

RETAIL JUSTIFICATION ADDENDUM

THE PRINCE ALBERT, COPTHORNE BANK, COPTHORNE, CRAWLEY, WEST SUSSEX, RH10 3QX

1. INTRODUCTION

- 1.1. On behalf of the applicant, Westcoast Convenience Limited, ROK Planning have prepared this addendum in order to further assess the findings of the Retail Justification Statement dated 23rd April 2025 undertaken in support of a planning application relating to the Site at The Prince Albert, Copthorne Bank, Copthorne, Crawley, West Sussex, RH10 3QX.
- 1.2. The planning application (ref. DM/24/2957) seeks planning permission for the following proposal:
- “Sever existing land to retain existing public house use and area of pub garden and erect a convenience store and 4 no. apartments with associated works, including alterations to the existing vehicular access and car park.”*
- 1.3. This addendum should be read in conjunction with the full Retail Justification Statement dated 23rd April 2025.

2. CONTEXT

- 2.1. The original Retail Justification Statement sought to address concerns that had been raised as a result of public objection to the planning application. Taking into account the contents of the objections against the relevant planning policy context, the report concluded:
- There is no planning policy requirement to demonstrate retail ‘need’;
 - The Site is located as a designated village centre under Local Plan policy DP6 and, in accordance with the NPPF, is therefore an ‘in-centre’ location.
 - On that basis, neither the retail sequential nor the retail impact tests need be applied;
 - Even if there was a requirement to apply the retail impact test to this proposal, based on its location, it would in any case fall below the local threshold of 500sqm and way below the national threshold of 2500sqm where such as assessment is needed; and
 - Economic market competition is not a material planning consideration. Speculation about the potential impacts on existing businesses cannot influence nor be considered by a decision maker in the determination of this application.
- 2.2. Nevertheless, a high-level assessment of retail impact and potential retail capacity was undertaken. The original Statement concluded that the proposed retail unit can be accommodated within Copthorne village based on existing available expenditure, with a high surplus remaining, even when assuming a limited population growth from 2021 to 2026 and adopting an incredibly robust sales density figure.
- 2.3. Following submission of the original Statement, an additional consultation response from Worth Parish Council dated 1st October provided the following comments:
- While there is no planning policy requirement to provide a retail impact assessment, Worth Parish Council argue that there is validity in the expressed concern about the impact of the proposal on existing stores within Copthorne;

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- Worth Parish Council do not agree that there is no requirement for the proposal to be subject to the sequential test, stating the proper application of national and local planning policy would maintain the proposal should be subject to a sequential test, and noting that no such test has been undertaken.

2.4. This addendum does not seek to respond to the concern raised regarding the impact of the proposal on existing stores within Copthorne. This is addressed in full within the original Statement, and the conclusions are repeated for ease at paragraph 2.1 of this addendum.

2.5. Instead, this addendum seeks to respond to the comment raised regarding the application of the sequential test.

3. APPLICATION OF THE SEQUENTIAL TEST

3.1. The NPPF sets out a requirement for Local Planning Authorities to apply the sequential test to planning applications for main town centre uses that are not in an existing centre and not in accordance with than up-to-date Local Plan.

3.2. Policy DP6 (Settlement Hierarchy) of the MSDC Local Plan (2018) sets out that:

“Development will be permitted within towns and villages with defined built-up area boundaries. Any infilling and redevelopment will be required to demonstrate that it is of an appropriate nature and scale (with particular regard to DP26: Character and Design), and not cause harm to the character and function of the settlement.”

3.3. Copthorne is a Category 2 settlement under policy DP6 and is defined as a:

“Larger village acting as Local Service Centres providing key services in the rural area of Mid Sussex. These settlements serve the wider hinterland and benefit from a good range of services and facilities, including employment opportunities and access to public transport.”

3.4. The NPPF defines ‘Town Centres’ as follows:

“Area defined on the local authority’s policies map, including the primary shopping area and areas predominantly occupied by main town centre uses within or adjacent to the primary shopping area. References to town centres or centres apply to city centres, town centres, district centres and local centres but exclude small parades of shops of purely neighbourhood significance. Unless they are identified as centres in the development plan, existing out-of-centre developments, comprising or including main town centre uses, do not constitute town centres.”

3.5. It is accepted that the Site does not fall within a primary shopping area. However, the Site falls within a Local Service Centre as designated within the Development Plan by policy DP6, and the NPPF confirms that references to town centres applies to district and local centres.

3.6. On that basis, the original Statement concludes that the Site is ‘in-centre’ and the sequential test does not need to be applied.

3.7. However, Worth Parish Council contend that as the Site is not located within a centre designated under policies DP2 and DP3 of the Mid Sussex District Plan, and as the Copthorne Neighbourhood Plan does not define any ‘centre’ within its area, the Site is ‘out-of-centre’ and the sequential test must be applied.

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- 3.8. Whilst the conclusions made within the original Statement are maintained, a response to the contention cited above is provided below.

Appropriate Catchment Area

- 3.9. As detailed within the original Statement, the following aspects of the development demonstrate that the proposed store will serve a local catchment only:
- The store will be only 372sqm in size. Convenience stores of this size usually only sell approximately 2,500 product lines, far fewer than the range of lines generally sold in larger supermarkets (between 8,000 to 30,000);
 - The actual shop floor will be even smaller at circa 260sqm when factoring in back-of-house requirements, which is below the Sunday Trading Act threshold of 280sqm;
 - The shopping trips undertaken at convenience stores are of a small size, usually providing essential goods on a top-up basis;
 - The proposed store is well below the national threshold of 2500sqm in terms of requirement for the impact test; and
 - The proposed store is additionally below the 500sqm threshold set out within policy DP2 of the MSDC Local Plan (2018).
- 3.10. Were a sequential assessment to be applied to the Site, it would be reasonable to assume a catchment area of 1.5km. Such a catchment area is considered highly robust mindful of the store's size and character.
- 3.11. This is supported by multiple appeal decisions. The first is an appeal decision (ref. APP/A1015/A/13/2205692) in relation to the provision of a Tesco Express store at the former Crispin Inn Public House in Chesterfield. The appeal decision is enclosed at **Appendix A**. A 1km catchment area was assessed which had been considered appropriate by the appellant as the vast majority of trade was expected to come from walk-in trade from the surrounding area. This catchment area was not challenged by the Inspector who agreed with the findings of the sequential assessment and the appeal was allowed. In this case, the following conclusion made by the Inspector is also relevant:
- "The proposals would be likely to retain top-up expenditure within the locality that currently goes to stores outside the 1km catchment; and, this would encourage more sustainable travel patterns by reducing the need for people to travel out of the area for certain items."*
- 3.12. A second was an allowed appeal (ref. APP/E5900/W/15/3137623) for a Sainsbury's Local convenience store in an out-of-centre site near Stepney Green whereby the 500m catchment area proposed was deemed acceptable by the Inspector. The appeal decision is enclosed at **Appendix B**.
- 3.13. A third relates to an appeal (ref. APP/G5180/W/18/3193635) which was allowed by the Inspector following the refusal by the London Borough of Bromley for the provision of a convenience store of c. 594sq.m in a suburban 'out-of-centre' location. Whilst the Council had challenged the sequential test, both the Council and Inspector accepted the catchment area for a Tesco convenience store of 1km. The appeal decision is enclosed at **Appendix C**.

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- 3.14. Mindful of the Parish Council's comments, of the Centres that are designated under policies DP2 and DP3 of the Mid Sussex District Plan, the two that are within the closest proximity to the Site are as follows:
- Crawley Down – Village Centre – 4.7km away; and
 - East Grinstead – Town Centre – 10.1km away.
- 3.15. Both are clearly well in excess of the catchment area for the proposed store. Alternative sites in centres located well beyond the catchment area for the proposal would not be appropriate as they would serve an entirely different catchment to that intended to be served by the proposed development.
- 3.16. National Planning Practice Guidance (NPPG), Paragraph: 012 Reference ID: 2b-012-20190722 states:
- “Use of the sequential test should recognise that certain main town centre uses have particular market and locational requirements which mean that they may only be accommodated in specific locations.”*
- 3.17. The entire purpose of the proposal is to serve the needs of the local catchment. Indeed, the original Statement identifies that the proposed retail unit can be accommodated within Copthorne based on existing available top-up retail expenditure, indeed with a significant surplus, even when adopting incredibly robust parameters.

4. CONCLUSION

- 4.1. This addendum has been prepared to further consider the application of the sequential test in relation to planning application ref. DM/24/2957 which seeks planning permission for the following proposal:
- “Sever existing land to retain existing public house use and area of pub garden and erect a convenience store and 4 no. apartments with associated works, including alterations to the existing vehicular access and car park.”*
- 4.2. This addendum should be read in conjunction with the full Retail Justification Statement dated 23rd April 2025.
- 4.3. Specifically, this addendum seeks to address the additional queries raised by Worth Parish Council dated 1st October. This addendum does not seek to respond to the concern raised regarding the impact of the proposal on existing stores within Copthorne. This is addressed in full within the original Statement, and the conclusions are repeated for ease at paragraph 2.1 of this addendum.
- 4.4. Instead, this addendum seeks to respond to the comment raised regarding the application of the sequential test.
- 4.5. In the first instance, the conclusions of the original Statement are maintained as set out at paragraphs 3.2 to 3.6 of this addendum.

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- 4.6. In the second instance, it is relevant that NPPG Paragraph: 011 Reference ID: 2b-011-20190722 highlights that the application of the test will need to be proportionate and appropriate for the given proposal.
- 4.7. Mindful of the character and scale of the development proposed, were a sequential test to be undertaken, it would be reasonable to assume a catchment area of 1.5km. Such a catchment area is considered highly robust mindful of the lesser catchment areas accepted at appeal for stores of similar sizes elsewhere in the country.
- 4.8. Of the Centres that are designated under policies DP2 and DP3 of the Mid Sussex District Plan, the two that are within the closest proximity to the Site are as follows:
- Crawley Down – Village Centre – 4.7km away; and
 - East Grinstead – Town Centre – 10.1km away.
- 4.9. Both are clearly well in excess of the catchment area for the proposed store. Alternative sites in centres located well beyond the catchment area for the proposal would not be appropriate as they would serve an entirely different catchment to that intended to be served by the proposed development.
- 4.10. The proposal will serve the day-to-day convenience needs of a local catchment within the Local Service Centre within which it sits.
- 4.11. The original Statement evidences that the proposed retail unit can be accommodated within the Local Service Centre based on existing available expenditure, with a high surplus remaining, even when assuming a limited population growth from 2021 to 2026 and adopting an incredibly robust sales density figure.
- 4.12. This addendum evidences that, were a sequential test to be applied, any centre designated via development plan policies DP2 and DP3 would be located well beyond the catchment area that the proposed store is intended to serve.
- 4.13. With the above in mind, it is maintained that the proposed development is acceptable in retail terms.

APPENDIX A

Appeal Decisions

Inquiry held on 15 July 2014

Site visit made on 15 July 2014

by Clive Sproule BSc MSc MSc MRTPI MIEEnvSc CEnv

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

Decision date: 24 October 2014

Appeal A - Ref: APP/A1015/A/13/2197205

Crispin Inn, 240 Ashgate Road, Chesterfield, Derbyshire S40 4AW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Tesco Stores Ltd against the decision of Chesterfield Borough Council.
 - The application Ref CHE/12/00786/FUL, dated 12 December 2012, was refused by notice dated 13 March 2013.
 - The development proposed is alterations to the front and side elevations and installation of front and side access ramps.
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Appeal B - Ref: APP/A1015/A/13/2197208

Crispin Inn, 240 Ashgate Road, Chesterfield, Derbyshire S40 4AW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Tesco Stores Ltd against the decision of Chesterfield Borough Council.
 - The application Ref CHE/12/00787/FUL, dated 12 December 2012, was refused by notice dated 13 March 2013.
 - The development proposed is installation of an ATM and bollards.
-

Appeal C - Ref: APP/A1015/A/13/2197209

Crispin Inn, 240 Ashgate Road, Chesterfield, Derbyshire S40 4AW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Tesco Stores Ltd against the decision of Chesterfield Borough Council.
 - The application Ref CHE/12/00788/FUL, dated 12 December 2012, was refused by notice dated 13 March 2013.
 - The development proposed is installation of plant equipment and associated screening to service yard.
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Appeal D - Ref: APP/A1015/A/13/2197213

Crispin Inn, 240 Ashgate Road, Chesterfield, Derbyshire S40 4AW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Tesco Stores Ltd against the decision of Chesterfield Borough Council.
- The application Ref CHE/12/00785/FUL, dated 12 December 2012, was refused by notice dated 13 March 2013.
- The development proposed is demolition of the existing conservatory and the erection

of an extension and side access ramp, external alterations, access alterations and parking.

Appeal E - Ref: APP/A1015/A/13/2205691

Crispin Inn, 240 Ashgate Road, Chesterfield, Derbyshire S40 4AW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Tesco Stores Ltd against the decision of Chesterfield Borough Council.
 - The application Ref CHE/13/00253/FUL, dated 26 April 2013, was refused by notice dated 6 August 2013.
 - The development proposed is alterations to the front and side elevations and installation of front and side access ramps.
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Appeal F - Ref: APP/A1015/A/13/2205692

Crispin Inn, 240 Ashgate Road, Chesterfield, Derbyshire S40 4AW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Tesco Stores Ltd against the decision of Chesterfield Borough Council.
 - The application Ref CHE/13/00252/FUL, dated 26 April 2013, was refused by notice dated 6 August 2013.
 - The development proposed is demolition of the existing conservatory, the erection of an extension and side access ramp, access alterations and parking and the installation of plant equipment and associated screening on the extension.
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Decisions

1. In relation to Scheme 1:

Appeal A - Ref: APP/A1015/A/13/2197205

2. The appeal is allowed and planning permission is granted for alterations to the front and side elevations and installation of front and side access ramps at Crispin Inn, 240 Ashgate Road, Chesterfield, Derbyshire S40 4AW in accordance with the terms of the application, Ref CHE/12/00786/FUL, dated 12 December 2012, subject to the conditions in the attached schedule.

Appeal B - Ref: APP/A1015/A/13/2197208

3. The appeal is allowed and planning permission is granted for installation of an ATM and bollards at Crispin Inn, 240 Ashgate Road, Chesterfield, Derbyshire S40 4AW in accordance with the terms of the application, Ref CHE/12/00787/FUL, dated 12 December 2012, subject to the conditions in the attached schedule.

Appeal C - Ref: APP/A1015/A/13/2197209

4. The appeal is allowed and planning permission is granted for installation of plant equipment and associated screening to service yard at Crispin Inn, 240 Ashgate Road, Chesterfield, Derbyshire S40 4AW in accordance with the terms of the application, Ref CHE/12/00788/FUL, dated 12 December 2012, subject to the conditions in the attached schedule.
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Appeal D - Ref: APP/A1015/A/13/2197213

5. The appeal is allowed and planning permission is granted for demolition of the existing conservatory and the erection of an extension and side access ramp, external alterations, access alterations and parking at Crispin Inn, 240 Ashgate Road, Chesterfield, Derbyshire S40 4AW in accordance with the terms of the application, Ref CHE/12/00785/FUL, dated 12 December 2012, subject to the conditions in the attached schedule.
6. In relation to Scheme 2:

Appeal E - Ref: APP/A1015/A/13/2205691

7. The appeal is allowed and planning permission is granted for alterations to the front and side elevations and installation of front access ramp at Crispin Inn, 240 Ashgate Road, Chesterfield, Derbyshire S40 4AW in accordance with the terms of the application, Ref CHE/13/00253/FUL, dated 26 April 2013, subject to the conditions in the attached schedule.

Appeal F - Ref: APP/A1015/A/13/2205692

8. The appeal is allowed and planning permission is granted for demolition of the existing conservatory, the erection of an extension and side access ramp, access alterations and parking and the installation of plant equipment and associated screening on the extension at Crispin Inn, 240 Ashgate Road, Chesterfield, Derbyshire S40 4AW in accordance with the terms of the application, Ref CHE/13/00252/FUL, dated 26 April 2013, subject to the conditions in the attached schedule.

Procedural matters and main issues

9. The description of development on the application form for the Appeal E proposal is *'alterations to the front and side elevations and installation of front and side access ramps'*. However, the relevant application drawing (ref: (P)125 Rev.G) only shows a single ramp as part of the development proposed by application number ref: CHE/13/00253/FUL. A modified description, that is, *'alterations to the front and side elevations and installation of front access ramp'* was used on the Council's decision notice and has been included within the statement of common ground between the Council and the appellant. In the interests of clarity and precision it is the modified description of development that is being considered in regard to the Appeal E proposal.
10. The appeal proposals were refused planning permission for a variety of reasons that included the effect on: highway safety in regard to matters including customer parking, and the use of automated teller/cash machine (ATM); local living conditions in regard to noise and disturbance; and the character and appearance of The Crispin Inn and the locality.
11. In a letter dated 1 April 2014 the Council withdrew its first reasons for refusal in relation to Appeals C and F. These were in relation to the effects of noise from proposed plant and equipment. After carrying out noise monitoring, the Council concluded that the proposed equipment would be unlikely to be audible to neighbouring residents, and if it were to be, it could be easily mitigated.

12. A subsequent letter, dated 13 June 2014, referred to the Council's consideration of: appeal ref: APP/A1015/A/13/2208099; the National Planning Policy Framework ('the Framework'); and, associated Planning Practice Guidance (PPG). The letter confirmed the Council's decision that, for the current appeal proposals, its reasons for refusal in relation highway matters and the effects of vehicle noise could not be supported, and design matters alone would not be sufficient to withhold planning permission. The Council also adopted a neutral stance in regard to all factual matters, including the non-applicability of the retail sequential test.
13. Other parties to the appeals maintained their objections to the proposals in relation to matters that included those within the reasons for refusal. On this basis, the main issues are considered to be the effect of the developments proposed on: (1) the character and appearance of The Crispin Inn and the locality; (2) the living conditions of people in the locality in relation to noise and disturbance from plant and vehicles associated with the developments proposed; and, (3) highway safety.

Reasons

Character and appearance

14. The locality around The Crispin Inn includes houses of varying age and design, some open areas and occasional commercial uses. Differing building lines, boundary treatments, mature vegetation and footway widths combine with the carriageway width of Ashgate Road, to provide a balanced and diverse predominantly residential urban environment that has a significant degree of perceived enclosure. The architecture of The Crispin Inn contributes to the character and appearance of the townscape in this location and it is a focal point in the street scene.
15. The frontage of The Crispin Inn has a central expressed gable feature that is flanked on each side by dormer windows that are set into a pitched roof plane with a ridge line that is terminated by chimneys. The composition of built forms and fenestration within the frontage results in a high degree symmetry, which is emphasised by the space around the building within its plot. The architecture has been described as 'diluted Arts and Crafts – or more accurately Domestic Revival' in style.¹
16. To a certain extent this symmetry is reduced by the existing access ramp on one side of the frontage. The conservatory is a substantial structure that projects out from the western side of the building, but its form, materials and set back position reduces its influence on the perception of frontage symmetry.
17. The rear of the building has been extended with flat roofed single storey structures that by their simple form do not compete with the pitched roof elements of the original building. While the architecture of The Crispin Inn may not be 'exemplary', the building sits comfortably within its predominantly residential setting.

¹ Page 14 of Mr Murphy's proof of evidence

18. The Council's reasons for refusal in regard to design refer to *Replacement Chesterfield Borough Local Plan* – June 2006 (LP) policies GEN 3 and GEN 10, along with SHC6 for Appeal D, plus EVR 25 in regard to Appeal A. Appendix H of the Chesterfield Borough Council *Local Plan: Core Strategy 2011-2031* - adopted 24 July 2013 (CS) indicate these policies to have been replaced by a number CS policies, the most relevant these to the reasons for refusal in these cases is CS policy CS18. The two Officer reports on the appeal schemes straddle the adoption of the CS, with the Officer's report in relation to Scheme 2 considering design matters against CS policy CS18.
19. CS policy CS18 seeks all development to respond to, and integrate with, the character of the site and its surroundings and respect the local distinctiveness of its context.
20. Access ramp railings and modification of window openings in the front elevation would cause the Appeal A proposal to disrupt the existing and distinctive symmetry of The Crispin Inn's front elevation. However, the strong lines of the building and its roof would remain. These roof forms and their associated features are very significant elements of the building's frontage and they would ensure the character of the building, and locality, would remain.
21. The flat roof rear extension within the Appeal D proposal would reflect the existing rear extension of the building. It would significantly increase the area of flat roof form and create a ramped side entrance, but the original architecture would remain the strongest and most apparent element of the building. While there may be metal parts in the structure of the proposed service yard enclosure it would: have the appearance of timber fencing; be set back from the front of the building; and, it would be in proportion to the larger forms of The Crispin Inn and neighbouring development.
22. The Appeal E proposal would provide an access ramp to a new central entrance in the building's frontage through a design that would complement the existing symmetry in the front elevation.
23. The appellant's Arboricultural Report confirms that three trees, known as T2, T10 and T11, would be removed by the proposed works. Of these trees, T2 and T11 are category 'C' (low quality or young) trees that would be directly affected by the extended building footprint, while the third (T10) is a category 'B' tree (of moderate quality) next to the parking area and a stand of trees that would be retained. While three specimens would be lost, the appeal site would retain trees that would continue to contribute to the mature planting in the locality and the resulting character and appearance.
24. Appeal proposals, including those within Appeals A, D or E, would cause changes in the appearance of The Crispin Inn. Proposed modifications to the appeal site would integrate with and retain the character of the building; its contribution to the character and appearance of the locality would also remain.
25. For these reasons, the appeal proposals comply with CS policy CS18. None of these proposals would be an example of poor design that fails to take the opportunity to improve the character and quality of an area and the way that it functions, which Framework paragraph 64 indicates should lead to refusal of planning permission.

Living conditions

26. The Council's reason for refusal in relation to Appeal C refers to LP policy EVR 23, which CS Appendix H indicates to have been superseded by CS policies CS2 and CS8. CS policy CS2 requires all developments to have an acceptable impact on the amenity of users or adjoining occupiers in relation to matters including noise, traffic, social and economic impacts.
27. The appeal site is currently used as a public house and therefore has the potential to be a source of noise and disturbance, especially during evening hours. There is also a retail fallback position, which is described below under *Other matters*. Evidence indicates the noise environment in this area to have a distinct quieter period during night-time hours between 23:00hrs and 06:00-07:00hrs when noise levels begin to rise toward day-time levels. This is so for both Ashgate Road and Churston Road, although (as would be expected) the thoroughfare along Ashgate Road reaches higher daytime levels. The appellant's background noise monitoring recorded levels of 24-34dB L_{A90}, 1 hour in these locations between 03:00-05:00hrs, and 25dB L_{A90}, 8 hours. Minimum daytime levels are in the region of 35dB L_{A90}, 16 hours.
28. Local residents' concerns regarding the proposed installation of cooling equipment near to homes and amenity spaces around the appeal site are understandable given that public experience of cooling systems can include older noisy units. Existing plant on the appeal site includes the cooling system used by the public house, which does not appear to have been a problem to local residents. Subject to the imposition of conditions to address noise, no objections to the appeal proposals were raised by the Borough Council's Environmental Health Officer. In addition, the potential for noise from the proposed equipment was considered within the Council Officer's Committee reports on Schemes 1 and 2.
29. The proposed developments include additional plant that would be a source of noise. It has been explained that the appellant's intended units have been designed specifically for stores that are likely to have neighbouring residential land uses. The Statement of Common Ground (SoCG) includes suggested conditions for the Appeal C and Appeal F proposals that address noise and hours of use for air conditioning and condenser units on the appeal site. These conditions would deal with the potential for the location and elevation of the proposed equipment to cause noise and disturbance.
30. The Noise Policy Statement for England seeks effective management of noise to: avoid significant, and mitigate and minimise, adverse impacts on health and quality of life; and, where possible contribute to the improvement of health and quality of life.
31. Evidence in this case confirms that concerns regarding the noise output from fixed plant on the appeal site can be adequately addressed to ensure that a suitable noise environment is provided for local residents.² This also applies to potential future occupiers of housing on the neighbouring commercial site. Predicted noise levels from the equipment have been shown to be below both

² As detailed in Section 5 of Mr Scrivener's proof of evidence

the Lowest Observed Adverse Effect Level (LOAEL) and the Significant Observed Adverse Effect Level (SOAEL) on health and quality of life.

32. A swept path analysis drawing for a larger delivery vehicle indicates how deliveries would be likely to be provided to the store.³ It would require deliveries to be wheeled across the forecourt between The Crispin Inn and the neighbouring house (indicated to be no.220). However, evidence before the inquiry addressed these matters and the scope of relevant suggested planning conditions.
33. Vehicle movements and associated activity, such as audio systems and car doors closing, can cause noise and disturbance in predominantly residential urban environments of this type. Planning conditions that would limit opening hours, the operation (and illumination) of the ATM and deliveries, would be expected to provide effective controls on the potential for noise and disturbance during the quieter night-time hours.
34. Other regulatory controls would address illuminated signage and its appropriateness in this location. As such, there is no evidence that light emitted from signage would be expected to be harmful to local living conditions.
35. If the proposed vehicle movements and associated activities were to occur during the daytime hours set out within the evidence,⁴ and plant were to be installed and operated in accordance with suggested conditions, evidence confirms that no harm to local living conditions would result from the operation of the developments proposed. For these reasons the two schemes (including Appeals C and F) comply with CS policy CS2 (and CS policy CS8).

Highway safety

36. LP policies TRS 1 and TRS 12 have been superseded by CS policy CS20 which aims to ensure that development has an acceptable impact on the functioning and safety of the highway network. It also seeks to maximise walking, cycling and use of public transport through the location and design of development and parking provision.
37. This section of Ashgate Road has a 30mph speed limit and unrestricted parking. Traffic associated with the nearby school was highlighted as being responsible for specific types of vehicles, associated peaks of parking activity and movements on the local highway network. On-street parking activity also results from the type of housing in this location, and it occurs in a highway environment where the footways on either side of Ashgate Road are of differing widths. In addition, Ashgate Road is a route used by emergency vehicles. Even so, the appellant's parking survey indicates that between 07:00 and 19:00hrs there are opportunities for on-street parking. These opportunities may reduce after 19:00hrs as people arrive back at their homes, but this would highlight the availability of the parking provision within the appeal site.
38. One personal injury accident has been recorded in the vicinity of the appeal site during the 5 year period ending on 31 August 2013. This slight injury to an

³ Drawing number SP03 Revision A

⁴ Appropriate opening and delivery hours are at paragraph 1.7 of Mr Scrivener's proof of evidence

adult pedestrian occurred at the junction with Churston Road at 22:45hrs in July 2010. Another incident in 2013 has been referred to, but few details have been provided and it is not within the personal injury accident data for this area. Accordingly, personal injury accident records indicate this section of Ashgate Road to have a very good accident record.

39. At present, there are vehicle movements on and around the appeal site that are associated with its use as a public house. The appeal site has two vehicle entrances and approximately 17 car park spaces. In addition, if the retail fallback position (described below) were to be implemented, the site could provide up to 20 on-site car parking spaces and this could occur in the absence of conditions aimed at improving access to the site. The appeal proposals would provide 15 parking spaces, including two for use by disabled persons.
40. It is estimated that the appeal schemes would more than double the number of vehicle movements in comparison to those resulting from The Crispin Inn.⁵ The Highway Authority was consulted on the two schemes and considered the access and egress for servicing to be 'far from ideal', but did not object subject to the imposition of five conditions, including a requirement for a Service Management Plan. The swept path analysis indicates how service vehicles would be expected to enter and leave the site, and servicing of the site would be within the control of the operator.
41. In considering the appeal schemes' possible effects on highway safety, the appellant has taken into account the fallback positions, TRICS database trip forecasts and observed vehicle movements at similar stores in the area. Forecast parking demands have considered the use of the ATM and differing stay periods, and indicate that the proposed level of parking would be sufficient for the expected customer numbers.
42. Suggested conditions would address the delineation of the bus stop outside the appeal site, access improvements and the laying out of the car park. These factors would encourage people to use the on-site parking facilities and significantly reduce the potential for on-street parking. While a certain level of on-street parking would nonetheless be expected to occur, and especially by people accessing the ATM, it has not been shown that it would be harmful to highway safety.
43. Evidence indicates that suitable driver visibility splays of 2.4m x 47m (and 2m x 2m at the footway) can be achieved from the customer parking and service vehicle exit that the marking out of the bus stop on the southern side of the highway would help to keep clear.⁶
44. Regular bus services to stops on either side of Ashgate Road immediately outside the appeal site would provide opportunities to access the proposals (and the centre of Chesterfield) by alternatives to the private car. Many local people are within walking distance of The Crispin Inn, which along with the proposed cycle parking, also indicates that the appeal site has the potential to encourage sustainable travel patterns to the proposals.

⁵ Section 6 of the Transport Statements at CD-3.11 and CD-4.6

⁶ Drawing No. PL04 Appendix I of Mr Lyon's proof of evidence

45. Planning permission for new homes on the neighbouring commercial site would be expected to alter the traffic types and flows from that site. However, there is no evidence to suggest that the local highway network, and the junctions with it, would be unsuitable for the likely types and additional numbers of vehicles associated with the current appeal schemes, either alone or in combination with development on the neighbouring site.
46. For these reasons, the proposed development would help to maximise walking, cycling and the use of buses along Ashgate Road. It is unlikely that the appeal schemes would cause congestion in the locality, or any harm to vehicular and pedestrian traffic in the vicinity of the appeal site. No conflict with CS policy CS20 has been identified, nor in regard to the transport network and paragraph 32 of the Framework would the residual cumulative impacts of the development be severe to suggest that planning permission should be prevented or refused.

Other matters

Fallback position

47. In cases such as this, local planning authorities and appellants are expected to agree a SoCG, which provides an important point of reference for those involved in the inquiry. Paragraph 7.1 of the SoCG confirms that the two main parties agree that permitted development rights would enable The Crispin Inn to be converted into a food store without the need for planning permission.⁷ The appellant has demonstrated that there would be sufficient existing floor space within the building to provide a viable business, but would intend to implement a conversion with a 100m² extension under permitted development rights.⁸ The level of highway activity and noise associated with such a food store would not be expected to differ significantly from the appeal schemes. There is no reason to doubt that the appellant would seek to implement these permitted development rights if the current appeals were to be dismissed. However, the store would operate without the suggested conditions in relation to, for example, deliveries.

Loss of a community facility

48. The conservatory at The Crispin Inn is of sufficient size to be used for meetings and provides an area suitable for families, especially as the grounds outside include a play area. It is clear that the loss of The Crispin Inn would remove a facility that is of value to members of the local community, and not just as a public house. However, it is also apparent that this loss to the local community (which would be distinct and separate from any benefits that might result from increased convenience store provision) would be likely to occur even if the current appeals were to be dismissed.

Litter

49. Concerns have been raised regarding the possibility for litter associated with the developments proposed. Certain commercial activities can result in an increased likelihood of litter, but there is no convincing evidence to suggest

⁷ Two fallback options are provided within Mr Roe's Appendices 4 and 5

⁸ Letter from the appellant company, dated 23 June 2014, included as Mr Roe's Appendix 7

that a convenience store of the type proposed would be likely to cause quantities of litter in the locality that would be harmful to local living conditions, or the character and appearance of the area.

Crime and anti-social behaviour

50. It has been suggested that the appeal schemes would be likely sources of anti-social behaviour. No evidence has been produced that demonstrates the proposed developments would be more likely to result in crime or anti-social behaviour than the existing public house. Nor has it been shown that this is an area where community safety would be expected to be put at risk by developments of the type proposed.
51. CS policy CS18 seeks development to be designed to be safe and secure, and to create environments that reduce the potential for crime. A suggested planning condition would address measures to minimise the risk of crime. This, along with the proposed designs and layouts, which include CCTV cameras, and the natural surveillance provided by a contemporary retail environment, would meet the aims of CS policy CS18. Indeed, these matters indicate that the appeal schemes would be likely to be more secure than the fallback positions.

Retail impact

52. CS policy CS16 states that a sequential approach will be used to assess sites for retail and other town centre uses, to focus such development on Town, District, Local Service and Local Centres to meet the requirements of national planning policy. Chatsworth Road District Centre lies to the south of the appeal site and Loundsley Green Local Centre is to the north.⁹ Both are within a 1km radius of the appeal site, with the Loundsley Green Local Centre significantly so. Also within that radius is a petrol station with a convenience store on Ashgate Road to the east of the appeal site, and a population estimated to be almost 11,000 people and rising.¹⁰
53. The appeal site lies outside any of the centre types that are the subject of CS policy CS16. In such a location, CS policy CS16 is normally permissive of individual small shops up to 200m² to serve local day to day needs. The appeal proposals would result in a net sales area of 233m², and a gross floor area of 429m².
54. In relation to ensuring the vitality of town centres, paragraph 24 of the Framework states that a sequential test should be applied to planning applications for main town centre uses that are not in an existing centre and not in accordance with an up-to-date Local Plan. Annex 2 of the Framework confirms retail development to be a main town centre use.
55. Paragraph 26 of the Framework indicates that a retail impact assessment should be sought if the proposal is above a proportionate locally set floor space threshold. It would appear that no such threshold exists in this Local Plan area. Therefore, the default threshold of 2,500m² provided by the Framework applies, which is considerably greater than both the net and gross floor space proposed.

⁹ As shown in Appendix 1 of Mr Roe's proof of evidence

¹⁰ Table 1 in Appendix 3 of Mr Roe's proof of evidence

56. Nevertheless, the appellant has considered the need for the proposed store within the context of the estimated convenience store expenditure in the locality, along with passing trade as people travel through this section of Ashgate Road.¹¹ This is set within a background of rising levels of top-up convenience store spending.
57. Concerns have been raised regarding the effect of the appeal schemes on local traders and the pattern of expenditure in local centres. However, no evidence has been produced to counter the conclusions within the appellant's evidence, nor was potential retail impact a reason for refusal. These conclusions include that: there is more than sufficient available top-up expenditure to sustain existing and proposed convenience store provision in the locality; the proposals would be likely to retain top-up expenditure within the locality that currently goes to stores outside the 1km catchment;¹² and, this would encourage more sustainable travel patterns by reducing the need for people to travel out of the area for certain items.
58. It has also been suggested that the current proposals would cause the appellant company to have a monopoly position in Chesterfield. That position is not supported by the evidence before the inquiry, which indicates a range of companies operating in this part of Chesterfield and top-up expenditure that would significantly exceed to level of provision proposed.¹³
59. A sequential assessment has been provided by the appellant. It was based on the availability of premises within the catchment that would be up to +/-20% of the floor space proposed. Using these parameters will have omitted any significantly smaller (or larger) units that may have been available, but the inclusion of such smaller units would not provide a store of the type and range sought, and in any event could simply be comparable to the fallback position. The assessment indicated there to be no vacant units at the Loundsley Green Local Centre, no suitable available sites in the Chatsworth Road District Centre, and no edge of centre sites.
60. As noted above, it is clear that the appellant has a fallback position that is likely to be implemented if these appeals were to be dismissed. The additional floor space that is proposed over that of the fallback position would amount to 124m². Given the scale of the extension over the permitted development fallback position (and if it were to be applicable, the results of the sequential assessment), no conflict with the specific objectives of CS policy CS16 has been identified. The appellant has demonstrated that there is an identified need within the market area around The Crispin Inn that the appeal schemes would only address in part.
61. The appeal proposals would be in very close proximity to the markets the appellant seeks to address. It would be located on a thoroughfare that carries traffic to and from the centre of Chesterfield. No harm has been identified in relation to the effect of the proposals on: existing or planned investment in centres in the catchment area; or, town centre vitality and viability. No

¹¹ Including Tables 4-6 in Appendix 3 of Mr Roe's proof of evidence

¹² Approximately 40% of the available top-up expenditure is estimated to be lost from the catchment – Table 6 in Appendix 3 of Mr Roe's proof of evidence

¹³ Tables 4 and 6 of Mr Roe's Appendix 3

matters that are the subject Framework paragraph 27 (and that are dealt with above) suggest that planning permission should be refused.

Economic effects

62. Development through either Scheme 1 or 2 would contribute to the local economy and respond to changing consumer preferences.¹⁴ Framework paragraph 19 is clear that significant weight should be placed on the need to support economic growth. The appeal schemes would do this by providing up to 25 jobs and increased economic activity in the locality, while reducing the need for travel to shops and services elsewhere.

Biodiversity

63. It has been suggested that roosting bats may be present within The Crispin Inn, but no details have been provided to confirm where the bats might be. The Officer Reports in relation to the two schemes indicate that the Council gave detailed consideration to this, and referred to standing advice from Natural England. No obvious gaps in the structure of the building have been identified that bats could use to access roof and other voids within The Crispin Inn. In addition, the building has remained in use and outside the recorded distribution area of serotine or horseshoe bat. The Council's conclusion reflects the results of a desk based study carried out for the appellant, which did not indicate the likely presence of protected species on the appeal site.
64. Framework paragraph 118 indicates that the determination of planning applications should aim to conserve and enhance biodiversity. In this regard, PPG advises that statutory obligations should be fulfilled in a way that minimises delays and burdens.¹⁵
65. Evidence has not been produced that suggests, nor is it apparent, there is a reasonable likelihood of a protected species being present on (or indeed near to) the appeal site, or that a protected species may be adversely affected by the proposals. By having an acceptable environmental impact and not adversely affecting a feature of recognised importance, the appeal proposals comply with CS policies CS2 and CS9.

The planning balance

66. Decisions in planning appeals require a balance to be struck between the possible detrimental effects of the development and factors that weigh in favour of the proposal. The context for this is described by paragraphs 11 and 12 of the Framework.
67. In this instance, there is a considerable level of local opposition to the proposed developments and concern regarding potential effects on the matters discussed above. In relation to the stance taken by the Council following its consideration of other decisions, such as appeal ref:APP/A1015/A/13/2208099, interested parties were of the view that the sites were not comparable with The Crispin Inn. Each application and appeal is considered on the basis of the

¹⁴ Paragraph 5.10 of Mr Roe's proof of evidence

¹⁵ Reference ID: 8-007-20140306

specific arguments for and against it, and that is how the appeals that are the subject of these decisions have been dealt with.

68. The appeal proposals would result in change to the appeal site and the loss of a public house that is valued by many local people who made representations to the inquiry. However, given the scope of possible conditions, no significant planning harm has been identified in relation to the proposed developments. The proposed convenience store would provide a service to the local community. Its development would support economic growth, and when the circumstances of the site and proposals are taken into account, it is clear that Appeals A-F would be sustainable forms of development.
69. A reference was made to the human rights of local residents. The First Protocol of the European Convention on Human Rights (ECHR) includes Articles 1 and 8 which address: the protection of property in respect to a person being entitled to the peaceful enjoyment of their possessions; and, the right to respect for a person's private and family life, their home and correspondence. Evidence shows that with suitable planning conditions the possible effects of the developments proposed would not be unacceptably harmful to people in the locality, including in relation to their living conditions and highway safety. Therefore, in respect of Article 8 any effects from the developments proposed on local residents would not be disproportionate. If these appeals were to be allowed, Article 8 would not be violated. Additionally, it has not been shown that any residents of the locality would be deprived of their possessions and therefore, Article 1 would not be violated.
70. The appeal schemes comply with CS policies CS2 (and CS8), CS9, CS16, CS18, CS20 and relevant paragraphs of the Framework and PPG. Following consideration of all representations in these cases, no other matters have been found that significantly and demonstrably outweigh the benefits of the proposals and the identified policy compliance.

Conditions

71. Section 8 of the SoCG contains suggested conditions agreed between the appellant and the local planning authority. In addition to those conditions, it was suggested that conditions be imposed to address opening and delivery hours, and a Service Management Plan for deliveries. All of the suggested conditions have been considered with reference to the Framework and PPG. Conditions requiring the provision of car parking, vehicle manoeuvring and delivery areas would also be necessary on the relevant elements of the two schemes.

For all the Appeals A-F

72. The suggested schemes of conditions include a condition that would allow minor modifications and "non material amendments", but no condition stipulating the approved drawings. For the avoidance of doubt and in the interests of proper planning, a condition shall be imposed in regard to the approved drawings, rather than the suggested minor modifications condition.
73. In the interests of protecting local living conditions, a condition shall be imposed in relation to hours of demolition/construction works.

Appeal A

74. In the interests of protecting the character and appearance of the locality conditions shall be imposed in regard to construction materials and finishes, including where windows are to be infilled. In the interests of protecting local living conditions a condition shall be imposed in relation to a crime reduction scheme.

Appeal B

75. The Appeal B installation that is the subject of this decision is that described by drawing number (P)121 Revision F. The condition imposed in regard to the approved drawings will also list a 'Revision E' drawing which has annotations that confirm the views that would be taken by the proposed CCTV cameras.¹⁶
76. In the interests of protecting local living conditions and highway safety a condition shall be imposed requiring the marking out of the bus stop adjoining the site on Ashgate Road. In the interests of protecting local living conditions, conditions shall be imposed in relation to: the hours when the ATM would be lit, illuminated and available for use; and, the noise levels from the ATM. In the interests of protecting the character and appearance of the locality conditions shall be imposed in regard to CCTV cameras and the finishes of features associated with the ATM.

Appeal C

77. In the interests of protecting local living conditions, a condition shall be imposed to address the noise from plant and equipment and the hours when it would occur. To protect local living conditions and the character and appearance of the locality a condition shall be imposed in regard to boundary treatment and/or screening fencing. To protect the character and appearance of the locality a condition shall be imposed regarding the colour of the service yard fence and gates.

Appeal D

78. To protect local living conditions, conditions shall be imposed in regard to hours of trading and for deliveries. In the interests of protecting local living conditions and highway safety, conditions shall be imposed requiring the marking out of the bus stop adjoining the site on Ashgate Road, and the provision of a Service Management Plan. In the interests of highway safety conditions shall be imposed in relation to the provision and retention of accesses, car park, delivery and vehicle manoeuvring areas, and an adequate visibility splay onto Ashgate Road. To protect the safety of future users of the site a condition shall be imposed to address the risk from coal mining.
79. In the interests of protecting the character and appearance of the locality, conditions shall be imposed to address: the protection of trees during demolition/construction works; the materials and their use in the frontage wall and surfacing of the car park, pedestrian and service areas; and the materials to be used in the construction of the extension and side access ramp.

¹⁶ Drawing number (SD)533 - *Proposed detail of bollards* and the *Details of GANZ security cameras* have been provided at inquiry Core Documents CD-3.16(C) and (D)

80. In the interests of providing a sustainable form of development a condition shall be imposed in regard to the provision of bicycle stands.

Appeal E

81. In the interests of protecting local living conditions a condition shall be imposed in relation to a crime reduction scheme. To protect the character and appearance of the locality conditions shall be imposed in regard to construction materials and finishes.

Appeal F

82. To protect local living conditions, conditions shall be imposed in regard to hours of trading and for deliveries, and the noise from plant and equipment and the hours when it would occur. In the interests of protecting local living conditions and highway safety, conditions shall be imposed requiring the marking out of the bus stop adjoining the site on Ashgate Road, and the provision of a Service Management Plan. In the interests of highway safety conditions shall be imposed in relation to the provision and retention of accesses, car park, delivery and vehicle manoeuvring areas, and an adequate visibility splay onto Ashgate Road. To protect the safety of future users of the site a condition shall be imposed to address the risk from coal mining.
83. In the interests of protecting the character and appearance of the locality, conditions shall be imposed to address the protection of trees during demolition/construction works, and in regard to construction materials and finishes.
84. In the interests of providing a sustainable form of development a condition shall be imposed in regard to the provision of bicycle stands.

Conclusions

Appeal A - Ref: APP/A1015/A/13/2197205

85. For the reasons above, the appeal should be allowed.

Appeal B - Ref: APP/A1015/A/13/2197208

86. For the reasons above, the appeal should be allowed.

Appeal C - Ref: APP/A1015/A/13/2197209

87. For the reasons above, the appeal should be allowed.

Appeal D - Ref: APP/A1015/A/13/2197213

88. For the reasons above, the appeal should be allowed.

Appeal E - Ref: APP/A1015/A/13/2205691

89. For the reasons above, the appeal should be allowed.

Appeal F - Ref: APP/A1015/A/13/2205692

90. For the reasons above, the appeal should be allowed.

C Sproule

INSPECTOR

SCHEDULES OF CONDITIONS

Appeal A - Ref: APP/A1015/A/13/2197205

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans, Drawing Nos.:
 - (P)100 Rev. B - Location Plan and Block Plan
 - (P)101 - Existing Ground Floor Plan Planning Application
 - (P)101-1 - Existing Basement and First Floor Plans
 - (P)202 - Existing Building Elevations
 - (P)125 Rev. D - Shop Front Planning Application – Proposed Elevation and GF Plan
- 3) Prior to commencement of the development hereby permitted, a scheme of measures to minimise the risk of crime shall be submitted to and approved in writing by the local planning authority. The scheme shall address the design principles within any relevant Secured by Design Guides, and include an implementation programme. Measures to minimise the risk of crime shall be provided in accordance with the approved scheme and its implementation programme, and shall be retained thereafter.
- 4) Prior to commencement of the development hereby permitted, details of the materials and method of infilling the two existing windows on the eastern side of the Ashgate Road frontage of the building (as shown on drawing no.: (P)125 Revision D), that will retain reveals to highlight the original openings, shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) The materials to be used in the construction of the external surfaces of the side walls of the access ramps hereby permitted shall match those used in the existing building.
- 6) The hand railings, new side door, door frame and front entrance glazing bars hereby permitted shall be installed with a matt black colour and retained as such thereafter.
- 7) Demolition or construction works shall not take place outside 08:00hours to 18:00hours Mondays to Fridays and 08:00hours to 13:00hours on Saturdays nor at any time on Sundays or Bank Holidays.

Appeal B - Ref: APP/A1015/A/13/2197208

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans, Drawing Nos.:
 - (P)100 Rev. B - Location Plan and Block Plan
 - (P)101 - Existing Ground Floor Plan Planning Application
 - (P)101-1 - Existing Basement and First Floor Plans
 - (P)202 - Existing Building Elevations

- (P)121 Rev. E - ATM Planning Application – Proposed Elevation and Ground Floor Plan [annotated with CCTV camera views]
- (P)121 Rev. F - ATM Planning Application – Proposed Elevation and Ground Floor Plan
- (SD)319 - 6625 Installation Details Through Cavity Wall
- (SD)533 - Proposed detail of bollards
- Details of GANZ security cameras

- 3) No development shall take place until a scheme for the provision of road markings to delineate the bus stop adjoining the site has been submitted to and approved in writing by the local planning authority. The ATM hereby permitted shall not be brought into use until road markings have been provided in accordance with the approved scheme.
- 4) The ATM hereby permitted shall be of a design which limits the sound levels of electronic noises from the machine to below 45dB L_{Amax} when measured within 1.0m of facades/elevations with bedroom windows facing the development hereby permitted on dwellings which adjoin or are opposite the site, and below 55dB L_{Amax} within the rear gardens/curtilages of dwellings which adjoin or are opposite the site.
- 5) The ATM hereby permitted shall not be lit, illuminated or available for use by the public between the times of 23:00hours to 07:00hours.
- 6) The luminaires hood and surround, bollards (excepting coloured band), and CCTV cameras and mounts hereby permitted shall be finished in a matt black colour and retained as such thereafter.
- 7) The CCTV cameras hereby permitted shall be installed with low profile 'flush mounts' (referenced ZC-FM2 in the submitted specification) and retained as such thereafter.
- 8) Demolition or construction works shall not take place outside 08:00hours to 18:00hours Mondays to Fridays and 08:00hours to 13:00hours on Saturdays nor at any time on Sundays or Bank Holidays.

Appeal C - Ref: APP/A1015/A/13/2197209

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans, Drawing Nos.:
 - (P)100 Rev. B - Location Plan and Block Plan
 - (P)101 - Existing Ground Floor Plan Planning Application
 - (P)101-1 - Existing Basement and First Floor Plans
 - (P)202 - Existing Building Elevations
 - (P)123 Rev. E - Plant Planning Application – Proposed Ground Floor Plan and Elevations
 - (C)333 - Service Yard Fence
 - (C)334 - Service Yard Gates
- 3) The plant and equipment hereby permitted shall be operated in accordance with the submitted details as follows:

Two air conditioning units (Sales Areas) operated at 40dB(A) at 10 metres and no night time running (between 23:00hours to 07:00hours)

One air conditioning unit (Cash Office) operated at 32dB(A) at 10 metres

One condenser unit operated at 32dB(A) at 10 metres during daytime and at 27dB(A) at 10 metres during night time (between 23:00hours to 07:00hours)

- 4) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment and/or screening fencing to be erected. The boundary treatment and/or screening fencing shall be completed before the plant hereby permitted is brought into use. Development shall be carried out in accordance with the approved details and retained as such thereafter.
- 5) The service yard fence and gates hereby permitted on the eastern side of the site shall be installed with a matt dark green or brown stain and retained as such thereafter.
- 6) Demolition or construction works shall not take place outside 08:00hours to 18:00hours Mondays to Fridays and 08:00hours to 13:00hours on Saturdays nor at any time on Sundays or Bank Holidays.

Appeal D - Ref: APP/A1015/A/13/2197213

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans, Drawing Nos.:
 - (P)100 Rev. B - Location Plan and Block Plan
 - (P)101 - Existing Ground Floor Plan Planning Application
 - (P)101-1 - Existing Basement and First Floor Plans
 - (P)202 - Existing Building Elevations
 - (P)103 Rev. D - Proposed Ground Floor Plan Planning Application
 - (P)203 Rev. E - Proposed Building Elevations – Extension and Demolition Work
 - SP03 Rev. A - Swept Path Analysis of a 14.25m Articulated Vehicle
- 3) No development shall take place until a scheme for the provision of road markings to delineate the bus stop adjoining the site has been submitted to and approved in writing by the local planning authority. The development hereby permitted shall not be brought into use until road markings have been provided in accordance with the approved scheme.
- 4) No development shall take place until a scheme to provide and retain an adequate visibility splay at the site accesses to Ashgate Road has been submitted to and approved in writing by the local planning authority. No part of the development hereby permitted shall be brought into use until an adequate visibility splay has been provided in accordance with the approved scheme, and the adequate visibility splay provided shall be retained thereafter.

- 5) No development shall take place until the site investigation as recommended by the submitted Coal Mining Risk Assessment has been carried out, and the findings with any necessary mitigation measures have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved findings and mitigation measures.
- 6) No development shall take place until details of the materials to be used in the construction of the front boundary wall and the construction specification of the surfacing of the car park (including an above ground construction where surfacing is within the root protection area of trees that are to be retained), pedestrian areas and service areas and how they are to be demarcated, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and retained as such thereafter.
- 7) No development shall take place until samples of the materials to be used in the construction of the external walling and roofing of the building hereby permitted, including its access ramp, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 8) No development shall take place until a scheme to protect trees during demolition/construction works, that shall reflect BS 5837 'Trees in Relation to Design, Demolition and Construction' and include an implementation programme, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme and its implementation programme.
- 9) Demolition or construction works shall not take place outside 08:00hours to 18:00hours Mondays to Fridays and 08:00hours to 13:00hours on Saturdays nor at any time on Sundays or Bank Holidays.
- 10) No part of the development hereby permitted shall be brought into use until the accesses, car park, delivery and vehicle manoeuvring areas have been provided in accordance with Drawing No. (P)103 Revision D – *Proposed Ground Floor Plan Planning Application*. The accesses shall be retained thereafter and the car park kept available for customer parking, and the delivery area kept available for deliveries, for the development hereby permitted.
- 11) No part of the development hereby permitted shall be brought into use until a minimum of 3 'Sheffield type' bicycle stands have been provided in accordance with the details on drawing no. (P)103 Revision D, and the bicycle stands shall be retained as such thereafter.
- 12) No part of the development hereby permitted shall be brought into use until a Service Management Plan, that shall address matters including the maximum length of delivery vehicles and that deliveries to the development hereby permitted shall not be made from the highway, has been submitted to and approved in writing by the local planning authority. Servicing, including deliveries, shall only be made in accordance with the approved Service Management Plan.

13) The use hereby permitted shall not be open to customers outside the following times: 07:00hours to 23:00hours Monday to Saturday and 08:00hours to 22:00hours on Sundays.

14) Deliveries to the retail use hereby permitted and the associated activity of loading and unloading shall be restricted to the hours of 07:00hrs to 18:00hrs Mondays to Saturdays and 08:00hrs to 16:00hrs on Sundays.

Appeal E - Ref: APP/A1015/A/13/2205691

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans, Drawing Nos.:

(P)100 Rev. C - Location Plan and Block Plan

(P)101 - Existing Ground Floor Plan Planning Application

(P)101-1 - Existing Basement and First Floor Plans

(P)202 - Existing Building Elevations

(P)125 Rev. G - Shop Front Planning Application – Proposed Elevation and GF Plan

3) Prior to commencement of the development hereby permitted, a scheme of measures to minimise the risk of crime shall be submitted to and approved in writing by the local planning authority. The scheme shall address the design principles within any relevant Secured by Design Guides, and include an implementation programme. Measures to minimise the risk of crime shall be provided in accordance with the approved scheme and its implementation programme, and shall be retained thereafter.

4) Demolition or construction works shall not take place outside 08:00hours to 18:00hours Mondays to Fridays and 08:00hours to 13:00hours on Saturdays nor at any time on Sundays or Bank Holidays.

5) The materials to be used in the construction of the external surfaces of the side walls of the access ramp hereby permitted shall match those used in the existing building.

6) The hand railings, front entrance glazing bars and door frames hereby permitted shall be installed in a matching matt black colour finish and retained as such thereafter.

Appeal F - Ref: APP/A1015/A/13/2205692

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans, Drawing Nos.:

(P)100 Rev. C - Location Plan and Block Plan

(P)101 - Existing Ground Floor Plan Planning Application

(P)101-1 - Existing Basement and First Floor Plans

(P)202 - Existing Building Elevations

(P)103 Rev. E - Proposed Ground Floor Plan Planning Application

(P)103-1 Rev. B - Proposed Basement and First Floor Plans

(P)123 Rev. F - Plant Planning Application - Proposed Ground Floor Plan and Elevations

(P)203 Rev. H - Proposed Building Elevations – Extension and Demolition Work

(C)333 - Service Yard Fence

(C)334 - Service Yard Gates

- 3) No development shall take place until a scheme for the provision of road markings to delineate the bus stop adjoining the site has been submitted to and approved in writing by the local planning authority. The development hereby permitted shall not be brought into use until road markings have been provided in accordance with the approved scheme.
- 4) No development shall take place until a scheme to provide and retain an adequate visibility splay at the site accesses to Ashgate Road has been submitted to and approved in writing by the local planning authority. No part of the development hereby permitted shall be brought into use until an adequate visibility splay has been provided in accordance with the approved scheme, and the adequate visibility splay provided shall be retained thereafter.
- 5) No development shall take place until the site investigation as recommended by the submitted Coal Mining Risk Assessment has been carried out, and the findings with any necessary mitigation measures have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved findings and mitigation measures.
- 6) No development shall take place until a scheme to protect trees during demolition/construction works, that shall reflect BS 5837 'Trees in Relation to Design, Demolition and Construction' and include an implementation programme, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme and its implementation programme.
- 7) No development shall take place until details of the materials to be used in the construction of the front boundary wall and the construction specification of the surfacing of the car park (including an above ground construction where surfacing is within the root protection area of trees that are to be retained), pedestrian areas and service areas and how they are to be demarcated, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and retained as such thereafter.
- 8) No development shall take place until samples of the materials to be used in the construction of the external walling and roofing of the building hereby permitted, including its access ramps, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 9) The hand railings, new side door, door frame and front entrance glazing bars hereby permitted shall be installed with a matt black colour and retained as such thereafter.

- 10) The close boarded fencing, service yard fence and service yard gates hereby permitted shall be installed with a matt dark green or brown stain and retained as such thereafter.
- 11) No part of the development hereby permitted shall be brought into use until the accesses, car park, delivery and vehicle manoeuvring areas have been provided in accordance with Drawing No. (P)103 Revision E – *Proposed Ground Floor Plan Planning Application*. The accesses shall be retained thereafter and the car park kept available for customer parking, and the delivery area kept available for deliveries, for the development hereby permitted.
- 12) No part of the development hereby permitted shall be brought into use until a minimum of 3 'Sheffield type' bicycle stands have been provided in accordance with the details on drawing no. (P)103 Revision E, and the bicycle stands shall be retained as such thereafter.
- 13) No part of the development hereby permitted shall be brought into use until a Service Management Plan, that shall address matters including the maximum length of delivery vehicles and that deliveries to the development hereby permitted shall not be made from the highway, has been submitted to and approved in writing by the local planning authority. Servicing, including deliveries, shall only be made in accordance with the approved Service Management Plan.
- 14) Demolition or construction works shall not take place outside 08:00hours to 18:00hours Mondays to Fridays and 08:00hours to 13:00hours on Saturdays nor at any time on Sundays or Bank Holidays.
- 15) The plant and equipment hereby permitted shall be operated in accordance with the submitted details as follows:
 - Two air conditioning units (Sales Areas) operated at 40dB(A) at 10 metres and no night time running (between 23:00hours to 07:00hours)
 - One air conditioning unit (Cash Office) operated at 32dB(A) at 10 metres
 - One condenser unit operated at 32dB(A) at 10 metres during daytime and at 27dB(A) at 10 metres during night time (between 23:00hours to 07:00hours)
- 16) The use hereby permitted shall not be open to customers outside the following times: 07:00hours to 23:00hours Monday to Saturday and 08:00hours to 22:00hours on Sundays.
- 17) Deliveries to the retail use hereby permitted and the associated activity of loading and unloading shall be restricted to the hours of 07:00hours to 18:00hours Mondays to Saturdays and 08:00hours to 16:00hours on Sundays.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

James Corbet Burcher of Counsel	Instructed by the Borough Solicitor, Chesterfield Borough Council
Tom Wallace	Chesterfield Borough Council
Alan Morey	Chesterfield Borough Council

FOR THE APPELLANT:

Sasha White, Queens Counsel	Instructed by Ashurst LLP
He called	
Rupert Lyons	Transport Planning Associates Limited
Rhys Scrivener	KR Associates (UK) Limited
MSc MIOA	
Kevin Murphy	KM Heritage Limited
B.Arch MUBC RIBA IHBC	
Matthew Roe	CgMs Limited
BA(Hons) MTP MRTPI	

INTERESTED PERSONS:

Cllr Shirley Niblock	Chesterfield Borough Council
Alastair Meikle – statement read by Cllr Niblock	Local resident
Roderick Harrison	Local resident
Alan Craw	CAMRA
Gordon Partington	Local resident
Sarah Butt	Local resident
Karen Bagnall	Local resident
Mr Browett	Local resident

DOCUMENTS

1. Pages 87-92 of the Replacement Chesterfield Borough Local Plan 2006 (also within Core Document 2.2)
2. Statements of public speaking - including those identified as being from Mr Harrison, Mr Meikle and Mr Partington
3. Tree Survey Plan & Tree Constraints and Protection Plan – GC Design
4. Note Concerning Protected Species – from the appellant

APPENDIX B

Appeal Decision

Site visit made on 17 March 2016

by D J Board BSc (Hons) MA MRTPI

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

Decision date: 30 June 2016

Appeal Ref: APP/E5900/W/15/3137623

3-5 Globe Road, London, Tower Hamlets, E1 4DT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Sainsbury's Supermarket Limited against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/15/00587, dated 6 March 2015, was refused by notice dated 1 May 2015.
 - The development proposed is described as 'Application for planning permission for change of use of ground floor from Use Class B1 to Class A1 and external alterations comprising new customer entrance door, replacement window to frontage and new means of escape to the rear (revised application)'.
-

Decision

1. The appeal is allowed and planning permission is granted for change of use of ground floor from Use Class B1 to Class A1 and external alterations comprising new customer entrance door, replacement window to frontage and new means of escape to the rear (revised application) at 3-5 Globe Road, London, Tower Hamlets, E1 4DT in accordance with the terms of the application, Ref PA/15/00587, dated 6 March 2015, subject to the following conditions in Annex A.

Procedural Matter

2. The site address on the application for is '3 Globe Road'. On the decision notice and appeal form it is given as '3-5 Globe Road'. I have used the latter.

Background and Main Issue

3. The site was the subject of a previous application¹ that was subsequently dismissed at appeal² and this is a material consideration in assessment of the current proposal. Nonetheless, I note the differences between the two schemes, in terms of the additional supporting information provided by the appellants, and I have taken this into account. In particular I have considered the individual circumstances of this current proposal in the light of current national policy and guidance.
4. The main issue is the effect of the proposed A1 use on the vitality and viability of the Stepney Green Neighbourhood Centre (SGNC).

¹ LPA Ref PA/13/01811

² APP/E5900/A/14/2217680

Reasons

5. The SGNC is defined within the adopted Core Strategy. It contains a mix of uses including small convenience and comparison shops. It is proposed to change the use of the existing building to a convenience store. It would be about 429m² gross floor space with 261m² net retail space.
6. Core Strategy (CS) Policy SP01 defines the town centre hierarchy. The Managing Development Document (MDD) policy DM2 is also relevant. This sets out that development of local shops outside of town centres will only be supported where, amongst other things, there is a demonstrable local need that cannot be met within an existing town centre and that they are of an appropriate scale for their locality.
7. Paragraph 2.3 identifies that 'Local shops' are defined, for the purposes of DM2 (2) as having '*...a gross floorspace of no more than 100 sqm...*' The appeal proposal would have a floor space that exceeds this. Nevertheless the policy is seeking to manage the risk of larger shops coming forward outside of designated centres that could be a threat to the vitality and viability of a town centre or have a negative impact on existing local shops. Therefore assessment against it is in my view appropriate.
8. Paragraph 24 of the Framework is clear that '*Local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. They should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. 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*'.
9. The Planning Practice Guidance (PPG) also reiterates what the sequential test is and how it should be used in decision taking. The Council's main concern is that there would be a degree of overlapping between the catchments and that the appellants do not go far enough in identifying why premises in the BJNC are not suitable. In doing so it refers to an appeal decision in Newport, Isle of Wight³. I do not have all the detail of that case. Therefore whilst I have taken it into account I am mindful that the situation would be distinct to the appeal site location within a borough of London.
10. The appellants submit that the primary catchment for a store of the size and type proposed would be a 500m radius with a focus on Stepney Green. In addition the preference would be to have a location as close as possible to the centre of that area. Therefore the sequential test undertaken by the appellants is within the identified radius. This excludes other shopping areas referred to by the Council. The basis for this is that it is not commercially realistic to include these neighbourhood or district centres as they operate differently.
11. As part of the unaccompanied part of my site inspection I walked to the Ben Jonson Neighbourhood Centre (BJNC) and also visited the Mile End and Whitechapel District centres. Having done this I agree with the appellants that

³ APP/P2114/W/14/3001004

for the consideration of premises focussed on Stepney Green a nearby resident is unlikely to walk to one of these centres as an alternative for top up shopping. As such, whilst neither the PPG or the Framework advocates use of 'catchment areas', in this case the appellants 500m radius is a reasonable and realistic approach to adopt for application of the sequential test. This would be proportionate and appropriate as advocated by the PPG. This would also cover sites within or on the edge of the SGNC.

12. Within the 500m radius the appellant identified two vacant units in the SGNC. Their view is that neither of these units would be of a suitable size. The submitted information shows the floor spaces to be substantially below the appellants' requirements. The Council's initial report identifies two sites that they think should be included in the sequential test. One is located within the centre but is below the appellants' size and format requirements, whilst the other is also edge of centre. In this regard it is not clear why the Council consider that either would be preferable to the appeal site. Overall the appellants have demonstrated that the proposal could not be accommodated within the SGNC boundary.
13. In addition the Sainsburys operator statement letter provides the reasons why the appellants want to open a store in this location. Notwithstanding other stores identified by the Council in Bethnal and Mile End Road the appellants are clear that this site is the best for serving the SGNC being adjacent to the centre boundary and the station.
14. The Framework identifies a requirement for the Impact test and the PPG confirms that the impact test should be undertaken in a proportionate and locally appropriate way. However, the proposal is below the threshold of 2,500 sq m specified in paragraph 016 and it therefore does not apply. Nevertheless the appellants have considered the impact of the proposal having regard to policy DM2 (2). Following the development plan policies through would require the appeal scheme to demonstrate that there is a '*local need that cannot be met within an existing town centre*' and that the scheme would be of '*an appropriate scale for the locality*'.
15. As with the previous appeal scheme the appellants submit that the store would be small scale. It would be in close proximity to the main road and easily accessible. Therefore in their view it would operate as part of the centre and would serve walk in and 'top up' shopping needs of the local residents. In particular customers would be from the surrounding residential streets and also those travelling between home and work. Following the previous appeal decision the appellants have produced further information that they consider supports their position. The two main areas where arguments regarding 'need' are focussed are the overtrading of existing floor space and the 'leakage' of expenditure from the SGNC.
16. The appellants have put forward the figures for nearby Sainsburys stores which indicate that they are trading comfortably above average levels. Based on this information the submission is made that it is likely that the Coop in the SGNC would also be overtrading relative to its benchmark level. Furthermore they submit that the nearby Coop store and the appeal proposal could function and operate in close proximity to each other. More specifically that the Coop turnover may reduce but this change would not be significant as it would still be overtrading.

17. The appellants consider that the majority of the A1 floor space in the area is not convenience or is more bespoke in its offer and that the retail convenience in the area is in fact overtrading with spending 'leaking' out of the catchment. In particular that this is evidence of a need for additional facilities and that the area is trading well with the Council's statement identifying that '*the SGNC is generally vital and viable*'. This position is based on the household surveys and on street surveys undertaken. This information does demonstrate that there is an outflow of trips and spending from the SGNC, although I appreciate that some of this will inevitably be for bulk/weekly shopping as opposed to top up. In addition observations of the area on site support the appellants' assertion that, other than the Coop, other A1 units appear to be more specialist in their offer.
18. The Council's assessment of the position on this matter is cautious about the ability of the proposal to 'clawback' expenditure and considers that the proportion of retained expenditure in fact indicates that the area is already well served by small food stores. It also suggests that the impact on SGNC is underestimated. There is no dispute that the addition of the appeal proposal would have an impact and reduce the trading levels of existing stores. The issue is whether it would be 'significant and adverse' as set out in the Framework.
19. In terms of other material considerations, if it is accepted that the proposal could not be accommodated within the SGNC, the site's location adjacent to the boundary could be viewed as the next preference. In addition the site is adjacent to the station and within walking distance of the surrounding residential area. Further the building would be brought back into a beneficial use and provide employment.
20. The appeal proposal would be a retail use adjacent to and not within the SGNC. In my view the appellants have demonstrated that the proposal could not be accommodated within the SGNC. In this regard this site directly adjacent to the SGNC would be acceptable in this context. The impacts of the proposal have been tested within the context of the policies of the development plan. The proposal would be larger than a 'local shop'. Nevertheless the appellants have provided sufficient evidence that the proposal would add to the convenience offer within an already vital and viable centre without having a significant and adverse impact.
21. I therefore conclude that the proposal would not have an adverse effect on the proposed A1 use on the vitality and viability of the Stepney Green Neighbourhood Centre. In this regard it would not be in conflict with CS Policy SP01, MDD policy DM2 or the Framework.

Other matters

22. The site is located within the Stepney Green Conservation Area. The current appearance of the site is not harming the character and appearance of the area. Some external changes are proposed to the building to which no objection has been raised. Therefore the proposal would preserve the Conservation Area in which it is located.

Conditions and Conclusion

23. The Council has suggested a number of conditions which it considers would be appropriate were I minded to allow the appeal. I have considered these in light of the Framework and Planning Practice Guidance and for clarity some of the proposed wording is amended.
24. Conditions are necessary that relate to the standard time limits and requiring development to be carried out in accordance with the approved plans. In the interests of the character and appearance of the area conditions are necessary that require the submission of the detail of the materials for external works associated with the development.
25. In the interests of highway safety and living conditions of nearby occupiers conditions are also necessary to secure details of the provision of refuse and recycling storage, cycle storage, provision and use of the loading bay, restrictions on deliveries and hours of operation. With regard to the times of delivery I agree with the appellant that, given the location and size of the premises, that a greater window for this would not be unreasonable.
26. Therefore having regard to the above and all other matters raised I conclude that the appeal should be allowed.

D J Board

INSPECTOR

Annex A – Conditions

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 200; 201; 202; 203; 204; 207.
3. No development shall take place until details of the materials to be used in the construction of the external works to the building have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
4. With the exception of the delivery of newspapers deliveries shall be taken at or despatched from the site only between 0700 to 2100 on Monday to Saturday, and 1000 to 1700 on Sundays or on Bank or Public Holidays.
5. The use hereby permitted shall only take place between the following hours:
 - a. 07.00 – 23.00 Mondays - Saturdays
 - b. 09.00 – 23.00 Sunday and Bank Holidays.
6. The development hereby permitted shall not be occupied until the loading bay shown on Vectos drawing 120598/A/06 or a suitable alternative that has been agreed in writing with the Local Planning Authority has been constructed and completed in accordance with the agreed details and thereafter kept available for the loading and unloading.
7. No development shall take place until details of secure bicycle storage have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details and that space shall thereafter be kept available for the parking of bicycles.
8. No development shall take place until details of the provision of refuse and recycling storage facilities have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

APPENDIX C



Appeal Decisions

Hearing Held on 4 April 2019

Site visit made on 4 April 2019

by Mr K L Williams, BA, MA, MRTPI

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

Decision date: 16 May 2019

Appeal A: APP/G5180/W/18/3193635

The Chinese Garage, Wickham Road, Beckenham, BR3 6RH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Masters of Beckenham Limited against the Council of the London Borough of Bromley.
- The application, ref: 17/03273/RECON, is dated 13 July 2017.
- The application sought planning permission for the change of use of the existing car showrooms and associated workshops (sui generis) to two retail units (Class A1) and conversion of first floor to 2 two bedroom flats (Class C3) together with associated car parking, landscaping, external alterations and related internal works to Listed Building without complying with conditions attached to planning permission DC/16/02988/FULL1, dated 5 December 2016.
- The conditions in dispute are nos. 21, 22 and 23. These conditions and the reasons for their imposition are set out in the body of this decision.

Summary of Decision: The appeal succeeds. Planning permission is granted in the terms set out in the Formal Decision.

Appeal B: APP/G5180/C/18/3215173

Land at the Chinese Garage, Wickham Road/Stone Park Avenue, Beckenham, BR3 6RH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Masters of Beckenham Limited against an enforcement notice issued by the Council of the London Borough of Bromley.
- The enforcement notice, ref:18/00668/LISTED, was issued on 1 October 2018.
- The breach of planning control as alleged in the notice is the erection of a metal hoarding approximately 2 metres in height along the perimeter boundary of the Land (following the green line on the plan attached to the notice) which falls within the curtilage of a listed building.
- The requirements of the notice are to remove the metal hoarding and leave it in a clean and tidy condition.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be determined.

Summary of Decision: The appeal fails. The enforcement notice is corrected, varied and upheld.

Preliminary Matter

1. The Hearing was closed in writing on 18 April 2019.

Background

2. The appeal site is outside Bromley and Beckenham town centres. It is known as the Chinese Garage and is at the apex of South Eden Park Road and Stone Park Avenue. There are two retail units in the development approved under planning permission DC/16/02988/FULL1 for the site. Drawing 3997/102 shows the approved site layout. Unit 1 is the southern unit and would have a gross floorspace of 383m². Unit 2 is the northern unit and would comprise 594m². The 3 disputed conditions in Appeal A are nos. 21, 22 and 23. Condition no.21 requires that: *"The premises shall only be open for customer business between the hours of 09:00 and 20:00 on Monday to Friday, 09:00 to 19:00 on Saturday and 10:00 to 17:00 on Sundays and Bank Holidays."* The reason given for the condition is in order to safeguard the amenities of adjoining occupants at unsociable periods and to comply with policy BE1 of the Unitary Development Plan. The appellants propose to replace this condition with a condition requiring that: *"The premises shall only be open for customer business between the hours of 07:00 and 23:00."*
3. Condition no.22 requires that: *"No movement of service vehicles or servicing of the commercial units shall take place at either premises except between the hours of 09:00 and 17:00 Monday to Friday"* The reason given for the condition is to avoid any disruption of the free flow of traffic at roads approaching the Chinese Roundabout in the morning and evening peak hours and in the interest of pedestrian and vehicular safety in order to comply with Policy T18 of the Unitary Development Plan and Policy 6.12 of the London Plan The appellants propose to replace this condition with a condition requiring that: *"No movement of service vehicles or servicing of the commercial units shall take place at either premises except between the hours of 08:00 and 20:00 aside from the delivery of newspapers."*
4. Condition no.23 requires that: *"Notwithstanding the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking, re-enacting or modifying that Order), the premises shall be used for retail use (Use Class A1) for (i) pets, pet food, and all pet related products, and ancillary pet care, treatment and grooming services, (ii) beers, wine, spirits and sundry goods and for no other purpose (including any other purpose in Use Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order)." The reason given for the condition is to enable the Council to reconsider the situation in the event of a change of user in the interest of highway safety and in the amenities of the area and to comply with Policies S7, T18 and EMP5 of the Unitary Development Plan, Policies 4.1, 4.7 and 6.12 of the London Plan and the National Planning Policy Framework.*
5. The appellants propose to replace this condition with a condition requiring that: *"Notwithstanding the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking, re-enacting or modifying that Order), Unit 2 of the premises shall be used for retail use (Use Class A1) for convenience goods with 10% of the floorspace for comparison goods. Unit 1 of the premises shall be used for the retail sale of beers, wine and spirits and sundry goods and for no other purpose (including any other purpose in Use*

Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order)." This would enable Unit 2 to be occupied by a Tesco Express convenience store.

Appeal A

Main Issues

6. The Council does not resist the proposed changes to conditions nos.21 and 22. On that basis the main issue in Appeal A is in respect of condition no.23. That issue is whether the condition is reasonable and necessary having regard to the replacement condition proposed by the appellants and to:
 - i) The Sequential Test for main town centre uses;
 - ii) The effect on highway safety and on the free flow of traffic.

The Sequential Test

7. The Bromley Local Plan (LP) was adopted in January 2019. LP policy 91 requires main town centre uses to be located within the designated town centres or, if no in-centre sites are available, sites on the edge of centres. Only if suitable sites are not available in town centres or in edge of centre locations should out of centre sites be considered. Proposals for new main town centre uses outside of existing centres are required to meet the Sequential Test set out in the National Planning Policy Framework, 2018 (The Framework).
8. Framework paragraph 86 sets out that test. It says that main town centre uses should be located in town centres, then in edge of centre locations and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered. Amongst other things, Framework paragraph 87 says that applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.
9. In *Aldergate Properties Ltd v Mansfield District Council* [2016] EWHC 1690 (Admin) Mr Justice Ouseley said that the Framework "cannot therefore be interpreted as requiring "suitability" and "availability" simply to be judged from the retailer's or developer's perspective, with a degree of flexibility from the retailer and responsiveness from the authority". The terms "suitable and available" should apply to the broad type of development proposed with regard to approximate size, type and range of goods, generally excluding the identity and personal or corporate attitudes of an individual retailer. Mr Justice Singh's judgment in *The Queen (oao the Midcounties Co-operative Limited) v Forest of Dean District Council v Aldi Stores Limited* [2017] EWHC 2056 (Admin) is consistent with that approach. *Warners Retail (Moreton) Ltd v Cotswold DC and Others* [2016] EWCA Civ 606 is a Court of Appeal judgement. Lord Justice Lindblom found that in applying the sequential test "What bounds could reasonably be set on an applicant's preference and intentions as to "format and scale" would always and necessarily depend on the facts and circumstances."
10. The appellants contend that they have approached the Sequential Test with an appropriate degree of flexibility and without regard to the identity of the retailer or the presence of competitors restricting their consideration of

- alternative sites. They observe that there are various types of convenience stores. In this case the proposed convenience store would provide for top-up shopping for both for walk-in and drive-in customers. They identify two formats for top-up convenience stores. Those in town centres are close to main transport hubs. They attract pass-by trade and do not require on-site car parking. A suburban top-up store on the other hand attracts walk-in customers living locally and car users, primarily those already on the highway network. This type of store is said to require a trading space of at least 278m², or 300m² if on 2 floors, plus at least 100m² of back of house space.
11. The Council's evidence shows that there is a range of formats for convenience stores in the area, both within and outside shopping centres. They include Tesco Express stores and similar outlets operated by other retailers. Examples given include town centre stores and those with retail floorspace of 277 m², 205 m² and 176 m². Some do not have on-site car parking. The top-up shopping role of the proposed convenience store would involve the purchase of a small number of non-bulky items. It should not preclude the use of nearby off-site parking. There is a large volume of parking available in various locations within Bromley Town Centre.
 12. The specifications identified by the appellants in respect of size and parking provision are relevant considerations. Nevertheless, it seems to me that consideration of potential sites for a town centre or edge of centre top-up convenience should be approached with a greater degree of flexibility than they suggest. The identification of one category as being "suburban stores" would inhibit serious consideration of town centre or edge of centre sites and run contrary to the approach of the Sequential Test. Nor should reliance on off-site parking necessarily render a site unsuitable for a top up convenience store.
 13. The Council's updated assessment gives details of 4 sites in Bromley town centre it considered to be sequentially preferable, suitable and available. It later conceded that one of them, 196-198 High Street, is unlikely to be available and can be discounted. Nos.208-214 High Street comprises two units, The site is being marketed as part of an extensive retail development. The Council considers that the development is likely to proceed if an anchor tenant is secured. Nevertheless, the timing of any redevelopment is uncertain and it may not occur. On that basis I do not consider this site to be available.
 14. No.98 High Street is available for rent. It has 3 floors. A measured survey gives a retail area of 205 m² on the ground floor. There is 114 m² of retail area and 62m² of storage at first floor level. The second floor has 20m² of storage and some ancillary floorspace. When compared with the examples illustrated in Council's Appendix 3 this unit has a very narrow frontage to the street. In addition, its ground floor layout is very narrow, with the main staircase in the middle of the store. As a result of these factors, when combined with the limited ground floor area, this unit is unlikely to be suitable for the type of development proposed.
 15. Unit 1, St Mark's Square is one of the units in a recently completed mixed use development on the fringe of Bromley Town Centre. The development includes a cinema and flats. The planning permission also provides for restaurants or cafés, a retail unit and a drinking establishment. Unit 1 comprises 315 m² gross floorspace. There is conflicting evidence on its availability. The most recently dated of several submitted emails is from Savills and says that the unit

“remains on the market for underlet or assignment”. The size of the unit would not preclude a top-up convenience store. However, it would be sited within a leisure focussed development, where most visits are likely to be for attending the cinema or visiting restaurants. None of the examples shown in Appendix 6 of the Council’s evidence are similarly sited. In that position there is unlikely to be sufficient passing trade during the day as a whole for Unit 1 to be considered suitable for a top-up convenience store.

16. I conclude on this issue that there are no sequentially preferable sites for the type of development proposed which are suitable and available. The proposal would not conflict with LP policy 91.

Highway safety and the free flow of traffic

17. Framework paragraph 109 says that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Policy 32 of the Bromley Local Plan (LP), 2019 requires that road safety is not significantly adversely affected by development. Policy 31 deals with relieving congestion and provides criteria for development likely to be a significant generator of traffic.
18. The access, parking and servicing arrangements would remain unchanged from those approved in 2016. Drawing 3797/102 shows the access off South Eden Park Road. There would be 23 parking spaces for customers of the 2 retail units. At each arm of the adjacent roundabout there is tactile paving and a central refuge for pedestrians. There are no crossing points controlled by traffic lights or zebra crossings.
19. The appellants have assessed the effect on traffic movements to and from Unit 2 if the condition was changed as they suggest. For each of the hours assessed, the associated vehicle movements would be significantly higher than those associated with the pet related outlet which condition no.23 requires. However, the siting and top-up shopping function of the proposed store would result in a proportion of trips being by vehicles already on the network. These pass-by trips would form part of a longer journey. Based on experience with similar stores elsewhere the appellants assume a range of 20-30% of pass-by trips, varying at different times of the week. An estimated additional flow of 31 vehicles to and 33 vehicles from the site is anticipated on weekdays between 08:00 and 09:00. It is assumed that a proportion of these, perhaps 30-40%, would arrive and depart on South Eden Park Road without needing to use the roundabout. On that basis it is expected that the effect on traffic using the roundabout would be an increase of 19-22 vehicles in each direction in the morning peak period. The appellants contend that this would be insignificant, amounting to one additional vehicle every 3 minutes in either direction. There would be a lesser effect in the evening peak and at other times of the day.
20. The Council’s concerns focus on the effect on vehicle queuing, particularly on South Eden Park Road and Stone Park Avenue, on the adequacy of on-site parking and on highway safety. It takes into account the traffic effects of development on 2 nearby sites, for which planning permission has been granted. There is permission for 105 dwellings on land at the junction of South Eden Park Road and Bucknall Way. There is outline planning permission on land off South Eden Park Road about 400 metres from the site. It includes up to 179 dwellings, with non-residential institution use, assembly and leisure uses.

21. The Council's January 2019 traffic surveys are said to show that the roundabout is running at capacity, with significant queues on all arms. Queues of over 30 vehicles were recorded on Stone Park Avenue. Queues on South Eden Park Road exceeded 25 vehicles at times. The Council also assessed the effect of traffic from the two sites with planning permission on the ratio of flow to capacity (RFC) of each road. In that scenario the RFC figures for morning and evening peak on South Eden Park Road are assessed as 0.98 and 0.67 respectively. For Stone Park Avenue these figures would be 1.16 and 1.11. The effect with the addition of a Tesco Express convenience store is also assessed. This gives RFC figures for South Eden Park Road of 1.01 and 0.68 for the morning and evening peaks respectively. The equivalent figures for Stone Park Avenue are 1.18 and 1.13. Assuming an average customer length of stay, or dwell-time, of 20-25 minutes the Council assesses customer parking provision to be inadequate, with the risk of vehicles queueing on the highway. It is said that this would lead to on-street parking with related risks to road users and pedestrians.
22. The Council's Table 2 LBB ARCADY depicts a scenario with the 2 developments with planning permission and a Tesco Express convenience store. It shows that the RFC for Wickham Road, Hayes Lane and Wickham Way would remain well below 1.00 in the morning and evening peaks. For South Eden Park Road the RFC would marginally exceed 1.00 in the morning peak. For Stone Park Avenue, the RFC would exceed 1.00 to a somewhat greater extent in the morning and evening peaks. However, a comparison of the Council's Table 1 and Table 2 suggests that the contribution of the Tesco convenience store to any increases in RFC would be marginal. Moreover, it is unlikely that top-up shopping trips would be initiated at times when approaches to the roundabout are likely to be congested.
23. With regard to parking provision and dwell-time, the appellants submit survey results from another site which contains a Tesco Express, 3 other units and 19 parking spaces. The total floorspace at that site is broadly comparable to Unit 2. The survey showed average durations of stay at that site of about 8 minutes on Friday, 11 minutes on Saturday and 7 minutes on Sunday. On that basis the Council's dwell-time assumption appears unrealistic. A substantially lower dwell-time would allow a faster turnover of use of the parking spaces. The balance of evidence is that the parking provision would be adequate.
24. If this appeal succeeds a condition could ensure that Unit 1 was used almost entirely for convenience goods shopping. On that basis its use mainly for top-up shopping and the appellants' assessment of additional traffic movements and the likely extent of pass-by trips are credible. There is only limited provision for pedestrians to cross the roads near the roundabout. The appellants' assumption of 30-40% of vehicle visits not needing to negotiate the roundabout appears speculative and may be optimistic. Nevertheless, the extent to which there would be additional traffic using the roundabout would not be sufficient to result in a significant adverse effect on road safety.
25. The term "significant generator of travel" is not defined in LP policy 31, nor is a similar term used in Framework paragraph 111 defined. In this case retail use of Unit 2 is already permitted, the floorspace involved is quite modest, the predicted traffic movements are not large and some trips would be by vehicles already on the network. The proposal would not result in a significant generation of traffic so that LP policy 31 is not relevant in this appeal. It is

consistent with Framework paragraph 109 to take into account residual cumulative impacts. Nevertheless, while the convenience store in combination with the 2 permitted developments would contribute to increased traffic queues in peak hours, it would do so only to a small degree. There would not be a severe impact on the road network. The proposed top-up convenience store would be acceptable with regard to highway safety and the free flow of traffic.

Other matters

26. A number of local residents object to the proposed extended opening and servicing hours. A house on Stone Park Avenue and another on South Eden Park road have boundaries which adjoin the site. If this appeal succeeds a further condition could be applied requiring the erection of a screen within the site to reduce noise. Condition no.12 of the 2016 planning permission already requires the submission of a lighting scheme. The appellants say that there would be an opportunity to use smaller delivery vehicles if servicing hours are extended. They suggest that a Service Management Plan could be provided giving details of servicing arrangements. The site is in an urban area with a mix of uses, including commercial uses, and with 5 roads approaching the roundabout. Subject to the imposition of a further condition requiring a screen and a Service Management Plan the effects on residential amenity of the proposed extended hours would be acceptable.
27. Having regard to the limited extent of additional traffic generation there would not be harm to air quality in the area. A further concern of local residents is the potential effect of a convenience goods shop in Unit 2 on local shops, including units in the parade of shops and other outlets on Wickham Road. It provides shopping and other services which are valued by the local community. It is not part of the Council's case that there would be direct harm by retail impact. The gross floorspace of the Tesco Express would be well below 2500m², the level at which Framework paragraph 89 requires submission of an impact assessment. The appellants say that the opening of Tesco Express outlets elsewhere has not harmed local shops, although substantive evidence of that is not submitted. Their evidence does suggest that the anticipated turnover of the Tesco Express would be modest compared with those of nearby shopping centres. The proposal would provide a further convenience shop within walking distance of residential areas and nearby bus stops. I conclude that there would not be harm to retail provision in the area.

Overall Conclusions on Appeal A

28. Having regard to the above and to all other matters raised Appeal A should succeed. Conditions nos. 21, 22 and 23 of planning permission DC/16/02988/FULL1 are not reasonable or necessary. Planning permission should be granted for the original development subject to the conditions set out in the Formal Decision, including the conditions suggested by the appellants.

Appeal B: The Enforcement Appeal

The Enforcement Notice

29. There is a minor error at paragraph 5 of the enforcement notice, which should refer to leaving the site in a clean and tidy condition. This can be corrected without injustice as set out in the formal decision.

Ground (a) and the Deemed Planning Application

30. The deemed planning application is for the erection of the metal hoarding as alleged in the enforcement notice. The appellants seek a temporary permission for 6 months. The main issue is the effect of the hoarding on the setting of the Chinese Garage as a listed building, on that of the Park Langley Conservation Area and on the character and appearance of the area.
31. The Chinese Garage is a Grade II listed building. It dates from 1928 and was a petrol filling station, motor garage and showroom. The building is significant for its distinctive architectural form and as a survivor from the early days of motoring. A canopy extended over the petrol pumps and the roof structure resembles a pagoda. The listing description also refers to two distinctive tall lanterns and five smaller lanterns in a small garden in front of the building. A large attached workshop building is of a functional appearance. The siting of the Chinese Garage adjacent to a roundabout serving five roads contributes positively to its significance. Part of the Park Langley Conservation Area on Hayes Lane is close to the site. The Conservation Area's is residential in character and its significance includes its spacious layout. The Chinese Garage and the Conservation Area are designated heritage assets. Having regard to proximity and inter-visibility the hoarding is within the settings of these heritage assets.
32. The hoarding is a utilitarian structure comprising linked fencing sections. They are predominantly solid panels. It extends around much of the perimeter of the site. It appears that since the notice was served, part of the hoarding facing Stone Park Avenue has been replaced with fencing panels of an open character. The hoarding is an unsightly and incongruous feature. It appears to have been installed with no thought to the setting of the listed building. Having regard to the temporary period for which permission is sought there would be moderate harm to that setting. The Conservation Area covers an extensive area and only a small part of it is near the appeal site. There would be modest harm to its setting. There would also be moderate harm to the character and appearance of the wider area around the appeal site. It is characterised by a mix of suburban housing and other uses, including car sales and a parade of shops.
33. The hoarding conflicts with policies 38 and 42 of the Bromley Local Plan, 2019. They protect the settings of listed buildings and Conservation Areas respectively. The effect on the significance of the designated heritage assets would amount to the "less than substantial harm", to which paragraph 196 of the National Planning Policy Framework alludes. It is therefore appropriate to consider any public benefits arising from the development. The appellants cite the 2016 planning permission and the need to make the site secure pending changes to it. While the protection and security of a listed building is in the public interest it has not been shown that this could not be achieved in a considered and more sympathetic manner. This matter does not outweigh the identified harm. The appellants also cite Schedule 2, Part 4, Class A of the Town and Country Planning (General Permitted Development) (England) Order, 2015. It permits the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land. There are no ongoing operations on this site. Nor is there any certainty as to when any operations will be carried out. I therefore give this matter little weight.

Appeal B: Ground G

34. The 6 month period for compliance sought by the appellants would be akin to the temporary planning permission sought under ground (a). Removal of the hoarding could be achieved quickly. Nevertheless, an extended period is necessary to allow time for a more appropriate design of fencing to be considered and installed, should it still be required. Such a design might also address the effect of solid fencing on sight lines for drivers, a concern raised during the Hearing. The compliance period will be extended to 3 months.

Overall Conclusions on Appeal B

35. Having regard to the above and to all other matters raised Appeal B should not succeed. Planning permission should not be granted. The notice should be corrected, varied and upheld.

Formal Decisions

Appeal A: APP/G5180/W/18/3193635

36. The appeal is allowed and planning permission is granted for the change of use of the existing car showrooms and associated workshops (sui generis) to two retail units (Class A1) and conversion of first floor to 2 two bedroom flats (Class C3) together with associated car parking, landscaping, external alterations and related internal works to a listed building at The Chinese Garage, Wickham Road, Beckenham, BR3 6RH in accordance with the application 17/03273/RECON, dated 13 July 2017, without compliance with condition nos. 21, 22 and 23 previously imposed on planning permission DC/16/02988/FULL1, dated 5 December 2016, subject to the conditions set out in the Schedule attached to this decision.

Appeal B: APP/G5180/C/18/3215173

37. It is directed that the notice be corrected at paragraph 5 by the replacement of the word "it" with "the site". It is further directed that the notice be varied at paragraph 6 by the replacement of the words "one month" with "3 months".
38. The appeal is dismissed. The enforcement notice is upheld subject to the above correction and variation.

K Williams

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development to which this permission relates must be begun not later than the expiration of 3 years, beginning with the date of this decision.
- 2) The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans approved under planning permission DC/16/02988/FULL1 .
- 3) Details of the materials to be used for the external surfaces of the building shall be submitted to and approved in writing by the Local Planning Authority before any work is commenced. The works shall be carried out in accordance with the approved details.
- 4) Details of the windows (including rooflights and dormers where appropriate) including their materials, method of opening and drawings showing sections through mullions, transoms and glazing bars and sills, arches, lintels and reveals (including dimension of any recess) shall be submitted to and approved in writing by the Local Planning Authority before any work is commenced. The windows shall be installed in accordance with the approved details.
- 5) Before any part of the development hereby permitted is first occupied boundary enclosures of a height and type to be approved in writing by the Local Planning Authority shall be erected in such positions along the boundaries of the site as shall be approved and shall be permanently retained thereafter.
- 6) Details of a scheme of landscaping, which shall include the materials of paved areas and other hard surfaces, shall be submitted to and approved in writing by the Local Planning Authority before the commencement of the development hereby permitted. The approved scheme shall be implemented in the first planting season following the first occupation of the buildings or the substantial completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the substantial 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 to those originally planted.
- 7) No part of the development hereby permitted shall be commenced prior to a contaminated land assessment and associated remedial strategy, together with a timetable of works, being submitted to and approved in writing by the Local Planning Authority.
 - a) The contaminated land assessment shall include a desk study to be submitted to the Local Planning Authority for approval in writing. The desk study shall detail the history of the site's uses and propose a site investigation strategy based on the relevant information discovered by the desk study. The strategy shall be approved in writing by the Local Planning Authority prior to investigations commencing on site.
 - b) The site investigation, including relevant soil, soil gas, surface water and groundwater sampling shall be submitted to and approved in writing by the Local Planning Authority.

- c) A site investigation report shall be prepared detailing all investigative works and sampling on site, together with the results of analysis, risk assessment to any receptors, a proposed remediation strategy and a quality assurance scheme regarding implementation of remedial works, and no remediation works shall commence on site prior to approval of these matters in writing by the Authority. The works shall be of such a nature so as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment.
 - d) The approved remediation works shall be carried out in full on site in accordance with the approved quality assurance scheme to demonstrate compliance with the proposed methodology and best practise guidance. If during any works contamination is encountered which has not previously been identified then the additional contamination shall be fully assessed and an appropriate remediation scheme submitted to the Authority for approval in writing by it or on its behalf.
 - e) Upon completion of the works, a closure report shall be submitted to and approved in writing by the Authority. The closure report shall include details of the remediation works carried out, (including details of waste materials removed from the site), the quality assurance certificates and details of post-remediation sampling.
 - f) The contaminated land assessment, site investigation (including report), remediation works and closure report shall all be carried out by contractors approved in writing by the Local Planning Authority.
- 8) The development permitted by this planning permission shall not commence until a surface water drainage scheme for the site and an assessment of the hydrological and hydro geological context of the development has been submitted to, and approved by, the Local Planning Authority. The surface water drainage strategy should seek to implement a SUDS hierarchy that achieves reductions in surface water run-off rates in line with the findings of the submitted Foul Sewage & Surface Water Drainage Assessment report carried out by Wormald Burrows Partnership Ltd with Ref No. E3564-DRAIN-Rev1-0516 dated May 2016 to limit the discharge rate to 2l/s.
- 9) Prior to the commencement of the development hereby permitted a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall include measures of how construction traffic can access the site safely and how potential traffic conflicts can be minimised; the route construction traffic shall follow for arriving at and leaving the site and the hours of operation but shall not be limited to these. The Construction Management Plan shall be implemented in accordance with the agreed timescale and details.
- 10) No wall, fence or hedge on the street facing boundaries or on the first 2.5m of the flank boundaries shall exceed 1m in height, and these means of enclosure shall be permanently retained as such.
- 11) Before the access hereby permitted is first used by vehicles, it shall be provided with 3.3m x 2.4m x 3.3m visibility splays and there shall be no obstruction to visibility in excess of 1m in height within these splays except for trees selected by the Local Planning Authority, and which shall be permanently retained thereafter.

- 12) Details of a scheme to light the access drive and car parking areas hereby permitted shall be submitted to and approved in writing by the Local Planning Authority before the development hereby permitted is commenced. The approved scheme shall be self-certified to accord with BS 5489 - 1:2003 and be implemented before the development is first occupied and the lighting shall be permanently retained thereafter.
- 13) The arrangements for storage of refuse (which shall include provision for the storage and collection of recyclable materials) and the means of enclosure shown on the approved drawings shall be completed before any part of the development hereby permitted is first occupied, and permanently retained thereafter.
- 14) Before any part of the development hereby permitted is first occupied, bicycle parking (including covered storage facilities where appropriate) shall be provided at the site at 2 spaces for each residential unit in accordance with details to be submitted to and approved in writing by the Local Planning Authority, and the bicycle parking/storage facilities shall be permanently retained thereafter.
- 15) The existing access shall be stopped up at the back edge of the highway before any part of the development hereby permitted is first occupied in accordance with details of an enclosure to be submitted to and approved in writing by the Local Planning Authority. The approved enclosure shall be permanently retained as such.
- 16) While the development hereby permitted is being carried out a suitable hardstanding shall be provided with wash-down facilities for cleaning the wheels of vehicles and any accidental accumulation of mud on the highway caused by such vehicles shall be removed without delay and in no circumstances be left behind at the end of the working day.
- 17) Surface water from private land shall not discharge on to the highway. Details of the drainage system for surface water drainage to prevent the discharge of surface water from private land on to the highway shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of works. Before any part of the development hereby permitted is first occupied, the drainage system shall be completed in accordance with the approved details and shall be retained permanently thereafter.
- 18) Before commencement of the use of the land or building hereby permitted parking spaces and/or garages and turning space shall be completed in accordance with the approved details and thereafter shall be kept available for such use and no permitted development whether permitted by the Town and Country Planning (General Permitted Development) Order (England) 2015 (or any Order amending, revoking and re-enacting this Order) or not shall be carried out on the land or garages indicated or in such a position as to preclude vehicular access to the said land or garages.
- 19) The flat roof area of the ground floor commercial units shall not be used as a balcony or sitting out area for the upper level residential flats and there shall be no access to the roof area.

- 20) Before any work is commenced on the access/highway works a Stage 1 and where appropriate a Stage 2 Road Safety Audit (these may be combined with the prior agreement of the local Planning Authority) shall be submitted to and approved in writing by the Local Planning Authority. The works shall be implemented strictly in accordance with the approved details to the satisfaction of the Local Planning Authority before any part of the development hereby permitted is first occupied. A Stage 3 Audit shall be submitted to and approved in writing by the local Planning Authority following satisfactory completion of the works and before they are opened to road users. The road safety auditor will also request for a member of LBB traffic team to be present on site at the time of audit.
- 21) The premises shall only be open for customer business between the hours of 07:00 and 23:00 hours.
- 22) No movement of service vehicles or servicing of the commercial units shall take place at either premises except between the hours of 08:00 and 20:00 aside from the delivery of newspapers. Before Unit 2 is brought into operation details of a Servicing Management Plan for that unit shall be submitted to and approved in writing by the Local Planning Authority. The servicing of Unit 2 shall thereafter be operated in accordance with the approved Servicing Management Plan.
- 23) Notwithstanding the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking, re-enacting or modifying that Order), Unit 2 of the premises shall be used for retail use (Use Class A1) for convenience goods with 10% of the floorspace for comparison goods. Unit 1 of the premises shall be used for the retail sale of beers, wine, spirits and sundry goods and for no other purpose (including any other purpose in Use Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order).
- 24) Details of a screen to protect the adjoining residents beyond the western boundary of the site from noise and disturbance shall be submitted to and agreed in writing by the Local Planning Authority. The screen shall be erected in accordance with the approved details before any part of the development hereby permitted is first occupied and shall thereafter be retained.

APPEARANCES

FOR THE APPELLANT:

Ms C Colquhon	of Counsel.
Mr Roe	Tesco.
Mr Hanks	Transport Planning Associates
Mr Lowes	Rapleys LLP.
Mr Crutchley	Heritage witness.

FOR THE LOCAL PLANNING AUTHORITY:

Mr D Bord BA(Hons), PG Dip MRTPI	Principal Planner, London Borough Bromley.
Mr N Rastani BEng (Civil) PG Dip (Transport), MCIHT	Highways Development Manager, London Borough Bromley
Mr N Ahad BSc (Civil), MSc (Construction Management), MCIHT, GICE	Highway Development Engineer.

INTERESTED PERSONS:

Mr Macfarlane	Local resident
Mr A Duncan	Local resident
Ms Eddowes	Local resident
Ms Stamper	Local resident
Ms Shotton	Local resident
Ms Green	Local resident
Mr Oakley	Local resident
Mr Possamoll	Local businessman
Mr Calder	Local resident

DOCUMENTS SUBMITTED DURING THE HEARING

1. Council's Sequential Assessment – 26 March 2019.
2. Set of Photographs of the site.
3. Email of 26 March 2019 concerning Unit 1, St Mark's Square, Bromley.
4. Emails of 21 March and 26 March 2018.
5. Draft Statement of Common Ground.
6. Council's suggested condition.
7. Marketing details for St Mark's Square.
8. Map of Bromley Town Centre.
9. Council's list of appearances.
10. Copy of drawing 3797/102.
11. Council's email to the Planning Inspectorate, 10 April 2019.
12. Rapleys letter to the Planning Inspectorate, 10 April 2019.
13. Council's letter to the Planning Inspectorate, 15 April 2019.
14. Rapleys email to the Planning Inspectorate, 17 April 2019.
15. Rapleys letter to the Planning Inspectorate, 17 April 2019.
16. CV of Matthew Rose.
17. Appellants' Summary Closing.