

PLANNING

Date: Monday 13 August 2018

Time: 5.30 pm

Venue: Rennes Room, Civic Centre, Paris Street, Exeter

Members are invited to attend the above meeting to consider the items of business.

If you have an enquiry regarding any items on this agenda, please contact Howard Bassett, Democratic Services Officer (Committees) on 01392 265107.

Entry to the Civic Centre can be gained through the Customer Service Centre, Paris Street.

Membership -

Councillors Sutton (Chair), Lyons (Deputy Chair), Bialyk, Branston, Denham, Edwards, Foale, Harvey, Mrs Henson, Morse, Prowse, Thompson and Vizard M

Agenda

Part I: Items suggested for discussion with the press and public present

1 Apologies

To receive apologies for absence from Committee members.

2 Declarations of Interest

Councillors are reminded of the need to declare any disclosable pecuniary interests that relate to business on the agenda and which have not already been included in the register of interests, before any discussion takes place on the item. Unless the interest is sensitive, you must also disclose the nature of the interest. In accordance with the Council's Code of Conduct, you must then leave the room and must not participate in any further discussion of the item. Councillors requiring clarification should seek the advice of the Monitoring Officer prior to the day of the meeting.

3 LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985 EXCLUSION OF PRESS AND PUBLIC

It is not considered that the Committee would be likely to exclude the press and public during the consideration of any of the items on this agenda but, if it should wish to do so, then the following resolution should be passed: -

RECOMMENDED that, under Section 100A (4) of the Local Government Act 1972, the press and public be excluded from the meeting for particular item(s) on the grounds that it (they) involve(s) the likely disclosure of exempt information as defined in the relevant paragraphs of Part I of Schedule 12A of the Act.

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Public Speaking

Public speaking on planning applications and tree preservation orders is permitted at this Committee. Only one speaker in support and one opposed to the application may speak and the request must be made by 5pm on the Thursday before the meeting (full details available on request from the Democratic Services (Committees) Officer).

4 Planning Application No. 18/0076/OUT - Land north of Honiton Road and west of Fitzroy and west of Fitzroy Road

To consider the report of the City Development Manager.

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Date of Next Meeting

The next scheduled meeting of the Planning Committee will be held on **Monday 3 September 2018** at 5.30 pm in the Civic Centre.

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Agenda Item 4

COMMITTEE DATE: 13/08/2018

APPLICATION NO: 18/0076/OUT
APPLICANT GPG Development Projects Ltd and Growen Estates Ltd
PROPOSAL: Outline application for mixed use development to provide town centre facilities comprising retail units (food and non-food) (Use Class A1) and restaurant units with ancillary drive-throughs (Use Class A3), together with associated access, access roads, service yards, car parking, infrastructure and landscaping (all matters reserved except access).

LOCATION: Land North of Honiton Road and West of Fitzroy Road, Honiton Road, Exeter, EX1 3RS

REGISTRATION DATE: 17/01/2018

EXPIRY DATE:

HISTORY OF SITE

11/1619/01 -	Outline planning permission to erect a mixed use development comprising B1, B8, D1, D2, C1, A1, A3, A4 and A5 uses (means of access to be determined only)	PER	19.06.2012
12/0954/02 -	Hotel and restaurant (Approval of reserved matters following outline approval 11/1619/01 granted 19 June 2012)	PER	17.12.2012
13/5128/03 -	Removal of condition 29 requiring a vehicular connection to the northern boundary of the site prior to the occupation of any retail unit (Ref. No. 11/1619/01 granted 19-06-2012)	PER	24.03.2015
14/1615/01 -	Mixed use development to provide a District Centre comprising uses within some or all of Classes A1 (Retail) with associated Garden Centre, A2 (Financial and Professional Services), A3 (Restaurants and Cafes), A5 (Hot Food Takeaway), D1 (Non-residential institutions), D2 (Leisure), associated means of access, access road, car parking, infrastructure works, public realm and landscaping	REF APPEAL DIS & REF BY SOS	02.12.2014 30.06.2016

DESCRIPTION OF SITE/PROPOSAL

The site comprises 3.2ha of agricultural land to the east of Exeter. The site is in Pinhoe ward. The site is bounded by a Persimmon residential development site to the north, Fitzroy Road and Brewers Fayre/Premier Inn to the east, the A3015 ('Honiton Road') to the south and the Exeter to Exmouth railway line ('Avocet Line') to the west. Existing housing accessed off Wilton Way lies beyond the railway line to the west. Sowton Industrial Estate lies beyond Honiton Road to the south and the Met Office and Exeter Business Park lie to the north/northeast. The Preliminary Ecological Appraisal submitted with the application concludes that the site has limited habitat value.

The site is within the Monkerton/Hill Barton Strategic Allocation in the Core Strategy. This supersedes the Landscape Setting designation in the Local Plan First Review. The site is within the 'Sowton' character area in the Monkerton & Hill Barton Masterplan Study (November 2010), which recommended it for employment use with business community facilities. The site is in Flood Zone 1. There are no above ground heritage assets in the vicinity. The site is within Local Energy Network Area A.

The application has been submitted in outline with all matters reserved except access. The description of the proposal is to develop a mixed use development to provide town centre facilities comprising retail units (food and non-food) (Use Class A1) and restaurant units with ancillary drive-throughs (Use Class A3), together with associated access, access roads, service yards, car parking, infrastructure and landscaping. The Planning Statement states that approval is sought for a maximum floorspace of 13,200 sq m GEA / 12,634 sq m GIA, and a maximum building height of 53 m AOD (above ordinance datum). Of the 12,634 sq m GIA floorspace, approval is sought for a maximum of 11,961 sq m A1 uses (shops) and 673 sq m A3 uses (restaurants and cafes, including drive throughs).

Approval is also sought for the following plans:

- Proposed Location Plan (15049_PL01)
- Proposed Site Parameters Plan (15049_PL06)
- Highway Access Plan (PHL-01 B)

The Proposed Site Parameters Plan shows a large A1 block to the west of the site with service yard behind adjacent to the railway line, a smaller A1 block to the north of the site with a service road behind running adjacent to the north boundary, and three smaller A1 buildings to the southeast of the site. It also shows a detailed car parking layout with vehicle and pedestrian circulation routes. The car parking layout is the same as that shown on the Proposed Site Layout drawing (15049_PL02 B) submitted for illustrative purposes. This plan states that 408 car parking spaces will be provided, including 26 disabled spaces and 12 parent and child spaces. It also states that 20 electric vehicle charging points, 16 motorcycle and 72 cycle spaces will be provided.

The illustrative Proposed Site Layout drawing shows the large A1 block to the west split into four large retail units. The following potential tenants are named on the drawing, although if consent is granted occupation will not be limited to these occupiers: Next, Marks & Spencer, Boots and Lidl Food Store. The Schedule of Accommodation states that these will be non-food, food store, retail unit and food store respectively. The first three units will include mezzanines. The A1 block to the north is shown split into three large retail units and Mothercare is named as one of the tenants; this unit will include a mezzanine. Out of the three smaller buildings to the southeast, one is indicated as a McDonald's drive-through, one is indicated as a Costa drive-through and the third is shown split into three 'retail pods'.

Whilst the application has been running, the applicants have proposed a condition to restrict the A1 net sales area to a maximum of 9,688 sq m, of which no more than 2,789 sq m and no less than 1,000 sq m shall be used for the sale of convenience goods. The Marks & Spencer and Lidl Food Stores shown on the illustrative Proposed Site Layout drawing are indicated as 929 sq m GIA and 2,137 sq m GIA respectively (net sales areas are not indicated). The proposed condition would therefore provide flexibility and likely allow for either both food stores to come forward or only one.

The Highway Access Plan shows the redesign of the existing access road to the site off Fitzroy Road. It proposes to widen the carriageway to the north in order to incorporate an

island and right turn lane into the Persimmon residential development site to the north. The plan shows a vehicle connection to the north up to the site boundary in order to connect to the road in the Persimmon residential site (ref. 17/0440/RES). Whilst the application has been running, the applicants have proposed the following revised condition concerning this access:

Prior to the first occupation of any of the retail (Class A1) units hereby authorised, or within four months of the provision to the local planning authority of written evidence and confirmation that a bona fide bus service provider is intending to service the route, whichever is the latter, a highway connection to the adjoining land to the north shall be provided in accordance with the details shown on the approved drawing (ref: PHL 01 B). The connection shall be at all times restricted to buses using an Automatic Number Plate Recognition system linked to automated barrier controls, or alternative means of control, to be submitted to and approved in writing by, the local planning authority. The restrictions shall subsequently be maintained at all times in good and effective working order to ensure that the use of the route is restricted to buses in perpetuity.

Reason: To prevent a severe impact on the local transport network and ensure that safe and suitable access is provided for vehicles, in accordance with Section 4 of NPPF, Aim 4.1 of the Monkerton & Hill Barton Masterplan and Policy CP19 of the ECC Core Strategy.

SUPPORTING INFORMATION SUPPLIED BY THE APPLICANT

- Planning Statement (Rocke Associates, January 2018)
- Design & Access Statement (Fletcher Rae, December 2017)
- Retail Assessment (Mango, January 2018)
- Transport Assessment (Vectos, December 2017)
- Air Quality Assessment (Ramboll, 26 January 2018)
- Flood Risk Assessment (HBS, January 2018)
- Preliminary Ecological Appraisal (Sunflower International, July 2017)
- Cotswold Archaeology letter 10.April 2014 (Archaeological Evaluation)
- Geophysical Survey Report (Stratascan, April 2010)
- Sitecheck Data (Landmark Information Group, 24 November 2009)

Additional Information Submitted During Application

- Chase & Partners letter 24 January 2018 (Material Changes in the Exeter Retail Development Market)
- Economic Impact Assessment (Regeneris, 14 March 2018)
- Noise Assessment for Planning Application (Inacoustic, 16 March 2018)
- Mango letter 20 March 2018 (Response to EDDC objection)
- Ramboll letter 21 March 2018 (Addendum Air Quality Assessment)
- Traffic Distribution Technical Note (Vectos, April 2018)
- Ramboll letter 23 July 2018 (Updated Addendum Air Quality Assessment)
- Flood Risk Assessment Revision D (HBS, July 2018)
- Trialpitt Technical Details (Robson Liddle Geotechnical, 29.03.2010)

REPRESENTATIONS

There have been 39 representations, including 23 objections and 14 in support. Objections have been received from the Hill Barton Consortium, Legal and General UK Property Fund (owners of Exe Bridges Retail Park), East Devon New Community partners (developers of

Cranbrook New Community) and Stagecoach. The majority of the letters of support have been received from businesses in the area, including one from Exeter Science Park Ltd. The issues raised in the objections were:

- The development does not accord with the definition of a local centre, contrary to Policies CP8 and CP19.
- Lack of planning use mix – letters of support from local businesses in Planning Statement refer to a desire for a range of amenities to serve the area, including A2 and D use classes.
- A mixed foot/cycle path should be extended from Wilton Way along Honiton Road to improve safe access to the site.
- The development should contribute to sustainable transport infrastructure in the area.
- Noise pollution – proximity of service road to housing.
- Lack of communal facilities.
- Traffic pollution and congestion.
- Impact on city centre.
- Lack of family leisure facilities.
- Contrary to Masterplan and transport and air quality plans.
- 408 car parking spaces/drive-throughs will encourage driving.
- Impact on air quality.
- Lacks identity.
- Disappointed about significant amount of parking, as it does not fit in with the aspirations of the city to become more sustainable.
- Poor transport provision.
- Does not accord with Masterplan promoting employment uses on the site.
- Impact on city centre from store relocations.
- Contradicts Core Strategy Policy CP8 and does not fit in with definition of local centre.
- Need for district centre to serve east of city, but this development will not meet that need.
- Contrary to Masterplan objective promoting sustainable movement.
- Contradicts Air Quality Action Plan.
- Honiton Road already difficult to negotiate other than motor traffic with some of the highest levels of pollution.
- Development of this scale and nature must be served by a suitable local public transport network – it's critical a meaningful contribution is made towards this, including enhanced public transport routes via Oberon Road through the Hill Barton Vale Development.
- The bus gate to the north will have no purpose without the continuation of the service through and on to Oberon Road.
- The development will harm the amenity of residents directly to the north in terms of noise, air quality, lighting, outlook from scale and massing of the proposal, and sunlight.
- The development should provide a noise fence, not the residential developer, as the proposal will cause the noise impact.
- The development will become a new destination for higher order comparison shopping instead of a planned 'local centre' competing directly with Exeter and other District Centres, and will have a significant adverse impact.
- The proposal has more retail floorspace than the previous proposal, which was dismissed by the Secretary of State as an unacceptable departure from the development plan.
- Scale of development means it should only be delivered through a plan led approach.
- Impact on retail hierarchy.

- The Retail Impact Assessment needs to be updated, as it uses Lidl's published sales density who have stated they will not be occupying.
- The applicant has asserted unrealistic trade diversion assumptions in the RIA underestimating the impact on existing centres.
- The RIA assumes impact between 2018 and 2021, but should be assessed over a 5 year period in line with the NPPF/PPG.
- The RIA is not fit for purpose.
- The development would compete with the development envisaged at the Bus and Coach Station site and should be given more time to be delivered.
- The Transport Assessment under-estimates the trip generation of the retail floorspace.
- No assessment of the impact on Cranbrook Town Centre.
- The prospective retailers are represented in the City Centre and would not meet day-to-day needs.
- The scheme is car dependent.
- Site not well served by public transport in context of a major retail scheme.
- Will introduce significant additional traffic movements into highways links and junctions that are already highly congested.
- Conditions should be added to limit sale of fashion.
- Measures to boost effectiveness of public transport in Honiton Road/Heavitree Road corridor required.
- Targeted measures to demonstrably reduce emissions in Honiton Road/Heavitree Road corridor required, e.g. upgrade portions of the bus fleet passing the site.

The issues raised in the letters of support were:

- Retail needed on this side of Exeter.
- Next, Boots, M&S food etc. great for local residents, although bland design.
- Not possible for all journeys to take place by car in historic city like Exeter, so makes sense to build shops motorists can get to.
- Will help to reduce congestion in the city centre.
- Our staff and colleagues from London/USA/Dubai rarely shop in city centre during office hours, due to distance from business park, but the site is within easy reach of the office and will provide for daily shopping needs.
- Positive for local businesses and local economy in general.
- Will offer a retail centre for our (125) staff during lunch times and after work.
- A scheme that will deliver Boots Pharmacy, Fashion, Restaurants and Cafes, a newsagent, Next Home, M&S, etc. will not only support our staff but those employers and employees across Exeter Business Park, Science Park, SkyPark and Sowton industrial estate.
- Very little facilities near to Exeter Business Park, so support development that can provide retail with uses such as Boots Pharmacy, Next Home, Fashion, Cafe, Restaurants, M&S Food, Homeware, Newsagent etc. within walking distance for staff.
- The proposal will make this employment location (Eagle Way) more attractive to our (600) staff where there is very limited provision of daily retail and leisure facilities within our locality.
- Not enough time for staff to travel to city centre at lunchtime or after work, and will benefit staff on shift hours.
- Will have major economic benefits for city and strengthen area for attracting investment.

- Difficult for staff of Exeter Science Park to get into Exeter City Centre during the working week; will support the needs of our ever expanding community and strengthen credentials of our business district.
- At the same time the precise nature of ME's offering needs to be coordinated with the outline planning permission already granted for Exeter Science Park (including 1,050 sq m of Class A1 retail-convenience) as well as nearby housing developments (e.g. Tithebarn Green and Mosshayne) to ensure this attractive housing and business community is developed with an strong and sustainable retail offering.
- Acute lack of nearby places to go for (140) staff in lunch breaks from office in Exeter Business Park; ME will be within walking distance and provide many services which are useful in everyday life.
- Few amenities at Sowton Industrial Estate and Exeter Business Park.
- Will have positive impact on staff well-being as they will have access to shopping such as Next Home & Fashion, Boots Pharmacy, M&S Food, cafes and restaurants.
- There is a need for this retail scheme; important for staff to be able to walk to a local centre for their daily shopping needs as well as providing options for lunch or coffee; staff currently have little option but to drive to supermarket or even further afield from Exeter Business Park.
- Scheme that will deliver retailers such as Boots Pharmacy, Next Home, fashion shops, cafes, restaurants, M&S Food, homeware, newsagent etc. is fundamental to supporting the employment in Exeter.
- ME will be of great benefit to local community providing convenience, reduced congestion and jobs.
- Facilities available to our (60) staff in Sowton area are restricted and it is not feasible for them to travel to the city centre during the working day.
- Will create job opportunities and capture spending power locally, which is currently lost as many Sowton based staff will travel further afield at the end of the working day.
- Will improve attractiveness of location to businesses.
- Lack of retail facilities for our (80) staff at Exeter Business Park; ability to attract staff is critically important.
- Will provide health and well-being benefits to staff as there are very few nearby amenities that can be easily accessed by foot, with the result that many staff do not leave the office during the working day.
- Will benefit our 20 staff who drive in from all over the country and business to have better facilities close by; drive to central Exeter too problematic.
- Mixed use scheme on this side of Exeter can only help with the issue of congestion within the city.
- Well-being of our (85) staff is important and we place great importance on the proximity of high quality facilities; ME will make this employment location more attractive to our staff where there is very limited provision of daily retail and restaurants within our locality.
- Recently relocated Paignton based staff to Exeter site many of whom said there were no conveniences available within reasonable reach of Exeter Business Park, and some decided not to relocate for this reason.
- We are based at Sowton with access to very little retail and leisure facilities, which is frustrating for staff and the business; welcome a scheme that delivers a wide range of uses such as Pharmacy, Fashion, Cafe, Restaurants, shops, Homeware, supermarket, newsagent, etc.
- Support a development that acts as a 'hub' of facilities for the business community in East of Exeter; assume will have major economic benefits for the City and strengthen the area for attracting investment and jobs.

In addition, Lidl have written to confirm that they retracted their interest in the site in the latter part of 2017 and they are not in contract on the scheme despite Lidl's name appearing on the submitted plans and documents. They state they are committed to further opportunities within the city which better suit their expansion requirements.

CONSULTATIONS

NB. Should the Planning Committee resolve to approve the application, the Secretary of State for the Ministry of Housing, Communities & Local Government will need to be consulted in accordance with the Town and Country Planning (Consultation) (England) Direction 2009 before the decision is issued.

Highways England: No objection – the development is predicted to generate 851 trips during the PM peak, which is an increase of 566 trips above the now expired 2012 permission. However, the refused 2014 application had a predicted trip generation of 954 trips during the same period and Highways England did not object to this. This figure does not take into consideration any reductions for linked, pass-by or diverted trips. The applicants' assumptions that 25% of trips will be linked trips and 55% will be pass-by (already on Honiton Road and therefore not new) are reasonable. The development would increase traffic by 0.15% at J29 of the M5 and 0.35% at J30 during the PM peak periods. This is unlikely to have a severe impact on the operation of the Strategic Road Network. The condition directed for the 2014 application requiring either improvements at Moor Lane Roundabout or the completion of the Tithebarn Link Road prior to occupation of the development is no longer necessary.

Local Highway Authority (DCC):

Trip Generation and Vehicular Access

The total predicted traffic generation is comparable to historic applications on the site. 25% of trips will be internalised and 45% will be pass-by, the remaining 30% will be new trips. The development will substantially increase traffic movements at the Fitzroy Road junction, particularly right turn traffic into and out of the site; the current right turn facility into the site from Honiton Road can accommodate 8 vehicles. It's essential that demand for the right turn movement in any one signal cycle does not exceed the storage to avoid impacting Moor Lane Roundabout. The green time would need to be reallocated to this movement, taken from other movements – namely Honiton Road outbound and the right turn out of the site. Queuing on Honiton Road outbound is already a concern and substantial worsening is not acceptable. Therefore, the applicant proposes the same mitigation as the previous submission, i.e. widening approx. 100m along the Honiton Road frontage, including relocating the existing bus stop into the widened section and providing a Toucan crossing to the west opposite Heron Road. The operation of the signals, particularly provision of the right run in a separate signal stage, will need to be amended. The additional lane will increase outbound throughput at the signals considerably and help with better use of the outbound lanes, as such, the current vehicle throughput can be achieved with a shorter amount of green time. The longer length of two lanes will also give better lane utilisation for outbound traffic, helping to reduce queuing and the ability of traffic exiting Fitzroy Road to proceed on a green light. The applicants have also agreed to move the stop line of Honiton Road (Eastern arm) forward, increasing the number of vehicles that can be accommodated in the existing right turn lane, improving the efficiency of the Fitzroy signalised junction. This will be secured by condition. Detailed design of the mitigation is required at s278 stage. The provision of a shared use footway along the frontage of the site, where achievable, would also be desirable. The Transport Statement uses LIDL trip rates, which are typically lower than standard trip rates, however the small increase does not warrant refusal based on the mitigation above.

Walking and Cycling Access

The three pedestrian and cycle links to the south boundary, and link to the northeast of the site are welcomed, but a suitable cycle connection of appropriate width through the site from the south boundary to the north boundary to the Persimmon site is essential. The applicants are not providing this despite a foot/cycle way being indicated on the approved and adopted Masterplan. Exeter City Council has approved plans with a pedestrian/cycle link to the south boundary as part of the Persimmon reserved matters application (ref. 17/0440/RES). A pedestrian/cycle link connecting the housing at Hill Barton to the proposed retail units must be provided to avoid a highways **objection**. Such a link was proposed in the previous application. People will have to walk at least 250m extra without the link. A link of at least 3m wide must be secured by condition and/or s106 agreement in the interests of sustainable development and paragraphs 37, 38 and 41 of the NPPF. This must continue through the site with appropriate width (at least 3.5m) and geometry (straight desired), and also be secured by condition and/or s106. The link is essential as it will provide a direct connection from the Hill Barton consortium through the site to the industrial estate to the south. It will promote sustainable transport and complement the Masterplan, the NPPF and Core Strategy Policy CP19 whereby green infrastructure should be provided.

Bus Access

The bus/pedestrian/cycle only connection to the north must be secured by s106 and/or condition. The original condition proposed by the applicants concerning this connection was unacceptable, as it left the bus link in the control of the applicant. A different condition is recommended by the Local Highway Authority ensuring the link is secured permanently.

On site Facilities / Travel Planning / Construction

The proposed 408 parking bays will be enough for the proposed use. 20 electric charging spaces are welcomed. The car park will be managed privately. Cycle parking standards should be exceeded where practical reflecting the site's proximity to the Hill Barton community/key employment hubs and cycle routes. Suitable changing facilities/lockers for staff should be provided in accordance with the Sustainable Transport SPD. Tracking diagrams have not been provided to demonstrate that service vehicles can turn in the service yard, although it looks possible from the plans.

The development will be required to have a Travel Plan, including details of walking and cycling routes, as well as public transport. It should also include information about car sharing schemes, car clubs, eco-driving and motorcycle safety.

A condition is recommended to ensure appropriate facilities are provided on site for construction traffic.

No objection, subject to conditions.

Traffic Distribution Technical Note

Whilst the development proposals may not increase flows on Honiton Road in the peaks, because it is essentially at capacity, the demand will be there and have two potential impacts: Firstly by extending the peak periods, e.g. peak shoulder spreading, and secondly, by increasing the queues either side of the constrained road.

Natural England: No comments – refer to standing advice on protected species and ancient woodland and veteran trees. The lack of comment does not imply there are no impacts on the natural environment, but only that the application is not likely to result in significant impacts on statutory designated nature conservation sites or landscapes. It is for the LPA to determine whether the application is consistent with national and local policies on the natural environment.

The proposed development is in an area that Natural England considers could benefit from enhanced green infrastructure (GI) provision. Multi-functional green infrastructure can perform a range of functions including improved flood risk management, provision of accessible green space, climate change adaptation and biodiversity enhancement. Natural England would encourage the incorporation of GI into this development.

Lead Local Flood Authority (DCC): No in-principle objection, however the applicant should clarify the change in the 'trial pit depth' of SA2 over the three tests. If trial pit logs have been produced, the applicant should submit these.

Exeter International Airport: The proposal has been examined from an Aerodrome Safeguarding aspect and does not appear to conflict with safeguarding criteria at this stage, however the maximum allowable height for any construction related equipment in that area is 25m above ground level. To avoid confusion with aeronautical ground lights it is recommended that any proposed lights, especially street and car park lighting are full cut off and mounted horizontally so that light is not emitted above the horizontal. Any developments, especially those close to the approach and take off surfaces must not display high levels of lighting.

In terms of the Air Navigation Order, it is an offence to endanger an aircraft or its occupants by any means. Safeguarding notes attached, which all developers and contractors must abide by during construction and commissioning. Exeter Airport has no safeguarding objections to this development provided that all safeguarding criteria are met and there are no changes made to the current application.

Network Rail: No objection in principle. Comments and requirements for the safe operation of the railway and the protection of Network Rail's adjoining land given re: fencing, drainage, safety, encroachment, site layout, piling, excavations/earthworks, environmental issues, and plant, scaffolding and cranes.

South West Water: No objection.

RSPB: No response.

Devon & Somerset Fire & Rescue Service: Devon & Somerset Fire & Rescue Service will deal with any issues of fire service access and other fire safety measures under the statutory consultation process under the Building Regulations 2010. The plans provided would in principle appear to satisfy our access requirements under the Building Regulations. There may be additional requirements to provide an adequate water supply (e.g. fire hydrants), but again these can be dealt under the Building Regulations. If a fire hydrant is required the developers should be made aware now. The developer is recommended of the importance of the consideration of sprinkler protection of the proposed development at the earliest possible stage.

East Devon District Council: Objects – The applicants have stated that one of the purposes of the development is to provide retail facilities for new business and residential communities, some of which are in East Devon. However, these developments have been designed with their own centres/ancillary facilities, which represent the most sustainable

solution to meeting the needs of people living and working in the area and the proposal could undermine the viability and deliverability of these. The Moor Exchange development should not be seen as being in any way necessary to meet these needs.

The applicants have not carried out a sequential test or impact assessment of the proposal on Cranbrook Town Centre. This is contrary to the NPPF and PPG. Land is available at Cranbrook Town Centre to meet the identified need. There is already development in the consented town centre at Cranbrook which would face competition from this development and emerging developments will also be affected. The impact assessment should take into account existing development and development expected to come forward over the next 5 years.

The response stating that Cranbrook Town Centre is not identified as a town centre on the Local Plan proposals map is semantics – Strategy 12 refers to the provision of a town centre at Cranbrook. It also has outline consent. It will be included on the proposals map for the forthcoming Cranbrook Plan DPD.

Exeter Chamber of Commerce & Industry: The Chamber has reconsidered its position regarding the new application. After careful analysis and consultation with relevant Members, the Chamber again supports the need for retail and other facilities in this area.

Exeter Civic Society: Objects – Disappointed the proposal for a Local Centre in the Masterplan/Core Strategy has been ignored. The large retail units are more aligned to an out of town retail centre. They have the potential to harm the vitality and viability of the City Centre and other Local Centres, contrary to the NPPF. A large home furnishing store and supermarket are not necessary to support those working or living in the area. These outlets will attract people from the wider area who will travel by car. Accept that a small supermarket, a chemist, a mother and child outlet, a coffee shop and 'fast-food' outlet are suitable for a modern Local Centre. A better mix of businesses is more likely to result in higher wages. There is a shortage of long-term employment land in the Exeter area. Specific concerns: the amount of car parking; pavements along Honiton Road should be widened; bus operator should be identified for the proposed bus link; cycle access to the site should be improved; impact of development on outlook of housing to north; and impact of plant noise.

Exeter Cycling Campaign: Objects –

- Non-compliance with the adopted Local Plan, particularly in relation to CP1, CP8, CP9 and CP17;
- Non compliance with the adopted Monkerton and Hill Barton Masterplan;
- Negative impact on air quality in an Air Quality Management Area;
- Negative impact on the safety of vulnerable road users, contrary to paragraphs 32 and 35 of the NPPF.

Believe the proposed development represents a fundamentally unsustainable development typology and should be refused. If permission is granted, it is essential that the access design is revised to prioritise pedestrians and cycle movements. It would also be essential to secure significant financial contributions to help mitigate the road safety and air quality impacts of the proposed development, through provision of new segregated cycle infrastructure and safer junctions along the routes most affected. This includes along the length of Honiton Rd and Heavitree Rd towards Exeter city centre, where there is currently no safe provision, and to employment sites at Sowton Industrial Estate.

The effect of the proposed air quality mitigation has not been assessed. In the absence of evidence to the contrary, Exeter Cycling Campaign assume that even with the mitigation identified, the effect of the proposed development on air quality at East Wonford Hill and Heavitree would still be 'Substantial Adverse'. Until and unless it can be identified that the proposed development will not negatively affect the quality of air that people in Heavitree and surrounding areas will breathe on a daily basis, the proposed development must be refused on air quality grounds.

Met Office: No objection.

Police Architectural Liaison Officer: No response.

Environmental Health (ECC): Objects – Objected originally due to the predicted adverse impact on air quality and no mitigation of air quality impacts being included in the proposal, and also due to insufficient information provided on noise impacts. The Air Quality Impact Assessment (AQIA) predicts a substantial impact on air quality at the back of the pavement on Honiton Road. This is not a residential receptor and as such the predicted increase in air pollution is of lesser impact on human health. At the houses on this section (which are set back some distance from the road), the predicted impact is negligible. However, the AQIA does not consider the impact of the development further west along the Heavitree corridor. In particular it does not include East Wonford Hill, where there are existing levels of nitrogen dioxide pollution that are above the objective level at residential properties. Given the report predicts increases in traffic flows on Honiton Road as a result of the development it seems inevitable that there will also be an impact on traffic on East Wonford Hill. The impact of the proposal on the air quality of East Wonford Hill and the Heavitree corridor as a whole has not been assessed. Subject to further information from the applicant, it is likely that the impact of the development on air quality at homes on East Wonford Hill will be at least 'moderate' and potentially 'significant'. Policy EN3 states 'Development that would harm air or water quality will not be permitted unless mitigation measures are possible and are incorporated as part of the proposal.' No mitigation has been proposed.

Maintained objection regarding air quality following the submission of additional information by the applicants. The additional information identifies that the development will have a substantial adverse impact on air quality on East Wonford Hill. The applicant has subsequently suggested that the net impact of the development on traffic flows will be smaller than predicted in the Transport Impact assessment and the Air Quality Impact Assessment because it will divert some journeys that already take place to other retail sites. It has not been possible to take this into consideration because it has not been quantified. The additional information proposes mitigation consisting of:

- Toucan crossing on Honiton Road to provide an improved connection for pedestrians and cyclists across Honiton Road from Sowton.
- Significant infrastructure for a new Bus Route for East Exeter, to provide for a right turn, Bus Only link into the residential estate to the north. This infrastructure is subject to agreement with Devon County Council.
- An initial proposal of two electric charging points, later updated to 20.
- Cycle racks/storage would be provided on the proposed development.

The impact of these mitigation options has not been quantified. The improved offer of 20 electric charging points is still low, at less than 5% of the total spaces.

The toucan crossing and the bus infrastructure had already been proposed by the applicant before the updated air quality assessment. This raises two issues. Firstly, whether they had already been accounted for in the travel assumptions made in the Transport Impact

Assessment. If this is the case they cannot be proposed as mitigation of the substantial air quality impact that was modelled based upon that traffic data. The second concern with these measures is that the developer would have done them anyway. They are not a response to the air quality impact, and don't reflect the harm that the development is predicted by the developer to cause. Therefore, Environmental Health maintain their objection on the grounds that the impact of the proposal on the air quality of East Wonford Hill is substantial and adverse, and with regard to Policy EN3, the proposed mitigation is unquantified and insufficient.

The applicant is invited to quantify the impact of any proposed mitigation which is additional to that already included in the scheme and the transport impact assessment, and to make additional suggestions of what can be done to mitigate the harm to air quality.

Should agreement be reached over the issues above and consent granted, Environmental Health would also wish the following conditions to be included:

- CEMP
- Litter Management Plan for each food use occupier
- Kitchen Extraction details
- External Lighting Assessment
- Noise attenuation measures

Heritage Officer (ECC): Confirmed that archaeological work was undertaken on this site some years ago in relation to previous applications and no further work is necessary as no significant remains were identified.

Building Control (ECC): Can only comment on Regulation B5 (Access for the Fire Service) of the Building Regulations 2010 at this stage, with which the proposal appears compliant.

PLANNING POLICIES/POLICY GUIDANCE

Government Guidance

National Planning Policy Framework (NPPF) (July 2018)
Planning Practice Guidance (PPG)

Core Strategy (Adopted 21 February 2012)

Core Strategy Objectives

CP1 – Spatial Strategy

CP8 – Retail

CP9 – Transport

CP11 – Pollution

CP12 – Flood Risk

CP13 – Decentralised Energy Networks

CP15 – Sustainable Construction

CP16 – Green Infrastructure, Landscape and Biodiversity

CP17 – Design and Local Distinctiveness

CP18 – Infrastructure

CP19 – Strategic Allocations

Exeter Local Plan First Review 1995-2011 (Adopted 31 March 2005)

AP1 – Design and Location of Development

AP2 – Sequential Approach
S1 – Retail Proposals/Sequential Approach
S2 – Retail Warehouse Conditions
S5 – Food and Drink
T1 – Hierarchy of Modes
T2 – Accessibility Criteria
T3 – Encouraging Use of Sustainable Modes
LS4 – Nature Conservation
EN3 – Air and Water Quality
EN4 – Flood Risk
EN5 – Noise
DG3 – Commercial Development

Devon Waste Plan 2011 – 2031 (Adopted 11 December 2014) (Devon County Council)

W4 – Waste Prevention
W21 – Making Provision for Waste Management

Development Delivery Development Plan Document (Publication Version, July 2015)

DD1 – Sustainable Development
DD5 – Access to Jobs
DD13 – Residential Amenity
DD20 – Accessibility and Sustainable Movement
DD21 – Parking
DD26 – Designing out Crime
DD30 – Green Infrastructure
DD31 – Biodiversity
DD32 – Local Energy Networks
DD34 – Pollution and Contaminated Land

Exeter City Council Supplementary Planning Documents

Sustainable Transport SPD (March 2013)
Planning Obligations SPD (April 2014)

Devon County Council Supplementary Planning Documents

Minerals and Waste – not just County Matters Part 1: Waste Management and Infrastructure SPD (July 2015)

OBSERVATIONS

The key issues are:

1. The Principle of the Proposed Development / Retail Policy Issues
2. Access and Impact on Local Highways
3. Parking
4. Impact on Air Quality
5. Impact on Amenity of Surroundings / Noise
6. Impact on Trees and Biodiversity
7. Flood Risk and Surface Water Management
8. Sustainable Construction and Energy Conservation

1. The Principle of the Proposed Development / Retail Policy Issues

This application follows a similar application that was refused by the Council in 2014 and was subsequently dismissed at appeal by the Secretary of State in 2016. The Secretary of State's decision is a material consideration. Advice has been obtained from GVA, a planning consultancy specialising in retail planning, on the retail and planning policy aspects of the application. Their advice report is attached to this report. This application is one of five current major applications for retail development on out-of-centre sites in Exeter. These are listed below:

- 17/1962/OUT – Outline application for development of a non-food retail unit (Use Class A1), with associated deliveries yard, car parking and landscaping on part of the existing Tesco car park (all matters reserved except access). (At Tesco overspill car park, Russell Way)
- 18/0368/OUT – Outline application for the demolition of existing structures, site remediation and redevelopment to provide Classes A1 (retail), A3 (Cafes and Restaurants), associated access, internal circulation, service yards, parking, landscaping, public realm works, infrastructure and dedication of land for improvements to Honiton Road (all matters reserved except access). (At WPD Depot, Moor Lane)
- 18/0983/OUT – Outline planning permission for a retail park (Class A1) along with complementary cafe/restaurants (Class A3) including means of access (all other matters reserved). (At B&Q, Avocet Road, Sowton Industrial Estate)
- 18/1007/FUL – Demolition of existing buildings and construction of a mixed use development comprising Class A1 retail units; Class A1/A3/A5 food and drink units with drive through facilities; Class D2 health & fitness use; management office, customer toilet facilities, and associated access, parking, and landscaping. (At Police Headquarters, Devon And Cornwall Constabulary Police Training College, Alderson Drive)

GVA has been commissioned to provide advice on the above applications, which is still pending at the current time. With regards to the cumulative impact of the proposals on the City Centre and other centres GVA has advised that best practice is to determine the applications at the same time in case the Council wishes to make a choice between them. The applicants for the current application have objected to this as, unlike the other applications, this site is located within the Monkerton/Hill Barton Strategic Allocation in the Core Strategy and they consider that the proposal will deliver the objectives of the Monkerton & Hill Barton Masterplan by providing facilities for the local community, including the local business community. Officers consider this is a satisfactory reason to determine this application before the other applications and the merits of the application in this regard are discussed below.

GVA have provided a table comparing the content of the current application and the previous dismissed application (see para. 2.8 of advice report). This shows that the total floorspace of the current application is 26% smaller than the dismissed application (11,961 sq m compared to 16,127 sq m). However, the amount of Class A1 retail floorspace has increased by 8% (11,961 sq m compared to 11,102 sq m). In addition, the proposed Class A1 retail floorspace net sales area has increased by 34% (9,688 sq m compared to 7,217 sq m). The current application comprises Class A1 (shops) and Class A3 (food and drink). The reduction in total floorspace is attributable to the loss of Class A2 (financial and professional services), Class A5 (hot food takeaways), Class D1 (non-residential institutions) and Class D2 (assembly and leisure) floorspace in the application compared to the dismissed application, although the amount of Class A3 floorspace has also roughly halved.

GVA have split their advice into three parts: Development Plan, Sequential Test and Impact. These are discussed below.

Development Plan

The relevant development plan policies are CP1, CP8 and CP19 of the Core Strategy. These policies take precedence over Policy S1 of the Local Plan First Review. Policy CP1 promotes the City Centre as the sustainable heart of the city, including provision of around 3,000 sq m net retail convenience floorspace and up to 37,000 sq m net retail comparison floorspace. Policy CP8 repeats this, including up to 30,000 sq m of comparison floorspace in the Bus and Coach Station area, and requires a sequential approach to retail development on out-of-centre sites; it also states that local retail facilities will be required as part of the community provision at Monkerton/Hill Barton. Policy CP19 describes the quantum of development and infrastructure proposed in the Monkerton/Hill Barton area, including provision of a 'local centre to provide shops, doctors surgery and community facilities'. The glossary in the Core Strategy defines local centres as 'A range of small shops of a local nature serving a small catchment area.'

The Secretary of State dismissed the previous application, in part, due to its conflict with Policy CP19 and, albeit less specifically, Policy CP8, as 'the proposals would go well beyond any reasonable interpretation of a local centre'. At this time, the Secretary of State considered that Policy CP19 was not inconsistent with the NPPF and that neither it nor the Core Strategy as a whole were out of date. The Secretary of State also considered the application to be contrary to the development plan as a whole, i.e. no development plan policy support outweighed the conflict with the above policies. GVA note that the scale of the development in the dismissed application was a key reason why the Inspector concluded the proposal could not be a local centre in accordance with Policy CP19 and arguably the loss of the A2, A5 and D1/D2 uses make the current proposal less like a local centre as the mix of uses has reduced. Therefore, they consider that the current application is also contrary to Policy CP19. Officers concur with this advice, i.e. the proposal does not accord with Policies CP19 and CP8, as it would not be a local centre due to its overall size and mix.

Planning legislation requires applications to be determined in accordance with the development plan unless material considerations indicate otherwise. Material considerations are discussed below.

Sequential Test

The previous application was also dismissed because the Secretary of State considered that it failed the sequential test and would therefore be contrary to the NPPF, as the Bus and Coach Station (BCS) site was sequentially preferable, suitable and available. GVA advise that this site is still the only sequentially preferable site requiring an assessment of its suitability and availability for the current scheme. Having analysed the changes in circumstances since the Secretary of State's decision, GVA consider that the BCS site is still available, but there is now much less certainty over it being a suitable alternative for the proposal. This is due to challenging market conditions, which resulted in the developers of the BCS site (The Crown Estate and TIAA Henderson Real Estate) abandoning its plans to redevelop the site in 2017. GVA note that the Council has not stated its intentions regarding the BCS site and a marketing exercise is due to take place that may confirm that the site is still suitable for some form of retail redevelopment. However, this is not certain at the current time and the applicants consider it to be unviable. GVA have also pointed out that the Council has already confirmed that the BCS site is not suitable to accommodate a larger foodstore/supermarket. Therefore, if the larger foodstore/supermarket shown on the illustrative Proposed Site Layout drawing (indicated as Lidl) was a guaranteed part of the scheme, then the sequential test will be passed. However, at this stage the condition

proposed by the applicants would only guarantee the smaller foodstore (indicated as Marks & Spencer).

Officers agree that the BCS site is sequentially preferable and available (noting the change in wording of the new NPPF to include suitable sites 'expected to become available within a reasonable period'). However, the BCS site is not a suitable alternative for the proposal if it includes a larger foodstore/supermarket, which is discussed further below. This notwithstanding, with the collapse of The Crown Estate and TIAA Henderson Real Estate's redevelopment proposal in 2017, it is difficult to envisage an alternative retail-led scheme being viable within a 'reasonable period'. Therefore, officers consider the sequential test has been passed.

East Devon District Council and East Devon New Community partners have objected to the application, in part, because the applicants have not taken into account Cranbrook Town Centre in their sequential test assessment. The applicants have replied stating that the NPPF defines a town centre as an 'Area defined on the local authority's proposals map, including the primary shopping area and areas predominantly occupied by main town centre uses within or adjacent to the primary shopping area.', and this is not true of Cranbrook at the current time. The new NPPF maintains this definition (albeit replacing 'proposals' with 'policies'), therefore officers do not consider that the Council can lawfully require the applicants to carry out a sequential assessment of Cranbrook. In addition, the Council did not require this for the previous application dismissed at appeal and it was not questioned by the Inspector or Secretary of State.

Impact Test

The Secretary of State agreed with the Inspector that the previous application would not have a significant adverse impact on the vitality and viability of the City Centre, or Cranbrook and Exe Bridges Retail Park (which is within St Thomas District Centre). He disagreed with the Inspector over the likelihood of it having a significant adverse impact on the planned investment at the BCS site and did not include this as a reason for refusal. GVA have undertaken an impact assessment of the current proposal with two scenarios: 1) with larger foodstore/supermarket (reflecting the applicants' retail impact assessment), and 2) without larger foodstore/supermarket (reflecting the applicants' proposed net sales area/convenience goods condition). This indicates that the proposal will have an impact on the City Centre of between 2% and 3% for both convenience and comparison goods, rising to around 3% and 4% when taking into account cumulative impacts. It also indicates that the proposal will have an impact on St Thomas District Centre of around 9%-10% for comparison goods and between 3% and 5% for convenience goods. These impacts are similar to the previous application, therefore it is not considered that the proposal will have a significant adverse impact on the vitality and viability of the City Centre and St Thomas District Centre. However, GVA note the prospect of potential store relocations from these centres to the site. In terms of the impact of the proposal on planned investment at the BCS site, as discussed above the circumstances have changed since the previous application and there is currently no retail investment project for the site. In terms of other centres, GVA do not consider there is likely to be a significant adverse impact upon them.

The applicants do not have to take into account the potential cumulative impacts of the other major retail applications proposed on out-of-centre sites in the city until they become commitments, i.e. are granted planning permission. These applications will need to take into account the cumulative impacts of this application if it is approved. As discussed above, the location of the site within the Monkerton/Hill Barton Strategic Allocation and the applicants' assertions that the proposal will meet the aspirations of Policy CP19 by providing facilities for the local community are considered to justify determining this application separately.

Other Material Considerations

As the retail redevelopment project at the BCS site was abandoned last year due to market conditions, the applicants have questioned whether the development plan remains up-to-date. This clearly now has to be established in light of the new NPPF published just before this committee on 24 July. The relevant section of the NPPF is '7. Ensuring the vitality of town centres'. This is consistent with the relevant section of the old NPPF, albeit it has been slightly simplified. Of particular relevance to this case, it states that planning policies should 'define a network and hierarchy of town centres and promote their long-term viability and vitality...'. This is consistent with the old NPPF and was the reason why the Inspector and Secretary of State for the previous application/appeal did not consider Policy CP19 requiring a local centre to be out-of-date. However, unlike the old NPPF, the new NPPF continues by stating '– by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allows a suitable mix of uses (including housing) and reflects their distinctive characters;'. This text is open to interpretation, but could lend a limited degree of weight to taking a slightly more flexible approach to implementing Policy CP19 with regards to delivering a local centre/meeting community needs at Monkerton/Hill Barton than previously. The applicants have also questioned whether the Council can meet the retail floorspace targets in Policies CP1 and CP8 of the Core Strategy, following the abandonment of the BCS site scheme last year. GVA have advised that this argument was raised for the previous application/appeal and was dismissed by the Inspector. The applicants have not taken into account the considerable amount of new retail floorspace that has been delivered, including John Lewis and Ikea, to meet the identified needs. Therefore, officers do not consider that the development plan is out-of-date and maximum weighting can be applied to Policies CP19 and CP8 accordingly. Officers do however acknowledge that the Core Strategy was written prior to the new and old versions of the NPPF and there have been significant changes to the retail economy in recent years that are material considerations.

The Inspector and Secretary of State went on to review the sustainability of the previous application/appeal to see if there were material considerations to indicate that the proposal should be determined other than in accordance with the development plan. This was considered in terms of the economic, social and environmental dimensions of the scheme. The Secretary of State concluded that the proposal would result in significant economic benefits, but could pose a risk to the BCS site scheme; therefore, overall he considered there was moderate weight in favour of the proposals on economic grounds. The Secretary of State considered there was moderate weight in favour of the proposals in terms of social benefits and limited weight against the proposals environmentally, as it included a large car park and drive through restaurants which would be likely to encourage car driving rather than deter it. Overall, the Secretary of State did not consider that the benefits of the scheme outweighed the conflict with the development plan and environmental harm.

GVA have provided comments on the above dimensions of sustainable development for the current scheme, although it is up to the Council to decide how much weight to give them. Officers consider that unlike the previous application/appeal, significant weight can now be given to the economic benefits of the scheme, as opposed to moderate weight, as it will no longer pose a risk to a potentially competitive scheme on the BCS site following the abandonment of the redevelopment project last year. This takes into account the financial impacts to the City Centre and St Thomas District Centre discussed above, although these can be mitigated through the imposition of conditions (see below). The economic benefits of the scheme are presented in the submitted Economic Impact Assessment and include the following:

- £15 million construction investment
- 260 average construction jobs over 1-year build period

- 520 FTE permanent jobs
- £12 million estimated total annual wage bill across the development
- £9 million estimated total annual expenditure in the UK economy by employees of the development
- 160 FTE jobs supported in the wider economy by the development
- £1.1 million annual business rate contribution arising from the development
- Up to £2.2 million in CIL

The applicants have also pointed out that there are areas of deprivation around the site that will benefit from the scheme through job creation. Members should also note the 14 letters of support from local businesses, employing high numbers of people, citing the benefits of the proposal in attracting new employees and generating additional investment by providing retail facilities within easy reach of their businesses.

In terms of social benefits, officers consider that there is now limited weight in favour of the proposal compared to moderate weight in favour of the previous proposal, due to the loss of the A2, A5, D1 and D2 floorspace in the scheme reducing the mix of uses to A1 and A3 only. In addition, the net sales area/convenience goods condition proposed by the applicants would only secure the smaller foodstore shown on the illustrative plans and not the larger foodstore/supermarket. GVA consider that a condition that guarantees both foodstores would improve the social benefits of the scheme. Officers concur, although the benefits also depend on how the remaining comparison retail floorspace is controlled. On 30 July the applicants proposed four additional retail conditions to the one above. The first of these simply secures the floorspace applied for. One relates to the largest unit shown on the illustrative plans (indicated as Next) and would limit the sale of clothing and footwear to 60% of the net sales area of this unit. Another would secure a chemist (with or without a pharmacy) for five years after it opens of a minimum size of 465 sq m (GIA), which is half the size of the Boots store shown on the illustrative plans. The remaining conditions control the size of the units and prevent amalgamation/sub-division. Taking into account the net sales area/convenience goods condition already proposed, this means that there would be no controls over the goods that could be sold from up to around 6,700-6,900 sq m of the A1 net sales area (about 70%). This means that a significant proportion of the A1 retail floorspace in the scheme could in theory be used to sell only fashion goods, contrary to the aspirations of Policy CP19, unless further controls through conditions are applied. This is discussed further under 'Conditions' and 'Conclusion' below.

In terms of environmental considerations, GVA do not consider that this has changed from the previous application/appeal, i.e. there is limited weight against the scheme taking into account the site accessibility by public transport, large car park and drive through restaurants. In reaching this view previously the Secretary of State took into account the suggested conditions of the Inspector, many of which were agreed between the appellants and the Council. Some of the conditions related to environmental matters, for example: landscaping scheme, sustainable urban drainage system, connection to district heating network, BREEAM 'Excellent' (shell only), noise management plan, Wildlife Plan, Toucan crossing, pedestrian/cycle connections, and Framework Travel Plan. If these or similar conditions are not imposed on the current application (should it be approved), then the environmental harm of the proposal will be significantly worse. In addition, Environmental Health have objected to the current application due to the adverse impact on air quality and insufficient mitigation of air quality. If air quality mitigation is not secured then the environmental harm of the proposal will also increase. In this circumstance, officers consider there would be moderate weight against the proposal environmentally, as opposed to limited weight.

Conditions

As has already been discussed above, the Inspector for the previous dismissed application/appeal suggested conditions that in his view should be imposed if the scheme was permitted. These included the environmental conditions above, a number of standard conditions and the appellants' eight conditions to control the retail floorspace (which were not agreed by the Council). However, the Inspector did not consider that these conditions were sufficient to allow the scheme, taking into account the conflict with the development plan and overall harm. The Secretary of State agreed that the suggested conditions would not overcome the reasons for refusal. Whilst the balance of material considerations has shifted for the current application, officers do not consider the application is acceptable unless suitable conditions are applied, including conditions to control the retail floorspace. As discussed above, the applicants have proposed five conditions to control the retail floorspace, which are copied below:

1. *The overall floorspace to be comprised in the development hereby permitted, and the quanta per Use Class, shall not exceed the gross maxima set out in the Schedules below:*

Development Parameter	Quantum
<i>Maximum Floorspace (sq m GEA)</i>	<i>13,200</i>
<i>Maximum Floorspace (sq m GIA)</i>	<i>12,634</i>
<i>Maximum Building Height (m AOD)</i>	<i>53</i>

Use Class	Maximum (sq m GIA)
<i>A1 (Shops)</i>	<i>11,961</i>
<i>A3 (Restaurants and cafes, including Drive-Thru's)</i>	<i>673</i>

Reason: *To define the terms of the permission and to ensure that the development comprises an appropriate mix of uses to serve its intended purposes.*

2. *The total net sales area of the retail (Class A1) floorspace hereby permitted shall not exceed 9,688 square metres, of which no more than 2,789 square metres and no less than 1,000 square metres shall be used for the sale of convenience goods.*

Reason: *To ensure that the trading impacts of the proposal are acceptable.*

3. *The retail (Class A1) floorspace hereby authorised shall be limited as follows:*

- *An anchor unit of up to 3,902 (gross internal area) with a maximum net sales area of 3,029 sq m for the purposes of non-food retailing; no more than 60% of the net sales area of this unit shall be used for the display and sale of clothing and footwear;*
- *Additional units each of not less than 465 sq m (gross) (excluding Units K, L and M as shown as shown on the approved Parameter Plan (Drawing Ref: 15049_PL06_B)).*

Reason: *To ensure that the complexion of the development is in accordance with the purposes prescribed in the application and reflects the complexion of the proposals upon which the assessment of impact was based.*

4. *For a minimum period of 5 years following the date of its first opening, the development hereby authorised shall include provision of no less than 465 square metres (gross internal area) predominantly for the sale of chemist and related goods (with or without a pharmacy).*

Reason: *To ensure that the complexion of the development is in accordance with the purposes prescribed in the application.*

5. *Further to any approval of reserved matters pursuant to this planning permission, there shall be no subsequent amalgamation or sub-division of units without the prior approval in writing of the local planning authority.*

Reason: *Any changes will require further consideration by the LPA to ensure that the impacts are acceptable.*

Condition 2 would limit the total net sales area to 9,688 sq m, which is 34% higher than the previous scheme (7,217 sq m), and allow convenience goods to be sold from between 1,000 sq m (10%) and 2,789 sq m (29%) of the total net sales area. Suggested condition 21 relating to the previous application/appeal required a single unit of not less than 1,000 sq m (gross) for predominantly convenience retailing, which was a minimum of 9% of the total A1 retail floorspace (gross). The proposed condition will not guarantee both foodstores shown on the submitted illustrative plans, or the larger foodstore, and is broadly similar to suggested condition 21 in terms of the proportion of convenience floorspace to A1 retail floorspace. Condition 4 is considered to be positive in meeting the aspirations of Policy CP19, albeit it would only last five years. The first part of condition 3 is expected to allow Next Home to occupy the unit. The conditions would leave a significant proportion of the A1 retail floorspace uncontrolled meaning that this floorspace could be used to sell fashion goods, such as clothes and shoes. Officers consider this would be contrary to the aspirations of Policy CP19 in meeting local community needs and would not respect the retail hierarchy of the city. The letters of support from local businesses, and those appended to the submitted Planning Statement, also refer to a mix of shops/facilities in terms of goods sold.

Recommended conditions are listed at the end of this report, including conditions to control the retail floorspace. These have not been agreed with the applicants at this stage, although have been drafted to provide a balance between meeting the aspirations of Policy CP19 and taking into account the applicants' concerns over deliverability in challenging market conditions for retail. With these conditions added, officers consider that moderate weight can be given to the scheme in terms of social benefits (the same as the dismissed application/appeal), taking into account the reduced mix of uses.

Conclusion

The application is contrary to Policies CP19 and CP8, as the proposal is not a 'local centre'. These policies are considered to be up-to-date with regards to the new NPPF, although officers acknowledge they were written before the new and old versions of the NPPF and there have been significant changes to the retail economy in recent years. Unlike the previous dismissed application/appeal, the sequential test is considered to have been passed, as the BCS site is not considered to be a viable site for a major retail development, following the abandonment of the retail-led redevelopment proposals on the site last year, and there is no evidence to suggest that this will change in the near future. Whilst the proposal will have financial impacts on the City Centre and, to a larger extent, Exe Bridges Retail Park within St Thomas District Centre, these impacts are similar to the impacts of the previous application/appeal and are not considered to be significantly adverse. There will be no significantly adverse impacts on any other centres or on planned investments in centres.

However, there could be store relocations to the site from the centres without adequate controls.

The Secretary of State refused the previous application/appeal in accordance with the development plan, as the economic and social benefits of the scheme did not outweigh the policy conflict or environmental harm taking into account the suggested conditions of the Inspector. The economic benefits were considered to be moderate (taking into account the risks to development on the BCS site), as were the social benefits of providing accessible local services, whilst the environmental harm of a large new car park and drive through restaurants encouraging car driving carried limited weight against the scheme. Officers consider there is now significant weight in favour of the application economically and moderate weight in favour socially, subject to the imposition of the recommended conditions below. Again, subject to the imposition of the recommended conditions and securing air quality mitigation in a s106 legal agreement (discussed below), officers consider there is limited weight against the proposal environmentally, although Members may consider this to be neutral/limited weight in favour depending on the weight given to the air quality mitigation.

In terms of the overall planning balance, officers consider that the material considerations of the significant economic benefits of the scheme, moderate social benefits and potential neutral/limited environmental benefits (with air quality mitigation) outweigh the conflict with Policies CP19 and CP8. Therefore officers consider that planning permission should be granted, subject to a s106 legal agreement and conditions. This also takes into account that a local centre has not been delivered for the Monkerton/Hill Barton area for the plan period so far, and given the Council's lack of a five year housing land supply, the site could be developed for housing and the opportunity to provide local retail facilities for the new community and business community in the area would be lost.

2. Access and Impact on Local Highways

Vehicular access to the site will be via the existing vehicular access off Fitzroy Road. The access road will be widened to the north in order to incorporate a right turn lane to a new vehicle connection to be provided on the north boundary with the purpose of connecting to the highway permitted on the neighbouring Persimmon residential site (ref. 17/0440/RES). This vehicle connection is intended to be bus/pedestrian/cycle only and was discussed with the applicants at pre-application stage. It must be provided in accordance with Policy CP19 requiring a green infrastructure framework for the Monkerton/Hill Barton area and the Monkerton & Hill Barton Masterplan, showing movement connections between the sites for permeability. The applicants initially proposed a condition to manage this connection, which was rejected by the Local Highway Authority as it would have allowed the connection to be closed should the bus only restrictions fail. The Local Highway Authority has stated that the bus link is required in perpetuity and should be secured by s106 agreement or condition. The Local Highway Authority drafted a condition, but this was rejected by the applicants who proposed the revised condition under 'Description of Site/Proposal' above. Again the Local Highway Authority have raised concerns with this. In addition, Stagecoach have commented that the benefits of the bus link have been overstated, although it could be implemented in accordance with the Masterplan at very low cost. They have advised that it should be designated as a short section of bus lane in both directions with appropriate signage and CCTV, but physical barriers/bollards will not be acceptable. Officers consider this connection to be fundamental to any development on the site and that it should be secured in perpetuity in a s106 legal agreement. It should be designed in accordance with Stagecoach's requirements to ensure that it is utilised as a bus link, including the right turn lane. Stagecoach propose that the link would be physically blocked with a concrete barrier until such a time as a bus service requiring its implementation is inaugurated.

The Parameters Plan shows three pedestrian accesses to the site from Honiton Road, two stepped and one ramped. The ramped access aligns with a Toucan crossing proposed across Honiton Road, which aligns with the existing public right of way footpath that runs through Sowton Industrial Estate to the south. These connections will enhance pedestrian permeability from the south. A condition should be added securing the detailed design of the ramp to ensure that its gradient is appropriate for wheelchair users and other people with mobility problems, and that there are suitable resting points along the ramp accordingly.

In terms of traffic generation, the proposal is predicted to generate 851 two-way PM peak hour weekday trips and 1137 two-way Saturday peak hour trips, although this does not take into account internalised, pass-by and diverted trips. The Local Highway Authority advise this is similar to the previous application/appeal (although it is greater in the Saturday Peak). They state that the proposal will substantially increase traffic movements at the Honiton Road/Fitzroy Road junction, therefore mitigation highway works are proposed, which take into account Moor Lane Roundabout identified as a critical highway constraint. The mitigation works will be secured by conditions and detailed via a s278 highways agreement with Devon County Council as Local Highway Authority. The mitigation works include: widening approximately 100m along Honiton Road frontage, relocating the eastbound bus stop, Toucan crossing, amending traffic signals and moving the stop line of Honiton Road (eastern arm) forwards. The Local Highway Authority has confirmed that the mitigation works are broadly acceptable and sufficient to overcome their concerns, although provision of a shared use footway along the frontage of the site, where achievable, would be desirable. A Conditions should be added securing the mitigation works and a Travel Plan.

3. Parking

The Parameters Plan shows a large car park on the site between the blocks. The Proposed Site Layout drawing submitted for illustrative purposes states that this will comprise 408 car parking spaces, including 26 disabled spaces and 12 parent and child spaces. It also states that 20 electric vehicle charging points, 16 motorcycle and 72 cycle spaces will be provided.

The indicative car parking standards set out in Table 3 of the Sustainable Transport SPD state that 1 space per 14 sq m (GIA) is required for food retail and 1 space per 20 sq m for non-food retail. This means that approximately 698 car parking spaces should be provided if the maximum floorspace applied for and both foodstores shown on the Proposed Site Layout are delivered, and approximately 652 car parking spaces should be provided if the maximum floorspace applied for and only the smaller foodstore is delivered. However, the applicants have carried out parking accumulation calculations based on the trip rates data in the Transport Assessment showing that a maximum of 167 spaces will be required during weekdays and 218 spaces on Saturdays. The Local Highway Authority has not objected to the level of car parking provision. However, Stagecoach have raised concerns regarding the implications for the Honiton Road Park and Ride site. A condition should therefore be added requiring a car parking management strategy to ensure that appropriate restrictions are in place to prevent permanent parking in the car park leading to overspill parking in the Park and Ride car park.

The minimum car parking standards for disabled users in Table 4 of the Sustainable Transport SPD require 4 + 4% of the total capacity of the car park for shopping developments. 4% of 408 is 16, therefore a minimum of 20 disabled spaces should be provided. The illustrative Site Layout Plan shows 26 disabled spaces, which would be acceptable. The SPD states that retail facilities should be future-proofed to provide charging points for electric vehicles. The illustrative Site Layout Plan indicates that 20 charging points will be provided, which is 5% of the total. Officers have encouraged the applicants to increase this. A condition should be added securing the disabled spaces and electric charging points accordingly.

The minimum cycle parking standards set out in Table 2 of the Sustainable Transport SPD require 1 staff cycle space per 350 sq m net retail floorspace. This means that a minimum of 28 staff cycle parking spaces should be provided for the retail units if the maximum A1 retail floorspace is delivered (based on the applicants proposed net sales area/convenience goods condition). Staff cycle parking will also be required for the A3 retail units. Staff cycle parking should be provided in secure locations and showers, lockers and space to dry clothes must also be provided (ST SPD Para 5.3.1). Staff cycle parking provision should be conditioned.

Customer cycle parking is also required. The relevant standards are 1 space per 350 sq m net retail floorspace (minimum 10 spaces) for food retail and 1 per 500 sq m of net retail floorspace (minimum 4 spaces) for non-food retail. Therefore, a minimum of 10 customer cycle parking spaces will be required for the proposed foodstore(s) and a minimum of 14/17 cycle parking spaces for the other A1 retail units depending on whether one or both foodstores are delivered. Customer cycle parking will also be required for the A3 retail units. Customer cycle parking should be provided in small groups of bike stands close to individual shop entrances, as opposed to large groups of stands, to be more convenient, easier to accommodate and less visually intrusive (ST SPD Para 5.4.1). Customer cycle parking provision should be conditioned.

4. Impact on Air Quality

Environmental Health objected due to the predicted adverse impact on air quality and no mitigation of air quality impacts being included in the proposal. Policy CP11 states that 'Development should be located and designed so as to minimise and if necessary, mitigate against environmental impacts.' Policy EN3 states 'Development that would harm air or water quality will not be permitted unless mitigation measures are possible and incorporated as part of the proposal.' Policy DD34 of the emerging Development Delivery DPD states 'All development proposals should minimise and where possible reduce emissions and other forms of pollution, including light and air pollution, and ensure no unacceptable deterioration in air and water quality and quantity... Proposals will only be permitted where, individually or cumulatively, taking into account of proposed mitigation, remediation and future monitoring, there are no unacceptable impacts on:... air quality'. These policies are considered to be up-to-date with regards to the new NPPF. The new NPPF states that 'Transport issues should be considered from the earliest stages of plan-making and development proposals, so that:... d) the environmental impacts of traffic and transport infrastructure can be identified, assessed and taken into account – including appropriate opportunities for avoiding and mitigating any adverse effects, and for net environmental gains' (Para 102). Paragraph 170 states 'Planning policies and decisions should contribute to and enhance the natural and local environment by:... e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality...'. Paragraph 181 states 'Planning policies and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones, and the cumulative impacts from individual sites in local areas. Opportunities to improve air quality or mitigate impacts should be identified, such as through traffic and travel management, and green infrastructure provision and enhancement.'

The applicants' original Air Quality Assessment (AQA) predicted a substantial impact on air quality at the back of the pavement on Honiton Road within the Air Quality Management Area (AQMA), although Environmental Health state that at this location houses are set back some distance from the road, so the impact on residents will be negligible. Officers note however that there will still be an impact on users of the road, i.e. motorists, cyclists and

pedestrians walking along the pavements. Environmental Health requested the assessment to be expanded to take into account the AQMA further west along the Heavitree corridor, in particular East Wonford Hill where pollution levels are already breaching relevant legislative limits at residential properties. The applicants submitted an Addendum AQA in March that concluded that the predicted traffic generation of the proposal could result in substantial adverse impact on the AQMA at East Wonford Hill. The applicants stated that to offset the impact a number of measures have been introduced, namely 20 electric charging points and 72 covered cycle stands in addition to the bus link already proposed. Environmental Health maintained their objection, as these measures are already requirements and the benefits in regard to air quality have not been quantified. Officers concur (see sections '2' and '3' above) and agree that additional air quality mitigation is necessary.

The applicants subsequently submitted a Traffic Distribution Technical Note and Updated Addendum AQA for East Wonford Hill claiming that the development will not increase traffic pollution at East Wonford Hill because the development will not increase traffic on the wider road network. Therefore, no air quality mitigation is required. The Local Highway Authority has commented on the Technical Note and questioned the validity of a number of points within it. In particular, the statement, 'Retail development of this kind does not create its own traffic, but rather serves the people working and living in the area' does not ring true of a retail park of this nature, especially (as pointed out by the Local Highway Authority) if it includes a Next Home store. The Local Highway Authority states that whilst the proposal may not increase flows on Honiton Road in the peak hours because it is already at capacity, the demand will be there and have the potential of extending the peak periods and increase queues either side of the road; this will slow traffic flow through the AQMA and increase pollution. Officers have therefore not placed any weight on these documents and consider that air quality mitigation is required in accordance with the original AQA predicting a substantial impact on air quality at the back of the pavement on Honiton Road in the AQMA and the Addendum AQA concluding that the proposal could result in substantial adverse impact on the AQMA at East Wonford Hill.

Officers have concluded that the most practical form of mitigation is to improve bus services through the AQMA that go past the site. Planning Practice Guidance states that promoting infrastructure to promote modes of transport with low impact on air quality, and contributing funding to measures designed to offset the impact on air quality of new development, are appropriate forms of mitigation. Stagecoach were approached and have stated that there is an opportunity to upgrade the buses on services 4/4A and 56 to Euro VI standard, which reduce pollution significantly compared to the older buses currently being operated. These services run past the site and use East Wonford Hill and Heavitree Road. The cost to effectively upgrade a bus to Euro VI standard is £42,000. Service 4/4A involves seven buses in the operating cycle and six are planned on service 56. Therefore, the overall cost to upgrade all the buses for these services is £546,000.

Officers are currently awaiting further comments from Environmental Health on what a reasonable contribution towards the above will be for the development. This will be reported on the Update Sheet.

5. Impact on Amenity of Surroundings / Noise

Persimmon on behalf of the Hill Barton Consortium have objected to the application, due to the impact of the proposal on the amenity of the adjoining dwellings being constructed, in terms of noise, air quality, external lighting, outlook and daylight from scale and massing. Whilst layout and scale are reserved matters, the applicants have sought approval for the submitted Parameters Plan showing the location of the buildings on the site and their maximum heights. The minimum separation distance between the dwellings and the building to the west on the Parameters Plan is 20m, whilst the minimum distance between the

dwellings and building to the northeast of the site on the Parameters Plan is 22m. Paragraph 7.24 of the Residential Design SPD requires a minimum distance equal to twice the height of the blank/largely blank wall between buildings, where habitable room windows face onto a blank or largely blank wall of another building. Therefore, the maximum height of the building to the west must be 10m and the maximum height of the building to the northeast must be 11m if the layout remains the same, unless the building heights are staggered. This should be conditioned. In addition, a condition should be added to secure shading diagrams as part of the reserved matters to ensure that there will be no adverse impact on the neighbouring residential properties from significant overshadowing.

The applicants submitted a noise assessment of the application at the request of Environmental Health. This took into account provision of a 3m high acoustic barrier along the north boundary understood by the applicants to be provided by the residential developer. The assessment was undertaken for both daytime and night-time periods. It concluded that no mitigation will be required for the plant, as it will be 'low impact'. Delivery vehicles will result in no greater than negligible impact by day and minor impact by night, and customer vehicles will result in no impact. Persimmon has stated that the acoustic barrier must be provided by the developers of this application, as the noise impact will be caused by the retail development. Environmental Health have raised no objections regarding noise, subject to the imposition of conditions to: prohibit deliveries between the hours of 11pm and 6am, provision of an acoustic fence along the north boundary prior to occupation (details to be agreed with the LPA) and noise not exceeding 5dB above background noise levels to be demonstrated following first occupation. The fence will need to allow for the movement connection to the north. Conditions should be added accordingly.

Given the visual impact of the acoustic fence, officers consider that landscaping should be provided adjacent to it within the site to soften its appearance and this should be a specific requirement of a landscaping scheme for the site to be conditioned. This will also mitigate the visual impact of the development from the housing if it is taller than the fence. Details of the location and design of the waste storage facilities for the retail units on the site should also be provided as part of the reserved matters and conditioned in the interests of the amenity of the area, in particular the neighbouring residential properties. A condition for an external lighting scheme as part of the reserved matters should also be added, including isoline drawings of lighting levels and mitigation if necessary, to protect the amenity of the neighbouring residential properties and to protect wildlife (as well as safeguard Exeter Airport). Environmental Health have also recommended conditions for a Construction Method Statement, litter management plans (for the food uses) and kitchen extraction details (for the food uses), in the interests of the amenity of the area. A Waste Audit Statement should also be conditioned in accordance with Devon County Council's SPD, noted above.

6. Impact on Trees and Biodiversity

A tree survey has not been submitted, however there are no trees on the site except for a few within the embankment along the western boundary with the railway line and within the hedgerow to the south. These are indicated as either being retained or replaced, together with additional tree planting, on the Parameters Plan. There are also trees within the hedgerow to the north, although this hedgerow is within the neighbouring site. There is an opportunity to provide tree planting as part of a landscaping/green infrastructure scheme for the site in accordance with Policies CP16, CP17, CP19 and DG1. Natural England stated that the proposed development is in an area that could benefit from green infrastructure provision. Landscaping details will be required for the reserved matters and a condition should be added securing a detailed landscaping scheme. A tree/hedgerow protection condition should also be added where these are to be retained, including those on the neighbouring site.

The Preliminary Ecological Appraisal submitted with the application concludes that the site has limited habitat value. The only features with some habitat value are the hedges, particularly the northern hedge, although, as stated, this hedge is not within the site. The report recommends mitigation measures to protect and enhance biodiversity. The new NPPF states that 'Planning policies and decisions should contribute to and enhance the natural and local environment by:... d) minimising impacts on and providing net gains for biodiversity, including establishing coherent ecological networks that are more resilient to current and future pressures' (Para 170), and when determining applications local planning authorities should encourage 'opportunities to incorporate biodiversity improvements in and around developments, especially where this can secure measurable net gains for biodiversity.' (Para 175). The recommended measures in the report include: minimising light-spill from security or road lighting; planting a new native species hedge between the site and the grounds of the adjoining hotel; installing ten open-fronted and hole bird nest boxes on buildings to the north of the site; and provision of green open spaces and landscaped areas within the development. A limited amount of monitoring is also recommended to ensure the mitigation and enhancement measures are carried out in accordance with the landscape plan or a Landscape and Ecological Management Plan (LEMP). These measures should be taken into account at reserved matters stage and a Wildlife Plan condition added.

With reference to The Conservation of Habitats and Species Regulations 2017, this development has been screened in respect of the need for an Appropriate Assessment (AA) and given the nature and scale of the development it has been concluded that the proposal does not require an AA.

7. Flood Risk and Surface Water Management

Policy EN4 does not permit development if it would be at risk of flooding. The site is within Flood Zone 1 and the proposed use is classified as 'less vulnerable' (see PPG). 'Less vulnerable' uses are appropriate in Flood Zone 1, therefore the proposal accords with Policy EN4.

Policy CP12 requires all development proposals to mitigate against flood risk utilising SUDS where feasible and practical. The applicants proposed surface water drainage strategy consists of soakaways beneath the car park and service yard to the west. The Lead Local Flood Authority is Devon County Council. They have no in-principle objection, although requested additional technical information. This information was submitted on 30 July and at the time of writing comments are awaited from DCC to confirm that the proposed surface water drainage strategy is acceptable. Subject to this response, conditions should be added securing detailed surface water drainage schemes for the construction and operational phases of the development.

8. Sustainable Construction and Energy Conservation

Policy CP13 requires new development with a floorspace of at least 1,000 sq m to connect to any existing, or proposed, Decentralised Energy Network in the locality to bring forward low and zero carbon energy supply and distribution. The proposed development will exceed this floorspace and the site is located in one of the network areas. Therefore a condition is required to ensure the building is connected to the network or is constructed to be connected in the future.

Policy CP15 requires all non-domestic development to achieve BREEAM 'Excellent' standards from 2013 and are expected to be zero carbon from 2019. A condition should be added securing a BREEAM design stage assessment report and post-completion report to ensure Policy CP15 is complied with. To be consistent with the previous application/appeal, this shall relate to shell only.

CIL/S106

The proposed development is CIL liable, as it is for out of city centre retail development. The rate for permission granted in 2018 is £174.67 per sq m. This is charged on new floorspace. The application has been submitted in outline with all matters reserved except access, therefore the total liability will depend on the scale of development approved at reserved matters stage. However, based on the maximum floorspace applied for, the total liability will be up to £2,206,780.78. As the CIL liability will be more than £50,000, it can be paid in the following instalments provided an assumption of liability notice form and commencement form are submitted prior to commencement:

1. £50,000 within 60 days after the date on which development commences
2. £150,000 within 1 year after the date on which development commences
3. £200,000 within 18 months after the date on which development commences
4. Outstanding liability (up to £1,806,780.78 within 2 years after the date on which development commences)

If these forms are not submitted prior to commencement of the development, the right to pay in instalments will be lost.

A s106 legal agreement is considered necessary and must secure the following contributions/obligations:

- Financial contribution towards upgrading buses to Euro VI standard on services 4/4A and/or 56 as air quality mitigation (sum to be confirmed).
- Pedestrian/cycle/bus connection to site boundary to north connecting to the highway connection in the Persimmon site, with provisions for maintenance, management and enforcement.

SUMMARY/CONCLUSION

This application raises a number of complex issues which have required very careful consideration. Compatibility with the Development Plan, the previous appeal decision on the site and the changed circumstances at the bus and coach station are all important factors. Equally the economic and financial benefits of the scheme are an important consideration, as is deliverability. The retail market is an uncertain one at present and a relatively small number of schemes of this scale are being progressed nationally at the moment. The commercial interest in Eastern Exeter is a positive endorsement of the city as a place to invest. It is important however to consider the likely delivery of any consented scheme. There have been situations elsewhere where consents have been granted but not implemented, which as well as meaning investment is lost, creates uncertainty in retail hierarchies and can prejudice the proper planning of the area. There are good reasons to suggest that this proposal is more likely to progress than not, although Members will be aware that nothing is guaranteed. Next have had a long standing interest in Eastern Exeter and it is believed that this site is their preferred one. In addition, the presence of named occupiers in the submission documents suggests a high degree of confidence that commercial interest is credible. Consolidated Property Group have an impressive track record of delivery and I would suggest the submission of this proposal relatively soon (at least in planning terms) following the previous refusal suggests a high level of commitment to delivery.

Notwithstanding the above however, Members still need to consider whether both the proposal and the context within which this decision is to be made differs sufficiently from the previous scheme which was deemed unacceptable in planning terms. The application is still

considered to be contrary to Policies CP19 and CP8, as the proposed development will not be a 'local centre' according to the definition of local centres in the Core Strategy. However Members should recognise that the scheme does provide, as part of a wider package, a local function and that it is extremely unlikely that a more 'traditional' local centre will be delivered within the Monkerton/Hill Barton area. This application is therefore the only realistic opportunity to secure local retail facilities in the area.

In conclusion, officers consider that there are now satisfactory material considerations to permit the application. In addition to the opportunity to provide retail facilities to meet the needs of the developing local community in the area, as well as the local business community there are very significant economic benefits. There will no longer be an impact to an investment project on the edge of the City Centre, following the abandonment of the retail redevelopment proposals for the Bus and Coach Station site last year and the retail impact study concludes that there will be no discernible impact on the vitality and viability of the city centre. In respect of this latter issue the impact of out of town retail on city centres has long been the 'make or break' issue in determining applications and historically the City has benefited from a very clear 'city centre first' approach. Whilst this is still a key issue and one that is satisfied in the determination of the current application given that there is not a sequentially preferable site, it is perhaps arguable that a bigger current issue is securing 'bricks and mortar' investment, with its consequent economic benefits, in the face of the relentless growth of online shopping. Whilst the development plan is largely silent on this matter, it is clearly a relevant issue for Members to take into account given the emerging thinking such as that contained within the Grimsey Review on how towns and cities will need to evolve and change to respond to the way on which people now choose to spend their leisure time.

Officers have recommended a number of conditions and legal obligations contained within the report, which will be necessary to ensure that any potential harm resultant from the proposal will be satisfactorily mitigated. Some of these mitigation works, in particular the contribution towards cleaner buses, will have benefits beyond pure mitigation. Subject to these controls and mitigation measures, officers consider that there are sufficient material considerations weighing in favour of the proposal to offset any conflict with the development plan.

RECOMMENDATION

APPROVE subject to the completion of a s106 legal agreement securing the contributions/obligations above and with the following conditions:

1. Standard Time Limits – Outline Planning Permission

Application for the approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of the permission and the development hereby permitted shall be begun before the expiration of five years from the date of the permission, or before the expiration of two years from the date of the approval of the last of the reserved matters to be approved whichever is the later.

Reason: To ensure compliance with sections 91 - 93 of the Town and Country Planning Act 1990.

2. Reserved Matters

Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development shall be carried out as approved.

Reason: To safeguard the rights of the local planning authority in respect of the reserved matters. This information is required before development commences to ensure that the development is properly planned with appropriate regard to the reserved matters.

3. Approved Plans

The development hereby permitted shall be carried out on the land outlined in red on drawing number 15049_PL01 ('Proposed Location Plan') and shall not be carried out otherwise than in general accordance with the plans listed below, unless modified by the other conditions of this consent or the s106 legal agreement pertaining to it:

- Highway Access Plan (PHL-01 B)
- Proposed Site Parameters Plan (15049_PL06)

Reason: To ensure compliance with the approved drawings.

4. Outlook of Neighbouring Dwellings

The distance between the buildings on the site and the dwellings on the land adjoining the site to the north shall be a minimum of twice the height of the buildings (ground floor level to eaves or parapet), taking into account any level difference between the buildings and the dwellings, where the buildings have blank or largely blank walls facing the dwellings.

Reason: To accord with paragraph 7.24 of the Residential Design SPD in the interests of the residential amenity of the neighbouring dwellings.

5. Shadow Path Diagrams

Shadow path diagrams of the buildings on the site shall be submitted to, and agreed by, the Local Planning Authority as part of the submission of reserved matters. These shall illustrate the shadow paths at the winter solstice and spring/autumn equinox (sunrise, midday and sunset).

Reason: To ensure there will be no overshadowing of neighbouring dwellings that will harm residential amenity, taking into account paragraphs 7.21-7.23 of the Residential Design SPD.

6. Cycle Parking

The reserved matters details shall show the location and design of cycle parking facilities for the staff and customers of the retail units in accordance with chapter 5 of the Sustainable Transport SPD, including showers, lockers and space to dry clothes for staff. The cycle parking facilities shall be provided in the development as approved prior to the occupation of the development.

Reason: To promote cycling as a sustainable mode of travel and to accord with the Sustainable Transport SPD.

7. Disabled Car Parking Spaces and Electric Charging Points

The reserved matters details shall show the location and design of disabled parking spaces and charging points for electric vehicles in accordance with chapter 6 of the Sustainable Transport SPD. A minimum of 20 electric charging points shall be provided for. The disabled parking spaces and electric charging points shall be provided in the development as approved prior to the occupation of the development.

Reason: To accord with the minimum car parking standards for disabled users in the Sustainable Transport SPD, and to enable charging of plug-in and other ultra-low emission vehicles in accordance with the Sustainable Transport SPD and paragraph 110 of the NPPF.

8. Detailed Drawings Pedestrian/Cycle Accesses

The reserved matters details shall include detailed drawings of the three pedestrian/cycle accesses within the site to the south boundary shown on drawing number 15049_PL06 ('Proposed Site Parameters Plan'), including sections to confirm the gradients of the ramps. The entrance to the ramp in the middle of the site to the south shall align with the public right of way footpath to the south of the site and the proposed Toucan crossing on Honiton Road. The pedestrian/cycle accesses shall be provided in the development as approved prior to the occupation of the development.

Reason: To ensure safe and suitable access to the site for all users, including wheelchair users, and ease of access from the existing public right of way footpath to the south of the site.

9. Waste Storage Facilities

The reserved matters details shall show the location and design of waste storage facilities for the retail and restaurant units hereby permitted. The waste storage facilities shall be designed to accord with the Waste Audit Statement required by condition 10 below. The waste storage facilities for each unit shall be provided as approved prior to the occupation of the unit.

Reason: To ensure adequate waste storage facilities are provided for the uses and located in the interests of the amenity of the area.

Pre-commencement Details

10. Waste Audit Statement

Prior to the commencement of the development hereby permitted, a Waste Audit Statement shall be submitted to and approved in writing by the Local Planning Authority. This statement shall include all information outlined in the waste audit template provided in Devon County Council's Waste Management and Infrastructure Supplementary Planning Document. The development shall be carried out in accordance with the approved statement.

Reason: To minimise the amount of waste produced and promote sustainable methods of waste management in accordance with Policy W4 of the Devon Waste Plan and the Waste Management and Infrastructure Supplementary Planning Document. These details are required pre-commencement as specified to ensure that waste generated during construction is managed sustainably.

11. Surface Water Drainage Management System (Construction) (tbc with DCC)

No part of the development hereby permitted shall be commenced until the detailed design of the proposed surface water drainage management system which will serve the development site for the full period of its construction has been submitted to and approved in writing by the Local Planning Authority, in consultation with Devon County Council as the Lead Local Flood Authority. This temporary surface water drainage management system must satisfactorily address both the rates and volumes, and quality, of the surface water runoff from the construction site. The approved surface water drainage management system shall be implemented and maintained throughout the construction period.

Reason: To ensure that surface water runoff from the construction site is appropriately managed so as to not increase the flood risk, or pose water quality issues, to the surrounding area. (Advice: Refer to Devon County Council's Sustainable Drainage Guidance.) These details are required pre-commencement as specified to ensure that an appropriate drainage system is provided for the construction stage.

12. Detailed Permanent Surface Water Drainage Scheme (tbc with DCC)

Prior to the commencement of the development hereby permitted, a detailed permanent surface water drainage scheme for the development shall be submitted to and approved in writing by the Local Planning Authority in consultation with Devon County Council as the Lead Local Flood Authority. The scheme shall accord with the Illustrative Surface Water Drainage Strategy (HBS-DR-C-(00)-SK1 P3) in the submitted Flood Risk Assessment Revision D (HBS, 27 July 2018), unless an alternative sustainable drainage system is agreed with the Local Planning Authority in consultation with Devon County Council as the Lead Local Flood Authority. The scheme shall include a detailed plan showing the size and location of all parts of the surface water drainage system, and confirm the make and specification of any attenuation features (including the outfall and discharge rate). It shall also include the arrangements for ongoing maintenance and the management responsibilities for all parts of the site's surface water drainage system. The development shall not be occupied until the surface water drainage scheme has been completed as approved and it shall be continually maintained thereafter in accordance with the approved details. (Any soakaways shall be designed in accordance Building Research Establishment Digest 365, and evidence that trial holes and infiltration tests have been carried out in the same location as the soakaways must be provided.)

Reason: To manage water and flood risk in accordance with Policy CP12 of the Core Strategy, Policy EN4 of the Exeter Local Plan First Review and paragraphs 163 and 165 of the NPPF. These details are required pre-commencement as specified to ensure that an appropriate drainage system is provided for the development and there will be no increased risk of flooding to surrounding buildings, roads and land.

13. District Heating Network

Unless it is demonstrated in writing prior to commencement that it is not viable or feasible to do so, the buildings comprised in the development hereby approved shall be constructed in accordance with the CIBSE Heat Networks Code of Practice so that their internal systems for space and water heating are capable of being connected to the proposed decentralised energy (district heating) network. Prior to occupation of the development, the necessary on site infrastructure, including appropriate space for plant and machinery, shall be put in place for connection of those systems to the network at points at the application site boundary agreed in writing by the Local Planning Authority.

Reason: To ensure that the proposal complies with Policy CP13 of the Core Strategy and paragraph 153 of the NPPF, and in the interests of delivering sustainable development. If it is demonstrated that it is not viable or feasible to construct the building in accordance with the CIBSE Heat Networks Code of Practice, this information must be provided to the Council prior to commencement of the development because it will affect the construction of the building.

14. BREEAM

Unless otherwise agreed in writing by the Local Planning Authority the buildings hereby approved shall achieve a BREEAM 'excellent' standard as a minimum (shell only). Prior to commencement of development of each building on the site the developer shall submit to the Local Planning Authority a BREEAM design stage assessment report to be written by a licensed BREEAM assessor which shall set out the BREEAM score expected to be achieved by the building and the equivalent BREEAM standard to which the score relates. Where this does not meet the BREEAM minimum standard required by this consent the developer shall provide prior to the commencement of development of the building details of what changes will be made to the building to achieve the minimum standard, for the approval of the Local Planning Authority to be given in writing. The building must be completed fully in accordance with any approval given. A BREEAM post-completion report of the building is to be carried

out by a licensed BREEAM assessor within three months of substantial completion of the building and shall set out the BREEAM score achieved by the building and the equivalent BREEAM standard to which such score relates.

Reason: To ensure that the proposal complies with Policy CP15 of the Core Strategy and in the interests of delivering sustainable development. The design stage assessment must be completed prior to commencement of development because the findings may influence the design for all stages of construction.

15. Construction Method Statement

No development (including ground works) or vegetation clearance works shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The Statement shall provide for:

- a) The site access point(s) of all vehicles to the site during the construction phase.
- b) The parking of vehicles of site operatives and visitors.
- c) The areas for loading and unloading plant and materials.
- d) Storage areas of plant and materials used in constructing the development.
- e) The erection and maintenance of securing hoarding, if appropriate.
- f) Wheel washing facilities.
- g) Measures to control the emission of dust and dirt during construction.
- h) No burning on site during construction or site preparation works.
- i) Measures to minimise noise nuisance to neighbours from plant and machinery.
- j) Construction working hours and deliveries from 8:00 to 18:00 Monday to Friday, 8:00 to 13:00 on Saturdays and at no time on Sundays or Bank Holidays.

The approved Statement shall be strictly adhered to throughout the construction period of the development.

Reason: To ensure that the construction works are carried out in an appropriate manner to minimise the impact on the amenity of neighbouring uses and in the interests of the safety and convenience of highway users. These details are required pre-commencement as specified to ensure that building operations are carried out in an appropriate manner.

16. Tree/Hedgerow Protection Measures

No development (including ground works) or vegetation clearance works shall take place until fences have been erected and any other protection measures put in place for the protection of trees and/or hedgerows to be retained around the site boundary in accordance with a Scheme which has been submitted to and approved in writing by the Local Planning Authority. The Scheme shall be prepared in accordance with British Standard BS 5837:2012 (or any superseding British Standard). The fences and any other protection measures required in the approved Scheme shall be retained until the completion of the development and no vehicles, plant or materials shall be driven or placed within the areas enclosed by the fences.

Reason: To protect the trees and hedgerows to be retained around the site boundary in the interests of the amenities of the area and biodiversity, in accordance with Policy LS4 of the Exeter Local Plan First Review and the Trees in Relation to Development SPD (September 2009). These details are required pre-commencement as specified to ensure that trees and hedgerows to be retained are not damaged by building operations or vegetation removal, including their biodiversity interests.

Pre-specific Works

17. Bird Breeding Season

No tree works or felling, cutting or removal of hedgerows or other vegetation clearance works shall be carried out on the site during the bird breeding season from March to September, inclusive. If this period cannot be avoided, these works shall not be carried out unless they are overseen by a suitably qualified ecologist and the reasons why have been submitted to and approved in writing by the Local Planning Authority, including the date of the intended works and the name of the ecologist. If breeding birds are found or suspected during the works, the works will cease until the ecologist is satisfied that breeding is complete.

Reason: To protect breeding birds in accordance with Policy LS4 of the Exeter Local Plan First Review, and paragraphs 174 and 175 of the NPPF. These details are required pre-commencement as specified to ensure that breeding birds are not harmed by building operations or vegetation removal.

18. External Lighting

No external lighting shall be installed on the site or on the buildings hereby permitted unless details of the lighting have previously been submitted to and approved in writing by the Local Planning Authority (including location, type and specification). The details shall demonstrate how the lighting has been designed to minimise impacts on local amenity and wildlife (including isoline drawings of lighting levels and mitigation if necessary). The lighting shall be installed in accordance with the approved details.

Reason: To ensure lighting is well designed to protect the amenities of the area and wildlife, and to safeguard Exeter Airport.

Pre-occupation

19. Wildlife Plan

Prior to the first occupation or use of the development hereby permitted, a Wildlife Plan for the site shall be submitted to and approved in writing by the Local Planning Authority. The Wildlife Plan shall demonstrate how the development has been designed to enhance the biodiversity value of the site and how it will be managed in perpetuity to enhance biodiversity, taking into account the recommendations of the submitted Preliminary Ecological Appraisal (Sunflower International, July 2017). Thereafter, the development shall be carried out and managed strictly in accordance with the approved measures and provisions of the Wildlife Plan.

Reason: In the interests of protecting and improving existing, and creating new wildlife habitats in the area.

20. Acoustic Fence

Prior to the first occupation or use of the development hereby permitted, a fence shall be provided along the northern boundary of the site to provide an acoustic, visual and security barrier in accordance with details previously submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of the amenity of the neighbouring residential properties.

21. Detailed Landscaping Scheme

Prior to the first occupation or use of the development hereby permitted, a Detailed Landscaping Scheme for the site shall be submitted to and approved in writing by the Local

Planning Authority. The Scheme shall include details of hard and soft landscaping, including all boundary treatments. It shall include soft landscaping to screen the fence required by condition 20 above. Where applicable, it shall specify tree and plant species and methods of planting. The hard landscaping shall be constructed as approved prior to the occupation/use of the development. The soft landscaping shall be planted in the first planting season following the occupation/use of the development or completion of the development, whichever is the sooner, or in earlier planting seasons wherever practicable, and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: In the interests of good sustainable design in accordance with Policy CP17 of the Core Strategy, Policy DG1 of the Exeter Local Plan First Review and paragraph 127 of the NPPF.

22. S278 Agreement

The development shall not be occupied or brought into use until a Section 278 Highways Agreement has been entered into in order to secure the necessary works to the public highway shown on drawing number 2176-PHL-007 C ('S278 Works Honiton Road Widening and Proposed Bus Stops') in the submitted Transport Assessment Issue 5 (Vectos, Jan 2018), including the Toucan crossing. The works shall be implemented prior to the occupation/use of the development.

Reason: To mitigate the impact of the development on the local highway network and ensure safe access to the site.

23. Travel Plan

No part of the development shall be occupied until a Travel Plan (including recommendations and arrangements for monitoring and review) has been submitted to and approved in writing by the Local Planning Authority in consultation with the Local Highway Authority. Thereafter the recommendations of the Travel Plan shall be implemented, monitored and reviewed in accordance with the approved document, or any amended document subsequently approved in writing by the Local Planning Authority.

Reason: To encourage travel by sustainable means, in accordance with Policy T3 of the Local Plan First Review and the Sustainable Transport SPD.

24. Car Park Management Plan

No part of the development shall be occupied until a Car Park Management Plan has been submitted to and approved in writing by the Local Planning Authority. Thereafter the Car Park Management Plan shall be carried out as approved, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure there is no overspill parking in the Honiton Road Park & Ride car park to the detriment of its use by people using the Park & Ride service to travel to the City Centre in the interests of sustainable travel.

25. Car Parking Provision

No part of the development shall be occupied until all of the car parking spaces and access thereto shown on the approved plans of any subsequent reserved matters consent have been provided and made available for use. The car parking spaces shall be kept permanently available for parking and access purposes thereafter.

Reason: To ensure that adequate off-street parking and access thereto is provided and kept permanently available for use in the interests of highway safety and to protect the amenities of the neighbourhood.

26. Litter Management

Prior to the occupation of any of the A3 restaurant/drive-through units hereby permitted, a Litter Management Plan for the unit shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the Litter Management Plan shall be implemented as approved by the occupier of the unit.

Reason: In the interests of the amenity of the area.

27. Kitchen Ventilation

Prior to the occupation of any of the A3 restaurant/drive-through units hereby permitted, the kitchen ventilation system for the unit shall be installed in accordance with details previously submitted to and approved in writing by the Local Planning Authority. The details shall include drawings of the location and design of the system, and information on how odour emissions shall be controlled, including abatement if necessary, and how the system shall be maintained to ensure it does not adversely affect the amenity of the surroundings.

Reason: In the interests of the amenity of the area, especially nearby residential uses.

Post Occupancy

28. Delivery Hours

There shall be no deliveries to the site nor loading or unloading of delivery vehicles between the hours of 11pm and 6am.

Reason: In the interests of the amenity of the neighbouring residential properties.

29. Noise Levels

Notwithstanding condition 20 above, total noise from the development hereby permitted shall not exceed a rating noise level of 5dB above background noise levels, measured in accordance with BS4142:2014. Compliance with this condition shall be assessed at 1 metre from the façade of residential receptors, or an alternative suitable proxy location as agreed in writing with the Local Planning Authority. This noise level shall be demonstrated to the Local Planning Authority by measurement and reported to the Local Planning Authority following the first occupation of all the units and maintained thereafter.

Reason: In the interests of the amenity of the neighbouring residential properties.

Retail Controls

30. Quantum of Development

The overall floorspace to be comprised in the development hereby permitted, and the quanta per Use Class, shall not exceed the gross maxima set out in the Schedules below:

Development Parameter	Quantum
Maximum Floorspace (sq m GEA)	13,200
Maximum Floorspace (sq m GIA)	12,634
Maximum Building Height (m AOD)	53

Use Class	Maximum (sq m GIA)
A1 (Shops)	11,961
A3 (Restaurants and cafes, including Drive-Thru's)	673

Reason: To define the terms of the permission.

31. Net Sales Area

The total net sales area of the retail (Class A1) floorspace hereby permitted shall not exceed 9,688 square metres, of which no more than 2,789 sq m and no less than 1,000 sq m shall be used for the sale of convenience goods.

Reason: To ensure that the trading impacts of the proposal are acceptable and that a foodstore is delivered as part of the development to meet the community needs of the locality.

32. A1 Retail Floorspace (West Block)

The reserved matters to be submitted pursuant to this planning permission for the A1 retail block to the west of the site shown on drawing number 15049_PL06 ('Proposed Site Parameters Plan') shall comprise a maximum gross floor area of 8,826 sq m (including mezzanine floors) limited as follows:

- a) A maximum of four separate retail units;
- b) A unit of between 3,252 – 5,807 (GIA) with a maximum net sales area of 3,029 sq m for the purposes of non-food retailing; no more than 60% of the net sales area of this unit shall be used for the display and sale of clothing and footwear;
- c) At least one unit of not less than 929 sq m (GIA) for predominantly convenience retailing; up to 20% of the net sales area may be used for ancillary comparison goods sales;
- d) Additional units of not less than 929 sq m (GIA) of which one can be occupied by retailers whose operation is predominantly the sale of clothing and footwear – no more than 60% of the net sales area of this unit shall be used for the display and sale of clothing and footwear.

Reason: To ensure that the development reflects the complexion of the proposals upon which the assessment of impact was based, to provide a mix of shops to meet the needs of the community and to respect the retail hierarchy of the city.

33. A1 Retail Floorspace (North Block)

The reserved matters to be submitted pursuant to this planning permission for the A1 retail block to the north of the site shown on drawing number 15049_PL06 ('Proposed Site Parameters Plan') shall comprise a maximum gross floor area of 2,788 sq m (including mezzanine floors) limited as follows:

- a) A maximum of three separate retail units;
- b) Retail units shall comprise a minimum size of 464 sq m (GIA);
- c) A maximum of one retail unit can be occupied by retailers whose operation is predominantly the sale of clothing and footwear.

Reason: To ensure that the development reflects the complexion of the proposals upon which the assessment of impact was based, to provide a mix of shops to meet the needs of the community and to respect the retail hierarchy of the city.

34. A1 Retail Floorspace (South Block)

The reserved matters to be submitted pursuant to this planning permission for the A1 retail block to the south of the site shown on drawing number 15049_PL06 ('Proposed Site

Parameters Plan') (indicated as Units K, L and M on the illustrative Proposed Site Layout 15049_PL02 B) shall comprise a maximum gross floor area of 349 sq m (including mezzanine floors) and shall be limited to a maximum of three separate retail units; the retail floorspace to be comprised in these units shall not be occupied by retailers whose operation is predominantly the sale of clothing and footwear.

Reason: To ensure that the development reflects the complexion of the proposals upon which the assessment of impact was based, to provide a mix of shops to meet the needs of the community and to respect the retail hierarchy of the city.

35. A3 Uses

Uses within Class A3 (restaurants and cafes) shall be comprised in a maximum of two freestanding units as shown on drawing number 15049_PL06 ('Proposed Site Parameters Plan') (indicated as Units H and J on the illustrative Proposed Site Layout 15049_PL02 B).

Reason: To ensure that the complexion of development is in accordance with the purposes prescribed in the application and to provide a mix of uses to meet the needs of the community.

36. Chemist

For a minimum period of 10 years following the date of its first opening, the development hereby authorised shall include provision of no less than 464 square metres (GIA) predominantly for the sale of chemist and related goods (with or without a pharmacy).

Reason: To ensure that the complexion of the development is in accordance with the purposes prescribed in the application and to provide a mix of shops to meet the needs of the community.

37. Prevention of Amalgamation or Sub-division of Units

Further to any approval of reserved matters pursuant to this planning permission, there shall be no subsequent amalgamation or sub-division of units without the prior approval in writing of the Local Planning Authority.

Reason: Any changes will require further consideration by the Local Planning Authority to ensure that the impacts are acceptable.

38. Dual Representation

Unless otherwise agreed in writing by the Local Planning Authority, none of the approved A1 retail floorspace shall be occupied by any retailer who at the date of occupation, or within a period of 12 months immediately prior to occupation, occupies A1 retail floorspace within the City Centre or any of the District or Local Centres as defined on the Exeter Local Plan First Review Proposals Map, or any subsequent development plan document defining the city, district and local centre hierarchy, unless a scheme which commits the retailer to retaining their presence as a retailer within that Centre, for a minimum period of 5 years following the date of their occupation of A1 retail floorspace within the development, or until such time as they cease to occupy A1 retail floorspace within the development, whichever is sooner, has been submitted to and approved in writing by the Local Planning Authority. The scheme(s) shall be carried out as approved.

Reason: To protect the vitality and viability of the centres in Exeter and ensure that the A1 retail floorspace serves the local community.

Local Government (Access to Information) 1985 (as amended), Background papers used in compiling the report:

*Files of planning applications available for inspection from the Customer Service Centre,
Civic
Centre, Paris Street, Exeter. Telephone 01392 265223*

Assessment of Retail Planning Policy

Planning Application for Class A Retail and
Associated Development at: Land North of
Honiton Road and West of Fitzroy Road, Exeter

May 2018

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Appendices

Appendix I	June 2016 Secretary of State decision
Appendix II	Study Area
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1. Introduction

Scope and Purpose

- 1.1 This advice report has been prepared by GVA for Exeter City Council ('ECC') in relation to the retail and town centre planning policy aspects of an outline planning application by CPG Development Projects Ltd and Growen Estates Ltd ('the applicants') for a development comprising Class A retail floorspace and associated development on land north of Honiton Road and west of Fitzroy Road in Exeter.
- 1.2 The submitted application form indicates that 12,634sq m of Class A1 and A3 retail floorspace will be provided, along with 408 car parking spaces. The proposal is commonly known as 'Moor Exchange' which is how we shall refer to it for the purposes of this advice report. A more detailed description of the proposed development is contained in Section 2 of this advice report.
- 1.3 This is the second application for large-scale retail development on this site in recent years. In December 2014 an application for outline planning permission was refused by ECC. That application included a larger amount of new floorspace and, in addition to Class A1 and A3 uses, included provision for Class A2, A5, D1 and D2 land uses. A subsequent appeal against that refusal was recovered and then dismissed by the Secretary of State in June 2016, following a public inquiry in December 2015. Further details regarding the content of the previous application and the Secretary of State's reasons for dismissing the appeal can be found later in this advice report.
- 1.4 This advice report considers the same key issues that were relevant for the previous application, namely the relationship of the proposed retail development to the development plan for the area (including the aspiration for a local centre within the Monkerton / Hill Barton area) and the sequential and impact tests. We summarise the salient contents of the development plan for the local area and also material considerations such as the National Planning Policy Framework ('NPPF') in Section 3 of this advice report.
- 1.5 As part of the preparation of this advice, we have had regard to the following documents:
 - A Planning Statement ('PS'), dated January 2018, prepared by Rocke Associates;
 - A letter from Chase & Partners ('C&P') to CPG Development Projects Ltd, dated 24th January 2018;
 - A Retail Assessment ('RA'), dated January 2018, prepared by Mango Planning & Development Limited ('Mango').

- 1.6 In addition, during the preparation of this advice report, there has been various email correspondence between GVA, ECC and Rocke Associates, including the content of potential planning conditions to control the operation of the proposed retail floorspace.
- 1.7 From the outset it should be noted that this application is one of a number of other current / forthcoming applications for retail development on the eastern side of the Exeter urban area. These are:
- An outline application for the redevelopment of the Western Power Distribution depot on Moor Lane for 7,962sq m (gross) of Class A1 and A3 retail floorspace along with associated development;
 - An outline application for a 1,230sq m (gross) Class A1 retail unit on the existing Tesco supermarket car park at Russell Way; and
 - As we understand it, a forthcoming planning application for Class A1, A3, A5 and D2 uses on part of the Devon & Cornwall Constabulary headquarters at Middlemoor.
- 1.8 For the avoidance of doubt, this advice report deals with the Moor Exchange application alone and separate advice will be provided by GVA to ECC in relation to the above proposals. We will also provide separate advice to ECC on cumulative impact issues in order that consideration can be given to the impact on defined 'town centres' in the event that ECC is to consider whether to grant planning permission for more than one of these current/forthcoming proposals. On this issue, ECC will need to give careful consideration to whether there is a need to determine some or all of the above applications together, particularly where it may wish to make a choice between the applications.
- 1.9 During the course of this advice report we will also make reference to the Exeter and West End of East Devon ('EWEED') Retail Study which was prepared by GVA for ECC and East Devon District Council ('EDDC'). The EWEED study is intended to act as an evidence base document for development plan making and development management purposes in Exeter and the 'west end' of East Devon District.

Content of this Report

- 1.10 The remainder of this advice report is structured in the following manner:
- Section 2 outlines the content of the current outline planning application and the application site's recent planning history
 - The salient planning policy context surrounding the application site and proposed development is summarised in Section 3

- In Section 4 we consider the key retail and town centre planning policy issues for this proposal, including the relationship of the proposal to the development plan aspiration for a local centre in the Monkerton / Hill Barton area, along with the sequential and impact policy tests.
- Finally, in Section 5, we provide a summary of our advice and conclusions on the key retail and town centre policy issues.

1.11 All plans, statistical information and other documents referred to in the text of this report can be found in appendices contained at the rear of this document.

2. The Current Moor Exchange Proposal and the Planning History of the Application Site

The Proposed Development

2.1 The planning application on land to the north of Honiton Road is submitted in outline by CPG Development Projects Ltd and Growen Estates Ltd. The description of development is as follows:

"Mixed use development to provide town centre facilities comprising uses within Classes A1 (retail) and A3 (cafes and restaurants) with associated drive-thru's, associated means of access, access road, service yards, car parking, infrastructure, public realm and landscaping".

2.2 Section 1 of the PS indicates that outline permission is sought in relation to three plans – site location, parameter plan and access plan – along with the following floorspace:

- Class A1 retail floorspace – 11,961sq m gross
- Class A3 café and restaurant floorspace – 673sq m gross

2.3 The Class A1 floorspace is proposed to be arranged, according to the parameter plan, in two blocks with the Class A3 floorspace elsewhere in the application site.

2.4 An illustrative masterplan has also been submitted with the application, but ECC have not been invited to formally approve that particular plan. The illustrative plan shows the potential size and number of retail units in this proposal including potential food and non-food units and potential tenants.

2.5 The PS does not suggest any particular controls over the number of separate retail units in the proposed development, nor the split between convenience and comparison goods floorspace. However, for the purposes of the assessment of the financial impact of the proposed Class A1 floorspace, the RA indicates the following split:

- Convenience goods sales – 2,789sq m net – from 5 units
- Comparison goods sales – 6,798sq m net – from 9 units

2.6 Following discussions between ECC officers and the applicants agent (Rocke Associates), the following condition has been proposed by the applicant:

"The total net sales area of the Class A1 retail floorspace hereby permitted shall not exceed 9,688 sq m, of which no more than 2,789 sq m and no less than 1,000 sq m shall be used for the sale of convenience goods.

Reason: to ensure that the trading impacts of the proposal are acceptable and the development provides an appropriate mix of convenience and comparison retail facilities"

Planning History

- 2.7 As noted in the previous section of this advice report, this current application on land to the north of Honiton Road is the second such application for large scale retail development on this site in recent years. The previous application was refused permission by ECC in December 2014 and a subsequent appeal was recovered by the Secretary of State and dismissed in June 2016 (following a public inquiry in December 2015). A copy of the Inspector's report and Secretary of State's decision are contained at Appendix I to this advice report.
- 2.8 We consider that the content of the previous application and the reasons for refusing permission are likely to be material considerations for this current outline planning application and therefore it is useful to compare the content of both schemes. This is contained in Table 2.1 below.

Table 2.1 – content of current (2018) application and refused (2015/2016) proposal

	2015 Scheme	2018 Scheme	Change (%)
Maximum total floorspace (sq m gross GIA)	16,127sq m	11,961sq m	-26%
Class A1 floorspace	11,102sq m	11,961sq m	+8%
Class A2 floorspace	316sq m	Nil	-100%
Class A3 floorspace	1,509sq m	673sq m	-55%
Class A5 floorspace	116sq m	Nil	-100%
Class D1 floorspace	1,138sq m	Nil	-100%
Class D2 floorspace	1,946sq m	Nil	-100%

- 2.9 Table 2.1 above indicates that:
- There has been reduction in the overall proposed floorspace of around one quarter;
 - The Class A2, A5, D1 and D2 uses in the previous scheme have been removed and do not appear in the current application;
 - The amount of Class A3 retail floorspace has been reduced by approximately half; and
 - In contrast to reductions in all of the other land uses, the amount of Class A1 floorspace in the current proposal has risen by 8% from the previous (refused) scheme.

- 2.10 It is also notable that the proposed control of the Class A1 retail floorspace net sales area in the current application (9,688sq m net) is 34% larger than the previous application (7,217sq m net¹).
- 2.11 It is also relevant to note that the previous application was promoted by the applicant as being able to fulfil the role of the planned new local centre in the Monkerton / Hill Barton area of Exeter in the adopted Core Strategy. Such a claim is much less visible in the supporting material submitted with the current application although it is still claimed that the current proposal is able to provide retail floorspace in line with the aspirations of the development plan.

¹ As set out in No.19 of the suggested conditions in the Inspector's report

3. Planning Policy Context

Introduction

- 3.1 The development plan for the proposal comprises the Exeter Core Strategy ('the Core Strategy'), and those remaining saved policies in the Exeter First Review Local Plan ('the Local Plan') which have not been superseded by the contents of the Core Strategy.
- 3.2 Apart from the statutory development plan, a key material consideration will be national planning policy within the National Planning Policy Framework ('the NPPF') along with the National Planning Practice Guidance ('NPPG').

The Development Plan

- 3.3 Policy CP1 of the Core Strategy sets the overall spatial strategy for Exeter over the period 2006 to 2026. In addition to the provision of employment land and new dwellings, it indicates the provision of up to 40,000sq m of net retail floorspace, split between 3,000sq m for convenience goods floorspace and 37,000sq m for comparison goods floorspace.
- 3.4 These quantum of new retail floorspace are repeated by Policy CP8 which deals specifically with retail land use uses. CP8 notes that:

"Retail facilities will be provided so as to contribute to the delivery of sustainable growth and respond to the needs of local, including disadvantaged, communities.

To maintain and enhance the vitality and viability of the City Centre, the provision of around 3,000 square metres of net retail convenience floorspace and around 37,000 square metres of net retail comparison floorspace is proposed. This will include up to 30,000 square metres of comparison floorspace in the Bus and Coach Station area, to be developed as part of a mixed-use scheme by around 2016.

Retail development outside the City Centre should be located in the district or local centres. Out of centre sites will only be considered if there are no suitable sites in, or on the edge of, the City Centre, district centres or local centres and the proposal would cause no significant overall impact on the existing centres and would bring net benefits. In all cases proposals must be accessible by public transport and other sustainable modes, and be appropriate in scale and character to the role and function of the proposed location.

Local retail facilities will be required as part of the community provision at the Monkerton/Hill Barton and Newcourt urban extensions".

- 3.5 Policy CP8 specifically refers to a requirement for "local retail facilities" within the Monkerton/Hill Barton and Newcourt urban extensions. This requirement is followed through into Policy CP19 which notes that, in relation to Monkerton/Hill Barton, the associated infrastructure will include a local centre to provide shops, doctors surgery and community facilities. Paragraph 12.14 of the supporting text to this policy indicates that the local centre will comprise:

"a doctors surgery/polyclinic, local shops, and other appropriate facilities to meet skills, special educational and community needs".

- 3.6 Policies CP8 and CP19 do not define the proposed local centre for the Monkerton/Hill Barton strategic allocation, although the glossary of terms in the Core Strategy defines a local centre as:

"a range of small shops of a local nature serving a small catchment area"

- 3.7 The glossary also defines a 'district centre' as:

"a group of shops normally containing at least one supermarket or superstore and a range of non-retail services and public facilities"

Material Considerations

- 3.8 In relation to development management for retail uses, the two key policy tests in the NPPF are the sequential approach and impact. The NPPF explains that applications for retail development outside existing centres and which are not in accordance with an up to date development plan should demonstrate compliance with the sequential test and be assessed against their impact on town centres.

- 3.9 The sequence of preferred locations for retail development remains town centres in the first instance, then edge of centre sites and only if suitable sites are not available should out of centre sites be considered. Paragraph 24 of the NPPF makes it clear that:

"When considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale".

- 3.10 Within the NPPF, the test of impact comprises two elements:

- impact 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 town centres and wider area.

- 3.11 Paragraph 27 of the NPPF provides a clear statement of national policy indicating that if applications that fail the sequential test or have significant adverse impacts on town centres then they should be refused. This is, of course logical in the context of paragraph 6 of the NPPF, as a failure to comply with the 'town centres first' sequential test or the ability to exhibit a significant adverse impact upon 'town centres' is clearly not sustainable development.

4. The Key Retail and Town Centre Planning Issues

Introduction

- 4.1 This section of our advice report examines the relationship of the current Moor Exchange outline application with the development plan (insofar as it relates to retail and town centre policies) and also the sequential and impact policy tests.

The Development Plan

- 4.2 The relationship with the development plan, and particularly Policy CS19, was a key issue for consideration in the previous retail and leisure proposal at the application site. The appellant (now the applicant in the current proposal) argued that:

- The proposals would accord with the requirement for a local centre in CP19²;
- Policy CP19 is inconsistent with the NPPF and out-of-date as the acceptability of development is now to be determined by reference to the sequential and impact test³.

- 4.3 In response, the Inspector concluded the following:

"11.8 The site itself has no specific allocation in the CS at the moment but is simply part of the wider MHB designation. However, this of itself offers no support to the appellant as the only basis for a retail development within MHB is as a local centre. Although adding little, the reference to local retail facilities in policy CP8 can only support the wording in CP19. The appellant acknowledged that the smaller units, the class A3 outlets, and the gym would serve the local catchment while the larger anchor and warehouse type units would serve a wider catchment. It also accepted that there would be demand for the site which would be seen as a district retail hub. In effect it did not deny that it would be more than a local centre and this is consistent with the description in the original application. On this point, the proposals could not reasonably be described as a local centre as referred to in CP19".

and

"11.20 The appellant is therefore wrong to argue either that CP19 is inconsistent with the NPPF, or that it is out-of-date, on the grounds that whether development is acceptable is now only to be determined by reference to the sequential and impact tests. If the LP were out-of-date, as was found at Rushden Lakes, that would be true. Here it is not. While the NPPF may only set two tests, it expects LPs to fill in the gaps, as it were, by meeting the criteria in NPPF 23, including a network and hierarchy of centres. The above is precisely what the LP does, including CP8's support for the City Centre and CP19's strategic allocations. While there have been changes over the years, such as the new John Lewis store and the Enterprise Zone, which are likely to be taken into account in the new DDDPD, none of these mean that the existing policies are out-of-date. There is nothing inconsistent about the LP specifying the appropriate hierarchy in the way that was missing at Rushden Lakes. When read in context, Rushden Lakes adds little to an understanding of the sequential test as interpreted by Tesco v Dundee".

² Paragraph 8.4 of the Inspector's report

³ Paragraph 8.6 of the Inspector's report

and

"11.23 For all the reasons given above, the proposals would go well beyond any reasonable interpretation of a local centre, as generally understood or as described in the CS glossary. The scheme would therefore be contrary to policy CP19 and, albeit less specifically, to CP8".

and

"11.58 For the above reasons, the proposals would conflict with CS policy CP19 and, to a lesser extent, with CP8. No development plan policy support would outweigh this conflict and so the scheme would be contrary to the development plan as a whole. It should therefore be dismissed unless material considerations indicate otherwise.

11.59 The appellant has argued that the Rushden Lakes decision means that this development plan must also now be seen through the prism of the NPPF, that is to say refracted, bent or distorted, by it. Whether or not that was the Inspector's meaning, given the primacy of the development plan, as confirmed in NPPF 2, that must be read with caution. Indeed, it should be noted that there is nothing to suggest that the SoS necessarily accepted this interpretation as meaning that all development plans must now be read as being biased towards the presumption in favour of sustainable development, rather than just those which are absent, silent or whose relevant policies are out-of-date. In any event, the presumption in NPPF 14 turns on the definition taken from NPPF 6 which refers to NPPF 18-219 as a whole, including NPPF 210, so this adds little. [6.25-27, 7.5, 7.14, 8.12-13]

11.60 Rather, the requirement to consider sustainable development in most decisions is a factor to be balanced with any other material considerations. Frequently this will overlap with the balancing exercise when looking at the requirement to consider the development plan as a whole. In the Rushden Lakes decision the relevant hierarchy in the development plan as it applied to Rushden was out-of-date and so that decision has limited bearing on the conclusions to be drawn here. The SoS's Decision in Sainsbury's Braintree does not alter this.

11.61 The NPPF recognises the importance of town centres but also promotes competition within them. It also expects a hierarchy of centres, with clear definitions, to be established in local plans. That is what ECC has done through the CS and, as a result, there is no reason why the findings in this appeal should ignore the conflict with the CS.

11.62 As set out above, the appeal proposals would conflict with the development plan as a whole and so should be dismissed unless material considerations indicate otherwise. The NPPF is a material consideration but, on balance, the benefits of proposals would not outweigh the harm so as to amount to sustainable development and so this also indicates that the appeal should fail. Although of some age, the CS is not out-of-date. Nevertheless, given the above conclusion, even if it were out-of-date and/or inconsistent with the NPPF, and so to be given reduced weight under NPPF 215, the balance on sustainable development means that it would not alter the overall decision. Equally, if the relevant policies are given substantial weight, as they should be, even if the proposals passed the sequential and impact tests they should still be refused. As above, the suggested conditions which could be applied to control the use of the proposed floorspace would not alter this conclusion".

4.4 The Secretary of State's decision letter noted:

"14. The Secretary of State has considered the Inspector's analysis at IR11.2-11.23. He agrees with the Inspector's assessment of the appellant's argument as set out at IR11.20, that it is wrong to argue that CP19 is inconsistent with the NPPF, or that it is out-of-date, on the grounds that whether development is acceptable is now only to be determined by reference to the sequential and impact tests. He agrees with the Inspector that while the NPPF may only set two tests, it expects LPs to fill the gaps, as it were, by meeting the criteria in NPPF 23, including a network and hierarchy of centres, and also agrees that this is what the LP does, and that the changes over the years do not mean that the existing policies are out of date

(IR11.20). He further agrees that as long as the CS is not out-of-date, which it is not as it satisfies the criteria for plan making in NPPF 23, then it is proper, indeed essential, to weigh the scheme against policies CP8 and CP19 in assessing its compliance or otherwise with the development plan. He therefore agrees with the Inspector's conclusion at IR11.22 that CP19 is not inconsistent with the NPPF, and that neither it, nor the Core Strategy as a whole, are out of date (IR11.22). He further agrees that the proposals would go well beyond any reasonable interpretation of a local centre, and that the scheme would therefore be contrary to policy CP19 and, albeit less specifically, to CP8 (IR11.23).

15. The Secretary of State further agrees with the Inspector at IR11.58 that the scheme would be contrary to the development plan as a whole. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan".

and

"28. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. As outlined above at paragraph 15, the Secretary of State agrees with the Inspector that the scheme would be contrary to the development plan as a whole. He has therefore gone on to consider whether there are any material considerations sufficient to outweigh the conflict with the development plan. He has considered the benefits of the scheme in terms of job creation, accessible local services and environmental considerations, and has concluded that the economic and social benefits carry moderate weight in favour of the proposals, and the environmental harm carries limited weight against the proposals

29. However, he does not consider that the benefits of the scheme outweigh the conflict with the development plan and the environmental harm. The scheme also fails to satisfy the sequential test, and paragraph 27 of the Framework indicates that planning permission should be refused in those circumstances. Therefore, the Secretary of State finds that there are no material considerations which indicate that the proposal should be determined otherwise than in accordance with the development plan".

- 4.5 In the current application, the suggestion that the proposed development can provide the 'centre' in the Core Strategy has been largely dropped, although the applicant maintains that the proposal can still provide retail floorspace envisaged by the allocation. The reasoning for this change in approach is not clear from the applicant's documentation, although we consider it unlikely that the change in approach will affect how proposals at the application site will be judged.
- 4.6 In particular, it is clear from the Inspector's overall conclusions that the key issue was whether the proposal would conflict with the development plan and, if it did, whether material considerations indicate otherwise. The Inspector found that the appeal proposal was in conflict, because the proposed retail and leisure floorspace would not deliver the local centre required by CP19, and the benefits did not outweigh the harm. The Inspector went on to note that even if the proposal passed the sequential and impact tests, it should still be refused. Based upon the contents of paragraph 29 of the decision letter, it would appear that the Secretary of State did not disagree with this conclusion.

4.7 Therefore, we consider that whatever may (or may not) change in relation to the sequential and impact tests, a key issue remains as to whether there is conflict with the development plan and whether there are any sufficient material considerations to outweigh this conflict. This is ultimately a matter for ECC to consider although we note the following:

- There has been no change in the development plan context for this application. The Core Strategy remains the key development plan document and the key policy for the Monkerton and Hill Barton area remains Policy CP19.
- There are differences between the content of the previous (dismissed) application and the current application. In particular, the leisure, Class A2 and Class A5 uses have been removed and the Class A3 floorspace has been reduced by half. There has also been a 26% reduction in the amount of gross floorspace proposed. However, the amount of gross Class A1 retail floorspace has remained broadly the same but the amount of A1 net sales floorspace has increased by circa 30%. Therefore, we consider that two issues are relevant here. First, whilst the size of the proposed development has reduced by one quarter, the gross Class A1 retail floorspace remains the same and the amount of net sales floorspace has increased. In our opinion, this scale of provision was a key reason why the previous Inspector concluded that the proposal could not be a local centre under the provisions of CP19. Second, it is also arguable that the removal of the A2, A5 and D1/2 uses makes the latest proposal less like a local centre in any event as the mixture and variety of uses has been reduced. The indicative masterplan submitted with the current application does offer some hope that the latest scheme is partially closer to having some characteristics of a local centre via the inclusion of a reasonably large foodstore although the proposed floorspace/goods condition does not guarantee such a scenario. We return to this issue later in this advice report.

4.8 Therefore, based upon the above analysis we consider that the content of the current proposal is also contrary to the content of Policy CP19 and we consider that its content is sufficiently similar to the previous (dismissed) appeal proposal to allow the conclusions of the Inspector and the Secretary of State to be a material consideration for ECC when determining this application.

4.9 ECC will now need to consider whether: (A) unlike the previous application there is support from any other part of the development plan; (B) whether the Core Strategy remains up-to-date; and (C) whether, should ECC consider the current proposal to be in conflict with the development plan as a whole, there are any material considerations which indicate otherwise.

4.10 In relation to these matters, we would note the following:

- The Core Strategy. The applicant's agent (Rocke Associates) has again questioned whether the Core Strategy is up to date. This is not contained within the PS but in an email sent to the Council on 15th April 2018. The general basis for this claim is that the Bus and Coach Station

redevelopment scheme promoted by the Crown Estate and Henderson at the time of the previous application has now been abandoned and it is claimed that the Council has been unable so far to meet the projected need for new comparison goods floorspace in Policy CP8. This is a claim which was made, in a similar way, at the public inquiry in 2015 and was dismissed by the Inspector, where he noted that the retail floorspace allocation for the city centre is expressed as a maximum amount. In any event, a considerable amount of new retail floorspace has been delivered since the evidence base study informing the Core Strategy was undertaken. In particular, the vacant former Debenhams store, now occupied by John Lewis was excluded from the capacity figures and the opening of the John Lewis store in that unit will have removed a significant amount of that identified net additional capacity⁴. In addition, the IKEA store at Newcourt is now open and this store will extend to 28,000sq m. Whilst we do not have a net sales area for the IKEA we consider it fair to assume that around half of the comparison goods floorspace indicated in policies CP1 and CP8 have now been provided by these two stores alone. Therefore, we do not share the concerns of the applicant in terms of the delivery of retail floorspace.

- Other material considerations including sustainable development. Following the conclusions of the Inspector and the Secretary of State that the previous scheme was contrary to the development plan as a whole, their analysis went on to consider whether there were material considerations which indicate that the proposal should be determined other than in accordance with the development plan. Key parts of this consideration were the sequential and impact tests and the economic, social and environmental dimensions of sustainable development. Our assessment of the sequential and impact tests are contained later in this chapter although in relation to sustainable development we would note the following:
 - Economic. The Secretary of State gave the economic benefits of the previous proposal significant weight. That scheme had the potential to generated around 400 full time equivalent jobs, and facilities for local businesses. The current proposal is assumed to generate around 520 FTE jobs. The Secretary of State also noted that the risks of the previous scheme to development on the BCS site carry moderate weight against the proposal, thus leading to a conclusion that there was moderate weight in favour of the previous proposals on economic grounds. As will be outlined later in this section, there is no current proposal at the BCS site and therefore ECC will need to consider whether these two changes affect the previous conclusion which gave limited positive weight to the proposal.
 - Social. The Secretary of state considered that the social benefits carried moderate weight in favour of the previous proposals. The content of the current proposal is different, as the A2, A5, D1 and D2 land uses have been removed, and ECC will need to consider whether it is reasonable to continue with the view that moderate positive weight remains. Our view

⁴ The DTZ retail study indicated that the net sales area of the Debenhams was 5,574sq m

is that the removal of the A2, A5, D1 and D2 uses will reduce the previously observed benefits but the inclusion of a reasonably large sized foodstore will increase such benefits.

- o Environmental. The Secretary of State concluded that the environmental harm of previous proposal attracted limited weight against the scheme. This was based upon its accessibility by public transport, the large car park and drive through restaurants encouraging use of the private car and the more accessible location of the BCS site. In our opinion, nothing has changed particularly in relation to these factors although, unlike the previous proposals, there is no current retail and leisure development proposal for the BCS site.

- 4.11 ECC will need to consider whether the reasoning of the Secretary of State in relation to the above factors needs to change as a consequence of the latest position with regards the BCS site and any other material changes in circumstances. Some of these issues are explored in relation to the sequential and impact tests below.

The Sequential Test

Introduction

- 4.12 We consider that the relevance of the sequential test to this proposal is the same as considered by the Inspector and Secretary of State in relation to the previous dismissed appeal. Paragraph 17 of the Secretary of State's decision letter noted:

"For the reasons set out at IR11.27-11.29, the Secretary of State agrees with the Inspector that the NPPF 24 test should apply, and that preference should be given to the Bus and Coach Station site as sequentially preferable if it is suitable and available (IR11.29)".

- 4.13 Paragraph 11.27 of the Inspector's report noted:

"Three points arose: whether the NPPF 24 test should apply and, if so, whether the sequentially preferable site would be either suitable or available. For the appeal scheme to fail the test, all three points would need to apply. NPPF 24 requires the test for all proposals which are not in an existing centre and are not in accordance with an up-to-date Local Plan. The appeal site is not in an existing centre and, as above, it should be concluded that the scheme would not comply with CP19 which is not out-of-date. In the SoS Decision for Plymouth the proposals were not the right size for the role of a new centre as required by the development plan; here they would be significantly over-sized".

- 4.14 In this instance, it remains the case that: (A) the appeal site is not in an existing centre, and (B) the scheme would not comply with the CP19 proposal for a local centre in the Monkerton and Hill Barton strategic allocation area. Therefore, in line with approach taken for the previous proposal, ECC must again consider whether there are any suitable and available sequentially preferable sites to accommodate the proposal, taking into account the need for flexibility.

4.15 During the consideration of the previous proposals, it was agreed that the only possible sequentially preferable site is the Bus and Coach Station site ('the BCS site') in Exeter city centre. The BCS site is allocated in the development plan for mixed use development including a substantial amount of comparison goods retail floorspace. We consider that the BCS site remains the only large-scale redevelopment site in Exeter city centre which can accommodate retail and leisure uses and we consider it important to examine whether there have been any material changes in circumstance since the previous public inquiry in December 2015, the Inspector's report (February 2016) and the Secretary of State's decision (June 2016) which could lead to a different conclusion in relation to the sequential test.

4.16 Before we do so, it is useful to set out the events which have occurred since the Secretary of State's decision and also to summarise the applicant's case as to why the BCS site is not suitable and available for the proposed development.

Events since June 2016

4.17 In relation to events since June 2016, the RA notes that:

- Outline planning permission for the BCS site redevelopment scheme was granted by ECC in July 2016. The decision notice issued by ECC includes controls over the amount floorspace which can be provided within the development. The controls are expressed as maximums and include the following:
 - Total gross internal area of 27,547sq m
 - Total gross internal area for Class A1 uses of 11,000sq m
 - Total gross internal area for Class A3 restaurants of 9,500sq m
 - Total gross internal area for Class A2, A4 and A5 uses of 750sq m
 - Total gross internal area for Class D2 uses of 6,800sq m
- The Crown Estate, the promoter of the BCS redevelopment, sought approval for the Reserved Matters relating to the commercial land use elements of the BCS outline permission in March 2017. The floorspace for the Class A and Class D land uses was as follows:
 - A1 – 6,188sq m
 - A3 – 9,531sq m
 - D2 cinema – 1,888sq m
 - A1/3/5 retail kiosks – 150sq m
- It is noteworthy that the amount of approved floorspace via the Reserved Matters for A3 uses is very similar to the maximum allowed by the outline permission whilst the amount of A1 floorspace (6,188sq m) is below the maximum allowable amount of 11,000sq m.

- In November 2017 it was announced that the Crown Estate had pulled out of the BCS redevelopment project citing market conditions.
- The implementation of the replacement bus station and new leisure centre have also been put on hold.

4.18 Some of these events are also referred to in the C&P letter submitted by the applicants, along with the abandonment by Morrisons of a proposal to develop a large supermarket on the Devon & Cornwall Constabulary headquarters site at Middlemoor.

The applicant's case for the current outline planning application

4.19 The RA, PS and C&P letter all provide analyses which are relevant to the applicant's case on the sequential test and the BCS site. The RA notes that:

- The BCS site is demonstrably smaller than the Moor Exchange application site;
- The BCS site fails to meet the need for a new centre in the locality of the application site;
- Accommodating the application proposals on the BCS site would fail to meet the aspirations of the Council for the comprehensive redevelopment of the BCS site for uses complementary to the city centre;
- The BCS site is not suitable for retail development such as proposed in the latest Moor Exchange scheme, including a foodstore which requires on-site, street level car parking and servicing.
- There is no current marketing of the BCS site.
- Any redevelopment scheme will involve the relocation of a significant number of businesses.
- To assemble a site of the size required to accommodate comprehensive redevelopment would take a considerable period of time.
- Redevelopment would necessitate stopping up proceedings that the Crown Estate faced strong opposition to.
- The viability of the BCS site for any major redevelopment is still to be demonstrated and is unlikely to be viable without significant public sector investment.

4.20 The PS reiterates a number of the points made by the RA and also notes that:

- The BCS site is of insufficient size to accommodate the development proposed.
- The proposed leisure centre and bus station uses on the BCS are incompatible with the content of the Moor Exchange proposals.

- It has been previously accepted by ECC that a large foodstore/supermarket cannot be accommodated on the BCS site.
- The BCS site is not available within a reasonable timescale and ECC has not disclosed its intentions following the withdrawal of the Crown Estate.
- There is a location specific need for the Moor Exchange application proposals.

4.21 Finally, the C&P letter notes that:

- The BCS scheme failed because it was not viable as retailer demand in the central area of Exeter would not support the development of more retail space. It can no longer be brought forward for retail development.
- There is no longer demand for a large food supermarket at Honiton Road due to a permanent change in the operation of the grocery sector

Assessment of suitability and availability

4.22 Given the content of the Inspector's report and the Secretary of State's decision on the previous Moor Exchange scheme, it will be important for ECC to be clear over whether there have been any changes in circumstance since the June 2016 decision.

- Development plan. The content of the development plan for Exeter – i.e. the Core Strategy and the remaining saved policies in the Exeter First Review Local Plan – remains the same now as it did at the time of the previous proposals in 2015/2016. Therefore, the development plan strategy regarding the BCS site, retail development and the proposal for a local centre in the Monkerton / Hill Barton area remains the same. The only other factor for ECC to consider in relation to the development plan is whether it remains up to date.
- Content of the Moor Exchange scheme. As set out in the previous section of this advice, the content of the current outline planning application is different, in relation to certain aspects, to the previous scheme:
 - The overall floorspace has reduced by one quarter
 - A number of land uses have been removed from the current proposal. These are the A2, A5, D1 and D2 uses.
 - The amount of gross A1 retail floorspace has remained broadly the same.
 - The amount of net sales A1 floorspace has grown by circa 30%.
 - The indicative masterplan submitted by the applicant for the current scheme shows two retail units intended to sell convenience goods. These are Unit B (Marks & Spencer

Foodhall) and Unit D (Lidl). This could be a potential change from the previous scheme as that included just one food unit of at least 1,000sq m gross in the mixed use block in the northern part of the site. However, as noted in the previous section, the applicant is not necessarily proposing to ensure that what is shown in the indicative masterplan is delivered as the proposed condition for this application requires between 1,000sq m and 2,789sq m for convenience goods retailing. As a consequence, the current scheme could deliver the same amount of convenience goods floorspace as the previous scheme.

- o Therefore, in general terms, if the previous larger scheme was considered to be capable of being accommodated on the BCS site (taking into account the need for flexibility), there is no reason to suggest that, in purely physical terms, the current (smaller) scheme could not.
- Physical state of the BCS site. Having visited the BCS site in April 2018, we consider that its physical state is very similar to that at 2015/2016. The bus station and surface level car park remain operational and the buildings along Paris Street and Sidwell Street remain. The only obvious difference is that some of the retail units along Paris Street are currently vacant.
- Redevelopment interest in the BCS site. This is obviously a significant change since 2015/2016. As set out in the applicants' supporting documentation, the Crown Estate have abandoned plans to redevelop the BCS site in the manner outlined in the outline planning permission and subsequent Reserved Matters approvals. The decision to abandon the approved plans was based upon the influence of 'market conditions' and the applicants' argue that this goes to the heart of whether the BCS site is actually suitable for large scale retail development.
- Market conditions. In our opinion, there has been a potential change in current circumstances, which is linked to the above. The ability to develop 'town centre' floorspace for comparison goods retailing remains challenging (as it did in 2015 / 2016) and the pressures facing national multiple retailers continues to be well documented in the press. A number of factors are contributing to this pressure, one of which is the competition posed by out of centre retail parks, such as Moor Exchange, although other factors include the general state of the UK economy and the continued competition posed by the internet. A large element of the BCS redevelopment proposal was always intended to be occupied by food and beverage (A3/4/5) operators and in recent times we have seen a cooling of the market for these uses. We consider that this is likely to have had a significant influence on the decision taken by the Crown Estate.
- The intentions of ECC with regards to the BCS site. ECC have a significant land-holding interest in the BCS site and were working with the Crown Estate to deliver the outline planning permission and the development plan strategy for the site. The applicants' supporting document correctly states that ECC has not made a formal public statement as to its intentions for the BCS site. To our knowledge, this is correct, although ECC officers have

informed us that work will be undertaken over the summer to determine the potential options for the redevelopment of the BCS site as a precursor to marketing of the site later in 2018.

- 4.23 It is also to be noted that a number of the arguments put forward by the applicants as to why the BCS site is not suitable and available were put forward for the 2015 public inquiry and generally dismissed by the Inspector and Secretary of State. In particular, these relate to: site size, the inability of the BCS site to meet the need for a local centre and the incompatibility of the Moor Exchange proposals with the bus station and leisure centre uses.
- 4.24 Based upon the foregoing analysis, there have been a number of factors which have remained constant since the previous decision and also some changes in circumstance. The key question is whether these changes have the potential to alter the previously reached conclusions over 'suitability' and 'availability'.
- 4.25 In relation to the issue of availability, we consider that there is no reason to divert from the previous conclusion that the BCS site is, in principle, available. It is allocated in the development plan for redevelopment and ECC has recent actively participated in a redevelopment proposal process which, as we have noted above, has now been abandoned by the Crown Estate. The fact that the Crown Estate proposal has now been abandoned may well be a material consideration in the wider set of issues associated with this application but we have been informed by ECC that there is an intent to market the BCS site later in the year. Therefore, the BCS site should be considered 'available'.
- 4.26 In relation to suitability, we can see no reason, in physical terms, why the conclusions of the Secretary of State should not still be relevant. The BCS site was judged to be capable of providing a suitable alternative to the previous Moor Exchange proposal and, market conditions aside, there is no reason why the latest scheme, which has a similar amount of gross Class A1 floorspace (and a reduced amount of other main town centre uses) would not be in a similar position. It is also allocated for a substantial amount of comparison goods retail floorspace in the development plan. Therefore, on the basis that physical 'in principle' suitability is not an issue, the wider issue of is whether the BCS site can viably accommodate retail uses is a key matter for consideration.
- 4.27 The evidence before ECC is that a recent proposal for retail and commercial leisure uses has been abandoned. That is based upon the scale and format of the BCS redevelopment scheme promoted at the time of the 2015 public inquiry. It may be possible that an alternative proposal is able to accommodate retail floorspace but, as noted above, ECC intend to embark upon a fresh marketing exercise for the BCS site later in the year and thus there is no certainty in this regard.
- 4.28 Therefore, it is less certain, at the current time, that the BCS site can be a suitable alternative for large scale retail development. This will ultimately be determined by the marketing exercise

planned for later this year and ECC will need to determine whether the content of the development plan strategy, along with the possibility that the BCS site could remain a suitable alternative, provides sufficient reason to continue to conclude that the Moor Exchange proposals fail the sequential test.

- 4.29 A further consideration is the content of the current Moor Exchange proposal and the inclusion of convenience goods floorspace. Paragraph 6.100 of the PS makes reference to a discussion which took place between the applicant/appellant, GVA and ECC in September 2015 regarding the possibility that a (Moor Exchange) scheme that incorporated a greater proportion of convenience goods floorspace could change the overall planning balance. We considered that this change in the planning balance was influenced by two factors. First, that the inclusion of a larger foodstore/supermarket within the scheme would have a better fit with the concept of a 'centre' in this location – i.e. centres are usually anchored by a foodstore/supermarket and such uses help to meet the day to day grocery needs of the local population – although it would not transform the proposal into the local centre required by the Core Strategy. Second, it would have had an influence on the outcome of the sequential test as ECC had recently concluded that the proposed supermarket at Middlemoor could not be accommodated on the BCS site.
- 4.30 Based upon the content of the indicative masterplan for the current proposal, there is a potential material change from the previous (refused) application. We consider that if the content of the current proposal was controlled to include a foodstore of 23,000sq ft in Unit D, in addition to other convenience goods floorpace within the scheme, and that it was a definite part of the scheme (i.e. delivered in the first phase), then, in line with the approach taken by ECC at Middlemoor, the latest proposal would pass the sequential test as the BCS site could not be considered a suitable alternative.
- 4.31 Clearly, the proposed controls over the Class A1 retail floorspace recently suggested by the applicants' agent do not require this to happen and we are therefore in the same situation in terms of convenience goods as the previous scheme. It is of course open to ECC to impose conditions which make unacceptable development proposals acceptable and we would recommend that such a condition could be useful in the following ways:
- To confirm that the proposal passes the sequential test in the event that ECC still considers the BCS site to be a potentially suitable alternative; and
 - Whilst it would not make the latest proposal a genuine 'local centre' it would bring the developer closer to that role via the provision of a large foodstore.

Conclusions

- 4.32 Overall, the focus for the sequential test remains on the BCS site and our re-assessment of its suitability and availability finds a number of factors have not materially changed since the 2015 public inquiry and the June 2016 Secretary of State decision. These include the development plan strategy towards the site and the physical condition of the site. However, there have been some material changes including the abandonment of the redevelopment scheme promoted by the Crown Estate which is related to changes in market conditions. In addition, as a consequence of the abandonment of the redevelopment scheme (based upon the outline planning permission) ECC will now assess its options with regards to the BCS site going forward and there is a possibility for a change in approach for the land use mix. As a consequence, we consider that it reasonable to remain of the view that the majority of the BCS site considered as part of the previous proposal remains available but there is now much less certainty over it being a suitable alternative for the Moor Exchange proposals.
- 4.33 Also relevant to the issue of suitability is the content of the current scheme. In overall terms, the current scheme is smaller than the scheme refused in 2016, with a similar amount of Class A1 retail floorspace. That change does not suggest that the current scheme cannot be physically accommodated on the BCS site. However, the applicant has contemplated that the current scheme could include a reasonably large foodstore, which is shown on the indicative illustrative masterplan. However, the provision of this floorspace is not guaranteed by the proposed floorspace control offered by the applicant. This suggests no real difference from the previous scheme. However, should a large format foodstore become a formal and guaranteed part of the current scheme, we consider that it could not be accommodated on the BCS site thus potentially removing any potential concern that the BCS site was still a suitable alternative.

Impact

- 4.34 We consider that, given the current outline planning application proposal is not providing the local centre envisaged by the Core Strategy, the impact test should apply. As set out in paragraph 26 of the NPPF, ECC will need to consider whether the proposed development is likely to have a significant adverse impact upon the health of, or investment within, nearby defined 'town centres'. This is the same approach as adopted by the Inspector and the Secretary of State at the recent public inquiry.
- 4.35 We consider each test in turn below.

Impact on town centre vitality and viability

- 4.36 In relation to the previous proposals, it was common ground between ECC and the appellant that the Moor Exchange proposal was unlikely to have a significant adverse impact upon the health of Exeter city centre. In particular, whilst GVA's assessment was that most of the turnover

of the previous proposal would be diverted from the city centre, that diversion represented a small proportion of the centre's annual turnover. However, given that this is a fresh application, we have re-visited the impact of the proposal on the health of nearby town centres, including a review of the applicant's own assessment.

- 4.37 The applicant's impact assessment is contained within Section 7 of the Mango RA and supported by economic tables in Appendix 11. It has been agreed with Mango that the basis for this latest impact assessment should be the quantitative assessment contained within the EWEED study. Appendix 11 of the RA provides extracts from the relevant sections of the EWEED quantitative analysis and uses the 2021 turnover levels as the basis for its assessment of financial impact. This is considered to be reasonable and generally in line with guidance contained with the NPPF and NPPG.
- 4.38 In order to provide the basis for the impact of the proposal, Table A in Appendix 11 of the RA estimates the turnover of the proposal. As a starting point, it should be noted that around half of retail units are assigned a specific retailer and the turnover of that unit calculated on that basis. The remaining units are assigned a generic sales density. This was the applicant's approach in relation to the previous application and was an approach that we also adopted in evidence to the 2015 public inquiry with the caveat that this was one of a number of different occupational scenarios for the proposed development. We make the same observations in relation to the applicants' latest analysis. This is reinforced by lack of proposed controls from the applicant, along with the one control which has been offered which demonstrates that two foodstores may not be provided in the development in the same way that Table A suggests.
- 4.39 A review of the contents of Table A of the applicant's analysis indicates that the turnover associated with the 'Boots' unit appears to be missing. This exclusion may therefore underestimate the turnover of the proposal.
- 4.40 We also note that the applicant's analysis has included the trading effects of a number of retail commitments in Exeter. For convenience goods floorspace, this includes the new ALDI store in Topsham and the replacement Lidl at Burnthouse Lane. In addition, a small amount of convenience goods floorspace at the city centre bus depot site has also been included. In relation to comparison goods floorspace, the applicants' analysis includes the soon to be opened IKEA store along with The Range store in the former B&Q unit on Alphington Road. We consider that this is a reasonable scope of the cumulative impact assessment. In relation to applicant's comparison goods analysis in Table C there may be an error as the '2021 with commitments' column appears to contain very similar turnover levels to the '2021' column despite the likelihood that the IKEA store will have a reasonably large effect on turnover levels in Exeter.
- 4.41 The applicant's analysis in relation to the convenience and comparison goods impacts of the proposal are set out in Tables B and C in Appendix 11 to the RA. In order to test whether they are

reasonable estimates of diversion we have undertaken our own assessment which has regard to the assessment provided by GVA to the 2015 public inquiry but re-visited to take into account the change in floorspace between the two proposals. Our analysis is contained at Appendix III

4.42 Our analysis considers two scenarios:

- The first scenario, contained in Tables 1a, 2a and 3b considers the mix of convenience and comparison goods floorspace as set out in the applicant's assessment – i.e. assuming that 2,789sq m net convenience goods floorspace is provided.
- The second, and alternative, scenario, contained in Tables 1b, 2b and 3b considers the lower level of convenience goods floorspace based upon the possibilities provided by the applicants' proposed floorspace/goods controls.

4.43 The analysis at Appendix III indicates the following:

- The solus impact upon the city centre's convenience goods sector will be between 2% and 3%, rising to 3% to 4% when the effects of commitments are taken into account.
- The solus impact upon the city centre's comparison goods sector will be between 2% and 3%, rising to 4% when the effects of commitments are taken into account.
- The impact on the comparison goods sector at St Thomas district centre is likely to be around 9%-10%. This is the largest impact in any of the district or local centres in the city and is due to the presence of a number of large retail units (Boots, TK Maxx etc) which are similar to the units proposed at Moor Exchange. We consider that there will also be an impact of between 3% and 5% on the convenience goods turnover of St Thomas district centre due to the presence of an Marks and Spencer Foodhall.

4.44 In relation to the city centre, the above levels of impact are similar to the ones forecast in relation to the previous Moor Exchange proposals and it was not ECC's case at the December 2015 public inquiry that this level of direct financial impact would lead to a significant adverse impact upon the health of the city centre. As a consequence, we do not consider there is evidence to suggest that a different conclusion should be reached in relation to this current outline planning application. Indeed, as advised by the NPPG, the positive and negative effects should be considered alongside other material considerations in the overall planning balance. In relation to the impact of the proposal on the health of the city centre, we consider that the following should be taken into account:

- The direct financial impact of the proposal on the city centre's convenience and comparison goods sectors does not suggest a likely significant adverse impact but should be considered as a minor adverse impact.

- The proposal will, to some extent, provide a rival shopping destination for the city centre, as it could provide an opportunity for an additional store for existing city centre retailers. Clearly, the proposal is not of a similar scale, on its own, to the city centre but could lead to a reduced need to visit the city centre for some convenience and comparison goods shopping trips. This should also be considered as a minor adverse impact associated with the proposal.
- Finally, we cannot rule out the potential for retailer relocations from the city centre to the Moor Exchange site. The number of relocations which could take place is, of course, limited by the scale of the Moor Exchange proposal, and the strength of the city centre as a trading destination may also dampen the possibility of closures. However, it is nevertheless a potential characteristic of the proposal which should be taken into account.

4.45 We note that the owner of the Exe Bridges Retail Park within the defined St Thomas district centre has objected to this application⁵. Amongst other things, the objection indicates that the current Moor Exchange proposal would destabilise the retail hierarchy in Exeter and that the amount of trade forecast to be diverted from the city centre and St Thomas district centre is too low. No specific claims are made in relation to the impact on the health of, or investment within, the district centre.

4.46 In our view, the likely impacts associated with the current Moor Exchange application are similar to the ones forecast in relation to the previous dismissed scheme in 2015/2016. ECC did not present a case at the December 2015 public inquiry to suggest that there is likely to be a significant adverse impact upon St Thomas district centre. Therefore, with no apparent material differences between the circumstances surrounding the district centre between the time of the two proposals, we do not consider that, in the interests of consistency in decision making, there is reason for ECC to change its approach in relation to St Thomas district centre. However, we do consider that the current proposal will, like the previous application, have an adverse impact upon the health of the district centre in the following ways:

- Direct loss of trade. We predict that the centre will lose around 9%-10% of its comparison goods annual turnover and 3%-5% of its convenience goods turnover. A clear contribution to this forecast is the overlap between the style of retail units (and goods sold) between Moor Exchange and Exe Bridges retail park element of the district centre. There is the possibility that the EWED household survey may have under-estimated parts of the district centre's turnover, and thus the actual proportionate impacts may be lower, although we still consider that the centre will experience a material loss of turnover.
- Potential loss of existing occupiers. Whilst the main part of the centre is unlikely to experience retailer relocations, Exe Bridges retail park is more susceptible. Boots, Next and Marks & Spencer have been identified with the latest Moor Exchange scheme and TK Maxx were also

⁵ See letter from Legal and General to ECC dated 3rd April 2018

identified with the previous scheme. All of these retailers are present at Exe Bridges and there are varying degrees of possibility that Moor Exchange could result in store closures in the short term, following the expiry leases and at lease breaks.

- Overall impact on the health of the district centre. The overall focus for the impact upon St Thomas district centre is on Exe Bridges retail park which forms part of the defined centre. We consider that the retail park will be the focus for the trade loss from the centre and also in relation to the possibility of store closures. Information on how this may affect the rest of the centre is not available as we do not know the propensity for linked trips between the two parts (which is similar to the situation experienced in 2015/2016) and therefore we do not have information to demonstrate that the scale of impact on Exe Bridge retail park is likely to have a significant adverse impact upon the district centre as a whole.

Impact on town centre investment

4.47 It is well known that a key part of ECC's case at the 2015 public inquiry in relation to the previous Moor Exchange scheme was a concern that it was likely to have a significant adverse impact upon the planned investment (by Crown Estate and others) at the BCS site. The Inspector agreed with the case put forward by ECC and the Crown Estate but the Secretary of State concluded that whilst Moor Exchange posed a moderate risk to planning investment at the BCS site, he did not consider the risk to be 'likely' (which is a key part of the policy test in paragraphs 26 and 27 of the NPPF).

4.48 As set out earlier in this section of our advice, the investment project which was being led by the Crown Estate has now been abandoned. The BCS site remains a very important part of the development plan strategy for the city centre, but the circumstances which were relevant in 2015/2016 and led the Inspector and Secretary of State to their individual conclusions have now changed. Whilst the potential for retail development on the BCS has not gone away completely, there is no current investment project. We have therefore re-visited the guidance on the 'impact on investment' test in the NPPG and note the following:

- Policy status. Nothing has changed in this regard and the BCS site remains a key part of the development plan strategy for the city centre.
- Progress. There is no tangible progress on the BCS site investment as the Crown Estate scheme has been cancelled and a new project has yet to be established.
- The extent to which an application is likely to undermine planned developments or investments based on the effects on current/ forecast turnovers, operator demand and investor confidence. Due to the lack of a current investment project on the BCS site, it is very difficult to suggest that a project will be undermined. Moreover, there is no available

information on operator demand and no suggestion that potential investors are concerned over the impact of the latest Moor Exchange proposal.

- 4.49 Based upon the above, there is no evidence / analysis to suggest that the current Moor Exchange proposal is likely to have a significant adverse impact upon investment on the BCS site. Indeed, even when there was a 'live' redevelopment scheme at the BCS site, the Secretary of State concluded that the prospect of a significant adverse impact was not likely. Given that the Crown Estate scheme, which was the focus for the previous assessment, has now been abandoned, we consider that it would be unreasonable to suggest that the risk of a likely significant adverse impact remains.
- 4.50 In relation to other defined 'town centres' in the local hierarchy, we do not consider that there is a likely to be a significant adverse impact on these district and local centres. The 'centre' which is likely to receive the most attention in relation to this part of the impact assessment is St Thomas district centre given that it incorporates the large retail units at Exe Bridges. There is the potential for an effect on Exe Bridge retail park although, as noted above, there is no available robust information or evidence to demonstrate that existing investment in the centre as a whole will be affected to a significant degree. It is nevertheless a potential negative aspect of the scheme to be taken into account in the overall planning balance.

5. Summary and Conclusions

Introduction

- 5.1 This advice report has been prepared by GVA for Exeter City Council in relation to the retail and town centre planning policy aspects of an outline planning application by CPG Development Projects Ltd and Growen Estates Ltd for a development comprising Class A retail floorspace and associated development on land north of Honiton Road and west of Fitzroy Road in Exeter. The submitted application form indicates that 12,634sq m of Class A1 and A3 retail floorspace will be provided, along with 408 car parking spaces.
- 5.2 This is the second application for large-scale retail development on this site in recent years. In December 2014 an application for outline planning permission was refused by ECC. That application included a larger amount of new floorspace and, in addition to Class A1 and A3 uses, included provision for Class A2, A5, D1 and D2 land uses. A subsequent appeal against that refusal was recovered and then dismissed by the Secretary of State in June 2016, following a public inquiry in December 2015.
- 5.3 This advice report considers the same key issues that were relevant for the previous application, namely the relationship of the proposed retail development to the development plan for the area (including the aspiration for a local centre within the Monkerton / Hill Barton area) and the sequential and impact tests.
- 5.4 It should be noted that this application is one of a number of other current / forthcoming applications for retail development on the eastern side of the Exeter urban area. For the avoidance of doubt, this advice report deals with the Moor Exchange application and separate advice will be provided by GVA to ECC in relation to the other proposals and cumulative impact issues.

Relationship to the Development Plan

- 5.5 A key issue in relation to the previous planning application proposals was the relationship of the Moor Exchange proposals to the development plan. The development plan for the application site remains the same and it is to be noted that the site lies within a wider area which includes provision for a new local centre.
- 5.6 Having considered the content of the current proposal, we continue to consider that the content of the current proposal is also contrary to the content of Policy CP19 and we consider that its content is sufficiently similar to the previous (dismissed) appeal proposal to allow the conclusions of the Inspector and the Secretary of State to be a material consideration for ECC when determining this application.

5.7 ECC will need to consider whether: (A) unlike the previous application there is support from any other part of the development plan for the proposed development; (B) whether the Core Strategy remains up-to-date; and (C) whether, should ECC consider the current proposal to be in conflict with the development plan as a whole, there are any material considerations which indicate otherwise.

5.8 In relation to these matters, we would note the following:

- The Core Strategy. Insofar as the retail floorspace strategy is concerned the plan remains up to date.
- Other material considerations including sustainable development. If ECC consider that the current proposal is also contrary to the development plan as a whole, there is a need to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the plan. Key parts of this consideration were the sequential and impact tests and the economic, social and environmental dimensions of sustainable development. Our assessment of the sequential and impact tests are contained below although in relation to sustainable development we would note the following:
 - Economic. The Secretary of State gave the economic benefits of the previous proposal significant weight. That scheme had the potential to generated around 400 full time equivalent jobs, and facilities for local businesses. The current proposal is assumed to generate around 520 FTE jobs. The Secretary of State also noted that the risks of the previous scheme to development on the BCS site carry moderate weight against the proposal, thus leading to a conclusion that there was moderate weight in favour of the previous proposals on economic grounds. As will be outlined later in this section, there is no current proposal at the BCS site and therefore ECC will need to consider whether these two changes affect the previous conclusion which limited positive weight on this issue to moderate.
 - Social. The Secretary of state considered that the social benefits carried moderate weight in favour of the previous proposals. The content of the current proposal is different, as the A2, A5, D1 and D2 land uses have been removed, and ECC will need to consider whether it is reasonable to continue with the view that moderate positive weight remains. Our view is that the removal of the A2, A5, D1 and D2 uses will reduce the previously observed benefits but the inclusion of a reasonably large sized foodstore will increase such benefits.
 - Environmental. The Secretary of State concluded that the environmental harm of previous proposal attracted limited weight against the scheme. This was based upon its accessibility by public transport, the large car park and drive through restaurants encouraging use of the private car and the more accessible location of the BCS site. In our opinion, nothing has changed particularly in relation to these factors although, unlike

the previous proposals, there is no current retail and leisure development proposal for the BCS site.

- 5.9 ECC will need to consider whether the reasoning of the Secretary of State in relation to the above factors needs to change as a consequence of the latest position with regards the BCS site and any other material changes in circumstances. Some of these issues are explored in relation to the sequential and impact tests below.

The Sequential Test

- 5.10 Given that the proposal is not, in our opinion, in conformity with the development plan, there is a need to consider whether the latest Moor Exchange proposal complies with the sequential test. We consider that the focus for the sequential test remains on the BCS site and our re-assessment of its suitability and availability finds a number of factors have not materially changed since the 2015 public inquiry and the June 2016 Secretary of State decision.
- 5.11 These include the development plan strategy towards the site and the physical condition of the site. However, there have been some material changes including the abandonment of the redevelopment scheme promoted by the Crown Estate which is related to changes in market conditions. In addition, as a consequence of the abandonment of the redevelopment scheme (based upon the outline planning permission) ECC will now assess its options with regards to the BCS site going forward and there is a possibility for a change in approach for the land use mix. As a consequence, we consider that it reasonable to remain of the view that the majority of the BCS site considered as part of the previous proposal remains available but there is now much less certainty over it being a suitable alternative for the Moor Exchange proposals.
- 5.12 Also relevant to the issue of suitability is the content of the current scheme. In overall terms, the current scheme is smaller than the scheme refused in 2016, with a similar amount of Class A1 retail floorspace. That change does not suggest that the current scheme cannot be physically accommodated on the BCS site. However, the applicant has contemplated that the current scheme could include a reasonably large foodstore, which is shown on the indicative illustrative masterplan. However, the provision of this floorspace is not guaranteed by the proposed floorspace control offered by the applicant. This suggests no real difference from the previous scheme. However, should a large format foodstore become a formal and guaranteed part of the current scheme, we consider that it could not be accommodated on the BCS site thus potentially removing any potential concern that the BCS site was still a suitable alternative.

Impact

- 5.13 Given the lack of conformity with the development plan, and given the location of the application site and the scale of the proposed retail floorspace, there is also a need to consider whether the proposal is likely to have a significant adverse impact upon the health of, or investment within, defined 'town centres' in the local area.

- 5.14 In relation to the 'impact on investment' test, there is no evidence / analysis to suggest that the current Moor Exchange proposal is likely to have a significant adverse impact upon investment on the BCS site. Indeed, even when there was a 'live' redevelopment scheme at the BCS site, the Secretary of State concluded that the prospect of a significant adverse impact was not likely. Given that the Crown Estate scheme, which was the focus for the previous assessment, has now been abandoned, we consider that it would be unreasonable to suggest that the risk of a likely significant adverse impact remains.
- 5.15 In relation to the 'impact of town centre health' test we have examined the applicant's financial impact analysis, undertaken our own analysis, and also considered the wider effect of the current Moor Exchange proposal.
- 5.16 In relation to the city centre, we consider that the likely impacts associated with the current proposal are similar to the ones forecast in relation to the previous proposals and it was not ECC's case at the December 2015 public inquiry that this level of direct financial impact would lead to a significant adverse impact upon the health of the city centre. As a consequence, we do not consider there is evidence to suggest that a different conclusion should be reached in relation to this current outline planning application. Indeed, as advised by the NPPG, the positive and negative effects should be considered alongside other material considerations in the overall planning balance. In relation to the impact of the proposal on the health of the city centre, we consider that the following should be taken into account:
- The direct financial impact of the proposal on the city centre's convenience and comparison goods sectors does not suggest a likely significant adverse impact but should be considered as a minor adverse impact.
 - The proposal will, to some extent, provide a rival shopping destination for the city centre, as it could provide an opportunity for an additional store for existing city centre retailers. Clearly, the proposal is not of a similar scale to the city centre but could lead to a reduced need to visit the city centre for some convenience and comparison goods shopping trips. This should also be considered as a minor adverse impact associated with the proposal.
 - Finally, we cannot rule out the potential for retailer relocations from the city centre to the Moor Exchange site. The number of relocations which could take place is, of course, limited by the scale of the Moor Exchange proposal, and the strength of the city centre as a trading destination may also dampen the possibility of closures. However, it is nevertheless a potential characteristic of the proposal which should be taken into account.
- 5.17 There is also a need to consider the impact on the health of St Thomas district centre and we consider that there are no apparent material differences between the circumstances surrounding the district centre between the time of the two Moor Exchange proposals. As a consequence, and in the interests of consistency in decision making, there is no reason for ECC to change its approach in relation to St Thomas district centre. However, we do consider that the current

proposal will, like the previous application, have an adverse impact upon the health of the district centre in the following ways:

- Direct loss of trade. We predict that the centre will lose around 9%-10% of its comparison goods annual turnover and 3%-5% of its convenience goods turnover. A clear contribution to this forecast is the overlap between the style of retail units (and goods sold) between Moor Exchange and Exe Bridges retail park element of the district centre. There is the possibility that the EWED household survey may have under-estimated parts of the district centre's turnover, and thus the actual proportionate impacts may be lower, although we still consider that the centre will experience a material loss of turnover.
- Potential loss of existing occupiers. Whilst the main part of the centre is unlikely to experience retailer relocations, Exe Bridges retail park is more susceptible. Boots, Next and Marks & Spencer have been identified with the latest Moor Exchange scheme and TK Maxx were also identified with the previous scheme. All of these retailers are present at Exe Bridges and there are varying degrees of possibility that Moor Exchange could result in store closures in the short term, following the expiry leases and at lease breaks.
- Overall impact on the health of the district centre. The overall focus for the impact upon St Thomas district centre is on Exe Bridges retail park which forms part of the defined centre. We consider that the retail park will be the focus for the trade loss from the centre and also in relation to the possibility of store closures. Information on how this may affect the rest of the centre is not available as we do not know the propensity for linked trips between the two parts (which is similar to the situation experienced in 2015/2016) and therefore we do not have information to demonstrate that the scale of impact on Exe Bridge retail park is likely to have a significant adverse impact upon the district centre as a whole.

Appendix I

June 2016 Secretary of State decision



Department for
Communities and
Local Government

Dr Thomas Rocke
Rocke Associates Limited
Number One
Queen Square Place
Bath
BA1 2LL

Our Ref: APP/Y11110/W/15/3005333

30 June 2016

Dear Dr Rocke

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY CPG DEVELOPMENT PROJECTS LTD
AT LAND NORTH OF HONITON ROAD AND WEST OF FITZROY ROAD,
EXETER EX1 3RS
APPLICATION REF: 14/1615/01**

1. I am directed by the Secretary of State for Communities and Local Government ('the Secretary of State') to say that consideration has been given to the report of the Inspector, David Nicholson RIBA IHBC, who held a public local inquiry on 1-4 and 7-8 December 2015 into your client's appeal against the decision of Exeter City Council ('the Council') to refuse planning permission for mixed use development to provide a District Centre comprising uses within some or all of Classes A1 (Retail) with associated Garden Centre, A2 (Financial and Professional Services), A3 (Restaurants and Cafés), A5 (Hot Food Takeaway), D1 (Non-residential institutions), D2 (Leisure), associated means of access, access road, car parking, infrastructure works, public realm and landscaping at land north of Honiton Road and west of Fitzroy Road, Exeter EX1 3RS, in accordance with planning application reference 14/1615/01, dated 27 June 2014.
2. On 31 March 2015 the appeal was recovered for the Secretary of State's determination in pursuance of section 79 and paragraph 3 of Schedule 6 to the Town and Country Planning Act 1990 because the appeal involves any main town centre use or uses where that use or uses comprise(s) over 9,000m² gross floorspace and which are proposed on a site in an edge-of-centre or out-of-centre location which is not in accordance with an up-to-date development plan document.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal should be dismissed and planning permission refused. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with

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Planning Casework
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his recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to the IR.

Procedural matters

4. Footnote 1 on page 1 of the Inspector's report states that the application form reads 'west' of Fitzroy Road, but that this was subsequently corrected. In fact the application form reads 'east' of Fitzroy Road, and this was subsequently corrected to 'west'.
5. On 1 June 2016, you wrote to the Secretary of State advising him that an undetermined application by British Land for a retail park development at a 3.15 hectare site currently occupied by a B&Q warehouse store (Exeter City Council ref: 15/1065/01), which was referred to in the proofs of evidence of Richard Short (paras 12.9-12.10) and Matt Morris (para. 6.35), had been withdrawn, and stated that it should therefore not be given any weight in the current decision. You also stated that since this withdrawal, interest by prospective anchor tenants, including Next, in the current appeal scheme has been consolidated, and discussions regarding heads of terms have progressed.
6. On 9 June 2016, a response was received from Exeter City Council enclosing a Certificate of Lawfulness, granted on 15 April 2016, for the proposed subdivision and use of the B&Q warehouse building for unrestricted Class A1 sales, and an email from the agent for the withdrawn B&Q planning application informing the Council that their clients will determine how to proceed with their scheme once the current appeal by CPG is determined, but that in the meantime they will submit a planning application for external alterations to initiate a fall-back position of subdividing the existing building into a number of unrestricted Class A1 non-food and drink retail units. A further letter from Next Group plc was attached which confirmed Next's interest in either the proposed retail park scheme or the proposed fall-back scheme on the B&Q site. The Council reiterated their view that should the appeal be allowed, strict controls must be placed on the retail units to ensure they will not harm centres in the catchment area of the appeal proposal, and that this does not change the position that the appeal should be dismissed.
7. On 10 June 2016 a further response was received from Steven Ardron of Next Group plc, stating that the Certificate of Lawfulness does not itself make the premises suitable for the requirements of Next, and that it has become clear to Next that the only credible and deliverable development within the vicinity of J29 is the appeal site. Terms have been agreed between Next and CPG (subject to consent) to occupy a unit with a footprint of circa 26,500 sq. ft on the appeal site.
8. The above representations were circulated to CEH on 16 June 2016, inviting their comments. A response was received on 21 June 2016, summarising the contents of the objection letter CEH had submitted in February 2016 to the application for the redevelopment of the B&Q store, in which they also doubted the viability of the fall-back position. They consider the interest now confirmed by Next confirms the degree of risk to the City Centre arising from the appeal proposal, in that it would be directly competing with the City Centre for the

same catchment area. They also note that only heads of terms are agreed between CPG and Next, and state that in their view, this non contractual interest does not add any material evidence to the CPG case. CEH continue to promote their outline application for the redevelopment of Exeter Bus & Coach Station site, with a view to confirming the formal planning permission within the next few weeks.

9. Copies of these letters are available from the address at the foot of the first page of this letter.

Policy considerations

10. 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 Exeter Core Strategy 2026 (adopted in February 2012) and the Exeter Local Plan First Review 2011 (adopted in March 2005). The Secretary of State considers that the development plan policies most relevant to this case are those set out at IR3.2-3.9.
11. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the NPPF), the associated Planning Guidance, and the other matters set out at IR3.1.

Emerging policy

12. In determining this application, the Secretary of State has also had regard to the emerging draft Development Delivery Development Plan Document. He considers that the relevant emerging policies include those dealing with sustainable development (DD1), employment allocations (DD3), provision of local services (DD4) and the Bus and Coach Station site (DD14).
13. Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The Secretary of State agrees with the comments of the Inspector on the first two elements at IR3.10. With regard to the third element, the Secretary of State considers that at this stage the relevant policies in the emerging DPD do not appear to contain obvious inconsistencies with the Framework, but are still subject to change. Overall he agrees with the Inspector that the relevant emerging policies carry limited weight. He has also taken into account the Monkerton and Hill Barton Masterplan Study IR3.11-3.12 and the documents set out in IR3.13.

Main issues

Development plan

14. The Secretary of State has considered the Inspector's analysis at IR11.2-11.23. He agrees with the Inspector's assessment of the appellant's argument as set out at IR11.20, that it is wrong to argue that CP19 is inconsistent with

the NPPF, or that it is out-of-date, on the grounds that whether development is acceptable is now only to be determined by reference to the sequential and impact tests. He agrees with the Inspector that while the NPPF may only set two tests, it expects LPs to fill the gaps, as it were, by meeting the criteria in NPPF 23, including a *network and hierarchy of centres*, and also agrees that this is what the LP does, and that the changes over the years do not mean that the existing policies are out of date (IR11.20). He further agrees that as long as the CS is not out-of-date, which it is not as it satisfies the criteria for plan making in NPPF 23, then it is proper, indeed essential, to weigh the scheme against policies CP8 and CP19 in assessing its compliance or otherwise with the development plan. He therefore agrees with the Inspector's conclusion at IR11.22 that CP19 is not inconsistent with the NPPF, and that neither it, nor the Core Strategy as a whole, are out of date (IR11.22). He further agrees that the proposals would go well beyond any reasonable interpretation of a *local centre*, and that the scheme would therefore be contrary to policy CP19 and, albeit less specifically, to CP8 (IR11.23).

15. The Secretary of State further agrees with the Inspector at IR11.58 that the scheme would be contrary to the development plan as a whole. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

Employment land

16. For the reasons set out in IR11.24-11.26, the Secretary of State agrees that use of the site other than for offices would not be in direct conflict with policy CP19, there would be no significant harm to the supply of employment land in Exeter and no significant conflict with the development plan (IR11.26).

Sequential test

17. For the reasons set out at IR11.27-11.29, the Secretary of State agrees with the Inspector that the NPPF 24 test should apply, and that preference should be given to the Bus and Coach Station site as sequentially preferable if it is suitable and available (IR11.29).
18. For the reasons set out at IR11.30-11.37, the Secretary of State agrees with the Inspector that given no more than reasonable flexibility, the Bus and Coach Station site would be suitable for the town centre uses proposed for the appeal site (IR11.37). The Secretary of State has taken into account the Inspector's reasoning at IR11.38-11.40. He agrees that there is no rationale for concluding that the site must be on the open market to any developer, and that the new retail floorspace would be marketed to traders who would occupy it regardless of who developed or owned the scheme (IR11.39). He further agrees that the requirement for a bus station and a leisure outlet on another part of the Bus and Coach Station site does not mean that the area earmarked for retail development is not available (IR40). Overall he considers that the Bus and Coach Station site is available.
19. Overall, the Secretary of State agrees with the Inspector's conclusion at IR11.41 that the Bus and Coach Station site is relevant, highly accessible and well connected to the city centre. He concludes that it is sequentially

preferable, suitable and available. The appeal proposals therefore fail the sequential test and would be contrary to paragraph 24 of the Framework. Paragraph 27 of the Framework indicates that applications should be refused in these circumstances.

Impact test

20. The Secretary of State has considered IR11.42-11.50, and considers that the appeal proposals pose a moderate risk to planned investment with an additional risk of delay. He considers that given its size, strategic importance, and prominence in the Core Strategy, if allowing the appeal resulted in the PHL scheme being prevented, there would be a significant adverse impact on planned public and private investment. The Secretary of State agrees with the Inspector's conclusion at IR11.51 that this risk would conflict with the aims of policy CP8 for the regeneration of the BCS site.
21. However, the Secretary of State does not consider that this risk is 'likely' to occur in terms of the test in paragraph 27 of the Framework. He agrees with the Inspector that any impacts on Cranbrook and Exe Bridges Retail Park are unlikely to meet this test (IR11.53). He therefore does not consider that the appeal should be dismissed on this basis.
22. For the reasons given in IR11.43 and 11.52, the Secretary of State agrees with the Inspector's conclusion at IR11.52 that the potential harm to the vitality and liability of the City Centre in general should be given little weight.

Other matters

23. For the reasons set out in IR11.53, and subject to proposed conditions dealing with highway works and reserved matters, the Secretary of State agrees that concerns over the height and location of built development, and any risk to highway safety should not be a bar to development.

Economic, social and environmental dimensions of sustainable development

24. The Secretary of State has taken into account the economic benefits of the scheme, which include the creation of around 400 full time equivalent jobs, and facilities for local businesses (IR11.55). He gives this significant weight. However, he considers that the risks to development on the Bus and Coach Station site carry moderate weight against the proposals. Overall he considers that there is moderate weight in favour of the proposals on economic grounds.
25. The Secretary of State agrees with the Inspector that the proposals would provide accessible local services (IR11.56), but considers that this social benefit carries moderate weight in favour of the proposals rather than being broadly neutral as the Inspector suggests.
26. The Secretary of State agrees with the Inspector that while the appeal site is generally well-located for public transport, it is in a less accessible location than the sequentially preferable BCS site. The appeal scheme would include a large new car park and 'drive-through' restaurants which would be likely to encourage rather than deter the use of the private car. The Secretary of State therefore considers that the environmental harm carries limited weight against

the scheme, rather than being broadly neutral as the Inspector concludes (IR11.56).

Planning conditions

27. The Secretary of State has given consideration to the Inspector's analysis at IR10.1-10.3. He has also taken into account the recommended conditions set out at the end of the IR and the reasons for them, and national policy in paragraph 206 of the Framework, along with the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for refusing this appeal.

Planning balance and conclusions

28. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. As outlined above at paragraph 15, the Secretary of State agrees with the Inspector that the scheme would be contrary to the development plan as a whole. He has therefore gone on to consider whether there are any material considerations sufficient to outweigh the conflict with the development plan. He has considered the benefits of the scheme in terms of job creation, accessible local services and environmental considerations, and has concluded that the economic and social benefits carry moderate weight in favour of the proposals, and the environmental harm carries limited weight against the proposals

29. However, he does not consider that the benefits of the scheme outweigh the conflict with the development plan and the environmental harm. The scheme also fails to satisfy the sequential test, and paragraph 27 of the Framework indicates that planning permission should be refused in those circumstances. Therefore, the Secretary of State finds that there are no material considerations which indicate that the proposal should be determined otherwise than in accordance with the development plan.

Formal Decision

30. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses the appeal and refuses planning permission for mixed use development to provide a District Centre comprising uses within some or all of Classes A1 (Retail) with associated Garden Centre, A2 (Financial and Professional Services), A3 (Restaurants and Cafés), A5 (Hot Food Takeaway), D1 (Non-residential institutions), D2 (Leisure), associated means of access, access road, car parking, infrastructure works, public realm and landscaping at land north of Honiton Road and west of Fitzroy Road, Exeter EX1 3RS, in accordance with planning application reference 14/1615/01, dated 27 June 2014.

Right to challenge the decision

31. 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.
32. A copy of this letter has been sent to Exeter City Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Maria Stasiak

Maria Stasiak

Authorised by the Secretary of State to sign in that behalf

Annex B

Correspondence submitted after the close of the inquiry

Correspondent	Date
Dr Thomas S. Roche, Roche Associates (CPG)	1 June 2016
Matt Diamond, Exeter City Council	9 June 2016
Steve Ardron, Next Group Plc	10 June 2016
Gary Forster, Montagu Evans LLP (CEH)	21 June 2016



Report to the Secretary of State for Communities and Local Government

by David Nicholson RIBA IHBC

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

Date: 29 February 2016

TOWN AND COUNTRY PLANNING ACT 1990

EXETER CITY COUNCIL

APPEAL MADE BY

CPG DEVELOPMENT PROJECTS LTD

Inquiry held on 1-4 and 7-8 December 2015

Land north of Honiton Road and west of Fitzroy Road, Exeter

Report APP/Y11110/W/15/3005333

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GLOSSARY

BCS	Bus and Coach Station site
CD	Core document
CS	Exeter Core Strategy
DAS	Design and Access Statement
CEH	The Crown Estate and TIAA Henderson Real Estate
CLG	Communities and Local Government
DCC	Devon County Council
dDDDPD	draft Development DPD
DL	Decision Letter
DPD	Development Plan Document
ECC	Exeter City Council
EIA	Environmental Impact Assessment
ERS	Exeter Retail Study 2008 by DTZ (CD20)
FTE	Full Time Equivalent
GEA	gross external area
GIA	gross internal area
HA	Highways Agency
IC	Examination in chief
IQ	Inspector's Questions
IR	Inspector's Report
LP	Exeter Local Plan
LPA	Local Planning Authority
MHB	Monkerton and Hill Barton
MHBMS	MHB Masterplan Study
NPPF	National Planning Policy Framework
PHL	Princesshay Leisure scheme
PPG	Planning Practice Guidance
PSA	Primary Shopping Area
RfR	Reason for Refusal
ReX	Re-examination
S106	Section 106 of the Town and Country Planning Act 1990
SoCG	Statement of Common Ground
SoS	Secretary of State for Communities and Local Government
SPG	Supplementary Planning Guidance
SPD	Supplementary Planning Document
TAA	Transport Assessment Addendum
XX	cross-examination

File Ref: APP/Y1110/W/15/3005333

Land north of Honiton Road and east¹ of Fitzroy Road, Exeter EX1 3RS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by CPG Development Projects Ltd against the decision of Exeter City Council.
- The application Ref 14/1615/01, dated 27 June 2014, was refused by notice dated 2 December 2014.
- The development proposed is mixed use development to provide a District Centre comprising uses within some or all of Classes A1 (Retail) with associated Garden Centre, A2 (Financial and Professional Services), A3 (Restaurants and Cafés), A5 (Hot Food Takeaway), D1 (Non-residential institutions), D2 (Leisure), associated means of access, access road, car parking, infrastructure works, public realm and landscaping.

Summary of Recommendation: The appeal should be dismissed

1. Procedural Matters

- 1.1 Determination of the appeal was recovered by the Secretary of State by way of a direction². The reason given for the direction was that the appeal involves proposals which involve any main town centre use or uses where that use or uses comprise(s) over 9,000m² gross floorspace and which are proposed on a site in an edge-of-centre or out-of-centre location which is not in accordance with an up-to-date development plan document.
- 1.2 As well as the appellant and Exeter City Council (ECC), Rule 6(6) status was granted to The Crown Estate and THRE (TIAA Henderson Real Estate) collectively referred to as CEH. THRE are owners of the Princesshay retail development and, with ECC, are bringing forward proposals to develop the Exeter bus and coach station (BCS) site.
- 1.3 The Inquiry sat for 6 days on 1-4 and 7-8 December 2015. I conducted an accompanied site visit on 7 December 2015 and carried out unaccompanied site visits before, during and after the Inquiry³. I sent out a Pre-Inquiry note on 20 October 2015.
- 1.4 The application to which the appeal relates was made in outline form except for access. All other matters (appearance, landscaping, layout and scale) were reserved. A Design and Access Statement (DAS) was also submitted.
- 1.5 A revised application⁴ was submitted after the appeal was lodged. This was accompanied by revised documents⁵ but was otherwise not before the Inquiry. However, it was agreed in the Statement of Common Ground (SoCG), that the Appeal could be considered on the basis of the parameters in the revised application, although the changes do not alter the Council's objections to the proposed development. CEH also commented on the SoCG⁶.

¹ The application form reads 'west' of Fitzroy Road but this has been corrected on the Council's notice to accord with the Location Plan

² made under Section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990

³ To virtually all the centres and stores shown on Inquiry Document (ID) LP9

⁴ Ref: 15/0704/01 – see Core Documents (CD) CD33, CD35, CD43 and CD50

⁵ Retail Impact Assessment, Transport Assessment and Planning Statement

⁶ ID CEH2

- 1.6 The application was refused by ECC for six reasons⁷. In short, these relate to: loss of employment land; conflict with the retail strategy in the development plan; failure to satisfy the sequential test; harm to vitality and viability; conflict with Core Strategy (CS) policies CP8 and CP19; and impact on the highway network. Following additional details and assessments, it was common ground that the concerns in the final reason had been resolved. Subject to conditions securing the widening of Honiton Road, provision of a Toucan Crossing and improvements to the Fitzroy Road junction, the Council withdrew its objections with regard to highway safety and offered no evidence in relation to this reason for refusal.
- 1.7 The appellant requested a screening opinion under Regulation 5 of the Environmental Impact Assessment (EIA) Regulations. The Council considered this and found that the proposals did not constitute EIA development requiring an Environmental Statement⁸.

2. The Site and Surroundings⁹

- 2.1 The appeal site extends to some 3.2 hectares (ha). Its southern boundary fronts onto the A3015 (Honiton Road) which is an important arterial route into Exeter City Centre from the east, and from the M5 and A30 in particular. The site and its context are more fully described in the DAS that accompanied the appeal application, and in the officer's report¹⁰ relating to the application.
- 2.2 The site lies on the southern boundary of the *Monkerton/Hill Barton* strategic allocation (see section 3 below). Residential development is well underway. The appeal site is separated from Fitzroy Road to the east by a budget hotel (Premier Inn) and an accompanying pub/restaurant (Brewers Fayre) which have been occupied. To the north-east of the site is The Met Office, one of the City's most prestigious employers. The northern boundary of the site has an existing hedgerow which separates it from land currently in agricultural use but allocated for future housing development. The south-western boundary of the site adjoins the Exeter to Exmouth Railway Line, beyond which is residential development.
- 2.3 Vehicular access to the site, and the hotel and restaurant, is from Fitzroy Road via a new T-junction that has been constructed between the A3015 and the Met Office and ends at the boundary with the appeal site. The Sowton Industrial Estate, to the south of the application site, is one of the two major suburban industrial/employment areas in Exeter and comprises a range of employment activities including manufacturing, offices, distribution, service industries, and bulky goods non-food retailing. Exeter has three existing district centres¹¹, four out-of-centre retail parks including Sowton¹², three commitments¹³, five out-of-centre supermarkets and ten local centres¹⁴.

⁷ See tab in buff folder, main file and CD30

⁸ See Questionnaire

⁹ A simple map and a list of centres and stores are shown at ID LP9.

¹⁰ CD28

¹¹ ID LP9: Topsham, Heavitree and St Thomas

¹² Rydon lane, Marsh Barton and Bishops Court

¹³ Morrisons, IKEA and Aldi

¹⁴ See Morris's appendices 4-17 and listed in CS appendix 6 which are in turn taken from the plans at A2.5 to A2.14 of the Local Plan First Review (CD5)

- 2.4 The GOAD plan¹⁵ identifies the commercial premises in the City Centre and the other centres in Exeter. Virtually all the well-known High Street fashion and leisure brands are represented in the City Centre. The Council acknowledged that it is thriving and robust¹⁶. The Primary Shopping Area (PSA) covers the Princesshay and Guildhall shopping centres as well as the High Street. Adjoining the top of the High Street lies the BCS and associated retail development. This is of some age. There are a number of car parks close to the BCS¹⁷.
- 2.5 Outside the city centre, the largest areas of shops are the four retail parks and the three district centres. The majority of these have permissions which are limited by conditions to restrict the goods which can be sold. The exception to this is at Exe Bridge Retail Park (adjoining St Thomas District Centre) where a largely unrestricted, mixed use permission includes branches of Next and TK Maxx with significant area of fashion floorspace¹⁸ and extends to over 9,000 sq m¹⁹ on a former Sainsbury's site. I walked from the city centre to the Exe Bridges Retail Park and saw that the distance, topography and road layout do not encourage linked trips between these shopping areas. The ten local centres vary in size but typically comprise a string or rough grouping of small units.
- 2.6 There are ten employment centres²⁰. These include the Met Office and adjacent Exeter Business Park 'within' (i.e. to the west of) the M5 and ECC's administrative boundary. An Enterprise Zone was recently announced in East Devon²¹ encompassing Exeter Science Park, Sky Park and Exeter Gateway. To date no employment land has been developed within the strategic allocation (see below). A new rail halt is proposed nearby on the Exeter to Exmouth Railway line²². A new town known as the Cranbrook New Community is being constructed in the adjoining district of East Devon.

3. Planning Policy

- 3.1 The T&CP Act 1990, the Planning and Compulsory Purchase Act 2004, the Localism Act 2011, the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG) are particularly relevant.
- 3.2 The development plan for the area comprises the Exeter Core Strategy 2026, adopted in February 2012 (CS), and the Exeter Local Plan First Review 2011, adopted March 2005 (LP). Both were therefore adopted before the NPPF was published although the draft NPPF was considered by the Inspector at the CS Examination. All relevant policies are listed in the SoCG²³. Particularly pertinent to this appeal are CS policies CP8 and CP19.

¹⁵ Morris's appendix 3 also shows the location of the BCS

¹⁶ Morris in XX

¹⁷ Morris in ReX: at Princesshay, behind John Lewis, and behind the Vue cinema

¹⁸ See Schedule of retail warehouse floorspace for all these centres on DI LP11

¹⁹ Ibid, total of occupiers under Exe Bridge Retail Park

²⁰ Also listed on ID LP9

²¹ ID A6 and ID A9: note on Employment Land Supply p8 para 4.1

²² CD8: Monkerton Hill Barton Masterplan p23

²³ Schedule 5.1

- 3.3 CS Policy CP8 reads: *Retail facilities will be provided so as to contribute to the delivery of sustainable growth and respond to the needs of local, including disadvantaged, communities.*
To maintain and enhance the vitality and viability of the City Centre, the provision of ... around 37,000 square metres of net retail comparison floorspace is proposed. This will include up to 30,000 square metres of comparison floorspace in the Bus and Coach Station area, to be developed as part of a mixed-use scheme by around 2016.
Retail development outside the City Centre should be located in the district or local centres. Out of centre sites will only be considered if there are no suitable sites in, or on the edge of, the City Centre, district centres or local centres and the proposal would cause no significant overall impact on the existing centres and would bring net benefits. In all cases proposals must be accessible by public transport and other sustainable modes, and be appropriate in scale and character to the role and function of the proposed location.
Local retail facilities will be required as part of the community provision at the Monkerton/Hill Barton and Newcourt urban extensions.
- 3.4 Supporting paragraph 7.8 refers to the challenge from out-of-centre shopping, and the need to match the restraint of dispersal with investment in the City Centre, while paragraph 7.11 recognises the need for some local retail facilities to serve the new development areas on the eastern edge of the city.
- 3.5 CS policy CP19 identifies 3 strategic allocations. Of these, *The Monkerton/Hill Barton area*²⁴ strategic allocation includes the appeal site. This area: *is proposed for around 2500 dwellings, around 5 hectares of employment land and all associated infrastructure including:*
- *local centre to provide shops, doctors surgery and community facilities ... and other matters of limited relevance to this appeal.*
- 3.6 The introduction to CS section 12: *Strategic Allocations* reads: *Delivery of the Monkerton/Hill Barton, ... areas (see Policies CP1-CP3) as sustainable urban extensions is central to the achievement of the spatial strategy. It is proposed that, together, they will deliver around 21 hectares of employment land and around 6,500 dwellings (including permissions). These areas are, therefore, identified as strategic allocations (see Plans 1-3). Policies CP1-CP3 cover the overall provision of retail floorspace, employment land and dwellings. It is common ground that the strategic allocation is for mixed use development, including retail, but does not make specific land use designations and so the appeal site is not specifically allocated for employment or any other use.*
- 3.7 CS paragraphs 12.14-18, under the heading "Monkerton/Hill Barton", continue: *... The residential development should be integrated closely with adjoining housing and should be within convenient walking distance of a primary school and community centre, and a local centre comprising a doctors surgery/polyclinic, local shops, and other appropriate facilities to meet skills, special educational and community needs.*
- 3.8 The glossary describes *district* and *local centres* as: *A group of shops normally containing at least one supermarket or superstore and a range of non-retail services and public facilities and a range of small shops of a local nature serving*

²⁴ identified on plan 2, page 101

a small catchment area respectively. Three *district* and ten *local centres* are listed in Appendix 6 to the CS.

- 3.9 The 2005 LP proposed retail development at four sites including the BCS area (Policy S1) which also aimed to protect the vitality and viability of the existing shopping centres and set out a sequential test for new development. Policy KP3 proposes comprehensive redevelopment of the Bus Station/Sidwell Street/Paris Street. In the LP, the BCS site was identified as: *The area defined by Sidwell Street, Cheeke Street, London Inn Square Paris Street, the Bus and Coach Station and Summerland Street is a highly sustainable location which, once Princeshay [sic] is fully trading, warrants the preparation of a master plan to achieve a high quality mixed use scheme. A comprehensive approach to its redevelopment is essential*²⁵.
- 3.10 The emerging draft Development Delivery Development Plan Document (dDDDPD) was published for consultation purposes in December 2013. It was common ground that part of the appeal site was shown on the Proposals Map with a key notation District and Local Centres that also applied to existing district and local centres. A revised dDDDPD was published, again for consultation, in July 2015. That allocated the whole of the appeal site for employment use. Given the early stage in its progress towards adoption, the objections that have been made to its content, not least by the appellants regarding the appeal site, and the provisions of paragraph 216 to the NPPF (NPPF 216), it was common ground that it should carry limited weight at the time of the Inquiry.
- 3.11 The Monkerton and Hill Barton (MHB) Masterplan Study (MHBMS)²⁶ forms part of the CS evidence base. It has not been adopted as either a DPD or supplementary planning document (SPD). However, the document itself records that it has been approved for development management purposes and it is intended that the Masterplan be adopted by the City Council as a SPD in due course. In accordance with the CS, the preparation of which it informed, development at the Monkerton and Hill Barton strategic allocation *should have general regard to the guidance contained within the MHBMS*²⁷. It was common ground²⁸ that the MHBMS contemplates two centres of different scales in addition to facilities for the business community on the appeal site.
- 3.12 Proposals for centres in the MHBMS area followed consideration of a range of options from which emerged: *'... a conceptual model for the development of the area to create a cohesive urban area which responds to its natural and cultural setting. It comprises: ... Creation of a new 'district' centre focused in the northwestern part of the area; Development of a more local centre focused at Hill Barton; ...'*²⁹. Later stages of the MHBMS set out framework plans for the identified centres as follows:
- Pilton Centre (the north-western part): *is the main mixed use centre including retail, ... builds upon ... Sainsbury's ... will be a diverse and active hub for the new and existing community to the east of Exeter*

²⁵ CD5 para 14.12

²⁶ CD8

²⁷ CD3: CS para. 12.18

²⁸ SoCG para 5.10

²⁹ CD8 p36

- Hill Barton Centre (to the south-west): *is a local centre focused around the proposed railway station and includes ... a local shop*³⁰.
The appeal site, together with the adjacent site now developed for the purposes of a Premier Inn hotel and Brewers Fayre restaurant, comprises the Sowton character area for which the MHBMS anticipates *a high quality employment area, building on the established identity of Exeter Business Park. Some business community facilities such as a crèche, small gym and local shop ...*³¹.

3.13 The Bus and Coach Station Development Principles³² published by the Council in June 2012 relate to the provisions of LP Policy KP3 and Policy CP8 of the CS. They provide for a retail and leisure led mixed use development. The latest retail study for the City is the Exeter Retail Study (ERS) by DTZ in 2008³³. Policy on the sequential test has been interpreted by the Supreme Court in *Tesco v Dundee*³⁴. It was also considered in some detail by the SoS in the *Rushden Lakes Decision*³⁵.

4. Planning History³⁶

- 4.1 Outline planning permission³⁷ was granted for mixed use development on the appeal site subject to conditions including: restricting the total amount of class A floorspace to 1,600 sq m, that no individual class A unit size should exceed 750 sq m, and that there should be no drive-through element. The reason for each of these was to protect the vitality and viability of existing retail centres. The first phase of the permission, comprising a hotel and pub/restaurant adjoining the appeal site, has been completed³⁸.
- 4.2 Amongst other things, permission for a mixed use residential scheme within the MHB strategic allocation³⁹ included 750 dwellings and a local centre. Condition 4 requires the reserved matters applications to adhere to approved framework plans.
- 4.3 Permission has recently been granted for change of use from office to two A3 units at Broadwalk House, adjacent to the Roman Wall, and at the Guildhall Shopping Centre.
- 4.4 The Princesshay Leisure scheme (PHL) outline planning application was submitted in July 2015 and an updated form and formal amendments were submitted on 12 November 2015⁴⁰. This increased the proposed total floorspace to 25,980 sq m with between 7,294 or 8,750 sq m, up to a

³⁰ Ibid p50

³¹ Ibid p49

³² CD9

³³ CD20

³⁴ CD36: *Tesco Stores Ltd v Dundee City Council [2012] UKSC 13*. At paragraph 19 this reiterates the memorable quote from *Cranage Parish Council & Ors v First Secretary of State & Ors [2004] EWHC 2949 (Admin)* (9 December 2004) that *The courts must be wary of an approach whereby decision makers can live in the planning world of Humpty Dumpty, making a particular planning policy mean whatever the decision maker decides that it should mean.*

³⁵ CD10, particularly IR 8.36-8.39 and DL14 which accepted the analysis in IR 8.37-8.39

³⁶ See SoCG s4

³⁷ CD27: Ref.11/1619/01 dated 19 June 2012 for mixed use development comprising B1, B8, D1, C1, A1, A3, A4 and A5 uses

³⁸ SoCG section 4 and CD27 condition 17

³⁹ CD45: ref. 12/0472/01 dated 23 March 2012

⁴⁰ CD60 and CD66

suggested maximum of 11,000 sq m, of A1 retail floorspace. Some 3,780 sq m of class A1, A2 and A3 floorspace would be demolished. A potential occupier layout plan was also submitted⁴¹. The application was due to be determined during the Inquiry but the decision was deferred. The parties will need to advise the SoS direct as to its outcome. In arguing that the BCS could accommodate the appeal proposals, CEH produced overlaid plans⁴².

5. The Appeals Proposals

- 5.1 The proportion of uses described on the application, within Classes A1, A2, A3, A5, D1 and D2, would be as set out in the development parameters in the SoCG⁴³. These, and other parameters, could be controlled by conditions. The proposed access would extend the spur road between the A3015 and the Met Office. Illustrative drawings and various supporting documents are also listed in the SoCG. A Retail SoCG was also agreed. CEH submitted a note commenting on some aspects of the SoCGs.
- 5.2 In short, the maximum gross external area (GEA) of floorspace could be roughly 17,000 sq m of which the Class A1 gross internal area (GIA) of floor space would be limited to approximately 11,100 sq m, with one unit potentially up to about 5,800 sq m in size and other units of 650 sq m⁴⁴. It was acknowledged that the appeal site is out-of-centre with regard to the tests in the NPPF⁴⁵. An indicative Lettings Masterplan, with potential occupiers, was also submitted⁴⁶. The suggested conditions would also limit the extent of drive-through restaurants.
- 5.3 It was common ground with the Council that the appellant's Study Area Plan⁴⁷ should be used as a basis for determining existing shopping patterns but that this did not represent the full catchment area. The estimated comparison goods turnover from the proposals was put at £34.36m⁴⁸. The extent of trade draw and trade diversion, the existing provision trade draw from beyond the Study Area and the Impact of investment with regard to the BCS site were not agreed.
- 5.4 At the Inquiry the appellant sought to resile from the description of the proposals as a District Centre arguing that this is not defined in the NPPF and that it was therefore irrelevant.

6. The Case for Exeter City Council

The gist of its case was as follows:

- 6.1 The Inspector identified 6 main issues at the outset of the Inquiry, regarding: the development plan, employment land, the sequential test and the BCS site,

⁴¹ Chase Ax. GFC9. NB that the appellant is in discussion with Next at Home, whose format would fit the revised layout plan at GFC8

⁴² See Forster appendix 8

⁴³ Schedule 2.1 Plans and Drawings

⁴⁴ See Appellant's draft suggested conditions - nos. 18 to 25. Also the DAS: Design Proposal – Use & Amount, Schedule of Approximate GIA and GEA Areas Rev E; and Design Proposal – Layout

⁴⁵ Hughes in XX by the LPA

⁴⁶ drawing 13-170 SK-32 revision A

⁴⁷ Hughes Appendix 9 and Morris Appendix 1, (Ref AH/NR/130088/02 - Prepared to support the duplicate application)

⁴⁸ Hughes Appendix 11, Table 5, and Retail SoCG paragraph 4

impact on future investment and the vitality and viability of the city centre, sustainability, and highway safety and residential amenity. Of these, the Council is satisfied that, subject to the agreed conditions, there would be no unacceptable effects on highway safety or the amenities of future residents of adjoining land.

Development plan

- 6.2 This provides the starting point for considering the appeal proposals. Although a separate issue, the matter of whether relevant policies are up-to-date can be considered under the first main issue. It was accepted⁴⁹ that CS Policy CP19 is the most directly relevant policy. The site lies within the MHB area⁵⁰ where the CS proposes dwellings, employment land and infrastructure. As *Tesco v Dundee* reminds us: *policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context*⁵¹. The caution that *planning authorities ... cannot make the development plan mean whatever they would like it to mean*⁵² applies equally to developers. It is also important to interpret a policy having regard to the purpose it is intended to achieve⁵³ without *linguistic dissection*⁵⁴ or *forensic archaeology*⁵⁵.
- 6.3 Here, policy CP19 expects the associated infrastructure for MHB to include: *local centre to provide shops, doctors surgery and community facilities*. Guidance in CS paragraph 12.14 is that: *The residential development should be ... within convenient walking distance of ... a local centre comprising a doctors surgery/polyclinic, local shops, and other appropriate facilities to meet skills, special educational and community needs*. The development of this area should have general regard to guidance contained within the MHBMS⁵⁶. The description of local centre in the CS Glossary of terms is *a range of small shops of a local nature serving a small catchment area*, while that for a district centre is *a group of shops normally containing at least one supermarket or superstore and a range of non-retail services and public facilities*. Finally, policy CP8 expects that: *Local retail facilities will be required as part of the community provision at the Monkerton/Hill Barton and Newcourt urban extensions* and paragraph 7.11 anticipates: *a need for some local retail facilities to serve the new development areas on the eastern edge of the city and to the east ... of the city*.
- 6.4 Read as a whole, in its proper context and with regard to the purpose of CP19, it is clear that *local centre* is not some open ended retail development but a limited number of small shops serving a small catchment for local needs. *Associated infrastructure* for the strategic allocation means supporting facilities not larger retail growth for which the CS has the description *district centre*.

⁴⁹ (albeit somewhat reluctantly) by Roche in XX by ECC

⁵⁰ CS Key Diagram and on plan 2, page 101

⁵¹ *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759, 780 per Lord Hoffmann, Para 18

⁵² *Ibid* para 19

⁵³ CD41: *R (Chalfont St Peter Parish Council) v Chiltern District Council* at para 135 (per Moore-Bick LJ); at para 120 (per Beatson LJ)

⁵⁴ *Ibid* at para 115 (per Beatson LJ)

⁵⁵ CD42: *Phides Estates (Overseas) v SSCLG* at para 56 (per Lindblom J, referring to dicta in *R (TW Logistics) v Tendring District Council*)

⁵⁶ CS para 12.18

Neither CP19 nor its supporting text uses this term. The reference to the MHMBS adds nothing to this.

- 6.5 It is true that CP19 goes beyond the glossary description to add *a doctors surgery/polyclinic and other appropriate facilities* but not in terms of retail provision. It wanted a *local centre* with a few other facilities. Given the Sainsbury's superstore on Pinhoe Road⁵⁷, this is not surprising. The argument that the word *including* in CP19 makes it a minimum provision which does not preclude other development is at odds with the interpretation by the Courts. It simply means that if other infrastructure were needed to support the allocation then it could be provided. It cannot be sensibly interpreted to mean unlimited retail provision subject only to the limitations of the impact test. The reference in the CS Inspector's Report to a *flexible application* does not alter the requirement for a *local centre* with appropriate community facilities into a *district centre*.
- 6.6 Case law⁵⁸ has found that: *the term "local centre" is undoubtedly, in the absence of any contextual limitations, of no very precise meaning ... connotes a development comprising a shop or shops and possibly other community uses in which the shops sell primarily convenience goods and have a relatively limited catchment area.* In CP19, the context includes the glossary reference to a *small catchment area* and the existing local centres⁵⁹ which are of modest extent with modest sized retail units. The CS also lists the district centres and, with the CS Key Diagram, shows that these are larger and serve wider functions suggesting that the catchment area of a local centre is smaller than that for a district centre. Policy CP19 therefore requires the retail development within the strategic allocation to function as a *local centre* serving the day to day needs of residents and other new development areas on the eastern side of the city.
- 6.7 The size of development proposed⁶⁰ cannot be a *local centre*. Its predominantly comparison turnover⁶¹ and extensive catchment area⁶² are out of all proportion to the three higher tier district centres in the CS area with the largest⁶³ being less than a quarter of that size. While it is arithmetically correct to say that two thirds of the comparison turnover would come from the three zones 1A, 1B and 1C⁶⁴, these zones effectively embrace the whole of the built up area of Exeter⁶⁵. To regard that extensive area as the *local catchment* of a *local centre* is to rob the words of all real meaning.

⁵⁷ within the defined extent of the strategic allocation – see Plan 2 of the CS

⁵⁸ Morris appendix 25, p333: *Braintree v Secretary of State for the Environment and Others Queen's Bench Division (George Bartlett Q.C., sitting as a Deputy High Court Judge): September 29, 1995*

⁵⁹ listed in CS appendix 6 and illustrated on the plans in Morris appendices 8 to 17 which are in turn taken from the plans at A2.5 to A2.14 of the Local Plan First Review (CD5)

⁶⁰ See Appellant's draft conditions: Maximum Floorspace 16,933 sq m GEA of which 11,102 sq m class A1 retail

⁶¹ £34.36m comparison out of £44m – see Retail SoCG, Table 5

⁶² 80% of its comparison goods turnover comes from beyond the study area zone (Zone 1A) where it is located - Comparison turnover from Zone 1A as per Hughes appendix 11, Table 17 (£6.6m) is 19.24% of total comparison turnover of £34.36, therefore turnover from other Zones and inflow is £27.75 (80.76%)

⁶³ St Thomas (including the Exe Bridges Retail Park) £8.54m - Hughes POE, Table at para 5.130, and Retail SoCG Table 5

⁶⁴ By reference to Hughes appendix 11, Table 17

⁶⁵ some 130,000 people and some 56% of the study area's 2020 population - see the study area map at Morris appendix 1 and the population figures at Table 1 of the Retail SoCG

- 6.8 Next it was argued that the proposal could be a local centre under CP19 and also fulfil a wider role for a wider catchment. This was rejected in the 1995 *Braintree* Judgment and, while the policy context was different, the judgment did not turn on policy or guidance but makes the point that a local centre is different to a district or a city centre, and that larger centres do not become local centres simply because some shoppers use them to meet local needs. Otherwise the city centre would also be a local centre, as it provides for the day to day shopping needs of those living there, and the hierarchy in the CS would be meaningless. The application is for a district centre and so cannot be for the local centre sought by CP19.
- 6.9 Reference to other Decisions does not show that CP19 should not limit the amount of floorspace. The outline permission⁶⁶ which included the appeal site limited the total Class A floor space to 1,600 sq m, with no more than 900 sq m of Class A1, while condition 18 set a maximum unit size of 750 sq m, and condition 19 precluded drive-through elements. This was seen as an alternative to the Hill Barton local centre in the MHMBS not an addition⁶⁷. The scale exceeded what was needed but not by so much that it was possible to *identify such harm to the established retail hierarchy which would justify refusal*⁶⁸. This does not suggest that CP19 allows large scale retail development but shows that departure from policy may be justified if there would be no harm. That is not the case here.
- 6.10 Outline planning permission for a mixed use scheme, including a *local centre*, was granted on land to the north and north-west of the appeal site⁶⁹. Conditions limited the class A units to 750 sq m and provided an effective limit on the overall retail size through a tie to the Masterplan⁷⁰ to ensure that it would not be more than a local centre. Neither the Council nor the developer expects the local centre to come forward if the already approved retail units at the appeal site proceed⁷¹. Rather, the two permissions were seen as alternative means of meeting the retail requirements of CP19⁷² not as accepting that larger retail development would be appropriate or acceptable. Even if the permissions were regarded as cumulative, they would together provide no more than local centre facilities. The appeal scheme would be of quite a different order of magnitude to these and even to a flexible approach to CP19.
- 6.11 If the appeal is allowed, neither of these local centres would be likely to proceed. The scheme would also frustrate the provision of employment land. The conclusion must be that the proposals would not accord with CP19 as they would not be a *local centre* and because they would prevent the required local centre and the provision of employment land.
- 6.12 Turning to CS policy CP8, *local retail facilities* must be a cross-reference to *local centre* in CP19. With regard to the opening requirement to respond to the *needs of local ... communities* and later direction that *proposals must be ...*

⁶⁶ CD27

⁶⁷ CD28: officer report, foot of p28

⁶⁸ Ibid p29

⁶⁹ CD45 - November 2013

⁷⁰ CD46

⁷¹ Ibid including the resulting s106 agreement

⁷² Morris in RX: *The committee report and s.106 contemplate that there will only be one local centre within the strategic allocation*

appropriate in scale and character to the role and function of the proposed location reinforce the above conclusions under CP19. Concerning the BCS site, the capacity figures are not relied upon by the Council and no issue was taken⁷³ with the objective of CP8 to enhance the vitality and viability of the city centre being achieved by promoting the development of the BCS site. Overall, the proposals would not accord with CP8 or with the development plan as a whole.

6.13 The appellant also argued that the NPPF has rendered out-of-date any policy which seeks to limit retail development, by reference to anything but the sequential and impact tests, and that the use of the term *local centre* in policies CP19 and CP8 makes these inconsistent with the NPPF. It was accepted that it is wholly legitimate, and not inconsistent, for a development plan to set out a retail hierarchy which differentiates between centres⁷⁴. However, the appellant then claimed⁷⁵ that in a development management context such a hierarchy does not need to be reinforced and is not relevant where the plan is not up-to-date as the NPPF does not distinguish between centres. On this *Catch 22* approach, a policy which set out a hierarchy could never be up-to-date and so could never be used when making decisions.

6.14 Alternatively, it was argued⁷⁶ that retail should be limited by reference to need. On this basis, this issue would not be whether policies are up-to-date but whether the scale of development would be commensurate with the needs of that *local centre*. Once it is agreed that acceptable scale can be assessed other than just by the impact test, the debate over *Rushden Lakes* becomes academic. The reasons for this are:

- *Rushden Lakes* was an appeal Decision not a policy statement. This turns on its own facts as presented. The SoS has other mechanisms for clarifying policy. At most, the Decision can illustrate the application of policy;
- The retail issue was dealt with solely by reference to the NPPF as the SoS had already concluded that the development plan was not up-to-date. While he correctly found that the NPPF does not include a test of hierarchy or scale (other than as part of flexibility), he made no finding on whether retail hierarchies in development plans are consistent with the NPPF, only that the one before him was not up-to-date⁷⁷. His comments on NPPF 23 must be seen in that context. *Rushden Lakes* is simply a decision that turns on its own particular facts, which are rather different from those in the present appeal.

6.15 There is no sound basis for regarding CP19 or CP8 as out-of-date because they refer to a *local centre* or because (in the case of CP8) it expects development to be of an *appropriate scale* to the *role and function* of the *proposed location*. Nor is CP19 out-of-date because the evidence base dates from 2008. Nothing turns on the capacity estimates. The Council's objection is not that the scheme would take up capacity ear-marked for the BCS site, but that the proposals would be of an inappropriate scale for the function required in the strategic allocation and

⁷³ By Hughes or Chase

⁷⁴ Hughes in XX by ECC

⁷⁵ Ibid and in XX by CEH

⁷⁶ Roche in XX by ECC

⁷⁷ CD10, paras: 8.9, 8.11, 8.16-17, 8.19, 8.21-22, 8.24-27, 8.29-30, 8.34, 8.36-37 and 8.39.

would fail both the sequential and impact tests. So far as it is relevant, CP8 is up-to-date.

- 6.16 It was also argued⁷⁸ that the CS envisages retail provision meeting wider needs, that as CP19 limits retail to a *local centre* it is out-of-date, and that local businesses support greater provision. This argument, in trying to establish material considerations to *indicate otherwise*, is not supported by the facts. While there is a wider residential population in Exeter, nothing in the CS suggests that there is a retail deficiency. Cranbrook new town will have its own town centre. The expenditure by the residential population within the strategic allocation, particularly on comparison goods, would represent less than 8% of the comparison turnover of the proposal⁷⁹. This significant imbalance suggests the retail provision would be over-sized.
- 6.17 The evidence does not support the notion that the shopping needs of the local workforce are unmet as, for both convenience and comparison, expenditure associated with work is a very small part of the total⁸⁰. It is common sense that comparison shopping (which would account for most of the proposal's retail turnover) is not a significant activity for people at work, going to work or immediately after work. There is already a reasonable spread of shops on the eastern side of Exeter, both convenience provision and class A3/A4/A5 facilities for lunchtime refreshments⁸¹. The proposals would take most of its comparison turnover from retail outlets in the city centre⁸². The reality is that not much comparison shopping takes place during the working day compared with other times such as weekends. Rather than meeting the needs of those on the eastern side of the city, the scheme would draw the bulk of its trade from a catchment extending across the whole of Exeter and that trade would mostly be diverted from the city centre. The proposals would be over-sized if they were just for the needs of new residents of workers in eastern Exeter.
- 6.18 A smaller proposal, such as the *local centre* sought by CP19 would be adequate to meet the needs of eastern Exeter. This could be either on the appeal site or at the Hill Barton centre. Whether or not the current permission is valid is not critical as there is no reason to think that a further proposal would be unacceptable. In these circumstances, neither CP19 nor CP8 is out-of-date. The appeal would be contrary to both policies and should be refused unless material considerations indicate otherwise.

Employment land

- 6.19 As well as precluding a *local centre*, the proposals would remove the last practical opportunity for employment floorspace from the strategic allocation. The strategic allocation will now under-deliver on employment floorspace

⁷⁸ Rocke

⁷⁹ Retail SoCG, Table 1 gives a 2020 population for Zone 1A of 27,232. The strategic allocation is 2,500 dwellings so (say) 7,500 population. This is 28% of the Zone 1A population. ADH11, Table 17 shows that the proposal draws £6.61m comparison turnover from Zone 1A, so 28% of that would be £1.85m. This is less than 8.0% of the comparison

⁸⁰ Morris para 5.17

⁸¹ Illustrated by Morris appendix 18, and explored in the XX of Stevens

⁸² Hughes appendix 11, Table 18: Diversion of £16.80m comparison turnover from the City Centre (out of a total comparison turnover for the development of £34.36m, or 49%)

anyway but the site could provide some 2.2-3.2ha out of the 5ha originally expected. This could equate to 8-13,000 sq m of office floorspace.

- 6.20 There is at least 15 years supply of employment land but the quantitative argument overlooks the need for the right choice and quality for the market. A range of different opportunities is required including the important office component. The appeal site is prominent, near to Exeter Business Park (by the prestigious Met Office), 'within' the M5 boundary and the City's administration, free from the restrictions at Exeter Science Park or Exeter Gateway, at a mature location rather than a 'pioneer' site such as Sky Park, and could be marketed for self-build or owner-occupied buildings which are in limited supply elsewhere.
- 6.21 There are outstanding requirements for larger areas of office floor space which the current stock cannot meet⁸³. Other sites do not provide a sufficient range to meet all likely needs. Regardless of the parties' scoring, and the announcement of an Enterprise Zone, the key factors of location, accessibility and developability for the type of office space in demand show that the appeal site is one of the best options available⁸⁴. If the appeal is dismissed, there is every reason to think that the owners would take a commercial view and wish to see the site developed. There would be real harm to the objectives of policy CP19 if there is no employment development within the strategic allocation.

Sequential test

- 6.22 To re-interpret the *Plymouth* Decision⁸⁵ as meaning that the sequential test does not apply, as the site lies within an area identified for a new centre, is mistaken as NPPF 24 requires the test for all proposals which *are not in an existing centre and are not in accordance with an up-to-date Local Plan*. The appeal site is not in an existing centre and cannot be within a centre without a review of the CS⁸⁶. As above, the proposals do not accord with the CS which is up-to-date. At *Plymouth* the development in question was not the right size for the role of a new centre as required by the development plan⁸⁷. Here it is over-sized and so has to comply with the sequential test, as accepted⁸⁸.
- 6.23 The appellant argued that flexibility need not play a part in framing the proposals but only in whether those already set could be accommodated elsewhere⁸⁹. When considering *suitable* in the Scottish version, the Supreme Court found in *Tesco v Dundee* that, *subject to a qualification*, it meant *suitable for the development proposed by the applicant*. However, the *qualification*⁹⁰, explains that *the application of the sequential approach requires flexibility and realism from developers and retailers as well as planning authorities ... 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*

⁸³ Pearce appendix 4

⁸⁴ Pearce, with an undisputed knowledge of the local market, garnered over 25 years of experience

⁸⁵ CD31: APP/N1160/A/12/2169472, North West Quadrant, Derriford Road, Plymouth

⁸⁶ Or the production of some other DPD. See the glossary definition of "Town centre" in the NPPF

⁸⁷ CD31: at DL15.15, 15.21 and 15.22

⁸⁸ Hughes in XX by ECC

⁸⁹ Hughes POE, paras 5.44 and 5.45 and his answer in XX (to ECC): "The only scale that has to apply is what the applicant has proposed. Otherwise, inconsistent with national policy."

⁹⁰ by Lord Reed in paras 28 and 29

their scale may fit better with existing development in the town centre. ... [the applicant] 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.

- 6.24 The Supreme Court did not find that a site which could not accommodate the applicant's proposal in the form in which it was proposed could be automatically disregarded. *Tesco v Dundee* makes it clear that a developer's proposal can only be used to set the parameters for "suitable" sites if that proposal properly demonstrates flexibility in its formulation (having regard to the "real world" in which all retailers operate).
- 6.25 At *Rushden Lakes* the Inspector considered 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. There is no suggestion here that the sequential test means to refer to anything other than the application proposal*⁹¹ and: *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.* It would be to misinterpret the decision in *Tesco v Dundee* to suggest that this means that the commercial requirements do not have to take account of the requirement for flexibility⁹². To do otherwise would undermine the test if not render it entirely nugatory.
- 6.26 Moreover, the SoS clearly had the new PPG in mind at *Rushden Lakes* where his decision echoes consideration of *flexibility* and whether there is scope for this in the format and/or scale of a proposal⁹³. The decision maker needs to consider whether that has been properly addressed. Under the PPG⁹⁴ there is no question of looking at *suitability* solely from the perspective of the applicant's commercial requirements. The PPG reference to *precisely* acknowledges the point in *Tesco v Dundee* that the developer had not limited its *assessment to sites which could accommodate the development in the precise form in which it has been designed*⁹⁵. In *Rushden Lakes* the degree of flexibility had been shown having regard to the somewhat bespoke nature of the hybrid retail and leisure uses being proposed there.
- 6.27 It follows that *Rushden Lakes* does no more than illustrate that, if a developer does satisfy the *Tesco v Dundee qualification* by showing flexibility in how the proposals are formulated, then the decision maker should ask the question: *is it suitable for the development proposed by the applicant?* However, if the flexibility has not been shown, then the qualification has not been satisfied and the proposal in its precise form cannot be used to set the parameters for a *suitable* site.
- 6.28 Turning to the proposals here, by insisting that its retail formulation must be 11,000 sq m of class A1 space, with at least one large comparison goods store, surface level parking and drive-through restaurants, the appellant has not

⁹¹ CD10: IR8.46

⁹² See *Tesco v Dundee* paras 28-29

⁹³ CD10: DL paragraph 15

⁹⁴ see CD2: Ref. ID2b-010-20140306

⁹⁵ *Tesco v Dundee* para 30

shown the requisite degree of flexibility. The scale of provision is not justified by the original Retail Statement but by the size of the site, a parameter selected by the appellant. The suggestion⁹⁶ that this is the minimum to achieve the CS objectives of a *local centre* (or even a *district centre*) is misconceived. No attempt has been made to show that a smaller development would be insufficient to meet the identified needs, excessive reliance has been placed on support from local businesses and there is no substantive evidence that those businesses have been hampered by the existing retail facilities. Finally on this point, the drive-through facilities would be an optional element which could be dispensed with.

Suitability

- 6.29 The BCS site counts as edge-of-centre for the sequential test and is in a sequentially preferable location to the out-of-centre appeal site. It is large enough for the amount of floorspace proposed⁹⁷. Given its central location, close to existing public parking and a public transport hub, there is no need for the retail/restaurant/leisure development to provide bespoke parking. This would not be disaggregation as the Council is not suggesting that parking should be provided elsewhere but that it's not needed.
- 6.30 The argument that the BCS cannot be suitable as it is not in or near the strategic allocation can have no force as it would not be focused on the needs provided by a local centre but would be out of all proportion to such needs. A local centre at Hill Barton or as the existing permission for the site could provide for these needs. Given the catchment area that it would draw from, and the anticipated turnover, location cannot be part of the sequential test. Relying on *Braintree ex parte Clacton Common Developments*⁹⁸ is misplaced as that related to the former PPG6 when the BCS site is within the proposals' catchment. With regard to the current PPG advice⁹⁹ there is no justification for saying the scheme could only be accommodated on the eastern side of Exeter.
- 6.31 Next it was argued that the BCS site could not be suitable because it must provide for the bus station and a leisure centre neither of which feature in the appeal proposals. However, these can be accommodated and still leave space for the retail/restaurant/leisure proposals¹⁰⁰. There would be no requirement for the retail developer to provide or fund these elements which would be the responsibility of the local authority. While these are an integral feature, the BCS site could accommodate both the commercial and other elements. A sequentially preferable site need not be a mirror image of the less central site. Addressing the particular attributes of a more central site, that would not affect an out-of-centre site, is part of flexibility. Providing the constraints of the more central site could be addressed, to still allow the out-of-centre proposals on it, the more central site could still be suitable. The bus station and leisure centre may make programming more complex but do not make the BCS site unsuitable.

⁹⁶ CD56A, original Retail Assessment, paras 6.2 and 6.6

⁹⁷ Hughes in XX by ECC. Even with the appellant's conditions, the appeal proposals could be accommodated on the BCS site.

⁹⁸ CD37: *Braintree ex parte Clacton Common Developments Limited CO/1614/98*

⁹⁹ CD2: ID2b-011-20140306

¹⁰⁰ Hughes para 5.58

Availability

- 6.32 This concept is not elaborated on in either the NPPF or the PPG. It does not have to be available either to the particular applicant or immediately¹⁰¹. While other Decisions turn of their own facts, *Bath Press*¹⁰² and *Sainsbury's Braintree*¹⁰³ are relevant as both were made in the context of the NPPF. The former accepted that available could mean several years' hence while in the latter case no steps at all were made to make the putative sequential site available. The terms: not available *generally*, or *in the market*, do not feature in the PPG. The BCS site is available for development and in a form that, with flexibility, could accommodate the appeal proposals.
- 6.33 The limitation of one developer¹⁰⁴ does not make it unavailable for development. The proposals would not be occupied by the appellant but by retailers, restaurateurs and leisure operators. The BCS site is just as available for these as the appeal site. Whether it is developed by the appellant or CEH is academic. The onus is on the appellant¹⁰⁵ to show that there is no suitable and available site which is sequentially preferable. It has not done so.

Impact test

- 6.34 While there would be trade diversion, the Council does not suggest that the trading impacts of the scheme would have a significant adverse impact on the vitality and viability of the town centre. However, there would be an impact on planned investment that on its own would be sufficient to breach the first part of the NPPF 26 test¹⁰⁶. Again, the onus is on the appellant¹⁰⁷. The test should take into account the local context of both the proposal and the investment that may be affected.
- 6.35 The impact test on *investment in a centre or centres* does not necessarily exclude an edge-of-centre site if, as with the BCS, it is seen as a planned extension to the centre. Here, the BCS would be the major part of the 37,000 sq m proposed by policy CP8 with the express purpose of *maintaining and enhancing the vitality and viability of the city centre*. It was similarly recognised in the LP¹⁰⁸. The fact that the BCS is not yet part of the PSA is not significant; such an adjustment should come after development not before.
- 6.36 While each case turns on its facts, the judge in *Milton Estates*¹⁰⁹ noted the argument that an edge-of-centre site could never be protected by NPPF 26 as it had not been developed but found: *that is an interpretation of the policy*

¹⁰¹ Hughes in XX by ECC. Also compare para 24 of the NPPF on sites being well-connected to town centres with Hughes' evidence

¹⁰² LP/2: decision 18 December 2013

¹⁰³ CD32: decision APP/Z1510/A/14/2219101 *Sainsbury's Supermarket Ltd – Broomhills Industrial Estate, Braintree* 25 June 2015

¹⁰⁴ ID A4: email of 24 August 2015

¹⁰⁵ Or applicant under the PPG, see CD2: ID2b-010-20140306

¹⁰⁶ NPPF 27 refers to "*significant adverse impact on one or more of the above factors*"

¹⁰⁷ PPG ID2b-015-20140306 it is "*for the applicant to demonstrate compliance with the impact test*"

¹⁰⁸ CD5, paras 14.12 to 14.14: "*close proximity to the primary shopping area*"; "*seen as an integral part of the City Centre*"

¹⁰⁹ ID LP1: *R (Milton (Peterborough) Estates Company) v. Ryedale District Council* [2015] EWHC 1948 (Admin), Mr Justice Dove, para 27, quoting para 6.69 of the officer report

*which is difficult if not impossible to sustain ...*¹¹⁰. The reference in [NPPF] 26 to 'committed and planned public and private investment in a centre or centres' clearly contemplates developments which are planned for and have yet to materialise on the ground. In this appeal, CS policy CP8 already sees the BCS site as something that would maintain and enhance the city centre and so there is no reason to disregard it.

- 6.37 As with the appeal proposals, the PHL application is in outline form. Both offer considerable flexibility and could come forward in a variety of forms with a variety of uses including a substantial element of Class A1 retail space. The BCS site could accommodate the appeal proposal's floorspace as a whole and its key components. Given this similarity, it is not surprising that CEH is concerned about the impact on investment.
- 6.38 Re-development of the BCS site is supported by the CS. Negotiations between the Council (as landowner) the main tenant (Stagecoach) and the developers (CEH) are at an advanced stage, steps have been taken to secure vacant possession without the need for compulsory purchase and progress has been made towards a development agreement. The Council should not be criticised for not undertaking an assessment of the effects on turnover when the onus is on the appellant which did not request such information on the BCS scheme. Moreover, the concern is not about turnover but about securing the right tenants to raise the necessary investment.
- 6.39 The argument that the appeal proposals and the PHL scheme are *different animals*, with different retailers for in-town and out-of-town markets not competing with each other, is unsupported by credible evidence. While the appellant's suggested list of potential occupiers might not overlap with those for PHL, any permission would run with the land with no control over the marketing of a consented scheme. There are no retail Heads of Terms and it is likely that contact has been on hold since the appeal was called in. The *Farnborough* and *Fort Kinnaird* decisions¹¹¹ emphasise that prospective occupiers can change at any time and so there can be no assurance over potential tenants¹¹². The lettings strategy¹¹³ shows that the likely tenants would overlap with those who would be targeted for PHL. There was no evidence that the outdoor leisure operators who might come to Exeter¹¹⁴ would do so on a multi-locational basis. Those already in the High Street in the City Centre might well want better configured space.
- 6.40 None of the appellant's proposed conditions would confine the scheme to identified retailers. They would give broad flexibility to vary the composition including size and number of units. The limited restrictions on ranges would allow further scope. Having regard to the NPPF tests, there are no alternative conditions that could satisfy the concerns over the impact test or be both reasonable and so different that the scheme would not compete with or jeopardise investment in the BCS site. A large food store anchor has been

¹¹⁰ Ibid para 54

¹¹¹ MM26 paras 13 and 14 and MM27 paras 49 and 53

¹¹² Conceded by Chase in XX by ECC

¹¹³ By letting agent BNP – see GFC 9: BNP letter and Mr Chase's supporting list

¹¹⁴ Evans Cycles and Cotswold Outdoor Leisure were identified

rejected as not deliverable and conditions could not overcome the overall scale or the failure to deliver a local centre. No condition could bind future occupiers.

- 6.41 There would remain a real risk that both schemes would target the same tenants and risk investment in the BCS site. This amounts to a significant adverse impact. The appellant has not satisfied the impact test with regard to the effect on planned investment in the BCS site.

Sustainable development

- 6.42 The presumption in favour of sustainable development in NPPF 14 is not engaged. The proposals would not accord with the development plan which is neither absent nor silent. Policies CP8 and CP19 are not out-of-date insofar as they apply to either the appeal or the BCS sites. The appeal should therefore be determined in accordance with the development plan (unless material considerations indicate otherwise).
- 6.43 Even if NPPF 14 were engaged, its balancing exercise would point to refusal. NPPF 27 spells out that a breach of either the sequential or impact tests would significantly and demonstrably outweigh the benefits. Prejudice to the objectives for the strategic allocation should carry significant weight. The benefits have been over-stated as future needs for residents and employees could be adequately addressed by a CS-compliant development. The benefit of additional jobs could be provided on the sequentially preferable site¹¹⁵. There is no reason to think that plan-led development would not be sustainable and follow national and local policy. By contrast, the appeal proposals would produce a large out-of-centre retail park which would harm the City Centre and the success of the strategic allocation; they should be dismissed.

7. The Crown Estate and TIAA Henderson Real Estate (CEH)

The gist of its case was as follows:

- 7.1 CEH objected on 3 grounds: conflict with the development plan; that there is a sequentially preferable site; and that there would be a significant adverse impact on investment in the city centre including, of most concern, the Princesshay Leisure scheme (PHL). It argued that other material considerations would not outweigh the conflict with policy and that if the tests in NPPF 27 were failed the application should be refused.

Conflict with the development plan

- 7.2 To allow the substantial amount of main town centre floorspace proposed for this out-of-centre site would make a mockery of NPPF 23 and the development plan strategy. But for the *Rushden Lakes Decision*, on which such reliance has been placed, the appeal might not have been made. However, both the context and the conclusions in that case have been misunderstood.
- 7.3 CS policy CP19 and Paragraph 12.14, under the heading "Monkerton/Hill Barton", require a local centre and employment land. To reinterpret the word "including" as meaning that a local centre is the minimum but that any retail

¹¹⁵ CEH/8: closing para 22, and *Stoke* decision AA/3 IR286 and DL19

development is acceptable provided that the sequential and impact tests are satisfied, is wholly unsustainable. Indeed, the appellant seems unable to decide whether to pretend that it would be a local centre or to admit, as the application calls it, that it would be a district centre. It would not be a local centre as defined in the CS or be comparable with Exeter's existing district centres. Rather it would be an out-of-centre development of main town centre uses. The likely expenditure draw was not agreed. Rather than being local, the potential tenants would have a sub-regional draw which would be wider than any district centre and within the regional draw of the city centre.

- 7.4 It is misguided to use the glossary to argue that policy CP19 is out-of-date because the NPPF treats all centres as town centres. All the glossary does is explain that this is shorthand for all the types of centres mentioned while NPPF 23 bullet 2 sets out the need for local plans to define a hierarchy. Hence policy CP19 is not out-of-date for identifying a local centre. Nor should this be interpreted as allowing unlimited retail and leisure floorspace. The argument that even if these considerations are relevant to plan-making they are not relevant to decision-taking is equally misconceived as, if it is not at odds with the NPPF which it is not, it should be given full weight.
- 7.5 The *Rushden Lakes* Decision does not support the argument that the hierarchy of centres is no longer relevant. There the Inspector correctly said that NPPF 23 did not provide: *some form of additional test for decision-taking that a proposal must honour the hierarchy of town centres still less some form of test of 'appropriate scale' which is not mentioned in NPPF [23]. Plainly, if the two tests [sequential and impact] are passed an application will be consistent with the NPPF*¹¹⁶. What the Inspector did not say was that a proposal would be consistent with the development plan if that plan contains policies which are themselves consistent with national policy and which require provision of a particular type of centre in a particular location. That is the case here where the appeal should be dismissed not simply on the grounds of scale¹¹⁷ but due to conflict with policy CP19. The CS Inspector's conclusion on flexibility¹¹⁸ does nothing to detract from the policy requirement for a centre which would serve local needs.
- 7.6 The proposals would not amount to *sustainable development* within the meaning of the NPPF because the majority of customers would arrive by car and as it would draw trade from the city centre which is highly accessible by non-car modes. Sustainable development could be achieved by building a local centre on the site, complete with a surgery and community facilities. While the appellant's scheme would bring a much higher land value, it does not try to show that a local centre would not be viable. The late attempt¹¹⁹ to claim that a local centre would not be viable has no sound basis and should be given no weight.
- 7.7 The benefits relied upon as material considerations are essentially convenience for those who live and work locally. It is therefore unsurprising that local

¹¹⁶ CD10, DL14 (NB in his DL the SoS did not expressly agree with IR 8.36. Rocke PoE para 7.42 relies on IR 2.27-28 but this was part of the Appellant's case, not the Inspector's conclusions.)

¹¹⁷ Ibid IR8.38

¹¹⁸ CD4 p.13 para 48

¹¹⁹ By Mr Chase

businesses are supportive. However, these benefits would be provided by a policy compliant development. If the effect of the scheme would be to prevent PHL going ahead, then very little weight can be given to economic benefits. Consequently the benefits claimed could not outweigh the conflict with the development plan.

The BCS site and PHL scheme / sequential test

- 7.8 The CS provides for comparison goods retailing to take place primarily in the city centre, for some retail warehouse provision after 2015 and limited new local centres under policy CP19. CS paragraph 7.4 and policy CP8 identify additional comparison floorspace capacity in the city centre of 37,000 sq m by 2021 to include up to 30,000 sq m of comparison floorspace in the Bus and Coach Station area, to be developed as part of a mixed-use scheme by around 2016. This proposal was essentially carried forward from the LP in which the area was described¹²⁰ as that defined by Sidwell Street, Cheeke Street, London Inn Square[,] Paris Street, the Bus and Coach Station and Summerland Street.
- 7.9 There was some dispute over what area of land constituted the BCS site. The LP description, on the face of it, included the bus depot site and other uses between Cheeke Street and Summerland Street while the proposals map shows the 'BC' area finishing at Cheeke Street. On the other hand, the Masterplan¹²¹ shows the area extending to Summerland Street. It is therefore probable that the 30,000 sq m in the CS includes the PHL site and the land to the east.
- 7.10 The CS drew on the 2008 ERS. This anticipated a third department store but did not take account of the approaching recession¹²². Since the CS, the department store has been realised¹²³ but not as the anchor to a major retail development¹²⁴. Policy CP8 cannot be said to be out-of-date. The capacity identified will shortly all be taken up¹²⁵. If IKEA is counted as taking up capacity, there is no more room for the appeal proposals; if it is discounted as out-of-centre then the appeal scheme should be as well.
- 7.11 Next is the question of whether the BCS site is within the town centre. In the LP it is partly within and partly outside the secondary shopping area. In the emerging DPD it is partly within and partly outside the primary shopping area (PSA)¹²⁶. It is within the City Centre boundary as defined on the LP Proposals Map and the emerging DPD¹²⁷. Chapter 14 of the LP and the CS refer to or treat it as being within the City Centre¹²⁸. Even if it were not, it should be

¹²⁰ CD5 para 14.12

¹²¹ the document anticipated by paragraph 7.10 of the Core Strategy – namely, “a Masterplan for the site [that] is in preparation” – that was published 4 months after the adoption of the Core Strategy; and Bus and Coach Station – Development Principles”: CD9

¹²² CD20 pp.29-30 para 5.4: *therefore a matter of some conjecture as to how deep the recession will be or how long it will last*; unlike the effects of internet shopping, which were taken into account in the Study, as is apparent from the same paragraph. See also CD3 para 7.1

¹²³ By John Lewis in the significantly extended old Debenhams store

¹²⁴ CD3 p.35 para 7.4

¹²⁵ 37,000 sq m total by 10,000 sq m in John Lewis; say 22,000 sq m net at IKEA and say 7,000 sq m net by PHL

¹²⁶ CD5 Appx 2, A2.1; Forster Appx 6

¹²⁷ CD 5 Proposals Map; Forster Appx 7 (city centre boundary is defined by the red line)

¹²⁸ CD5 paras 14.5, 14.14; proposal KP3

treated as such¹²⁹ as it would function as part of the city centre and as a logical extension to the primary shopping area. Even the appellant accepted that it would form a natural extension to the primary shopping area¹³⁰. In any event, the sequential test at NPPF 24 still protected an edge-of-centre site, not within the PSA.

- 7.12 There was no doubt that PHL constitutes 'planned investment' under NPPF 26. Significant weight should be given to the PHL scheme as: a planning application has been submitted; it would accord with the development plan; the area needs regeneration, additional retail and leisure floorspace which would function as part of the city centre; Heads of Terms for a Development Agreement have been agreed with the Council, which owns the freehold; CEH has a long leasehold interest in much of the commercial part of the site; the bus station lease will terminate in 2016¹³¹; occupational leases can also be terminated in 2016; leases to 160 and 167-8 Sidwell Street would be unaffected; compulsory purchase powers will not be needed; and CEH has huge combined experience in projects of this kind and would not have invested in the project if it did not intend to deliver it¹³². PHL is likely to be delivered unless it is put at risk by the appeal being allowed.
- 7.13 It was agreed that the BCS site is sequentially preferable to the appeal site. 'Suitable' in NPPF 24 means for the proposed development, applying flexibility. 'Flexibility' includes format and scale as set out in *Tesco v Dundee*¹³³: *[developers and retailers] 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 comment in the *Rushden Lakes* Decision that *the question is not whether the proposed development can be altered or reduced so that it can be made to fit the alternative site* also comes from the Supreme Court Judgment¹³⁴. Flexibility is therefore in the context of the likely greater constraints with a town centre or edge-of-centre site.
- 7.14 The context of *Rushden Lakes* is also important: it was for a unique range of uses, at the outer edge of the catchment, where the catchments did not overlap and there were aspirations of self-containment¹³⁵. Those circumstances are quite unlike the present case and so *Rushden Lakes* adds little to an understanding of the sequential test beyond that already interpreted by *Tesco v Dundee*.
- 7.15 At BCS, flexibility should be applied to car parking as none is proposed for PHL since there is adequate parking already in the city centre which is highly accessible by non-car modes (including the bus station). Some reconfiguration would be appropriate, so long as a similar quantum and type of floorspace could

¹²⁹ See the way the Inspector treated the sequentially preferable (LMS) site in Malton in *R (Milton Peterborough Estates) v Ryedale DC*: LP1 paras 13 (IR43), 53, 54

¹³⁰ Chase XX NK; also CD20 p. 37 para 5.26 Scenario

¹³¹ notices have been served on Stagecoach

¹³² Through the planning application, revisions, objecting to the appellant's planning application and appeal, and commencing discussions with potential key tenants. Also agreed by Chase in XX by NK

¹³³ CD36: Supreme Court Judgment para 28

¹³⁴ *Ibid* para 29

¹³⁵ CD10: IR p.190 para 8.3; p.201 para 8.51

be provided, which could be subject only to limited reorganisation¹³⁶. Nearby car parks usually have considerable capacity. It would be feasible to have parking underneath. Flexibility should not mean that two drive-through units would have to be included in a city centre site. The quantum of floorspace could be accommodated¹³⁷ and higher maxima have been sensitivity tested in the revised transport assessment. PHL could provide similar amounts of class A1 and D2 floorspace and additional A3 floorspace. The inclusion of a local authority leisure centre and bus station within the overall application should not exclude the BCS site from consideration as these are effectively separate elements, albeit ones to be provided at the same time. The BCS site would be suitable.

7.16 With regard to being available, this surely means for the development proposed not for an alternative landowner as the *Bath Press* case indicates¹³⁸. There is a current planning application for PHL due to be determined while the Decision on this appeal is likely to be another 8-12 months¹³⁹. There is no sound basis for concluding that the BCS site is not available and the appeal scheme should fail the sequential test.

Impact

7.17 The onus is on the appellant to demonstrate compliance with the impact test¹⁴⁰ and key considerations include: the extent to which an application is likely to undermine planned developments based on the effects on current/forecast turnovers, operator demand and investor confidence. Here the confidence that matters is in PHL. Although it has asked for viability information which is confidential, it has not attempted to forecast the turnover of PHL. It is not necessary to do so as it is not about turnover but about investor confidence in an important scheme for Exeter City Centre. If the appeal is allowed, there is a real risk that PHL will not proceed and that the (uncontested) benefits in extending and improving the PSA and the leisure offer in the city centre, as well as improving the appearance of the site its surroundings, would be lost.

7.18 The PHL scheme is likely to proceed, unless the appeal is allowed, even if there is some concern over funding for the leisure centre¹⁴¹. It is likely that it would be in competition for at least some of the same tenants as the appellant has identified for the appeal site¹⁴² although, understandably, none of these is yet known¹⁴³. Consequently it cannot be safely concluded that there would be no

¹³⁶ Forster Ax 8. This was not an attempted design but simply to show that it could fit – Forster in XX.

¹³⁷ Main SoCG para 2.8 and CD66. This excludes the bus station (760 sq m) local authority leisure centre (6,100 sq m) and A2, A5 and D1 floorspace (316, 116 and 975 sq m respectively) proposed on the appeal site as these are required as part of a local centre under policy CP19.

¹³⁸ The cancellation of the Practice Guidance since that case was decided does not of course mean that the policy as set out in the NPPF has changed as a result.

¹³⁹ Based on the *Plymouth* Decision (where the Inquiry closed on 16 October 2012 and the SoS's Decision was issued on 5 August 2013)

¹⁴⁰ PPG: CD2 "Ensuring the vitality of town centres" para 16

¹⁴¹ Raised by Chase (PoE para 9.42) but this is to be funded and delivered by the Council and so would not affect the viability of the commercial element of PHL

¹⁴² GFC9; letter of 9 November 2015. TK Maxx, one of the Arcadia fascias, M&S Simply Food, Evans Cycles or similar, Cotswold Outdoor or similar, Pizza Express, Chiquito, Costa, and Frankie and Benny's

¹⁴³ Chase IC acknowledged that there might be a bit of a fight over 1 or 2 traders but thought that overall the scheme would not have one jot of impact on PHL

substantial competition between the schemes for tenants. Both would be after the same type of well-known High Street fashion and leisure brands.

- 7.19 The exact traders proposed for the appeal site are unknown but a number of the most likely tenants are already in the city centre. If they take floorspace on the appeal site they might move out of the city centre or reduce their floorspace there when leases come up for renewal of break clauses become operational. This would significantly damage and undermine confidence in the centre. The appellant has forecast a substantial draw to the appeal site from the city centre. If the traders are the same, there would be direct competition for customers as well as traders leading to a substantial negative effect on trade in their existing shops. Some may open stores at both locations but others may not.
- 7.20 These issues also apply to existing and committed investment in the city centre including Princesshay, the recent permission for Broadwalk House, and investment at the Guildhall Shopping Centre. Competition which has implications for covenant strength and lease terms at PHL therefore apply to the city centre as a whole. The SoS should not take the risk that PHL would still proceed if the appeal is allowed despite the likely impact on this critically planned investment in the heart of Exeter.

Conditions

- 7.21 Even if the appellant's proposed conditions were attached and enforced, the scheme would still compete substantially with PHL for tenants and customers. There is a significant risk that even these could be relaxed in the face of arguments that the floorspace could not be let with such conditions in place. The 68% net:gross floorspace ratio suggested for the anchor store¹⁴⁴ would be surprisingly inefficient and it would be hard for the Council to resist an extended sales area coming forward.

Conclusion

- 7.22 The appeal proposal would be: in substantial conflict with the development plan; fail to meet the sequential test; and be likely to have a significant adverse impact on investment in Exeter City Centre. For these reasons the appeal should be dismissed.

8. The Case for CPG Development Projects Ltd Limited

The gist of its case was as follows:

Development plan

- 8.1 The starting point is the development plan and whether its relevant policies, particularly CP8 and CP19, are up-to-date. It was held in *Tesco v Dundee* that: *policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context and that planning authorities ... cannot make the development plan mean whatever they would like it to mean.* The CS has broad objectives consistent with its vision to: *embrace its role in the region as an area of growth: ... through sustainable*

¹⁴⁴ Condition 22(a)

*urban extension to the east, at ... Monkerton/Hill Barton ...*¹⁴⁵. Context is important, including the specific reference to the MHB masterplan (which is not just part of the evidence base¹⁴⁶), and the words *local centre* should not be construed as a statute or contract.

- 8.2 Policies CP8 and CP19 recognise the need for new retail facilities as part of the MHB strategic allocation. The appeal site is well placed to meet this need and so the starting point is the acceptability of town centre uses on the appeal site. It is now the only site in the locality available to accommodate a new centre. Policy CP8 includes provision for about 8,500 sq m gross comparison goods floorspace based on the ERS 2008¹⁴⁷ and not only in the City Centre. CS paragraph 7.11 notes: *a need for some local retail facilities to serve the new development areas on the eastern edge of the city.*
- 8.3 The requirement is not just the MHB allocation in CP19 and adjacent business park, but also the developing Science Park and Sky Park with their recent Enterprise Zone status. There is a remarkable level of significant, strong and continuing support for the proposals from businesses on the eastern side of Exeter. Employment land which extends beyond the City's administrative boundary into East Devon underlines that the new facilities would be sustainable.
- 8.4 Policy CP19 proposes a *local centre* at MHB. The CS Glossary describes this as: *A range of small shops of a local nature serving a small catchment area.* The appeal site is not allocated for anything specific¹⁴⁸. The proposals would accord with the requirements for a *local centre* in CP19 as:
- they are inclusive not exclusive, i.e. they set a minimum for infrastructure with no cap on floorspace or facilities;
 - the policy list is longer than the glossary description of a *local centre*¹⁴⁹ so it must have been intended to provide more;
 - the MHBMP contemplated more than one centre, that at Pilton being referred to as a *district centre*;
 - the outline permission for the site has been partly implemented by a hotel and a pub/restaurant which were not listed in CP19;
 - the Council interpreted the policy flexibly when it granted permission for a second centre at Hill Barton;
 - the above and the discussion in the CS Inspector's Report show that the context for the policy was one of flexibility and a minimum requirement;

¹⁴⁵ CD3, CS para 3.2

¹⁴⁶ See CD42: *Phides v SoSCLG, Shepway District Council and David Plumstead CO/4792/20014*

¹⁴⁷ CD20, while out-of-date this this gave a clear indication of the need for facilities at the eastern edge of Exeter - See Hughes para 4.23-4.32 and 5.11-5.25

¹⁴⁸ While the draft DDD proposes to allocate it, this is subject to objection and thus, pending examination, carries little weight.

¹⁴⁹ The discussion of "local centre" in *Braintree DC v. Secretary of State* (1995) 71 P&CR 323 in MM25 was against the background of policy and practice at least 20 years ago (the outline permission was granted in 1989, see p.324) and concerned the scope of a planning permission and the validity of a reserved matters application, not the interpretation of current policy. There is no evidence of regard to the *Braintree* approach in the ECS. It is of little more than historic interest.

- the proposals would provide the minimum local facilities required by CP19.
- 8.5 The retail analysis¹⁵⁰ does not support the concern that the scheme would function as a sub-regional centre. The fact that a few elements within the scheme would have a wider catchment than the smaller, more local facilities, would not make it a sub-regional centre. The crude comparison of 30% from beyond the study area with 50% for Exeter City Centre¹⁵¹ should be rejected because:
- The Council's figure of 50% represents the huge draw of the City Centre, with its successful regeneration, range of traders and a turnover of some £400-500m. The 30% from beyond the study area for the appeal proposals is highly unlikely to draw from as far as the City Centre and its turnover would be in the range of £10m;
 - the size of the facilities on the appeal site cannot sensibly be compared with the City Centre offer. Rather they would be similar in size to St Thomas district centre/Exe Bridges Retail Park combined which is both much closer to the City Centre and largely benefits from open A1 use;
 - the effect of the proposals would be broadly local in trading terms and would serve the needs for the local area¹⁵².
- 8.6 Even if, incorrectly, CP19 is construed as seeking to limit development, then it would be inconsistent with the NPPF and out-of-date as the acceptability of development is now to be determined by reference to the sequential and impact tests. It is out-of-date as the terminology of *local* and *district* centres is not part of the NPPF which simply considers town centres and town centre uses. There are no longer requirements to consider disaggregation, scale, need or viability in applying either the sequential or impact tests. Issues of relative size are now subsumed into the impact test and it would be wrong to reintroduce them by reference to the hierarchy reference in NPPF 23. That relates to the requirement to plan positively rather than to development control decisions. This interpretation was accepted by the SoS in *Rushden Lakes*¹⁵³. The CS is also out-of-date as the CP19 allocation will not achieve its target of 2,500 houses or, absent the appeal site, the retail and community facilities required. It cannot provide 5ha of employment land in any event.
- 8.7 Policy CP8 does not set an upper limit in floorspace on out-of-town or City Centre developments. From the Council's decisions, it does not represent a basis for rejecting out-of-town retail floorspace either¹⁵⁴. The now out-of-date figures in CP8 are not intended to be prescriptive or fetter the growth promoted by the CS.
- 8.8 Turning to the BCS, it is worth noting that the maxima figures for floorspace proposed would be gross as there would also be a loss of floorspace¹⁵⁵. This site should be treated as edge-of-centre as, based on LP policies S1 and KP3, it

¹⁵⁰ By Hughes, supported by Chase's likely trading profile

¹⁵¹ Put forward by Morris

¹⁵² Chase in XX and ReX

¹⁵³ See in particular CD10, IR 8.36-8.39 and DL14 which accepted this analysis

¹⁵⁴ Hughes Proof 5.17-5.20, the discussion above, and his oral evidence

¹⁵⁵ See section 10 of updated application form CD60

is beyond the defined PSA although once constructed it would function, at least in part, as within it. The Council was mistaken to rely on *Milton*¹⁵⁶ as it was not concerned with the merits but whether officers had misled members.

- 8.9 The development plan is out-of-date not least with regard to the NPPF. In particular, the evidence base dates from the early part of the recent recession, before Princesshay was fully established and John Lewis opened. The ERS 2008 could not have regard to these and was conservative with regard to the recession. Expenditure forecasts have changed which might affect capacity. As the CS is limited to the needs to 2021, it does not meet the full needs required by NPPF 23 bullet 6.
- 8.10 The plans for the BCS have changed significantly from that anticipated in 2008. The BCS now proposes around 7,500 sq m of class A1 rather than 30,000 sq m. The PHL is leisure rather than retail led as expected by CP8. Permission has been granted for an out-of-centre branch of IKEA¹⁵⁷. Recent Experian figures provide a picture of further growth in available expenditure and trading¹⁵⁸.
- 8.11 As the development plan is not up-to-date, the appeal should be determined in accordance with NPPF 14, that is permitted *unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole ...*. No impact arising would meet this threshold.

Significance of previous Decisions cited

- 8.12 The parties relied upon several Decisions. First and foremost, *Rushden Lakes* was a seminal Decision by the SoS with regard to the approach to be taken to policy in the NPPF. The Inspector's Report specifically addresses points of principle on the application of NPPF town centre policy. The Decision post-dates the PPG. The SoS expressly adopts the Inspector's views on policy and principle. When considering the development plan in the context of the NPPF¹⁵⁹ he found that, in applying the law as reiterated in NPPF 2, the presumption in favour of sustainable development means that: *The development plan is now to be seen through the prism of the NPPF...*
- 8.13 The *Bath Press* case is of limited relevance as it relied on the former guidance in PPS4. *Sainsbury's Braintree* endorses *Rushden Lakes* as more than just a decision on its facts. Although specifically dealing with disaggregation, the comments apply equally to other considerations of principle and show the continued importance of the *Rushden Lakes* Decision. If a development plan is out-of-date or inconsistent with the NPPF, or both, then that is an important material consideration supporting departure from it.

¹⁵⁶ LP1: *R (Milton (Peterborough) Estates Company) v. Ryedale District Council* [2015] EWHC 1948 (Admin) paras 47,48,51 and 58

¹⁵⁷ permitted in part because it was not considered to impact adversely on the city centre and would generate jobs, but equivalent or fewer than the 400 jobs FTE that would be generated by the appeal proposals

¹⁵⁸ see LP5: the agreed note and Experian Briefing Notes 12.1 and 13

¹⁵⁹ CD10: IR8.13 approved by DL11

Employment land

- 8.14 The objection is inconsistent with the reason for refusal. It is common ground that there is an ample supply of employment land until at least 2030 and the quantitative supply is not at issue. The qualitative analysis is wrong as well since, on the appellant's analysis, some 40ha, or 88% of the total, is of better or equivalent quality. At worst, some 70% is at similar or equivalent quality¹⁶⁰. In any event, the site cannot contribute the 5ha referred to in CP19. It does not have permission for pure office development which means that it has been over-scored as those in the market for offices are unlikely to wait more than 2 years for a site.
- 8.15 The proposed retail development would be important not only to the future housing but for the business parks and employment uses whose representations support the proposed hub of facilities, including the gym¹⁶¹. Policy CP19 will not provide the full target for housing or employment in any event. The above factors would outweigh any theoretical loss of employment land.

Sequential test

- 8.16 The NPPF simplified the sequential test as one of suitability and availability. Only the BCS is possibly sequentially preferable. The purpose of flexibility is not to require the application to be transformed into something significantly different. This was confirmed in *Tesco v Dundee*¹⁶² and reiterated in *Rushden Lakes*¹⁶³. The sequential test relates entirely to the application proposal. In *Braintree*¹⁶⁴, the SoS considered *Rushden Lakes*, found it of more than general application and that *the sequential test relates entirely to the application proposal and whether it can be accommodated on an actual alternative site*.

SUITABILITY

- 8.17 While in theory the quantum of floorspace in the appeal proposals could be accommodated on the BCS site, in practice there has been no attempt to show a workable scheme¹⁶⁵, with servicing and access, and it is wrong to assume that a foodstore would not need any parking or that the 'drive-through' restaurant can be omitted. This form of disaggregation is no longer appropriate under the NPPF.
- 8.18 Moreover, any development on the BCS site is required to provide a replacement bus station and new leisure facilities. This would be contrary to *Tesco v Dundee* as it would require the appeal proposals to be programmed in with the non-commercial elements which are not part of the scheme. The outline application does offer reasonable flexibility. However, to limit the class A3 uses, remove all car parking, and add in a replacement bus station and a leisure centre, is to require a materially different form of application. The BCS site is not sequentially preferable.

¹⁶⁰ Pearce in XX

¹⁶¹ A summary of letters of support is at Rocke appendix 1

¹⁶² CD36 paras 21, 24 and 28

¹⁶³ CD10 paras 8.45-8.46

¹⁶⁴ CD32 DL9 and IR paras 449-452

¹⁶⁵ See Hughes paras 5.55-5.68

AVAILABILITY

- 8.19 The BCS site is being brought forward for development and so, given its ordinary meaning, it is not available. *Rushden Lakes* confirms¹⁶⁶ that NPPF 24 simply asks if a better site is available, not whether such a site might come forward over a period of some years. The purpose, in the NPPF context of promoting economic growth and jobs, is to ensure that any sequential alternative could actually deliver the scheme proposed. The notion that a site could still be available when it is only available to one developer would not satisfy the NPPF. It can only mean available to be acquired or leased for the proposed development.
- 8.20 The BCS site is not available as: ECC owns the freehold and will not make it available to another developer; CEH also owns other leases and would be unlikely to allow others to develop here given its ownership of Princesshay; a development agreement is being negotiated; and CEH intends to proceed with redevelopment. As the proposal for PHL is very different to that for the appeal site, as it includes a new bus station and leisure centre, the site is not available in the terms in the NPPF.

Impact on vitality and viability

- 8.21 Government policy on potential impact is set out in NPPF 26-27. The evidence shows that there would not be any impact, still less a significant one, on the City Centre or on investment. Neither the Council nor CEH contends that the proposals would have a significant impact on the vitality and viability of the City Centre. Rather, there is only weak and vague evidence, which is neither independent nor objective, of an adverse impact on investment.
- 8.22 The key considerations in the PPG¹⁶⁷ are the policy status of the investment (i.e. whether it is in the development plan), the progress towards securing it (e.g. established contracts), and the extent to which it would be likely to undermine planned investment based on turnover, demand and confidence. There must be sound objective evidence to conclude that there would be a significant adverse impact of such magnitude as to outweigh the weight to be placed on supporting economic growth as required by NPPF 19.
- 8.23 The confidential nature of CEH's evidence is understood. Nevertheless, this means that the evidence is limited, its witness was not independent (but employed by the Crown Estate) and had misunderstood the position with regard to lease renewals and rent reviews¹⁶⁸.
- 8.24 The Council's evidence¹⁶⁹ was limited to comparing the catchments, and the 30% of trade that the appeal proposals would draw from beyond the study area with the 50% for the city centre, and suggesting that this would harm investment. How was not clear as:

¹⁶⁶ CD10 para 8.55. See also CD32: *Sainsbury's Braintree* para 447 (and DL9): As to availability, the Bath Press decision is of little assistance because it relied on the cancelled guidance in PPS4 for the definition. The Framework does not ask whether sites are likely to become available; it asks whether they are available

¹⁶⁷ Reference ID: 2b-016-2014030

¹⁶⁸ As explained by Chase of Grinnell's evidence

¹⁶⁹ By Morris

- no assessment or assumptions were made of the PHL turnover figures (unsurprisingly as none was made available by CEH);
- the 50% relates to a turnover of some £400-500m from a far wider catchment as a regionally important centre compared with 30% of around £10m for the site for which even the largest unit would only reflect the catchments for other retail parks in Exeter¹⁷⁰;
- the evidence was not directly from a commercial property agent¹⁷¹. By contrast, the appellant's agents¹⁷² had not been called as the site and negotiations had been discussed, there was a letter considering possible occupiers, heads of terms had been reached¹⁷³, and it did have an independent expert commercial witness¹⁷⁴.

8.25 There was little objective evidence to support the reasons for refusal on investment confidence and the concerns fell well short of evidence of significant adverse impact under NPPF 27. Indeed, the PHL scheme may be more robust than suggested as:

- the outline application is now in terms of likely and maximum uses;
- work has been done on the development agreement with mutual obligations for the private and public aspects;
- CEH has spent a 7 figure sum over the last 3 years, and probably the last year, in progressing the scheme;
- agreement on pre-lets is expected in the first quarter of 2016;
- the PHL scheme has not been put on hold but has advanced despite knowledge of the appeal proposals and their likely timescales¹⁷⁵. This is not consistent with the concern expressed and is more suggestive of being anti-competitive than legitimate protection.

8.26 The PHL scheme is not as far progressed as required by the PPG, having been significantly amended, with terms yet to be agreed, a development agreement not concluded, details not yet fixed, and only soft marketing undertaken. No occupier has been identified and not even illustrative turnover or other economic material has been provided. Despite the arguments about competition, the Transport Assessment Addendum shows a high likelihood of linked trips with the City Centre¹⁷⁶.

¹⁷⁰ Contrary to the Council's closing, 80% of the comparison turnover is not drawn from beyond the study area

¹⁷¹ Although Morris is not a commercial property agent, and though he had agency colleagues, he said that he had not consulted them but that he was sure what they would have thought

¹⁷² BNP Paribas

¹⁷³ With four occupiers, The Gym, Costa, McDonalds and Frankie and Bennys

¹⁷⁴ Chase

¹⁷⁵ Of 8-12 months by reference to the *Plymouth* case, where the Inquiry closed on 16 October 2012, the Inspector's Report was sent in on 5 February 2013, and the Decision was issued on 5 August 2013.

¹⁷⁶ CEH's TA Addendum Ax E [ID A7] states at 6.9 and 6.10: The current masterplan show [sic] that all unit sizes proposed are below 4,000m² which is likely result [sic] in higher pass-by trips which are linked to the current city offer. This implies that the proposed uses are more likely to produce linked trips.

- 8.27 CEH's case is little more than *'trust us – we are experienced – we know best'*. This should be rejected as to do otherwise would support an anti-competitive and protectionist approach. Despite frequent requests, the appellant has no information to inform the PPG exercise. The original application form was not informative and it is nearly impossible for the appellant to assess any economic impact. It is known that there would be no significant trading impact on the City Centre which must inform the issue of confidence. If PHL trades as the City Centre, it is even more difficult to understand how there would be an issue of confidence.
- 8.28 It is wrong to argue that there is no need to address the PPG¹⁷⁷ or to ignore objective factors despite the time available. The only independent commercial evidence¹⁷⁸ found:
- the smaller units, class A3 outlets and the gym would serve the local catchment while the larger anchor and warehouse type units would serve a wider catchment but would not cause damaging diversion from the city centre;
 - the retail format of the anchor store would differ from that if it were in the city centre and no anchor would consider the site as a proxy for the city centre. The only exception might be Cotswold Outdoor but that is partly due to extensive competition already in Exeter. TK Maxx would want both a fashion offer in the city centre and a Home Sense in an out-of-centre location;
 - all the potential traders for the appeal scheme already have at least one branch in central Exeter¹⁷⁹ so a presence on the appeal site would be in addition to the city centre;
 - there is demand for the site which would be seen as a district retail hub which would serve the needs of this suburb and the growth of business and residential development in the area;
 - CEH's concern with regard to the floorspace ratio for the anchor store overlooks the fact that Next-at-Home needs more space for display and storage than its other stores;
 - the site would roughly replicate St Thomas's and Exe Bridges Park together. The Council was happy with 3 large stores there¹⁸⁰, despite its proximity, and it has not had any adverse impact on the City Centre. Nor would the appeal site;
 - PHL would be leisure led with the majority of other space taken by restaurants but possibly another large corner store opposite John Lewis¹⁸¹. The appeal site offers nothing comparable;

¹⁷⁷ As Morris did in ReX

¹⁷⁸ Of Chase

¹⁷⁹ Indeed Boots has 5, Costa Coffee has 8 in the centre (17 in total), M&S has several sites (indeed, it was variously described by Chase, who ultimately settled on the description: a retailer with multiple location requirements)

¹⁸⁰ M&S Simply Food, Next and TK Maxx

¹⁸¹ Block A CD61 at p. 46

- CEH's concerns are inconsistent with its expenditure on the BCS site where demand is strong for retail, leisure and restaurants;
- Exeter is a robust city that survived the recession well, despite Princesshay opening in the depth of the recession, and its (very low) 6% vacancy rate is less than half the national average;
- although the proposed corner store at PHL would be prime retail space, and likely to be a single large store, there is no known suitable anchor nor could 50 prime shop units support it given the proximity to Princesshay and the High Street;
- there are already other gyms in Exeter¹⁸² so one on the appeal site would not be a threat;
- IKEA is not a threat to Exeter and the appeal proposal should be seen in the same way as providing facilities, an economic boost and the creation of around 400 FTE jobs;
- the proposals would not disadvantage investment with regard to rent reviews and lease renewals for existing tenants as terms for out-of-centre schemes are of a different character.

Sustainable development

8.29 As defined by the NPPF, the proposals would amount to sustainable development because:

- they would comply with policies for town centres in NPPF 24-27 and those supporting a positive approach to economic development such as NPPF 17-19;
- while the scheme would not secure specific employment development, it is not allocated for this use and the Council no longer expects to achieve the CS policy CP19 targets for housing and employment land;
- a similar number of jobs would be secured as will arise from the approved IKEA development.

8.30 The scheme would also be sustainable as it is located within the CP19 allocation, close to homes and businesses, and target the areas of new development on the eastern edge of the city¹⁸³, particularly for lunchtime or travel to/from work purchases or use of facilities. The proposals would be accessible by bus, footpath, and cycle routes¹⁸⁴ with a new rail halt proposed for the adjoining Hill Barton development, and would be well positioned in terms of public transport and sustainable transport options¹⁸⁵.

¹⁸² including a David Lloyd, described by Stevens as upmarket as opposed to the smaller and more modest operation proposed

¹⁸³ referred to in CS para 7.11

¹⁸⁴ See the appeal TA [CD58] sections 3.3, 3.4, Table. 3.1, and section 5 (accessibility) plus Appendix A figs. 5.1 and 5.2

(footpaths and cycleways) and Appendix B (Exeter cycle map)

¹⁸⁵ CD58: TA para 5.4

Other issues

8.31 The highway reason for refusal has now been resolved, subject to the imposition of conditions. Amenity concerns are not supported by the Council and can be dealt with by conditions controlling detailed design and boundary conditions¹⁸⁶.

Benefits

8.32 These would include:

- the provision of important facilities for the locality, which includes planned housing and businesses;
- providing these facilities east of the city centre with easy access from housing and businesses;
- that there is already outline permission for mixed use recognising that the site could provide the local centre on the masterplan with the first phase of a hotel and pub/restaurant having been completed.

Conclusion

8.33 The proposals would provide sustainable town centre uses where they would serve a local catchment of existing and planned residential, business and employment uses to the east of Exeter City Centre. The site is part of a wider allocation to include town centre uses. The scheme would not seriously compete with the successful and robust city centre, or threaten investment in that centre or at its edge. There is no sequentially suitable site, having regard to flexibility, and there would be no significant trading impact. The proposals would not deter investors from the BCS site¹⁸⁷ or from present investment. The PHL scheme is not protected by policy in any event as it is edge-of-centre¹⁸⁸ but even if it were there would be no significant adverse impact. There would be sustainability in terms of investment, job creation and support to growth in employment and residential development on the eastern side of Exeter. These benefits would not be significantly and demonstrably outweighed by any adverse impacts and the presumption in favour of sustainable development should be applied and permission should be granted.

9. Written Representations

Many of the written representations also echoed the major concerns raised by the Council and CEH. Additional points made are summarised below.

- 9.1 **Elizabeth Wright** expressed concern about residential amenity and the proposed location of the tall 2 storey building with regard to her house and others nearby. She commented that the shops would make little difference to her but the chemist and bank would be convenient.
- 9.2 **Des Furness** thought it a good idea to have small retail area on the city edges. In his capacity as Chair of the **Wilton Way Residents Association**, he

¹⁸⁶ As explained by Rocke in answer to IQs

¹⁸⁷ CD61: DAS. See the "justification" Section 1.4 p. 15, "The Vision" at p. 39 and complementing Princesshay and increasing attractiveness and dwell-time in Exeter at p. 46

¹⁸⁸ Hughes 4.14-4.19

confirmed that the overwhelming majority of residents support the opportunity for much needed facilities within walking distance as well as employment opportunities. Finally, he reiterated the Association's more general concern over road safety on Wilton Road.

- 9.3 **CBRE** wrote on behalf of John Lewis to object that the proposed quantum of retail development would not accord with the development plan allocation of a local centre. It highlighted the existing permission, restricted to 1,600 sq m of retail floors, and the committee report which acknowledged that this exceeded the amount envisaged by the MHBMS but could not justify refusal on that basis. The appeal proposal would exceed this by over ten times while there has been no site designation. It raised other arguments summarised above and confirmed that it had no concerns with regard to a local centre but did object to the inappropriate scale of development now proposed.
- 9.4 **David Lock Associates** wrote on behalf of the developers of the Cranbrook New Community. They updated their original concerns, adding that Cranbrook has permission for 2,900 dwellings and 6,700 sq m retail floorspace and that no issues to either were raised in the independent examination of the new East Devon Local Plan. Early provision of retail facilities at Cranbrook is a policy requirement in order to anchor the new town centre. The appeal proposals would undermine the positive strategy for Exeter and East Devon, be contrary to the development plan, fail to comply with the sequential test in the NPPF with regard to Cranbrook, have a major impact on delivery of Cranbrook town centre and would detract from, and undermine, investments in the delivery of Cranbrook.
- 9.5 **Nathaniel Lichfield & Partners** represented the owners of Exe Bridges Retail Park. Having reviewed various documents they followed up their earlier objection adding that the proposals would be contrary to adopted and emerging policy, and that the appellant has not addressed concerns regarding the retail assessment and retail impact. As well as arguments covered above, they commented that the appellant's response, that Exe Bridges is out-of-centre, is wrong since it lies entirely within the boundary of St Thomas District Centre and the two form an integrated whole. The appellant's retail assessment was flawed due to the sample sizes in the household survey data which were too small to provide a reliable basis. The assessment did not consider the impact on the St Thomas District Centre. In particular, it stated that the offer would be different when it then showed a potential line-up of tenants all of which are represented at Exe Bridges.
- 9.6 **Turley Associates** wrote on behalf of the Hill Barton Consortium which owns the adjoining land allocated for residential development. While recognising the existing permission, the current proposals would be a significant departure from this and the change in scale and function would have a significant impact on residential amenity. In particular, the proposed continuous building parallel to the boundary would significantly reduce connectivity and light penetration to the approved, forward-facing residential development to the north and risk delivery of the southern side of the site. They proposed a substantial buffer along the boundary between the proposed dwellings and any development on the appeal site and emphasised the desirability of safe pedestrian and cycle links between the sites. On the basis of the information available at that time, Turley Associates also raised concerns with regard to highway safety.

10. Conditions

- 10.1 The suggested conditions were discussed at the Inquiry¹⁸⁹. Many of these were agreed between the Council and the appellant and, following a few changes, these are set out at Appendix C. Except as explained below, or as modified by me for clarity, should planning permission be granted for the proposals, for the reasons accompanying the attached conditions, I recommend that they should be imposed.
- 10.2 Conditions 1 to 9 are more or less standard conditions and, for the reasons given, should be attached. Condition 10 provides an agreed form of words to require the appellant to comply with policy with regard to district heating with the proviso that it is viable and feasible. Condition 11 sets out the policy compliant requirement for the Building Research Establishment Environmental Assessment Methodology (BREEAM) but acknowledges that only the shell would be within the appellant's practical control. Conditions 12 and 13 cover noise and wildlife, again for the reason given. Conditions 14 to 17 are slightly simplified Highway Authority requirements and the reasons explain why the requirements for highway, cycling and travel planning are needed.
- 10.3 Conditions 18 to 25 are the appellant's suggestions for controls over the uses of the proposed floorspace. The Council accepted that there was nothing incomprehensible in the wording but otherwise they were not agreed. The Council's position, as above, was that no amount of control over use could satisfactorily ameliorate the extent of floorspace proposed and that none of the anchor unit should be used for the sale of clothing and footwear. I discuss the merits of these below.

¹⁸⁹ ID A11 and CD25 – signed hard copy

11. Inspector's Conclusions

From the evidence before me at the Inquiry, the written representations, and my inspection of the appeal site, its surroundings, and the majority of other retail outlets in the greater Exeter area, I have reached the following conclusions. The references in square brackets [] are to earlier paragraphs in this report.

Main considerations

11.1 The main considerations in this appeal are as follows:

- i) whether the proposals would accord with the development plan;
- ii) the effect of the proposals on the supply of suitable employment land;
- iii) whether there is a sequentially preferable site;
- iv) whether there would be a significant adverse impact on investment in Exeter City Centre, with particular regard to the PHL scheme for the BCS site;
- v) the impact of the proposals on the vitality and viability of Exeter City Centre;
- vi) whether there would be any other significant harm, specifically to highway safety and/or residential amenity; and
- i) whether the proposals would amount to sustainable development as set out in the NPPF, having regard to the above matters and any benefits of the scheme.

Development plan

11.2 Two CS policies are of particular relevance: CP19 and CP8. The latter makes particular reference to the BCS site, as well as requiring local retail facilities at MHB, and so the overall conclusions on CP8, and the development plan as a whole, follow consideration of the other issues. As above, policy CP19 is specific to 3 strategic allocations of which MHB includes the appeal site. The CS *Glossary of terms* contains descriptions for local and district centres. The requirements for MHB's *local centre* go beyond the description in the glossary by adding community facilities and a health centre. [3.3,3.5,3.8]

11.3 The context for the allocations in policy CP19 is set out in CS paragraph 12.1 which emphasises that the strategic allocations are central to the spatial strategy and refers back to policies CP1-CP3. To this extent, delivery of the strategic allocations should be given considerable weight. However, consistent with policies CP1-CP3, there is overt flexibility regarding the area of employment land, while the number of dwellings is expressed as a minimum and the area of net retail floorspace for the city is identified as a maximum (*up to* in CP1). Beyond the reference to MHB as a mixed-use urban extension, there is no allowance for retail outside the City Centre in CP1 (whereas it makes specific reference to employment land and housing in the urban extensions). There is no slack between the provision of up to 37,000 sq m net retail comparison floorspace (plus 3,000 sq m convenience) in the City Centre, in CP1 and CP8, and the 40,000 for the city as a whole. Beyond the *local retail facilities* in CP8, and the *local centre* in CP19, there is no provision for additional retail floorspace in the CS. [3.6]

CS policy CP19

- 11.4 The arguments between the parties on this policy turned on whether the proposals could fall within the requirements of CP19 and those for a *local centre* in particular. There is no doubt that the CS has broad objectives, including new facilities on the eastern side of Exeter, that it intends flexibility, and should not be interpreted rigidly. The additional requirements for community facilities and a health centre, as well as a local centre, are consistent with this approach and with the function of the local shops to be within convenient walking distance. On the other hand, there would be no point in the policy descriptions, which as above are part of the spatial strategy that should be given considerable weight, if they had no parameters at all. There is nothing in the CS to suggest that the reference to retail at MHB should be unlimited. [3.5]
- 11.5 The proposals would be predominantly for comparison goods shops and, with the suggested conditions, these would be restricted to around 11,000 sq m GIA of Class A1 floorspace with the net sales area (excluding any garden centre) limited to about 7,200 sq m. There is no similarity between this size of provision and that at any of the ten existing local centres in Exeter which are of limited extent with modestly sized retail units. While none of these comparisons should be seen as determinative, they do give an indication of what the CS might have had in mind as a *local centre*. Any proposal falling within the range of existing local centres could legitimately be viewed as one. A proposal falling outside this range should be given due consideration. The size of the appeal proposals falls a very considerable way outside the range of existing local centres. [2.5,5.2]
- 11.6 The existing out-of-town retail premises include three district centres listed in the CS and four retail parks. The extent of floorspace proposed would compare with the largest of these at the combined St Thomas District Centre/Exe Bridges Retail Park. On this comparison as well, it would be stretching the most flexible interpretation of *local centre* in the CS far too far to incorporate the whole of the appeal proposals. While conditions could regulate the development to prevent any specific excesses, given that the parameters are set out in the DAS, they could not be used to reduce the overall provision. [2.5,3.8]
- 11.7 It was agreed that the turnover for the proposed units is anticipated to be some £34m and that its catchment area would be extensive. None of the figures for diversion, or the impact of such diversion, were agreed but it would undoubtedly have a significant trade draw from existing trade nearby and further afield, including some from the City Centre. Although the catchment areas would be different, the proposals would therefore be within the catchment area of the City Centre. To refer to the proposals as a sub-regional centre would be an overstatement but it is not unlikely that a large individual anchor store could result in a sub-regional draw for a certain section of trade in the way that the proposed IKEA might well do in due course. The fact that the Council has, on occasion, departed from policy CP19 where other considerations were weighed in the balance, shows use of flexibility not a total disregard for policy. An alternative permission on land to the north and north-west of the strategic allocation does nothing to justify more than a *local centre* on the appeal site. [3.12,5.3]
- 11.8 The site itself is has no specific allocation in the CS at the moment but is simply part of the wider MHB designation. However, this of itself offers no support to

the appellant as the only basis for a retail development within MHB is as a *local centre*. Although adding little, the reference to *local retail facilities* in policy CP8 can only support the wording in CP19. The appellant acknowledged that the smaller units, the class A3 outlets, and the gym would serve the local catchment while the larger anchor and warehouse type units would serve a wider catchment. It also accepted that there would be demand for the site which would be seen as a district retail hub. In effect it did not deny that it would be more than a local centre and this is consistent with the description in the original application. On this point, the proposals could not reasonably be described as a *local centre* as referred to in CP19. [3.3,3.5,3.6]

- 11.9 Nevertheless, the appellant argued that the scheme would accord with the requirements for a *local centre* in CP19 for several reasons. First, that the requirements are inclusive, not exclusive, with no cap on floorspace. However, as above, the overarching policy CP1, specifically referred to in the introduction to CS section 12, does set a cap on retail floorspace, albeit across the whole of the City. While the cap should be treated flexibly, it would be to misinterpret the CS to conclude that CP19 sets no cap at all on retail floorspace. The suggestion that paragraph 7.11 supports anything beyond the facilities referred to in CP19 is without foundation. [8.4]
- 11.10 Next, it was argued that as the CP19 requirements go beyond the glossary description of a *local centre*, to include community facilities and a health centre, more than just a *local centre* must have been intended. This is correct but is also consistent with the notion of flexibility. The long list of requirements for MHB does not include any increase in retail floorspace. It follows that some other provisions could be added to the local centre without it breaching the policy. This could be taken to apply to the hotel and pub/restaurant and arguably some of the other non-shop facilities such as the proposals for a garden centre, financial and professional services, restaurants and cafés, hot food takeaways, non-residential institutions, and leisure (i.e. the gym). What the additions to the term *local centre* do not do is suggest further Class A1 retail provision beyond that which could be reasonably interpreted as falling within the glossary description. [3.3,3.5,8.4]
- 11.11 It is true that the MHMBS contemplated more than one centre and referred to a *district centre*. However, this was envisaged to the north-west, towards Pinhoe, rather than on or close to the appeal site. In any event, while the MHMBS is more than just part of the evidence base, the requirement to deliver the strategic allocations in accordance with their respective Masterplans was deleted from the final CS, and paragraph 12.18 only requires development at MHB to have general regard to this. Granting permission for a second centre at Hill Barton does not make the scheme more closely compliant with CP19 than otherwise. As above, the implementation of the hotel and pub/restaurant is consistent with flexibility in the requirements for MHB, particular given that the list is not limited to a *local centre* but embraces additional facilities other than shops. [2.3,2.5,3.11,8.4]
- 11.12 The arguments with regard to the local workforce and the support from local businesses lend weight to the need for flexibility and additional facilities (perhaps including restaurants or a gym) as well as a policy compliant *local centre*. What they do not do is provide persuasive evidence of a need for a substantial retail development of the sort normally found on a high street.

While the proposals would certainly provide the minimum requirement for a *local centre*, so would a policy compliant development. [8.3]

- 11.13 The appellant is justified in countering the suggestion that the scheme would operate as a sub-regional centre by comparing it with St Thomas District Centre/Exe Bridges Retail Park. However, this is, as its name suggests, very much a district centre with the addition of a retail park. No evidence was put forward to suggest that, when the retail park was permitted by the Council on the former Sainsbury's site in 1999, it was contrary to the provisions of the development plan at that time. Rather, the argument reinforces the comparison between the appeal proposals and centres of a higher order than the *local centre* required by the CS. [2.5,8.5]
- 11.14 The discussion in the CS Inspector's Report does show that the context for the policy was one of flexibility but this was centred on discussions of employment land and should not provide *carte blanche* for an unlimited retail element. There was no disagreement that the proposals would provide the minimum local facilities required by CP19 but that would not make them into the *local centre* intended by the policy. Case law confirms that *local centre* has no very precise meaning so even if the CS tried to be more prescriptive it would be to no avail. Nevertheless, unless the CS is to be rendered meaningless, there must be some limits. The term *local centre* in CP19 should be interpreted flexibly but not allowed to mean something completely different. There is a strong probability that a policy compliant local centre could come forward. Turning to the NPPF, while it is true that this does not contain a hierarchy of centres, nor does it preclude them. Indeed, amongst other criteria, NPPF 23 expects LPAs to: *define a network and hierarchy of centres*. That is what the CS does. There is nothing inconsistent about that. [6.6,7.5,8.4]
- 11.15 Finally, with regard to policy CP19, it was argued that this is out-of-date as, following *Rushden Lakes*, the NPPF only seeks to limit retail development by reference to the sequential and impact tests. *Rushden Lakes* was a Decision, on a 'called-in' planning application supported by the local planning authority, not a statement of policy nor a High Court Judgment, let alone one in the Supreme Court. The SoS agreed with the Inspector with regard to the tests in the NPPF: *Plainly, if the two tests are passed an application will be consistent with the NPPF*. However, it is worth noting, as CEH pointed out, that he was silent on the weight to be given to any conflict with the development plan on this issue. [6.13,7.4,8.6]
- 11.16 There is probably no error here but paragraph 8.36 of the *Rushden Lakes* Inspector's Report must be read with care. Its conclusion: *if a proposal meets these two tests then necessarily it is consistent with the town centres first approach* is entirely within the context of applying the NPPF where the development plan is not up-to-date. There is nothing to explain why the SoS was silent as to his views on this paragraph but, if it was to avoid it being taken out of context, then he was wise to do so. While what the Inspector meant to say was correct in the context of the NPPF, the absence of a reference to this in the last sentence could be seen as excluding the development plan from the process. I have no doubt that the Inspector recognised this and only drew this conclusion for his particular case where the development plan was out-of-date. This is hardly surprising as it should not be for an Inspector at a section 78 Inquiry to decide on what the retail hierarchy

should be; that is for the LP. If the retail policies are out-of-date in a LP then, as stated in *Rushden Lakes*, the NPPF tests are the only ones left. [6.14,7.14,8.6]

- 11.17 It is also worth noting that, while the Inspector at *Rushden Lakes* found that a need and scale test could not be re-introduced into the NPPF, and that the sequential test in the NPPF should not have regard to hierarchy, he emphasised that this was because the adopted settlement hierarchy as it applied to *Rushden Lakes* was out-of-date. What he did not discuss, because it was not relevant to his applicaiton, was the approach that must be followed where the LP is not out-of-date and includes a hierarchy, as the NPPF expects it to. It is understandable that, through the NPPF, the government wants to avoid decisions on retail hierarchies being made at appeal. That is not the same as saying that policy soundly made at the LP stage should be ignored. Although the paragraph 7.12 to policy CP8 refers to the needs to 2021, there is no evidence, from the Experian data or otherwise, to suggest that there will be such dramatic growth over the next 5 years that it does not meet the full needs required by NPPF 23 bullet 6. [6.14,7.14,8.6]
- 11.18 Similarly, although the SoS did adopt the Inspector's reference to the Council's interpretation, that *the development plan is now to be seen through the prism of the NPPF*, he only did so with regard to the spatial strategy, and two policies in particular, whereas other paragraphs are adopted in full and more than once. He did not endorse a generalised interpretation of the Council's submission as meaning that any view of the development plan should be distorted and, in the light of the primacy of the development plan, the SoS was again wise not to do so. In fact, the Council's comment was once more in the context of a case where it had found that the scheme there would amount to sustainable development and so the presumption in its favour should be applied. It would be quite wrong to extend this view to cover development which would not be sustainable but would conflict with the development plan as a whole. [6.14,7.5,8.12]
- 11.19 The SoS's Decision in *Sainsbury's Braintree* does indeed endorse the *Rushden Lakes* interpretation of the NPPF with regard to disaggregation, and possibly on scale and form, but again that is no surprise. For the above reasons on flexibility, it is of limited relevance here where no disaggregation of main town centre uses would be required. The only separation required would be of parking and access including that to the restaurants (see below). What is worth noting is that in *Sainsbury's Braintree* the SoS dismissed the appeal despite finding that it would pass the sequential test. The Decision also confirms that the *Bath Press* case is of little assistance. [6.32,8.13]
- 11.20 The appellant is therefore wrong to argue either that CP19 is inconsistent with the NPPF, or that it is out-of-date, on the grounds that whether development is acceptable is now only to be determined by reference to the sequential and impact tests. If the LP were out-of-date, as was found at *Rushden Lakes*, that would be true. Here it is not. While the NPPF may only set two tests, it expects LPs to fill in the gaps, as it were, by meeting the criteria in NPPF 23, including *a network and hierarchy of centres*. The above is precisely what the LP does, including CP8's support for the City Centre and CP19's strategic allocations. While there have been changes over the years, such as the new John Lewis store and the Enterprise Zone, which are likely to be taken into

account in the new DDDPD, none of these mean that the existing policies are out-of-date. There is nothing inconsistent about the LP specifying the appropriate hierarchy in the way that was missing at *Rushden Lakes*. When read in context, *Rushden Lakes* adds little to an understanding of the sequential test as interpreted by *Tesco v Dundee*. [6.23,7.14,8.16]

- 11.21 In arguing that NPPF 23 is about plan making misses the point. While weighing the merits of the proposals against the sequential and impact tests in the NPPF does not need to take account of NPPF 23, this does not negate a separate assessment against the development plan. Indeed, as this is the starting point, and the NPPF a material consideration, the reverse is true. So long as the CS is not out-of-date, which it is not as it satisfies the criteria for plan making in NPPF 23, then it is proper, indeed essential, to weigh the scheme against policies CP8 and CP19 in assessing its compliance or otherwise with the development plan. This approach is further endorsed by the PPG 2b paragraphs 001-003. [8.6]
- 11.22 The argument that the CS is also out-of-date, just because the policy CP19 allocation will not fully achieve its targets for housing, retail and employment, is a poor one and should not be used to justify a development which would leave it even further adrift from its targets. Here, for the above reasons, CP19 is not inconsistent with the NPPF. Neither it, nor the CS as a whole, is out-of-date. The term *local centre* is perfectly valid in a LP. The *Rushden Lakes* Decision does not alter this. Extending the argument to the whole of the CS with regard to the NPPF is no more convincing. The fact that PHL proposes less than the 'up to 30,000 sq m' in CP8 is not inconsistent with that being expressed as a maximum. The BCS site is proposed for mixed use in CP8 and in PHL. The shift to a greater emphasis on leisure is not inconsistent with this and does not make the CS out-of-date. [3.3,3.5,6.13,7.4,8.6]
- 11.23 For all the reasons given above, the proposals would go well beyond any reasonable interpretation of a *local centre*, as generally understood or as described in the CS glossary. The scheme would therefore be contrary to policy CP19 and, albeit less specifically, to CP8. The overall conclusion on the development plan as a whole follows consideration of the other issues below.

Employment land

- 11.24 It was agreed that, in broad terms, there is no need for additional employment land in Exeter. Rather, the arguments turned on whether there was a need for land for high quality offices and to satisfy the policy requirements of policy CP19. The appeal site lies close to the Met Office and other prestigious employers. It has excellent vehicular access, can be reached by sustainable means of transport and may soon be close to a new rail halt. It would make an excellent site for new high quality offices and would probably be in demand for this use if it were offered for sale or lease. Policy CP19 anticipates 5ha of employment land, which can no longer be met in full, and the appeal site could make a useful contribution towards this. Use of the site for employment would therefore gain support from CP19. [3.5,3.6]
- 11.25 Limited need for employment land is not the same as little demand. Indeed, despite extensive efforts, the appellant's evidence did little to dispel the Council's assertion that the appeal site is one of the best options available for office development. The appeal scheme would have the effect of removing all

employment floorspace from the strategic allocation. While no significant harm would result from the loss of potential employment land, because there is a good supply, this does not mean that the CS is out-of-date in allocating employment land within MHB; there is an evident demand and there is no imperative to depart from the CS. [6.19-21,8.14-15]

- 11.26 On the other hand, the 5ha allocation in policy CP19 is approximate and there is no minimum requirement for employment land in the CS. Although the appeal site is one of the few areas left within the strategic allocation that could be developed for employment, CP19 does not direct employment use to the site. There was no evidence to show that any specific potential office occupiers would be deterred from setting up in Exeter just because the appeal site was unavailable or that other employment sites could not meet most requirements. Unlike the proposed retail floorspace, which depends on the policy requirement for a *local centre* to have any justification, use of the site other than for offices would not be in direct conflict with policy CP19. On this issue, there would be no significant harm to the supply of employment land in Exeter and no significant conflict with the development plan.

Sequential test

- 11.27 Three points arose: whether the NPPF 24 test should apply and, if so, whether the sequentially preferable site would be either suitable or available. For the appeal scheme to fail the test, all three points would need to apply. NPPF 24 requires the test for all proposals which *are not in an existing centre and are not in accordance with an up-to-date Local Plan*. The appeal site is *not in an existing centre* and, as above, it should be concluded that the scheme would not comply with CP19 which is not out-of-date. In the SoS Decision for *Plymouth* the proposals were not the right size for the role of a new centre as required by the development plan; here they would be significantly over-sized. [6.22,7.8,8.16]
- 11.28 It was agreed that the only possible sequentially preferable site is the BCS. This is currently edge-of-centre in the saved LP and the CS. While the catchment areas for PHL and the appeal proposals would be different there would be a substantial overlap. NPPF 24 requires flexibility to be shown on both sides. Arguments were heard on the difference of wording between the two policy documents and the possible differences in boundaries. These are nuances which should fall within the need for flexibility providing the required site could be developed. With this in mind, any discrepancies between the wording of policies of different ages and of detailed boundaries should be given little weight. [3.3,3.9]
- 11.29 The argument over whether the BCS site is part of the city centre is somewhat irrelevant as it was agreed that, once constructed, it would function as part of the PSA. It certainly arguable that the figures in CP8 have been overtaken by events as they relate to the BCS site. However, that is more a matter for the PHL application, currently before the Council, than for the sequential test. In essence, there was little doubt that, under PPG 2b-010, the BCS is an *accessible site* (it contains a bus and coach station) *that is well connected to the town* (here, city) *centre* as it adjoins the end of the High Street. The NPPF 24 test should therefore apply to the appeal site and preference should therefore be given to the BCS as sequentially preferable if it is suitable and available. [6.29,7.9-11,8.18]

SUITABILITY

- 11.30 The DAS includes a plan of possible tenants. Some of these have expressed interest but, unsurprisingly prior to planning permission being granted, none has yet entered into a contract. The appellant acknowledged that the quantum of retail floorspace proposed would fit within the area of shops proposed for the BCS site in the PHL scheme. However, it would need to be slightly differently configured. Furthermore, BCS could not accommodate the proposed access road, parking areas or the drive-through aspect of these proposed restaurants, and the BCS site is also required to provide a new bus and coach station, and a new leisure centre. [6.31,7.15,8.18]
- 11.31 The Glossary at Annex 2 to the NPPF provides definitions including: *Main town centre uses: 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).*
- 11.32 *Tesco v Dundee* looked at how the policy should be interpreted including flexibility. As above, it found that the question of suitability does require judgement but also that the purpose of flexibility is not to require the application to be transformed into something significantly different. Here, the proposed retail elements could be accommodated without disaggregation but the configuration of floorspace would need to be different to take account of the relative size of adjacent properties (their scale) and the floorspace would most likely need to be concentrated nearest to the existing PSA for commercial reasons. This would be no more than showing reasonable flexibility. [6.31,7.15,8.17-18]
- 11.33 To insist on the same requirement for parking and access in a town centre, which has ample existing parking, service roads and excellent links to public transport, would be unreasonable. *Drive-through restaurants* do feature within the definition of a town centre and so, to be suitable, it must be possible for these to be accommodated. Nevertheless, as with general access requirements for servicing and other vehicular needs, it would be no more than showing reasonable flexibility to accept that existing streets and access arrangements could provide part of the *drive* element of such a proposal if not the restaurant area. Moreover, *drive-through restaurants* are not fixed elements of the proposals as they do not feature specifically in the description of development, would not be a requirement of the suggested conditions, and could easily be varied to another use. The scheme would also include a gym which would fall within the *health and fitness centres* part of the NPPF definition. However, the Council's contribution to the PHL as a whole includes a leisure centre. It was not suggested that an operator who might occupy the gym proposed for the appeal site would not be interested in a City Centre location, and there are already other gyms in Exeter. [6.29,7.15,8.17-18]
- 11.34 The Judgment in *Tesco v Dundee* found, at paragraph 28 that: *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 in the local plan, but the same approach must be implicit: otherwise, the policies would in practice be inoperable.

- 11.35 PPG 2b-010 confirms that it is for the applicant to show that it has complied with the sequential test which should be proportionate and appropriate for the given proposal. It provides a checklist of considerations including that: *preference should be given to accessible sites that are well connected to the town centre, that scope for flexibility in the format and/or scale of the proposal, and that it is not necessary to demonstrate that an alternative site could accommodate precisely the scale and form of development being proposed.* Against these factors as well, the BCS site would be preferable.
- 11.36 Finally, it was argued that the BCS site would not be suitable as it is not within the strategic allocation. While it would be unreasonable to require consideration of a sequentially preferable site in another town, the appeal site and the City Centre are both within Exeter and the catchments overlap considerably. This suggestion gains no support from either the development plan or the NPPF and should be disregarded. [6.30]
- 11.37 On this part of the NPPF test, given no more than reasonable flexibility over the arrangement of units, the use of existing access and parking, and the occupier of the proposed gym, the BCS site would be suitable for the town centre uses proposed for the appeal site.

AVAILABILITY

- 11.38 The NPPF and the PPG both refer to availability with regard to the sequential test but neither clarifies how this should be defined. The appellant argued that the BCS is not available since CEH and the Council have agreed on a way forward and are unlikely to allow other developers a look in. The purpose of retail policy in NPPF 23 is to promote competitive town centre environments and manage the growth of centres. The NPPF test should not be used to prevent development unless a sequentially preferable site could actually deliver the proposals. [6.32-33,7.16,8.20]
- 11.39 However, there is no sound basis for finding that the BCS site is not available to traders and no rationale for concluding that the site must be on the open market to any developer. Providing PHL goes ahead, the new retail floorspace would be marketed to traders who would occupy it regardless of who developed or owned the scheme. The need for flexibility in the Judgment in *Tesco v Dundee* refers to retailers as well as developers and this strengthens the conclusion that *available* means for the development proposed not for the landowner hoping to carry out the development. Although on the separate point of specific locational requirements, the PPG does state that land ownership does not provide a justification for excluding a site. [6.32,7.16,8.19]
- 11.40 In the absence of any clearer interpretation, the preference in NPPF 24 should refer to availability to traders. It follows that it doesn't matter who develops the site so long as it can provide the proposed level of shop floorspace. As above, the requirement for a bus station and a leisure outlet on another part of the BCS site does not mean that the area earmarked for retail development is not available. On this point as well, the BCS would be sequentially preferable.

CONCLUSION ON THE SEQUENTIAL TEST

11.41 In conclusion on this issue, the NPPF test should be applied to the appeal proposals. The BCS site is relevant, highly accessible and well connected to the city centre. It is sequentially preferable, suitable and available. The appeal proposals therefore fail the sequential test and would be contrary to NPPF 24.

Impact test

INVESTMENT

11.42 The CS supports the re-development of the BCS site. The outline planning application for PHL has been submitted and will almost certainly be determined before the SoS reaches his Decision on this appeal. CEH argued that the appeal scheme would pose a direct threat to investment in PHL and so to it proceeding. The evidence was equivocal. As the Council noted, it is not surprising that CEH is concerned about the impact regardless of whether delivery of the scheme is truly in doubt. What is less clear is whether CEH's concern is a planning one, regarding investment and/or vitality and viability, or a purely commercial one to do with the impact on future turnover at PHL, its existing Princesshay outlets, and the knock-on effect on leases and rents. The likelihood is that it is concerned about both and that the two are hard to disentangle. Consequently, while its specific concerns require careful consideration, by itself the fact that CEH was fully represented at the Inquiry, or may or may not have rushed to submit an outline planning application in response to the appeal proposals, proves very little. [6.35,7.17,8.25]

11.43 Some of the CEH evidence related to Princesshay and the city centre in general, including concern over rent reviews and lease renewals. Given the common ground between the appellant and the Council regarding impact on the city centre (see below), supported by the very low vacancy rate, the potential harm from this proposal alone to the vitality and viability of the city centre as a whole should be given little weight. [7.17,7.20,8.21]

11.44 As with the appeal proposals, the evidence concerning possible future tenants for the PHL scheme was complicated. Most of the national retail chains are already represented in Exeter; some have multiple outlets. The proposed corner anchor store would therefore be unlikely to be taken by a major department store as the most probable contenders are already represented. The few traders not in the city, Cotswold and Evans for example, might well look at the largest unit on either the appeal site or PHL but would not be ideal tenants in any case. Next and TK Maxx are already in Exe Bridges Retail Park and so are less likely to replicate their provision at PHL than on the appeal site though the distance, and difficulty with linked trips between the two ends of the city centre, may affect this probability. Neither the appellant nor CEH could provide definite line-ups of likely occupiers. This may mean little since, as the move by John Lewis illustrated, the retail world is dynamic, retail decisions are not always predictable, and the most that CEH could say was that it would be likely that PHL would be in competition with the appeal proposals for at least some of the same tenants. [6.39,7.19,8.23]

11.45 There was speculation as to the likely tenants at PHL and no details were provided on the grounds of confidentiality. This compares with the appeal site

where future occupiers have been suggested but none has signed up. However, these have changed since the application was submitted and may change again before the SoS's Decision is published. No occupier will agree terms without a planning permission being in place and the trading environment is likely to change between the Inquiry closing and the Decision being issued. None of the suggested conditions would restrict the occupation to specific retailers. It is possible that a trader might want to occupy premises in both locations at roughly the same time but this seems unlikely given the required levels of investment. Very little can be deduced from the evidence on future occupiers of either scheme. Consequently, the likelihood that investment can be raised for the PHL must be in doubt as must the possibility that the appeal proposals would have a significant effect on this. [6.37,6.39,7.19,8.26,8.28]

11.46 Nevertheless, regardless of the precise trading climate and profitability for any future occupiers of the BCS site, the overall confidence in the success of PHL is likely to affect the ease with which it can sign up potential tenants. If there are doubts over the deliverability as a result of perceived competition then there are likely to be doubts over whether to commit investment to this scheme rather than to another town centre or development. The ease with which CEH can sign up potential tenants at PHL would translate into the ease with which it can raise the capital to allow the development to go ahead. The proposed public investment in a new bus and coach station, and in a new leisure centre, would also appear to be contingent on the PHL proceeding. [6.41,7.18,8.28]

11.47 The evidence suggested three main possible outcomes for the PHL scheme if the appeal proposals go ahead. These are: that PHL may well go ahead regardless, in which case the effect on investment would be limited; it may not go ahead in any event for reasons unconnected with the appeal proposals; or, it may not go ahead as a direct result of the overlapping competition for future occupiers from the appeal scheme, particularly for the anchor unit in each of the proposals. A further possibility which could apply to any of the above would be that any decision on redevelopment of the BCS site, including public investment, would be delayed. [6.41,7.20,8.27-28]

11.48 In its closing submissions, the appellant suggested that PHL was both more robust than CEH admitted, but also that it was not as far progressed as it claimed. The evidence and expert judgements before the Inquiry were so diametrically opposed that none of these outcomes appears much more or less likely than any of the others. Overall, the best prediction is therefore that the appeal proposals pose a moderate risk to planned investment with an additional risk of delay. Given its size, strategic importance, and prominence in the CS, if allowing the appeal resulted in the PHL scheme being prevented, the effect would be dramatic and amount to substantial harm to planned public and private investment. In other words, there is a moderate risk of a major adverse outcome. Further harm would be likely to flow from a significant delay. [6.41,7.18,8.25]

11.49 The relevant test in NPPF 26-27 is whether the proposals would be likely to have a significant adverse impact on planned investment. Under PPG 2b-016, the considerations with regard to investments are: *the policy status of the investment (i.e. whether it is in the development plan); the progress towards securing it (e.g. established contracts); and the extent to which an application*

would be likely to undermine planned investments based on the effects on current/forecast turnovers, operator demand and investor confidence. [8.28]

11.50 Here, development of the BCS site is an expectation of the CS, an outline application has been submitted, Heads of Terms for a Development Agreement have been reached between the developer and the landowner and there is no need to use compulsory purchase powers. While contracts have yet to be signed, as the landowner is a public body, and the developer has a strong track record in delivering such proposals, even allowing for some unresolved matters, significant weight should be given to the progress that has been made. As the appellant has identified, the effect of the likely draw on turnover is hard to gauge as the available comparisons are between the appeal proposals and the whole of the City Centre rather than just the PHL scheme. Nevertheless the competition for occupiers, and for a tenant for each of the proposed anchor stores in particular, could have a substantial effect on operator demand and so on investor confidence. While hard to quantify, CEH may well be right that the greatest risk to PHL proceeding is if this appeal is allowed. [3.3,4.4,6.38,7.12,8.26]

11.51 The conclusions to be drawn from the evidence are that there is a moderate risk of a substantial adverse impact with further weight to the risk of delay. Overall, this equates to a significant, if not substantial, adverse impact on planned investment and so, following NPPF 27, the proposals should be refused. For similar reasons, on balance, the risk of a serious impact as a result of the appeal scheme would conflict with aims of policy CP8 for the regeneration of the BCS site.

Vitality and viability

11.52 Even if the Council's figure for draw from the City Centre is accepted, on its own this would be a tiny proportion of its overall turnover while there is a very low vacancy rate. Adding the common ground between the appellant and the Council on this point, the potential harm to the vitality and viability of the city centre in general should be given little weight. While CEH added Princesshay, Broadwalk House, and the Guildhall Shopping Centre to locations where investment might be affected, there was little evidence of direct impact on these let alone that such impact would be significant to the city centre as a whole. On balance, apart from the BCS site, the appeal proposals would not cause a significant adverse impact on the vitality and viability of the City Centre or conflict with the NPPF or the development plan on this point. [6.34,7.20,8.28]

Other matters

11.53 Taking account of the written representations of interested parties, and subject to proposed conditions dealing with both highway works and reserved matters, it was common ground between the main parties that there were no outstanding issues with regard to impact on the highway network or residential amenity. Subject to these conditions, concerns over the height and location of built development, and any risk to highway safety, should not be a bar to development. With regard to Cranbrook and Exe Bridges Retail Park, any impact would be unlikely to reach the hurdle of significant adverse impact in NPPF 27. In any event, impact on these centres would be less than that which

might arise for PHL and so should not alter the outcome of this appeal.
[1.6,8.31,9.1-2,9.6]

Sustainable development

- 11.54 Notwithstanding the primacy of the development plan, the NPPF is a material consideration in planning decisions. In particular, the NPPF explains that the purpose of the planning system is to contribute to the achievement of sustainable development. It defines the Government's view of this, and summarises three dimensions to sustainable development leading to three roles for the planning system to perform. The proposals should therefore be assessed against these roles. [6.42]
- 11.55 First, weight should be given to the economic benefits of the scheme including the creation of around 400 full time equivalent jobs and facilities for local businesses which support the proposals. However, a scheme which satisfied the requirements of policy CP19, for example by providing a compliant local centre and employment uses, would also be expected to create a substantial number of jobs and there was little persuasive evidence that such a scheme would not be viable. Moreover, in the event that the proposals prevented or delayed development of the BCS site, there would be substantial economic disadvantages to the City Centre. On balance, the alternatives for the appeal site would balance each other out while the risk of hindering development on the BCS site means that the economic role weighs against the proposals. [6.43,8.29]
- 11.56 On the social role, the proposals would provide accessible local services but, as above, so could an alternative scheme. On the environmental role, while the appeal site is generally well-located for public transport, it is in a less accessible location than the sequentially preferable BCS site. Moreover, the appeal scheme would include a large new car park and 'drive-through' restaurants which would be likely to encourage rather than deter the use of the private car. By contrast, the PHL proposals include an integral bus and coach station and would be located on the edge of the PSA where linked trips would be very easy. At the very best, the appeal proposals would be neutral with regard to mitigating climate change and moving to a low carbon economy. [6.43,8.30]
- 11.57 Overall, the economic role weighs against the appeal proposals while on the social and environmental roles the scheme would be broadly neutral. On balance, the proposals would not amount to sustainable development and this is a material consideration which weighs against allowing the appeal.

Conclusions on the development plan

- 11.58 For the above reasons, the proposals would conflict with CS policy CP19 and, to a lesser extent, with CP8. No development plan policy support would outweigh this conflict and so the scheme would be contrary to the development plan as a whole. It should therefore be dismissed unless material considerations indicate otherwise.
- 11.59 The appellant has argued that the *Rushden Lakes* decision means that this development plan must also now be seen through the prism of the NPPF, that is to say refracted, bent or distorted, by it. Whether or not that was the Inspector's meaning, given the primacy of the development plan, as confirmed

in NPPF 2, that must be read with caution. Indeed, it should be noted that there is nothing to suggest that the SoS necessarily accepted this interpretation as meaning that all development plans must now be read as being biased towards the presumption in favour of sustainable development, rather than just those which are absent, silent or whose relevant policies are out-of-date. In any event, the presumption in NPPF 14 turns on the definition taken from NPPF 6 which refers to NPPF 18-219 as a whole, including NPPF 210, so this adds little. [6.25-27,7.5,7.14,8.12-13]

- 11.60 Rather, the requirement to consider sustainable development in most decisions is a factor to be balanced with any other material considerations. Frequently this will overlap with the balancing exercise when looking at the requirement to consider the development plan as a whole. In the *Rushden Lakes* decision the relevant hierarchy in the development plan as it applied to Rushden was out-of-date and so that decision has limited bearing on the conclusions to be drawn here. The SoS's Decision in *Sainsbury's Braintree* does not alter this.
- 11.61 The NPPF recognises the importance of town centres but also promotes competition within them. It also expects a hierarchy of centres, with clear definitions, to be established in local plans. That is what ECC has done through the CS and, as a result, there is no reason why the findings in this appeal should ignore the conflict with the CS.

Overall conclusions

- 11.62 As set out above, the appeal proposals would conflict with the development plan as a whole and so should be dismissed unless material considerations indicate otherwise. The NPPF is a material consideration but, on balance, the benefits of proposals would not outweigh the harm so as to amount to sustainable development and so this also indicates that the appeal should fail. Although of some age, the CS is not out-of-date. Nevertheless, given the above conclusion, even if it were out-of-date and/or inconsistent with the NPPF, and so to be given reduced weight under NPPF 215, the balance on sustainable development means that it would not alter the overall decision. Equally, if the relevant policies are given substantial weight, as they should be, even if the proposals passed the sequential and impact tests they should still be refused. As above, the suggested conditions which could be applied to control the use of the proposed floorspace would not alter this conclusion.
- 11.63 For the above reasons, the appeal proposals would not accord with the development plan as a whole. On balance, they would also conflict with the NPPF so that no material considerations arise that would outweigh the requirement to determine the appeal in accordance with the development plan.

12. Inspector's Recommendations

- 12.1 The appeal should be dismissed.

David Nicholson

INSPECTOR

Appendix A

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Michael Bedford of Counsel	instructed by the Head of Legal Services, Exeter City Council
He called	
Richard Short BA MBA	Exeter City Council
Matthew Morris BSc (Hons) DipTP MRTPI	Bilfinger GVA
Andrew Pearce BA RICS	Jones Lang Lasalle

FOR CPG DEVELOPMENT PROJECTS LTD:

David Elvin QC	instructed by Dr Tom Rocke
He called	
Arfon Hughes BSc (Hons) LLB (Hons) DipEngLaw MRTPI	Mango Planning & Development Limited
Tom Rocke BA (Hons) PhD BTP (Dist) MRTPI	Rocke Associates
Graham Chase FRICS C.ARB FRSA FInstCPD	Chase & Partners
Noel Stevens BSc MRICS	Alder King

FOR THE CROWN ESTATE AND TIAA HENDERSON REAL ESTATE:

Neil King QC	instructed by Wragge Lawrence Graham & Co
He called	
Gary Forster BA (Hons) MPhil MRTPI	Montagu Evans
John Grinnell	the Crown Estate

Appendix B.

Inquiry Documents (ID)

Local Planning Authority (LP)

- 1 Judgment in *R (Milton (Peterborough) Estates Company) v. Ryedale District Council* [2015] EWHC 1948 (Admin)
- 2 *Bath Press* Decision and Report dated 18 December 2013
- 3 Opening Statement on behalf of Exeter City Council
- 4 Letter of notification of the Inquiry and its date and venue
- 5 Experian Retail Planner Briefing note 13, October 2015
- 6 IKEA Outline Planning Permission ref. 13/4525/01 dated 26 November 2014
- 7 ALDI Full Planning Permission ref.14/2083/03 dated 30 June 2015
- 8 Email dated 27 November 2015 and plan for Sainsbury's store
- 9 Site visit plans and lists
- 10 Answers to IQs to ECC re the BCS redevelopment
- 11 Schedule of permissions and conditions for existing retail developments
- 12 Closing submissions on behalf of Exeter City Council

The Crown Estate and THRE (TIAA Henderson Real Estate) (CEH)

- 1 Opening Statement on behalf of CEH
- 2 Rule 6 party Position Statement on Statement of Common Ground
- 3 Position Statement on Statement of Common Ground on Retail Matters
- 4 Transport Assessment Addendum Technical Note TN7 dated November 2015
- 5 Email dated 2 December 2015 with adjusted cinema flows
- 6 Table relating to ID CEH5
- 7 Extract from Next plc Annual Report and Accounts
- 8 Closing submissions on behalf of CEH

CPG Development Projects Ltd. (A)

- 1 Opening submissions on behalf of the appellant
- 2 Retail Assessment by Bilfinger/GVA for *Firepool, Taunton*, November 2015
- 3 *Tesco Springfields* Decision and Report
- 4 Email dated 1 December 2015 regarding the ownership of the BCS site
- 5 Email and formal response from national express dated 24 August 2015
- 6 Press cutting regarding proposed Enterprise Zone
- 7 Transport Assessment Addendum Appendix C to F dated November 2015
- 8 Briefing note regarding ID LP5
- 9 Note on Employment Land Supply
- 10 Summary of letters of support
- 11 List of proposed conditions
- 12 Closing submissions on behalf of the appellant

Core Documents (CD)

- CD1 National Planning Policy Framework
- CD2 Planning Practice Guidance
- CD3 Exeter Core Strategy 2026
- CD4 Exeter Core Strategy Examination Inspector's Report
- CD5 Exeter Local Plan First Review 2011 (including Proposals Map)
- CD6 Draft Development Delivery DPD 2013: Proposals Maps 8 & 10
- CD7 Publication Development Delivery DPD 2015: Proposals Map 12
- CD7A Publication Development Delivery DPD 2015: Text
- CD8 Monkerton and Hill Barton Masterplan Study
- CD9 Exeter Bus and Coach Station Development Principles (June 2012)
- CD10 Secretary of State Call-In Decision (Ref: APP/G2815/V/12/2190175) relating to land at Skew Bridge Ski Slope, Northampton Road, Rushden
- CD11 Appeals Decisions: Baltic Wharf, Peter's Street, Maidstone
- CD12 Retail Impact Assessment prepared by GVA accompanying Application Ref: 13/4073/03 for a convenience store at Middlemoor, Honiton Road, Exeter
- CD13 Officer's Report to Committee in respect of Application Ref: 13/4073/03 for a convenience store at Middlemoor, Honiton Road, Exeter
- CD14 Officer's Report to Committee in respect of Application Ref: 13/4525/01 for a non-food retail store for IKEA at Rydon Lane, Exeter
- CD15 Application (Ref: 15/07091/01) for redevelopment of Exeter Bus and Coach Station: Application Forms
- CD16 Application (Ref: 15/07091/01) for redevelopment of Exeter Bus and Coach Station: Masterplan / Parameter Plans
- CD17 Application (Ref: 15/07091/01) for redevelopment of Exeter Bus and Coach Station: Transport Statement
- CD17A Letter from Montagu Evans to appellant dated 6 November 2015 regarding floorspace figures for Bus and Coach Station application
- CD17B Decision Notice on planning application 15/0387/03 relating to relocation of Bus depot and stabling from Bus and Coach station
- CD18 Letter from GVA dated 24th February 2015 in respect of Application (Ref: 14/2083/03) for a foodstore for Aldi at Exeter Road, Topsham
- CD19 Officer's Report to second Planning Committee in relation to Application (Ref: 14/2083/03) for a foodstore for Aldi at Exeter Road, Topsham
- CD20 Exeter Retail Study 2008 prepared by DTZ
- CD21 Officer's Report to Planning Committee on 1st December 2014, and Update Sheet, in respect of the Appeal Application
- CD22 Rule 6 Statement of Case on behalf of the Appellants
- CD23 Rule 6 Statement of Case by the Council
- CD24 Rule 6 Statement of Case on behalf of The Crown Estate / TIAA Henderson Real Estate
- CD25 Statement of Common Ground
- CD26 Supplementary Statement of Common Ground in relation to Retail Matters
- CD27 Decision Notice relating to Outline Planning Permission (Ref: 11/1619/01) granted in relation to the Appeal site
- CD28 Officer's Report to Committee in relation to Application (Ref: 11/1619/01) for Outline Planning Permission in relation to the Appeal Site
- CD29 Advice letter (undated) from GVA to Exeter City Council in respect of the Appeal Application
- CD30 Decision Notice (Ref: 14/1615/01) refusing to grant Outline Planning Permission for the Appeal Application
- CD31 Secretary of State Call-In Decision (Ref: APP/N1160/A/12/2169472/01) relating to land at Derriford Road, Plymouth
- CD32 Secretary of State Call-In Decision (Ref: APP/110/A/14/2219101) relating to land at Broomhills Industrial Estate, Braintree

- CD33 Representations in support of the revised Application (Ref: 15/0704/01)
- CD34 Updated response from the Highway Authority to the Appeal Proposals
- CD35 Officer's Report to Planning Committee and Update Sheet in relation to the revised Application (Ref: 15/0704/01)
- CD36 Legal Judgement: Tesco Stores v Dundee City Council
- CD37 Legal Judgement: R v Braintree District Council ex parte Clacton Common Development Limited
- CD38 Decision notice for Planning Application (Ref: 13/5218/03) varying Condition 29 of Planning Permission Ref: 11/1619/01
- CD39 Extract from ECC Employment land Supply report April 2010
- CD40 Highways England Direction for Planning Condition on Appeal Application
- CD41 Chalfont St Peter Parish Council v Chiltern District Council 2014 EWCA Civ 1393
- CD42 Phides Estates (Overseas) Ltd v SSCLG 2015 EWHC 827
- CD43 Decision Notice relating to Revised Application (Ref: 15/0704/01) dated 9 November 2015
- CD44 Officer's report to Planning Committee re Application (Ref: 12/0472/01) on land to the north by Hill Barton consortium
- CD45 Decision Notice on Application Ref: 12/0472/01C
- CD46 Illustrative Layout Plan relating to Application Ref: 12/0472/01 showing location of Local Centre
- CD47 Planning application (Ref: 15/1065/01) by British Land for B&Q Site: Quod Planning & retail assessment Section 4 Proposed Development and Prospective Tenants
- CD48 Planning Application (Ref: 15/1065/01) by British Land for B&Q Site: Proposed Development Parameters Plan
- CD49 Planning Application (Ref: 15/1065/01) by British Land for B&Q Site: Plans showing fallback position
- CD50 Advice Letter (August 2015) from GVA to Exeter City Council in respect of Revised Application (Ref. 15/0704/01)
- CD51 Application form re. Planning Application Ref. 11/1619/01
- CD52 Practice Guidance on Need, Impact and the Sequential Approach
- CD53 Appeal Application: Application Forms
- CD54 Appeal Application: Plans and Drawings
- CD55 Appeal Application: Design and Access Statement
- CD56 Appeal Application: Retail Statement
- CD57 Appeal Application: Planning Statement
- CD58 Appeal Application: Transport Statement
- CD59 Revised Application: Agreed Highway Works (Dwg. Ref. 2176_PHL_007C)
- CD60 Bus and Coach Station Application Revised Letter, Forms and Docs List
- CD61 Bus and Coach Station Application Revised DAS Complete
- CD62 Bus and Coach Station Application Revised Location and Existing Plans
- CD63 Bus and Coach Station Application Revised Demolition and Parameter Plans
- CD64 Bus and Coach Station Application Illustrative Scheme Plans
- CD65A Bus and Coach Station Application Transport Assessment Addendum Drawings
- CD65B Bus and Coach Station Application Transport Statement Addendum Text
- CD66 Bus and Coach Station Application Supplementary Note re Application Amendments
- CD68 Revised Appeal Application Design and Access Statement
- CD69 Revised Appeal Application Appendix 4 to Planning Statement Appellants' Suggested Conditions

Appendix C.

Suggested conditions

- 1 Approval of the details of the layout, scale, appearance of the buildings, and the landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority (LPA) in writing before any development is commenced.

Reason: To safeguard the rights of control by the LPA in respect of the reserved matters.

- 2 Application for the approval of the reserved matters shall be made to the LPA before the expiration of three years from the date of the permission and the development hereby permitted shall be begun before the expiration of five years from the date of the permission, or before the expiration of two years from the date of the approval of the last of the reserved matters to be approved whichever is the later.

Reason: To ensure compliance with section 91 - 93 of the Town and Country Planning Act 1990.

- 3 The development hereby permitted shall not be carried out otherwise than in general accordance with the submitted details received by the LPA on 1 July 2014 (2176-PHL-001 revision D: Proposed Access Plan) and introduced at the subsequent appeal the approved Parameter Plan to the duplicate application (Drawing PR719_PL07) as modified by other conditions of this consent.

Reason: In order to ensure compliance with the approved drawings.

- 4 Samples of the materials to be used to use externally in the construction of the development shall be submitted to the LPA. No external finishing materials shall be used until the LPA has confirmed in writing that their use is acceptable. Thereafter the materials used in the construction of the development shall correspond with the approved samples in all respects.

Reason: To ensure that the materials conform to the visual amenity requirements of the area.

- 5 A detailed scheme for landscaping, including the planting of trees and/or shrubs and hard landscaping including boundary screen walls and fences shall be submitted to, and agreed by, the LPA as part of the submission of reserved matters; such scheme shall specify types and species, and any earthworks required, together with a programme of planting and the timing of implementation of the scheme. The scheme shall be implemented in accordance with the approved details.

Reason: To safeguard the rights of control by the LPA in these respects and in the interests of amenity.

- 6 In the event of failure of any trees or shrubs, planted in accordance with any scheme approved by the LPA, to become established and to prosper for a period of five years from the date of the completion of implementation of that scheme, such trees or shrubs shall be replaced with such live specimens of such species of such size and in such number as may be approved by the LPA.

Reason: To safeguard the rights of control by the LPA in these respects and in the interests of amenity.

- 7 No materials shall be brought onto the site or any development commenced, until the developer has erected tree protective fencing around all trees or shrubs to be retained, in accordance with a plan that shall previously have been submitted to and approved in writing by the LPA. This plan shall be produced in accordance with BS 5837:2012 - 'Trees in Relation to Construction'. The developer shall maintain such fences to the satisfaction of the LPA until all development the subject of this permission is completed. The level of the land within the fenced areas shall not be altered without the prior written consent of the LPA. No materials shall be stored within the fenced area, nor shall trenches for service runs or any other excavations take place within the fenced area. Where such permission is granted, soil shall be removed manually, without powered equipment.

Reason: To ensure the protection of the trees during the carrying out of the development.

- 8 No development shall take place until a Construction and Environment Management Plan (CEMP) has been submitted to, and approved in writing by, the LPA. Notwithstanding the details and wording of the CEMP the following restrictions shall be adhered to:
- a) There shall be no burning on site during demolition, construction or site preparation works;
 - b) Unless otherwise agreed in writing, no construction or demolition works shall be carried out, or deliveries received, outside of the following hours: 0800 to 1800 hours Monday to Friday, 0800 to 1300 on Saturdays, and not at all on Sundays and Public Holidays;
 - c) Dust suppression measures shall be employed as required during construction in order to prevent off-site dust nuisance.
- The approved CEMP shall be adhered to throughout the construction period.

Reason: In the interests of the occupants of nearby buildings.

- 9 Prior to the commencement of the development a Sustainable Urban Drainage Scheme (SUDS) to deal with surface water associated with the development shall be submitted to and approved in writing by the LPA (in consultation with Devon County Council as the Lead Local Flood Authority). The said scheme shall include details of the on-going maintenance arrangements associated with any drainage system to be installed. The development shall be implemented strictly in accordance with the approved scheme.

Reason: To ensure the satisfactory drainage of the development.

- 10 Unless it is agreed with the LPA in writing prior to commencement of development that it is not viable or feasible to do so, the buildings comprised in the development hereby approved shall be constructed so that their internal systems for space and water heating are capable of being connected to the proposed decentralised energy (district heating) network, and in accordance with the Heat Networks: code of practice for the UK (CIBSE). Prior to occupation of the development the necessary on site infrastructure shall be put in place to enable connection of those systems to the network.

Reason: To ensure that the proposal complies with CS Policy CP13 and paragraph NPPF 96 and in the interests of sustainable development.

- 11 The development hereby approved shall be constructed to achieve a minimum rating for BREEAM 'Excellent' for shell only, and within 3 weeks of practical completion (or within an alternative timescale to be agreed) the relevant application for construction certification, demonstrating that BREEAM 'Excellent' (shell only assessment and certification) has been achieved, shall be submitted to, and approved in writing by, the LPA.

Reason: To ensure that the proposal complies with Policy CP15 of Council's Adopted CS and in the interests of delivering sustainable development.

- 12 The applicant shall submit for approval a management plan for the development. This should describe the steps that will be taken to ensure that noise from use of the development does not have an adverse effect on local amenity. It should include, but not be limited to, the hours of use of the development (including deliveries), supervision and any noise mitigation measures that are appropriate. The use of the development shall subsequently be carried out in accordance with the approved details.

Reason: In the interests of local amenity.

- 13 Prior to any building hereby approved being brought into use a Wildlife Plan which demonstrates how the proposed development has been designed to enhance the ecological interest of the site, and how it will be managed in perpetuity to enhance wildlife has been submitted to and approved in writing by the LPA. Thereafter the development shall be carried out and managed strictly in accordance with the approved measures and provisions of the Wildlife Plan.

Reason: In the interests of protecting and improving existing, and creating new wildlife habitats in the area.

- 14 No Class A1 unit hereby approved shall be occupied until the widening of Honiton Road, provision of a Toucan crossing and improvements to Fitzroy Road junction, as indicated on the Proposed Site Parameters Plan (Drawing 13-170 PL-16 Revision A), have been provided and retained for that purpose at all times.

Reason: To prevent a severe impact on the local transport network and ensure that safe and suitable access is provided for vehicles, in accordance with Section 4 of NPPF.

- 15 The vehicular connection to the northern boundary of the application site shall be constructed in accordance with the submitted details received by the LPA on 1 July 2014 (Drawing Ref: 2176_PHL_001 revision D – Proposed Access Plan) to the adoption standards of the Highway Authority, and be available for public use, at a date no later than 4 months following the completion and availability for public use of a new full vehicular link and connection between both Hill Barton Road and Oberon Road on adjoining land to the north of the application site in accordance with Planning Permission Ref: 12/0472/01, or any planning permission by which it may be amended and/or superseded.

Reason: To ensure the approved retail/leisure facilities may be conveniently accessible from the proposed development to the north, with appropriate trigger for timing of the link to ensure the Fitzroy Road junction operates in a safe and suitable manner.

- 16 No Class A1 unit hereby approved shall be occupied until the three pedestrian/cycle connections of at least 3.0 metres width from the northern boundary of the site to a point on the footway on Honiton Road on the southern boundary adjacent the Toucan crossing, as indicated on the Proposed Site Parameters Plan (Drawing 13-170 PL-16 Revision A), has been provided to a standard approved in writing by the LPA and made available for public use and such connections to be maintained for this purpose at all times.

Reason: To provide adequate facilities to promote the use of sustainable modes in accordance with Section 4 of the NPPF.

- 17 A comprehensive Framework Travel Plan for the site, to reflect the objectives set out in Section 8 of the Framework Travel Plan forming part of the Transport Statement accompanying the application, shall be submitted to and approved in writing by the LPA in advance of occupation of the development. The approved travel plan measures shall be implemented to the satisfaction of the LPA.

Reason: To ensure that the development promotes all travel modes reliance on the private car, in accordance with paragraph 36 of the NPPF.

- 18 The overall floorspace to be comprised in the development hereby permitted, and the quanta per Use Class, shall not exceed the gross maxima set out in the Schedules below:

Development Parameter	Quantum
Maximum Floorspace (sq m GEA)	16,933
Maximum Floorspace (sq m GIA)	16,127
Maximum Building Height (m AOD)	53.4

Use Class	Maximum (sq m GIA)
A1 (Shops)	11,102
A2 (Financial & Professional Services)	316
A3 (Restaurants and Cafes)	1,509
A5 (Hot Food Take-away)	116
D1 (Non-residential Institutions)	1,138
D2 (Assembly and Leisure)	1,946

Reason: To define the terms of the permission and to ensure that the development comprises an appropriate mix of uses to serve its intended purposes.

- 19 The net sales area of the retail (Class A1) floorspace (excluding Garden Centre) hereby permitted shall not exceed 7,217 square metres.

Reason: To ensure that the trading impacts of the proposals are acceptable.

- 20 The reserved matters to be submitted pursuant to this planning permission for the 'retail block' (Use Class A1) as shown on the approved Parameter Plan to the duplicate application (Drawing PR719_PL07) adjacent to the western site boundary shall comprise a maximum gross floor area of 8,734 sq m limited as follows:

- a) An anchor unit of between 3,252 - 5,807 sq m (gross) (excluding Garden Centre) with a maximum net sales area of 3,948 sq m for the purposes of non-food retailing; no more than 60% of the net sales area of this unit shall be used for the display and sale of clothing and footwear;
- b) Additional units each of not less than 650 sq m (gross); the retail floorspace to be comprised in these units shall not be occupied by retailers whose operation is predominantly the sale of clothing and footwear (but not so as to restrict the sale of clothing and footwear for the purposes of sports and/or outdoor pursuits).

Reason: To ensure that the complexion of the development is in accordance with the purposes prescribed in the application and reflects the complexion of the proposals upon which the assessment of impact was based.

- 21 The reserved matters to be submitted pursuant to this planning permission for the 'mixed use' block shown on the approved Parameter Plan to the duplicate application (Drawing PR719_PL07) adjacent to the northern site boundary shall include the following:

- a) a single unit of not less than 1,000 sq m (gross) for predominantly convenience retailing; up to 20% of the net sales area may be used for ancillary comparison goods sales;

- b) a single unit of up to 1,946 sq m (gross) for the purposes of a gymnasium (Class D2);
- c) a minimum of one unit each for purposes within Use Classes A2 (Financial and Professional Services) and D1 (Community Use);
- d) not more than a single 'in-line' unit (maximum 455 sq m gross) for purposes within Class A3 (Restaurants and Cafes).

Reason: To ensure that the complexion of the development is in accordance with the purposes prescribed in the application and reflects the complexion of the proposals upon which the assessment of impact was based.

- 22 With the exception of the 'in-line' restaurant allowed for in accordance with Condition 21 above, uses within Class A3 (Restaurants and Cafes) shall be comprised in a maximum of three freestanding 'drive-to' units, with optional 'drive-thru' facilities, as shown on the approved Parameter Plan to the duplicate application (Drawing PR719_PL07).

Reason: To ensure that the complexion of development is in accordance with the purposes prescribed in the application.

- 23 Except where otherwise permitted in accordance with Conditions 20 and 21 above, no individual unit within the 'mixed use' block shall exceed 511 sq m (gross).

Reason: To ensure an appropriate range and mix of unit sizes.

- 24 Further to any approval of reserved matters pursuant to this planning permission, there shall be no subsequent amalgamation or sub-division of units.

Reason: Any changes will require further consideration by the LPA to ensure that the impacts are acceptable.

- 25 The floorspace to be used for purposes within Class D2 hereby permitted shall not be used other than for the purposes of a gymnasium (which shall not include provision for a swimming pool), and shall not be used as a cinema or for any other purpose(s) within Class D2 of the Town and Country Planning (Use Classes) Order 1987 (as amended), or any Order by which it may be revoked and re-enacted.

Reason: To ensure that the leisure uses are complimentary to the City Centre offer.



RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

Appendix II

Study Area

exeter 2015 household survey area FINALv3.1



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Appendix III

Impact Assessment

TABLE 1a: INDICATE TURNOVER OF MOOR EXCHANGE PROPOSAL (BASED ON LARGE FOODSTORE WITHIN SCHEME)

	NET SALES AREA (sq m)	COMPARISON FLOORSPACE	CONVENIENCE FLOORSPACE	COMPARISON SALES DENSITY (£/sq m)	CONVENIENCE SALES DENSITY (£/sq m)	COMPARISON GOODS TURNOVER (£m)	CONVENIENCE GOODS TURNOVER (£m)
Next	3029	2843	186	£3,249	£3,249	£9.2	£0.6
M&S Simply Food	1338	0	1338	£0	£11,283	£0.0	£15.1
Boots	1004	953	50			£2.5	£0.0
Lidl	1496	427	1069	£8,554	£8,554	£3.5	£9.1
Mothercare	1463	1317	146	£3,709	£3,709	£4.9	£0.5
Unit F	419	419	0	£4,500	£0	£1.9	£0.0
Unit G	627	627	0	£4,500	£0	£2.8	£0.0
Unit K	104	104	0	£4,500	£0	£0.5	£0.0
Unit L	104	104	0	£4,500	£0	£0.5	£0.0
Unit M	104	104	0	£4,500	£0	£0.5	£0.0
Total						£26.2	£25.4

Notes:

Net sales and convenience/comparison floorspace taken from Mango Retail Assessment (Table A).
Sales densities taken from Verdict and Retail Rankings (2018) research.

TABLE 1b: INDICATE TURNOVER OF MOOR EXCHANGE PROPOSAL (NO LARGE FOODSTORE WITHIN SCHEME)

	NET SALES AREA (sq m)	COMPARISON FLOORSPACE	CONVENIENCE FLOORSPACE	COMPARISON SALES DENSITY (£/sq m)	CONVENIENCE SALES DENSITY (£/sq m)	COMPARISON GOODS TURNOVER (£m)	CONVENIENCE GOODS TURNOVER (£m)
Next	3029	2843	186	£3,249	£3,249	£9.2	£0.6
M&S Simply Food	1338	0	1338	£0	£11,283	£0.0	£15.1
Boots	1004	953	50			£2.5	£0.0
Unit D	1496	1496	0	£4,500	£0	£6.7	£0.0
Mothercare	1463	1317	146	£3,709	£3,709	£4.9	£0.5
Unit F	419	419	0	£4,500	£0	£1.9	£0.0
Unit G	627	627	0	£4,500	£0	£2.8	£0.0
Unit K	104	104	0	£4,500	£0	£0.5	£0.0
Unit L	104	104	0	£4,500	£0	£0.5	£0.0
Unit M	104	104	0	£4,500	£0	£0.5	£0.0
Total						£29.5	£16.2

Notes:

Net sales and convenience/comparison floorspace taken from Mango Retail Assessment (Table A).
Sales densities taken from Verdict and Retail Rankings (2018) research.

TABLE 2a: CONVENIENCE GOODS IMPACT OF MOOR EXCHANGE, 2021 (BASED ON LARGE FOODSTORE WITHIN SCHEME)

STORE / CENTRE	PRE-IMPACT 2021 TURNOVER (£m)	DIVERSION TO COMMITMENTS (£m)	RESIDUAL TURNOVER (£m)	IMPACT OF COMMITMENTS (%)	DIVERSION TO MOOR EXCHANGE (£m)	RESIDUAL TURNOVER (£m)	SOLUS IMPACT (%)	CUMULATIVE IMPACT (%)
Exeter City Centre								
Marks & Spencer, High Street, Exeter	£7.3	£0.1	£7.3	-0.7%	£0.8	£6.5	-10.5%	-11.1%
Sainsbury's, Guildhall Shopping Centre	£20.5	£0.1	£20.4	-0.5%	£0.5	£19.9	-2.5%	-3.0%
Other - Exeter City Centre	£33.8	£0.4	£33.4	-1.2%	£0.5	£32.8	-1.5%	-2.7%
Sub-total	£61.6	£0.6	£61.1	-0.9%	£1.8	£59.3	-2.9%	-3.8%
Heavitree district centre								
	£2.6	£0.1	£2.5	-1.9%	£0.1	£2.4	-4.0%	-5.8%
St Thomas district centre								
Co-op, Cowick Street, Exeter	£5.6	£0.1	£5.5	-0.9%	£0.0	£5.5	0.0%	-0.9%
M&S Simply Food, Albany Road, Exeter	£3.1	£0.0	£3.1	0.0%	£0.8	£2.3	-24.8%	-24.8%
Tesco Express, Cowick Street, Exeter	£6.5	£0.1	£6.4	-0.8%	£0.0	£6.4	0.0%	-0.8%
St Thomas District Centre	£1.2	£0.0	£1.2	0.0%	£0.0	£1.2	0.0%	0.0%
Sub-total	£16.4	£0.1	£16.3	-0.6%	£0.8	£15.5	-4.7%	-5.3%
Topsham district centre								
Co-op, Fore Street, Topsham	£2.7	£0.4	£2.3	-14.9%	£0.0	£2.3	0.0%	-14.9%
Topsham District Centre	£2.0	£0.3	£1.8	-12.5%	£0.0	£1.8	0.0%	-12.5%
Sub-total	£4.7	£0.7	£4.0	-13.8%	£0.0	£4.0	0.0%	-13.8%
Sidwell Street / Blackboy Road								
Mount Pleasant	£0.7	£0.0	£0.7	0.0%	£0.0	£0.7	0.0%	0.0%
Magdalen Road	£0.3	£0.0	£0.3	0.0%	£0.0	£0.3	0.0%	0.0%
Countess Wear (Topsham Road)	£0.3	£0.0	£0.3	0.0%	£0.0	£0.3	0.0%	0.0%
Countess Wear (Glass House Lane)	£0.6	£0.0	£0.6	0.0%	£0.0	£0.6	0.0%	0.0%
Beacon Lane	£0.3	£0.0	£0.3	0.0%	£0.0	£0.3	0.0%	0.0%
Polstoe Bridge	£0.3	£0.0	£0.3	0.0%	£0.0	£0.3	0.0%	0.0%
Pinhoe	£1.4	£0.0	£1.4	0.0%	£0.0	£1.4	0.0%	0.0%
Whipton	£1.9	£0.0	£1.9	0.0%	£0.0	£1.9	0.0%	0.0%
Exwick Road / Winchester Avenue	£0.2	£0.0	£0.2	0.0%	£0.0	£0.2	0.0%	0.0%
Isleworth Road	£0.0	£0.0	£0.0	0.0%	£0.0	£0.0	0.0%	0.0%
Exeter out-of-centre stores								
Aldi, Alphington Road, Exeter	£30.0	£1.2	£28.8	-4.0%	£1.0	£27.8	-3.5%	-7.4%
Aldi, Exhibition Way, Pinhoe	£20.9	£0.6	£20.3	-2.9%	£2.3	£18.0	-11.3%	-13.8%
Aldi, Topsham	£6.8	£0.0	£6.8	0.0%	£0.4	£6.4	-5.6%	-5.6%
Lidl, Burnthouse Lane, Exeter	£11.6	£1.3	£10.8	-6.9%	£1.5	£9.3	-14.1%	-20.0%
Lidl, Powlesland Road, Exeter	£8.5	£0.8	£7.7	-9.1%	£0.3	£7.5	-3.3%	-12.1%
Morrisons, Prince Charles Road, Exeter	£31.8	£0.7	£31.1	-2.1%	£2.3	£28.8	-7.3%	-9.3%
Sainsbury's, Alphington Road, Exeter	£40.5	£0.9	£39.6	-2.2%	£1.4	£38.2	-3.5%	-5.6%
Sainsbury's, Pinhoe	£47.3	£0.4	£46.9	-0.8%	£5.8	£41.2	-12.3%	-13.0%
Tesco Extra, Russell Way	£40.9	£2.6	£38.2	-6.4%	£4.7	£33.6	-12.3%	-17.9%
Waitrose, Gladstone Road, Exeter	£23.1	£0.4	£22.7	-1.7%	£2.8	£19.9	-12.3%	-13.8%
Iceland, Alphington Road, Exeter	£2.3	£0.0	£2.3	0.0%	£0.0	£2.3	0.0%	0.0%
Other	£3.6	£0.1	£3.5	-1.4%	£0.1	£3.4	-2.9%	-4.3%
Other	£1,054.0	£0.0	£1,054.0		£0.3			

Notes:

Pre-impact 2021 turnover taken from EWEEED study.

TABLE 2b: CONVENIENCE GOODS IMPACT OF MOOR EXCHANGE, 2021 (NO LARGE FOODSTORE WITHIN SCHEME)

STORE / CENTRE	PRE-IMPACT 2021 TURNOVER (£m)	DIVERSION TO COMMITMENTS (£m)	RESIDUAL TURNOVER (£m)	IMPACT OF COMMITMENTS (%)	DIVERSION TO MOOR EXCHANGE (£m)	RESIDUAL TURNOVER (£m)	SOLUS IMPACT (%)	CUMULATIVE IMPACT (%)
Exeter City Centre								
Marks & Spencer, High Street, Exeter	£7.3	£0.1	£7.3	-0.7%	£0.5	£6.8	-6.7%	-7.3%
Sainsbury's, Guildhall Shopping Centre	£20.5	£0.1	£20.4	-0.5%	£0.3	£20.1	-1.6%	-2.1%
Other - Exeter City Centre	£33.8	£0.4	£33.4	-1.2%	£0.3	£33.0	-1.0%	-2.1%
Sub-total	£61.6	£0.6	£61.1	-0.9%	£1.1	£59.9	-1.9%	-2.7%
Heavitree district centre	£2.6	£0.1	£2.5	-1.9%	£0.1	£2.5	-2.6%	-4.4%
St Thomas district centre								
Co-op, Cowick Street, Exeter	£5.6	£0.1	£5.5	-0.9%	£0.0	£5.5	0.0%	-0.9%
M&S Simply Food, Albany Road, Exeter	£3.1	£0.0	£3.1	0.0%	£0.5	£2.6	-15.8%	-15.8%
Tesco Express, Cowick Street, Exeter	£6.5	£0.1	£6.4	-0.8%	£0.0	£6.4	0.0%	-0.8%
St Thomas District Centre	£1.2	£0.0	£1.2	0.0%	£0.0	£1.2	0.0%	0.0%
Sub-total	£16.4	£0.1	£16.3	-0.6%	£0.5	£15.8	-3.0%	-3.6%
Topsham district centre								
Co-op, Fore Street, Topsham	£2.7	£0.4	£2.3	-14.9%	£0.0	£2.3	0.0%	-14.9%
Topsham District Centre	£2.0	£0.3	£1.8	-12.5%	£0.0	£1.8	0.0%	-12.5%
Sub-total	£4.7	£0.7	£4.0	-13.8%	£0.0	£4.0	0.0%	-13.8%
Sidwell Street / Blackboy Road	£0.7	£0.0	£0.7	0.0%	£0.0	£0.7	0.0%	0.0%
Mount Pleasant	£0.0	£0.0	£0.0	0.0%	£0.0	£0.0	0.0%	0.0%
Magdalen Road	£0.3	£0.0	£0.3	0.0%	£0.0	£0.3	0.0%	0.0%
Countess Wear (Topsham Road)	£0.3	£0.0	£0.3	0.0%	£0.0	£0.3	0.0%	0.0%
Countess Wear (Glass House Lane)	£0.6	£0.0	£0.6	0.0%	£0.0	£0.6	0.0%	0.0%
Beacon Lane	£0.3	£0.0	£0.3	0.0%	£0.0	£0.3	0.0%	0.0%
Polsloe Bridge	£0.3	£0.0	£0.3	0.0%	£0.0	£0.3	0.0%	0.0%
Pinhoe	£1.4	£0.0	£1.4	0.0%	£0.0	£1.4	0.0%	0.0%
Whipton	£1.9	£0.0	£1.9	0.0%	£0.0	£1.9	0.0%	0.0%
Exwick Road / Winchester Avenue	£0.2	£0.0	£0.2	0.0%	£0.0	£0.2	0.0%	0.0%
Isleworth Road	£0.0	£0.0	£0.0	0.0%	£0.0	£0.0	0.0%	0.0%
Exeter out-of-centre stores								
Aldi, Alphington Road, Exeter	£30.0	£1.2	£28.8	-4.0%	£0.6	£28.2	-2.3%	-6.2%
Aldi, Exhibition Way, Pinhoe	£20.9	£0.6	£20.3	-2.9%	£1.5	£18.8	-7.2%	-9.9%
Aldi, Topsham	£6.8	£0.0	£6.8	0.0%	£0.2	£6.6	-3.6%	-3.6%
Lidl, Burnthouse Lane, Exeter	£11.6	£1.3	£10.8	-6.9%	£1.0	£9.9	-9.0%	-15.2%
Lidl, Powlesland Road, Exeter	£8.5	£0.8	£7.7	-9.1%	£0.2	£7.6	-2.1%	-11.0%
Morrisons, Prince Charles Road, Exeter	£31.8	£0.7	£31.1	-2.1%	£1.5	£29.7	-4.7%	-6.7%
Sainsbury's, Alphington Road, Exeter	£40.5	£0.9	£39.6	-2.2%	£0.9	£38.7	-2.3%	-4.4%
Sainsbury's, Pinhoe	£47.3	£0.4	£46.9	-0.8%	£3.7	£43.2	-7.9%	-8.6%
Tesco Extra, Russell Way	£40.9	£2.6	£38.2	-6.4%	£3.0	£35.2	-7.9%	-13.8%
Waitrose, Gladstone Road, Exeter	£23.1	£0.4	£22.7	-1.7%	£1.8	£20.9	-7.9%	-9.5%
Iceland, Alphington Road, Exeter	£2.3	£0.0	£2.3	0.0%	£0.0	£2.3	0.0%	0.0%
Other	£3.6	£0.1	£3.5	-1.4%	£0.1	£3.4	-1.9%	-3.2%
Other	£1,054.0	£0.0	£1,054.0		£0.2			

Notes:

Pre-impact 2021 turnover taken from EWEEED study.

TABLE 3a: COMPARISON GOODS IMPACT OF MOOR EXCHANGE, 2021 (BASED ON LARGE FOODSTORE WITHIN SCHEME)

STORE / CENTRE	PRE-IMPACT 2021 TURNOVER (£m)	DIVERSION TO COMMITMENTS (£m)	RESIDUAL TURNOVER (£m)	IMPACT OF COMMITMENTS (%)	DIVERSION TO MOOR EXCHANGE (£m)	RESIDUAL TURNOVER (£m)	SOLUS IMPACT (%)	CUMULATIVE IMPACT (%)
Exeter City Centre	£865.2	£9.7	£855.5	-1.1%	£20.72	£834.76	-2.4%	-3.5%
Heavitree district centre	£5.3	£0.0	£5.3	0.0%	£0.00	£5.28	0.0%	0.0%
St Thomas district centre	£8.7	£0.0	£8.7	0.0%	£0.79	£7.89	-9.1%	-9.1%
Topsham district centre	£6.8	£0.0	£6.8	0.0%	£0.00	£6.79	0.0%	0.0%
Sidwell Street / Blackboy Road	£2.4	£0.0	£2.4	0.0%	£0.00	£2.40	0.0%	0.0%
Mount Pleasant	£3.4	£0.0	£3.4	0.0%	£0.00	£3.40	0.0%	0.0%
Magdalen Road	£0.3	£0.0	£0.3	0.0%	£0.00	£0.31	0.0%	0.0%
Countess Wear (Topsham Road)	£0.8	£0.0	£0.8	0.0%	£0.00	£0.76	0.0%	0.0%
Beacon Lane	£0.2	£0.0	£0.2	0.0%	£0.00	£0.17	0.0%	0.0%
Polsloe Bridge	£0.1	£0.0	£0.1	0.0%	£0.00	£0.07	0.0%	0.0%
Pinhoe	£12.0	£0.0	£12.0	0.0%	£0.00	£12.03	0.0%	0.0%
Whipton	£3.4	£0.0	£3.4	0.0%	£0.00	£3.41	0.0%	0.0%
Exwick Road / Winchester Avenue	£0.3	£0.0	£0.3	0.0%	£0.00	£0.31	0.0%	0.0%
Isleworth Road	£0.0	£0.0	£0.0	0.0%	£0.00	£0.00	0.0%	0.0%
Rydon Lane	£27.3	£1.0	£26.3	-3.5%	£1.05	£25.28	-4.0%	-7.4%
Alphington	£12.7	£0.7	£12.0	-5.4%	£1.05	£10.96	-8.7%	-13.6%
Marsh Barton	£49.4	£4.0	£45.4	-8.2%	£0.00	£45.35	0.0%	-8.2%
Sowton	£72.6	£4.4	£68.1	-6.1%	£1.31	£66.82	-1.9%	-7.9%
Other	£7.1	£0.0	£7.1	0.0%	£0.00	£7.06	0.0%	0.0%
Ikea	£48.0	£0.1	£48.0	0.0%	£0.52	£47.48	-1.1%	-1.1%
Other	£1,109.9	£29.9	£1,080.0	-2.7%	£0.79	£1,079.21	-0.1%	-2.8%

Notes:
Pre-impact 2021 turnover taken from EWEEED study.

TABLE 3b: COMPARISON GOODS IMPACT OF MOOR EXCHANGE, 2021 (NO LARGE FOODSTORE WITHIN SCHEME)

STORE / CENTRE	PRE-IMPACT 2021 TURNOVER (£m)	DIVERSION TO COMMITMENTS (£m)	RESIDUAL TURNOVER (£m)	IMPACT OF COMMITMENTS (%)	DIVERSION TO MOOR EXCHANGE (£m)	RESIDUAL TURNOVER (£m)	SOLUS IMPACT (%)	CUMULATIVE IMPACT (%)
Exeter City Centre	£865.2	£9.7	£855.5	-1.1%	£23.28	£832.21	-2.7%	-3.8%
Heavitree district centre	£5.3	£0.0	£5.3	0.0%	£0.00	£5.28	0.0%	0.0%
St Thomas district centre	£8.7	£0.0	£8.7	0.0%	£0.88	£7.80	-10.2%	-10.2%
Topsham district centre	£6.8	£0.0	£6.8	0.0%	£0.00	£6.79	0.0%	0.0%
Sidwell Street / Blackboy Road	£2.4	£0.0	£2.4	0.0%	£0.00	£2.40	0.0%	0.0%
Mount Pleasant	£3.4	£0.0	£3.4	0.0%	£0.00	£3.40	0.0%	0.0%
Magdalen Road	£0.3	£0.0	£0.3	0.0%	£0.00	£0.31	0.0%	0.0%
Countess Wear (Topsham Road)	£0.8	£0.0	£0.8	0.0%	£0.00	£0.76	0.0%	0.0%
Beacon Lane	£0.2	£0.0	£0.2	0.0%	£0.00	£0.17	0.0%	0.0%
Polsloe Bridge	£0.1	£0.0	£0.1	0.0%	£0.00	£0.07	0.0%	0.0%
Pinhoe	£12.0	£0.0	£12.0	0.0%	£0.00	£12.03	0.0%	0.0%
Whipton	£3.4	£0.0	£3.4	0.0%	£0.00	£3.41	0.0%	0.0%
Exwick Road / Winchester Avenue	£0.3	£0.0	£0.3	0.0%	£0.00	£0.31	0.0%	0.0%
Isleworth Road	£0.0	£0.0	£0.0	0.0%	£0.00	£0.00	0.0%	0.0%
Rydon Lane	£27.3	£1.0	£26.3	-3.5%	£1.18	£25.15	-4.5%	-7.8%
Alphington	£12.7	£0.7	£12.0	-5.4%	£1.18	£10.83	-9.8%	-14.6%
Marsh Barton	£49.4	£4.0	£45.4	-8.2%	£0.00	£45.35	0.0%	-8.2%
Sowton	£72.6	£4.4	£68.1	-6.1%	£1.47	£66.66	-2.2%	-8.1%
Other	£7.1	£0.0	£7.1	0.0%	£0.00	£7.06	0.0%	0.0%
Ikea	£48.0	£0.1	£48.0	0.0%	£0.59	£47.41	-1.2%	-1.2%
Other	£1,109.9	£29.9	£1,080.0	-2.7%	£0.88	£1,079.12	-0.1%	-2.8%

Notes:
Pre-impact 2021 turnover taken from EWEEED study.

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