

Reference No: 15/00978/VAR

Proposal: **Variation of condition 13 of planning approval 07/02384/VAR (Application to revise condition No.13 of planning permission 03/00120/OUT) to allow the sale of food and drink.**

Location: Phase 2, Peel Centre, Spire Road, Glover, Washington

Ward: Washington North

Applicant: Peel Property Intermediate Limited

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1. Application Proposal

The application before Members is being made via Section 73 of the Town and Country Planning Act 1990. Section 73 allows applications to be made for permission to develop without complying with a condition(s) previously imposed on a planning permission, in this case permission 03/0012/OUT. The Local Planning Authority can grant such permission unconditionally or subject to different conditions, or they can refuse the application if they decide that the original condition(s) should continue. Members should note that the original permission will continue to subsist whatever the outcome of this Section 73 application.

The applicant, Peel Property Intermediate Limited, is seeking to vary Condition 13 of planning permission 03/00120/OUT so as to allow for the sale of food and drink from up to 1,356 sq. m gross floorspace at Phase 2 of the Peel Centre. Planning permission 03/00120/OUT and its subsequent reserved matters (ref: 07/02808/REM), approved the extension of the existing retail park (hence Phase 2) consisting of 5 non-food retail warehousing (5,760 sq. m) together with associated car parking.

Paragraph 1.7 of the applicant's Agent, Savills, Retail Statement Update (August 2015) explains that '...The [Section 73] application proposal seeks to facilitate the delivery of the approved units on the Phase 2 land by allowing the sale of food and drink in order to attract a small to medium sized foodstore'. Paragraph 1.9 clarifies that the foodstore is to operate from the largest approved retail unit, i.e. Unit A under

the Reserved Matters approval 07/02808/REM, which has a gross floorspace of 1,356 sq. m.

Paragraph 1.8 of Savills' Retail Statement Update further explains that the proposal seeks to provide the landowner with options to assist in the delivery of the permitted undeveloped floorspace, so as to secure '...the associated economic benefits', with these benefits cited later, at Paragraph 6.2.4, as including employment generation, increased local spending, improved consumer choice and regeneration of the site.

Savills' proposed wording for the variation to Condition 13 was set out, originally, in Paragraph 1.9 of its Retail Statement Update and was derived from, but is not exactly the same as, the wording that was incorporated in a previous Section 73 consent that revised Condition 13 via 07/02384/VAR (approved on 1 August 2007).

However, Savills' wording also omits reference to item p) in 07/02384/VAR's Condition 13, which would have prohibited the sale of 'household/ personal telecommunications equipment'. It was therefore necessary to clarify the applicant's intention and in an email dated the 20 December 2016 Savills confirmed that the omission of item p) is deliberate whilst clarifying the proposed wording for the replacement Condition 13 is as follows:

The Use Class A1 development hereby approved shall not be used for the retailing of any of the following goods, except where ancillary to the main product range, without the prior written consent of the Local Planning Authority (LPA):

- a) Food and drink, except from up to 1,356 sq.m gross (14,600 sq. ft.) of floorspace (excluding the ancillary sale of food and drink for consumption on the premises);*
- b) Fashion clothing (excluding gardening/DIY overalls protective clothing and sportswear);*
- c) Fashion accessories (excluding sportswear);*
- d) Footwear (excluding gardening/DIY protective footwear and sports footwear);*
- e) Jewellery, and watches;*
- f) Cosmetics and toiletries;*
- g) Pharmaceutical products;*
- h) Books, newspapers and magazines;*
- i) Toys (excluding garden toys and outside play equipment);*
- j) Videos, DVDs, CDs, audio cassettes and records;*
- k) Musical instruments;*
- l) Stationery and greetings cards;*
- m) Florist;*
- n) Travel agency;*
- o) Cameras and photographic equipment.*

hollissvincent's Appraisal of the Retail Policy Aspects of Peel's Section 73 application

Given the specialist nature of the retail planning considerations arising from this application, officers employed the services of a retail planning specialist in order to provide advice to the LPA in its consideration of the application. Officers instructed hollissvincent to undertake an independent audit of the retail policy aspects of Peel's Section 73 application.

hollissvincent has directly advised the Council on a number of retail related planning applications in the City since 2011, a number of which have been in the Washington area. This in-depth knowledge of the City's retail landscape has been enhanced yet further following their recently completed Sunderland Retail Needs Assessment (2016), which hollissvincent undertook on behalf of the Council and which will form a key part of the evidence base as the Council progresses the Local Plan i.e. the next iteration of the Development Plan.

In undertaking their instructions, hollissvincent visited the application site, Washington Town Centre and Concord Local Centre, and appraised the following:

- the planning history of Phase 2 of the Peel Centre and the wider Peel Centre site;
- the planning application form (both the original and the amended versions) and the site location plan;
- the Retail Statement and Appendices, submitted on behalf of the applicant by Savills in May 2015;
- the Retail Statement Update and the Retail Statement Appendices Update, submitted on behalf of the applicant by Savills in August 2015;
- the results of a telephone survey of households undertaken by NEMS Market Research in April 2013, which was commissioned by GL Hearn on behalf of Prudential/ M&G;
- the representation submitted by Colliers International on behalf of Prudential/ M&G (the freehold owner of the Galleries and Galleries Retail Park), by way of its letter to the Council of 31 July 2015;
- the development plan for the Washington area, which comprises the saved policies of the City of Sunderland Unitary Development Plan (the UDP), adopted in 1998;
- hollissvincent's findings from the recently completed Sunderland Retail Needs Assessment of November 2016; and
- all other relevant correspondence submitted to the LPA in respect of the subject matters of this report, by both the applicant and third parties.

A copy of hollissvincent's audit report and policy advice in respect of this application is included as an Appendix to this report and Members should read this committee report in conjunction with the hollissvincent report.

2. Application Site

The Peel Centre is a retail park that dates from the 1980s, located approximately 2.5km, by road, to the east of Washington Town Centre. The Peel Centre is in an 'out-of-centre' location for the purposes of the definitions given in Annex 2 of the National Planning Policy Framework (the NPPF), and is located adjacent to the A1231 Sunderland Highway with access off Spire Road. The Peel Centre is divided into two parts, with Phase 1 located within the western section of the applicant's overall landholding and with Phase 2 located within the eastern section of the applicant's overall landholding. To the immediate north of Phase 2 is Clay's Garden Centre.

3. Planning History and Potential Fall-back Positions

Planning History

Phase 2 of the Peel Centre was approved by the Secretary of State on the 29 July 2004, following a call-in inquiry (ref: APP/J4525/V/03/1123896). The Secretary of State granted outline consent for an extension to the existing retail park consisting of 5,760 sq.m of non-food retail warehousing in the five units. The Secretary of State imposed various conditions, with Conditions No. 13 and No. 14 being of most significance to the current Section 73 application. Condition No. 13 restricts the range of goods that may be sold to bulky, non-food items, and Condition No. 14 limits the gross floorspace in Phase 2 to 5,760 sq.m, including any mezzanines.

Condition No. 13 of the outline planning permission for Phase 2 of the Peel Centre was varied in August 2007, under planning permission 07/02384/VAR, so as to allow for the sale of sportswear, sports goods, camping equipment, computers and computer games, and to include the words 'except where ancillary to the main product range'.

A reserved matters application was submitted pursuant to the original outline and was approved on 5 September 2007 (ref: 07/02808/REM). This reserved matters permission was subject to 25 conditions, with Condition No. 12 controlling the range of non-food goods that may be sold. It is noted, however, that Condition 12 of this reserved matters permission uses the same wording as that used in Condition No. 13 of the variation permission (ref: 07/02384/VAR), rather than the wording used in Condition 13 of the original outline consent, to which the reserved matters application is stated to relate.

The approved reserved matters layout plan shows five retail units, with a total gross floorspace of 5,760 sq.m, which reflects the maximum floorspace permitted by the Secretary of State under Condition No. 14 of his call-in decision letter in respect of APP/J4525/V/03/1123896. This reserved matters application has been implemented through the construction of all car parking areas and access to them, as confirmed by Paragraph 8 of Appendix 1 to Savills' Retail Statement.

Nevertheless, the site of one of the five approved units (Unit E, which was separate from the terrace of units A to D) was the subject of a further planning permission (ref:

07/02812/FUL) which was approved on 6 September 2007. The approved development was for the 'erection of [a] two storey health and fitness club (use class D2) with associated retail (use class A1), plus car parking, access and related works'. The building of this two storey mixed use health and fitness/ retail unit, with a total floorspace of 5,110 sq.m gross, means that it is no longer possible to develop Unit E of the reserved matters approval (ref: 07/02808/REM), which measured 1,431 sq.m. Furthermore, in July 2014 a change of use application (ref: 14/00970/FUL) was approved to enable the ground floor of the two storey health and fitness club to be occupied by a B&M Homestore, which is now trading.

Potential Fall-backs

A fall-back position is what could happen on a particular site based on the planning position as it stands and it is a material consideration that should be factored into the planning balance when deciding whether to grant planning permission for a particular development proposal.

In order for a fall-back position to be a material consideration, the potential fall-back position must be "real" (i.e. the LPA must be satisfied that there is at least an outside chance or a slight possibility that the fall-back position could be fully implemented) as opposed to being merely "theoretical".

It is then a matter of planning judgement as to the relevant weight to be given to a "real" fall-back position, which will reflect the likelihood of it occurring and/ or the level of planning harm that would arise if the fall-back occurred, compared to the development proposal for which planning permission is sought.

- The Armstrong Road Site

The Armstrong Road site benefits from an extant planning consent for the development of seven non-food retail warehouses, totalling 8,440 sq.m gross (refs: 01/02086/OUT and 05/00412/REM). Condition 3 of both the outline and reserved matters consents prohibits the sale of convenience goods and a wide range of non-bulky comparison goods. The site is also subject to a Section 52 Planning Agreement that prevents the sale of convenience goods and the sale of a similar wide range of non-bulky comparison goods. Following the construction of an access road the commencement of development was confirmed by the Council in its letter dated the 26 April 2007.

More recently, there has been a foodstore application (ref: 12/00100/FUL), which was refused in December 2013 on the ground of the significant adverse cumulative impact it would cause in relation to Washington Town Centre, and a refusal of planning application ref: 14/02687/VAR, which sought to vary Condition No. 3 of the parent permission, so as to include toys, sporting goods and camping equipment, and so as to allow the retailing of convenience goods from up to 1,550 sq.m Gross Internal Area. This Section 73 application also sought to reduce the minimum size of unit from 1,000 sq.m to 500 sq.m.

The LPA, when considering the above variation application, considered at the time that the full implementation, over the next 5 or so years, of the extant planning

permission for the non-food retail warehouse park (under refs: 01/02086/OUT and 05/00412/REM) was questionable and on balance it was considered unlikely given the range of non-food goods that may be sold is strictly controlled under the terms of Condition No. 3 and by the Section 52 planning agreement. Nevertheless, it was considered, at that time, that there was a 'slight possibility', or 'an outside chance' that the extant consent could be fully implemented over the next 5 or so years.

However, with the further passage of time, it is now considered that there is not even 'an outside chance' of the extant consent for a non-food retail warehouse park at Armstrong Road being fully implemented and occupied over the next five years, which is the time horizon for assessing the second of the two impact tests incorporated in Paragraph 26 of the NPPF, which will be discussed in further detail later in this report. The range of goods condition and the Section 52 agreement are considered too restrictive for the necessary occupier demand to be secured. As a consequence, it is now considered, on balance, that this extant consent is now merely 'theoretical' (as opposed to being 'real') and therefore no weight is given to it as a potential fall-back position.

- The Peel Centre Site, Phase 1

The site of Phase 1 of the Peel Centre benefits from a number of extant planning permissions for Class A1 retail development under planning permissions 06/04039/FUL, 08/02901/FUL and 12/03137/OUT. The first two of these three permissions relate to the redevelopment of Units 1 and 2, so as to allow for open A1 retail uses. However, it is the last of these three permissions, for a food superstore of 5,485 sq.m gross, which potentially has the most severe impact consequences for Washington Town Centre. Thus, although all of the four leading foodstore operators have substantially cut back on their development of large food superstores, it is still considered, on balance, that there remains 'an outside chance' that such a food superstore could be developed at Phase 1 of the Peel Centre during the next five years.

It is therefore considered that the extant consent for a foodstore at Phase 1 of the Peel Centre remains a 'real' position, as opposed to being merely 'theoretical', and as such remains to be a material planning consideration.

4. Publicity, Representations and Consultations

The application has been publicised by the Council in accordance with the requirements of the Town and Country Planning (Development Management Procedure) (England) Order, 2010, that is, by:

- Site Notice
- Press Notice and
- Neighbour Notification Letters

Following this public consultation exercise two letters of representation were received. The first is from Colliers International, writing on behalf of M&G Real Estate and their client fund Prudential Insurance Company Limited, the freehold owners of

The Galleries and Galleries Retail Park. The second letter of representation is received from the adjacent Clay's Garden Centre.

- M&G Real Estate/ Prudential Insurance Company Limited

The objecting letter dated the 31 July 2015 was written by Colliers International on behalf of M&G/ Prudential. To summarise, the letter states that the application should be refused as the sequential approach has not been followed; and that the applicant's impact assessment is inadequate and as such, an appropriate assessment cannot be made in respect of the application's impact on the vitality and viability of the Town Centre.

The objection letter highlighted that it was written in the following context:

1. The recent granting of planning permission 14/02701/FUL for the development of a food store at Armstrong House, Armstrong Road, Washington;
2. The previous planning permission for a superstore development at The Peel Retail Park;
3. The 'fall back' permissions relating to The Peel Retail Park and to Phase 1 of that development in particular;
4. The fall back permissions at Armstrong;
5. The current development plan context.

The letter confirmed that Prudential continue to oppose as strongly as possible the continuing attempts by developers to establish the Peel Retail Park as a broad based park just two miles from the northern entrance to Washington Galleries. It expressed concerns that it could take away a high proportion of trips to the Town Centre so that the trade of The Galleries town centre retailers would be severely harmed. The letter asserts that this would undermine the Town Centre in a manner that it would be hard if not impossible for it ever to recover. The letters considers that while the LPA continues to grant planning permissions for out of centre developments it is particularly difficult for M&G Real Estate to secure retailer interest for the more complex, sequentially preferable, town centre sites.

The letter also confirms that M&G/ Prudential do not accept hollissvincent's interpretation of impact on town centre investment, disagreeing with the apparent re-definition of "existing" investment to "on-going" investment, thus giving no weight to the £50m investment made at Washington by the fund and occupiers over the last seven years. The return on that investment, which justifies it and which is required if any further investment is to be made, relies on the vitality, viability and commercial success of the centre and that recent investment.

In summary a significant reduction into the town centre will have the opposite impact and that the continuing provision of out of centre opportunities within the Washington area will dilute retailer interest in town centre opportunities, thereby restricting the scope for further investment in the future.

Given the retail policy related nature of this objection and as stated earlier in this report, hollissvincent has included Collier's letter as a key document in their

appraisal of Peel's Section 73 application proposal. The matters raised above are therefore discussed in further detail in the following Sequential Test and Impact Tests sections.

- Clay's Garden Centre

In principle terms the representation was not objecting to the application allowing the sale of food and drink. Nevertheless, serious concerns were expressed in respect of the number of car parking spaces and highway access issues. The letter asserts that site was originally built for a gym and small sports shop along with the un-built adjacent unit. The representation considers the car park to be inadequate and that the access road to the Clay's Garden Centre is extremely dangerous, stating that it is a miracle that an accident has not already occurred as B&M customers assume a right of way.

In response, of critical importance is the fact that the entirety of the site, particularly in terms of its access and parking layout, is built out following the earlier approvals. This includes the initial 03/00120/OUT approval and its related reserved matters approval, ref: 07/02808/REM. The subject of this proposed variation i.e. the intention to sell food and drink (up to 1,356 sq. m), does not alter the already built-out layout of Phase 2, whilst the Council's highway engineers (Transportation (Network Management)) have offered no objection to the proposed variation.

- Transportation (Network Management)

In summary, Transportation (Network Management), having reviewed this Section 73 planning application, have no objection to the proposed variation. In the event that Members are minded to approve, Transportation have requested that all the previous conditions attached to 03/00120/OUT approval be applied to the Section 73 application.

5. The Requirements of National and Local Policy for Town Centres and Sustainable Economic Development

National Policy

The National Planning Policy Framework (NPPF) was published on 27 March 2012. Paragraphs 2, 11, 12, 13 and 196 of the NPPF emphasise that planning law requires applications for planning permission to be determined in accordance with an up-to-date development plan, unless material considerations indicate otherwise. Thus, the starting point for consideration of a planning application is the development plan and development that accords with an up-to-date Local Plan should be permitted, unless material considerations indicate otherwise.

The NPPF also establishes a number of other fundamental principles which are of relevance to the consideration of this application, in particular:

- a) Due weight should be given to relevant policies in an existing development plan according to their degree of consistency with the policies of the NPPF (Paragraph 225);
- b) Paragraph 14 of the NPPF makes it clear that, in decision-taking, the presumption in favour of 'sustainable development' applies '...where the development plan is absent, silent or relevant policies are out-of-date';
- c) The NPPF maintains previous national policy in seeking to promote competitive and healthy town centres (Paragraphs 23-27);
- d) The NPPF itself is a material consideration to which significant weight should be given.

In summary, as will be explained in further detail later in the report, it is considered that there is a deficiency in the relevant saved Shopping Policies in the UDP, namely policies S1 and S2, in that they are strategic and aspirational policies that do not address the up-to-date development management tests for retail development for outside town centres, as set out in Paragraphs 26 and 27 of the NPPF. It is therefore considered that more weight should be given to the up-to-date development management tests for out of centre retail development proposals contained in the NPPF.

Therefore, the Section 73 application proposal benefits from the presumption in favour of sustainable development under Paragraph 14 of the NPPF because the relevant Shopping Policies in the UDP are not up-to-date, and should therefore be approved unless:

- a) any adverse impacts of doing so (including cumulative impacts) would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole; or
- b) specific policies in the NPPF indicate that such development should be restricted (e.g. because of a breach of the provisions of Paragraph 27 of the NPPF in respect of the sequential test or due to a significant adverse impact on the town centre).

Local Policy – Unitary Development Plan (UDP)

Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that a planning application should be determined in accordance with the development plan unless material considerations indicate otherwise.

In determining whether a planning application is in accordance with the development plan, the decision maker should consider the development plan as a whole (R v Rochdale Metropolitan Borough Council ex parte Milne (2000)).

The development plan for the Washington area comprises the saved policies of the City of Sunderland Unitary Development Plan, adopted in 1998 (the UDP).

Site Specific Policies

The application site at the Peel Centre is unannotated on the Proposals Map of the adopted UDP and is therefore governed by Policy EN10. This policy covers those areas of the City where the existing land use pattern is considered satisfactory and where no major development pressure is envisaged. Where the Plan does not indicate any proposals for change, the existing pattern of land use is intended to remain; proposals for development in such areas will need to be compatible with the principal use of the neighbourhood.

Consequently, given that the Peel Centre is now an established out of centre Retail Park, and as retail development has been firmly established on Phase 2 via the initial outline approval (ref: 03/00120/OUT) and its subsequent reserved matters (ref: 07/02808/REM), it is considered that the development proposal is in accordance with this policy.

Shopping Policies

The saved Shopping Policies of relevance to this application are Policies S1 and S2. Both of these policies are strategic Part 1 policies that relate to the Council's overall strategy and to the retail hierarchy of centres. Policies S1 and S2 are consistent with the objectives set out in Paragraph 23 of the NPPF, which seek to ensure the vitality of town centres.

However, the local development management policy within the original UDP that would have been of most relevance to the consideration of retail development proposals for out-of-centre sites, Policy S5, was not saved, on the ground that it was considered unnecessary because it repeated the policy set out in the (then) Planning Policy Statement 6. As a consequence, shopping Policies S1 and S2 are not considered to be fully up to date because, although they incorporate the sequential test, they are not consistent with the up to date development management impact tests for applications for out-of-centre retail development as contained in Paragraphs 26 and 27 of the NPPF. Therefore more weight is given to the two tests set out in Paragraph 26 of the NPPF.

With this background in mind, saved Policy S1 seeks to enhance the role of the City's shopping service by encouraging a wide range of attractive, well distributed, facilities to meet future shopping and related needs. Policy S1 requires proposals that are located outside existing centres, such as that proposed by this Section 73 application, to be subject to a sequential test and are required to complement existing facilities. It is clear, therefore, that Policy S1 incorporates the sequential approach.

However, the policy position under Paragraphs 26 and 27 of the NPPF, in respect of the impacts of out of centre retail development on existing centres, requires an assessment as to whether or not the development proposal will have a 'significant adverse impact' on existing, committed and planned investment and on the overall vitality and viability of the existing centre, rather than whether it will 'complement' the existing centre, which is a materially different approach to development management.

In terms of a sequential assessment of the development, as required by Paragraph 24 of the NPPF, it is accepted that there are no alternative sites within, or on the edge of, Washington Town Centre, or Concord Local Centre, which meet each of the 'available', 'suitable' and 'viable' components of the sequential test. As a consequence, the application is consistent with the sequential aspect of Policy S1.

However, the subsequent impact assessment, which is discussed in further detail later in this report, demonstrates that the Section 73 application proposal, together with the existing commitments and 'fall-backs', would cause some level of harm to Washington Town Centre and, to a lesser extent, to Concord Local Centre, as a result of cumulative trade diversion. The Section 73 application does not therefore complement existing facilities, so that it is in conflict with this aspect of Policy S1. Moreover, the degree of conflict with Policy S1 increases materially when the cumulative effects of the application proposal are considered, together with existing commitments and 'fall-backs'.

However, as set out at the start of this section, more weight is given to the more up to date impact tests set out in Paragraphs 26 and 27 of the NPPF and it is important to note that these paragraphs do not require a proposal to be complementary with the town centre. Rather they require an assessment as to whether the application proposal is likely to cause a 'significant adverse' impact on existing, committed and planned investment and on the vitality and viability of the town centre.

Policy S2 of the UDP states that the Council will give favourable treatment to proposals which will sustain and enhance the vitality and viability and diversification of the City's three strategic town centres, including Washington and its six local centres, including Concord.

The impact assessment, which will be discussed in detail later in this report, indicates that the application proposal will not help in sustaining and enhancing the vitality, viability and diversification of Washington Town Centre or Concord Local Centre, through trade diversion. Moreover, the degree of conflict increases materially when the cumulative effects of the application proposal are considered, together with existing commitments and fall-backs. However, it is considered that more weight should be given to the more up-to-date impact tests for out-of-centre retail development set out in the NPPF.

Chapter 21 of the UDP sets out the Area Proposals for Washington. Paragraph 21.8 states that there is a well-planned shopping hierarchy based around the Galleries, Concord and the village centres. The planning strategy for Washington, which is set out in Paragraph 21.14, requires that '...the role of the Galleries and Washington's Town Centre should be developed and enhanced'.

Policy WA7 states that 'Concord shopping centre will be retained and improved'. This is an aspirational policy principally concerned with improvements to the Local Centre through measures such as traffic management, improvements to facades, landscaping, parking and so on. Policy WA7 is not a development management policy designed to set criteria for assessing retail development proposals in out-of-centre locations. Nevertheless, it is noted that the application proposal (together with existing commitments) is likely to cause some harm to Concord Local Centre as a

result of trade diversion. Therefore, the proposal is not fully consistent with the aim of Area Proposal WA7, which is to improve Concord Local Centre.

The policies for Washington Town Centre are set out in WA33 to WA37. Policy WA33 states that the Council will seek to sustain and improve Washington Town Centre by, amongst other things, '...liaising with the owners on their strategy for the Galleries'. The Town Centre is defined in Paragraph 21.101 to comprise the Galleries, the Galleries Retail Park (as then existed), community and leisure facilities to the south and east and office buildings along the northern and western edges. Policy WA34 (1) allocates part of the Western Car Parks for a range of town centre uses, including A1 retail, and this site, together with land in its vicinity, is appraised in later in this report as part of the sequential test.

The overall conclusion is that the application would cause some harm to the objectives of the UDP's Area Proposals for Washington, since the application, would lead to some adverse impact on both Washington Town Centre and Concord Local Centre. Moreover, the level of harm to the objectives of the Area Proposals increases materially when the cumulative impact of the application proposal is considered, together with existing commitments and fall-backs.

However, as is the case with the UDP's saved Shopping Policies, it is clear that the Area Proposals for Washington do not address the up-to-date development management tests for the consideration of the impacts of out-of-centre retail development proposals that are set out in Paragraphs 26 and 27 of the NPPF, as a consequence, more weight is given to the latter.

Emerging Local Development Framework

Paragraph 216 of the NPPF states that decision takers may give weight to relevant policies in emerging plans, from the date of publication, according to:

- a) the stage of preparation of the emerging plan;
- b) the extent to which there are unresolved objections to relevant policies; and
- c) the degree of consistency of the relevant policies with the NPPF.

In August 2013, the Council published, for consultation, its Core Strategy and Development Management Policies (Draft Revised Preferred Options). However, the Council has now since decided to progress a Local Plan that will contain a Core Strategy and a Site Allocations Document, and the submission version of the Local Plan is not expected to be published until 2017, with no date yet set for the Examination in Public. Consequently, the aforementioned consultation document represents a very early stage in the process and, in accordance with the policy set out in Paragraph 216 of the NPPF, very limited weight can be given to its provisions. In short, the emerging Local Plan is not sufficiently advanced for it to be of any assistance in determining the current application proposal.

Sequential Test

All planning applications for main town centre uses such as A1 retail that are not in an existing town centre must be subject to a sequential test in accordance with Paragraph 24 of the NPPF.

In considering out of centre proposals, Paragraph 24 provides that 'preference should be given to accessible sites that are well-connected to the town centre'.

Applicants (and the LPA) are also required to demonstrate flexibility on issues such as format and scale.

As explained above, Paragraph 27 of the NPPF states that where an application fails to satisfy the sequential test it should be refused.

In approaching the sequential test and being mindful to not disaggregate, any sequentially preferable location to be deemed suitable would need to be able to provide for a similar quantum of retail development to the remaining four units in Phase 2 that have not yet been built, which amounts to 4,329 sq. m gross (i.e. three non-food units, totalling 2,973 sq. m gross, and a food unit of up to 1,356 sq. m gross).

There are no vacant premises within or on the edge of Washington Town Centre, or in Concord Local Centre, which are currently available and suitable for meeting the scale and form of development that the application proposal is seeking to serve, even having applied the appropriate degree of flexibility.

There are currently no vacancies within the Galleries Retail Park, and the largest vacancy within the Galleries (Unit 35B), at the time of the Goad survey of September 2015, is just 310 sq. m gross, which is not big enough for a foodstore of the sort envisaged by this Section 73 application proposal, let alone the retail development in its entirety, which would require at least 3,600 sq. m, having applied an appropriate degree of flexibility in relation to scale and format.

In terms of other sites within and on the edge of Washington Town Centre, namely the Western and Eastern Car Parks, it is considered that these are unlikely to be able to provide a suitable opportunity for meeting the retail development proposed by this Section 73 application proposal at the Peel Centre (at least not for some years), and that the Western and Eastern Car Parks do not meet the available test. In reaching this conclusion account has been taken of:

- i) the very long passage of time which has elapsed since the adoption of site allocation WA34 (1) (i.e. the Western Car Park) and the longstanding and well-known interest by several food retailers in being represented within the Washington catchment area during this period, so that a more than reasonable period of time has been allowed to test whether a viable retail scheme on the Western Car Parks site (to meet the needs of either food or non-food retailers, or both) is likely to come forward;

- ii) the future parking demands associated with the extant consent, of January 2014, for a multi-screen cinema and food and drink units on the site of the former Cheviot House, which is to the immediate south of the allocation for retail and commercial development put forward under Area Proposal WA34(1);
- iii) the fact that there is no clear evidence of immediate market/ commercial interest in the Western Car Park site from foodstore operators or non-food retailers;
- iv) the fact that there is no published time-scale for submission of any potential planning application for retail development on any part of the Western or Eastern Car Parks;
- v) the close proximity of the existing Aldi store at the Galleries Retail Park, which would pose competition for the small to medium-sized supermarket operator envisaged in Peel's application;
- vi) the need for any new retailers on the site to share the same car park with Asda and other operators in the Galleries, particularly since the car parks appear to be very busy already; and
- vii) the potential objections from M&G Real Estate's own tenants as a result of the disruption that would be caused during construction.

Therefore, there are two fundamental concerns in relation to the availability, suitability and viability of the Western and Eastern Car Parks for retail development.

Firstly, it is not considered that there are any opportunities currently available and that it will take some years before any planned extension to the Primary Shopping Area can be executed, particularly given the need for replacement parking and the likelihood that this will need to be in the form of parking at more than one level, and the need for new access arrangements.

Secondly, it is considered telling that little progress has been made in bringing forward the allocated part of the Western Car Park sites for retail development in the 18 years that have passed since the UDP was adopted. There is no clear evidence of any progress in promoting a retail scheme on the site since the time Prudential gave evidence to the call-in inquiry in 2004 (ref: APP/J4525/V/03/ 1123896), when it told the Inspector that the Western Car Parks site is '... currently under close scrutiny and review, and it is likely that redevelopment proposals will be brought forward' (Inspector's Report, Paragraph 179).

Accordingly, in view of the above, it is considered that this Section 73 application complies with the sequential test under Paragraph 24 of the NPPF as there are no sequentially preferable sites.

Impact Tests

Paragraph 26 of the NPPF sets out the impact tests for applications for retail, leisure and office development that are located outside town centres and which are not in accordance with an up-to-date Local Plan.

For applications of over 2,500 sq. m gross (or over a locally set threshold in the Local Plan), these tests require an assessment of:

- a) 'the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and
- b) the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made. For major schemes where the full impact will not be realised in five years, the impact should also be assessed up to ten years from the time the application is made'.

The floorspace incorporated in the Section 73 application at the Peel Centre amounts to 4,329 sq. m gross (three non-food units and one food unit), which is well above the 2,500 sq. m threshold set out in Paragraph 26 of the NPPF, so that the application faces both of the impact tests set out in Paragraph 26 of the NPPF.

Impact test a) - Impact on Existing, Committed and Planned Investment

The first test set out in Paragraph 26 of the NPPF relates to the impact of the proposal on 'existing, committed and planned public and private investment' in a centre.

Since Prudential acquired The Galleries in 1999 there has been substantial investment in Washington Town Centre:

- development of the second phase of the Galleries Retail Park;
- the refurbishment of, and new layout for, the bus station;
- improvements to the pedestrian links between the Retail Park and the Galleries;
- the introduction of restaurant units into the Eastern Car Park areas;
- the refurbishment of the first floor of the Galleries and the introduction of many new Class A2 uses;
- a substantial programme of mall enlivenment measures, including the creation of a new focal point in Wessington Square, with fully glazed roof; and
- the creation of a new store for Wilkinsons, which in turn enabled Sainsbury's to undertake extensive works to improve its own store.

However, it is considered that a clear distinction should be drawn between, on the one hand, previous investment in town centre facilities that has already been made and completed, and, on the other hand, existing/ on-going, committed and planned future investment schemes. The impact of a development proposal on previous and

completed investment in town centre facilities is considered to be appropriately assessed through the second of the tests in Paragraph 26 of the NPPF (which considers the impact on the town centre's vitality and viability). Conversely, it is the impact on existing/ on-going, committed and planned future investment schemes that is the subject of the first of the Paragraph 26 tests.

- The Cinema and Leisure Consent (ref. 13/02714/FUL)

M&G Real Estate (Prudential) received planning consent, in January 2014, for the development of a multi-screen cinema and up to six units in Use Classes A1 to Class A5, at the site of Cheviot House. These units are expected to be taken by operators of restaurants and bars that will be complementary to the cinema. It is considered that this scheme is primarily aimed at improving the Town Centre's leisure offer. It is noted that a cinema operator has not yet been secured; however, it is considered that the Section 73 application proposal is highly unlikely to cause a significant adverse impact on the proposed cinema and restaurant scheme. Particularly as the Section 73 application proposal will not be targeting similar operators.

- The Western Car Parks

Regarding the Western Car Parks site, and as set out in the Sequential Test section above, it is considered that there is no reasonable prospect for retail development to occur in the foreseeable future on this site.

Attention is drawn to the fact that the recent Sunderland Retail Needs Assessment 2016 report concludes that there is a need to plan for an expansion of Washington's Primary Shopping Area, so as to meet the retail needs that have been identified over the next 20 years, albeit that much of these needs will not arise until after 2025.

Furthermore, the report identifies parts of both the Western and Eastern Car Parks as being the most appropriate locations for future planned extensions to Washington's Primary Shopping Area. However, it is considered unlikely that Peel's Section 73 application proposal would have a significant adverse impact on these recommended future planned extensions because these recommended extensions have not yet achieved policy status in the development plan, and because the potential investment in these extensions of the Primary Shopping Area is identified for the medium and longer term.

- The Galleries and Galleries Retail Park

It is acknowledged that a significant amount of investment has already taken place in the Galleries and there can be no doubt that this completed investment has helped the Galleries to withstand the effects of the recession in a much better way than other town centres of similar size. It seems clear, therefore, that the substantial level of investment previously made by M&G Real Estate (Prudential) has been a key factor in Washington's rise in the national rankings of town centres from 308th in the Management Horizons Europe ranking in 2000/01 to a ranking of 252nd in 2015 (Experian 2015).

Nevertheless, the representation from Colliers (dated 31 July 2015) does not identify any specific ongoing, planned or committed investments within the Galleries, or within the Galleries Retail Park. Thus, so far as the first of the impact tests in Paragraph 26 of the NPPF is concerned, there is no clear evidence that the current Section 73 application at the Peel Centre is likely to have any 'significant adverse' impact on any ongoing, committed or planned investment.

- **Conclusion on Town Centre investment impact**

It is considered that any impacts on previous town centre investment schemes that have already been completed are appropriately assessed as part of the second of the impact tests set out in Paragraph 26 of the NPPF (i.e. impact on the town centre's overall vitality and viability) which is considered below. In any event, no clear evidence has been put forward by Colliers on behalf of M&G Real Estate to substantiate a case that the section 73 application proposal is likely to cause a 'significant adverse' impact on existing/ on-going, committed and planned investment in Washington Town Centre.

In addition, there is no clear evidence of any existing/ on-going, committed and planned investment in Concord Local Centre that would be adversely impacted by Peel's Section 73 application proposal.

It is therefore concluded that this Section 73 application proposal on its own, and cumulatively with other commitments and real fall-back positions, is not likely to have a 'significant adverse' impact in relation to the first of the impact tests incorporated in Paragraph 26 of the NPPF.

Impact test b) - Impact on Town Centre Vitality and Viability

The second test set out in Paragraph 26 of the NPPF requires an assessment of the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made.

The National Planning Policy Guidance (NPPG) advises that 'a judgement as to whether the likely adverse impacts are significant (for the purpose of Paragraph 27 of the NPPF) can only be reached in light of local circumstances' (Paragraph 1D: 2b-017).

Throughout the period 2011 to 2015 hollissvincent has advised the LPA on a number of retail related applications and during this period it has been found that Washington Town Centre continues to enjoy a reasonably good level of health that was reported in the original Sunderland Retail Needs Assessment, prepared by Roger Tym & Partners in 2009.

Furthermore, hollissvincent, when preparing the 2016 Sunderland Retail Needs Assessment, undertook a further review of the current health of the Town Centre as part of this work, including an appraisal of an earlier report to the Council, prepared by England & Lyle (January 2015). Both of these reports concluded that Washington Town Centre continues to perform relatively well and is considered to be a vital and

viable centre. This conclusion therefore forms the back drop to hollissvincent's subsequent assessment of the cumulative trade diversion scenarios associated with Peel's Section 73 application proposal, which is the next section of this report.

- **Cumulative Trade Impacts**

- Trading Impact Results for Washington Town Centre

In hollissvincent's previous Report (June 2015) to the Council in respect of the B&Q (ref: 14/02687/VAR) and Jomast (ref: 14/02701/FUL) applications, sixteen potential cumulative impact scenarios were modelled, please see Table 1.

These sixteen scenarios (A to P) arose from the two live applications which existed at that time, and potential alternative outcomes with respect to the fall-back positions which existed, at that time, at the Peel Centre and at Armstrong Road. The June 2015 Report concluded that two of the sixteen scenarios (A and G) produced cumulative impacts on Washington Town Centre's overall retail turnover that were considered, on balance, as likely to result in a 'significant adverse' impact on the Town Centre's overall vitality and viability. Both of these scenarios involved a double permission for the previous B&Q and Jomast applications. Consequently, the B&Q application at Armstrong Road was subsequently refused on the 8 September 2015.

Table 1: Sixteen Potential Cumulative Impact Scenarios								
Category	Scenario	The Four Common Commitments	Food Superstore at Peel Centre	Convenience Fallback for Peel Centre	Section 73 Application at Armstrong Road	Armstrong Road Non-Food Bulky Goods Fallback	Armstrong House Application	Combined Percentage Impact
3	A	✓	✓	×	✓	×	✓	-15.6%
	G	✓	×	✓	✓	×	✓	-15.4%
2	C	✓	✓	×	×	✓	✓	-14.9%
	B	✓	✓	×	✓	×	×	-14.8%
	I	✓	×	✓	×	✓	✓	-14.7%
	H	✓	×	✓	✓	×	×	-14.6%
1	D	✓	✓	×	×	✓	×	-13.3%
	J	✓	×	✓	×	✓	×	-13.1%
	E	✓	✓	×	×	×	✓	-12.8%
	K	✓	×	✓	×	×	✓	-12.6%
	F	✓	✓	×	×	×	×	-11.2%
	L	✓	×	✓	×	×	×	-11.0%
	P	✓	×	×	✓	×	✓	-10.8%
	O	✓	×	×	×	✓	✓	-10.1%
	M	✓	×	×	✓	×	×	-10.0%
	N	✓	×	×	×	×	✓	-8.0%

However, in light of the B&Q refusal (ref: 14/02687/VAR) hollissvincent have modelled two variations of a new scenario, which have been termed Scenario R, please see Table 2. The first of these variations, termed Scenario R1, reflects the theoretical continued inclusion in the assessment of cumulative impact of the extant consent for a non-food retail park which exists at Armstrong Road, which is heavily restricted in terms of the nature of the non-food goods that may be sold, under planning permissions 01/02086/OUT and 05/00412/REM.

The second of these variations, which is termed Scenario R2, reflects the conclusion that in light of the heavily restricted nature of goods that may be sold from the Armstrong Road non-food retail park fall-back position means that the full

implementation of this extant consent is now merely 'theoretical', so that it should be given no weight as a material consideration and excluded from the assessment of cumulative impact for the purposes of Peel's Section 73 application proposal. Therefore, Scenario R is a cumulative impact assessment to reflect the following:

- Aldi trading at Armstrong House, under permission ref: 14/02701/FUL; **PLUS**
- Lidl trading in Unit A at Phase 2 of the Peel Centre, under Peel's current Section 73 application, ref: 15/00978/VAR; **PLUS**
- Four further convenience commitments, these being:
 - Tesco at Sunderland Retail Park (ref: 08/03338/OUT),
 - Lidl at North Hylton (ref: 15/02544/FUL),
 - Morrisons at Birtley (Gateshead ref: DC/12/00980/FUL), and
 - the food superstore at Phase 1 of the Peel Centre (ref: 12/03137/OUT); **PLUS**
- Seven further comparison commitments, these being:
 - the comparison goods component of the Lidl at North Hylton (ref: 15/02544/FUL),
 - other non-food units at North Hylton (ref: 11/00288/FUL),
 - the comparison goods component of Tesco at Sunderland Retail Park (ref: 08/03338/OUT),
 - the comparison goods component of Morrisons at Birtley (Gateshead ref: DC/12/00980/FUL),
 - the remaining three units of Phase 2 of the Peel Centre (ref: 07/02808/REM),
 - the B&M at the Peel Centre (ref: 14/00970/FUL), and
 - the food superstore at the Peel Centre (ref: 12/03137/OUT);
- **PLUS**, for Scenario R1, the non-food retail park fall-back at Armstrong Road, but with this extant permission being excluded in Scenario R2, so as to reflect that this is now merely a theoretical fall-back position, given the restrictions on the nature of the goods that may be sold and the further passage of time, please see Table 2.

Table 2: Summary of Cumulative Impacts on Washington Town Centre 2021

Scenario	CUMULATIVE IMPACTS ON WASHINGTON TOWN CENTRE IN 2021					
	Convenience		Comparison		Combined	
	Trade Diversion £m	Percentage Impact %	Trade Diversion £m	Percentage Impact %	Trade Diversion £m	Percentage Impact %
R1 All of the commitments listed in Paragraph 6.32, and including the extant consent for a heavily conditioned non-food retail park at Armstrong Road	27.4	20.9%	12.1	9.1%	39.5	15.0%
R2 All of the commitments listed in Paragraph 6.32, and excluding the extant consent for a heavily conditioned non-food retail park at Armstrong Road	27.4	20.9%	6.4	4.8%	33.8	12.8%

In concluding this part of the assessment, as the non-food retail park at Armstrong Road is now not considered to constitute a 'real' fall-back position, it is considered that significantly more weight should be given to the findings under Scenario R2, which exclude it from the cumulative assessment.

Thus, as can be seen from Table 2, the cumulative impact on Washington Town Centre overall retail turnover, under Scenario R2, is 12.8 per cent. This is a level of impact that is not considered to give rise to a 'significant adverse' impact on the vitality and viability of Washington town centre. Moreover, even under Scenario R1, which is now regarded as being no more than merely 'theoretical', the cumulative impact on Washington Town Centre's overall turnover, at exactly 15.0 per cent, is still not considered to be at a 'significant adverse' impact level.

It is noted, however, that the cumulative impact on Washington Town Centre's convenience goods sector is the same in Scenario R2, at 20.9 per cent, as it is in Scenario R1. This gives rise to some concern in relation to cumulative impact on the Sainsbury's and Asda stores, which are important anchors for the Galleries, and generate significant spin off expenditure. Indeed, at 20.9 per cent, this cumulative impact is marginally above the 20 per cent threshold previously assessed as being of concern for previous out-of-centre retail planning applications within Washington.

However, much of the cumulative impact on Washington Town Centre's convenience turnover is accounted for by the extant planning permission for a food superstore on the site of Phase 1 of the Peel Centre. This extant consent has been included in the cumulative analysis for Scenario R2 because it is considered, on balance, to be a real fall-back position and as such, it is a material consideration. Nevertheless, limited weight is given to the Phase 1 food superstore, because it is considered unlikely to be developed within the next five years, which is the relevant time horizon for assessing impacts.

Therefore, whilst the food superstore fall-back for Phase 1 of the Peel Centre has been included within the assessment, because it gives rise to the worst case impacts, it is considered that, on balance, a convenience led 'fall-back' for Phase 1 involving a leading foodstore operator in Unit 1 and an operator such as Iceland in Unit 2 is more likely. Consequently, a second iteration has been produced for Scenario R2 to reflect the cumulative impact associated with this convenience goods fall-back position for Units 1 and 2, rather than the food superstore fall-back for the whole of Phase 1, please see Table 3.

Under this further iteration, the cumulative impact on Washington Town Centre's overall turnover is 11.9 per cent, and the cumulative impact on the convenience goods sector is 18.7 per cent. The overall impact of this second iteration of R2 (ii) is lower, at 11.9 per cent, than the food superstore iteration of R2 (i), which had an overall impact of 12.8 per cent. Thus, it is considered that R2(ii), which incorporates foodstore operators in Units 1 and 2 of Phase 1 of the Peel Centre, is unlikely to have a significant adverse impact on Washington Town Centre's overall vitality and viability.

Nevertheless, it is considered that the most likely scenario for Phase 1 of the Peel Centre, assuming approval of the current Section 73 application at Phase 2, is for

the units in Phase 1 to remain occupied by comparison goods traders. As a consequence, a third iteration of the Scenario R2(iii) model has been produced which assumes that all of the Phase 1 units remain occupied by comparison goods operators. The cumulative impact on Washington Town Centre's overall turnover, under this third iteration, which is considered to be the most likely outcome, reduces to 8.5 per cent, and the cumulative impact on the convenience goods sector reduces to 12.3 per cent. Both of these levels of impact are considered to be substantially below the level likely to give rise to 'significant adverse' impacts on the vitality and viability of Washington town centre.

Thus, in Table 3, the outcome for the various iterations of Scenario R2 is summarised i.e. i) with a food superstore at Phase 1 of the Peel Centre, ii) with a convenience goods fall-back at Units 1 and 2 of Phase 1 of the Peel Centre and iii) with no convenience operators at Phase 1 of the Peel Centre.

Table 3: Iterations of Scenario R2, with Various Assumptions for Phase 1 of the Peel Centre

Scenario	CUMULATIVE IMPACTS ON WASHINGTON TOWN CENTRE IN 2021					
	Convenience		Comparison		Combined	
	Trade Diversion £m	Percentage Impact %	Trade Diversion £m	Percentage Impact %	Trade Diversion £m	Percentage Impact %
All of the commitments listed in Paragraph 6.32 (with a food superstore at the site of Phase 1 of the R2 (i) Peel Centre) , and excluding the extant consent for a heavily conditioned non-food retail park at Armstrong Road	27.4	20.9%	6.4	4.8%	33.8	12.8%
All of the commitments listed in Paragraph 6.32 (with convenience operators in Units 1 and 2 at the R2 (ii) site of Phase 1 of the Peel Centre) , and excluding the extant consent for a heavily conditioned non-food retail park at Armstrong Road	24.6	18.7%	6.8	5.1%	31.4	11.9%
All of the commitments listed in Paragraph 6.32 (with no convenience operators at the site of Phase R2 (iii) 1 of the Peel Centre) , and excluding the extant consent for a heavily conditioned non-food retail park at Armstrong Road	16.2	12.3%	6.2	4.7%	22.4	8.5%

Table 3 reveals that all iterations of Scenario R2 (i.e. without the extant consent for a non-food retail park at Armstrong Road) produce percentage impacts on the Town Centre's overall turnover that are considerably below our assessment of the 15 per cent level of trade diversion that gave rise to concern in the assessment of previous out of centre retail proposals in Washington.

Therefore, given that there has been no material change in the health of Washington Town Centre over the past couple of years (i.e. since the Jomast approval at Armstrong House, ref: 14/02701/FUL), it is concluded that the Section 73 application at Phase 2 of the Peel Centre, together with commitments and the 'real' fall-back positions, is, on balance, unlikely to cause a 'significant adverse' impact on Washington Town Centre's overall vitality and viability, or on consumer choice, or trading levels within the town centre.

Thus, with respect to Washington Town Centre, it is considered that the Section 73 application at the Peel Centre passes the second of the impact tests incorporated in

Paragraph 26 of the NPPF, as it will not have a significant adverse impact on the Town Centre's vitality and viability, or on consumer choice and trade.

- Results for Concord Local Centre

holissvincent's assessment considers that the worst case impact on the overall turnover in Concord Local Centre is less than 7 per cent and that the maximum impact on its convenience goods sector, which occurs under the assumption of a food superstore at the site of Phase 1 of the Peel Centre, is just 10.2 per cent. Moreover, in the scenario where all of the units at Phase 1 of the Peel Centre are assumed to continue to be occupied by comparison goods retailers, which is considered to be the most realistic scenario, the impact on Concord's convenience goods sector falls to 5.9 per cent.

Consequently, given that Concord Local Centre is a relatively busy, service-oriented centre, it is not considered that Peel's Section 73 application proposal is likely to have a 'significant adverse' impact on the overall vitality and viability of Concord Local Centre.

Conclusion in Relation to the NPPF Impact Tests

In conclusion, the Section 73 application, on its own, and cumulatively with other commitments and fall-backs, is, on balance, not likely to have a 'significant adverse' impact in relation to the second of the impact tests incorporated in Paragraph 26 of the NPPF.

This conclusion in respect of the current Section 73 application at the Peel Centre differs from the previous conclusion reached, in June 2015, in respect of the Section 73 application at Armstrong Road (ref: 14/02687/VAR). There are, however, considered to be three fundamental reasons for this different conclusion:

- i) first, and of most significance, is the fact that it is no longer considered that the full implementation of the extant consent at Armstrong Road for a non-food retail park, under permissions 01/02086/OUT and 05/00412/REM, to be a 'real' fall-back position, so that this permission is no longer a material consideration and should not be included in the assessment of cumulative impact – indeed, in June 2015 it was regarded that the development of such a retail park under this planning permission was 'unlikely';
- ii) second, the Peel Centre serves a materially different catchment area to the site at Armstrong Road, so that the patterns of trade draw to retail developments at these sites will differ, thereby resulting in different levels of cumulative impact on the Town Centre, noting also that the Peel Centre is closer to a major emerging employment development at the proposed International Advanced Manufacturing Park; and
- iii) thirdly, because, with the passage of time, the impact design year has been pushed back to 2021, as opposed to 2019 in our June 2015 Report, which allows for two further years of expenditure growth,

thereby increasing the denominator of the impact equation and thus lowering percentage impacts.

6. Other considerations

The application before Members is being made via Section 73 of the Town and Country Planning Act 1990. Section 73 allows applications to be made for permission to develop without complying with a condition(s) previously imposed on a planning permission, in this case ref: 03/00120/OUT. The Local Planning Authority can grant such permission unconditionally or subject to different conditions, or they can refuse the application if they decide that the original condition(s) should continue. However, whatever the outcome of the Section 73 application the initial outline permission will continue to subsist, especially in light of the fact that the associated reserved matters (ref: 072808/REM), which was approved on the 5 September 2007 has been implemented via the construction of the access and car parking areas, as confirmed by Paragraph 8 of Appendix 1 to Savills' Retail Statement.

Within the above decision-making context and given the nature of this Section 73 application i.e. seeking permission to enable the sale of food and drink from up to 1,356 sq. m, it is considered that a further assessment of the following "other" material considerations is required, i.e.:

- Highway
 - Design
 - Flood Risk
 - Ecology
 - Contamination
 - Noise, Demolition and Construction Works
 - Flood Risk
 - Physical Regeneration
 - Impact on Local Employment
 - Social Inclusion
-
- Highway

As highlighted above the reserved matters approval (ref: 07/02808/REM) has been implemented by virtue of the fact that the access into the site and the hardstanded and car parking areas have all been built out on site. As a consequence, in physical highway engineering terms, the development is largely complete. Furthermore, in terms of accessibility it is noted that the site is well-served by public transport with the Peel Retail Park north-bound and south-bound bus stops in close proximity to Phase 2. Moreover, the Council's highway engineers have offered no observations to the variation application except to request that all the original highway conditions should still apply.

It is therefore considered that there are no highway engineering considerations arising from the proposed variation that would warrant a refusal, or that require any

further conditions being placed on the decision notice, should Members be minded to approve.

- Design

UDP policy B2 requires the scale, massing, layout and setting of proposed development to respect and enhance the best qualities of nearby properties and the locality. Policy B2 also requires development proposals to provide for an acceptable amount of privacy amenity, whilst also protecting visual and residential amenity. Paragraph 17 of the National Planning Policy Framework (NPPF), in part, states that planning should seek to secure high quality of design and a good standard of amenity for all existing and future occupants of land and buildings.

The site is located to the north of the A1231 (Sunderland Highway), which is the road that connects Sunderland North to Washington and beyond, as such it is well-used on a daily basis. Nevertheless, given the gradient differences between the lower lying application site and elevated arterial Sunderland Highway; and in view of a strip of plantation woodland that lies to the south of the site, ensures that the application site is largely obstructed from view.

Furthermore, in light of the fly over and its associated bridge structures, in conjunction with the layout of the local road network connecting Barmston, the Peel Retail Park and the Glover Industrial Estate, effectively means that the visual relationship the site shares is with the existing retail warehousing units and the industrial units of the Glover Industrial Estate, whilst the existing B&M Homestore/ health and fitness building effectively shields views of the Phase 2 site from the Leamside Line.

It is therefore considered that there are no urban design considerations arising from the proposed variation that would warrant a refusal, or that require any further conditions being placed on the decision notice, should Members be minded to approve.

- Flood Risk

The site is located within Flood Zone 1, which has the lowest probability of flooding and as such the form of development proposed i.e. retail development, is considered acceptable in such areas. Furthermore, the site is not located in any of the Critical Drainage Areas, as designated by the Council via its Strategic Flood Risk Assessment. Moreover, of particular relevance is the fact that the majority of the site is built out by virtue of earlier approvals within Phase 2 and as such, it is not considered that there are flood risk considerations arising from the proposed variation that would warrant a refusal or that require any further conditions being placed on the decision notice, should Members be minded to approve.

- Ecology

The site is effectively built out and as such has been further constrained and dominated by all the hardstanded and car parking areas, including the relatively recent construction of the B&M Homestore development that was to be Unit E. The

remaining portion of the site is the boarded patch of rough ground where the remaining four units are to be located. Thus, in light of the fact that the development of the site has been firmly established by previous approvals and their subsequent constructed development, and as the Section 73 application is merely seeking to vary condition 13 (to enable the sale of food and drink), it is not considered that there are material reasons arising from an ecological perspective that would warrant a refusal, or that require any further conditions being placed on the decision notice, should Members be minded to approve.

- Contamination

During the course of discharging conditions attached to refs: 03/00120/OUT and the subsequent reserved matters approval 07/0208/REM it was confirmed by the LPA (in correspondences dated the 9 May 2008) that the land was not contaminated. The discharge of the relevant conditions, including land contamination, enabled the implementation of the reserved matters approval, resulting in the development that is now on the ground i.e. the access, hardstanded and car parking areas.

Nevertheless, should Members be minded to approve and in view of the fact that the site of Units A – D is rough ground, it is considered that a condition should be imposed that if, during development, contamination not previously identified is found to be present, the LPA shall be notified and appropriate actions submitted to and agreed in writing by the LPA prior to development recommencing on that part of the site. This will be required, should Members be minded to approve, by the imposition of the standard unidentified land contamination condition.

It is therefore considered that with the imposition of the “unidentified contamination” condition there are no land contamination issues arising from the proposed variation that warrant a refusal.

- Noise and Construction Works

Given that Phase 2 is located within an existing Retail Park, which is surrounded by an Industrial Estate to the north and west and a Trunk Road (A1231 – Sunderland Highway) to the south, noise issues are not envisaged to be significant either during construction or when the proposed units are operational. Accordingly there are considered to be no objections to the variation on these grounds, subject to construction methodology and hours of construction conditions being imposed, should Members be minded to approve the application.

- Physical Regeneration

The site of Phase 2 of the Peel Centre has only been partially developed, despite the fact that the Secretary of State gave the original outline consent for Phase 2 twelve years ago, in 2004. As a consequence, much of the site of Phase 2 represents under-utilised previously developed land and it is considered possible, therefore, that a permission for the Section 73 application will result in a physical regeneration benefit.

However, as was the case with the previously refused Section 73 application at Armstrong Road (ref: 14/02687/VAR), the key issue relates to the feasibility of the

Section 73 application proposal attracting a food supermarket operator and non-food retailers of what will continue to be a restricted range of non-food items that exclude fashion clothing, fashion accessories, shoes, jewellery, cosmetics and toiletries, pharmaceutical products and books and magazines.

It is considered that Peel's Section 73 application, by itself, is unlikely to succeed in attracting a foodstore operator and that further planning permissions would be required in relation to such matters as elevations, the configuration of the service yard, and a likely re-configuration of at least part of the car parking. All of these further applications would require time for preparation, submission processing and consideration (based on their respective planning merits), thereby delaying and providing a degree of uncertainty to the delivery of the physical regeneration benefits that would accrue through the re-development of this long vacant previously developed site.

Of particular concern in relation of the delivery of the potential regeneration and employment impact benefits is the fact that Peel's Section 73 application does not seem to be associated with any specific end users. On balance, therefore, it is considered that the physical regeneration benefits associated with Peel's Section 73 application proposal should be afforded limited weight, in that the application would appear to be speculative, so that timing of the delivery of these potential benefits is somewhat uncertain. A similar conclusion was reached in 2015, in respect of B&Q's Section 73 application at Armstrong Road.

It is accepted however, that if Peel does succeed in attracting a small to medium-sized supermarket operator, it is likely to assist, to some extent, in attracting non-food retailers to Units B, C and D. However, it is anticipated that there will be a need for further applications in relation to elevations and further Section 73 applications that seek to provide some relaxation to the range of non-food goods that may be sold.

- Impact on Local Employment

Similar considerations apply to the employment and local spending benefits identified by Savills, in that the weight that can be given to them is reduced by the apparent speculative nature of the Section 73 application proposal, the lack of signed up retailers, and the need for further planning permissions, all of which are likely to delay the timing of the benefits.

- Social Inclusion

The Section 73 application proposal, on its own, has the potential to assist in supporting the nearby communities as a result of the potential positive regeneration and employment impacts, particularly for the residents of Barmston. However, as is the case with the regeneration and employment benefits, the weight to be given to the social inclusion benefits is limited by the apparent speculative nature of the Section 73 application proposal, the lack of signed up retailers, and the need for further planning permissions, all of which are likely to delay the timing of the benefits.

Therefore the overall conclusion is that the weight that can be given to the potential regeneration, employment, local income and social inclusion benefits is limited by the uncertainty as to the timing of their delivery. Nevertheless, some positive weight should be given to them as a balance to the negative cumulative impact on the vitality and viability of Washington Town Centre, which is not considered to be 'significantly adverse'. Moreover, these positive regeneration benefits should be weighed in the context of the application proposal's very limited incremental trade impact on Washington Town Centre, of just 2.3 per cent in the convenience goods sector.

Furthermore, it is important to emphasise, once again, that Peel's Section 73 application proposal benefits from the presumption in favour of sustainable development, as set out in Paragraph 14 of the NPPF, because the relevant development plan policies for out-of-centre retail development are not up-to-date (for the reasons set out earlier in this report). As a consequence, planning permission should be granted, unless:

- a) any adverse impacts of doing so, including cumulative impacts, would significantly and demonstrably outweigh the benefits; or
- b) specific policies in the Framework indicate that such development should be restricted (e.g. because of a breach of the provisions of Paragraph 27 of the NPPF).

CONCLUSION

The Council's key conclusions in respect of the Peel Section 73 application are as follows:

1. The Peel Section 73 application (together with the existing planning commitments and the 'real' fall-back positions at the Peel Centre Phase 1) causes some conflict with the town centre objectives of the saved UDP policies S1 and S2 and the objectives of the area proposals WA7 and WA33 of the UDP as a result of trade diversion;
2. However, it is considered that more weight should be given to the up to date development management tests for out of centre retail development contained in Paragraphs 26 and 27 of the NPPF, as the saved UDP retail policies are not considered to be fully up-to-date because they are not fully consistent with Paragraphs 26 and 27 of the NPPF (for the reasons stated earlier in this report);
3. The Peel Section 73 Application complies with the requirements of the sequential test under Paragraph 24 of the NPPF. There are no vacant premises within or on the edge of Washington Town Centre, or within or on the edge of Concord Local Centre, which are currently available and suitable for meeting the scale and format of development that Peel's Section 73 Application is seeking to facilitate, even having applied the appropriate degree of flexibility;

4. When considered both on its own, and cumulatively with other commitments and the 'real' fall-back positions, the Peel Section 73 Application is on balance not considered to cause a significant adverse impact in relation to either of the impact tests under Paragraph 26 of the NPPF in respect of Washington Town Centre and Concord Local Centre;
5. This conclusion differs from the one reached in 2015 in respect of the previous Section 73 Application at Armstrong Road (ref: 14/02687/VAR), which was refused on that basis that the existing commitments, the "real" fall-back positions at the Peel Centre Phase 1 and the (then competing) Armstrong House planning application (approved at the same June 2015 Committee meeting) would have a cumulative significant adverse impact on the vitality and viability of Washington Town Centre.
6. The three key reasons for the different conclusion in respect of the Peel Section 73 Application are:
 - i) following the further passage of time, it is no longer considered that the full implementation of the extant consent at Armstrong Road for a non-food retail park, under permissions 01/02086/OUT and 05/00412/REM, constitutes a 'real' fall-back position (for the reasons stated earlier in this report), so that this permission is no longer a material consideration and should not be included in the assessment of cumulative impact;
 - ii) the Peel Centre application site serves a materially different catchment area to the Armstrong Road site, so that the patterns of trade draw to retail developments at these two sites will differ, thereby resulting in different levels of cumulative impact on the Town Centre, noting also that the Peel Centre is closer to a major emerging employment development at the proposed International Advanced Manufacturing Park; and
 - iii) with the passage of time, the impact design year for the consideration of the Peel Section 73 application is 2021, as opposed to 2019 (the impact design year of the previous 2014 Armstrong Road application), which provides for two further years of expenditure growth, thereby increasing the denominator of the impact equation and thus lowering percentage impacts.
7. Taking into account all material planning considerations, there are no significant adverse impacts arising from the Peel Section 73 Application that outweigh the positive benefits of the application in terms of the delivery of the physical regeneration, employment and social inclusion benefits (albeit these benefits are considered, at present, to be tempered given the likely requirement for future applications and therefore there is a degree of uncertainty as to their delivery timescales). Nevertheless, it is still considered that the conflict with UDP Shopping Policies S1 and S2, Area Proposals WA7 and WA33 and site specific policy WA1 is offset by these positive benefits;

8. Therefore, it is recommended that Members be minded to approve the Peel Section 73 Application for the reasons stated above. In the event that Members agree with this recommendation, the application will then be referred to the Secretary of State in accordance with the provisions of The Town and Country Planning (Consultation) (England) Direction 2009 given that the total floorspace of the application proposal when considered together with the existing approved Phase 1 development for the adjacent site exceeds 5,000 sq.m.

RECOMMENDATION:

Members be minded to approve the application for the reasons stated in the Conclusion Section above and subject to the draft conditions outlined below and that the application be referred to the Secretary of State in accordance with the provisions of the Town and Country Planning (Consultation) (England) Direction 2009.

1. Reserved Matters

Details of the following matters shall be submitted for the subsequent approval of the Local Planning Authority:

- Access;
- Appearance;
- Layout; and
- Scale.

Reason:

As required by Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and as the further details are necessary to ensure a satisfactory form of development.

2. Time-scale

The submission of matters specified in (1) above must be made not later than the expiration of three years beginning with the date of this permission and the development must be begun not later than whichever is the later of the following dates: (a) the expiration of five years from the date of this permission; (b) the expiration of two years from the final approval of matters specified above or in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason:

To ensure that the development is commenced with a reasonable period of time from the date of this permission.

3. In accordance with the submitted plans

The development hereby approved shall be in accordance with the following approved plan(s), unless otherwise agreed in writing with the Local Planning Authority:

Site Location Plan, Drawing ref. 2015/P2/SLP received 20 May 2015;

Reason:

To define the consent.

4. Materials

No construction works on the external elevations of any building on site shall commence until samples of the materials to be used in the construction of the external surfaces of the building has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason:

In the interests of visual amenity and to comply with policy B2 of the Unitary Development Plan.

5. Boundary enclosures

No above ground construction shall take place until details of all walls, fences or other means of boundary enclosures has been submitted to and approved by the Local Planning Authority. Thereafter the agreed boundary treatment shall be completed before occupation or in accordance with an agreed timetable.

Reason:

In the interests of visual amenity and to comply with policy B2 of the Unitary Development Plan.

6. Landscaping

No above ground construction shall take place until there has been submitted to and approved in writing by the Local Planning Authority a scheme of landscaping and treatment of hard surfaces which shall include indications of all existing trees and hedgerows on the land, and details for their protection during the course of development.

Reason:

In the interests of visual amenity and to comply with policy B2 of the Unitary Development Plan.

7. Landscaping – 5 years

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting season following the occupation of the buildings or the completion of the development whichever is the sooner, and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason:

In the interests of visual amenity and to comply with policies B2 and CN18 of the Unitary Development Plan.

8. Wheelwash

No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority the method of containing the construction dirt and debris within the site and ensuring that no dirt and debris spreads on to the surrounding road network. These details shall include the installation and maintenance of a wheelwash facility on the site. All works and practices shall be implemented in accordance with the agreed details before the development commences and shall be maintained throughout the construction period.

Reason:

In the interests of the amenities of the area and highway safety and to comply with policies B2 and T14 of the Unitary Development Plan.

9. Off-street parking

No part of the development shall be occupied until the off street parking provision has been constructed, surfaced, sealed and made available in accordance with the approved plans. This parking area shall then be retained and permanently reserved for the parking of vehicles.

Reason:

To ensure that adequate and satisfactory provision is made for the off street parking of vehicles and to comply with policy T22 of the UDP.

10. Surface Water

Prior to being discharged in to any watercourse, surface water sewer or soakaway system, all surface water drainage from parking areas and hardstanding shall be passed through an oil interceptor installed in accordance with a scheme submitted to and approved in writing before the development is commenced. Roof water shall not pass through the interceptor.

Reason:

In order to prevent the pollution of the water environment and to comply with policy EN12 of the Unitary Development Plan.

11. Unidentified contamination

If, during development, contamination not previously identified is found to be present at the site, the Local Planning Authority shall be notified and appropriate actions submitted to and agreed in writing by the Local Planning Authority prior to development recommencing on that part of the site. The appropriate actions shall include an amendment to the approved remediation strategy detailing how the unsuspected contamination shall be dealt with. The remediation strategy shall be implemented as approved.

Reason:

To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks and in accordance with policy EN14 of the Unitary Development Plan.

12. Range of goods

The Use Class A1 development hereby approved shall not be used for the retailing of any of the following goods, except where ancillary to the main product range, without the prior written consent of the Local Planning Authority:

- a) Food and drink, except from up to 1,356 sq.m gross (14,600 sq. ft.) of floorspace (excluding the ancillary sale of food and drink for consumption on the premises);
- b) Fashion clothing (excluding gardening/DIY overalls protective clothing and sportswear);
- c) Fashion accessories (excluding sportswear);
- d) Footwear (excluding gardening/DIY protective footwear and sports footwear);
- e) Jewellery, and watches;
- f) Cosmetics and toiletries;
- g) Pharmaceutical products;
- h) Books, newspapers and magazines;
- i) Toys (excluding garden toys and outside play equipment);
- j) Videos, DVDs, CDs, audio cassettes and records;
- k) Musical instruments;
- l) Stationery and greetings cards;
- m) Florist;
- n) Travel agency;
- o) Cameras and photographic equipment.

Reason:

In order to protect the vitality and viability of nearby local centres and comply with the requirements of the NPPF and policies S1 and S3 of the Unitary Development Plan.

13. Convenience – Unit A

The retail sale of convenience goods, hereby approved, shall only be traded from Unit A, as approved by reserved matters ref: 07/02808/REM, Site Layout, Drawing Number 5534 65. Of the total sales area (estimated to be 1,085 square metres) not more than 20% i.e. 217 square metres, shall be used for the sale and display of comparison foods.

Reason:

In order to protect the vitality and viability of nearby local centres and comply with the requirements of the NPPF and policies S1 and S3 of the Unitary Development Plan.

14. Gross floorspace – Unit A

The gross floorspace of Unit A, (as approved by reserved matters ref: 07/02808/REM, Site Layout, Drawing Number 5534 65), shall not exceed 1,356 square metres when measured internally, including any mezzanine floors within the unit.

Reason:

In order to protect the vitality and viability of nearby local centres and comply with the requirements of the NPPF and policies S1 and S3 of the Unitary Development Plan.

15. Gross floorspace – Units B, C & D

The gross floorspace of Units B, C and D, (as approved by reserved matters ref: 07/02808/REM, Site Layout, Drawing Number 5534 65), shall not exceed 2,973 square metres when measured internally, including any mezzanine floors within the units.

Reason:

In order to protect the vitality and viability of nearby local centres and comply with the requirements of the NPPF and policies S1 and S3 of the Unitary Development Plan.

16. No subdivision of Unit

No unit in the approved development shall have a floor space of or be subdivided into a unit of less than 929 square metres.

Reason:

In order to protect the vitality and viability of nearby local centres and comply with the requirements of the NPPF and policies S1 and S3 of the Unitary Development Plan.

17. Surfaced footway

Before the development is occupied for trading, a surfaced footway shall have been fully constructed on the west side of Spire Road between the eastbound off-slip road from the Sunderland Highway and the bus stop on the west bound on-slip road, in full accordance with details which shall first have been submitted to and approved in writing by the Local Planning Authority.

Reason:

In the interests of pedestrian safety and to comply with policy T8 of the Unitary Development Plan.

18. Barrier to eastern boundary

Before the development hereby approved is commenced details of a rigid low level barrier installed parallel with the eastern boundary of the application site shall be submitted to and approved in writing by the Local Planning Authority. The barrier shall be installed in accordance with the agreed details before any unit in the development is occupied.

Reason:

In the interests of pedestrian safety and in order to comply with policy T8 of the UDP.

19.Improvement to footway for cycleway

Before the occupation of any of the units hereby approved the developer shall improve the existing footway along the entire eastern boundary of the site to create a 3.5 metre shared footway cycleway in accordance with a scheme to be submitted to and agreed in writing with the Local Planning Authority.

Reason:

In the interests of pedestrians and cyclists, in order to comply with policies T8 and T9 of the UDP.

20. Construction method statement

No development shall take place until a scheme of working has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include days and hours of working, siting and organisation of the construction compound and site cabins, routes to and from the site for construction traffic, and measures to ameliorate noise, dust, vibration and other effects. The scheme shall be implemented before development commences.

Reason:

In the interest of the amenities of area and to comply with policies B2 and EN1 of the Unitary Development Plan.

21. Cycle/ Motorcycle parking

Before the development hereby approved is commenced the details of the space and facilities for bicycle and motorcycle parking shall be submitted to and approved in writing by the Local Planning Authority. No part of the development shall be occupied until those spaces and facilities have been provided in accordance with the agreed details. These facilities shall then be retained and permanently reserved for motorcycle and bicycle parking.

Reason:

In the interests of highway safety and in order to comply with policy T14 of the Unitary Development Plan.

22. Heavy lifting gear

Any jibs, mechanical arms, grabs, buckets or similar attachments as well as any loads being hoisted by any cranes or other types of heavy lifting gear used either during the course of construction or the operation of the site shall be regulated so that there is no over sail of the adjacent railway airspace.

Reason:

In the interests of public safety and in order to comply with policy T14 of the Unitary Development Plan.

23. Shared cycleway

Before the occupation of any of the units hereby approved the developer shall improve the existing footway along the entire eastern boundary of the site to create a 3.5 metre shared footway cycleway in accordance with a scheme to be submitted to and agreed in writing with the Local Planning Authority.

Reason:

In the interests of pedestrians and cyclists and in order to comply with policies T8 and T9 of the UDP.

24. Site-wide Travel Plan

Before the development hereby approved is commenced a Site Green Travel Plan shall be submitted to and agreed in writing by the Local Planning Authority. Prior to any of the units being opened for trading the retail park management company or its successors in title shall implement the requirements of the agreed Site Green Travel Plan.

Reason:

In order to ensure access to the site by alternative modes of travel and to accord with policies T1 and T2 of the UDP.

25. Unit Travel Plan

Before any unit hereby approved is opened for trading the occupant shall prepare and submit to the Local Planning Authority a Unit Green Travel Plan based on the format contained in the agreed Site Green Travel Plan. The Unit Green Travel Plan shall be agreed in writing by the Local Planning Authority and the requirements of the agreed Plan shall be implemented by the operator.

Reason:

In order to ensure access to the site by alternative modes of travel and to accord with policies T1 and T2 of the UDP.

26. Footways to bus stops

Before the development hereby approved is commenced a plan showing the provision of the extension of footways to link to existing bus stops in the vicinity of the development shall be submitted to and agreed in writing by the Local Planning Authority. The agreed works shall be implemented prior to any of the units being occupied.

Reason:

In the interests of highway safety and in order to comply with policies T14 and T22 of the Unitary Development Plan.

27. Lighting scheme

No above ground construction shall take place until details of the proposed lighting scheme, which shall be designed so as to ensure that the minimum level of lighting is used consistent with the maintenance of security when the retail warehouse units cease trading each day, have been submitted to and approved in writing by the Local Planning Authority. Thereafter the agreed scheme shall be implemented before any of the units are opened for trade.

Reason:

In the interests of public and highway safety and to comply with policies T14 and T122 of the UDP.

28. Car parking

Notwithstanding the submitted plans, the provision for car parking within the application site shall not exceed 272 spaces.

Reason:

In order to ensure a sustainable form of development and to comply with policy T22 of the approved UDP.