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Section 73 Application at Phase 2 of the Peel Centre, Washington

**Appraisal of the Retail Policy Aspects of Planning Application
15/00978/VAR**

On behalf of Sunderland City Council

December 2016

HV 092

FINAL REPORT

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1 INSTRUCTIONS, THE APPLICATION PROPOSAL, PLANNING HISTORY AND OUTLINE OF REPORT

Instructions and the Applicant's Description of the Application Proposal

- 1.1 In October 2015, Sunderland City Council instructed hollissvincent to advise on the retail policy aspects of a planning application, submitted by Peel Property Intermediate Limited, under Section 73 of the Town and Country Planning Act 1990 (ref: 15/00978/VAR). The applicant 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, Spire Road, Washington and to regularise the position with respect to the range of non-food goods that may be sold.¹
- 1.2 Paragraph 1.7 of Savills' Retail Statement Update, of August 2015², 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.
- 1.3 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

1 Condition No. 13 of the Secretary of State's outline permission (ref: 03/00120/OUT) was previously varied by permission 07/02384/VAR (so as to allow for the sale of the goods set out in items j), k) and l) of Condition 13 of the outline), and the revised wording to Condition 13 in the variation permission was reflected (arguably by mistake) in Condition 12 of the Reserved Matters permission attached to the original outline (ref: 07/02808/REM); hence the need for the regularisation of the non-food goods that the current application is seeking to allow to be sold, which was subsequently obtained through correspondence with Savills.

2 The Retail Statement Update, of August 2015, superseded the original Retail Statement, of May 2015, so as to reflect the reduction in the proposed gross floorspace to be used for the sale of food and drink, from '*up to 1,858 sq. m gross*', to '*up to 1,356 sq. m gross*'.

benefits cited later, at Paragraph 6.2.4, as including employment generation, increased local spending, improved consumer choice and regeneration of the site.

- 1.4 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 Condition 13 of the variation consent of 1st August 2007 (ref: 07/02384/VAR). However, Savills' wording also omits reference to item p) of the earlier variation, which would have prohibited the sale of 'household/personal telecommunications equipment'. By correspondence, it has been established that the omission of item p) is deliberate and Savills has confirmed that the applicant's proposed wording for the replacement Condition 13 in *this* application proposal 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: 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.'

Work Undertaken and Documentation Considered

- 1.5 In undertaking our instructions, we have visited the application site, Washington Town Centre and Concord Local Centre, and we have 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 31st 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 Local Planning Authority in respect of the subject matters of this report, by both the applicant and third parties.

1.6 In addition, a meeting was held at the offices of the City Council on 8th December 2015, at the request of Savills. The attendees at the meeting comprised: two representatives of Peel; two representatives of Savills; the Case Officer for the application proposal; a representative from the Council's legal team and ourselves. Savills' suggested agenda for the meeting covered three main themes, these being: potential impact thresholds; assessment of level of trade diversion as a result of the amended Section 73 proposal; and the weight that should be attributed to the various 'fall-back' scenarios in respect of the Peel Centre and Armstrong Road, and other potential planning commitments. The main topics discussed during the meeting were:

- the existing retail context for Washington and the rationale behind Council's most recent planning decisions with respect to out-of-centre retail proposals³;
- the rationale for the previous assessments in earlier hollissvincent reports, in respect of other out of centre retail proposals, that an impact on Washington Town Centre's overall retail turnover of 15 per cent or more would, on balance, be likely to cause a 'significant adverse' impact on its vitality and viability for the purposes of the second of the two tests incorporated in Paragraph 26 of the NPPF;
- the rationale for the various planning judgements, methodologies and data inputs associated with hollissvincent's impact model;
- the need for amendments to various data inputs in the impact model; and
- which of the potential fall-back positions are likely to constitute a 'real' fall-back for the purposes of determining this application.

1.7 Following the meeting, hollissvincent was instructed by Council to liaise further with Savills so as to discuss the need, or otherwise, for any data input changes to the model and any adjustments to methodology. Thus, hollissvincent held four subsequent meetings with Savills on 08/12/2015, 16/12/2015, 02/02/2016, and on 04/07/2016. This process culminated in Savills' submission to the Council, on 17th August 2016, of revised cumulative impact tables. These tables were derived from the hollissvincent model, but with Savills building in the planning commitments in a logical and agreed sequential order, in contrast to our own approach of building them in at the same time, but making allowance for a reduction in their sales densities to allow for competition between them. We provide further comment on the methodological differences in Section 6 of our Report.

³ Particular reference was made to hollissvincent's previous report to Sunderland City Council of June 2015, entitled *Armstrong Road and Armstrong House, Washington - Appraisal of the Retail Policy Aspects of the Planning Applications submitted by B&Q Properties plc (ref. 14/02687/VAR), and Jomast Developments Ltd (ref. 14/02701/FUL)*,

The Peel Centre

- 1.8 The Peel Centre is a retail park which 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.

Planning History

- 1.9 The original outline planning permission for Phase 1 of the Peel Centre, dated 9th August 1988 (ref: 87/89), provides for five retail warehouse units, totalling 6,762 sq. m, and a Garden Centre of 917 sq. m. A Reserved Matters application was subsequently submitted and approved on 7th October 1988 (ref: 87/89A). Since then, Phase 1 of the Peel Centre has been the subject of a number of further planning permissions, including permissions 06/04039/FUL and 08/02091/FUL, in respect of the sub-division of Units 1 and 2 for Class A1 purposes, and not subject to controls in relation to the range of goods that may be sold. This has been confirmed by Certificates of Lawfulness issued, originally, in March 2009, but replaced in October 2009 (refs: 09/03289/CLP and 09/03287/CLP). There has also been a more recent consent for the redevelopment of Phase 1 of the Peel Centre, so as to allow for the development of a food superstore of 5,485 sq.m gross, with a sales area of 3,038 sq.m (under ref: 12/03137/OUT).
- 1.10 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). Thus, 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.

- 1.11 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'*. We understand, however, that this subsequent variation permission has now lapsed, in that no reserved matters application was submitted pursuant to that variation permission, as required by Condition 2 of the variation permission.
- 1.12 Nevertheless, a reserved matters application was submitted pursuant to the original outline and was approved on 5th 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. We are curious, however, as to why Condition 12 of the 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.
- 1.13 We note that 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.
- 1.14 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 6th 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, Sunderland City Council approved a change of use application (ref: 14/00970/FUL) 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.

- 1.15 The remaining four units in the Phase 2 approval (Units A to D), which total 4,329 sq.m gross, are yet to be constructed, although the majority of the external parking and servicing areas have been completed.

Consistency in Decision-Making

- 1.16 At the outset, we should state that the Section 73 application at the Peel Centre, which is the subject of this Report, has similar characteristics to the previous Section 73 application refused by the Council on 8th September 2015 in respect of the Armstrong Road Retail Park (ref: 14/02687/VAR). Indeed, both of these applications:
- i) seek to introduce a food retail unit into a previously consented non-food retail park, where the range of non-food goods is heavily restricted under the original permission;
 - ii) are speculative, with no named food retailer;
 - iii) would be likely to require, if approved, further applications in respect of variations of elevations, parking layouts, servicing arrangements and so on in order to accommodate a retail operator; and
 - iv) are in respect of out-of-centre retail parks which are of equal status in terms of accessibility via a range of means of transport and connectivity with Washington Town Centre, so that the two sites – Armstrong Road and the Peel Centre – are considered to be sequentially equal.
- 1.17 We are aware of the importance of consistency in decision-making, and the principles established by case law, especially the Court of Appeal Judgment of 12th April 1992, in respect of *North Wiltshire District Council v Secretary of State*; and the High Court

Judgment of 4th April 2007, in respect of *Oxford City Council v the Secretary of State and One Folly Bridge Limited*. These cases establish four key principles, as follows:

- i) previous appeal decisions, or previous decisions of the Local Planning Authority (LPA), in respect of the same site, can be a material consideration if they are ‘*indistinguishable*’ from the current application;
- ii) where there is disagreement with a previous decision, then the Inspector/LPA must have regard to the previous decision and give reasons for departing from it; and
- iii) like or similar cases don’t have to be decided alike, and the Inspector/LPA must always exercise their own judgment, but they must have regard to the importance of consistency and give reasons for departing from the previous decision.

1.18 The case law has focussed on different decisions being taken in respect of the same application site. In this case, however, the Armstrong Road and Peel Centre sites are clearly distinguishable in terms of the catchment areas they serve, so that they may result in different impacts on the town centre. Furthermore, for the reasons given in Section 6, there have been important changes in circumstances in relation to the assessment of the potential ‘fall-back’ positions and in relation to expenditure growth. As a consequence, the Local Planning Authority may justifiably reach a different conclusion in its assessment of the likely impact of the current application (ref: 15/00978/VAR), against the two tests set out in Paragraph 26 of the National Planning Policy Framework, compared to its assessment, in 2015, in relation to the previously refused application at Armstrong Road (ref: 14/02687/VAR).

Outline of Report

- 1.19 Thus, with this background in mind, the remainder of our report is structured as follows:
- **Section 2** provides a brief résumé of those aspects of the National Planning Policy Framework (the NPPF) which relate to town centres and the location of development for retail and other main town centre uses;

- **Section 3** provides our appraisal of the application in relation to the retail policy aspects of the current and emerging development plan;
- **Section 4** provides our appraisal of the application proposal in relation to the sequential test, set out in Paragraph 24 of the NPPF;
- **Section 5** sets out the '*fall-back*' positions which potentially apply to various sites within the Washington catchment area, which have implications for the assessment of cumulative impact and, in each case, we consider whether – with reference to case law – the fall-back is '*real*', as opposed to being merely '*theoretical*', and, if '*real*', the relevant weight to be given to it as a material consideration;
- **Section 6** provides our appraisal of the application proposal against the impact tests set out in Paragraph 26 of the NPPF, taking account of the cumulative impact with existing commitments and '*real*' fall-back positions;
- **Section 7** provides our assessment of the physical regeneration, employment, consumer choice and social inclusion impacts of the application proposal; and
- **Section 8** provides our overall conclusions in relation to retail policy issues and our recommendations to the Council.

1.20 Our main report is accompanied by: a separate Volume of Spreadsheet Tables, which set out our own assessment of cumulative impact.

Price Base

1.21 Unless otherwise specified, all monetary figures in this report are in year 2013 prices. This price base is used to ensure consistency with the price base used in our Report to the Council of June 2015 in respect of applications 14/02687/VAR and 14/02701/FUL. We note that Savills also utilises the year 2013 price base in its support material for the current application proposal.

2 THE REQUIREMENTS OF NATIONAL POLICY FOR TOWN CENTRES AND SUSTAINABLE ECONOMIC DEVELOPMENT

Introduction

- 2.1 The National Planning Policy Framework (the NPPF) was published on 27th March 2012. Paragraphs 2, 11, 12, 196 and 210 of the NPPF emphasise that planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. Paragraph 13 confirms that the NPPF is a material consideration in planning decisions.

Sustainable Development

- 2.2 Paragraph 6 of the NPPF explains that the purpose of the planning system is to contribute to the achievement of sustainable development and that Paragraphs 18 to 219 of the Framework, taken as a whole, constitute the Government's view of what sustainable development in England means in practice for the planning system. Paragraphs 7 and 8 of the NPPF then explain that there are three dimensions to sustainable development – economic, social and environmental – and that these are mutually dependant, so that gains in each should be sought jointly and simultaneously.

The Presumption in Favour of Sustainable Development

- 2.3 Under the heading of 'the presumption in favour of sustainable development', Paragraph 12 confirms that the NPPF '*...does not change the statutory status of the development plan as the starting point for decision making*'. Thus, Paragraph 12 states that:

'...development that accords with an up-to-date local plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise'.

- 2.4 Paragraph 14 of the NPPF then sets out the presumption in favour of sustainable development in more detail and says that it '*...should be seen as a golden thread running through both plan-making and decision-taking*'.

2.5 For decision-taking this means⁴:

- *'approving development proposals that accord with the development plan without delay; and*
- *where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:*
 - *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole (our emphasis); or*
 - *specific policies in this Framework indicate development should be restricted.'*

2.6 The second decision-taking bullet point in Paragraph 14 of the NPPF only comes into force if the development plan is *'...absent, silent or relevant policies are out-of-date'*.

2.7 The development plan for the Washington area comprises the saved policies of the City of Sunderland Unitary Development Plan, adopted in 1998 (the UDP). Paragraph 215 of the NPPF advises that *'...due weight should be given to relevant policies in existing plans according to their degree of consistency with this Framework...'*

2.8 However, for the reasons set out in Section 3 of this report, it is considered that there is a deficiency in the relevant saved Shopping Policies in the UDP, namely Policies S1, and S2. These are strategic and aspirational policies, but they do not address the up-to-date development management impact tests for retail development which is located outside town centres, as set out in Paragraphs 26 and 27 of the NPPF. As a consequence, the second part of Paragraph 14 of the NPPF, as set out in Paragraph 2.5 above, comes into force, and the Section 73 application being considered benefits from the presumption in favour of sustainable development.

⁴ Unless material considerations indicate otherwise.

Core Planning Principles

2.9 Paragraph 17 of the NPPF then sets out 12 core planning principles which it says ‘...*should underpin both plan-making and decision-taking*’. These principles, amongst other things, include the need for the planning system to:

- be genuinely plan-led;
- be a proactive driver of sustainable economic development, so as to deliver the homes, business, industry and infrastructure that are needed;
- secure high quality design and a good standard of amenity;
- be aware of the different roles and character of different areas and promote the vitality of our main urban areas;
- encourage the effective use of previously developed land that is not of high environmental value;
- promote mixed use developments; and
- make the fullest use of public transport, walking and cycling and focus significant development in locations which are, or can be made, sustainable.

Building a Strong, Competitive Economy

2.10 Paragraph 18 of the NPPF explains that the Government is committed to securing economic growth in order to create jobs and prosperity and meet the twin challenges of global competition and a low carbon future. Paragraph 19 goes on to state that the Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. In order to achieve such growth, Paragraphs 20 and 21 emphasise the need to meet the development needs of business and to address potential barriers to investment, including a poor environment, or any lack of infrastructure, services or housing.

Ensuring the Vitality of Town Centres

2.11 Paragraphs 23 to 27 of the NPPF deal with the need to promote the vitality of town centres. Paragraph 23 states that planning policies should promote competitive town

centre environments and that, in drawing up local plans, LPAs should, amongst other things:

- recognise town centres as the heart of their communities and support their vitality and viability;
- promote competitive town centres that provide customer choice and a diverse retail offer;
- ensure that needs for retail, leisure, office and other main town centre uses are met in full and are not compromised by limited site availability, so that local planning authorities should undertake an assessment of the need to expand town centres to ensure a sufficient supply of suitable sites;
- allocate appropriate sites for main town centre uses in accordance with the sequential approach; and
- plan positively for centres in decline.

2.12 Paragraph 24 then sets out the sequential test that applies to planning applications for main town centre uses that are not in an existing centre and not in accordance with an up-to-date Local Plan. Paragraph 24 states that *'...applications for main town centres uses should be located in town centres, then in edge-of-centre locations, and only if suitable sites are not available should out-of-centre sites be considered.'* In considering edge and out-of-centre proposals, Paragraph 24 states that *'...preference should be given to accessible sites that are well-connected to the town centre'*.

2.13 In applying the sequential approach, Paragraph 24 requires applicants and local planning authorities to demonstrate flexibility on issues such as format and scale. However, in contrast to the provisions of Policy EC 15.1d of the former PPS4, Paragraph 24 of the NPPF makes no specific mention of the words *'car parking'* and *'disaggregation'* in applying the flexibility component of the test.

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

development, which are over 2,500 sq.m (or a locally set threshold), to include 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.'*

- 2.15 Paragraph 27 of the NPPF then confirms that *'Where an application fails to satisfy the sequential test or is likely to have a significant adverse impact on one or more of the above factors [in paragraph 26], it should be refused'*. However, it is clear from recent Court Judgments (such as the High Court Judgment of 20th December 2012, in respect of the Queen on the application of Zurich Assurance Limited and North Lincolnshire Council and Simons Developments Limited) that Paragraph 27 of the NPPF is not necessarily determinative, if there are significant material considerations which displace its presumption for refusal in the event of a failure of the sequential and/or impact tests.

Decision Taking

- 2.16 Finally, we draw attention to Paragraphs 186 and 187 of the NPPF. Paragraph 186 states that local planning authorities should approach decision-taking in a positive way to foster the delivery of sustainable development. Paragraph 187 reinforces the point in stating that *'local planning authorities should look for solutions rather than problems, and decision takers at every level should seek to approve applications for sustainable development where possible'* and work with applicants to *'...secure developments that improve the economic, social and environmental conditions of the area.'*

Principles Established in the NPPF

- 2.17 The NPPF establishes a number of fundamental principles which are of relevance in determining the planning application proposal which is the subject of this report; we draw attention, in particular, to the following principles:
- a) The NPPF emphasises the role of the development plan as the statutory starting point in the consideration of planning applications, so that applications which accord with an up-to-date development plan should be approved without delay, whereas if there is conflict with the development plan, applications should be refused, unless material considerations indicate otherwise.
 - b) The NPPF itself is a material consideration to which we give significant weight.
 - c) Due weight should be given to the relevant policies in an existing development plan according to their degree of consistency with the policies of the NPPF.
 - d) In decision taking, the presumption in favour of '*sustainable development*' applies not only where development proposals accord with the development plan, but also in circumstances where the development plan is absent, silent or relevant policies are out-of-date.
 - e) The NPPF maintains previous policy in seeking to promote competitive and healthy town centres.
- 2.18 For the reasons set out in Section 3 of this 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 which do not address the up-to-date development management tests for retail development that is located outside town centres, as set out in Paragraphs 26 and 27 of the NPPF. As a consequence, we consider that more weight should be given to the up-to-date tests in the NPPF.
- 2.19 The application proposal benefits, therefore, from the presumption in favour of sustainable development, because the relevant Shopping Policies in the UDP are out of date, and it should be permitted, 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).

3 APPRAISAL OF THE APPLICATIONS AGAINST THE RETAIL POLICY ASPECTS OF THE CURRENT AND EMERGING DEVELOPMENT PLAN

Introduction

- 3.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that:

'If regard is to be had to the Development Plan for the purpose of any determination to be made under the planning acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.'

- 3.2 The first test, and the statutory starting point is whether the application is *'in accordance with the plan'*, which is a phrase that has been the subject of debate in the High Court in the context of Section 54A of the Town and Country Planning Act 1990. In his judgment of 31 July 2000 (R v Rochdale Metropolitan Borough Council ex parte Milne), Mr Justice Sullivan (as he then was) concluded as follows:

'...I regard as untenable the proposition that if there is a breach of any one Policy in a development plan a proposed development cannot be said to be "in accordance with the plan"...

'For the purposes of Section 54A, it is enough that the proposal accords with the development plan considered as a whole. It does not have to accord with each and every policy therein.'

- 3.3 This Rochdale judgment is applicable to the interpretation of Section 38 (6) of the 2004 Act and the Council must reach a decision, therefore, as to whether the application is in accordance with the development plan when it is considered as a whole.

The Development Plan for Washington

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

Shopping Policies

- 3.5 Following the Secretary of State's saving direction, the Shopping Policies of most relevance to the application proposal being considered are Policies S1 and S2. These policies are strategic Part 1 policies that relate to the Council's overall strategy for the City's shopping service and to its hierarchy of retail centres. They 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 UDP that would have been of most relevance to the consideration of retail development proposals in out-of-centre locations, Policy S5, was not saved, on the ground that it was considered unnecessary because it repeated the policy set out in the (then) PPS6.
- 3.6 Policies S1 and S2 seek to sustain and enhance the existing network of centres and incorporate the sequential test. However, they are not considered to be fully up-to-date because they are not consistent with the development management impact tests for applications for out-of-centre retail development, as contained in Paragraphs 26 and 27 of the NPPF; we give more weight, therefore, to these two national policy tests.
- 3.7 Thus, with this background in mind, Policy S1, which is saved, states that:
- 'The City Council will seek to enhance the role of the City's shopping service in the region and ensure it meets local needs by encouraging a wide range of attractive, well-distributed facilities to meet future shopping and related needs. Where appropriate, new development will be based on existing centres, which will be improved wherever possible; development elsewhere should result from application of the sequential test, be in accordance with other policies of the plan and complement existing facilities'* (our emphasis).
- 3.8 Retail development, such as the application proposal, which is located outside existing centres, is subject to the sequential test, must be in accordance with other policies in the UDP, and should complement existing centres (our emphasis). It is clear, therefore, that Policy S1 incorporates the sequential approach. However, as explained in Section 2, 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, now requires an assessment as to

whether or not the development proposal is likely to have a '*significant adverse impact*' on existing, committed and planned investment, or on the overall vitality and viability of the existing centre. The tests in Paragraph 26 do not require an assessment of whether the development proposal will '*complement*' the existing centre, which is a materially different approach to development management.

- 3.9 Indeed, it is hard to envisage the circumstances under which retail development in out-of-centre locations could '*complement*' existing town centre facilities, other than through provision, perhaps, for bulky goods that require a large-scale retail warehouse format that cannot be accommodated within or on the edge of existing centres, even having applied the appropriate degree of flexibility.
- 3.10 In Section 4, we assess the application proposal in relation to the sequential test incorporated in Paragraph 24 of the NPPF. In summary, we accept 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.
- 3.11 However, for the reasons set out in Section 6, we consider 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. Thus, the application proposal does not complement existing facilities in these town centres, 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'.
- 3.12 Nevertheless, for the reasons stated above, we give more weight to the up-to-date impact tests set out in Paragraph 26 of the NPPF, and to the provisions of Paragraph 27 of the NPPF; these do not require the proposal to be complementary with the town centre, but they do require an assessment of whether the application proposal [with, we would

say, existing commitments] is likely to cause a ‘*significant adverse*’ impact on existing, committed and planned investment, or on the vitality and viability of the town centre.

3.13 Shopping Policy S2 states that:

‘The City Council will give favourable consideration to proposals which will sustain and enhance the vitality, viability and appropriate diversification of the following existing centres and thereby facilitate regeneration’.

- 3.14 Washington Town Centre and Concord Local Centre are included within the list of centres to which Policy S2 applies. Our subsequent assessment of impacts suggests that the application proposal will not help in sustaining and enhancing the vitality, viability and diversification of Washington or Concord, so that it causes some conflict with Policy S2. Furthermore, this degree of conflict with Policy S2 increases materially when the cumulative effects of the application proposal are considered, together with existing commitments and fall-backs. Once again, however, we consider 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, which we deal with in Section 6.

Area Proposals for Washington

- 3.15 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. Moreover, we note that the planning strategy for Washington, which is set out in Paragraph 21.14, requires that ‘*...the role of the Galleries and Washington’s Town Centre⁵ should be developed and enhanced*’.
- 3.16 Area Proposal WA7 states that ‘*Concord shopping centre will be retained and improved*’. Thus, WA7 is an aspirational policy concerned, principally, 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

⁵ As defined in Paragraph 21.101 of the UDP

locations. Nevertheless, we accept, for the reasons set out in Section 6, that the application proposal (together with existing commitments) is likely to cause some harm to Concord Local Centre as a result of trade diversion. Thus, the proposal is not fully consistent with the aim of Area Proposal WA7, which is to improve Concord Local Centre.

- 3.17 We note that Paragraph 21.35 suggests that developer interest in providing further convenience facilities in Concord's catchment area '*...has tended to focus on easily developable sites such as vacant industrial land at Hertburn or the Peel Centre which would seriously threaten the vitality and viability of Concord*'. However, our subsequent assessment of cumulative impact suggests that the application proposal will not cause a 'significant adverse' impact on Concord Local Centre in relation to the tests set out in Paragraph 26 of the NPPF.
- 3.18 The Area Proposals for Washington Town Centre are set out in WA33 to WA37. Area Proposal 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 as comprising 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.
- 3.19 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 Section 4 of our report, which deals with the sequential test. We note that Paragraph 21.202 requires that schemes for the Western Car Park site allow for public transport interchanges and replacement of any car parking lost as a result of development.
- 3.20 Our 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, in our view, 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.

- 3.21 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 which are set out in Paragraphs 26 and 27 of the NPPF; we give more weight, therefore, to the latter.

Site Specific Policies

- 3.22 The application site at the Peel Centre is unannotated on the Proposals Map of the adopted UDP.

Conclusion in Relation to the Development Plan

- 3.23 For the reasons set out in Section 4, we consider that the application proposal is consistent with the sequential approach aspects of the UDP's relevant saved Shopping Policies. However, for the reasons set out in Section 6, we consider that the application proposal (together with existing commitments and/or potential fall-backs) would cause some conflict with the town centre enhancement objectives contained in saved Shopping Policies S1 and S2, and with the objectives of Area Proposals WA7 and WA33 of the UDP, as a result of trade diversion. Moreover, we consider that the degree of conflict with these policies increases materially when the cumulative effects of the application proposal are considered, together with existing commitments and fall-backs.
- 3.24 However, following the Secretary of State's decision not to save development management Policy S5, it is clear that the remaining saved Shopping Policies and 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, which are set out in Paragraphs 26 and 27 of the NPPF; we give more weight, therefore, to the latter.

Emerging LDF

- 3.25 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.

- 3.26 In August 2013, Sunderland City Council published, for consultation, its Core Strategy and Development Management Policies (Draft Revised Preferred Options). However, the Council has 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. Thus, 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.

4 THE SEQUENTIAL TEST

Requirements of the NPPF

- 4.1 Paragraph 24 of the NPPF sets out the sequential test that applies to planning applications for main town centre uses that are not in an existing centre and not in accordance with an up-to-date Local Plan. Paragraph 24 states that *'...applications for main town centres uses should be located in town centres, then in edge-of-centre locations, and only if suitable sites are not available should out-of-centre sites be considered.'* In considering out-of-centre proposals, such as the current Section 73 application at the Peel Centre, Paragraph 24 states that *'...preference should be given to accessible sites that are well-connected to the town centre'*.
- 4.2 In applying the sequential approach, Paragraph 24 requires applicants and local planning authorities to demonstrate flexibility on issues such as format and scale. However, in contrast to the provisions of Policy EC 15.1d of the former PPS4, Paragraph 24 makes no specific mention of the words *'car parking'* and *'disaggregation'* in applying the flexibility component of the test.
- 4.3 Indeed, we note that the Inspector for the Vulcan Road appeal in Sheffield (ref: APP/J4423/A/13/2189893) stated, in Paragraph 34 of his decision of 3rd July 2013, that *'...the absence of any reference to other elements of flexibility such as car parking provision and disaggregation... is both telling and intentional'*. Furthermore, in his decision of 11th June 2014, in respect of a major mixed-use development proposal at Rushden Lakes (ref: APP/G2815/V/12/2190175), the Secretary of State confirms, in Paragraph 16 of his decision letter, that *'...there is no requirement to disaggregate'*.
- 4.4 Another important difference compared to Policy EC15.1 of the former PPS4 is the fact that Paragraph 24 of the NPPF makes no specific reference to the issue of viability in assessing the suitability of sites. Nevertheless, we consider that viability is an important aspect of the suitability component of the sequential test and we note that Paragraph 23 of the NPPF, which deals with local plan preparation, does include a viability requirement

in stating that local planning authorities should *'allocate appropriate edge of centre sites...where suitable and viable town centre sites are not available'* (our emphasis).

- 4.5 Indeed, it would be odd if viability was not to be a relevant requirement in development management, when delivery is such a key part of the NPPF; for example, Paragraph 173 requires *'...careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable* (our emphasis)'.
- 4.6 Moreover, we would emphasise that helpful clarification on this matter has been provided by the Inspector's report in respect of the aforementioned Rushden call-in Inquiry, in which he concludes that *'...the task is to identify sequentially preferable sites that are suitable and available which necessarily includes consideration of deliverability/viability'* (IR Paragraph 8.54, our emphasis); and we note that the Secretary of State's decision letter does not contest this conclusion.
- 4.7 The final aspect of the Inspector's report in Rushden that we wish to emphasise relates to the issue of availability. In paragraph 8.55 of his report to the Secretary of State, the Inspector argues that the NPPF requires that the site is *'currently available'*, thereby, rejecting the approach taken in the now superseded Planning for Town Centres Practice Guidance, which referred to availability *'... within a reasonable period of time... having regard to ... the urgency of the need'*.

National Planning Policy Guidance (the NPPG)

- 4.8 Paragraph ID: 2b-010 of the National Planning Policy Guidance (the NPPG) provides further advice on how the sequential test should be used in decision taking. It confirms that it is for the applicant to demonstrate compliance with the sequential test, with support from the local planning authority, which has a duty to share any relevant information. The NPPG confirms that there is a requirement to demonstrate flexibility, with respect to format and scale, in assessing the suitability of more central sites.
- 4.9 Paragraph ID: 2b-011 states that *'...use of the sequential test should recognise that certain main town centre uses have particular market and locational requirements which mean that they may only be accommodated in specific locations'*. The Guidance states,

however, that there must be a robust justification if a location-specific requirement is being advanced, and that land ownership does not provide such a justification.

- 4.10 Finally, we note that Paragraph ID: 2b-012 requires local planning authorities to recognise that town centre locations can be more expensive and complicated than building elsewhere, so that they should be *'...realistic and flexible in terms of their expectations'*.

Important Court Judgments

- 4.11 Before we turn to our assessment of the applicant's sequential appraisal, we wish to highlight the findings of two important Court judgments. The first is the Supreme Court Judgment in respect of Tesco Stores Ltd (the appellant) v Dundee City Council (the respondent), which was issued on 21st March 2012. The second is the High Court Judgment in respect of Aldergate Properties Ltd and Mansfield District Council and Regal Sherwood Oaks Ltd, which was issued on 8th July 2016.

Supreme Court Judgment in Dundee

- 4.12 The Dundee Judgment provides a ruling on the interpretation of the 'suitability' component of the sequential test. In this case, the Court had to decide whether the word 'suitable' means *'suitable for the development proposed by the applicant'*, or *'suitable for meeting identified deficiencies in retail provision in the area'* (see Paragraph 21 of the Judgment). Subject to the requirement for the applicant to demonstrate flexibility, the Court endorsed the former and rejected the latter. The reasoning and clarification are set out in paragraphs 28, 29, 30, 36, 37 and 38 of the Judgment.
- 4.13 In Paragraph 28 of the Judgment, Lord Reed confirms that *'suitable'* means *'suitable for the development proposed by the applicant'*, but he adds the qualification that there is a need for *'...flexibility and realism from developers and retailers as well as planning authorities'*. In Paragraph 29, he adds that provided the applicant has shown flexibility and had regard to the circumstances of the particular town centre, the question that remains is *'...whether an alternative site is suitable for the proposed development, not whether the proposed development can be altered or reduced so that it can be made to fit an alternative site'*.

- 4.14 Finally, we draw attention to paragraph 38 of the Dundee Judgment in which Lord Hope confirms that *‘...the whole [sequential] exercise is directed to what the developer is proposing, not some other proposal which the planning authority might seek to substitute for it which is for something less than that sought by the developer’*. He goes on to state that *‘...developments of this kind are generated by the developer’s assessment of the market that he seeks to serve...’* and that the sequential criteria *‘...are designed for use in the real world, in which developers wish to operate, not some artificial world in which they have no interest doing so’*.
- 4.15 The Inspector in the aforementioned Rushden call-in inquiry describes the Dundee Judgment as being of *‘seminal importance’* (IR 8.44) and he states (IR 8.45) that it establishes:
- a) *‘that if a site is not suitable for the commercial requirements of the developer in question then it is not a suitable site for the purposes of the sequential approach’*; and
 - b) *‘that in terms of the size of the alternative site, provided that the Applicant has demonstrated flexibility with regards to format and scale, the question is whether the alternative site is suitable for the proposed development, not whether the proposed development could be altered or reduced so that it can be made to fit the alternative site’* (Inspector’s underlining).

High Court Judgment in Mansfield

- 4.16 The Mansfield Judgment of Ouseley J provides further clarification in relation to how the sequential test should be applied and it establishes a number of important principles of relevance to the consideration of Peel’s Section 73 application proposal, as follows:
- i) *‘In my judgment, “suitable” and “available” generally mean “suitable” and “available” for the broad type of development which is proposed in the application by approximate size, type, and range of goods. This incorporates the requirement for flexibility in [24] NPPF, and excludes, generally, the identity and personal or corporate attitudes of an individual retailer’* (Paragraph 35 of the Judgment).

- ii) Second, ‘...NPPF [24] positively “requires” retail investment in the first place to locate in town centres rather than elsewhere... Its thrust is rather more emphatic than [those policies on which the Dundee decision was based]... NPPF [24] cannot therefore be interpreted as requiring “suitability” and “availability” simply to be judged from the retailer’s or developer’s perspective, with a degree of flexibility from the retailer, and responsiveness from the authority’ (Paragraph 37 of the Judgment).
- iii) ‘Third... still less can it [NPPF 24] be interpreted as envisaging that the requirement or preferences of an individual retailer’s trading style, commercial attitudes, site preferences, competitive preferences, whether against itself or greater competition, should dictate what sites are “suitable” or “available” subject only to a degree of flexibility. NPPF [23] and [24] are simply not couched in terms of an individual retailer’s corporate requirements or limitations’ (Paragraph 38 of the Judgment, our emphasis).
- iv) ““Available” cannot mean available to a particular retailer but must mean available for the type of retail use for which permission is sought’ (Paragraph 42 of the Judgment).

4.17 Of crucial importance, therefore, is Ouseley J’s conclusion that there is no inconsistency between the Dundee and Mansfield Judgments because the Supreme Court was referring to the suitability of sites by reference to the type of development proposed by the applicant, and not to the identity of the applicant or proposed operator.

The Sequential Location Category of the Application Site

4.18 The Section 73 application relates to a site which is in an ‘out-of-centre’ location for the purposes of the definition given in Annex 2 of the NPPF. It is important to record however - in the interests of consistency - that we consider the accessibility of the Peel Centre and its connections with Washington Town Centre to be similar to the level of accessibility and connectivity of the Armstrong Road site, which was subject to a refusal

on 8th September 2015, in respect of a similar Section 73 application proposal (Ref: 14/02687/VAR).

- 4.19 Thus, in line with the High Court Judgment in respect of the Borough of Telford and Wrekin/St Modwen Developments and the Secretary of State for Communities and Local Government of 14 June 2013, we consider that it is open to the Council (and in our view appropriate) to conclude that both sites are sequentially equal. Both sites are in 'out-of-centre' locations; both are relatively well-served by public transport; both will have similar levels of pedestrian accessibility; and both will be predominantly served by car transport, so that most of the linked trips with Washington Town Centre that may be generated will be by car.

Our Appraisal of the Application against the Sequential Test

Relevant Centres for the Sequential Search

- 4.20 Savills confines its sequential search to sites and premises within and on the edge of Washington Town Centre and Concord Local Centre. We agree with this approach given that we anticipate that the application proposal will draw 85 per cent of its turnover from residents of Washington's Primary Catchment Area (i.e. from Zones 1, 2 and 3, as set out in Table 7b and 25b for Scenario R in Volume 2).

Parameters for the Peel Centre Application

- 4.21 The Section 73 application at Phase 2 of the Peel Centre seeks to vary Condition No. 13 of the extant outline planning permission for construction of an extension to the Peel Centre (ref: 03/00120/OUT). The subsequent reserved matters approval (ref: 07/02808/REM) and the approved drawings reveal an aggregate floorspace of 5,760 sq. m gross in five units, with Unit A (the Unit intended for the food retailer) having a gross floorspace of 1,356 sq. m. As previously stated, Unit E (of 1,431 sq.m gross) has been replaced by subsequent planning permissions (refs: 07/02812/FUL and 14/00970/FUL), so as to allow for a B&M Homestore at ground floor level, with a Lifestyle Fitness gym at first floor level.

- 4.22 However, the applicant has not sought consent, as part of the current Section 73 application, to alter the layout of the remaining four units, as shown in Drawing No. 5534 65 of the approved reserved matters consent (ref: 07/02808/REM). It seems likely, therefore, that in order to secure a foodstore operator in Unit A, there would be a need for further planning applications relating to such matters as:
- the elevations previously approved under the reserved matters approval (drawing number 5534 63 Rev: A);
 - the configuration of the service yard for the food retailer; and
 - a likely reconfiguration of at least part of the car parking.
- 4.23 We are of the view, therefore, that the Section 73 application, by itself, would not secure a small to medium-sized foodstore operator at Phase 2 of the Peel Centre. There would be a need for further applications and there is a risk, therefore, that any permission granted for the Section 73 application could result in a new fall-back position at Phase 2 of the Peel Centre which is merely “*theoretical*”.
- 4.24 Notwithstanding this concern, the Section 73 application, if permitted, would create an entirely new planning permission for three non-food units and one food unit. Thus, given that the Secretary of State has deemed, in his Rushden decision, that disaggregation is not required, it is arguable that, in order for an opportunity in a sequentially preferable location to be deemed ‘*suitable*’, it 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).
- 4.25 This is the approach that we took in undertaking our assessment of the Section 73 application at Armstrong Road (ref: 14/02687/VAR), which involved a total quantum of retail development of 8,440 sq. m, and where we set a reasonable size parameter for the purposes of the sequential search of around 7,000 sq.m gross, having allowed for some flexibility (see Paragraphs 5.22 to 5.24 of our Report to the Council of June 2015). Indeed,

this is important because Savills appears to argue that it is the attraction of a food retailer that will generate interest in the non-food retail units.

- 4.26 Thus, whilst it might seem reasonable, at first sight, that Savills sets a size parameter for the sequential search for a food unit, in isolation, of a minimum of 465 sq. m gross (Paragraph 4.2 1 of the Retail Statement Update), we do not think this is the right approach. In line with the flexibility we required in our assessment of the Section 73 application at Armstrong Road, we consider that a reasonable size parameter for sequential search purposes, for Peel's Section 73 application, as a whole, would be approximately 3,600 sq. m gross, comprising both non-food units and a food unit.
- 4.27 Nevertheless, we do accept Savills' point that food retailers prefer regular-shaped single storey units, so as to facilitate the display of goods in linear aisles, with space for easy trolley manoeuvring and back of house areas to service the shop floor. We also accept that most small to medium-sized supermarket operators require direct and level access to car parking, as well as dedicated service provision to accommodate Heavy Goods Vehicles and frequent deliveries. Similarly, we accept that operators of supermarkets of the size envisaged require a location that is accessible by a range of modes of transport, and dedicated parking provision for private vehicles, so that customers can easily transport bulk food purchases.

Sites and Premises within or on the edge of Concord Local Centre

- 4.28 There are no sites or vacant premises available within, or on the edge of, Concord Local Centre that could provide for around 3,600 sq. m gross of retail development in the form of a mix of non-food units, together with a food unit. Indeed, the largest vacant unit in Concord Local Centre, when we last surveyed the centre in March 2016, was 1,060 sq. m gross, this being the former Junglerama unit, which has no frontage to the main shopping streets in Concord Local Centre. Indeed, the Junglerama premises are subject to a current planning application which seeks to demolish the existing building and erect a three-storey building to provide for 12 residential apartments (recently amended on 7th October 2016). Of the other five vacant units in Concord, at the time of our March 2016 survey, the largest is just 130 sq. m.

Vacant Units within Washington Town Centre

- 4.29 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 in the 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.

Other Sites within and on the edge of Washington Town Centre

- 4.30 Savills has assessed the suitability and availability of that part of the Western Car Parks site which is identified under Area Proposal WA34.1 of the UDP for new retailing and commercial developments in Use Classes A1, A2, A3, B1, C1, D1 and D2. In our audit reports to the Council of November 2013 and June 2015, in respect of planning applications refs: 12/03137/OUT, 12/00100/FUL, 14/02687/VAR and 14/02701/FUL, we noted that the Prudential Assurance Company (the freehold owner of the Galleries and the Galleries Retail Park) had been trying to promote the re-development of that part of the Western Car Parks identified for retail and commercial uses under Area Proposal WA34 (1) since 2004. Indeed, we reported the Inspector's summary of Prudential's case at the call-in inquiry for Phase 2 of the Peel Centre Retail Park, which took place in March 2004, to the effect that *'This area of land is currently under close scrutiny and review, and it is likely that redevelopment proposals will be brought forward'* (IR 179).
- 4.31 It is clear, however, that very little progress has been made in relation to progressing a retail development proposal for the WA34 (1) site in the 18 years that have passed since the allocation of the site was confirmed in the UDP. Indeed, no applications have been submitted for retail development on any part of the Western Car Parks since Prudential gave evidence to the call-in inquiry in 2004. Nor have there been any applications for retail development on the Western Car Parks since the Council's decision in December 2013 to refuse the application by Optimisation Developments for a food superstore at Armstrong Road (ref: 12/001004).

- 4.32 We consider that this lack of progress in seeking to promote retail development is telling and helps to support the arguments put forward by Savills and others, that the Western Car Parks are not currently suitable for retail development. Furthermore, we understand that no start has yet been made in seeking to implement the planning permission that was issued by the Council in January 2014 for a multi-screen cinema, together with six units in Use Classes A1 to A5, under ref: 13/02714/FUL. Our consultation with M&G Real Estate, as part of the Sunderland Retail Needs Assessment 2016, suggested that the issue seems to be the absence of a cinema operator to anchor the scheme and that it will proceed when the operator is found.
- 4.33 We are aware, however, that Colliers International has argued, in the past, that Prudential Assurance may be willing to make available land at the Western Car Parks for some form of retail development. Indeed, in its objections to previous food superstore applications in 2013, Colliers International put forward a considerable amount of documentation in its letters and emails of 1 July 2013 and 25 September 2013, which sought to demonstrate how a foodstore of 5,574 sq. m gross, might be accommodated to the immediate north of the WA34 (1) allocation, together with two levels of car parking on the WA34 (1) allocation site itself. These schemes were subject to substantial adverse comments from Savills (on behalf of Peel), with the main criticisms being:
- the lack of clear evidence of foodstore operator interest in the Western Car Parks site;
 - the absence of a time frame on the part of M&G Real Estate for submitting a planning application for retail development;
 - the close proximity of the competing Asda store and the pressure on demand for car parking;
 - the costs and viability of having a shared parking arrangement on more than one level; and
 - the likelihood of objections from existing tenants at the Galleries who may be disrupted during the period of construction.

- 4.34 The key issue, however, is whether there is an opportunity within the wider Western Car Parks area that is 'suitable' and 'available' to provide for at least 3,600 sq. m of retail development, in the form of non-food retail units next to a small to medium-sized foodstore of the kind envisaged for Unit A in Peel's current Section 73 application.
- 4.35 We are aware from the aforementioned consultation with M&G Real Estate that it has aspirations to extend the Primary Shopping Area in Washington, and that it is considering opportunities for such an extension in both the Western and Eastern Car Parks. Indeed, the Sunderland Retail Needs Assessment 2016 accepts the need for planned extensions to the Primary Shopping Area in Washington to meet the retail needs we have identified over the next twenty years, and the Car Parks represent the obvious locations for such extensions. However, much of the need we identify does not occur until after 2025, and our understanding from the consultation is that there are no opportunities within the Western or Eastern Car Parks that would meet the Rushden Inspector's requirement for them to be '*currently available*'.
- 4.36 Moreover, Savills argues that the extant consent for a cinema and food and drink units (ref: 13/02741/FUL) will be served by car parking located to the north of the leisure site, within that part of the Western Car Parks identified in Area Proposal WA34.1, so that the site identified in the UDP is no longer 'available'. NLP made a similar argument on behalf of Jomast in its support material for a new discount foodstore at Armstrong House, i.e. that the Western Car Parks could not provide for all of the demand arising from ASDA, from the multi-screen cinema, and from a new foodstore.
- 4.37 Similarly, HOW Planning, in support of the refused Section 73 application by B&Q at Armstrong Road, argued that the proximity of the planning commitment to provide a multi-screen cinema and six outlets aimed at food and drink operators means that there will be a limit on the amount of space available for new development within the Western Car Parks. Indeed, HOW Planning argued that any further development on the Western Car Park Site '*...would severely compromise parking for customers at Asda and the Galleries Shopping Centre, reducing the amount of parking whilst increasing traffic and visitor numbers*'. As a consequence, HOW Planning argued that the Western Car Parks

site is unsuitable for the development proposed in its client's Section 73 application at Armstrong Road and that it is not 'available', in any event, given M&G's decision to focus on leisure development.

- 4.38 In our own planning judgement, we consider, on balance, that it is unlikely that M&G would be willing for its client to suffer any net loss of car parking in the areas covered by the UDP's Proposals WA34(1), WA37(1) and WA37(2). This will therefore limit the potential for new retail development, unless compensatory provision is made in the form of multi-level car parking, which is expensive.
- 4.39 Our overall conclusion, therefore, is that, on balance, the Western and Eastern Car Parks are unlikely to be able to provide a suitable opportunity for meeting the retail development proposed to be facilitated by the live 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 Rushden Inspector's test of being '*currently available*'. In reaching this conclusion, we have taken account of:
- i) the very long passage of time which has elapsed since the adoption of site allocation WA34 (1) in the UDP in 1998 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 our common experience is for the car parks 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.

4.40 Thus, we have two fundamental concerns in relation to the availability, suitability and viability of the Western and Eastern Car Parks for retail development. Firstly, we are not convinced that there are any opportunities that are currently available and consider 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.

4.41 Secondly, we consider it to be 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. Indeed, there is no clear evidence of any progress in promoting a retail scheme on the site since the time when Prudential gave evidence to the call-in inquiry in 2004, 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*' (IR, Paragraph 179).

Other Out-of-Centre Sites

4.42 We have not been able to find any available and suitable opportunity within or on the edge of Washington Town Centre, or within or on the edge of Concord Local Centre, that

can provide for the type and quantum of retail development being put forward in the live Section 73 application proposal at the Peel Centre, i.e. a combination of non-food units adjacent to a small to medium-sized supermarket, with a total quantum of floorspace of at least 3,600 sq. m gross.

- 4.43 As a consequence, we have turned our mind as to whether there are any other out-of-centre sites that are more accessible, by a variety of means of transport, and/or better connected to Washington Town Centre. We consider, however, there have been no changes to accessibility since the time of our Report to the Council of June 2015 that would warrant a change to our previous conclusion that the Peel Centre, Armstrong House and Armstrong Road sites are all sequentially equal in terms of their relative accessibility and their connectivity with Washington Town Centre, so that none enjoys a sequential advantage in relation to the others.

Conclusions in Relation to the Sequential Test

- 4.44 Our overall conclusion is that the applicant has satisfied the requirements of the sequential approach and that the Section 73 application at the Peel Centre meets the sequential test set out in 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 the Section 73 application proposal is seeking to facilitate, even having applied the appropriate degree of flexibility. Moreover, the only sites that have merited detailed investigation are the Western Car Parks, covered by Area Proposals WA34 (1) and WA37 (2) of the UDP, and the Eastern Car Parks, covered by Area Proposal WA37 (1) of the UDP. These sites are not considered to be '*currently available*', albeit that they may have potential, in years to come, to provide for an extensions to the Primary Shopping Area, so as to meet the quantitative and qualitative needs identified in the Sunderland Retail Needs Assessment 2016, particularly after the year 2025.

5 THE POTENTIAL FALL-BACK POSITIONS

- 5.1 Our assessment of the cumulative impact scenarios that may arise in the future reflects current commitments and those ‘fall-back’ positions which may arise at Armstrong Road and at the site of Phase 1 of the Peel Centre, which are considered to be ‘real’. In this section of our report, therefore, we first set out the relevant case law which guides our approach to the assessment of the relevance of potential ‘fall-back’ positions and the factors underlying the weight which should be given to them as material planning considerations if they are considered to be ‘real’, as opposed to being ‘theoretical’.

Relevant Case on Potential Fall-backs

- 5.2 In informing our approach to the relevance of potential ‘fall-back’ positions, and the weight that should be accorded to them, we have taken account of a number of important Court Judgments. First, we refer to Snowden v Secretary of State for the Environment and the City of Bradford Metropolitan Council (July 1980), in which Donaldson L J defines the ‘fall-back’ position of the applicants as being ‘... *what they could have done without any change in their planning position...*’, i.e. without the need for further planning permissions.
- 5.3 Second, we refer to Brentwood Borough Council v Secretary of State for the Environment and Gray (March 1996), in which it was held that in order for a ‘fall-back position’ to be a material consideration, the prospects of it taking place had to be ‘real’ and not merely ‘theoretical’. This reflects the language used in Snowden, in which it was held that the decision maker is under a duty to make a comparison between the relative planning ‘evils’ of what is proposed (i.e. the development for which planning permission is sought) and the fall-back position (i.e. what the applicant could do on the application site based on the planning position as it stands, without that new planning permission). This duty applies, however, only if there is a ‘real possibility’ that the fall-back will occur.
- 5.4 Third, we refer to R (on the application of) Zurich Assurance Limited and North Lincolnshire Council and Simons Developments Limited (December 2012), in which it was held that: ‘*The prospect of the fall-back position does not have to be probable or even*

have a high chance of occurring; it has to be only more than a merely theoretical prospect. Where the possibility of the fall-back position happening is "very slight indeed", or merely "an outside chance", that is sufficient to make the position a material consideration...

Weight is, then, a matter for the planning committee'.

- 5.5 Zurich reflects an earlier judgment of the Court of Appeal in Samuel Smith Old Brewery (Tadcaster) and the Secretary of State for Communities and Local Government (March 2009), in which it is held that *'in order for a prospect [the fall-back] to be a real prospect [and therefore a material consideration], it does not have to be probable or likely: a possibility will suffice'.*
- 5.6 Thus, the first step for the decision maker is to decide whether the potential fall-back position for the relevant site is *'real'*, as opposed to being merely *'theoretical'*. If the fall-back is considered to be *'real'*, it is a material consideration and it is for the Local Planning Authority, as decision maker, to decide how much weight, if any, it should give it (as per Lord Hoffmann's speech in the House of Lords in the case of Tesco Stores Limited v Secretary of State for the Environment and Others, May 1995).
- 5.7 The decision on how much weight to give to a *'real'* fall-back will reflect: a) the likelihood of the fall-back occurring and/or b) the level of harm that would result from the fall-back position occurring. These propositions reflect the aforementioned Judgment in Tadcaster and the Judgment in South Buckinghamshire District Council v Secretary of State for the Environment (June 1998).
- 5.8 Thus, in Tadcaster, it is stated that *'... in a case where the adverse consequences of implementing the fall-back position would be very significant... there would be no reason why the Secretary of State could not conclude, as a matter of planning judgement, that even if the risk of implementing the fall-back position was very slight indeed – an outside chance perhaps – the seriousness of the harm that would be done if... the fall-back position was implemented was such that the risk was not acceptable...'*
- 5.9 Similarly, in the South Buckinghamshire case, it was held that weight would reflect the probability of the fall-back use being resumed, but that *'If the harm that would arise from the resumed use would be very serious, it may well be that a lower degree of probability*

of its resumption would be sufficient to justify the grant of permission [for the new proposal] than in the case of less serious harm’.

- 5.10 It is worth noting, at this stage, that a common characteristic of the body of case law, where weight is given to fall-backs, is the fact that the fall-back would have broadly similar planning implications, or cause greater harm than the current development proposal. Thus, in New Forest District Council v SoS for Environment (July 1995), the 48 timber lodges proposed would cause less harm to the Green Belt than the fall-back position for a hotel development; in South Buckinghamshire, the eight houses proposed would cause less harm to the Green Belt than the fall-back re-use of the site as a cattle market; and in Brentwood, the fall-back position of building the out-building five metres from the house would have similar consequences for the Green Belt, compared to building it two metres away.
- 5.11 Our interpretation of the relevant case law, therefore, is that there is a two stage approach in considering the relevance of potential fall-backs and the weight to be given to them. First, it is necessary to decide whether the fall-back is ‘real’, or merely ‘theoretical’. If the fall-back is ‘real’, it is a material consideration.
- 5.12 The second stage involves a planning judgement for the decision maker as to the relevant weight to be given to the fall-back, which will reflect the likelihood of it occurring and/or the level of planning harm that would arise if the fall-back was implemented, compared to the development proposal for which planning permission is sought.
- 5.13 Having set out our general approach to the consideration of the relevance of potential fall-backs, based on case law, we next identify the potential fall-back positions in relation to the Armstrong Road site that was subject to the variation of condition refusal on 8th September 2015 (ref: 14/02687/VAR), and in relation to the Peel Centre. We then consider whether or not each fall-back position is ‘real’ (i.e. whether there is at least an outside chance, or a slight possibility, that the fall-back will occur) and, if so, the weight that should be given to each of them.

The Armstrong Road Site

- 5.14 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 application site is also subject to a Planning Agreement, under Section 52, which prevents the sale of convenience goods and the sale of a similar wide range of non-bulky comparison goods.
- 5.15 In a letter to HOW Planning of 26 April 2007, the Council has confirmed that the construction of an access road constitutes a commencement of the development, so that the planning permission has not expired.
- 5.16 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 GIA. This Section 73 application also sought to reduce the minimum size of unit from 1,000 sq.m to 500 sq.m.
- 5.17 In our Report to the Council of June 2015, in respect of B&Q's Section 73 application at Armstrong Road, we stated (Paragraph 2.21) that 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 *'...clearly questionable; indeed, on balance, we consider that it is unlikely given that 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, we 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 (Paragraph 2.22).
- 5.18 With the further passage of time, however, we now consider 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. The range of goods condition and the Section 52 agreement are simply too restrictive for the necessary occupier demand to be secured. As a consequence, we consider, on balance, that this extant consent is now merely '*theoretical*' (as opposed to being '*real*') and therefore we give no weight to it as a potential fall-back position.

The Peel Centre Site

- 5.19 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, we still consider, 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.
- 5.20 Thus, we consider 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 is therefore a material planning consideration. As a consequence, our modelling of cumulative impact incorporates a food superstore at Phase 1 of the Peel Centre.

Overall Conclusions in Relation to the Fall-back Positions

- 5.21 With the further passage of time, we consider that the prospect of full implementation and occupation of the non-food retail park at Armstrong Road, under planning permission refs: 01/02086/OUT and 05/00412/REM, is now merely '*theoretical*', or '*fanciful*', so that we give no weight to it as a potential fall-back position. This position is also taken by Savills, on behalf of the applicant. Nevertheless, for completeness, our cumulative impact

modelling produces results both 'with' and 'without' the Armstrong Road non-food retail park fall-back, so as to fully inform the Council's decision-making process.

- 5.22 In contrast, we consider that there remains '*an outside chance*', or '*slight possibility*', that a food superstore may be developed on the site of Phase 1 of the Peel Centre, pursuant to planning permission ref: 12/03137/OUT. We consider, therefore, that this extant consent remains '*real*' and give it weight as a material planning consideration, and incorporate it into our assessment of cumulative impacts. There are also further fall-back positions at Phase 1 of the Peel Centre, under refs: 06/04039/FUL and 08/02091/FUL, which have a slight chance of being implemented, but which would result in lower cumulative impacts than is the case under the food superstore scenario. Our impact modelling therefore reflects the worst case scenario.

6 THE IMPACT TESTS

Requirements of the NPPF

6.1 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, 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.’*

6.2 The floorspace incorporated in the Section 73 application at the Peel Centre amounts to 4,329 sq. m gross⁶ (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.

6.3 Paragraph 27 of the NPPF then confirms that *‘Where an application fails to satisfy the sequential test, or is likely to have a significant adverse impact on one or more of the above factors [in Paragraph 26], it should be refused’*. However, it seems clear from the

6 The figure of 4,329 sq. m gross derives from Units A to D of the approved site layout plan (drawing No. 5534 65) from the Reserved Matters permission (ref: 07/02808/REM). Thus, this figure of 4,329 sq. m reflects the residual from the floorspace granted by the Secretary of State in the original outline parent permission (ref: 03/00120/OUT), which is limited, in Condition 14 of the parent consent, to 5,760 sq. m, having deducted the floorspace associated with Unit E of 1,431 sq. m. The site intended for Unit E has now been developed as a two-storey health and fitness and retail building under entirely separate planning permissions (07/02812/FUL and 14/00970/FUL). The total size of the health and fitness/retail building is 5,110 sq. m with Condition 6 of permission (ref: 14/00970/FUL) restricting Use Class A1 floorspace to 2,555 sq. m, at ground floor level, and with Condition 7, of the same permission, restricting Use Class D2 floorspace to 2,555 sq. m, at mezzanine level.

Zurich High Court Judgment, of December 2012, that Paragraph 27 of the NPPF is not necessarily determinative, if there are significant material considerations which displace its presumption for refusal in the event of a failure of the sequential and/or impact tests.

National Planning Policy Guidance

- 6.4 Paragraph ID: 2b-015 of the National Planning Policy Guidance (the NPPG) states that it is for the applicant to demonstrate compliance with the impact test, but that the test should be undertaken in a proportionate and locally appropriate way, drawing on existing information where possible.
- 6.5 Paragraph ID: 2b-016 of the NPPG sets out the key considerations in assessing the likely impact on proposed investment within the town centre that is in progress; these are:
- the policy status of the investment;
 - the progress made towards securing the investment; and
 - the extent to which an application is likely to undermine planned investments based on the effect on forecast turnover, operator demand, and investor confidence.
- 6.6 Paragraph ID: 2b-017 of the NPPG then sets out the key considerations in assessing the likely impact on trading levels and on town centre vitality and viability. The advice states that *‘...a judgment as to whether the likely adverse impacts are significant can only be reached in light of local circumstances’* and that *‘...in areas where there are high levels of vacancy and limited retailer demand, even very modest trade diversion from a new development may lead to a significant adverse impact’*. In instances where the evidence suggests that a *‘significant adverse’* impact on the town centre is unlikely, the Local Planning Authority *‘...must then consider all other material considerations in determining the application, as it would for any other development’*.
- 6.7 Having summarised national policy guidance, we turn to our appraisal of Peel’s Section 73 application against the two impact tests set out in Paragraph 26 of the NPPF.

Impact on Existing, Committed and Planned Investment

6.8 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’⁷. In our report to the Council of June 2015, in respect of the applications by B&Q Properties at Armstrong Road (ref: 14/02687/VAR) and by Jomast at Armstrong House (ref: 14/02/02701/FUL), we outlined the substantial capital investment that has been made by Prudential since it acquired the Galleries in 1999. This investment includes the following schemes:

- 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.

6.9 We consider, however, that a clear distinction should be drawn between, on the one hand, previous investment in the town centre that has already been made and completed, and, on the other hand, existing, committed and planned investment schemes, with ‘existing’, interpreted by ourselves, as meaning ‘very recent and ongoing’. The impact of a development proposal on previous and completed investment in the town centre is, in our opinion, 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/ongoing, committed and planned future

⁷ We interpret ‘existing’ to mean ‘very recent and ongoing’ and ‘committed’ to mean ‘with planning consent, or with a resolution to approve, subject to a Section 106 agreement’.

investment schemes which is, in our opinion, the subject of the first of the Paragraph 26 tests.

- 6.10 The representation from Colliers of 31st July 2015 disagrees with this distinction and claims, rather unfairly in our view, that we give no weight to this previous investment. However, without the distinction between previous investment and existing/ongoing, committed and planned investment, there would seem to be a clear duplication between the two impact tests under Paragraph 26. In our view, there is also a clear rationale for this distinction by affording specific protection to ongoing and future committed and planned investment schemes in the town centre which could potentially be abandoned, or reduced in scale, or be less successful commercially, as a consequence of a new out-of-centre development proposal.

The Cinema and Leisure Consent

- 6.11 With this distinction in mind, we note that 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 are complementary to the cinema. Indeed, the proposed investment is primarily to improve the Town Centre's leisure offer and evening economy. Thus, although we note that a cinema operator has not yet been secured, we consider that Peel's Section 73 application proposal is highly unlikely to cause a significant adverse impact on the proposed cinema and restaurant development scheme. This reflects the fact that Peel's Section 73 application will not be targeting similar operators, so that, in the words of Paragraph ID:2b-016 of the NPPG, there will be no impact on forecast turnover, operator demand and investor confidence.

The Western and Eastern Car Parks

- 6.12 So far as the Western Car Parks are concerned, we have already concluded, in Section 4, that there is no reasonable prospect for retail development occurring, within the next few years, and that the access and parking constraints mean that the Western Car Parks could not currently provide for the quantum of floorspace associated with Peel's Section

73 application proposal, even if this quantum is reduced to 3,600 sq.m to reflect the appropriate degree of flexibility required.

- 6.13 Nevertheless, we have concluded, in our recent report to the City Council, entitled the ‘Sunderland Retail Needs Assessment 2016’, that there is a need to plan for an expansion of Washington’s Primary Shopping Area, so as to meet the retail needs that we have identified over the next 20 years, albeit that much of these needs will not arise until after 2025. Furthermore, our 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, we consider it highly unlikely that Peel’s Section 73 application proposal would have a significant adverse impact on these recommended future planned extensions because, in the words of Paragraph ID:2b-016 of the NPPG, 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 for the medium and longer term.

The Galleries and Galleries Retail Park

- 6.14 We acknowledge that a significant amount of investment has already taken place in the Galleries and in the Galleries Retail Park, 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 since 2000/01, when Washington ranked 308th in the Management Horizon’s Europe ranking, compared to its ranking of 252nd by Experian in 2015.
- 6.15 Nevertheless, the representation from Colliers dated 31st 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, we can find 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

- 6.16 In our opinion, any impacts on previous town centre investment schemes that have already been completed are more 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). In any event, no clear evidence has been put forward by Colliers on behalf of M&G Real Estate to substantiate a case that Peel's current Section 73 application proposal is likely to cause a 'significant adverse' impact on any existing/ongoing, committed and planned investment in Washington Town Centre. Nor are we aware of any existing/ongoing, committed and planned investment in Concord Local Centre that would be 'significantly adversely' affected by Peel's Section 73 application proposal.
- 6.17 We conclude, therefore, that the Section 73 application, 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 on Town Centre Vitality and Viability

- 6.18 We have referred, already, to the provisions of Paragraph ID: 2b-017 of the NPPG which states that '*a judgement as to whether the likely adverse impacts are significant can only be reached in light of local circumstances*'. Therefore, in addressing the second of the impact tests set out in Paragraph 26 of the NPPF, we first provide an update of our appraisal of the current health of Washington Town Centre, drawing on our recent work for the Council in preparing the Sunderland Retail Needs Assessment 2016.

Washington Town Centre's Current Level of Vitality and Viability

- 6.19 We have been monitoring the health of Washington Town Centre since December 2011, as part of the various instructions to us from the City Council, including our audits of the food superstore applications at the Peel Centre and at Armstrong Road (refs: 12/03137/OUT and 12/00100/FUL), our audits of the applications to change the use of the Health and Fitness unit at Phase 2 of the Peel Centre (refs: 11/022201/FUL and

14/00970/FUL) and our audit of the retail policy aspects of the 2014 applications by B&Q Properties and Jomast, which sought to facilitate discount foodstores at Armstrong Road and at Armstrong House (refs: 14/02687/VAR and 14/02/02701/FUL).

- 6.20 Throughout the period 2011 to 2015, we found that Washington Town Centre continued to enjoy the reasonably good level of health that was reported in the original Sunderland Retail Needs Assessment, prepared by Roger Tym & Partners in 2009. However, in preparing the Sunderland Retail Needs Assessment of 2016, we have undertaken a further review of the current health of Washington Town Centre, including an appraisal of an earlier report to the Council, prepared by England & Lyle, dated January 2015.
- 6.21 The England & Lyle report considers that Washington is performing relatively well and is a vital and viable Town Centre. It describes the convenience offer as being strong, and states that the ASDA and Sainsbury's superstores clearly play a key role as anchor traders within the Galleries Shopping Centre. England & Lyle also describes Washington as having a strong representation of national multiple comparison retailers and good representation in the financial and professional services sector. Furthermore, England & Lyle notes that the vacancy rates are low and that the Town Centre accommodates a number of community and leisure uses, including a bowling alley, a bingo hall, a library, a health centre and a leisure centre.
- 6.22 We concur with England & Lyle's findings and our Sunderland Retail Needs Assessment Report of October 2016 records that Washington Town Centre continues to enjoy reasonably good levels of health, taking into account the following factors:
- the persistently low level of vacancy which, according to Goad's survey of September 2015, is less than 10 per cent in terms of units (13 vacant units out of a total of 131 units) and only 3 per cent in terms of floorspace, although, as subsequently explained, the low vacancy rate has been a result, in part, of the incentives that have been and continue to be offered by M&G;
 - the high and, until recently, growing levels of pedestrian footfall, although the Centre Manager reports a slight decline in the last two years;

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- the busyness of the main car parks, although the Centre Manager points out that much of the busyness arises from the fact that these car parks (2,700 spaces) serve approximately 3,000 workers in the Town Centre;
 - the very good accessibility to Washington Town Centre by a range of means of transport, especially by bus and by car;
 - the fact that the Galleries is a well-managed, self-contained shopping centre, under one ownership;
 - the presence of two key anchor food superstores, one of which, ASDA, is substantially over-trading (according to the telephone survey of shopping patterns undertaken by NEMS in February 2016), so that there is a high retention level for convenience goods expenditure;
 - the successful role performed by the two key anchor food superstores in generating linked trips with other retail and service traders in Washington Town Centre, as confirmed by the Council's survey of March 2013, which showed that 73 per cent of those exiting the ASDA and Sainsbury's stores had already visited other stores or service traders in the Town Centre earlier on the day of the survey, or were about to visit other stores and service traders in the centre on the same day;
 - the very high level of multiple retailers present in the Town Centre, which according to Experian's Goad survey of September 2015, amounts to 75 of the 131 categorised units;
 - the reasonable level of representation in most of the comparison goods sub-sectors, and the range of multiples, which includes Boots, Next, Marks & Spencer, New Look, Wilkinsons, Argos, Vodafone, H&M, Intermarché, Brantano, Game and Fonehouse;
 - the very good range of business services and the improving range of food and drink operators, which will be enhanced when the current planning commitment for a new multiscreen cinema and associated food and drink uses is developed;

- the presence nearby to the Galleries of an important range of town centre uses, including the Library, the Career Service, the Health Centre, the Police Station and the Council’s new Leisure Centre; and
- the sheltered, clean and safe environment within the Galleries, albeit that there is some scope for improvements in security and landscaping on the footpaths leading to the car parks and to the Retail Park, and scope for further improvement of the external appearance of parts of the Galleries.

6.23 In our assessment, therefore, it is clear that most of the health indicators for Washington Town Centre are positive. An important piece of new evidence derives from the survey of pedestrians in Washington, undertaken by NEMS in February 2016. The survey found that Washington ranked above Sunderland City Centre and Houghton-le-Spring Town Centre in relation to each of the 16 factors that reflect: the Town Centre’s retail/leisure/service offer; environmental and personal safety factors; and accessibility factors. Indeed, Washington’s overall mean score, on a ranking of 1.0 for ‘very dissatisfied’ to 5.0 for ‘very satisfied’, was 4.40. This compares to mean scores for Sunderland City Centre and Houghton-le-Spring of 3.41 and 3.49, respectively.

6.24 Nevertheless, our consultation with representatives of M&G Real Estate confirmed that this investor is concerned about competition from higher order centres such as Newcastle City Centre and the Metro Centre and from out-of-centre destinations such as Team Valley Retail Park, the Peel Centre and Dalton Park. Thus, M&G has emphasised that:

- Washington Town Centre is in a relatively unusual situation, in that it is effectively in one ownership, so that M&G has been able to be innovative and flexible in relation to tenancies, so as to limit vacancies, albeit that this has had performance implications as a result of the cost of the incentives that have been offered to some of its ‘at risk’ tenants, and which continue to be offered;
- footfall in the Town Centre has fallen slightly over the last two years, with the Centre Management team considering footfall to be significantly dependent on the two major food superstores;

- Zone A rents have fallen from £100 per sq. ft. in 2008 to £80 per sq. ft today;
- many of the car park spaces are occupied by those working in the Town Centre, both in the offices and in the retail outlets, so that the high level of car park occupancy is not necessarily a reflection of health and vitality;
- the quality and range of retailer representation has been enhanced by the Retail Park which has provided units with a floorplate required by modern retailers, but is susceptible to competition from out-of-centre retail developments; and that
- there has been major recent investment in the Town Centre, including: the investment in the redevelopment of Wessington Square, so as to improve the food and drink offer, and create space for the reconfiguration of the outlets operated by Sainsbury's and Wilko; general mall enlivenment; and external works to Sainsbury's.

6.25 We acknowledge M&G's concern with respect to competition from higher order centres and out-of-centre retail parks. We also consider that there is scope for improvement in the presence in Washington of some of Experian's basket of 'major multiple retailers', that there is a need for improvement in Washington's evening economy, and that there is a need for further investment in the public realm.

Conclusion in Relation to the Current Health of Washington Town Centre

6.26 Our overall conclusion, however, is that Washington is a vital and viable Town Centre, which is performing well. Indeed, most of the health check indicators are positive and the customer satisfaction ratings derived from the NEMS survey of February 2016 are high. Thus, we have no hesitation in concurring with England & Lyle's overall conclusion that *'Washington Town Centre is performing relatively well and is a vital and viable centre'*. This conclusion forms the backdrop to our subsequent assessment of the implications of the various cumulative trade diversion scenarios associated with Peel's Section 73 application proposal, to which we now turn.

HV Assessment of Cumulative Trade Impacts

- 6.27 In its representation of 31st July 2015, Colliers describes the initial impact assessment undertaken by Savills in its original Retail Statement as being '*not fit for purpose*'; we tend to agree. Nevertheless, as a result of our subsequent meetings with Savills, as referred to in Paragraph 1.7 of this Report, Savills agreed to use the cumulative impact model that we had used to underpin our Report to the Council of June 2015, in respect of the previous B&Q and Jomast applications. However, Savills have made an important refinement to the methodology we had employed by building in the planning commitments one-by-one, in a sequence agreed with ourselves, rather than all at once. In contrast, we build the commitments in together, but with sales densities at 90 per cent of company benchmarks to reflect competition between them. Savills also employs this 90 per cent sales density assumption, despite building the commitments in one-by-one, so we consider there is a degree of 'double discounting' under their approach.
- 6.28 We address this 'double discounting' point later in this section but, first, we set out our own cumulative impact findings. These are based on the same model as used to underpin the June 2015 report, so as to ensure consistency. However, given the passage of time, we have obviously rolled forward the impact design year, from 2019 to 2021, so as to reflect the NPPF requirement to assess impacts up to five years from when the application is submitted. We have also made sure that we are using the most up-to-date information on retailer sales densities and have allowed for the further population and expenditure change occurring between 2019 and 2021.
- 6.29 In our previous Report to the Council of June 2015 in respect of the B&Q and Jomast applications, we modelled sixteen potential cumulative impact scenarios, as reproduced in Table 6.1 of this Report. The 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 which 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.

Table 6.1: The 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%

6.30 However, the B&Q application at Armstrong Road was subsequently refused on 8th September 2015, so that we now need to model two variations of a new scenario, which we term Scenario R. The first version, which we term 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 version, which we term Scenario R2, reflects the conclusion that we have reached in Paragraph 5.18 of this Report, to the effect that the heavily restricted nature of goods that may be sold from the non-food retail park fall-back position at the Armstrong Road site means that the full implementation of the 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.

6.31 Thus, 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 our conclusion 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.

6.32 These planning ‘commitments’ include stores opened since the time of the GL Hearn commissioned telephone survey of shopping patterns, which was undertaken by NEMS in April 2013. Our model continues to use the GL Hearn commissioned survey, rather than the NEMS survey of February 2016 that underpins the Sunderland Retail Needs Assessment 2016, both in the interest of consistency, and because the two surveys produce almost identical estimates for the total retail turnover of Washington Town Centre, having adjusted for the effects of the Tesco store at Sunderland Retail Park, the

Morrisons store at Birtley, and B&M at the Peel Centre, which were all open and trading at the time of the most recent survey, whereas they were commitments at the time of the GL Hearn commissioned survey (i.e. April 2013).

Trading Impact Results for Washington Town Centre

- 6.33 The results for Scenario R1 (with the Armstrong Road non-food retail park fall-back) and Scenario R2 (without the Armstrong Road non-food retail park fall-back), using our methodology, are set out in full in the impact spreadsheets contained in Volume 2 of our Report, and are summarised in Table 6.2.

Table 6.2: Summary of Cumulative Impacts on Washington Town Centre in 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%

- 6.34 Given that we no longer regard the extant consent for a non-food retail park at Armstrong Road to constitute a ‘real’ fall-back position, we consider that significantly more weight should be given, instead, to the findings under Scenario R2, which exclude it from the cumulative assessment.
- 6.35 Thus, it can be seen from Table 6.2 that the cumulative impact on Washington Town Centre overall retail turnover, under Scenario R2, is 12.8 per cent. This is a level of impact which is comfortably below our assessment as to the level of impact that is likely to give rise to a ‘significant adverse’ impact on the vitality and viability of Washington town centre. Moreover, even under Scenario R1, which we regard to be no more than merely ‘theoretical’, the cumulative impact on Washington Town Centre’s overall turnover, at exactly 15.0 per cent, is not at a level that gave rise to concerns in our appraisal of the cumulative impacts of earlier out-of-centre retail planning applications/commitments.

- 6.36 We note, 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 in our earlier audit reports. 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 for a food superstore has been included in the cumulative analysis for Scenario R2 because it is considered, on balance, to be a real fall-back position for the reasons stated earlier in this report. The extant consent for a food superstore is, therefore, a material consideration; however, we give it limited weight, because we consider it to be unlikely to be developed within the next five years, which is the relevant time horizon for assessing impacts.
- 6.37 Thus, whilst we have focused attention on the food superstore fall-back for Phase 1 of the Peel Centre, because it gives rise to the worst case impacts, we consider, on balance, that a convenience led 'fall-back' for Phase 1, whereby a leading foodstore operator takes Unit 1, and an operator such as Iceland takes Unit 2, is more likely than a food superstore. Therefore, we have done a second iteration of Scenario R2 to reflect the cumulative impact associated with this convenience goods fall-back position for Units 1 and 2 of the Peel Centre, rather than the food superstore fall-back for the whole of Phase 1.
- 6.38 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 is lower, at 11.9 per cent, than the food superstore iteration of R2, which had an overall impact of 12.8 per cent. Thus, we consider that the second iteration of R2, 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.

- 6.39 Nevertheless, we consider that the most likely scenario for Phase 1, 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, we have done a third iteration of the Scenario R2 model, without the Peel Centre Phase 1 food superstore and assuming 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 we consider 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.
- 6.40 Thus, in Table 6.3, we summarise the outcome for the various iterations of Scenario R2, 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 6.3 – 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%

- 6.41 Table 6.3 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 which are considerably below our assessment of the 15 per cent

level of trade diversion that gave rise to concern in our earlier audit reports. Thus, given that there has been no material change in the health of Washington Town Centre over the past couple of years, we conclude 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.

- 6.42 Although the first iteration of Scenario R2, which assumes a food superstore at Phase 1 of the Peel Centre, produces an impact on Washington’s convenience sector of 20.9 per cent, such a superstore, in the hands of one of the UK’s leading food retailers, is considered to be unlikely to be delivered and operational within the next five years. However, we remain of the view that the superstore is still a ‘*real*’ fall-back position because there is a ‘*very slight*’ or ‘*outside*’ chance that it could happen, so that it is more than a merely theoretical prospect. We would emphasise, also, that the incremental impact of Peel’s Section 73 application is very limited, at 2.3 per cent in the convenience goods sector, and at 0.3 per cent in the comparison goods sector under Scenarios R1 and R2. Thus, although we consider that the cumulative approach is the appropriate way to undertake the tests set out in Paragraph 26 of the NPPF, it would not be fair, in our view, for the decision-maker to give no weight to the very low incremental impact caused by Peel’s Section 73 application proposal as part of this cumulative position.
- 6.43 Thus, with respect to Washington Town Centre, we consider 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.
- 6.44 However, before we turn to consider trade impacts in relation to Concord Local Centre, we first have a brief discussion on the outcome of the new cumulative impact modelling work prepared by Savills, which was emailed to the Council on 17th August 2016.

Savills' Assessment of Cumulative Trade Impacts

- 6.45 Savills' assessment of cumulative impact uses the HollissVincent model and all of the key data inputs, but it employs an alternative methodology in relation to commitments. In our work, we have built the commitments into the model at the same time, but have applied sales densities that represent 90 per cent of company averages, so as to reflect the competition between the commitments that would arise if they all came on stream at the same time.
- 6.46 Savills, in contrast, builds in the commitments one-by-one, in the most likely sequential order of their implementation, and this is a sequential order that has been agreed with hollissvincent. However, Savills also applies HollissVincent's 90 per cent benchmark sales densities. So, although we did not raise this with Savills at the time of our meetings, we now consider that there has been an element of double discounting, because the commitments naturally impact on each other when they are built in one-by-one, and it is arguable that their starting sales densities should be at 100 per cent of benchmark levels.
- 6.47 Therefore, in Table 6.4, we set out a summary of Savills' cumulative impact findings, both with the non-food retail park at Armstrong Road as a commitment (SAV1), and without the non-food retail park at Armstrong Road (SAV2). We would emphasise that we are in agreement with Savills in relation to the weight that should be given to the extant consent for a non-food retail park at Armstrong Road, because we now consider that this commitment is merely *'theoretical'*. As a consequence, we agree that significantly more weight should be given to the SAV2 model findings. Nevertheless, given the double discounting point, the findings in Table 6.4 are provided at three levels of sales densities for commitments – 90 per cent (as used by Savills), 95 per cent, and 100 per cent – so as to test the sensitivity of this assumption.

Table 6.4 – Sensitivity Testing of Cumulative Impact Results from Savills’ Modelling in 2021

	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 %
SAV1 – at 90 per cent benchmark sales densities for commitments	25.9	19.7%	11.6	8.8%	37.5	14.2%
SAV1 – at 95 per cent benchmark sales densities for commitments	26.7	20.3%	12.2	9.3%	38.9	14.8%
SAV1 – at 100 per cent benchmark sales densities for commitments	27.5	21.0%	12.8	9.7%	40.3	15.3%
SAV2 – at 90 per cent benchmark sales densities for commitments	25.9	19.7%	6.2	4.7%	32.1	12.2%
SAV2 – at 95 per cent benchmark sales densities for commitments	26.7	20.3%	6.6	5.0%	33.3	12.6%
SAV2 – at 100 per cent benchmark sales densities for commitments	27.5	21.0%	6.9	5.3%	34.4	13.1%

- 6.48 Comparison of Savills’ findings at the 95 per cent sales density level for commitments are very similar to the findings arising from our own methodology. As a consequence, we can conclude that, with the adjustment to Savills’ findings for the double discounting issue, the methodologies of both firms are robust, with no material difference in the outcome. Thus, the work undertaken by Savills reinforces our own conclusion that, on balance, Peel’s Section 73 application, in combination with commitments and ‘real’ fall-back positions, is unlikely to have a significant adverse impact on the vitality and viability of Washington town centre.

Results for Concord Local Centre

- 6.49 Table 6.5 sets out the findings for Concord Local Centre using the hollissvincent methodology, both with (Scenario R1) and without (Scenario R2) the extant consent for a non-food retail park at Armstrong Road. As was the case with Washington, we advise that significantly more weight should be given to the Scenario R2 findings, because the extant consent at Armstrong Road is no longer considered to be a ‘real’ fall-back, so that it should not be included in the assessment of cumulative impact. Table 6.5 also reflects the worst iteration of Scenario R2, whereby a food superstore is developed on the site of Phase 1 of the Peel Centre.

Table 6.5: Summary of Cumulative Impacts on Concord Local Centre in 2021

Scenario	CUMULATIVE IMPACTS ON CONCORD LOCAL 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	0.2	10.2%	0.2	4.8%	0.4	6.7%
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	0.2	10.2%	0.1	2.7%	0.3	5.3%

6.50 Table 6.5 reveals 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, under Scenario R2(iii), whereby all of the units at Phase 1 of the Peel Centre are assumed to continue to be occupied by comparison goods retailers, which we consider to be the most realistic scenario, the impact on Concord's convenience goods sector falls to 5.9 per cent (see final Spreadsheet Table of Appendix 4 in Volume 2). Thus, given that Concord Local Centre is a relatively busy, service-oriented centre, we do not consider 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.

Conclusions in Relation to the NPPF Impact Tests

Impact on Existing, Committed and Planned Investment

6.51 In our opinion, any impacts on previous town centre investment schemes that have already been completed are more 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). In any event, no clear evidence has been put forward by Colliers on behalf of M&G Real Estate to substantiate a case that Peel's current Section 73 application proposal is likely to cause a 'significant adverse' impact on existing/ongoing, committed and planned investment in Washington Town Centre; nor are we aware of any

existing/ongoing, committed and planned investment in Concord Local Centre that would be 'significantly adversely' affected by Peel's Section 73 application proposal.

- 6.52 We conclude, therefore, that the Section 73 application, on its own, and cumulatively with other commitments and fall-backs, 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 on Town Centre Vitality and Viability

- 6.53 With the passage of time, we now consider that the extant consent for a non-food retail park at Armstrong Road (under planning permissions 01/02086/OUT and 05/00412/REM) is so heavily restricted, in terms of the range of non-food goods that may be sold, that there is not even a '*very slight chance*', or an '*outside chance*' of it being developed and occupied over the next five years. We consider, therefore, that the extant consent does not represent a '*real*' fall-back position and that it is now entirely '*theoretical*'. As a consequence, no weight should be given to it and it should not be included in the assessment of cumulative impacts.
- 6.54 We give significantly more weight, therefore, to the findings arising under the various iterations of Scenario R2. Moreover, we consider that the most likely outcome, if permission is granted for Peel's Section 73 application, arises under Scenario R2(iii), where the Phase 1 units at the Peel retail park continue to be occupied by comparison goods traders, albeit that these comparison traders may change, given that the Section 52 agreement that governs the retail park does not exclude retailing of clothing. Thus, under this most realistic outcome, the cumulative impact Washington Town Centre's overall turnover is 8.5 per cent and the cumulative impact on its convenience goods sector of 12.3 per cent (as shown in the final row of Table 6.3).
- 6.55 Furthermore, even under the worst case iteration (Scenario R2(i)), whereby a food superstore operates from the site of Phase 1 of the Peel Centre, the cumulative impact on Washington Town Centre's overall turnover, of 12.8 per cent, is considered unlikely to cause any 'significant adverse' impacts in relation to the Town Centre's vitality and viability, its trading levels and the consumer choice it offers. The cumulative impact on

Washington's convenience turnover, arising under Scenario R2(i), is quite high, at 20.9 per cent. Nevertheless, we do not consider that a food superstore is likely to be developed and occupied at the Peel Centre within the NPPF's five-year timeframe for assessing impacts. Furthermore, even if such a food superstore were operating at the Peel Centre within the next five years, we consider that the resultant cumulative impact on Washington's convenience goods sector would not, of itself, represent a 'significant adverse' impact on the overall vitality and viability of the Town Centre.

- 6.56 It also noteworthy that the incremental impact of Peel's Section 73 application is very limited, at 2.3 per cent in the convenience goods sector, and at 0.3 per cent in the comparison goods sector under Scenarios R1 and R2. Thus, although we consider that the cumulative test is the appropriate test to undertake, it would not be fair, in our view, for the decision-maker to give no weight to the very low incremental impact caused by Peel's Section 73 application proposal.
- 6.57 Our findings show 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, under Scenario R2(iii), whereby all of the units at Phase 1 of the Peel Centre are assumed to continue to be occupied by comparison goods retailers, which we consider to be the most realistic scenario, the impact on Concord's convenience goods sector falls to 5.9 per cent (see final Spreadsheet Table of Appendix 4 in Volume 2). Thus, given that Concord Local Centre is a relatively busy, service-oriented centre, we do not consider that there are grounds to resist Peel's Section 73 application proposal on the basis of a 'significant adverse' cumulative impact on the overall vitality and viability of Concord Local Centre.
- 6.58 We conclude, therefore, that 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.

- 6.59 This conclusion in respect of the current Section 73 application at the Peel Centre (ref: 15/00978/VAR) differs from the previous conclusion we reached, in June 2015, in respect of the Section 73 application at Armstrong Road (ref: 14/02687/VAR). There are, however, three fundamental reasons for this different conclusion:
- i) first, and of most significance, is the fact that we no longer consider 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, we regarded the development of such a retail park under this planning permission as being '*unlikely*', even in June 2015;
 - 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.

7 RENEGERATION, SOCIAL INCLUSION AND EMPLOYMENT IMPACTS

Introduction

- 7.1 Paragraph ID: 2b-017 of the NPPG states that in instances where the evidence suggests that a proposed development is unlikely to have a 'significant adverse' impact on the town centre, under the tests set out in Paragraph 26 of the NPPF, the Local Planning Authority '*...must then consider all other material considerations in determining the application, as it would for any other development*'. Thus, in making its decisions on Peel's Section 73 application, the Local Planning Authority will need to have regard to a number of other material considerations. These material considerations include those which are outside the scope of our instructions and expertise, such as the potential impact of the application on climate change, flood risk, the natural environment and the likely impact on local traffic levels and congestion, and others which do fall within our expertise. In this section of our report, therefore, we seek to contribute to the process by commenting on the relative merits of Peel's Section 73 application in relation to physical regeneration, employment and social inclusion impacts.

Physical Regeneration

- 7.2 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.
- 7.3 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.

- 7.4 We have already stated 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.
- 7.5 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, we consider 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. We reached a similar conclusion in 2015, in respect of B&Q's Section 73 application at Armstrong Road.
- 7.6 We accept, 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, we anticipate a need for further applications in relation to elevations and further Section 73 applications which seek to provide some relaxation to the range of non-food goods that may be sold.

Employment and Local Spending

- 7.7 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

- 7.8 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.

Conclusions in Relation to Regeneration, Employment and Social Inclusion Impacts

- 7.9 Our 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.
- 7.10 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).

8 CONCLUSIONS AND RECOMMENDATIONS

Principles Established in the NPPF

- 8.1 The NPPF establishes a number of fundamental principles which are of relevance in determining the planning application proposal which is the subject of this report; we draw attention, in particular, to the following principles:
- a) The NPPF emphasises the role of the development plan as the statutory starting point in the consideration of planning applications, so that applications which accord with an up-to-date development plan should be approved without delay, whereas if there is conflict with the development plan, applications should be refused, unless material considerations indicate otherwise.
 - b) The NPPF itself is a material consideration to which we give significant weight.
 - c) Due weight should be given to the relevant policies in an existing development plan according to their degree of consistency with the policies of the NPPF.
 - d) In decision taking, the presumption in favour of '*sustainable development*' applies not only where development proposals accord with the development plan, but also in circumstances where the development plan is absent, silent or relevant policies are out-of-date.
 - e) The NPPF maintains previous policy in seeking to promote competitive and healthy town centres.
- 8.2 For the reasons set out in Section 3 of this 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 which is located outside town centres, as set out in Paragraphs 26 and 27 of the NPPF. As a consequence, we consider that more weight should be given to the up-to-date tests in the NPPF.

Conclusion in Relation to the Development Plan

- 8.3 For the reasons set out in Section 4, we consider that the application proposal is consistent with the sequential approach aspects of the UDP's relevant saved Shopping Policies. However, for the reasons set out in Section 6, we consider that the application proposal (together with existing commitments and/or potential fall-backs) would cause some conflict with the town centre enhancement objectives contained in saved Shopping Policies S1 and S2, and with the objectives of Area Proposals WA7 and WA33 of the UDP, as a result of trade diversion. Moreover, we consider that the degree of conflict with these policies increases materially when the cumulative effects of the application proposal are considered, together with existing commitments and fall-backs.
- 8.4 However, following the Secretary of State's decision not to save development management Policy S5, it is clear that the remaining saved Shopping Policies and 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, which are set out in Paragraphs 26 and 27 of the NPPF; we give more weight, therefore, to the latter.

Conclusions in Relation to the Sequential Test

- 8.5 Our overall conclusion is that the applicant has satisfied the requirements of the sequential approach and that the Section 73 application at the Peel Centre meets the sequential test set out in 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 the Section 73 application proposal is seeking to facilitate, even having applied the appropriate degree of flexibility. Moreover, the only sites that have merited detailed investigation are the Western Car Parks, covered by Area Proposals WA34 (1) and WA37 (2) of the UDP, and the Eastern Car Parks, covered by Area Proposal WA37 (1) of the UDP. These sites are not considered to be '*currently available*', albeit that they may have potential, in years to come, to provide for extensions to the Primary Shopping Area, so as to meet the quantitative and qualitative needs identified in the Sunderland Retail Needs Assessment 2016, particularly after the year 2025.

Overall Conclusions in Relation to the Fall-back Positions

- 8.6 With the further passage of time, we consider that the prospect of full implementation and occupation of the non-food retail park at Armstrong Road, under planning permission refs: 01/02086/OUT and 05/00412/REM, is now merely *'theoretical'*, or *'fanciful'*, so that we give no weight to it as a potential fall-back position. This position is also taken by Savills, on behalf of the applicant. Nevertheless, for completeness, our cumulative impact modelling produces results both 'with' and 'without' the Armstrong Road non-food retail park fall-back, so as to fully inform the Council's decision-making process.
- 8.7 In contrast, we consider that there remains *'an outside chance'*, or *'slight possibility'*, that a food superstore may be developed on the site of Phase 1 of the Peel Centre, pursuant to planning permission ref: 12/03137/OUT. We consider, therefore, that this extant consent remains *'real'* and give it weight as a material planning consideration, and incorporate it into our assessment of cumulative impacts. There are also further fall-back positions at Phase 1 of the Peel Centre, under refs: 06/04039/FUL and 08/02091/FUL, which have a slight chance of being implemented, but which would result in lower cumulative impacts than is the case under the food superstore scenario. Our impact modelling therefore reflects the worst case scenario.

Conclusions in Relation to the NPPF Impact Tests

Impact on Existing, Committed and Planned Investment

- 8.8 In our opinion, any impacts on previous town centre investment schemes that have already been completed are more 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). In any event, no clear evidence has been put forward by Colliers on behalf of M&G Real Estate to substantiate a case that Peel's current Section 73 application proposal is likely to cause a 'significant adverse' impact on existing/ongoing, committed and planned investment in Washington Town Centre. Nor are we aware of any existing/ongoing, committed and planned investment in Concord Local Centre that would be 'significantly adversely' affected by Peel's Section 73 application proposal.

- 8.9 We conclude, therefore, that the Section 73 application, on its own, and cumulatively with other commitments and fall-backs, 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 on Town Centre Vitality and Viability

- 8.10 With the passage of time, we now consider that the extant consent for a non-food retail park at Armstrong Road (under planning permissions 01/02086/OUT and 05/00412/REM) is so heavily restricted, in terms of the range of non-food goods that may be sold, that there is not even a '*very slight chance*', or an '*outside chance*' of it being developed and occupied over the next five years. We consider, therefore, that the extant consent does not represent a '*real*' fall-back position and that it is now entirely '*theoretical*'. As a consequence, no weight should be given to it and it should not be included in the assessment of cumulative impacts.
- 8.11 We give significantly more weight, therefore, to the findings arising under the various iterations of Scenario R2. Moreover, we consider that the most likely outcome, if permission is granted for Peel's Section 73 application, arises under Scenario R2(iii), where the Phase 1 units at the Peel retail park continue to be occupied by comparison goods traders, albeit that these comparison traders may change, given that the Section 52 agreement that governs the retail park does not exclude retailing of clothing. Thus, under this most realistic outcome, the cumulative impact Washington Town Centre's overall turnover is 8.5 per cent and the cumulative impact on its convenience goods sector of 12.3 per cent (as shown in the final row of Table 6.3).
- 8.12 Furthermore, even under the worst case iteration (Scenario R2(i)), whereby a food superstore operates from the site of Phase 1 of the Peel Centre, the cumulative impact on Washington Town Centre's overall turnover, of 12.8 per cent, is considered unlikely to cause any 'significant adverse' impacts in relation to the Town Centre's vitality and viability, its trading levels and the consumer choice it offers. The cumulative impact on Washington's convenience turnover, arising under Scenario R2(i), is quite high, at 20.9 per cent. Nevertheless, we do not consider that a food superstore is likely to be developed and occupied at the Peel Centre within the NPPF's five-year timeframe for

assessing impacts. Furthermore, even if such a food superstore were operating at the Peel Centre within the next five years, we consider that the resultant cumulative impact on Washington's convenience goods sector would not, of itself, represent a 'significant adverse' impact on the overall vitality and viability of the Town Centre.

- 8.13 It also noteworthy that the incremental impact of Peel's Section 73 application is very limited, at 2.3 per cent in the convenience goods sector, and at 0.3 per cent in the comparison goods sector under Scenarios R1 and R2. Thus, although we consider that the cumulative test is the appropriate test to undertake, it would not be fair, in our view, for the decision-maker to give no weight to the very low incremental impact caused by Peel's Section 73 application proposal.
- 8.14 Our findings show 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, under Scenario R2(iii), whereby all of the units at Phase 1 of the Peel Centre are assumed to continue to be occupied by comparison goods retailers, which we consider to be the most realistic scenario, the impact on Concord's convenience goods sector falls to 5.9 per cent (see final Spreadsheet Table of Appendix 4 in Volume 2). Thus, given that Concord Local Centre is a relatively busy, service-oriented centre, we do not consider that there are grounds to resist Peel's Section 73 application proposal on the basis of a 'significant adverse' cumulative impact on the overall vitality and viability of Concord Local Centre.
- 8.15 We conclude, therefore, that 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.
- 8.16 This conclusion in respect of the current Section 73 application at the Peel Centre (ref: 15/00978/VAR) differs from the previous conclusion we reached, in June 2015, in respect of the Section 73 application at Armstrong Road (ref: 14/02687/VAR). There are, however, three fundamental reasons for this different conclusion:

- i) first, and of most significance, is the fact that we no longer consider 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, we regarded the development of such a retail park under this planning permission as being *'unlikely'*, even in June 2015;
- 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.

Conclusions in Relation to Regeneration, Employment and Social Inclusion Impacts

- 8.17 Our 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.
- 8.18 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).

Recommendations

8.19 We recommend that the Local Planning Authority accepts that there is no retail policy reason for refusal of the Peel Section 73 application, either in relation to the sequential test or in relation to the two impact tests set out in Paragraph 26 of the NPPF. Thus, in the event that the Local Planning Authority considers that planning permission should be granted, having undertaken the balancing exercise required by Paragraph ID 2b-017 of the NPPG, we recommend the imposition of retail policy related conditions which:

- i) confine the sale of convenience goods to Unit A;
- ii) limit the gross floorspace of Unit A to 1,356 sq.m gross;
- iii) confine the sale of the restricted range of comparison goods to Units B, C and D (apart from an ancillary part of Unit A to reflect the fact that supermarkets do sell some comparison goods);
- iv) limit the aggregate floorspace associated with Units B, C and D to 2,973 sq.m gross;
- v) prevent any sub-division of Unit A;
- vi) prevent any sub-division of Units B, C and D that would result in the creation of a unit of less than 929 sq.m gross; and which
- vii) refine the list of permitted comparison goods that may be sold, so as to reflect the revised replacement for Condition 13 set out in Paragraph 1.4 of our Report.