Burnett's evidence setting out how poor progress has been in terms of delivering the NNJCS allocations which Miss Garbutt considered to still be up to date⁵³ (and see APP32). The nearest of the 3 Growth Towns to Rushden Lakes is Wellingborough which was earmarked in the NNJCS for some 15,500 to 18,500 sqm net additional comparison retail floorspace but over half way through the NNJCS period nothing has been delivered.
- 2.37 This is the context in which Rushden Lakes needs to be seen. Terraces B and C would provide a total of 17,431 sqm of net comparison retail floorspace⁵⁴ which, as Mr Burnett explained, is within the (minimum) range that was allocated to Wellingborough. Wellingborough Borough Council (WBC) supports the proposals and in its letter of 20th June 2013 explains that: "*The size and type of retail units proposed would not be able to be accommodated in our*

⁵³ EiC, Day 2 and c/ex, Day 6 respectively

⁵⁴ See Mr Burnett's proof APP 5 page 22 paragraph 2.99

town centre." This was substantiated by the Wellingborough Councillors and the Wellingborough Chamber of Commerce who spoke so forcefully on the subject at the evening session of the Inquiry. The point is not that Rushden Lakes should be treated as if it is in or at Wellingborough. Instead the point is a more subtle (and better) one, namely that the NNJCS provides for substantial retail development in Wellingborough *which necessarily would retain trade "leaking" out of North Northamptonshire e.g. to Northampton and which necessarily would impact upon trade in Northampton town centre;* that development hasn't taken place to date and the responsible authority WBC and the Chamber of Commerce doesn't consider it likely.

- 2.38 In other words, the context for considering the retail impact of Rushden Lakes upon e.g. Northampton town centre is that the core retail terraces (B and C) are no larger than the amount of floorspace that the NNJCS allocates to Wellingborough *the retail impact of which is strategically acceptable indeed deliberately advocated (via increased retention of trade within North Northamptonshire) by the NNJCS.* If that degree of impact is acceptable (indeed a great deal more is planned for in the NNJCS by virtue of the minimum net increases put in for Kettering and Corby as well) if built at Wellingborough how could it be held to be unacceptable, in terms of its impact on Northampton or Kettering, if built some ten minutes-drive from Wellingborough at Rushden Lakes? It sets our impact into its proper context.

(iii) Turnover of Rushden Lakes

- 2.39 The turnover figures for Rushden Lakes presented by Mr Burnett and Mr Nutter are very similar: £90 million per annum and £99.6 million per annum respectively.⁵⁵ Mr Burnett followed best practice in sense checking his turnover by constructing a series of hypothetical tenant line-ups. Besides making the obvious point that his line-ups were speculative (a point that in no way diminishes the validity of the exercise) the Consortium and Legal & General did not challenge his figures or his methodology.
- 2.40 In contrast, Mr Goddard's turnover figure (originally of £139.5 million per annum [see LAC 13] and then in his Appendix 16 a bit less at £135.8m) is implausible. It appears to have derived from a premature assumption that Rushden Lakes would trade at a benchmark level comparable to open A1 retail parks in more populous and strategically accessible locations, but that assumption does not withstand scrutiny. His work has all the air of having started with a high figure, then being unable to substantiate it but being unwilling to concede that he set the figure too high in the first place. The crashing error of including Argos at an obviously overstated turnover (in his Appendix 16) in a tenant line-up that was intended to substantiate his

⁵⁵ The difference between them reflects the use of floorspace efficiency by Mr Nutter, which he has applied to show consistency with Rodger Tym and Partners, but which it is apparent from his proof he does not personally support: paragraph 6.64.

turnover for the scheme should have rung alarm bells for Mr Goddard about the reliability of his colleague's work, just as it did when the Applicant saw it.

- 2.41 First, Mr Goddard applies a figure of 1.8% per annum for floorspace efficiency from 2010. There was some confusion how he sought to justify this figure. In EiC, he appeared to be saying that the percentage uplift was actually a proxy for Rushden Lakes performing better than average. Then, in cross examination,⁵⁶ he said that his primary position was that the figure represented floorspace efficiency and that as a secondary position he said it reflected the fact that Rushden Lakes would trade above average. As to the first point, Mr Goddard's analysis is flawed because brand new floorspace will not increase in efficiency year on year (backdated to 2010). It will be as efficient as possible *when it is built*. As to the second point, even when pressed Mr Goddard refused to give specific figures to quantify the degree to which Rushden Lakes might trade above the average. Adding an arbitrary £15m per annum uplift to represent above average trading that Mr Goddard was unable to provide any meaningful justification for is unwarranted.
- 2.42 Secondly, Mr Goddard's sensitivity testing contains a number of inaccuracies. In his Appendix 16, he constructed a tenant line-up with a turnover for Rushden Lakes of £135.8m per annum (at 2018 i.e. £129.9m plus £5.9m for the garden centre). He has Argos trading from Terrace B with a turnover of £22.4m per annum. To put that figure in context, Mr Burnett's highest turnover for this unit in Terrace B is £5.1m. There is therefore a difference of +£17.3m simply by virtue of the inclusion of Argos in Mr Goddard's calculations. The trading density ascribed to Argos by Mr Goddard is a nonsense. Argos is obviously not a conventional retailer with a standard net to gross ratio of 80%, nor does it trade from mezzanine floors. Instead Argos more likely has a net to gross ratio of about 20% because of its very different mode of retailing, with huge storage and stock-holding areas, and typically has a turnover of £5-6m per outlet.⁵⁷ Mr Goddard readily acknowledged that the Argos turnover in his Appendix 16 was wrong. In addition and in any event, Argos is not active in the retail park market and stopped acquiring such units some two years ago.
- 2.43 So far then these two points (floorspace efficiency +£15.2m and Argos +£17.3m) account for £32.5m of the difference between Mr Goddard and Mr Burnett i.e. some 71% of the difference between Mr Goddard's figure of £135.8m and Mr Burnett's figure of £90m and if these adjustments were made Mr Goddard's turnover would come down to £103.3m.
- 2.44 Thirdly, Mr Goddard's tenant line-up has WH Smith trading from Unit A3, but he accepted that WH Smith would struggle to retail in line with the proposed

⁵⁶ Day 7.

⁵⁷ APP27

- conditions.⁵⁸ If WH Smith did not trade from the unit in question, Mr Burnett's tenant line up has the turnover of this unit at some £0.4m per annum less than Mr Goddard.
- 2.45 Fourthly, Mr Goddard's line-up includes Zara Home in Unit A11 with a turnover of £1.2m per annum – twice the turnover Mr Burnett expects from the unit (£0.6m). But he acknowledged in cross examination that Zara Home was not active in the retail park market and its top-end town centre customer base (e.g. Mayfair) does not fit the profile here at Rushden.⁵⁹ Zara Home is a "definite no" for Rushden Lakes.
- 2.46 These two adjustments (WH Smith and Zara Home) would take another £1m from Mr Goddard's turnover bringing it down to £102.3m. In addition, there is getting on for £1m [£0.9m] difference between Mr Goddard and Mr Burnett in relation to the turnover of Debenhams (Unit C1 in Mr Goddard's Appendix 16). Mr Goddard was asked to check this figure as he might have (erroneously) included the Danish stores in his turnover per square metre. Mr Goddard did not respond on that point.
- 2.47 Fifthly, the turnovers of supposedly comparable retail parks presented by Mr Goddard do not support his turnover figure. As Mr Nutter explained in EiC,⁶⁰ Mr Goddard's sales density figure for the Greyhound Retail Park (£12,863/sqm) is completely inaccurate and it should be closer to £3,400/sqm. The turnover was derived from household surveys that failed to differentiate between the 4 retail parks within walking distance of one another which the public refer to collectively as the Greyhound Retail Park. There is no evidence to substantiate that these "comparables" are correct.
- 2.48 Additionally, the methodology used in the telephone surveys is not suitable for estimating the turnover of particular stores and retail parks to the extent necessary to be able to predict the turnover of a new scheme in a robust and reliable manner. Such surveys tend to over represent older shoppers.
- 2.49 In summary, the inclusion of a wholly unrealistic turnover for Argos and an unjustifiable uplift for floorspace efficiency account for a very large part of the difference between Mr Goddard's turnover on the one hand and Mr Burnett on the other. The fact that Mr Goddard cannot produce a realistic and robust tenant line up to substantiate his predicted turnover for Rushden Lakes is a powerful sense check. His estimated turnover is too high to be realistic.
- 2.50 Whilst it is comforting that Mr Goddard clearly thinks that Rushden Lakes would be a run-away success, it is of course his case and that of the Consortium that there is not enough expenditure to justify or support

⁵⁸ c/ex, Day 7.

⁵⁹ Day 7.

⁶⁰ Day 3.

Rushden Lakes. Mr Goddard actually considers that Rushden Lakes will draw less from its own catchment than Mr Burnett but relies instead on unrealistic assumptions about relocating expenditure from Northampton town centre in order to make his impact case. More realistic assumptions would demonstrate Rushden Lakes would not act as an alternative to Northampton town centre, which sits at the edge of its catchment area. The truth is that Rushden Lakes is a high quality development designed to meet the needs of East Northants; it would not be some sort of strategically located mega centre.

(iv) Trade draw of Rushden Lakes

- 2.51 First, there has been a great deal of criticism from those opposed to the proposal of Mr Burnett's judgment that some 69% of the turnover of the scheme would be drawn from zone 10. It was argued by Mr Goddard that Mr Burnett has attributed far too great a proportion of the scheme's turnover to the scheme's "home" or core zones, namely zones 10, 11, 9 and 7. In fact as can be seen from APP18 although there is a large difference between Mr Burnett (69% derived from zone 10) and Mr Goddard (35%) there is no substantial difference at all between them with regards to zones 11, 9 and 7; as shown on APP18 Mr Burnett puts these zones in at 28% of the scheme's turnover and Mr Goddard at 27%. In other words, the real difference is in relation to Zone 10. It is noteworthy that Mr Nutter derives 50% of the scheme's turnover from zone 10.
- 2.52 To put this into context, the other side of this coin is trade retention rates. It can be seen that despite the large difference between Mr Burnett and Mr Goddard concerning what proportion of the scheme's turnover would derive from zone 10, the resultant retention rates are not that far apart. Mr Burnett at a much criticised 70% but Mr Goddard at some 60% (57% in his sensitivity test) i.e. not so different. Mr Burnett's retention rate of 70% is a robust figure considering the scale of the proposal, the qualitative nature of the retail offering and the extremely low retention rate currently experienced in zone 10. It is certainly realistic having regard to the retention rates achieved and planned elsewhere in North Northamptonshire.
- 2.53 Mr Goddard's trade draw figures are not credible. His view (see tabulation at APP29) was that £57.76m or 41% of his £139.5m turnover per annum for Rushden Lakes, in his "primary" case, would be drawn from Northampton town centre. That contrasted with the mere £10.27m per annum or some 7% that he thought would be drawn to Rushden Lakes from out of centre retail parks in Northampton. On his analysis, as documented on APP29 whereas **without** Rushden Lakes 39% of expenditure from residents of zones 7, 9, 10 and 11 which "leaks" to Northampton would be spent in the town centre and 61% in the out of centre retail parks; **with** Rushden Lakes the position would change dramatically so as to reduce the amount of money spent by residents of these zones in Northampton town centre by a huge 96% and leave only

3% of the leaking money being spent in the town centre as against 97% in the out of centre retail parks.

- 2.54 The side by side analysis table (APP29) put to Mr Goddard in cross examination demonstrated the inconsistency of his assumptions and the obviously excessive loading of impact on the town centre. Things are not much better and certainly not more logical when one turns to Mr Goddard's "sensitivity" test; this is documented at a glance in APP32 from which it can be seen that although he now takes less from the town centre and more from the out of centre retail parks, there is still a huge disparity and an unjustifiably excessive degree of trade draw from the town centre when compared to the out of centre retail parks.
- 2.55 Something is very wrong here, not least when one remembers that Northampton Riverside Retail Park is trading extremely well (according to Mr Goddard's Appendix 15 at over £10,000 per sqm net - about double the turnover he has put in for the Rushden Lakes scheme); has the same or similar retailers to several of those anticipated to be interested in Rushden Lakes (agreed in cross examination by reference to APP31) and is well placed on the A45 considerably closer to Rushden than Northampton town centre (APP30). In Mr Burnett's view (and Mr Nutter's), it was not plausible for Mr Goddard to suggest that Rushden Lakes zone 10 residents would no longer have any need to go to Northampton town centre, but that there would be no significant change in their use of Northampton retail parks.⁶¹ Especially, given that twice as much zone 10 comparison goods expenditure currently goes to Northampton retail parks compared to Northampton town centre.⁶²
- 2.56 It is obvious, surely, that *to the extent that* Rushden Lakes would compete with stores in and around Northampton, it would compete with the out of centre retail parks - which are dominant in the area - far more than with the town centre. Indeed, *if* it is apt to characterise the town centre as weak (evidence of Mr Goddard & Mr Denness - the latter painted a picture of a damaged, failing centre) one has to wonder quite what it is in such a centre that Rushden Lakes would compete with. The reality is that Northampton town centre is so far removed from Rushden Lakes, and has such little attraction to residents of its core catchment that it is of little relevance to the determination of LXB's proposals. As is commonplace for catchment areas, the edges of Northampton's wider catchment and the wider catchment of Rushden Lakes would overlap but this does not mean that their core catchments would.
- 2.57 In truth, Northampton depends upon its own core catchment of zones including the town centre and those immediately encircling it (zones 5, 7, 4, 6 - see the table at APP44 by reference to the plan at page A1 in CDA 8.3)

⁶¹ Day 2, EiC.

⁶² Day 2, Mr Burnett, EiC -£23.5m p/a and £12.837m p/a respectively.

but even residents of these zones spend more money in the out of centre retail parks than the town centre (APP45) and a lot of money goes to Milton Keynes. It is not suggested that money does not flow from e.g. North Northamptonshire zone 10 (Rushden) and North Northamptonshire more generally to Northampton town centre. That isn't the point at all. The evidence shows that there is such leakage of expenditure. The point instead is that Northampton town centre **does not rely or depend upon** money flowing to it e.g. from Rushden (North Northamptonshire zone 10) – it would be very surprising if it did but the key is that *nor should it given the NNJCS strategy of increasing the retention of expenditure within North Northamptonshire at the expense of outflows to Northampton.*

- 2.58 Legal & General sought to undermine the level of trade retention that Mr Burnett predicts for zone 10 through the evidence of Mr Hunter-Yeats that the retention rate would imply that every household that has access to a car would need to visit Rushden Lakes some 66 times per annum, which Mr Hunter-Yeats regarded as wholly absurd. Noting that the position isn't quite as portrayed (see APP15) as explained by Mr Bird because of the number of adults in the households in question, a good deal of which also have more than one car, the implied visitation rate becomes some 23 trips per annum to the Rushden Lakes per adult - not even once a fortnight. That trip frequency was realistic in Mr Bird's judgement.
- 2.59 In cross examination, Mr Hunter-Yeats took the point made by Mr Bird and accepted that his figure of 66 trips per annum would have to be reduced.⁶³ He maintained, however, that the figure of 66 trips per annum was "so absurd that the reduction will only be to a level that is merely absurd". When pressed for a trip frequency that would be reasonable, Mr Hunter-Yeats said "I don't know, it's a retailer's question and I'm going to duck it". He then speculated that about a 10th of his calculation i.e. some 6 or 7 trips per annum would be reasonable. It was then pointed out to him that Mr Goddard's assessment implies a visitation frequency of about once a fortnight. First, it is surprising that he felt able to offer a strong view as to the validity of Mr Bird's figure without being able to explain, even in the broadest possible terms, what would be a reasonable trip frequency.
- 2.60 Secondly, in any event, his rejection of Mr Bird's figure is inconsistent with his own clear view in re-examination that half of the zone 10 residents (in car owning households) visiting Rushden Lakes once a week would be a reasonable proposition.⁶⁴ Of course, half the residents in car owning households visiting Rushden Lakes once a week is the same as all of these residents going once a fortnight. That was exactly what Mr Bird concluded was reasonable. The "absurdity" in cross examination became Mr Hunter-Yeats's own evidence in re-examination. But all of this is a distraction from

⁶³ Day 8

⁶⁴ Day 8

the real issue which is whether it is reasonable to imagine that Rushden Lakes would hit Northampton *town centre* hard in the way suggested by Mr Goddard, to which it is obvious surely that it would not.

SEQUENTIAL TEST

- 2.61 The sequential test is set out in NPPF [24 and 27]. The meaning and effect of this planning policy, and all planning policies, is a matter of law (*Dundee*). Interestingly, the sequential test in NPPF [24] is said by it to apply in cases where an application is “not in accordance with an up-to-date Local Plan”. It is the objectors’ case that the proposals fit this description. If they are right then the sequential test applies. But what if the Applicant is right and relevant policies, and in particular Policy 12 of the NNJCS, are not up to date? In these circumstances the presumption in favour of sustainable development applies as set out in the 2nd bullet point in the “decision-taking” part of NPPF paragraph 14. Does that mean that the sequential test does not apply? In my submission it would mean that the answer to the application of the sequential test (e.g. if the objectors are right and the Applicant fails the test) would be fed into the weighing process mandated by NPPF [14].
- 2.62 There are differences of approach between the Applicant, as against the objectors in relation to the meaning of the concept of “suitable” sites in the sequential test – in essence, “suitable for what” is the question which arises; and related to this whether “flexibility” in the last sentence of NPPF [24] includes the concept of disaggregation (previously explicitly set out as a part of the sequential test in PPS4) such that when applying the sequential test one should look to see whether disaggregated *parts* of the scheme could feasibly be accommodated in e.g. Northampton town centre.
- 2.63 LXB’s case in relation to these issues is simple and straightforward: the Supreme Court has told us in *Dundee* what “suitable” means and it has expressly rejected the approach advocated by the Consortium and Legal & General that the concept relates to need and/or identified deficiencies in retail provision in the area in question; and it has expressly rejected the notion that “suitable” means that one should alter or reduce the proposal so as to fit onto an alternative site. The policy concerning the sequential approach as set out in the NPPF, and (to the extent that it is still relevant) the non-policy PG that accompanied PPS4, **must** be applied in a manner which complies with the legally binding case law on the meaning of the sequential approach. The case in question – *Dundee* in the Supreme Court – is of seminal importance.
- 2.64 In summary it establishes [a] that if a site is not suitable for the commercial requirements of the developer in question then it is not a suitable site for the purposes of the sequential approach; and [b] that in terms of the size of the alternative site, provided that the Applicant has demonstrated flexibility with regards to format and scale, the question is whether the alternative site is suitable for the proposed development, not whether the proposed development could be altered or reduced so that it can be made to fit the

- alternative site. It is stressed that these points although related are distinct. I should add that the Supreme Court's decision applies in England (the Supreme Court is the Supreme Court for England too) as the High Court ruled in terms in the N. Lincs case (CDA1.D) at [61] and [62] in which it was read across and applied to the English sequential test then found in PPS4 (see [17-22] of the judgment).
- 2.65 The Dundee case does not do away with the sequential test – instead it instructs us *what the sequential test means* as a matter of law. It might or it might not be fair comment to say that the case law has stated the meaning of the sequential test to be less exacting than was thought to be the case previously. Some might say “and rightly so” but whatever one’s views are, they are beside the point as *the law is the law and must be applied*. It is emphasised that this is not a question of giving weight to what the Supreme Court has ruled, one doesn’t give weight to legal rulings; they must be applied in their entirety.
- 2.66 In order to make good the legal submissions it is important to run through the key passages in *Dundee*. A copy is available at CDA1c with the passages in question highlighted. For the record the passages in question are: Dundee at Lord Reed [1, 3-6, 13, 14, 21, 24, 25, 27, 28 – 30] (it is important to note that “the recommended approach” referred to in [29, 2nd sentence] relates to the particular terms of the Scottish guidance set out in [6 at indent 13] which are not found in the NPPF) and [33, 36 – 38] Lord Hope.
- 2.67 It is submitted that this case establishes the propositions stated as [a] and [b] above. It is especially important to bear in mind that the sequential test as set out in NPPF [24] states: “They should require **applications** for main town centre uses to be located in town centres...” (and it then runs through the sequence, edge, out of centre). This makes good the very simple point that what the sequential test seeks is to see whether *the application* (i.e. what is proposed) can be accommodated on a town centre site. This is demonstrably so once one reads the paragraph in question in whole – NPPF [24] refers to “planning applications” in the 1st sentence; to “applications” in the 2nd sentence, and to “proposals” in the 3rd sentence. There is no suggestion here that the sequential test means to refer to anything other than the application proposals. So *Dundee* undoubtedly applies to the NPPF.
- 2.68 A related submission concerns the differences between national policy as now stated in the NPPF and as previously stated in PPS4. The last sentence of NPPF [24] states that: “*Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale.*” This contrasts strikingly with what was said previously in PPS4 in then policy EC15.1 at (d) (iv) and 15.2 (conveniently recited at paragraph 19 of the Judgment in the *N. Lincs*. case (CDA1d) which contained an explicit requirement for disaggregation. There is no longer any such requirement stated in the NPPF. It is no answer to this to refer to the words “such as” in the last sentence of

- NPPF [24]. These words cannot be read so as to imply that a major, and extremely controversial, part of previously stated national policy lives on by implication in the NPPF. Had the Government intended to retain disaggregation as a requirement it would and should have explicitly stated this in the NPPF. It is too large a point to rest on implication. If it had been intended to carry on with the requirement then all that would have been required is the addition of the word "disaggregation" at the end of NPPF [24].
- 2.69 The Applicant is entitled to rely on the omission of this word (and concept) as deliberate and meaningful. It was argued (e.g. by Mr Jones) that the NPPF is "streamlined". If it is suggested that this implies that one can read back into the NPPF parts of national policy that previously existed but no longer do so, then that it is plain wrong as a matter of law. It was suggested by Mr Jones in re-examination that because the NPPF is streamlined then one can flesh it out with "good practice" and in particular the 2009 PG – this is just another (illegitimate) way of trying to get back into play guidance that is no longer relevant because the passages in national policy to which it relates have been ditched. Just to be clear, the "streamlined" nature of the NPPF was deliberate (see the last paragraph of the Ministerial Foreword) and the NPPF is a **complete** statement of national planning policies, save in respect of waste: see NPPF [1]. In short, if it is in the NPPF it is national planning policy and if it is not, then it is not. It is as simple as that.
- 2.70 In similar vein, there is nothing in the sequential test as set out in NPPF [24] that states that the concept of "suitable" sites means suitable in terms of the scale of the nearest centre to the site in question and/or its place in the "hierarchy" of centres. The sequential test relates entirely to the application proposal and whether it can be accommodated e.g. on a town centre site. It does not mean or imply that one should say to oneself, for argument's sake, "this scheme looks large in relation to Rushden, it would be more appropriate for it to be half the size and therefore we should look for a smaller site when carrying out the sequential search" or "this scheme looks large in relation to Rushden, by virtue of its scale it should be located in Northampton". It has already been submitted that the sequential test has nothing to do with "need" either.
- 2.71 It is important in this regard to remember that NPPF [23] is entirely related to plan-making, it has nothing to do with decision-taking. The decision-taking test is set out in NPPF [24, 27]. It would be wrong as a matter of law to treat NPPF [23] as if it applies to deciding a planning application when it is clear and states in terms that it relates to drawing up Local Plans.
- 2.72 In relation to flexibility (last sentence NPPF [24]) as Mr Burnett explained in cross examination the Applicant has demonstrated flexibility on format – a large part of the retail element of the scheme, namely the two anchors and the associated unit shops – anchors B8 and C1 and terraces B and C have full cover mezzanines thus reducing very significantly indeed the footprint of the

development. Mr Burnett also referred to flexibility in relation to “scale” and explained that the Applicant could readily have placed far more retail floorspace on the site than has been proposed – in this way the floorspace of the development is reduced. It is clear from the layout that he was right in this. A significant part of the scheme is taken up by the proposed hotel and leisure club and various lakeside buildings i.e. by non-retail uses.

- 2.73 Mr Burnett considered that the whole Rushden Lakes scheme could not realistically be moved to another location.⁶⁵ In his view, not that there is any requirement to disaggregate, there was also no realistic likelihood of even the M&S anchored Terrace being built in any of the town centres that have been referred to.⁶⁶ In any event, it would be inappropriate for a significant part of the Rushden Lakes scheme to be located in Northampton, which lies at the outer edge of the Rushden Lakes’ catchment, given the aspirations of self-containment for North Northamptonshire in terms of comparison goods choice and sustainability. Mr Goddard accepted in cross examination that in the real world the scheme must be “*suitable to do the job*”.⁶⁷ All that would happen were it feasible to imagine that the Rushden Lakes’ scheme (or even a significant part of it) could up sticks and migrate to Northampton is that this would simply consolidate and worsen the porous nature of North Northamptonshire.
- 2.74 The absurdity of breaking the scheme up was explored in the cross examination of Mr Whiteley by Mr Katkowski.⁶⁸ It is ridiculous and unreal to suggest, as Mr Whiteley did, that the scheme should be disaggregated into its constituent elements, all of which should be accommodated across a number of sites in Northampton. He went so far, and ludicrously, to suggest that the proposed restaurants and the hotel should be provided on sites in Northampton. This is unreal. Shoppers at Rushden Lakes would welcome somewhere to eat and drink as would those enjoying the nature walks, boating and visitor amenities. It defies logic to direct them to a faraway town for this. Similarly, it makes no sense to tell someone wishing to stay in the hotel at Rushden Lakes perhaps because of the Nene Valley tourism or business related trips that were discussed at the evening session of the Inquiry that they should stay in Northampton instead.
- 2.75 Mr Whiteley agreed that none of this made sense in the real world, but sought to argue things were different “*in policy terms*”.⁶⁹ That answer

⁶⁵ The Practice Guidance which forms part of the objectors’ case, directly recognises that an important part of the need for retail development can be a locationally specific need – see PG [6.26] and [6.52] – in fact, this is the second point in the PG’s checklist for applying the sequential test.

⁶⁶ Day 2, EiC

⁶⁷ c/ex, Day 7

⁶⁸ Day 6

⁶⁹ c/ex, Day 6

demonstrates a lack of understanding of what the case law tells us the sequential test means but also should have rang an alarm bell in Mr Whiteley's mind – if you believe that a policy requires an unreal, an unrealistic, outcome that should tell you that the chances are that you have misunderstood the policy in question. The same goes for the evidence of Miss Garbutt who similarly advocated that the proposed restaurants should go to the "restaurant quarter" in Kettering. Whilst sure the restaurant quarter may have its own appeal and purpose but what is the relevance to a mixed use retail and leisure scheme at Rushden?

- 2.76 Legal & General's mantra that the application seeks to locate a higher order use near a lower order centre also misses the point. If part or all of the scheme were to be located in Northampton, not only (as already said) would this fail to address the aspiration for self-containment, it would also not be accessible to zone 10 (and the other "home" zones) residents in a sustainable way since they would not be able to walk or cycle and the bus service to Northampton from Rushden is poor and not feasible on Sundays. Mr Whiteley acknowledged that putting part of the scheme in Northampton town centre would increase the outflow of expenditure from zone 10 and that this would patently be contrary to the objective of the NNJCS and in particular the requirement of Policy 12 that new retail development should not adversely affect the ability of North Northamptonshire to retain expenditure.⁷⁰ In terms of the case put against Rushden Lakes, this approach does not meet the same function as the application proposals are intended to perform. Nor of course is there any location in any of the town centres that would even remotely resemble the lakeside ambience, and associated water-based recreation and leisure, that Rushden Lakes would provide.
- 2.77 In terms of availability, NPPF [24] simply asks whether town centre or edge of centre sites are "available". It does not ask whether such sites are likely to become available during the remainder of the plan period or over a period of some years. That is unsurprising: NPPF [24] is concerned with planning applications, not plan-making; it is part of national policy which has at its heart an imperative to get the economy moving, for planning to facilitate and not frustrate - to deliver economic growth expeditiously. The ethos is to "look for solutions rather than problems" NPPF [187] but that seems an entirely alien notion to our opponents whose cases have been characterised by a lack of realism. Far from delivering economic growth all that would happen were they to prevail is that LXB's huge prospective investment with all the many tangible benefits that it would bring would disappear. And for what good reason? Dismissing this application would not energise Legal & General into delivering the scheme that they have promised for over a decade.

⁷⁰ c/ex, Day 6.

- 2.78 Reverting to the meaning of the word “available” in NPPF [24], NBC has previously adopted the same interpretation of “available” as LXB do. Mr Lewin accepted that in the Committee report (24 July 2012) in relation to an application to redevelop the Royal Mail site at Barrack Road for a 5,000+ sqm Tesco superstore, the Council rejected Legal & General’s objection that availability should have been looked at over a longer time frame.⁷¹ The site was not currently available and that was what was required by the sequential test. That Committee report (Mr Rhodes’ Appendix 5) established that there were no sequentially preferable sites in Northampton town centre for a development of a much smaller scale than Rushden Lakes, as recently as July 2012 – and there is no credible evidence that the position has changed.
- 2.79 LXB’s case in response to the sites put forward by our opponents is summarised in Mr Burnett’s evidence at section 4 of, and appendix 7 of, his proof. Many of the “sites” in question are tiny and a lot are individual vacant unit shops. Several cases in Corby are mentioned – why? Submissions have already been made on just how senseless it is to advocate such sites.
- 2.80 Mr Whiteley accepted that the sites put forward by the Consortium are critically dependent upon disaggregating the scheme.⁷² I have already submitted that given that the NPPF does not contain a test of disaggregation, the Consortium’s suggested sites are not suitable in NPPF terms. In any event, none of the suggested sites withstands scrutiny for the reasons given by Mr Burnett.
- 2.81 Mr Goddard accepted in cross examination that the sites in Wellingborough and Kettering could not “do the job” but qualified his answers by saying that they were nevertheless important sites for the future of the town centres⁷³ – that may or may not be true but it is not the sequential test. Ultimately, there is no real substitute for the impressions that were formed at the site visit to the towns and sites in question. To the extent that sites in Wellingborough have been referred to the Applicant’s case is that none are suitable and/or available but it is also important to bear in mind that the responsible LPA – WBC – agrees with LXB (see WBC letter dated 20th June 2013) and as was explained in clear terms at the evening session of the Inquiry by Councillors Scarborough and Maguire.
- 2.82 Cllr. Scarborough explained that he has been a councillor for many years and this scheme represents the best opportunity that he has seen to kick start real growth in the area. Cllr. Maguire referred to the unanimous political support at WBC for the scheme; that Wellingborough aims to be a 21st century market town and that Rushden Lakes is a completely different, complementary, development. The point was put extremely well by Mr

⁷¹ c/ex, Day 6

⁷² c/ex, Day 6

⁷³ Day 7

Piggott, the Chairman of the Wellingborough Chamber of Commerce. It is noteworthy that the Wellingborough Chamber of Commerce is fully committed to support the proposals. He explained that: "*Wellingborough town centre is very unlikely to have retail development for the foreseeable future. The town has stalled and the opportunity has now been lost. Rushden Lakes has our total vote.*" Doubtless it is touching that Northampton, Kettering and Corby Councils should concern themselves about Wellingborough but the important point is that they do not represent the views of WBC and the Chamber of Commerce. Their support for LXB's proposals completes a full set of support from all of the towns nearest to Rushden Lakes and it speaks volumes.

- 2.83 Turning to Kettering, Miss Garbutt's inconsistent approach in relation to sequentially preferable sites was demonstrated by her conclusion in her 7 May 2013 officer's report in relation to an application for a small unit shop at Belgrave Retail Park.⁷⁴ The proposed shop would be about the same size as a single unit in Terrace C and it would house a store such as the 99p Store. Having examined 93 potential sites, she found that the proposal satisfied the sequential test. In cross examination she was unable to give any convincing explanation as to why two months ago she could not find a suitable and available site for the equivalent of one unit shop in one of the retail Terraces at Rushden Lakes, but now she was giving evidence that large chunks of Rushden Lakes could be accommodated in Kettering. She said more than once that Rushden Lakes is of a completely different scale – but that's LXB's point!
- 2.84 In similar vein, Mr Whiteley's firm (see APP23) couldn't find a sequentially preferable site in Northampton to accommodate the Next proposals at Riverside Retail Park. What is clear from these examples is the fundamentally inconsistent approaches taken by Miss Garbutt and Mr Whiteley's firm in these reports when compared to that taken by them at this Inquiry. It exposes just how contrived the Consortium's case is. In addition, the NBC report into the Barrack Road proposals should not be forgotten.

IMPACT TEST

(i) Existing, committed and planned investment

- 2.85 NPPF [26] requires an assessment of the impact (if any) of the proposal on "existing, committed and planned public and private investment" in a centre. That requirement is quite straightforward, only investment that has been made, has been committed or is planned warrants consideration. Legal & General appeared to suggest that its expenditure in relation to professional fees to date somehow constitutes "existing" investment deserving of consideration under the impact test. NPPF [26] refers only to "*investment in a*

⁷⁴ Mr Rhodes' rebuttal Appendix 6

centre”, not to investment in the services of professional advisors who have collectively been unable to come up with a viable scheme for 13 years. As for “committed” investment, this is a much misused word by Legal & General who has asserted that it has a contractual commitment to invest by virtue of the 2009 Development Agreement (DA) with NBC. This is nonsense; the DA has a viability pre-condition and a continuing viability condition, the net effect of which is that unless Legal & General is satisfied that it makes sense to proceed then there is no “commitment” on Legal & General’s behalf to do anything at all.

- 2.86 As for “planned” investment Mr Denness was absolutely clear in his answers in cross examination that Legal & General did not have any planned investment. That must be right: without a viable scheme, Legal & General cannot plan to invest – plainly it would not plan to invest in an unviable scheme. As Mr Denness agreed, the highest Legal & General can put its case is that it has “*intended investment*”. But such inchoate aspirations do not fall within NPPF [26]. The rather desperate argument that Rushden Lakes would prejudice the public sector investment in the new, relocated, bus station which is an existing/committed investment is another bad point – the bus station has a whole series of worthwhile benefits in its own right and LXB is hardly responsible for huge amounts of taxpayers’ money having being spent on a new bus station without NBC having secured a commitment from Legal & General to deliver its side of the bargain.
- 2.87 Mr Whiteley agreed that the Consortium’s case on impact on investment rests upon two propositions: (a) the Grosvenor Centre would proceed if Rushden Lakes is refused planning permission; and (b) the Grosvenor Centre would not proceed if Rushden Lakes is granted planning permission.⁷⁵ When weighing the competing evidence on these issues between LXB and the Consortium, it is important to bear in mind that Mr Chase’s retail property experience is broad and extensive. Mr Whiteley on the other hand has advised Next and B&Q.
- 2.88 In order for the Consortium’s and Legal & General’s cases to stand up to analysis one would need to be satisfied that there is a viable redevelopment/extension scheme for the Grosvenor Centre in the absence of Rushden Lakes, which would become unviable were Rushden Lakes to proceed. *Put shortly, there can be no objection under NPPF [26] to a proposal which makes an already unviable scheme even more unviable.* That’s the key and in truth that’s at most what we’ve got here.
- 2.89 The assertion that Legal & General will not proceed with the Grosvenor Centre extension if Rushden Lakes is granted planning permission should not be accepted uncritically, especially since Legal & General’s intentions have

⁷⁵ c/ex, Day 6

been expressed vicariously through external witnesses. The self-proclaimed unwillingness of Legal & General to proceed with the Grosvenor Centre extension if Rushden Lakes is permitted has not been the subject of any resolution by the Board as far as is known to the Inquiry. Moreover, Mr Denness was not aware whether there were any internal reports discussing the viability of the Grosvenor Centre extension in the Rushden Lakes/no-Rushden Lakes worlds. All we have is the bare assertion of Mr Barrie⁷⁶ who, like all of his Legal & General colleagues, has chosen to spectate rather than participate in this Inquiry.

- 2.90 The Consortium, does not seek to prove that the Grosvenor Centre extension would not come forward with Rushden Lakes. Instead it relies on Legal & General's evidence.⁷⁷
- 2.91 Legal & General asserts that Rushden Lakes would make the Grosvenor Centre redevelopment/extension unviable and that it would therefore not proceed. That sounds definitive, until one actually looks at the evidence. There is nothing to support Legal & General's contention and plenty to refute it. First, Legal & General did not call a single witness able to give any firsthand evidence about the viability of the Grosvenor Centre redevelopment/extension. Mr Denness confirmed that he had worked with Legal & General in relation to various different design options for the Grosvenor Centre extension "*on an occasional basis*" from 1999 until last year. He had not, however, personally been involved in or examined the viability of any of the options.⁷⁸ Mr Jones' proof contains various assertions about viability, but he conceded in cross examination that he was simply setting out what someone at Legal & General had told him and that he had not actually seen or been party to any viability work.⁷⁹ He had not seen any evidence that the Grosvenor Centre extension would be deliverable without Rushden Lakes and not with it.
- 2.92 Secondly, Legal & General's self-imposed hiatus was the subject of conflicting evidence by its own witnesses. On proper analysis, Rushden Lakes is not the true cause. When asked by Mr Harris in re-examination how important Rushden Lakes was to the continued hiatus, Mr Denness unhesitatingly replied that it was "*the sole factor*".⁸⁰ Quite different to his answers in cross examination to Mr Katkowski. But, when Mr Katkowski's took Mr Jones in cross examination through the chronology he agreed that the hiatus was in actual fact prompted by two factors: the economy and development that had been permitted out of centre (the "noose" around Northampton town centre) that Legal & General has been protesting about in vain for many years.

⁷⁶ Letter at Mr Jones' Appendix 13

⁷⁷ Mr Whiteley, c/ex, Day 6

⁷⁸ c/ex, Day 9

⁷⁹ Day 9

⁸⁰ Day 9

- 2.93 Rushden Lakes did not feature in Legal & General's hearing statement to the CAAP EiP⁸¹ (which Mr Jones accepted was a truthful and accurate explanation as to why the scheme was not viable) because Legal & General had assumed that Rushden Lakes would be refused by the LPA. Therefore, in August 2012, irrespective of Rushden Lakes, the Grosvenor Centre extension was not viable. Mr Jones agreed that viability had not improved since then and that he was not saying that Legal & General now had a viable scheme or even a less unviable one. He confirmed in answer to Mr Dove's cross examination that even assuming Rushden Lakes is refused there would still not be a viable scheme. Consequently, the most that can be said is that by factoring Rushden Lakes into the equation Legal & General believes its own unviable scheme to be more unviable. As said, that simply cannot be a significant adverse impact in NPPF [27] terms.
- 2.94 It is no answer to argue as Mr Harris sought to do in re-examination that "*in principle*" a viable scheme could be devised. NPPF [27] does not protect mere in principle intentions, but rather safeguards actual plans to invest. Interestingly, the much-loved 2009 PG suggests that for an "impact on investment" test to be met, that investment must be "actively progressing"- see PG 7.17.⁸² By definition, Legal & General's self-imposed hiatus is the opposite of active progression. Legal & General's record speaks for itself. For 13 years Legal & General has failed to bring forward a viable scheme as Mr Dove established in cross examination.⁸³
- 2.95 Mr Goddard too accepted that Legal & General has owned the Grosvenor Centre throughout the biggest economic boom that we are likely to see in our lifetimes, but it had failed to bring forward a viable scheme.⁸⁴ In the absence of a known viable scheme, the opponents' cases simply do not get off the ground. "Prejudice" to an unviable scheme is nothing to the point. Indeed if one thinks about it, why should it be? The NPPF aims to deliver real economic growth; stopping investment in an undoubtedly viable scheme at Rushden Lakes in order to "protect" a known-to-be unviable "scheme" at the Grosvenor Centre would be folly, indeed surreal.
- 2.96 Neither this Inspector, nor the Inspector at the EiP of the CAAP have been shown the key parts of the 2009 DA. Without knowledge of the 9 pages of blacked out pre-conditions that LXB are aware of from the "close your eyes at midnight" redacted version that LXB has been provided with, it is impossible – literally impossible – to substantiate how many or more likely, few of these pre-conditions have been satisfied to date. Mr Whiteley and Mr Lewin had not seen the DA "in the raw", by which they meant – at all; they did not know

⁸¹ APP 34

⁸² Mr Goddard acknowledged this in c/ex, Day 7 and in his proof at paragraph 4.13 where he confirms his view that this is the meaning in NPPF paragraph 26

⁸³ Day 10

⁸⁴ c/ex, Day 7

what pre-conditions there were, nor has either NBC or Legal & General been prepared to disclose even the headings of the DA by way of pre-conditions.⁸⁵ These witnesses should not have allowed themselves to be put in the position of claiming to be able to give evidence about the DA – they were, literally, unable to do so. Mr Whiteley did, however, accept that the DA was bound to contain viability pre-conditions and that viability would have to be assessed at various critical points.⁸⁶

- 2.97 Other than the pre-conditions which are the responsibility of the public sector to discharge (e.g. relocating the bus station), none of the Consortium’s witnesses had any idea whether Legal & General had actually discharged any of its pre-conditions. It is also clear that the DA is the type of “commitment” from which Legal & General can readily withdraw – hence its letter to this Inquiry and the evidence given by the Council to the AAP Inspector last year. Nor were Mr Jones or Mr Denness able to give any evidence at all about the nature of the pre-conditions and how many or few had been met – neither of them had seen the DA. It has to be said that it is remarkable, striking indeed, that even Legal & General’s witnesses had been kept in the dark. But that is the fault of Legal & General who by doing so have made it literally impossible for any evidence to be given to substantiate its case.
- 2.98 The fact remains that there is no current scheme. Mr Harris has argued that the NPPF does not require there to be a “scheme.” That misses the point. In the absence of a scheme, there cannot be a viable scheme and consequently there cannot be “planned” (let alone “committed”) investment. At most there can be an *intention* to invest *if, as and when there ever is* a viable scheme but, as already submitted, that is not what the NPPF at [26] is aimed at. Mr Lewin alluded to the fact that there had been some 21 previous iterations of the Grosvenor Centre scheme, but he had not seen a worked up scheme and nor had Mr Whiteley.⁸⁷
- 2.99 Mr Hunter-Yeats, who provides Legal & General with transport advice, had not seen a scheme for at least 18 months.⁸⁸ In answer to the Inspector’s question, Mr Lewin thought that a scheme might be forthcoming by the end of the CAAP period, but that scheme would have to meet NBC’s expectations and there “*may well be a way to go in terms of balancing the two interests [of Legal & General and Northampton Borough Council]*”.⁸⁹ He was unable to give the Inspector a more precise date and simply said he agreed with whatever Mr Jones said. But when it came to Mr Jones, he was another witness who confirmed that there is no scheme for the redevelopment/extension of the Grosvenor Centre.

⁸⁵ c/ex, Day 6

⁸⁶ c/ex, Day 6

⁸⁷ c/ex, Day 6

⁸⁸ c/ex, Day 8

⁸⁹ Inspector’s Question, Day 6

- 2.100 Thirdly, in cross examination, Mr Harris suggested to Mr Nutter that Rushden Lakes and the Grosvenor Centre would compete for the same occupiers such that retailers would choose Rushden Lakes instead of the Grosvenor Centre.⁹⁰ This often repeated assertion is just that – an assertion. There is no evidence to substantiate it. LXB’s evidence, via Mr Chase, is that the market would not see the two locations as competing the one to the exclusion of the other. When one stops to think about it, it is implausible that retailers would abandon or decide not to be represented in the county town (a regional centre) because of Rushden Lakes. Mr Whiteley’s evidence [LAC 17] was that there were 28 retailer requirements for Northampton. When asked to compare the retailers with current requirements for Northampton with Mr Goddard’s review of likely retailer demand for Rushden Lakes,⁹¹ he revealed that the only comparison retailer common to both lists was Carphone Warehouse!⁹²
- 2.101 Mr Goddard conceded⁹³ that there is no evidence that a single one of the retailers likely to occupy Rushden Lakes would be lost to any of the town centres, either by pulling out of the centre in question or choosing not to go there because of Rushden Lakes. As Mr Chase explained, retailers look to plug gaps in their market profile and seek opportunities for *additional* representation. Thus, just by way of example, there is no evidence to substantiate that M&S would not have stores at both Rushden Lakes and Northampton town centre. Many retailers have multi representation in town centres and out of centre. Next is a perfect example of this. Several retailers have distinct town centre and out of centre formats. And that is in relation to retailers being represented in a town centre and also outside the same town centre – here Rushden Lakes would be a long way away from Northampton town centre and would be seen as serving a different core catchment and therefore market opportunity.
- 2.102 Mr Denness confirmed that he did not have any first-hand knowledge that retailers, including potential anchors, hold the view that if Rushden Lakes is granted planning permission they would not be interested in having representation in the Grosvenor Centre.⁹⁴ He then repeated an argument, made by the objectors throughout this Inquiry that no retailer would object to out of centre development. That argument is not borne out by the evidence. House of Fraser showed no reluctance in objecting to the Sixfields Sainsbury’s superstore in order to seek to protect the Grosvenor Centre.⁹⁵

⁹⁰ Day 4

⁹¹ Mr Goddard’s Appendix 9

⁹² c/ex, Day 6

⁹³ c/ex, Day

⁹⁴ c/ex, Day

⁹⁵ APP 35

- 2.103 Additionally, as Mr Nutter explained,⁹⁶ the real issue is not whether Rushden Lakes and the Grosvenor Centre would have overlapping catchment areas, but rather whether they would be competing for the same *market opportunity*. Rushden Lakes and the Grosvenor Centre do not share the same primary catchment area. Mr Nutter's view was that Northampton "*would never*" sit in the primary catchment area for Rushden Lakes.⁹⁷ He explained (as did Mr Chase⁹⁸) that sophisticated retailers would operate different format stores in town centres compared to retail parks. The two locations would not therefore be competing for the same market opportunity even if there were an overlap in their catchments. Once again, Next is a perfect example of this; witness their presence in Northampton town centre, and at Riverside Retail Park, and – as can be seen from Mr Denness' Appendix 7 – at Sixfields and St James Retail Park as well; the core catchment of all of these stores must overlap very substantially and yet the retailer is represented in these 4 locations, and is looking to expand in both the town centre and Riverside Retail Park.⁹⁹ They are also represented in Kettering and Corby.
- 2.104 Fourthly, a key plank of Mr Denness' argument that if Rushden Lakes is permitted and implemented Legal & General cannot bring forward the Grosvenor Centre extension was that "*the core catchment area for Northampton is concentrated to the east of the town*".¹⁰⁰ He didn't argue simply that money comes to Northampton town centre from the east, of course it does, that is well known; what he asserted is that the catchment is "concentrated" to the east. But he is wrong - the evidence simply does not support his assertion as seen from APP44 and APP45. In re-examination Mr Harris took Mr Denness to Mr Burnett's table BPD11 and suggested that there was some £98m inflow of expenditure to Northampton town centre from the east.
- 2.105 However, Mr Jones in cross examination agreed that the figure of some £98m did not refer to Northampton town centre exclusively; Mr Burnett's table assumed a 50:50 split between the town centre and retail parks. Therefore, the inflow would, at most, be some £49m. That however overstates the position as can be seen from Mr Burnett's rebuttal paragraph 4.9 and from APP29 and APP44, something like 2/3rds of the inflow is to the out of centre retail parks and 1/3rd to the town centre meaning that the town centre would benefit from some £34m. This is hardly a "core" part of the town centre's trade and, as said earlier on, why should it be in circumstances where the NNJCS aims to reduce the export of money from North Northamptonshire to Northampton. Mr Jones accepted in cross examination that the zones immediately surrounding Northampton are "key", and that APP45 fairly

⁹⁶ c/ex, Day 4

⁹⁷ r/ex, Day

⁹⁸ c/ex, Day 2

⁹⁹ See APP23

¹⁰⁰ See paragraph 5.1 of his proof and his EiC, Day 9

reflected that even from these zones expenditure was going south east to Milton Keynes and to the encircling retail parks. He also accepted, in answer to the Inspector's question that this was borne out by a "*further plank of evidence*" namely the position on the ground e.g. at Riverside Retail Park which is visibly trading well even on weekdays.¹⁰¹

- 2.106 It is also important to examine the consequences of Legal & General not proceeding. First, whilst it is recognised that the replacement of the bus station was connected to the aspiration to bring forward the Grosvenor Centre extension, the new bus station brings clear benefits in its own right as Mr Lewin accepted.¹⁰² The modern, improved, better located bus station, with its necessary enhancement of capacity, would not be lost if the Grosvenor Centre extension does not come forward. It is also important to recognise that the public funding for the bus station was time-limited and the funding body itself was due to expire.¹⁰³ Permitting Rushden Lakes is not going to make a jot of difference to the use of the new bus station.
- 2.107 Secondly, it is likely that another partner would be found should Legal & General decide to pull out. That was the evidence that Mr Lewin himself gave to the Inspector at the CAAP EiP after the Inspector had specifically sought reassurance about what would happen should Legal & General withdraw. He was "*confident given the attractiveness of Northampton and the amount of floor space identified in the retail studies that there was a strong economic case for someone else to step into Legal & General's shoes*".¹⁰⁴ His evidence accords with the views of the Leader of NBC expressed in his letter of 26 June 2013.
- 2.108 Thirdly, if as Mr Whiteley asserted the whole CAAP would collapse without the investor confidence instilled by the Grosvenor Centre extension, it is implausible that the Council lacks a plan B. As Mr Katkowski's put it in cross examination, a strategy of "L&G or bust" would be foolhardy.¹⁰⁵ The real problem for Northampton is not Rushden Lakes. The Rushden Lakes proposal is a side show, a scapegoat – instead it is Legal & General's failure to deliver investment in the Grosvenor Centre despite many years of reassuring statements that is the real issue.
- 2.109 The spectre of a lack of investor confidence is very easy to raise, but much harder to substantiate. Legal & General and the Consortium have been unable to provide any evidence to support the generalised fears that they have voiced. Moreover, Mr Burnett and Mr Nutter both show that the scale of expenditure available to Northampton town centre is such that, even allowing

¹⁰¹ Inspector's Question, Day 9

¹⁰² c/ex, Day 6

¹⁰³ Mr Whiteley, c/ex, Day 6

¹⁰⁴ c/ex, Day 6

¹⁰⁵ Day 6

for the impact of Rushden Lakes, the town centre turnover would continue to grow in real terms. LXB asks the Inspector not to be beguiled by unsubstantiated scare-mongering from opponents. It is substantiated and demonstrable evidence that counts and the simple fact of the matter is that not a single witness was called by the objectors to give any direct evidence on the subject – evidence that they could speak to of their own knowledge. Why the objectors have chosen to present their cases in this manner is for them but it's mystifying. Be all that as it may the important point is that their witnesses have substantiated nothing at all.

(ii) Impact on town centre vitality and viability

- 2.110 The Consortium and Legal & General both rely entirely on the evidence of Mr Goddard to show an impact on the vitality and viability of Northampton town centre. For the reasons set out above, Mr Goddard's evidence on turnover and trade draw is not robust and should not be accepted. Notably, the Consortium's case on impact was "refined" during the course of the Inquiry. As Mr Goddard's figures were subjected to the "micro analysis" he so disapproved of in cross examination,¹⁰⁶ in other words once one actually tested his figures to see whether they made any sense, his case became less about actual impacts on actual shops and more about generalised notions of investor confidence. Nonetheless it is important to appreciate that there is no evidence at all that a single shop anywhere would close (and not be re-occupied) as a result of Rushden Lakes let alone that sufficient numbers would do so such as to amount to a significant impact. That is significant: as Mr Lewin agreed, the approach of NBC in relation to the Barrack Road Tesco application was that a 22% trade diversion which would cause Sainsbury's to trade at 81%-67% of its company average was not a significant impact in NPPF terms because the Sainsbury's store would not close as a result.¹⁰⁷
- 2.111 At this point in these submissions we rely upon (without repeating) paragraphs 2.32-2.59 above to summarise our case that it has not been substantiated and demonstrated in evidence that Rushden Lakes would cause significant impacts on the vitality and viability of any of the town centres referred to by the objectors.
- 2.112 As for the health of Northampton town centre, if (as claimed) it isn't in good shape that is of course nothing at all to do with Rushden Lakes but rather is due to the many years of failure to bring forward town centre improvements to meet competition from Milton Keynes and Leicester as well as the ring of out-of-town retail parks surrounding the town centre. This will be worsened when, as Mr Denness agreed will be the case, the new bus station reduces footfall at the first floor level of the Grosvenor Centre which will deter

¹⁰⁶ Day 7

¹⁰⁷ c/ex, Day 6

retailers from taking space there.¹⁰⁸ He was not aware of *any* refurbishment carried out to the Grosvenor Centre since Legal & General purchased it in 1999. The Inspector visited the Grosvenor Centre and will have seen how badly it needs a facelift. With the continuing consolidation of out of centre retail parks around the town centre and the dispiriting Grosvenor Centre it is little wonder that Northampton town centre is losing out. It is such a waste of time, effort and resources (much provided by local taxpayers) for the Consortium and Legal & General to fight against Rushden Lakes – their efforts would be much better directed at getting to grips with their own town centres.

2.113 Mr Goddard accepted that he was not concerned about the vitality and viability of Rushden town centre and that his concerns about Corby were “relatively insignificant”.¹⁰⁹ Mr Goddard’s assessment of impact upon Northampton town centre is not credible and of course, if he has significantly overstated the likely turnover of the scheme and then inappropriately skewed his figures, as LXB says he has, his whole assessment lacks credibility and should not be relied upon, thus rendering his assessment of impact on Kettering and Wellingborough unreliable as well.

2.114 Even with the impact of Rushden Lakes, Mr Burnett and Mr Nutter’s evidence is that town centres (Rushden, Wellingborough, Kettering, Corby and Northampton) will still experience real growth in the period to 2018, given the scale of forecast population and expenditure growth: see Mr Burnett’s proof, tables 3.2 and 3.3. Their evidence is much to be preferred to that of Mr Goddard’s.

Issue (c) The extent to which the proposed development is consistent with Government advice in promoting more sustainable transport (section 4 of the NPPF); promoting accessibility to jobs, leisure facilities and services by public transport, walking and cycling; and reducing the need to travel, especially by car.

Relevant policy

2.115 The key parts of section 4 of the NPPF relevant to making a decision on this application are paragraphs 32, 34 and 36. These are the decision-taking as opposed to the plan-making paragraphs.

2.116 Decision-makers are required by NPPF [32] 1st bullet to “take account” of *inter alia* whether “the opportunities for sustainable transport modes have been taken up depending on the nature of the site, to reduce the need for major transport infrastructure”. Mr Hunter-Yeats agreed that [32] must be applied in a context specific manner depending upon the nature and location

¹⁰⁸ c/ex, Day 7

¹⁰⁹ c/ex, Day 7

of the site, and that the rationale for promoting sustainable transport modes was to reduce the need for major infrastructure to serve the development.¹¹⁰ The decision must be sensible and the opportunities for sustainable travel will necessarily vary according to the particular facts of each case. Mr Hunter-Yeats agreed that the 1st bullet of [32] does not mean that if the sequential test is passed then an application should be refused because it is inherently less sustainable in transport terms than a town centre site.¹¹¹

- 2.117 In terms of the 2nd and 3rd bullet points of [32], Mr Hunter-Yeats agreed that the footbridge and the routes within the site would be safe and that he was not suggesting that additional highway works were necessary; he agreed that he does not contend that there would be “severe” impacts as referred to at the end of the paragraph. The principal transport issue is therefore whether the 1st bullet point of [32] has been satisfied.
- 2.118 In terms of NPPF [34], it provides that decisions should ensure that developments that generate significant movement are located “*where the need to travel will be minimised and the use of sustainable transport modes can be maximised*”. But this is qualified by the need to “*take account of policies set out elsewhere in this Framework*”. The paragraph does not set some form of overriding additional test e.g. that if the retail sequential test is met, permission should be refused unless one can have (for example) maximum bus services at the level that one might find in a town centre. The paragraph must and can only be looking to achieve the art of the possible, what is practicable in the particular circumstances of the site and its location.
- 2.119 In terms of NPPF [36], Travel Plan issues are dealt with both by conditions and the planning obligations.
- 2.120 Mr Hunter-Yeats also referred to NPPF [35] but this says in terms that it aims to achieve various aspects “*where practical.*”
- 2.121 Mr Harris suggested to Mr Bird that [24] of the NPPF (the sequential test) required out of centre sites to be well connected to town centre. That is not what the policy says. As Mr Bird explained,¹¹² [24] contains a preference for well connected sites, not an absolute requirement. If the sequential test is passed that is the end of the matter and [24] does not provide the basis for a free-standing transport objection.
- 2.122 Finally, it is also important to note the strong adjuration in NPPF [187] that decision-makers should look for solutions rather than problems. In stark contrast to that imperative, Mr Hunter-Yeats assumed the role of critic with great alacrity. In his proof and EiC he did not offer any solutions to the

¹¹⁰ c/ex, Day 8

¹¹¹ c/ex, Day 8

¹¹² r/ex, Day 1

perceived problems that he had identified and, when pressed for his solutions in cross examination, it was apparent that he had not really thought about what LXB could/should additionally do in transport terms. In contrast, the highway authorities have followed the advice in NPPF [187] and there is a very full SoCG reflecting extensive agreement on transport matters. Mr Bird confirmed that Northamptonshire County Council (NCC) “*put us through our paces*” and did not give LXB “*an easy ride*” in relation to all the transport impacts of the proposal.¹¹³ Mr Hunter-Yeats rightly accepted that significant weight can be placed on the agreement that has been reached.¹¹⁴

Walking

- 2.123 Mr Bird explained that historically there was an important connection between Rushden Town Centre and Rushden Lakes.¹¹⁵ The new footbridge would reconnect the town with the Lakes, joining together the employment, residential and retail uses. Mr Bird specifically rejected Legal & General’s assertion in its Opening that the A45 would be a “physical barrier” or create “poor walking conditions”. His clear view was that the “footbridge will change that landscape”.
- 2.124 Mr Bird’s 2km walking catchment area is reasonable and derives from policy and best practice. Some 11,000 people live within a 2km walk of the site – that is a significant proportion of the inhabitants of Rushden and Higham Ferrers.
- 2.125 There is a rather odd commentary by NCC in APP50 (page 2) which refers to people carrying “heavy shopping” over long distances. This reads like the sort of observation one sees about the weekly food shop and not for schemes of this nature. Be all that as it may, it must not be forgotten that this is a mixed use retail, leisure and recreation scheme and walking to and from the site would not simply be related to trips to shop – there is so much more to this scheme than that.
- 2.126 In terms of walking access to the application site, as opposed to within the site, Mr Hunter-Yeats’ concerns are overstated. His fears of muggers lurking in the bushes along the Greenways and an intimidating environment created by the old railway cutting are evidently not shared by those who actually use the Greenways. *The clue is in the name*. At the evening session evidence was given about how safe these routes are regarded to be for children to use. The routes were seen at the site visit and it is hard to imagine that upon seeing them one recognised Mr Hunter-Yeats’ characterisation of them.

¹¹³ EiC, Day 1.

¹¹⁴ c/ex, Day 8.

¹¹⁵ EiC, Day 1.

2.127 The Ramblers Association's response to the planning application (3 February 2012) stated that *"we welcome the inclusion in the application, for improved pedestrian and cyclist access with the provision of a pedestrian/cyclist bridge over the A45 from the development to Northampton Road and Crown Park. This will also provide a link from the Greenway to Rushden Lakes"*. In similar vein, the Higham Ferrers Footpath Group responded (3 September 2012) in support of the pedestrian and cycle provision, noting that linkages to the Greenways and former railway were *"especially valuable"*. Moreover, you will have heard and read the comments of the many members of the public who value the walking and cycle provision offered by the scheme.

2.128 When pressed by Mr Katkowski, Mr Hunter-Yeats was unable to say what more LXB could do in terms of walking provision for the site. The site cannot be moved and LXB does not control the Greenway routes leading to the site. The absence of any practical suggestions for improvements is a powerful indicator that full use has been made of sustainable transport opportunities in this regard.

Cycling

2.129 Mr Bird emphasised that the benefits of the proposal to walkers apply with equal force to cyclists. 79,000 people live within an 8km cycle ride, including a significant element of the population of Wellingborough. Mr Bird's evidence explained how this would increase with improved connections planned not just by LXB but also in conjunction with the eastern development at Wellingborough and the continuing improvements planned along the Nene Valley.

2.130 Mr Hunter-Yeats did not criticise cycling provision in his EiC and in cross examination he could not point to any improvements that LXB could make to the scheme in relation to cycle access. His concerns about the cycling experience on the road network (which are not accepted) are irrelevant: section 4 of the NPPF does not place responsibility on the Applicant for the quality of the entire length of routes to and from the application site.

Buses

2.131 As a result of the unilateral planning obligation (INQ6) the No.49 bus route would be extended so as to serve the site. In other words, there would be no longer reliance upon users of that service walking across the new bridge from Waitrose to the site. This means that the exaggerated criticisms of this walk and the claim that this bus service should not count are all beside the point.

2.132 In addition to the existing bus service, it was originally proposed that the site would also be served by a new bus service linking the town centres of Wellingborough, Rushden and Higham Ferrers running hourly between 0700 and 1900 hours Monday to Saturday. That level of service was agreed with the responsible public authorities and they were satisfied with it. NCC is

confident that it would increase to a half hourly service when WEAST comes forward.¹¹⁶ Notwithstanding this it has, however, been suggested at this Inquiry that the bus service ought to run 7 days a week and more frequently on weekdays. LXB has considered these arguments and has secured in the unilateral planning obligation (INQ6) an hourly Sunday bus service (0900 to 1700 hours) as well. We consider that this package of public transport improvements is appropriate but if the SoS confirms in the decision letter that a half hourly bus service, seven days a week, is necessary and otherwise meets the requirements of Regulation 122 of the CIL Regulations 2010 then covenants in the unilateral planning obligation will come into effect by virtue of which the new bus service would be provided on a half hourly basis seven days a week.

- 2.133 Quite how it is that Legal & General has considered it appropriate to appoint itself as overseer of bus services to and from Rushden Lakes is mystifying. The reaction when LXB responded in a commendable and responsible manner to the evidence at the Inquiry and put forward the unilateral planning obligation spoke volumes. Legal & General is not in the least concerned to find solutions, it is not interested in Rushden residents using buses, after all the bus service to Northampton is very poor and on Sundays is useless.
- 2.134 Legal & General's criticism that the new bus is only secured for 3 years and thereafter its continuing viability is in doubt is plain wrong. As Mr Bird explained, the NCC fully expects the new bus service to continue in the long-term and to be self-funding.¹¹⁷
- 2.135 Legal & General's complaint that the viability of the proposed new bus services has not been tested or proven by LXB completely misses the point. LXB is procuring, not providing the bus services in question. It is Stagecoach who would be running the buses. In response to Mr Bird's email of 10 July 2013, following their detailed review of how in practice they would provide the services, Stagecoach replied unequivocally that:¹¹⁸

- (1) They expected the No.49 extension to be achievable at no extra cost *"thus in effect already commercial"*;
- (2) The proposal to serve Rushden Lakes on Sunday *"represents the best opportunity that we can see, by far, of catalysing a long term commercially sustainable quality Sunday bus service for the Four Towns area"*; and
- (3) *"we consider the Monday-Saturday package in the round will be sustainable commercially after the subsidy is removed"* and *"the*

¹¹⁶ See paragraphs 16.5.4 & 16.5.5 of SoCG.

¹¹⁷ r/ex, Day 1

¹¹⁸ APP46

Sunday service looks credibly likely to become commercially sustainable”.

2.136 NCC agrees. This is confirmed on pages 2 and 3 of APP50.

2.137 Legal & General’s claim in Opening that the bus service would be “derisory” is simply not borne out by the evidence. On any sensible reading and application of the relevant passages in the NPPF the proposals meet the aspirations of national planning policy.

Highway improvements

2.138 The proposed improvements to the Skew Bridge roundabout would be beneficial for users of the road network. Without these proposed improvements, already committed development would worsen conditions but there is no funding for the roundabout improvements. Rushden Lakes would fund the works and conditions for road users would improve.¹¹⁹

Trip reduction & carbon saving

2.139 The proposal would bring significant benefits in terms of trip reduction and carbon saving.¹²⁰ Even on the Consortium’s retail draw figures, there would be a substantial saving amounting to some one quarter to one third of what Mr Bird predicts based on Mr Burnett’s retail assessment.¹²¹

2.140 An argument arose at the Inquiry about whether the County Highway Authority positively disagreed with our position on this. The truth of the matter is that they did not *but* now in APP50 (pages 1 and 2) NCC has stated that it does not agree with 16.8 in the SoCG.

2.141 It stands to reason surely that because the proposed development would reduce the outflow of money (and thus trips by car) to Northampton town centre and retail parks and other distant locations, there is bound to be an overall reduction of trip lengths and consequent savings of carbon.

Issue (d): The extent to which the proposed development is consistent with Government advice, particularly in relation to giving appropriate weight to protected species and to biodiversity interests within the wider environment (Section 11 of the NPPF).

2.142 The application site is previously developed land as defined in Annex 2 of the NPPF and as such the NPPF encourages its effective use in [17]. The proposed development would bring very substantial environmental benefits to which

¹¹⁹ EiC, Day 1

¹²⁰ EiC, Day 1 and proof pages.15-16

¹²¹ EiC, Day 1

significant weight should be attached. Additionally, the scheme would deliver tourism and leisure benefits. Mr Lewin therefore agreed that the scheme would be beneficial and that if you reject Mr Goddard's evidence on retail issues, planning permission should be granted.¹²²

2.143 In terms of the environmental benefits, it is important to appreciate the significance of the application site and its surroundings. As Mr Rhodes explained,¹²³ the Nene Valley has the highest level of national and European nature conservation designations. It is also one of only 12 Nature Improvement Areas designated by Natural England in the country and, in its letter of 21 June 2013, the RSBP described the area as "*one of the most important wildlife sites in the UK*".

2.144 The extensive environmental benefits of the proposals are set out in full in the written evidence. In summary, key benefits are:

- (1) stopping the heavy damage that has occurred through trespass and disturbance;
- (2) designing the scheme in a way which is sensitive to the site;
- (3) enhancement through investment in habitat improvements and management (see the draft Access and Habitat Management Plan at Annex D of the SoCG) – management which would be "joined up" and cover a large area of important habitat;
- (4) the Visitor Centre providing a base for the Wildlife Trust which together with the other physical and management measures would truly enable the public to access, enjoy and be inspired by the importance of the wildlife along the Nene Valley.

2.145 Natural England, the Government's statutory consultee on ecological matters, has signed up to the SoCG to record its view that the proposals would bring "*significant benefits*", represent a "*unique opportunity to enhance the site's potential*" and that "*significant weight*" should be attached to the scheme's environmental benefits. The RSPB's letter of 21 June 2013 records its view that: "*the management proposals linked to the redevelopment will enable the linking up of various nature reserves in this area, including Wilson's pits, Ditchford Lakes and Meadows, Higham Ferrers Pits and Irthlingborough Lakes and Meadows. It will also link to the adjacent Stanwick Lakes site, producing a total area under nature conservation management of about 500 hectares – extremely significant in the context of a heavily developed, inland county like Northamptonshire.*"

¹²² c/ex, Day 6

¹²³ EiC, Day 5

- 2.146 Miss Garbutt's lack of enthusiasm for the proposals was based on her reading the ES, nothing more.¹²⁴ Her judgment is at odds with that of the RSPB, the Wildlife Trust, Natural England and hundreds of letters of support which specifically highlight the environmental benefits of the scheme.
- 2.147 The courts have consistently held that the views of expert statutory consultees in the field of nature conservation are to be given weight by decision-makers and that cogent and compelling reasons are required for departing from such advice.¹²⁵ In this case Natural England's view is clear: the proposals would bring environmental benefits which are significant material considerations in favour of the application. There is no reason, let alone a cogent or compelling reason to disagree with Natural England's judgement. The Consortium's point was a bad one. It characterises the evidence of the objectors which is devalued by their reluctance to recognise even the most obvious benefits of the development.

Other Benefits

- 2.148 The proposals would also result in significant tourism and recreation benefits, as well as in the creation of a significant number of jobs.
- 2.149 Mr Rhodes highlighted the local policy aspirations for the Nene Valley which represents a resource of strategic importance to East Northants. In EIC he emphasised the following aspects of the Nene Valley Strategic Plan:¹²⁶
- (1) The Nene Valley is the most significant natural asset in Northamptonshire by far, but it is under-recognised and under-used. The strategy seeks to change that and to make the most of the Nene Valley;
 - (2) The Nene Valley has potential to assist economic development strategies, particularly as it runs close to areas of deprivation (including Rushden);
 - (3) The objectives include investing in facilities and attractions, creating places that people will enjoy and strengthening the relationship between urban and rural;
 - (4) Use of the water for canoeing and boating is important, including because of its potential to generate business for campsites, overnight stays and visits to other attractions;

¹²⁴ c/ex, Day 6

¹²⁵ *R (on the application of Hart DC) v Secretary of State for Communities and Local Government* [2008] EWHC 1204 (Admin) (2008) 2 P. & C.R. 16, [49] *per* Sullivan J; and *R (on the application of Akester) v Department for the Environment, Food and Rural Affairs* [2010] EWHC 232 (Admin) [2010] Env. L.R. 33, [112] *per* Owen J.

¹²⁶ EIC, Day 5, referring to CD A4

- (5) Rushden Lakes is specifically identified as a location suitable for waterways and waterside facilities;
- (6) Stronger links with Nene towns are encouraged, including Rushden, where access is encouraged through a network of footpaths and cycle ways so that the towns maximise the opportunity to connect with the valley corridor;
- (7) Visitor centre provision is encouraged, as are circular walks and new links to the principal route the Nene Way, which Rushden Lakes would achieve via the Bailey Bridge, whilst Sustrans also have proposals to enhance links between Wellingborough, Rushden and Higham Ferrers;
- (8) Waterside catering facilities are also important.

2.150 The Rushden Lakes scheme could hardly be more consistent with this. Mr Rhodes drew particular attention to the fact that:

- (1) The proposal would deliver 2 waterside restaurants, a coffee shop in the proposed visitor centre, a drive in restaurant and also catering could be expected in the garden centre;
- (2) The retail development would provide a particular waterside attraction differing in character from any other facility along the Nene;
- (3) The boathouse is to be constructed, fitted out and let to Canoe2 on a peppercorn, enabling them to provide an expected 2,500 canoe trips/breaks and attract hundreds of overnight stays every year;
- (4) Under the management agreement, the boathouse would be available to the Scouts and other community groups;
- (5) The Bailey Bridge is an important link. The site visit will have shown the amount of pedestrian activity on the other side of the river and the "frustrated" paths leading to the bridge. The reinstatement of the bridge would connect directly with the Nene Way and open up considerably enhanced connectivity;
- (6) The new bridge to Rushden is important, the nearest footbridge currently is in Higham Ferrers some 2km away.

2.151 It was evident from the site visit that there is no formal public access to the application site, which is in poor condition and functions as a barrier between the town of Rushden and the Nene Valley corridor. The boathouse, visitors centre, restaurants, hotel and retail facilities would add enormously to the attraction of the valley, complementing other gateways into the valley. The

benefits described by Mr Rhodes should be given significant weight, especially when considered against the backdrop of the current situation.

- 2.152 In addition to recreation and tourism benefits, Bridget Rosewell's evidence¹²⁷ is that a significant number of jobs (some 1,714 FTE) jobs would be created by the proposals. Her evidence also identifies the need for this type of employment locally, the fact that East Northamptonshire has a higher unemployment count than the rest of North Northamptonshire,¹²⁸ and the fact that in this respect (as in others) the Applicant has pursued an exemplary path by working with the appropriate stakeholders to commit to workforce training to maximise the benefits of these jobs.
- 2.153 The Consortium and Legal & General have sought to argue that jobs would be lost elsewhere and therefore there would be no net gain. That approach is wrong for the reasons given by Bridget Rosewell (in short because it ignores the growth in spending which would support net new retail jobs on a scale greater than the impact of the Rushden Lakes proposal), but it is also inconsistent with the way in which NBC considered the Barrack Road Tesco application. Mr Lewin accepted that in that case there was "no trace" of the Council looking at net job creation even though the application would result in a town centre anchor trading significantly below its benchmark.¹²⁹ He agreed with Mr Katkowski's characterisation of the analysis in the Barrack Road officer's report "*lots of jobs; we need them; that's compelling*". The same approach applies equally, with greater effect, to the present case.
- 2.154 The evening session of the Inquiry demonstrated evocatively and forcefully just how significant these employment opportunities are to the local communities in question. Their importance should not be downplayed.
- 2.155 The wider benefits of the scheme have not gone unnoticed by the public. In answer to your question,¹³⁰ Mr Rhodes explained that the considerable public support for the proposals was significant not simply "in terms of the size of the postbag", but rather because the substance of the public representations squarely relate to material planning considerations. The considerable ecological, recreational and leisure benefits of the scheme are very clearly highlighted in the extensive local support. And they do so because there is a fundamental ring of authenticity in this case – there is a genuine recognition that Rushden Lakes has been very carefully developed in partnership with all relevant stakeholders to maximise its contribution to meeting multiple local needs and enhancing the way that people feel about their own town.

¹²⁷ Mr Rhodes' rebuttal Appendix 7.

¹²⁸ A point confirmed by Mr Wilson in r/ex, Day 4 referring to pockets of deprivation in East Northants.

¹²⁹ c/ex, Day 6.

¹³⁰ Inspector's Question, Day 5.

- 2.156 The Ministerial foreword to the NPPF decries the fact that “*people have been put off from getting involved because planning policy itself has become so elaborate and forbidding – the preserve of specialists, rather than people in communities.*” The NPPF sought to reverse that position “*By replacing over a thousand pages of national policy with around fifty, written simply and clearly, we are allowing people and communities back into planning*”. It appears to have worked. Apathy has given way, the local communities have understood the planning issues raised by this case, and they have made sensible, well-thought out representations engaging with the planning merits. The substance of what they said should be given significant weight. Every point and theme made at the evening session was a genuine and legitimate planning consideration.
- 2.157 Miss Garbutt’s criticisms of the scheme are very hard to understand. She accepted that up until the submission of her proof of evidence the Consortium had not raised any design objection.¹³¹ Such design objection as she did raise was no more than a statement of the obvious – the scheme would face and the Lakes rather than the A45. However, the Applicant’s case is that the layout would maximise the enjoyment of the Lakes. In any event, she accepted that Policy 5 of the NNJCS was satisfied in relation to design so her point would not warrant refusal. This is a truly exceptional development that has a great deal to offer its local communities.
- 2.158 Miss Garbutt’s criticisms seek to diminish, rather than to deny the benefits of the scheme, and Mr Lewin also admitted that the scheme would deliver benefits.¹³² The Consortium’s grudging acceptance of the scheme’s benefits is in stark contrast to the celebration of the scheme by local people, local businesses and local conservation groups - they know a good thing when they see it. The benefits of the scheme are clear, they are real and they should be given significant weight in the determination of this application.

Issue (d): Whether any permission should be subject to any conditions and, if so, the form these should take.

- 2.159 Draft conditions have been discussed at the Inquiry.

Issue (e): Whether any planning permission granted should be accompanied by any planning obligations under section 106 of the 1990 Act and, if so, whether the proposed terms of such obligations are acceptable.

- 2.160 There is a bilateral planning obligation and a unilateral planning obligation. They have been discussed at the Inquiry.

¹³¹ c/ex, Day 6.

¹³² c/ex Day 6.

OVERALL CONCLUSIONS

- 2.161 This is a once in a generation, most likely a once in several generations, opportunity for planning to do what it is surely meant to do – to improve the quality of life for local communities, to make things better, to give local people pride in where they live, to give them hope for themselves and their children and grandchildren. Local people spoke at the evening session of the Inquiry and made all these points eloquently. They are the people who count in all this. They are the bedrock of our democratic society. They are the authentic voice of localism. Unusually at this Inquiry local people, from all walks of life, young and old, from across the political spectrum, from every conceivable community organisation, turned up and spoke for a proposed development, praising its virtues, explaining how good it would be for them, how welcome it would be, how needed it is. Don't let these good people down. They deserve to have their aspirations fulfilled. And so they should be.
- 2.162 In the final analysis, there are no sound and clear cut reasons which warrant a decision to refuse the application, but there are persuasive and convincing reasons which tell in favour of allowing the proposed development to proceed. The Applicant requests that the proposal be recommended for approval and that the SoS grants planning permission.

THE CASE FOR EAST NORTHAMPTONSHIRE COUNCIL (ENC)

- 3.1 This planning application has attracted the most extraordinary local support; Mr Peter Bone, the local conservative MP for Wellingborough and Rushden, told the Inquiry¹³³ he had never known anything like it. At a time when the SoS is hoping to persuade local communities to welcome and appreciate the many benefits that development can bring, this application emphatically vindicates his approach. This is not a case of planning being done to local people top-down; this is a case where a developer has carefully and deliberately canvassed local opinion and aspiration, and designed a scheme that responds to what it was told. Unsurprisingly, when the planning application was made it was supported.¹³⁴ The LPA and ENC carefully assessed the application, realised that it was not in accordance with the out-of-date development plan, applied the presumption in favour of sustainable development, weighed the benefits against adverse impacts, decided that material considerations indicated determination of the application other than in accordance with the development plan and resolved to grant consent.
- 3.2 The Rushden Lakes proposal is the opportunity the community has long been waiting for to meet its priorities for jobs and shops and, at the same time,

¹³³ See the speaking note of his evidence

¹³⁴ See JR proof (doc APP3) at paragraph 2.22

deliver leisure opportunities that would further enhance quality of life for local people and visitors alike. The SoS then called-in the application.

- 3.3 The objectors to the scheme include neighbouring local authorities, three of which (the boroughs of Northampton, Kettering and Corby) have appeared at the Inquiry as a consortium – the LAC. Interestingly, the residents of those boroughs have not supported their LPA’s approach – quite the opposite. Mr Andy Sawford, the Labour MP for Corby and East Northants, told the Inquiry¹³⁵ that as a result of his enquiries he cannot believe that people would not want to shop in Corby town centre if the Rushden Lakes development goes ahead. On balance, he believed that the best interest of his constituency as a whole lay in supporting the proposed development. Locally, he detected cross party support for the proposed development.
- 3.4 The ‘common sense’ test urged by Mr Harris for Legal & General has been answered emphatically by the local community. Fortunately, the common sense approach is wholly supported by the SoS’s policy in the NPPF. Cllr Mackintosh, the leader of NBC, in making his early public remarks about the proposed development, no doubt well informed by his local knowledge and when common sense was to the fore, realised that the prospect of Northampton residents making a shopping trip to Rushden Lakes instead of shopping at the existing and more convenient outlets closer to hand in their own town was unlikely.¹³⁶
- 3.5 The Rushden Lakes proposal has caused a division in the NNJPU.¹³⁷ Two LPAs – Corby Borough Council (CBC) and Kettering Borough Council (KBC) are opposed to it; two support it - Wellingborough Borough Council (WBC) and ENC. As a result the four LPAs in the NNJPU cannot agree on important elements of the content of the NNJCS review. Rather than dissolve the NNJPU and abandon the NNJCS review, the parties have agreed that this appeal should be determined before further progress is made. There is no evidence that the NNJPU will be dissolved following this appeal or that further progress on the NNJCS depends on a particular outcome in this appeal. The SoS has been effectively asked to arbitrate on the issue of the sequential and impact tests in retail planning policy. In the circumstances this has been the right solution so that the established pattern of joint working on forward planning in this area is preserved.
- 3.6 No party has suggested that the ES is not fit for purpose and therefore fails to meet the requirements of the EIA Regulations. In coming to his decision the SoS is required to have regard to the totality of the Environmental Information (the ES and other information) now before the Inquiry. No doubt the SoS will do so.

¹³⁵ See the speaking note of his evidence

¹³⁶ Statement in the press by Cllr Mackintosh

¹³⁷ North Northamptonshire Joint Planning Unit

Issue (a): The extent to which the proposed development is consistent with the development plan for the area and would deliver sustainable development.

- 3.7 The elements of the development plan are identified in the SoCG at paragraph 8.2. The majority of the developable part of the site is identified as a commitment for industrial and commercial uses in the 1996 Local Plan. Although both Rushden and the application site are within the "Urban Core" shown on the Key Diagram¹³⁸ the strategic level NNJCS, adopted in 2008, does not anticipate retail-led development of this scale at Rushden (Policy 12) and has a 'three-towns' settlement hierarchy based on the Growth Towns of Corby, Kettering and Wellingborough with Rushden sitting in the tier below as a "Smaller Town" (Policy 1). The planning application in this case does not, in ENC's view, accord with these elements of the development plan; so much was made clear in the Report to Committee (RTC).¹³⁹
- 3.8 There are however, other parts of the development plan, and the NNJCS in particular, with which the application is wholly in accordance, including:
- (a) The Vision for North Northamptonshire.¹⁴⁰ The proposed development would assist greatly in meeting the vision by:
- (i) Delivering jobs for which there is a step-change requirement.
 - (ii) Delivering much needed investment in services and facilities which would assist in making North Northamptonshire a "more self sufficient area" and better able, in particular, to meet the needs of the growing population in the south of North Northamptonshire.
 - (iii) Regenerating Rushden, a town of the urban core.
 - (iv) The enhancement of the valuable environmental resource that is Rushden Lakes and the Nene Valley.
- (b) Objective 1 – Green Living. The proposal is well designed, promotes sustainable transport choices and encourages healthy lifestyles.
- (c) Objective 2 – Environment. The proposed development and investment would bring about a step change in biodiversity management, result in a net gain in Green Infrastructure and would enhance landscape character.
- (d) Objective 3 – Network of Settlements. The proposal would be urban-focused and support greater self-sufficiency of the area as a whole.

¹³⁸ CD A7.3 page 36

¹³⁹ CDB.14

¹⁴⁰ CD A7.3 page 19

(e) Objective 5 – Connectivity and Modal Shift. Transport choice would be increased.

(f) Objective 6 – Infrastructure and Services. The development would sustain and enhance the communities in and around Rushden and build confidence in North Northamptonshire for investors and others.

(g) Objective 7 – the Economy. The development would provide jobs and bring skills reducing out commuting leading to a more diverse, dynamic and self-reliant economy.

(h) Objective 8 – Quality of Life. The quality of life in Rushden and surrounds would be raised considerably.

(i) Objective 9 – Regeneration. The proposal makes use of previously developed land, delivers supporting infrastructure and plainly inspires community confidence all on a site that has been ear-marked for development for a considerable time but no scheme has been delivered.

3.9 These objectives are translated into the policies and reflected within them. For example, Policy 5 which relates to Green Infrastructure, finds its expression in the access improvements promoted in the development with their leisure and tourism benefits. Equally other policies in the NNJCS are fully complied with by the proposals. These issues were explored in detail in the RTC.

3.10 It is trite law¹⁴¹ that in reaching a judgment on what the development plan indicates when considering a planning application, a decision-maker must have regard to the development plan as a whole. Despite the level of development plan support for the proposed development, ENC has reached the view (see RTC paragraph 7.12) that the Rushden Lakes project is to be judged as being contrary to the development plan as a whole mainly because Policy 12 is to be regarded as the principal policy relating to the retail-led development proposed. However, officers and members at ENC regard such non-conformity as being outweighed by other material considerations, not least having applied the presumption in favour of sustainable development in the NPPF. The development plan is now to be seen through the prism of the NPPF. For this reason ENC resolved to grant planning permission subject to 'call-in' by the SoS.

3.11 The SoS asked in the call-in letter whether LXB's proposal is properly to be regarded as amounting to sustainable development. ENC is in no doubt that this proposal would deliver "change for the better" and in a way that ensures a better life for the people of Rushden and North Northamptonshire that does

¹⁴¹ R v Rochdale MBC ex p Milne (2001) 81 P.&C.R 365

not prejudice the lives of future generations.¹⁴² Applying paragraphs 18 to 219 of the NPPF as a whole, ENC is convinced that the proposed development, in practice, amounts to sustainable development across all three dimensions, is the correct local solution achieving very positive improvements in the quality of the built and natural environment and local people's quality of life.¹⁴³ It is clear beyond doubt that this too is the view of local people themselves.

3.12 The NPPF is quite clear¹⁴⁴ that, while the planning system is plan-led, the LPA should apply the presumption in favour of sustainable development in determining planning applications. Planning permission should be granted because:

- (a) Relevant policies in the development plan are out-of-date;
- (b) Adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits.

3.13 The "relevant policies" which are out of date are (and in the main, they are precisely those policies relied on by objectors in resisting this development):

- (a) NNJCS Policy 1 – the objectors' case is put on the basis that the adopted plan's settlement hierarchy would be disturbed by treating Rushden as the equivalent of a Growth Town.
- (b) NNJCS Policy 12 – the objections include that the scale of retail development is not identified in the adopted plan.
- (c) The use for which the application site is identified as a commitment in the Local Plan.

3.14 Policy 1 seeks to strengthen the network of settlements within North Northamptonshire as a whole. Development is to be principally directed towards the urban core (in which the application site is situated). While the focus is to be on the three Growth Towns, Rushden is to be a secondary focal point. While the regeneration of town centres is emphasised, the aim is to "provide jobs and services, deliver economic prosperity and support self sufficiency of the network of centres." This policy is out of date for the following reasons.

3.15 In bringing forward the NNJCS in 2005-2008, the NNJPU considered including Rushden as a Growth Town thus having a Four Towns rather than a Three Towns strategy. The Four Towns option was discounted, not because it would have adverse consequences, but simply because there was doubt over the

¹⁴² NPPF, Ministerial Foreword

¹⁴³ See NPPF paragraphs 6 to 10

¹⁴⁴ NPPF, paragraphs 196 and 197

deliverability of the Rushden element of such a strategy.¹⁴⁵ At that time growth in Rushden of any material scale was judged to be “difficult to achieve”.¹⁴⁶ That, as the current application now demonstrates, is plainly no longer the case.

- 3.16 The members of the NNJPU recognise the contribution that Rushden is now able to make to growth in North Northamptonshire for the benefit of local residents. The NNJPU is now promoting a review of the NNJCS in which it is agreed by the constituent LPAs that Rushden should be the fourth Growth Town. While KBC expressed some initial reservation,¹⁴⁷ it now must be taken as accepting Rushden’s enhanced role as a Growth Town; if KBC did not, it could not remain a member of the NNJPU in which case there would be no NNJCS review to bring forward. Rushden is, alongside other settlements nearby, a post-industrial town still recovering from the impact of the loss of the boot and shoe trade that once underpinned the local economy. It craves investment and growth to enhance its fortunes which is the motivation for its enhanced status in the emerging plan. The only outstanding issue to resolve is the effect of increased retail development at Rushden Lakes as proposed by LXB in this planning application.¹⁴⁸ Once that is established in this application, the NNJCS review will proceed either with or without Rushden Lakes.
- 3.17 The agreement within the NNJPU that Rushden should be a Growth Town is founded on a “robust evidence base and rationale;”¹⁴⁹ it is not a matter of political expediency. Two members of the LAC appearing at this Inquiry thus have no issue in principle to growth at Rushden.
- 3.18 The other member of the LAC, NBC, did not object in principle either.¹⁵⁰ The WNJPU,¹⁵¹ of which NBC is a member, in its consultation response,¹⁵² positively supported the spatial strategy being promoted by its neighbours in the NNJPU and made no adverse comment in respect of draft Policy 10 which expressly confirms Growth Town status for Rushden. The LAC’s concerns are not matters of principle, but rather, in this context, those of detail: if there is no objectionable adverse impact on their town centres, there can be no objection by the LAC to growth in Rushden. This concern is precisely what is to be examined at this Inquiry.
- 3.19 Rushden itself is most anxious to support the Government’s growth agenda in full measure. The NNJPU found that “there are clear local aspirations for

¹⁴⁵ See CD A7.1 page 109-112

¹⁴⁶ CD A7.1, paragraph 9.19

¹⁴⁷ See report to NNJC 31/1/13 (CD A7.13) at paragraph 3.11, 4th bullet

¹⁴⁸ See report to NNJC 14/3/13 (CD A7.14)

¹⁴⁹ CD A7.13, paragraph 3.16

¹⁵⁰ Mr Lewin in 2XX

¹⁵¹ West Northamptonshire Joint Planning Unit

¹⁵² ENC 9

regeneration, population expansion, employment and retail offers and to attract greater investment in infrastructure.”¹⁵³

- 3.20 Legal & General has not to date responded to the review of the NNJCS. To the extent that it might object in the future, such objection could only be on the basis of an alleged adverse impact on the Grosvenor Centre; again, this has been examined in great detail at this Inquiry.
- 3.21 While the emerging NNJCS review has not yet reached a stage where its draft policies can be accorded significant weight, the principle of Rushden’s position as a Growth Town is evidence-based and largely unopposed. It is therefore a material consideration to which the SoS can and should give significant weight. The quantum and location of retail development is, in this application, a matter of detail which will be considered in the section below. It is only right to observe that the issue of the quantum of retail and its relationship to national planning policy has enjoyed far greater scrutiny through this Inquiry process than would ever be possible in a Local Plan Public Examination.
- 3.22 Policy 12 is also out of date because it does not reflect up-to-date policy in the NPPF.
- 3.23 The NPPF at [23], 6th bullet provides that it is important that needs for retail development “are met in full and are not compromised by limited site availability” and the LPA, in plan-making, is required to “ensure a sufficient supply of suitable sites”. How to meet this requirement, in plan-making, is set out in the 7th bullet by allocating sites and setting policies.
- 3.24 It is self-evident that because site availability and market deliverability at Rushden was doubted at the time of the evolution and adoption of the NNJCS (see above), Rushden was not expressly identified to receive a floorspace allocation. Further, at that time national planning policy focused on meeting quantitative need not qualitative need. In addition, in so far as the need for sites for retail development in the south of North Northamptonshire were due to be met on sites to be allocated by a later DPD in Wellingborough¹⁵⁴ (the closest Growth Town to Rushden to be specifically identified in Policy 12 with a requirement for additional comparison goods floorspace), those sites are no longer able or available to accommodate the scale anticipated.¹⁵⁵ Indeed for the reasons explained in Mr Nutter’s evidence, the Wellingborough TCAAP is out of date as the proposals for retail development can no longer be realised in the light of the changed intentions of Tresham College.
- 3.25 Policy 12 of the NNJCS also included a decision-making element to be applied in circumstances including the determination of the instant planning

¹⁵³ CD A7.13, paragraph 3.13

¹⁵⁴ The Wellingborough Town Centre AAP adopted in 2009

¹⁵⁵ See KN proof ENC3 at paragraph 5.64-5 and paragraph 5.69-73

application. The sequential test in the 3rd paragraph of Policy 12 is itself not in accordance with that now found in NPPF [24]. That in Policy 12 provides for a cascade of (1) defined town centres, (2) well-connected edge of centre, (3) district and local centres, and (4) existing retail areas that are well served by a choice of means of transport. The NPPF's cascade is (1) town centres (2) edge of centre and (3) out of centre. At each of stages (2) and (3) where more than one site is available, a mechanism for selecting the preferred site is set out. It is self-evident that the NPPF sequential test is a marked change from that in Policy 12 which must now be regarded as being out of date.

- 3.26 Policy 12 at its 4th paragraph, reflects the then current national policy, and so includes tests of 'appropriate scale' and 'need'. These are no longer included in the NPPF as free-standing tests. To that extent, Policy 12 is further out of date.
- 3.27 Finally, Policy 12 required the delivery of specified minimum net increases (above then existing commitments) in comparison goods floor space in the three named Growth Towns. To date, 12 years into the plan period and 8 years before its end point,¹⁵⁶ very little progress has been made. Indeed in Corby, the position has gone backwards as the Evolution Corby commitment is stalled. In Wellingborough, sites once relied on are not available. The NPPF requires plans to be viable and deliverable,¹⁵⁷ any plan policy which promotes or relies on development which can no longer be delivered cannot sensibly be regarded as being up to date.
- 3.28 Finally, in so far as the adopted LP contains/relies on the allocation of the application site as an 'employment commitment' it too is not up to date because it cannot and will not be delivered. The NPPF promotes the flexible use of such sites where it is clear where there is no reasonable prospect of delivery,¹⁵⁸ and reflects the fact that jobs in the retail and leisure sectors can make an important contribution to the local economy. Indeed there is a similar provision in relation to the re-use of employment sites no longer considered suitable for the purpose in the NNJCS at Policy 11f.
- 3.29 For all these reasons, therefore, key policies and provisions in the adopted development plan are not up to date. That being the case, the provisions of NPPF [14], "decision taking" apply: planning permission should be granted unless any adverse impacts significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.¹⁵⁹ This plainly places an evidential burden on those who wish to demonstrate that planning permission should be withheld.

¹⁵⁶ The plan period was 2001-21.

¹⁵⁷ See NPPF paragraph 173

¹⁵⁸ NPPF, paragraph 22

¹⁵⁹ It has not been suggested that specific policies in the NPPF indicate development of the application site should be restricted as illustrated by footnote 9.

- 3.30 No one at this Inquiry has suggested that the application proposals are not deliverable.
- 3.31 Further consideration of the planning balance and the presumption in favour of sustainable development will be returned to once sections 2, 4 and 11 of the NPPF have been considered.

Issue (b): The extent to which the proposed development accords with the NPPF, in particular Section 2, which relates to ensuring the vitality of town centres.

- 3.32 It has already been noted that Section 2 of the NPPF requires that needs for retail uses are “met in full” and are not “compromised by limited site availability”.¹⁶⁰ This applies with particular force in circumstances where there is a deliberate development plan policy support for a drive to further self-sufficiency by clawing back expenditure that is currently leaking out of North Northamptonshire.
- 3.33 NPPF Section 2 establishes but two tests at the decision-making stage: a sequential test and an impact test. Objectors seem bent on (re)introducing additional (former) need and scale tests; such an approach is misconceived. With regards to scale, the approach in the NPPF is clearly not to limit growth by reference to a separate test of scale. If an individual proposal is unacceptably large then it would be likely to fail the impact test and thus be harmful. If the scale of a proposal is not such as to give rise to harmful impacts, then the intention is clearly that it should not be refused simply on the grounds of scale. Legal & General suggests¹⁶¹ that the sequential test should have regard to the hierarchy of settlements. However, for reasons already explained, the adopted settlement hierarchy is itself out of date certainly as it applies to Rushden. Simply placing the old policy from PPS4 alongside the up to date policy in the NPPF demonstrates that these contentions are fallacious.
- 3.34 With regards to need, if there is no quantitative local need or capacity for a proposed development, such that it has the effect of drawing in significant levels of trade from a wide catchment area, any harm that results to neighbouring centres would manifest itself under the impact test; there is no requirement for a separate free-standing test of need and none is included in the NPPF.
- 3.35 Despite the passing of the free-standing need and scale tests, objectors seek to maintain them by reference to the PPS4 PG.¹⁶² Indeed Mr Jones¹⁶³ sought

¹⁶⁰ NPPF, paragraph 23, 6th bullet

¹⁶¹ See 2XX of Mr Rhodes and ReX of Mr Jones

¹⁶² CD A2

¹⁶³ In 1XX

to justify this approach by explaining that in his view when national policy is abandoned by the SoS, the good practice adopted by practitioners in the furtherance of the superseded policy should nevertheless survive as a material consideration in its own right. Such an approach is wholly misconceived. It is clear that PG is only material where the policy in the NPPF reflects that in previous policy in PPS4.¹⁶⁴ Mr Jones and Mr Goddard face a further difficulty in that although the PPS4 PG is still extant, it too may have been revoked at the time of the Inspector's report or the SoS's decision. To continue to have regard to it in these circumstances would be wholly perverse, especially where it is being deployed to attempt to resurrect through old guidance policy which has now deceased.

- 3.36 The sequential test relevant to decision-taking is found at NPPF [24]. As the application site is out of centre, the test will be satisfied if "suitable [in or edge of centre] sites are not available". The question then arises: suitable for what? The answer to this question of law is suitable for the development proposed by the Applicant.¹⁶⁵ The Legal & General submissions in relation to the legal construction of "suitable" were somewhat opaque. It is, of course, correct that the meaning of the term should be construed in its context: that is a task which we undertake below, addressing in particular the question of "flexibility". However, that the terms are to be construed (and therefore applied) in the real world of real development is beyond argument. The real world is the context.
- 3.37 Although much was made of the fact that the Tesco Stores case was Scottish and related to Scottish policy it is worthwhile pointing out the similarity of the words which were at stake in that case which were "no suitable site is available".¹⁶⁶ It was in connection with those words that the Supreme Court determined that that phrase should be interpreted as meaning "suitable for the development proposed by the Applicant."¹⁶⁷ This was the approach taken to the case in Zurich Assurance [61-62]. The submission made by Legal & General that this approach would rob the sequential approach of its force was considered and rejected by Lord Hope at paragraph 37 of his judgment before reinforcing the "real world in which developers operate" as being the basis on which the suitability ought to be considered. Thus a cornucopia of unit shops or rag-bag of small sites are not suitable to accommodate a proposal to meet the qualitative need of an area which currently has to travel significant distances to undertake comparison shopping. We turn therefore to the contextual interpretation of the policy.

¹⁶⁴ Telford & Wrekin BC v SSCLG [2013] EWHC 1638 (Admin) (APP19) at paragraphs 17-20 & 35

¹⁶⁵ Tesco Stores Ltd v Dundee CC [2012] 2 P&CR 9 (CD A1C) at paragraphs 29 & 38 as discussed by KN in ENC3 at paragraphs 5.39-41 and R(Zurich Assurance Ltd) v North Lincs C [2012] EWHC 3708 (Admin) (CD A1D) at paragraphs 61-62

¹⁶⁶ CD A1.c Para 25

¹⁶⁷ CDA1.c Para 24

- 3.38 The sequential test in the NPPF also requires developers to demonstrate flexibility on issues such as format and scale. No indication as to what degree of flexibility is required is contained in the NPPF. Such a requirement was however previously contained in PPS4 and so any relevant PG advice continues to be material. PPS4 PG¹⁶⁸ is of assistance: flexibility in a business model, use of multi level stores, flexible car parking requirements or arrangements, innovative servicing solutions and a willingness to depart from standard formats. No serious complaint by the LAC or by Legal & General has been made in respect of these matters.
- 3.39 Flexibility as to format and scale were but two components of Policy EC15d in PPS4. Another, not now expressly identified in the NPPF, was a requirement (iv) to consider the scope for disaggregating specific parts of a retail or leisure development onto separate sequentially preferable sites. It is clear that this change in policy approach must be taken to have been deliberate on the part of the SoS; he could easily have made it clear if he intended a policy of disaggregation to continue.¹⁶⁹ That he did not do so is a very clear indication that there is no longer such a requirement in national retail planning policy and relevant parts of extant PPS4 PG that suggest otherwise cannot be regarded as up to date or given any weight.¹⁷⁰
- 3.40 There is also a dispute between LXB/ENC and the LAC/Legal & General as to the appropriate area of search for sequentially superior sites. The NPPF is silent on this issue. Mr Nutter has considered the advice given in PPS4 PG.¹⁷¹ The development at Rushden Lakes is promoted on the basis that the scale and quality of the existing comparison goods offer in the area is deficient with the result that residents are forced to travel further afield in order for these needs to be met. The LAC and Legal & General respond by asserting that this is simply a reflection of the hierarchy of settlements and that the residents of south North Northamptonshire should be expected to travel to higher order centres for their higher order retail requirements. They raise the spectre of a coach and horses being driven through the planning system by every settlement justifying self-sufficiency (or at least inappropriate levels of self-sufficiency) in terms of comparison goods shopping. This is a ridiculous argument to deploy in this case:
- (a) The aim of achieving greater self-sufficiency leading to clawback of expenditure has already been identified as part of the vision and objectives of the NNJCS. Nowhere does the NNJCS suggest that the needs of south North Northamptonshire should be met out of North Northamptonshire, for example in Northampton. To suggest that a site within a centre or even town from

¹⁶⁸ CDA2 at paragraph 6.27-28

¹⁶⁹ Mr Jones in 1XX

¹⁷⁰ See further Mr Nutter in ENC3 at paragraphs 5.34-38

¹⁷¹ ENC3 at paragraphs 5.10-33

which expenditure is to be clawed back is sequentially preferable would be self-evidently perverse.

(b) The south of North Northamptonshire has been identified as needing increased comparison goods floorspace in Policy 12 which is now unlikely to be delivered in Wellingborough as planned.

(c) Rushden is to become a Growth Town because previous delivery barriers to it doing so are no longer an obstacle (see above).

(d) It is simply absurd, in the real world, to expect that significant numbers of residents of Rushden and the smaller settlements nearby will travel to the higher order centres, particularly Northampton, by public transport.

3.41 For all these reasons¹⁷² Mr Nutter identifies an area of search as encompassing zones 9 to 11.¹⁷³ In addition, Mr Nutter identifies that within that area of search, candidate sites must be able to accommodate development of sufficient critical mass to effectively claw back leaking expenditure.¹⁷⁴

3.42 In the properly defined area of search the task is to identify sequentially preferable sites that are suitable and available which necessarily includes consideration of deliverability/viability. Mr Nutter identifies two candidate sites:¹⁷⁵ Palmbest, Rushden and The Swansgate Centre, Wellingborough. Both are then discounted: Palmbest because it is simply not available or big enough (i.e. suitable) and The Swansgate Centre because it is not available and viable. It is noteworthy that none of Rushden Town Council, Wellingborough Borough or Town Councils or the local chambers of commerce suggests that either represent sequentially superior sites. Mr Nutter also discounts additional sites suggested by objectors within zones 9 to 11:¹⁷⁶ the Peter Crisp site in Rushden because the available units are not suitable and the Trensham College and Market Square sites in Wellingborough because they are no longer available because in the case of the college site plans to vacate it have been abandoned (a material change in circumstances since its allocation in the AAP), and, in the case of the Market Square site, because it is too small on its own to be suitable.

¹⁷² Explained further at ENC3 paragraphs 5.10-32

¹⁷³ See ENC3 at paragraph 5.33

¹⁷⁴ Legal & General make essentially the same argument when pressing the importance of improving the attraction of the Grosvenor Centre in Northampton as it fights to claw back expenditure from Milton Keynes, Leicester and out of centre retail parks in Northampton itself.

¹⁷⁵ ENC3 paragraph 5.58

¹⁷⁶ ENC3 at paragraphs 5.68-73

- 3.43 The proper conclusion for the SoS to draw on the evidence is clear: there is no suitable and available sequentially superior site. We turn now to the second test – impact.
- 3.44 There is broad agreement as to which town centres ought to be considered:¹⁷⁷ Kettering, Corby and Wellingborough in the NNJCS area and Northampton in the WNJCS area. While there is likely to be some claw back from other centres (including for example Milton Keynes and Bedford) no one at this Inquiry has seriously or sensibly suggested any such resulting impact would be significantly adverse. It is also important to remember that the impact test in paragraph 26 of the NPPF applies only in respect of impact on centres. Therefore when considering the impact of claw back it is very important to ensure it is only claw back from centres that is considered and not, for example, that from out of centre retail parks. This is particularly relevant in considering the alleged impact on Northampton. There are two impacts to consider: effect on public and private investment (existing, committed and planned) and town centre vitality and viability.
- 3.45 There appears to be general agreement that “existing” investment is to be taken as a reference to investment that has already been made and that “committed” investment is that which is contractually committed (private) or subject to resolution (public). There is a dispute as to what is meant by “planned” investment.
- 3.46 Mr Nutter for ENC agrees that in considering the effect on planned investment it is proper to have regard to relevant parts of the PPS4 PG.¹⁷⁸ The methodology outlined therein suggests that evidence¹⁷⁹ of the following will be relevant:
- (a) Paragraph 7.17 - Town centre development opportunities which are being actively progressed; key considerations will include:
 - (i) The stage at which the proposal has reached;
 - (ii) The degree to which developers/occupiers are committed;
 - (iii) The level and significance of predicted direct and indirect impacts.¹⁸⁰
 - (b) Paragraph 7.19 - The effects on current/forecast turnovers and market share; operator demand/competition for the same market opportunity; the need/capacity for both; investor confidence/concern.
 - (c) Paragraph 7.20 – The effect on key anchors.

¹⁷⁷ Mr Goddard at LAC5 paragraph 7.13-14 accepts there will be no significantly adverse impact on Rushden itself.

¹⁷⁸ See ENC3, paragraph 6.11

¹⁷⁹ It is submitted that unsubstantiated assertion will not suffice

¹⁸⁰ As will be seen, there is some overlap here with the vitality and viability limb of the impact test.

- (d) Paragraph 7.21 - The policy status of the planned investment; e.g. is it a key provision of the development plan?
- (e) Paragraph 7.21 - The degree of risk.
- 3.47 Wellingborough can, in the circumstances, be dealt with shortly. There is no evidence that any planned investment is being actively progressed or that any plans have reached further than embryonic stage or that any developer is committed. While there are plans identified in the AAP these are unlikely to be progressed. There is no evidence that any are viable and as set out above the AAP is as Mr Nutter concluded out of date. There is no serious expression of any investor concern. The Wellingborough Chamber of Commerce and WBC are four-square behind the Rushden Lakes project.
- 3.48 With regard to Northampton it is important to realise that there is bound to be some impact if the development plan strategy to claw back leaking expenditure is to succeed. It is important to remember that the RTP West Northamptonshire Retail Study identified that Northampton was a healthy centre: "*Northampton is currently performing its role as the highest order centre in West Northamptonshire satisfactorily.*"¹⁸¹ Whilst it notes the need for improvement, involving the extension of the Grosvenor Centre, this recent objective appraisal does not bear out the descriptions of the objectors. Intriguingly, Mr Denness in his proof describes the centre in glowing terms.
- 3.49 Considering the evidence before the Inquiry against the matters identified in PPS4 PG the following conclusions should be drawn in respect of Northampton town centre:
- (a) The Grosvenor Centre redevelopment and extension is identified in the NCAAP.¹⁸² However, there is not even a sketch let alone a design of what is proposed. There is no planning application let alone a consent. The plan produced today reinforced that far from there being a few (2% we were told) unknown land-ownerships there are a number of known owners not within the ownership or control of Legal & General who would have to be the subject of a CPO which is yet to be a glint in the eye of NBC. The Grosvenor Centre is yet to be conceived, let alone formed into an embryo.
- (b) It cannot be said that the Grosvenor Centre has been pro-actively progressed. Since 2000 Legal & General has announced various plans that have all come to nothing.¹⁸³ This has been during times of abundance as well as lean years. Throughout, the Grosvenor Centre extension has had a supportive planning policy context: this is not of recent invention. No doubt

¹⁸¹ CD8.2 page 13 paragraph 3.11

¹⁸² Northampton Central Area Action Plan January 2013 CD9.3

¹⁸³ 2XX of Mr Jones and ENC13

down the years it would have said the same things as it has said (indirectly) to this Inquiry about how it is on the cusp of embarking on the extension. The frequently expressed intentions have been consistently fruitless. The evidence is plain that it is stalled for reasons wholly unconnected with Rushden Lakes.

(c) There is no evidence that Legal & General is actually contractually committed to doing anything. There is evidence of a 2009 DA with NBC, but no evidence as to what that agreement requires or commits Legal & General to. No witness for NBC or Legal & General had had sight of the DA.

(d) There is no evidence that can be tested that any identified or embryonic redevelopment scheme at Grosvenor Centre is viable. There is no evidence of any effect of the Rushden Lakes proposal on the viability of redevelopment at the Grosvenor Centre. All witnesses for Legal & General and the LAC have not themselves been privy to any viability discussions. It would obviously have been open to Legal & General to call such evidence but it chose not to do so. If either Legal & General or NBC wanted to do so but were contractually prevented from doing so by the other that cannot be a matter that stands in favour of the objectors.

(e) The evidence before the Inquiry shows that there is no competition for the same retailers or market opportunity as between the Grosvenor Centre and Rushden Lakes. The evidence shows that:

- (i) Retailers adopt different formats in town centres and on retail parks.
- (ii) Retailers that do trade in both town centres and retail parks do so in close proximity, certainly within the same urban or catchment area.
- (iii) Likely or target retailers for the Grosvenor Centre from Mr Whiteley has very limited overlap with those assumed by Mr Goddard to be likely at Rushden Lakes.

(f) There is no evidence from key anchors at the Grosvenor Centre that has been called by objectors. Instead reliance seems to be placed on the conclusion of the NCAAP Inspector. The second-hand evidence before him was not tested by cross examination. It is clear that the evidence on behalf of Legal & General did not paint a complete picture.¹⁸⁴ It seems that in August 2012 Legal & General told the NCAAP Inspector in response to his specific concern that the Grosvenor Centre extension was viable. At that time the Rushden Lakes application was in and there was no mention of it in their evidence. Furthermore, even after the resolution to grant Rushden Lakes, which occurred during the currency of the NCAAP examination, Legal & General did not say anything to the Inspector to gainsay the impression he was given that the Grosvenor Centre scheme was viable, nor did the Rushden

¹⁸⁴ 2XX of Mr Jones and ENC11, APP34

Lakes resolution deter NBC from adopting the NCAAP. This was a very different picture from that painted by Mr Jones in his evidence to this Inquiry where in paragraphs 7.39-7.40 he is clear that there is currently an examination of viability on foot and that there is no available conclusion there is any viable scheme.

(g) At its height, the evidence on the effect of planned investment at the Grosvenor Centre amounts to a bare allegation from Legal & General that it will not proceed with any as yet unspecified plans for investment should Rushden Lakes be permitted.¹⁸⁵ The degree of risk is not at all great given the track record of Legal & General's pronouncements set out above. NBC, as stated in the past, has the opportunity to progress with the redevelopment with another partner.¹⁸⁶

(h) In respect of projects/proposals identified in the NCAAP, there is no free-standing evidence of there being any adverse effect on investor confidence. The LAC's case in respect of Northampton town centre regarding investor confidence stands or falls with Legal & General and the Grosvenor Centre.

3.50 In any event the claim that the resolution to grant planning permission at Rushden Lakes is the cause of the current hiatus in the Grosvenor Centre project or the alleged crisis of confidence at Legal & General is not borne out by the evidence:¹⁸⁷

(a) On 17 May 2012, Legal & General's agents were concerned that a proposed out of centre foodstore would impact on Grosvenor Centre investment decisions as a convenience anchor was important to the viability of redevelopment, and that to grant planning permission at Barrack Rd, on top of the very many other out of centre retail permissions granted by NBC over the previous 15 years would have a significant impact on Grosvenor Centre deliverability.¹⁸⁸

(b) In June 2012 Legal & General announced its current scheme was not viable, that work on a planning application would cease leading to the 'hiatus'. Mr Jones confirmed in cross examination that the prevailing general economic conditions were highly material.

(c) On 12 June 2012, the leader of NBC made it clear that he was fed up and frustrated, but ascribed no blame to the Rushden Lakes project.¹⁸⁹

¹⁸⁵ See letter at LG3, Appendix 13, 1st paragraph

¹⁸⁶ See 2XX of Mr Whiteley in relation to CDA9.1

¹⁸⁷ Put to Mr Jones in IXX

¹⁸⁸ APP9 Appendix 5

¹⁸⁹ APP36

(d) The minutes of a debate at NBC on 2 July 2012 do not mention the Rushden Lakes effect at all.¹⁹⁰

(e) Statements submitted to the NCAAP Examination (on or about 13 August 2012) on behalf of Legal & General¹⁹¹ similarly do not mention Rushden Lakes; key points relied on included general economic conditions and the plethora of out of centre permissions granted by NBC. Mr Jones confirmed in cross examination that the EiP hearing statement was truthful and accurate.

- 3.51 Mr Jones in cross examination agreed that the NCAAP Inspector's report was based on less information than is now available. In addition, it is clear that the evidence he did have was not able to be tested in cross examination as it has at this Inquiry. The weight to be attached to conclusion reached in the Examination is thus limited.
- 3.52 The proper conclusion to draw is that Legal & General has been involved with the Grosvenor Centre since 1999 and did not invest in it during the economic boom. Any assertion by Legal & General that the resolution to grant planning permission at Rushden Lakes played an influential part in its decision in June 2012 to cease work on a planning application for the Grosvenor Centre and to conduct a viability review is not sensible. Its assertion that a grant of planning permission at Rushden Lakes would preclude future investment at the Grosvenor Centre on the grounds of viability is also unevidenced¹⁹² and, again, not sensible.
- 3.53 In Corby there is extant development plan support for a proposal known as Evolution Corby in which 15,500m² net of additional comparison goods floorspace would be delivered over the period to 2021.¹⁹³ In 2008 a planning application was made; CBC resolved to grant but the permission was never issued. The scheme was effectively abandoned by the previous owners. The new owners, Helical (Corby) Ltd objects to the Rushden Lakes application but there is no revised scheme and no evidence of any planned investment of such a scale that could deliver Evolution Corby. Furthermore, as Mr Nutter explains, Corby is simply not seeking to compete in the same market as Rushden. There is no compelling evidence of any significant adverse effect on planned investment in Corby. All of the retail impact analysis demonstrates that the measured effect of Corby is very small: even Mr Goddard has not been able to generate any significant loss of trade in his modelling.

¹⁹⁰ APP38

¹⁹¹ APP34

¹⁹² No witness for Legal & General or the LAC was able to give any evidence in XX to that effect

¹⁹³ See Mr Nutter's proof ENC3 at paragraph 6.15-17

- 3.54 In Kettering¹⁹⁴ there is similarly some policy support for improvements, particularly at the Wadcroft/Newlands Phase I site. However, again, there is no evidence of any scheme being progressed for comprehensive redevelopment as set out in the AAP. Neither Mr Goddard nor Miss Garbutt for the LAC gives any direct evidence on investment planned in Kettering. That offered by PR Kettering Ltd¹⁹⁵ has not been able to be tested by cross examination. Mr Nutter was not cross examined on his evidence in relation to investment in Kettering at all.
- 3.55 Turning next to evidence of impact on vitality and viability. Although some parts of the evidence have a scientific appearance, this is in the end a matter of professional judgment, in particular in so far as it relates to the assumptions as to where the trade for the new development will be drawn from. As in most cases of competing judgments, the task of the decision-maker is to select the most reliable, tested against the available empirical evidence and logic.
- 3.56 In order to assess such impact it is first necessary to establish the likely catchment area of the proposal and its likely turnover. The sum of money which is likely to be available to be drawn from relevant centres and elsewhere to the proposed development is then known. It is then necessary to determine which centres it is likely to be drawn from and what scope there is for claw back and from where. All experts have, in considering the question of existing catchments and patterns of trade draw used the same shopping survey data to inform their judgments.¹⁹⁶ In respect of each centre, the effect on the vitality and viability of those centres can then be analysed.
- 3.57 Both Mr Nutter and Mr Goddard judge that the core catchment is likely to be zones 9 to 11, with Mr Goddard adding in zone 7. Mr Goddard's secondary catchment is much more extensive and also covers most of the urban area of Northampton (zones WN4 to 7). As Mr Nutter explained in cross examination, it is just not credible to assume that substantial numbers of people living in Northampton and beyond would be drawn to Rushden Lakes when Northampton town centre is on their door step and when they would drive very close to if not past other retail parks en route. He also explained that if such persons were willing to travel for such a time, Milton Keynes was a much more attractive proposition as a very high order comparison goods draw. Mr Nutter's catchment assessment is therefore robust and credible.
- 3.58 As Mr Nutter explains, where end operators in a retail scheme are unknown, assumptions as to turnover have to be made. His assumptions are that the garden centre and Terrace A would trade as Mr Burnett suggests - £5.1m and £9.1m respectively. For Terraces B and C, applying an average of £4,000/m²,

¹⁹⁴ See Mr Nutter's proof ENC3 at paragraph 6.18-21

¹⁹⁵ PRK2

¹⁹⁶ CDA7.6 RTP 2011 Household Survey

he judges turnover at £73.4m. This gives a total turnover of £87.6m. In order to arrive at the turnover figure for the 2018 test year, Mr Nutter then assumes that turnover would increase in line with national averages. The 2018 figure is therefore £99.6m¹⁹⁷ nearly £10m above the figure adopted by Mr Burnett at this Inquiry.¹⁹⁸

3.59 The equivalent figure adopted by Mr Goddard for the LAC is £139.5m¹⁹⁹ about £40m above Mr Nutter's figure. Mr Nutter explained in chief that a key difference between them was in Mr Goddard's selection of a £5,500/m² average for Terraces B and C. Mr Goddard's figure is not reliable as it is based on analysis of schemes²⁰⁰ that are not truly comparable. In particular, the Greyhound Retail Park in Chester does not trade at an average of £12,863/m², but at £3,400/m².²⁰¹ The Northwich Retail Park trades very successfully at £4,336/m². The "super-scheme" at Banbury just off the M40 motorway trades at £4,882/m² and includes a premier full flagship M&S and new concept Next store and enjoys excellent access. Mr Goddard also produced a list of prospective tenants for Rushden Lakes. The company average for M&S is £4,987/m²²⁰² and for Next is £4,456/m².²⁰³ As was explained by Mr Nutter in cross examination, Mr Goddard's assumption of an average of £5,500/m² for Terraces A and B would not even be achieved if they were occupied by tenants all achieving more than the average turnover by M&S. This all suggests that Mr Goddard's figure is too high and Mr Nutter's is robust and appropriate.

3.60 In an attempt to underpin his existing work, Mr Goddard undertook sensitivity testing in his rebuttal proof. However, as was exposed in cross examination, his glaring error in assuming an Argos at Rushden Lakes would turn over £22.4m, instead of a company average based sales per outlet in the £5m to £6m range,²⁰⁴ means that his turnover is inflated by about £17m. This narrows the gap between Mr Goddard (sensitivity) and Mr Nutter to £23m. Mr Nutter's robust assumption that turnover would improve in line with national trends (which accounted for £9.6m of 2018 turnover) is to be contrasted with Mr Goddard's efficiency allowance of £15.2m. If Nutter is correct, which it is submitted he is, then the gap narrows still further to about £17m. Mr Goddard's trade draw includes an assumption that £7m would flow to Rushden Lakes from outside his already unrealistic and very large catchment area and that £8m would flow from tertiary zones WN11 (Buckingham) and WH (immediately north of Milton Keynes). If Mr Nutter is

¹⁹⁷ ENC3, paragraph 6.64

¹⁹⁸ See Mr Burnett's proof APP5, paragraph 3.10

¹⁹⁹ LAC5, paragraph 7.6

²⁰⁰ LAC6, Appendix 10

²⁰¹ Mr Nutter in chief and not taken issue with thereafter

²⁰² Table BPD C in APP11, Appendix 2

²⁰³ Table BPD D in APP11, Appendix 2.

²⁰⁴ See APP27

correct that WN11 is simply too far away to be considered as falling within the catchment of Rushden Lakes, and that WH is firmly within the considerable sphere of influence of Milton Keynes, then the gap all but disappears. What Mr Goddard's sensitivity testing does is to show that Mr Nutter's original work was robust and reliable and his was not.

- 3.61 To assess the impact on individual centres, it is necessary to drill-down into the figures and "follow the money". It is axiomatic that not all comparison goods trade drawn to Rushden Lakes from each zone will be drawn from money that is now spent in town centres. A judgment has to be made as to the draw from town centres and that from out of centre retail parks. Mr Goddard has made such a judgment but, as was exposed in cross examination and in ENC10, that judgment does not survive a sensitivity test because it is based on improbable and disproportionate differentials between town centres and out of centre retail parks. His modelling is defective for at least two important reasons: firstly, it does not reflect the current existing attractiveness demonstrated by the Household Survey of town centres and retail parks where the split is now currently generally even between the two (albeit in some zones retail parks are favoured;²⁰⁵) secondly, it is illogical and Mr Goddard could provide no sensible explanation for why the trade draw had been skewed so significantly. The problems infect the analysis of the impact both on Northampton town centre and Kettering town centre.
- 3.62 Page 1 of ENC10 sets out the results of Mr Goddard's trade draw assumptions from the Rushden Lakes home zones on Northampton town centre and the out of centre Riverside Park to the east (i.e. towards Rushden) both before²⁰⁶ and after²⁰⁷ Rushden Lakes is opened together with the sensitivity test position.²⁰⁸ The result is completely at odds with what Mr Goddard said he would expect applying his professional judgment. Rushden Lakes is shown as clawing back disproportionate and unexpected trade from the town centre when compared with the out of centre retail park. Whereas Mr Goddard had expected it would show significant trade redirected from Riverside Park this was not the case. Far more trade (about 10 times as much) was redirected from the town centre. PPS4 PG Annex D.27 advises that judgments should be based on existing shopping patterns. Whereas existing shopping patterns of those resident in the Rushden home zones show an approximately 50:50 split between town centre and retail park shopping, the analysis at ENC10 shows that Mr Goddard's data does not, even on the basis of his sensitivity test.
- 3.63 Page 2 of ENC10 shows the other side of the coin: the effect of Rushden Lakes on the shopping patterns of those living in the Northampton home zones. There continue to be bizarre outcomes. Mr Goddard was simply

²⁰⁵ Mr Goddard Appendix 13 Table 5

²⁰⁶ From Mr Goddard's table 10

²⁰⁷ From Mr Goddard's table 14

²⁰⁸ From Mr Goddard's table 16a

unable²⁰⁹ to explain why the diversion of expenditure by residents of zones W3 and W5 away from Northampton town centre increased in his sensitivity test. He was in similar difficulty in respect of explaining why, regarding zones W3, W4, W5 and W7 the impact on Riverside Park decreased in his sensitivity. Mr Goddard told the Inquiry that he could not explain why the data showed this, that it was counter-intuitive and that he would expect the opposite so it was "probably wrong". On page 3 of ENC10, Mr Goddard was unable to explain the outputs in respect of the Northfield Avenue Retail Park. The reason why his data output are "wrong" (or inexplicable) is of course, because they were based on inappropriate and unsupportable professional judgment. The attempt to air-brush this from history in the LAC closing at paragraph 3.35 betrays a fundamental misunderstanding of Mr Goddard's work. The errors were not "mathematical quirks thrown up by the computer modelling" but rather quirks created by the application of Mr Goddard's judgment which proved faulty. These errors were not in "a few cells" but in fact in the key zones of Mr Goddard's primary and secondary catchment.

- 3.64 There can be no possible doubt that Mr Nutter is to be preferred to Mr Goddard when it comes to accepting the outputs of professional judgment. It is telling that when you follow the money the amount drawn from the primary catchment identified by Mr Nutter and Mr Goddard is broadly equivalent. It is only when the exaggerated turnover used by Mr Goddard needs to be deployed that it is necessary for him to spread that implausibly high turnover he is required to contend that trade will be drawn from far and wide and in particular heavily from zones in Northampton. Thus the inaccurate turnover is coupled with the defective judgment to compile a modelling exercise which is not fit for purpose or a sensible basis for decision making. Mr Nutter's judgments reflect the empirical evidence available and are based on coherent and logical analysis. His outputs are in his Tables 6.2 and 6.3.²¹⁰
- 3.65 The solus effect on Corby town centre is -0.8% rising to -6.8% when taking account of existing commitments. The solus effect on Kettering town centre is -4.8% rising to -8.7% when taking account of existing commitments. The solus effect on Northampton town centre is -5.4% rising to -7.8% when taking account of existing commitments. However, in all cases the turnover in 2018 would be higher than in the base year of 2011. In each case Mr Nutter opines that the impact would not be significant.²¹¹
- 3.66 The effect on Wellingborough Mr Nutter has always accepted is more finely balanced. The solus effect on the town centre is -12.2% and is the same taking account of existing commitments. In both cases the turnover in 2018 would be similar to the base year of 2011. While the comparison goods floorspace position is not as strong as the other centres, the overall vitality

²⁰⁹ In 2XX

²¹⁰ Mr Nutter proof ENC3, page 62-63

²¹¹ See "Consideration of Consequences" at Mr Nutter's proof ENC3, p64-66

and viability of Wellingborough is underpinned by convenience goods investment.²¹² WBC is fully aware of Mr Nutter's assessment and has not withheld its support for Rushden Lakes on the grounds of adverse retail impact.

- 3.67 As a result, ENC is firmly of the opinion that consideration of section 2 of the NPPF does not indicate a refusal of planning permission.

Issue (c): The extent to which the proposed development is consistent with Government advice in promoting more sustainable transport (section 4 of the NPPF); promoting accessibility to jobs, leisure facilities and services by public transport, walking and cycling; and reducing the need to travel, especially by car.

- 3.68 Section 4 of the NPPF requires that journey length for shopping, jobs and leisure activity be minimised [37 and 34], that sustainable transport opportunities be maximised [29 and 34] while accepting that different solutions will be available in rural and urban areas, that development should take up opportunities for sustainable transport modes to reduce the need for major transport infrastructure [32], 1st bullet) and that where there is a choice of sites for development (for example in a sequential test) the 'well connected' option be selected [24].

- 3.69 While ENC did not call any direct evidence on this issue,²¹³ it continues to hold the views it held at the time the application was determined:

(a) In terms of vehicle mileage savings it is common sense that if significant expenditure from the Rushden Lakes home zones is clawed back from more distant centres there would be vehicle mileage savings. Mr Bird's calculations for LXB were criticised in cross examination but no alternative calculation was ever advanced by the LAC or Legal & General. It was suggested that Mr Bird had failed to take into account some trips that would be generated by Rushden Lakes e.g. current trips to Northampton by bus that would be replaced by a trip to Rushden Lakes by car but these do no more than chip away at the edges of the savings. Other suggestions were frankly bizarre e.g. the suggestion that diverting comparison goods shopping from Northampton to Rushden Lakes would still require a trip to Northampton to go to the bank, as if there were no banks in Rushden.

(b) In any event, there is currently not an attractive bus service to Northampton town centre from Rushden. Residents in zones 9 to 11 shopping in Northampton have no real choice other than to travel by car.

²¹² Mr Nutter proof ENC3, paragraph 6.80

²¹³ So it did not take up inquiry time in XX of Mr Hunter-Yeats

(c) There were no objections from highway authorities on the sustainable travel issue after a full consultative process. The LAC's and Legal & General's attempt to portray a failure to agree to some parts of the SoCG was not and cannot be taken to be an indication of an objection to those parts.

(d) LXB proposed enhancements to bus provision, walking and cycling that would be delivered. Legal & General's principal criticisms seemed to be that there was no bus to be provided on a Sunday and there would not be 2 buses an hour directly into the site. LXB has now increased its planned provision to meet those concerns. In addition, passengers using the existing bus that goes to Waitrose on the opposite side of the A45 to Rushden Lakes would have the opportunity to walk over the new footbridge into the new retail and leisure development. LXB has now restored the provision that at the time the application was determined satisfied the Highway Authority. Furthermore, the Highway Authority and bus operator have always been clear that planned housing development in the area would increase patronage of the bus services leading to increased confidence in the longer term sustainability of the services when funding from LXB ceases.

(e) There is no realistic alternative choice to meeting comparison goods shopping needs in the south of North Northamptonshire (see the sequential test above) and ENC is content that LXB has taken all reasonable steps to maximise travel by non-car modes.

(f) ENC accepts that the framework travel plan proposed by LXB is appropriate and meets policy expectations.

3.70 ENC is, therefore, satisfied that the SoS should conclude that the proposed development is consistent with Government advice in promoting more sustainable transport as set out in section 4 of the NPPF.

Issue (d): The extent to which the proposed development is consistent with Government advice, particularly in relation to giving appropriate weight to protected species and to biodiversity interests within the wider environment (Section 11 of the NPPF).

3.71 Section 11 of the NPPF requires valued landscapes to be enhanced [109], 1st bullet), the provision of net gains in biodiversity where possible [109], 3rd bullet), despoiled and degraded land to be remediated, previously developed land to be effectively re-used [111] and weight to be given to the contribution made to wider ecological networks [113].

3.72 In cross examination Mr Jones accepted that although his evidence included criticisms of the ecological benefits of the proposed development he was not an expert and that Legal & General had not sought expert advice. He reached his non-expert judgment without having had the benefit of considering the views of the local Wildlife Trust and the RSPB presented to this Inquiry. He

now accepts that the proposals would provide significant benefits that are welcome according to the Wildlife Trust and RSPB.

- 3.73 The Wildlife Trust letter to the Inquiry dated 23 April 2013²¹⁴ makes it clear that it would manage the proposed visitor centre, the 32ha of land within the application site and a further 60ha of land controlled by the Applicant. This land includes SSSI, SPA and a Ramsar site. It also lies in the Nene Valley Improvement Area where ecological awareness and access is to be encouraged. It confirms that unmanaged access and trespass on the land is a "key issue in the current decline in the condition of the SPA". It further confirms that the nature conservation value of the site would be enhanced by the proactive ecological management that it would undertake. By taking responsibility for LXB controlled land, the Wildlife Trust confirms it would be able to link up with its other nature reserves in the area to give a total integrated reserve area managed for people and wildlife of around 500ha. The visitor centre is judged to be an important base from which to manage conservation activities and provide outreach education to school children and visitors. It concludes by stating that *"the proposals will bring significant nature conservation benefits."*
- 3.74 The RSPB letter to the Inquiry dated 21 June 2013²¹⁵ states that it works closely with the Wildlife Trust in the Nene Valley and endorses its views. This is particularly important because the area is important for protected over-wintering birds.
- 3.75 It is plain that, applying the policy in section 11 of the NPPF substantial weight should be given to these benefits in the planning balance.

Issue (e): Whether any permission should be subject to any conditions and, if so, the form that these should take.

- 3.76 The RTC set out in full the conditions it was minded to attach to the permission should it have retained jurisdiction over the application. Since the resolution to grant further work has been done refining these conditions as the call-in process unfurled. A draft was supplied to the Inspector and Rule 6 parties through the SoCG. This led to further scrutiny and refinement.
- 3.77 The result is a comprehensive list of conditions which are now agreed and which meet the legal and policy requirements. ENC is not aware of any outstanding matters of dispute.

²¹⁴ INQ2

²¹⁵ INQ2

Issue (f): Whether any planning permission granted should be accompanied by any planning obligations under s106 of the 1990 Act and, if so, whether the proposed terms of such obligations are acceptable.

- 3.78 Regulation 122 of the CIL Regulations provides that for an individual obligation to be a lawful reason for granting planning permission, it must be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related to the scale and kind of the development.
- 3.79 In this case there is an agreement²¹⁶ and a unilateral undertaking²¹⁷ Obligation proffered. LXB has provided a Statement of Compliance to explain how each meets the Regulation 122 tests²¹⁸ which ENC endorses.
- 3.80 There are some matters of principle about which Legal & General do not agree. While no doubt LXB will respond in detail, ENC's position is:
- (a) There can be no objection in principle to the making of a Rushden town centre manager contribution. This would foster links between Rushden Lakes and the town centre, pump-prime capacity-building in the town centre, co-ordinate bids for future improvement funds so that at the end of the funding period voluntary and/or business bodies would be in a position to ensure the future health of the town centre.
 - (b) The importance of a Travel Plan Manager will be well known to the SoS. LXB would secure such an appointment for at least 5 years. Thereafter good practice would be likely to be embedded, and if it is, the need for LXB to provide continuing support. If such support is needed, it would continue as necessary. No objection to this proposal has been received from the Highway Authority.
 - (c) The visitor centre and boathouse would now be provided before any retail floorspace is open for trading.
 - (d) The provision for repayment of any unspent public transport contributions 2 years after they are made is reasonable. Public transport subsidy would cease after 3 years at which time both the operator, Stagecoach, and the Highway Authority are satisfied that the bus services would be viable. If that is in any doubt, remaining funds can be expended for a further 2 years before final repayment is due.

²¹⁶ Annex C to the SoCG

²¹⁷ APP 40

²¹⁸ APP 41

(e) ENC understands that the unilateral planning obligation is to be varied by deed so that in the event that the bus service on route 49 ceases and is replaced by an equivalent service, the business and facilities at Rushden Lakes are not required to close their doors.

Issue (a) revisited: The Presumption in favour of Sustainable Development – the Planning Balance.

- 3.81 The RTC identified the benefits that would accrue as a result of the proposed development.²¹⁹ Those not considered thus far are jobs and enhancement to recreation and leisure facilities and opportunities.
- 3.82 In considering the planning application ENC accepted LXB's assessment that there would be likely to be 290 direct jobs in the construction phase and this phase alone would generate directly £7m for the local economy to which would be added indirect effects.²²⁰ The operational phase was estimated by ENC to generate up to 1,340 direct and 844 indirect jobs generating an annual benefit of some £23m a year for North Northamptonshire. This analysis was not accepted by the LAC and Legal & General who argue that Rushden Lakes would cause a loss of retail jobs elsewhere. LXB produced further evidence in rebuttal.²²¹
- 3.83 In cross examination Mr Jones for Legal & General accepted that in respect of any additional jobs at the Grosvenor Centre he had no evidence of a viable scheme to show how they could be delivered. Further, he accepted that his methodology in his Appendix 16 which assumes jobs would be lost on the same basis that they are created was not supported by any study or proper empirical evidence. On the basis of these admissions there is no evidential basis on which to deduct job losses from the evidenced based approach of LXB.
- 3.84 The provision of the boat house and recreational access to the lake is plainly a recreational benefit of the proposed development including to youth organisations. The delivery of the boat house is secured by planning obligation and Canoe2 would occupy at least part of it. These are important community benefits and the boat house would contribute to the development of tourism in the Nene Valley.
- 3.85 The Wildlife Trust letter to the Inquiry confirms that its involvement would secure improved opportunities for bird-watching, walking, angling and boating. Access would be managed and provided through the land it manages to link up with the greenways of the wider Nene Valley. Policy 5 of the NNJCS seeks the improvement and enhancement of the network of sub-

²¹⁹ CD B14 paragraph 7.12.6

²²⁰ CD B14 paragraph 7.6.7.2

²²¹ APP9, Appendix 7

regional and local green corridors which pass through and close to the application site. Paragraphs 3.37-39 of the supporting text identify the multiple benefits to be derived from green corridor improvements as part of the River Nene Regional Park Project including tourism. CDA4 explains how Policy 5 and the project would be implemented which include²²² support for increased provision including water facilities, visitor attractions, information kiosks and picnic opportunities. All of this and more would be delivered by the proposed development. Mr Jones in cross examination accepted that the proposal would be consistent with NNJCS Policy 5 and the report at CDA4.

- 3.86 It is plain that the jobs, environmental and recreational benefits all fall squarely within the economic, social and environmental roles of sustainable development set out at NPPF [7]. These are benefits which are clearly welcomed by the local community, who surely are those best placed to value them. The SoS should ascribe significant weight to these matters in the planning balance: they are the epitome of his aspirations for a planning system built on Localism.
- 3.87 The benefits that therefore fall to be considered in the NPPF [14] balance include the regeneration of the previously developed site to the benefit of the self-sufficiency of the town and surrounding areas, provision of jobs and benefit to the local economy, enhancement of the environment and ecological benefit, the provision of leisure and recreation facilities, enhanced tourist facilities, connection of the town with the countryside via the new pedestrian and cycle links to the Greenway and Blueway networks including the provision of a bridge over the busy A45, considerable vehicle mileage savings by access to a quality local shopping destination in circumstances where currently long journeys are needed thereby minimising the need to travel, and improved public transport provision.
- 3.88 None of the main alleged retail adverse impacts (failure to apply the sequential test and significantly adverse impact on investment in town centres or the vitality and viability of those centres) has been made out. Access by non-car modes has been reasonably maximised.
- 3.89 While it may not wholly accord with an out of date element of the adopted development plan, Rushden Lakes is truly a proposal for sustainable development in planning policy terms. To the overwhelming majority of the huge number of non-professionals who have taken an interest in this planning application it is plainly a 'good thing'. The SoS can be confident that it represents a case where the interests of sound planning and common sense elide. The benefits are plainly not clearly and demonstrably outweighed by adverse impacts. There are no other material considerations that indicate that planning permission should not be granted.

²²² CD4, page 32

- 3.90 These proposals articulate the ambition of the local community to grow and prosper, to leave behind the legacy of the collapse of the boot and shoe industry, to meet their own needs for jobs and prosperity and improve their environment. Without them being blessed with vast quantities of public subsidy they are seeking to forge their own future taking a positive attitude to investment and development. These virtues merit reward by the SoS of consent for the scheme before the Inquiry which represents both a sustainable proposal and the very epitome of localism.

THE CASE FOR THE CONSORTIUM OF LOCAL AUTHORITIES (LAC)

Introduction

- 4.1 It is very unusual for planning applications to be called in by the SoS because of his recognition of the importance in general of local decision making. There are a few cases, however, of such significance that the SoS departs from his normal practice. This Rushden Lakes application is such a case. The SoS's reasons were "that the application is one that he ought to decide himself because he considers that the proposals may conflict with national policies on important matters".²²³
- 4.2 The SoS was absolutely right.²²⁴ This application raises in acute form really important questions about the interrelation of planning policy and investment. As Mr Goddard said,²²⁵ it is for the SoS to decide whether he takes the "short term expedient" of authorising this proposal and the economic activity which it would generate or whether to uphold national policy which promotes "genuinely plan-led development"²²⁶ and "recognises the importance of putting town centres first in planning decisions".²²⁷ This is not a choice between growth and restraint because the development plan in this instance seeks high levels of growth in the period 2008 to 2021. But a decision is required as to whether or not to support longstanding national and development plan policy for a "town centre first" approach to retail and other "main town centre uses".²²⁸ There are also strong policy commitments to positive town centre development proposals in the Area Action Plans ("AAPs") for the nearby Boroughs of Kettering, Wellingborough and Northampton.

²²³ DCLG letter 20th December 2012

²²⁴ PRK2, Written Submissions of Mark Robinson, Appendix 1

²²⁵ XX (Katkowski)

²²⁶ CD A1: "Core Planning Principles" paragraph 17, first bullet.

²²⁷ CD A6.11 "High Streets at the Heart of our Communities: The Government's Response to the Mary Portas Review". Prime Minister's Foreword: "We have published our new national planning guidance which recognises the importance of putting town centres first in planning decisions."

²²⁸ Which the NPPF glossary defines as: "retail development (including warehouse clubs and factory outlet centres); leisure, entertainment facilities the more intensive sport and recreation uses (including cinemas, restaurants, drive-through restaurants, bars and pubs, night-clubs, casinos, health and fitness centres, indoor bowling centres, and bingo halls); offices; and arts, culture and tourism development (including theatres, museums, galleries and concert halls, hotels and conference facilities).

Whilst not part of the statutory development plan for Rushden, these AAPs are important material considerations.

- 4.3 Northampton Town Centre's AAP was independently examined as recently as Autumn 2012, found sound and adopted in January 2013. The question at the heart of this Inquiry is whether these town centre first plans and proposals are allowed to proceed or whether they are disrupted by opportunistic comparison retail development of sub-regional scale in an out of town location.²²⁹ The implications for investor confidence in town centres generally are obvious and serious.²³⁰ Very considerable investment of public money has already occurred in Northampton and Corby town centres. Giving up on the planned town centre approach now would mean that this public investment would not yield its full value for the community because projected regeneration would be left incomplete. These are matters of much wider than local interest; they go to the root of national planning policy. The Willow Place Shopping Centre in Corby is an example where regeneration has taken place but there are other places where regeneration has not happened.

Issue (a): The extent to which the proposed development is consistent with the development plan and would deliver a sustainable form of development.

- 4.4 The development plan is a "Core Spatial Strategy". It sets out a Vision, Objectives and spatially articulated policies for implementing them in the period up to 2021. The Strategy²³¹ is a comprehensive and balanced plan for growth. It is comprehensive in that it deals with growth in homes and jobs coupled with provision for infrastructure and services including transport, recreational space and retail. There are ten balanced Objectives, none of which is prime. Two Objectives are, however, of particular significance for this application: Objective Three – Network of Settlements, and Objective Four – Town Centre Focus. Whilst greater (not total) self-sufficiency for North Northamptonshire forms part of these Objectives, this end is to be achieved within "a sustainable urban-focused" framework of settlements whose roles and characters will shape "the scale and location of growth" and within a focus for investment and growth on Town Centres. The examining Inspector described the NNJCS as identifying 'an identifiable "spatial vision" with a meaningful local perspective.'²³²
- 4.5 The Spatial Strategy emerges from the Objectives, with numbers 3 and 4 underpinning Policies 1 and 12 in particular. Policy 1 provides that the objective of achieving greater self sufficiency for North Northamptonshire is to be achieved by principally directing development to the urban core,

²²⁹ As to which, see Miss Garbutt in x, commenting in particular on the distance from the town and the degree of separation caused by the A45

²³⁰ PRK Appendix 2 – Selection of letters from town centre investors.

²³¹ CD A7.3 Chapter 3

²³² CD A7.4, Inspector's Report, paragraph 12

"focused on the three Growth Towns of Corby, Kettering and Wellingborough. The smaller towns", including Rushden "will provide secondary focal points for development within this urban core". The Policy states that "the emphasis will be on regeneration of the town centres..." Table 1 sets out in more detail the Settlement Roles. Relevantly for this case, the top two levels of the hierarchy provide as follows:

CATEGORY	SETTLEMENTS INCLUDED	ROLES	IMPLICATIONS
Growth Towns	Corby Kettering Wellingborough	To provide the focus for major co-ordinated growth and regeneration. Identified as 'sub-regional centres' in town centre hierarchy and focus of new retail development.	Greatest share of new employment, retail and leisure development. Main locations for new housing through urban capacity and sustainable urban extensions. Improved transport choice and linkages between neighbouring towns. The focus of new infrastructure and the removal of constraints on housing delivery.
Smaller Towns	Burton Latimer Desborough Higham Ferrers Irthlingborough Rothwell Rushden	To complement the Growth Town expansion by providing secondary focal points within the urban core. Rushden identified as 'other main town centre' in town centre hierarchy, remaining towns identified as 'localised convenience and service centres'.	Scale of new development related to infrastructure provision and regeneration needs. Local service roles and expansion of employment opportunities. Improved transport choice and links to Growth Towns. Rushden to consolidate its position as a fourth main town centre and be a focus for new employment development.

It is noticeable that Rushden's role is to "complement" the three "sub regional centres", as a "localised convenience and service centre".

- 4.6 In his written evidence, Mr Rhodes placed considerable emphasis on paragraph 3.11 of the NNJCS,²³³ arguing that the NNJCS recognises and is permissive of out of centre retail development, that the examining Inspector anticipated that the Plan would "fail" and therefore required an addition to the paragraph to cover such an eventuality. Accordingly, the proposition goes, the application proposal is either in accordance with the NNJCS or, the Plan having "failed", it is necessary and appropriate to remedy the situation by means of Rushden Lakes. In his oral evidence, Mr Rhodes' reliance on paragraph 3.11 was more circumspect, giving more weight to his allegation that the NNJCS is out of date. This shift of emphasis is typical of the way the Applicant has put forward ever changing rationales for the scheme, none of which is ultimately satisfying.
- 4.7 To the extent that it is still argued that paragraph 3.11 is permissive of out of centre retail development, it is necessary to consider Policy 11, "Distribution of Jobs" and Policy 12, "Distribution of Retail Development". Clearly, given the hierarchical approach of the spatial strategy, these policies are closely related to and consistent with Policy 1 and Table 1. Policy 11(c) provides that "new sites will be allocated to meet any shortfall in supply. These will be

²³³ See Main Proof paragraphs 4.22-23, 4.31, 5.20 and 5.23 and Rebuttal paragraph 2.3(5)

within or adjoining the main urban areas ... The town centres and other areas with good public transport connections will be the preferred locations for new office development." Paragraph 3.93 explains:

"The town centres are the preferred location for the focus of new office development followed by other areas with good public transport connections. However, the town centres cannot entirely accommodate the amount of land envisaged as being required for office-based uses. Furthermore, in view of the need to bring about economic growth as fast as possible, certain types of business use (such as research and development) may find more commercially attractive locations within the sustainable urban extensions or other prominent sites at the edge of the towns. These will need to be in locations that are, or can be made, highly accessible by a range of transport modes."

4.8 Policy 12 provides as follows:

"The town centres of Kettering, Corby and Wellingborough will be strengthened & regenerated as the focus of sustainable communities in North Northamptonshire. For the period 2004 to 2021 development plan documents will make provision, in addition to existing commitments, for a minimum net increase in comparison shopping floor space of:

Kettering 20,500m²

Corby 15,500m²

Wellingborough 15,500m²

Development of an appropriate scale that enhances the retail offer of Rushden town centre will be supported. The remaining Smaller Towns and Rural Service Centres will consolidate their roles in providing mainly convenience shopping and local services. Local deficiencies in convenience retail provision will be addressed by provisions made through detailed development plan documents.

Where retail development, for which there is an identified need, cannot be accommodated within the defined town centre areas, a sequential approach will be followed with preference first to well-connected edge of town-centre locations followed by district and local centres including those in the sustainable urban extensions, and then existing retail areas that are well served by a choice of means of transport.

The scale of retail development should be appropriate to the role and function of the centre where it is to be located. Accordingly, proposals for major retail development and their phasing will be assessed to ensure that they do not have an adverse impact on the long term vitality and viability of other town centres or the ability of North Northamptonshire to retain expenditure."

- 4.9 Paragraph 3.11, which supports Policy 1: Strengthening the Network of Settlements, states:

"The three Growth Towns will incorporate a mix of leisure, retail, and employment uses. Development within the town centres will take into account and build upon the historic character of the towns to ensure that their distinct identity is maintained. Improved cultural, community and leisure facilities within the growth towns will enhance their position as the focal points for the area as a whole and beyond. The towns will benefit from a healthier evening economy, which will support their vitality and viability. The town centres are, however, constrained and while emphasis will be on their regeneration, other complementary sites will be required either edge of town or out of town to fulfil the growth strategy and meet the need for early investment."

- 4.10 The disputed final sentence was added by the examining Inspector, who considered the *"Spatial Strategy – A Strong Network of Settlements"* in his Report.²³⁴ When reading this section, it is essential to bear in mind the fact that Policy 12: Distribution of Jobs in the Submission NNJCS²³⁵ became Policy 11 in the adopted Plan. He noted that the employment policy envisaged *"a high quality employment site at each growth town"* and went on to approve of the flexibility in paragraph (c) of that policy and its supporting text.²³⁶ 'Employment' for the purposes of the Plan means B Class uses.²³⁷ He noted the *"Roles and Relationships Study"* which supported the plan and the particular role of Kettering as a *"strong sub-regional retail centre"*, anticipating the Area Action Plans would further the NNJCS's policy for the 3 Growth Towns to grow on their *"particular strengths"*. Mr Rhodes relies on part of paragraph 23 of the Report; it reads in full:

"I agree with the representors that it is unlikely that there would eventually be three or four strategic office parks, or three sub regional retail centres, but the supporting text and Policy 12 are flexible enough for new employment sites to be allocated where required. I believe the Core Spatial Strategy (CSS) points the way for the future direction of the town centres. Regardless of the proposed 'balanced approach' in the CSS, it seems to me that the market will ultimately have a considerable influence on the success, or otherwise, of each town centre to fulfil its particular role identified in the supporting text at paragraph 3.102."

- 4.11 Paragraph 3.102 of the Submitted NNJCS became paragraph 3.101 of the adopted Plan. Adopted paragraph 3.101 sets out that the 3 Growth Towns are to be the *"focus of development with Kettering remaining the main retail*

²³⁴ CD A7.4, paragraphs 20-27

²³⁵ CD A7.23

²³⁶ Now paragraph 3.91 in the adopted CSS

²³⁷ CD A7.3 (adopted Plan) paragraph 3.89; CD A.23 (submission version), paragraph. 3.90

centre". The adopted Policy 12 comparison floorspaces are listed. There is no mention of Rushden. Mr Rhodes speculated that there must have been "*debate about the reality of the retail strategy at the examination*", leading to concern on the part of the Inspector. Mr Goddard firmly rejected that assumption for the following reasons:

(1) He had investigated this theory and discovered that while the Inspector asked a number of questions about the ability of the town centres to accommodate office development, the only question on retail related to the relative positions of Corby and Kettering.

(2) The 2005 RTP Study on Roles and Relationships,²³⁸ which formed the major evidence base for Policies 1 and 12, considered questions of physical and expenditure capacity to support the floorspace figures in adopted Policy 12 and it also considered qualitative factors. Notably, they reminded the Authorities that the then national policy prescription for town centres with physical constraints was planned expansion of town centres though they identified no difficulty about the town centres' ability to accommodate retail growth.²³⁹ In advocating the 3 Growth Towns Strategy, they rejected the 4 Towns Option including Rushden as overambitious and because of the physical constraints of that linear centre. There was therefore clear evidence dealing with demand and deliverability (viability and commercial realism and risks to successful delivery).²⁴⁰ Mr Goddard's understanding was that this work was not seriously challenged by the Inspector or anyone else at the Examination – and, in turn, his evidence about his investigations on this point was not challenged by the Applicant or ENC.²⁴¹

(3) The natural interpretation of the Inspector's reasoning is not that he was seeking to undermine the town centre first retail policy of the plan by a side wind, having raised questions about town centre capacity for employment growth but none about retail. Rather, he was seeking, by a minor amendment to supporting text for Policy 1, the spatial hierarchy, to bring it into line with (adopted) Policy 11 - particularly paragraph (c) - and its supporting text at (adopted) paragraphs 3.91 – 3.93. The reference in his additional sentence to the "*need for early investment*" chimes with (adopted) paragraph 3.93 which refers to "*the need to bring about economic growth as fast as possible*". The remainder of that paragraph refers to potential requirements of R & D uses for "*prominent sites at the edge of the towns*".

4.12 Whilst there is no mention in the report of the Rushden Lakes site, the fact is that it was, by that stage, a committed major employment site. Adopted paragraph 3.91 encourages employment at Rushden. Nothing in the

²³⁸ CD A7.1, p.102, paragraph 9.7; pp.120-121, particularly paragraphs 10.39-10.41

²³⁹ See p.102, footnote 42. See now NPPF paragraph 23, 6th bullet which carries forward that policy.

²⁴⁰ See p.112, Tab 9.7, bottom row - Option 7.

²⁴¹ CD 7.3 paragraph 1.2