

Reference No.: 12/00022/NONDET Appeal for Non-Determination
(Planning Application reference 11/02678/OUT)

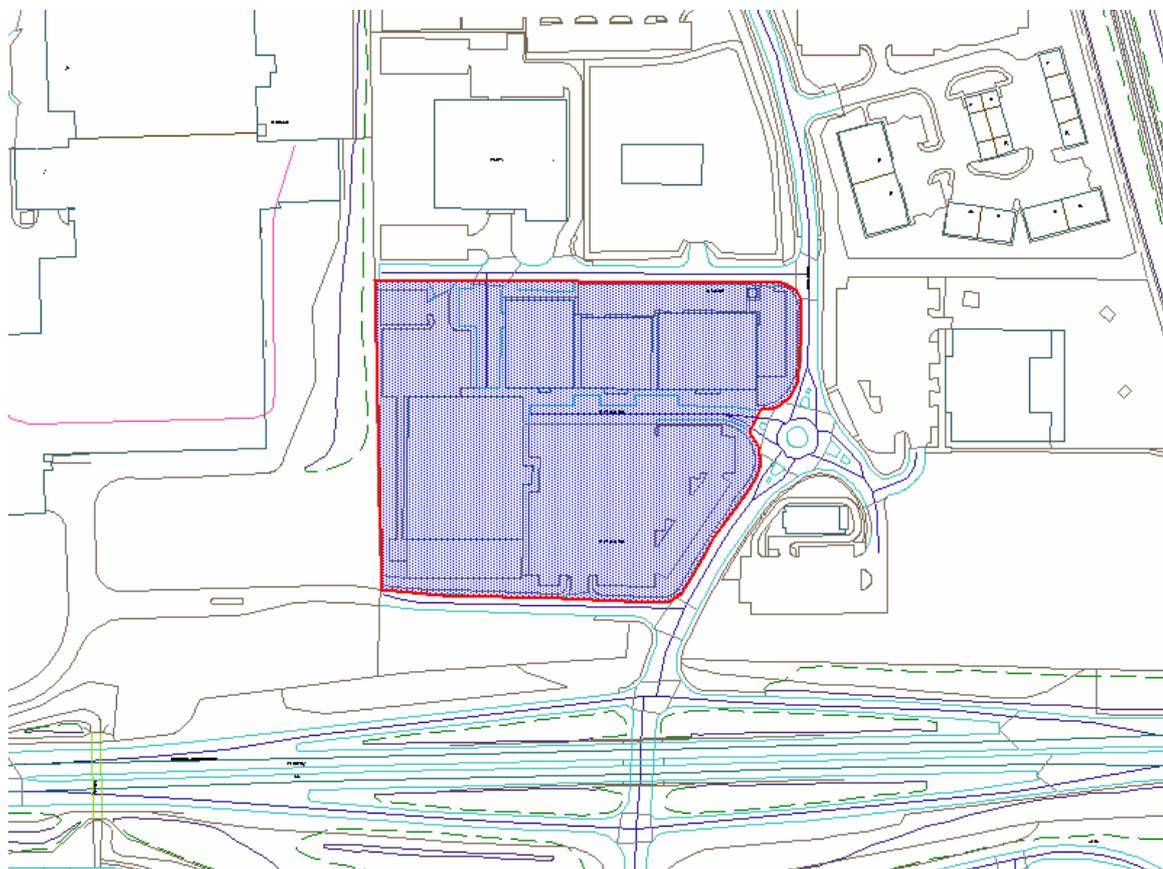
Proposal: **Erection of a 9,292 sq.m food superstore on stilts, together with undercroft car parking, petrol filling station and associated works**

Location: Phase 1 The Peel Centre Spire Road Glover Washington

Ward: Washington North

Applicant: Peel Land and Property Investments Ltd

Location Plan



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1. Application Proposal and Committee History

The application seeks outline planning permission for a 9,292 square metres (gross) food retail superstore (falling into Class A1 of the Town and Country Planning (Use Classes) Order, 1987), with an associated petrol filling station and undercroft car park. The applicant is seeking a total of 560 car parking spaces, including 27 spaces for disabled drivers and 23 spaces for parent and child use.

The proposed superstore would have a total sales area of 5,520 square metres, excluding checkouts, divided between convenience goods of 3,418 square metres sales area and comparison goods of 2,102 square metres sales area. The Appellant's agent has stated that the end user of the proposed superstore would be Tesco Stores Ltd.

The application was submitted in outline, with all detailed matters reserved, except access, although indicative details of the store layout and proposed external appearance have been provided.

As Members will recall, this application was previously reported to Committee on 22nd June 2012. At the committee meeting Members agreed with the officer's recommendation to defer the consideration of the application following the receipt of late material representations (which were submitted after publication of the committee report) as follows:-

- (i) a letter from FSP Retail Business Consultants dated 10th June 2012 (on behalf of Prudential) which referred to new evidence of a significant number of linked trips in Washington town centre between the two superstore anchors and the other retail units). As explained above, the June 2012 committee report was published prior to the receipt of evidence from FSP of linked trips associated with the two anchor stores;
- (ii) a letter from Peacock and Smith dated 20th June 2012 (on behalf of Wm Morrison Supermarkets plc) proposing a reduction in the net floorspace of the competing Armstrong Road superstore application (ref: 12/00100/FUL).

In view of the above it was agreed by Members that the application should be deferred (together with the competing application ref: 12/00100/FUL) to enable officers to consider further the impact assessment for both applications in light of these late representations.

Since the last committee meeting, officers have continued to review, reassess and update with an open mind the impact assessments for this application with specialist advice from an independent retail planning consultant, Hollissvincent and taking into account the following:-

- (i) additional detailed representations received from Savills (agents for the applicant), Colliers (on behalf of Prudential) and Osborne Clarke (on behalf of Asda);
- (ii) the detailed background data in respect of linked trips in Washington town centre referred to in FSP's letter dated 12th June 2012;
- (iii) the results of a new telephone survey of households within the Washington area regarding shopping habits carried out on behalf of Savills (for Peel) which was received on 22nd January 2013;
- (iv) the results from the Council's own independent survey of shoppers in Washington town centre carried out in March 2013 in order to understand (either way) the degree of linked trips between the two existing superstores (Asda and Sainsbury's) and the other retail units in the centre;
- (v) the guidance on the consideration of the fallback position for an application site as contained in Paragraph D.10 of the Planning for Town Centres: Practice Guidance;
- (vi) the relevant case-law on the consideration of the fallback position;
- (vii) the planning permission granted by Gateshead MBC on 20th December 2012 (Ref: DC/12/00980/FUL) to Wm Morrison Supermarkets plc for a Class A1 supermarket at Durham Road, Birtley.

In addition, on 19th April 2013 the Council then received the raw results of a further telephone survey undertaken by Prudential in the Washington area regarding shopping patterns and spending, linked trips and mode of travel for shopping trips. However, the information received to date is not in a format which enables comparison with the findings of the earlier survey carried out on behalf of Savills (for Peel). Accordingly, for the purposes of the updated cumulative impact assessments in respect of this application (as set out in Section 8 below), officers have used the data produced by the applicant through its telephone survey for Washington carried out in November and December 2012.

In the meantime, whilst all of the above work and relevant discussions have been ongoing, Peel decided to appeal for non-determination of its application. As a consequence, the Council no longer has jurisdiction to determine this application.

Given the significant nature and size of this proposed development and the complexity of the relevant issues, the Secretary of State has decided to determine this appeal himself rather than through the standard route of an appointed planning inspector. The public inquiry has been listed for 10 days starting on 11th June 2013.

Accordingly the purpose of this report is to seek the endorsement of Members to the views of officers in respect of this application for the purposes of the forthcoming public inquiry.

Members should also note that in parallel with this appeal, Peel submitted a second duplicate planning application to the Local Planning Authority (Ref: 12/03137/OUT) in exactly the same form as this existing application proposal. However, on 22nd April 2013, Peel subsequently notified the Council that it now intends to amend this second application to reduce the size of the proposed superstore under this proposal to 5,485 sq.m gross (with a reduced net sales area of 3,038 sq.m). The Council is therefore awaiting the submission of amended plans and updated supporting documents from Peel in respect of this second application which will then be subject to public consultation and consideration.

2. The Application Site

The application site is located within Phase 1 of the 'Peel Centre', which is a retail park located approximately 2.5km to the east of Washington Town Centre. It is an 'out of centre' site for the purposes of the Development Plan and for the purposes of the definitions set out in Annex 2 of the National Planning Policy Framework (the NPPF). The site is located adjacent to the A1231 Sunderland Highway and is accessed off Spire Road.

The application site is an existing retail park comprising five retail units, totalling 6,762 sq.m gross, and a garden centre of 917 sq.m. Unit 2 is vacant, and the remaining units are occupied by Homebase (Unit 1), Carpetright (Unit 3), Franks Flooring (Unit 4A) and Wyndsors World of Shoes (Unit 4B).

To the east of the application site the applicant also owns land which is intended to form Phase 2 of the Peel Centre. A McDonald's restaurant and vacant health and fitness club already exist, but the remainder of the Phase 2 retail park has yet to be started. To the north of the Phase 2 site is the Clay's Garden Centre.

The application site is also bounded by the Glover Industrial Estate to the north and west. To the south a tree belt plantation separates the site from the A1321 Sunderland Highway, which, in turn, separates the Peel Centre from the nearest residential estate of Barmston.

3. Planning History and Potential Fallbacks for the Application Site

Planning History

Phase 1 of the Peel Centre was granted outline planning consent in August 1988, under planning reference 87/89. Phase 1 (as authorised by permission 87/89) comprises the non-food retail development which is already constructed and operational, together with car parking, service areas, a fast food unit (McDonald's) and a petrol filling station (not constructed).

This planning consent was subject to a Planning Agreement dated 8 August 1988 made pursuant to Section 52 of the Town and Country Planning Act 1971, as amended by a subsequent Deed of Revocation, dated 14 July 2006. The Planning Agreement prohibits the sale of convenience goods and a range of non-food comparison goods from the application site, but it does not prohibit the sale of clothing and shoes, or electrical items. Moreover, the Deed of Revocation, dated 14 July 2006, removed the restriction which previously prohibited the sale of sports goods from the site.

The Planning Agreement and the Deed of Revocation both expressly state that there is nothing in the Section 52 Agreement that prohibits the right to develop any part of Phase 1 of the Peel Centre site in accordance with any later planning permissions.

The High Court held in the case of R (on the application of) The Prudential Assurance Company Ltd) v Sunderland City Council and Peel Investments UK Ltd (2010) EWHC 1771 (Admin) that the restrictions under the Planning Agreement do not apply to the development at Units 1 and 2, which are authorised by subsequent permissions 06/04039/FUL and 08/02901/FUL. These permissions authorise the sub-division of Units 1 and 2 through a package of internal and external works which are to be carried out in accordance with the approved plans. The terms of the Section 52 Agreement were not referenced or conditioned in either decision and no conditions were imposed under either permission regarding the use of the proposed sub-units. As a consequence, the High Court held that the resulting lawful use of the new sub-units is Class A1 retail by virtue of Section 75(3) of the Town and Country Planning Act 1990.

The Local Planning Authority notes that the High Court's decision has been brought into question by the subsequent decision of the High Court in R (on the application of) Peel Land and Property Investments plc) v Hyndburn Borough Council and Others (2012) EWHC 2959, but it is understood that this is currently the subject of an appeal by the Appellant to the Court of Appeal.

On 22 October 2009 the Council issued certificates of lawful use or development under Section 192 of the 1990 Act in respect of Units 1 and 2 which certify that following the implementation of the sub-division works authorised by permissions 06/04039/FUL and 08/02901/FUL in each case the resulting sub-units could be used for Class A1 retail purposes.

On 28 July 2011, the Planning and Highways Committee considered a report regarding the potential modification of the two permissions 06/04039/FUL and 08/02901/FUL pursuant to Section 97(1) of the 1990 Act in order to impose the restrictions on use contained in the Planning Agreement. The Council resolved that it was not expedient to modify the two permissions because there was no clear evidence that, if fully implemented, the two permissions would have a significant adverse impact on the vitality and viability of the existing town centres in Washington and Concord.

There is also a full planning application (ref 09/02091/FUL) that is pending consideration for the erection of a new retail unit attached to the existing Unit 1, with the consequent demolition of the existing Unit 2. The new unit is proposed to have the same floorspace as the existing Unit 2, to be demolished. It should be noted, however, that the superstore proposal would result in all of the existing retail units on Phase 1 being demolished.

As explained above, the applicant also owns the adjacent Phase 2 site to the east, where there is a McDonald's restaurant and a vacant health and fitness club, the latter having been granted consent under ref 07/02812/FUL. The applicant recently submitted an application for the change of use of the health and fitness club to Class A1 non-food retail (ref: 11/0221/FUL), although this application was later withdrawn. There is also an extant consent granted by the Secretary of State in July 2004 (ref App/J4525/V/03/1123896) for four further non-food retail warehouse units in Phase 2 of the Peel Centre, totalling 4,329 square metres gross. These units are subject to restrictions imposed by condition 13 of the Secretary of State's decision letter, which limits the range of non-food goods that may be sold (as amended subsequently, by permission ref 07/02384/VAR).

Potential Fallbacks

The applicant's support material puts forward a number of potential fallback positions in respect of the application site (i.e. what the applicant could do on the application site as it stands without planning permission) in comparison to the proposed development.

It should be noted that the applicant has changed its position on the potential fallback scenarios for the application site since it submitted its representations in respect of the potential modification of permissions 06/04039/FUL and 08/02901/FUL.

Nevertheless the Council has investigated all of the potential fallback positions put forward by the applicant in its Retail Statement. The Local Planning Authority considers that there are two fallback positions in respect of the application site which are 'real', as opposed to 'hypothetical'.

In order for a fallback to be a material consideration in respect of a planning application, the prospects of it occurring must be a 'real' and not merely 'hypothetical' (*Brentwood Borough Council v Secretary of State for the Environment* (1996) 72 P&CR 6).

The two principal fallback positions promoted by the applicant (in light of permissions 06/04039/FUL and 08/02901/FUL) which the Local Planning Authority considers to be 'real' rather than just a mere hypothetical prospect, and therefore material considerations, are:

- a foodstore led fallback, whereby a leading food operator occupies the whole of Unit 1, a food discount operator occupies the whole of Unit 2 and Section 52 planning agreement compliant electrical, clothing and sports goods retailers occupy Units 3, 4a and 4b ("Fallback Position 1"); and
- a non-food led fallback, whereby Section 52 compliant clothing and fashion operators occupy Units 1 and 2, and with the same electrical, clothing and sports goods retailers occupying Units 3, 4a and 4b, as per Fallback Position 1 above ("Fallback Position 2").

It is then a question of judgement for the decision maker as to how much weight is attached to a fallback position that is considered to be "real".

It is appropriate to consider the "relative planning evils" of the "real" fallback positions compared with the application proposal (Snowden v SoS for the Environment (1980) JPL 749).

Further, the advice in Paragraph D10 of the Planning for Town Centres: Practice Guidance states that when considering the impact of a development proposal which has a fallback position, the decision maker needs to look at both the impact of the proposal as a whole and the incremental impact based on the difference between the two (i.e. the proposal and the fallback).

The cumulative trade impacts associated with each of the two fallback positions (together with existing commitments) will be assessed in Section 9 of this report in comparison with the cumulative trade impacts associated with the application proposal (together with existing commitments).

4. Competing Proposal by Morrisons

As Members are aware, there is also a live planning application (ref: 12/00100/FUL) to develop a food superstore submitted by Peacock and Smith on behalf of Optimisation Developments Ltd (a subsidiary of Wm Morrison Supermarkets plc.) in respect of the Armstrong Road site in Washington.

Under the original application, full planning permission was sought for a new food superstore of 7,077 sq.m gross (with a net sales area of 3,702 sq.m), together with a petrol filling station and 480 car parking spaces.

The Morrisons application site is located approximately 1km to the north of Washington Town Centre, and the Local Planning Authority considers that it is in an 'out-of-centre' location for the purpose of the Development Plan and the definitions set out in Annex 2 of the NPPF.

Having previously appraised the support material for both of the Peel and Morrisons superstore applications, the Local Planning Authority considered these to be 'competing proposals' for the purposes of Paragraph D7 of the Planning for Town Centres Practice Guidance. As a consequence, the Local Planning Authority considered it necessary to assess the combined impact of both superstores, together with other planning commitments.

Members will recall that both applications were reported to the previous committee meeting on 22nd June 2012. In addition, Members will also recall that officers had concluded at that time that the combined cumulative impact of both proposed superstores (together with existing planning commitments) would cause significant adverse impacts on the vitality and viability of Washington town centre.

Further to the above, at the end of March 2013, Optimisation Developments Ltd submitted amended plans to the Council showing a reduced floorspace of the proposed superstore of 5,649 sq.m gross (with a reduced net sales area of 2,859 sq.m).

The Council is currently awaiting an updated design and access statement, retail statement, sequential test and impact assessments in respect of the amended application. This amended proposal will then be subject to further public consultation and consideration.

5. Publicity, Representations and Consultations

- Representations as a result of the applicant's own pre-planning application publicity and consultation exercises:

In response to the consultation exercise carried out by the applicant prior to submitting the planning application, a total of 44 completed feedback forms were received.

Of the 44 feedback forms received 40 agreed that they were generally in favour of the proposed development, with only 3 respondents being unsure and 1 being opposed.

Furthermore, Savills' correspondence (dated 26 March 2012) responding to third party representations contained the findings of a telephone survey commissioned by the applicant in December 2011 by DJS Research Ltd, an independent market research company. The telephone survey asked a single question of residents in the Washington portion of the ten minute drive time study area i.e. 'Would you support proposals for a new Tesco foodstore at the Peel Centre in Washington?' The result of the telephone survey is as follows; of the 443 people telephoned 47% answered 'yes', 34.3% answered 'no' whilst 18.7% answered 'don't know'.

Savills also commissioned DJS Research Ltd to undertake a new telephone survey of residents of the Washington catchment area in seeking to establish

current patterns of shopping expenditure. The survey was undertaken during November and December 2012 and the results have been used by the Council's consultants in undertaking an assessment of the cumulative trade impact of the application proposal, together with existing commitments for retail development, such as the new Morrisons permission in Birtley.

- **Representations made to the Local Planning Authority:**

In response to statutory consultation carried out by the LPA in the original processing of the planning application a total of 17 representations were received, along with a 1081 signed petition.

- Representations

Of the 17 representations received:

- 17 representations have been submitted an OBJECTION to the proposal.

Of the representations received 15 letters were identical in content. The concerns focused on traffic and noise pollution, stating that '*...getting in and out of Barmston Village will become virtually impossible if this supermarket is given planning permission*' (sic). The correspondences also asserted the view that the roads and roundabout around the application site are not designed to handle the volume of traffic the proposed development would introduce, while the highway network is busy courtesy of Hillary's blinds and Nissan employees.

The objectors consider there to be enough supermarket choice already, citing the new Sainsbury's store at Wessington Way and the ASDA store at the Galleries and Boldon. The correspondences finish by stating '*...that the smaller independent retailers do not stand a chance*' (sic) and that empty, boarded up shops will create eyesores for the local community, as witnessed in other areas where Tesco has been allowed to dominate.

Another correspondence cited a previous application (ref. 98/00668/OUT) for a Tesco foodstore being refused on the Phase 2 site due to objections from other companies. The objector did not consider that there was a need for another superstore in the area in view of those at the Galleries. The objector also commented on job creation by stating that the development proposal would lead to existing jobs being lost as companies would close down.

Another objection was received from the owners of a family run local store in Barmston Village who have operated there for 26 years. The correspondence explained that faced with the demolition of their previous store, which was located on the ground floor of a now demolished block of flats, negotiations took place with Sunderland City Council to build a new store on the site of the former village car park, which was subsequently approved via planning application ref 10/03238/FUL and is now their existing premises.

Before they embarked on this project, which they state was of considerable expense to themselves, they sought professional advice to ensure their investment would be worthwhile. The outcome of this advice was that their new store would be viable and worthwhile. However, following the submission of the Peel superstore proposal they again sought advice in order to ascertain the impact of the proposed superstore on their business. This culminated in a report which concluded that the objector's former store produced significantly greater profitability than would be expected in their new premises should the Peel superstore proposal be built.

The objection also expressed concern regarding levels of traffic, believing the development would cause congestion and delays, whilst also increasing pollution and noise levels. Finally the letter raised an additional point on job creation, citing a Daily Mail article which proffered the suggestion that supermarkets use this as a major weapon to push through hundreds of controversial planning applications.

- Petition

A 1081 signature petition was also received in objection to the proposal. This petition was organised by the 'Washington Local Traders against the TESCO development'. Their petition focused on the view that the proposed development would have a negative impact on local traders, particularly the smaller independents who already struggle in the harsh economic conditions.

A number of the 1081 signatories were collated in Barmston Village by the 'Barmston Village Traders Against the TESCO Development'. Their views were predicated on a covering letter which stated that the loss of local businesses will erode community spirit in an already struggling village with numerous social problems. It also cited the Tesco application which was refused 13 years previous (ref. 98/00668/OUT) and since this time the road traffic situation has changed markedly with the introduction of Hillary Blinds, MiKing and the Ambulance and Fire Station.

Accordingly there is concern over an increase in traffic '*...more so on match days*' (sic), whilst the covering letter also highlighted the recent Sainsbury's approval (ref. 10/03918/FUL) at Wessington Way and therefore questioned whether another supermarket was necessary, instead suggesting that what is really needed is a Cinema, ice rink and/or pub/restaurant.

Regarding some of the impact concerns expressed above it is considered that 'local' stores serve different and localised needs to that of a large food superstore. Local retailers generally serve their local area with everyday goods and build up a loyal customer base, whereas large food superstores inevitably serve a much wider catchment area and cater for a different need, principally bulky main food shopping.

The Agent, acting on behalf of the Appellant, in response cited paragraph D30 of the Planning for Town Centres Practice Guidance, which provides advice when approaching consideration of impact, wherein it states that '*...it will*

always be relevant to consider the character of development proposed... There is a general assumption that 'like affects like', so for example, in an area served by large modern foodstores, the effects of a new large food superstore are likely to fall disproportionately on the existing competing stores. Their proportionate impact on local independent retailers, or discount foodstores for example may be less'.

- Other Representations

Objections have been duly received by Osborne Clarke (on behalf of ASDA Stores Limited); Colliers, FSP and SJ Berwin (on behalf of The Prudential Assurance Company Limited). Both objectors argue that the application proposal fails the sequential test (for different reasons) and is likely to have a significant adverse impact on Washington town centre. The matters raised by these objections will be dealt with in the retail planning policy consideration sections of this report.

In addition, two letters (with associated material) of objection were also received from DTZ and Mott MacDonald on behalf of Mi-King, the occupier of land to the west of the proposed foodstore. The matters raised by these objections will be dealt with in the highway issues and arrangement section of this report.

A representation was also received from the bus operator Go North East who asked for the opportunity to speak to the developer to discuss whether funding might be available from the development. In response the Agent, acting on behalf of the applicant, responded to this written request by explaining that applicant and the intended operator for the store, Tesco, want to ensure that a quality public transport service continues when the store is built and operational. To that end, a Travel Plan Co-ordinator would be appointed to promote the use of public transport.

Furthermore, the Agent also highlighted section 3 of the submitted Framework Travel Plan, which states, amongst other features, that new shelters are to be introduced at the two nearest stops either side of the Peel Retail Park Roundabout, in order improve public transport infrastructure. In addition the Agent's correspondence also explained that Appellant would discuss further the details of specific bus services to the site with Go North East and Nexus in due course.

Consultee Responses

- Northern Gas Networks

Northern Gas Networks has no objections to the appeal proposal, however they stated in their consultation response that there may be apparatus in the area that may be at risk during construction works and should the planning application be approved, then Northern Gas Networks would require the developer to contact them directly to discuss Northern Gas Networks requirements in detail.

- Environment Agency

The Environment Agency consider the appeal proposal to be acceptable subject to conditions ensuring the satisfactory storage of / disposal of surface water and that all surface water drainage from hardstanding areas are passed through an oil interceptor. Furthermore, additional commentary was provided in the form of advice to the Local Planning Authority regarding the disposal of foul drainage in view of the fact that the existing site is served by the mains sewer network and if it is not possible to dispose foul drainage via the mains sewer network the Environment Agency would wish to be re-consulted. The Sewerage Undertaker in this instance is Northumbrian Water Limited and their consultation response follows.

In relation to land contamination, the Environment Agency only considered issues relating to controlled waters. The Agency considers that the controlled waters at the site are of low environmental sensitivity, therefore no detailed site-specific advice or comments were provided with regards to land contamination issues.

- Northumbrian Water Limited

Northumbrian Water's only comments in response to the consultation request came in the form of a suggested condition which requires the developer to agree a detailed scheme for the diversion of Northumbrian Water's apparatus with the Local Planning Authority in consultation with Northumbrian Water prior to development commencing on site.

6. The Development Plan

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

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

The Development Plan for Sunderland comprises the saved policies of the City of Sunderland Unitary Development Plan, adopted in 1998 (the UDP); and the UDP Alteration No 2 (Central Sunderland), adopted in September 2007 (although the application site lies outside the geographical area covered by Alteration No 2). Members should note that the Regional Spatial Strategy for the North East was revoked by statutory instrument on 15th April 2013 so the RSS no longer forms part of the Development Plan.

On commencement of the Planning and Compulsory Purchase Act (September 2004), the policies of the UDP were automatically 'saved' for three years, remaining in force until September 2007. The Council

subsequently notified the Government Office of the policies it wished to continue to retain and confirmation from the Secretary of State of the agreed continued saved policies was received on 4 September 2007.

Policy S1, which is saved, seeks to enhance the role of the City's shopping service by encouraging a wide range of attractive, well distributed, facilities to meet future shopping and related needs. Developments - such as the appeal proposal, which are located outside existing centres - are subject to the sequential test, must be in accordance with other policies in the UDP, and should complement existing facilities.

It is therefore considered that Policy S1 incorporates the sequential approach and some aspects of the impact tests set out in the NPPF.

Therefore the outcome of the sequential testing and impact assessments under paragraphs 24-27 of the NPPF, are set out later in this report and will determine whether there is any conflict with Policy S1.

Policy S2 of the UDP seeks to enhance the vitality and viability and diversification of the City's three strategic centres, including Washington and its six local centres, including Concord, and Policy S3 seeks the retention of other local shopping centres.

As above, Policies S2 and S3 must be considered in light of the outcome of the sequential test and impact assessments required under Paragraphs 24-27, of the NPPF.

- **Site Specific UDP Policies**

The Peel Centre is unannotated on the Proposals Map of the adopted UDP so there are no site specific policies.

- **Area Proposals for Washington**

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, it is noted that the planning strategy for Washington, which is set out in Paragraph 21.14, requires that '*...the role of the Galleries and Washington town centre¹ should be developed and enhanced*'.

The shopping policies for the Washington area are dealt with in Paragraphs 21.33 to 21.40. Policy WA7 states that '*Concord shopping centre will be retained and improved*' and 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*'.

¹ As defined in Paragraph 21.101 of the UDP

The cumulative impact test for the development proposal that is required to be undertaken under Paragraph 26 of the NPPF will therefore determine whether or not the application proposal conflicts with Policy WA7.

The policies for Washington town centre are set out in WA33 to WA37. Policy WA33 states that the Council will seek to sustain and improve Washington Town Centre by, amongst other things, '*...liaising with the owners on their strategy for the Galleries*'. The town centre is defined in Paragraph 21.101 to comprise the Galleries, the Galleries Retail Park (as then existed), community and leisure facilities to the south and east and office buildings along the northern and western edges.

As above, the cumulative impact assessment for the proposed development will determine whether or not the development proposal conflicts with Policy WA33.

Policy WA34 (1) allocates part of the Western Car Parks for a range of town centre uses, including A1 retail, and this site is appraised in the Sequential Test section of this report, although it is noted 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.

- Summary of Considerations in Relation to the Development Plan

It is accepted, that the saved policies in all elements of the development plan pre-date the NPPF, the recently replaced PPS4 and the Planning and Compulsory Purchase Act 2004. As a consequence, it is considered that more weight should be given to the development management tests set out in Paragraphs 24 to 27 of the NPPF, as discussed in the Sequential Test and Impact Test sections of this report.

- Emerging LDF

The Local Planning Authority considers that there are no local development documents that have reached a sufficiently advanced stage for more than limited weight to be given to them.

7. The Sequential Test

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

On the basis of the evidence available to date, the Council accepts that it has not been demonstrated that there is a site in a sequentially preferable town centre or edge of centre location which meets each of the 'available', 'suitable' and 'viable' components of the sequential test.

The sites which have warranted most of the Local Planning Authority's attention are the Western Car Park site identified under Policy WA34(1) of the UDP and Cheviot House, but the Local Planning Authority is not satisfied on the basis of current evidence and the site history that these sites are suitable and viable for meeting the need that the application proposal is intending to provide for.

Further, ASDA has argued that the Houghton Colliery site represents a sequentially preferable location for a food superstore development. However, officers consider that the Houghton Colliery site has a different catchment area to the application proposal and will not meet the needs that the applicant is seeking to serve in Washington.

Thus, the Local Planning Authority considers that the application proposal passes the sequential test set out in Paragraphs 23 and 24 of the NPPF. Nevertheless, the Council has reserved the right to respond to any new evidence which emerges from the objectors in relation to the sequential test prior to the start of the Inquiry.

8. The NPPF Impact Tests

- Significant Adverse Impacts

In examining whether the cumulative effects of outstanding planning commitments, together with the application proposal, or with the alternative fallback position, are likely to cause significant adverse impacts on existing town centres, as referred to in Paragraph 27 of the NPPF, the Council has taken account of the advice set out in Section 7 of the Planning for Town Centres Practice Guidance. In particular, Paragraph 7.3 of the Practice Guidance, states that *'it will be for the decision maker to determine what constitutes an "acceptable", "adverse" or "significant adverse" impact based on the circumstances of each case, having regard to national and local policy objectives'*.

Furthermore, Paragraph 7.29 of the Practice Guidance states that *'...there are no meaningful benchmarks of what constitutes an "acceptable" level of trade diversion... the relevant factors will depend on the circumstances of each case'*. Similarly Paragraph D39 states that *'The significance of any impacts will be a matter of informed judgement and depend on the individual circumstance of the locality and type of centre or facility. There is no universal threshold which could be applied to indicate whether an impact on trade/turnover is likely to be significant, but the guidance suggests how different impact considerations may be scored, and weighted to reflect the significance of each'*. In assessing the impact of the application proposal the Council has not sought to apply universal thresholds, but to consider the particular facts and circumstances.

Thus in assessing the likely impacts of the application proposal, the Council has taken account of the key factors included in the Practice Guidance, which include:

- the likely impact on vacancies and the quality of the retail offer in Washington Town Centre;
- the likely impact on investor confidence;
- the likely impact on the town centre's market share and turnover levels and the consequential implications for footfall and linked trips; and
- an assessment of the current state of health of Washington town centre and its vulnerability to competition from proposals in out-of-centre locations.

The significant adverse impacts cited in Paragraph 27 of the NPPF refer back to two separate impact tests in the two bullet points in Paragraph 26 of the NPPF, namely:

- the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and
- the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made. 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.

In accordance with Paragraph D10 of the Practice Guidance, the Council has considered and assessed the cumulative impact of both of the different fallback positions, together with existing commitments and assessed the cumulative impact of the application proposal as a whole, together with existing commitments. The assessment of cumulative impact of both the fallback positions and the application proposal in terms of direct trade diversion from Washington town centre under each scenario is illustrated in the summary impact table below.

- Cumulative Impact of the Fallback Positions

The Council has undertaken an assessment of the cumulative trade impacts associated with outstanding planning commitments, together with each of the two fallback positions. The outcome of this assessment of cumulative impact is that the effects of the non-food led fallback on Washington Town Centre (Fallback Position 2) are not considered to cause 'significant adverse' impacts for the purposes of Paragraph 27 of the NPPF, in respect of either of the tests set out in Paragraph 26 of the NPPF.

For the food-led fallback (Fallback Position 1), the cumulative impact on Washington Town Centre is higher, and estimated to be in the range £38m to £45m, depending on whether or not the existing planning permission for a

non-food retail warehouse park at the Armstrong Road site (which has been implemented through initial works to the proposed access road) is included as an existing commitment (ref: 01/02086/OUT) within the impact assessment. If the level of impact reaches £45m through inclusion of the Armstrong Road commitment, it is considered that this level of impact could lead to the closure of some of the existing shops in the town centre. However the applicant, Peel has argued that the Armstrong Road permission is not a realistic fallback position and should not be included in the cumulative impact assessment given the passage of time since the permission was granted and the restrictions on use contained in the conditions.

- Cumulative Impact of the Application Proposal

In contrast to the cumulative impact associated with either of the two fallback positions, the Local Planning Authority considers the cumulative impact on Washington Town Centre associated with the Inquiry proposal will clearly cause a significant adverse impact on the vitality and viability of Washington Town Centre under the second bullet point in Paragraph 26 of the NPPF. Indeed, the Local Planning Authority's Retail Planning consultant has assessed the cumulative direct trade diversion from Washington Town Centre to be in excess of £55m, and therefore it is considered that the town centre would lose at least a quarter of its convenience goods turnover as a result of the direct trade diversion impact.

Impact Summary Table							
Scenario		CUMULATIVE IMPACTS ON WASHINGTON in 2018					
		Convenience		Comparison		Combined	
		£m	%	£m	%	£m	%
1a	Commitments and Tesco total turnover inc. Armstrong	38.4	-25.6	17.7	-15.0	56.1	-20.9
1b	Commitments and Tesco total turnover exc. Armstrong	38.4	-25.6	10.3	-8.8	48.8	-18.2
2a	Commitments and Peel Phase 1 comparison goods fallback inc. Armstrong	18.2	-12.1	20.8	-17.6	39.0	-14.6
2b	Commitments and Peel Phase 1 comparison goods fallback exc. Armstrong	18.2	-12.1	14.0	-11.8	32.2	-12.0
3a	Commitments and Peel Phase 1 convenience goods fallback inc. Armstrong	27.6	-18.4	17.5	-14.8	45.1	-16.8
3b	Commitments and Peel Phase 1 convenience goods fallback exc. Armstrong	27.9	-18.6	10.7	-9.1	38.7	-14.4
Notes							
2010 Prices							
All scenarios include the Morrisons at Birtley as a commitment							
Using Savills Convenience Goods Household Survey and SRNA Comparison Survey							

Moreover, the Local Planning Authority's shopping survey, which was undertaken in Washington town centre (March 2013) in relation to linked trips between Washington's anchor foodstores – ASDA and Sainsbury – and other retail and service traders in Washington Town Centre (the Galleries, the adjacent Retail Park and the leisure and community facilities), shows that 73 per cent of those surveyed exiting the ASDA and Sainsbury stores had already visited other retail stores in the centre earlier in the day of the survey, or were about to visit other retail stores in the centre on the same day. Indeed, the 646 people surveyed who were exiting the two anchor stores had just spent approximately £14,000 in these stores between them, and they had spent, or were about to spend, a further £11,300 in other A1 retail stores within the Galleries, or at the adjacent Retail Park, giving a very high linked trip spending rate of 81 pence in the pound.

Thus, the exit survey shows that the effects of the direct trade diversions associated with the application proposal as shown in the impact table will be substantially exacerbated by the breakdown of linked trip spending within the centre, thereby significantly increasing the risk of store closures within the centre.

Whereas, in assessing the implications of the Inquiry proposal on existing, committed and planned public and private investment in Washington, the Council has examined the evidence submitted in representations by two Rule 6 parties, Prupim and ASDA, the impact of the development proposal on the previous substantial investment in Washington Town Centre is considered to be more appropriately assessed as part of the vitality and viability impact assessment, although the policy is a little unclear. In relation to the wording of the first bullet point of Paragraph 26, the impact on "existing, planned or committed investment" the Local Planning Authority is not aware of any clear evidence of ongoing, committed or planned investment that would be significantly impacted by the development proposal.

However, the Local Planning Authority is aware that the owner of the centre does not agree with this point from the representations that have been submitted. Moreover, as is the case in relation to the sequential test, the Council has reserved the right to respond to any new evidence which emerges in relation to investment impact prior to the start of the Inquiry.

- The Appropriate Approach to Assessing Cumulative Impact

The Council's evidence will refer to Paragraph D10 of the Planning for Town Centres Practice Guidance, given its finding that on balance neither of the fallbacks lead to unacceptable harm in respect of the vitality and viability impact test set out in Paragraph 26 of the NPPF, but that, in contrast, the cumulative effects associated with the Inquiry proposal clearly constitute a 'significant adverse' impact on Washington Town Centre in respect of the vitality and viability assessment under Paragraph 26.

In line with the various authorities, including the decision in Snowden v SoS for the Environment and the City of Bradford Metropolitan Council, the Council's approach has been to compare the 'relative evils' of the fallback positions (which in respect of this case is not considered to cause unacceptable harm) compared to the application proposal (which does cause unacceptable harm). Having done so, the Local Planning Authority has reached a conclusion that the appeal proposal would cause significant adverse effects to Washington Town Centre.

Thus, the Council considers that the advice set out in Paragraph D10 of the Practice Guidance reinforces its conclusion that the appropriate approach in assessing cumulative impact is to look at the full turnover of the application proposal, rather than just the 'incremental' impact of the difference between the application proposal and each of the fallback positions, particularly when the fallback positions do not cause unacceptable harm, but the application proposal would cause unacceptable harm.

9. Other Material Considerations

- CO2 Emissions and Climate Change

The Design and Access Statement (D&AS) which supported the application submission anticipated that a BREEAM rating of at least "Very Good" was to be achieved at the proposed superstore development. The Council therefore considers that subject to conditions requiring any future development demonstrates a minimum BREEAM rating of "Very Good" and 10% of its energy needs are produced on site, the application proposal is acceptable in respect of climate change considerations.

- Accessibility and Impact on Traffic Levels

In terms of accessibility and impact on traffic levels the Local Planning Authority has no objection in principle from a highway engineering perspective to the application proposal. The planning submission was supported by a substantial Transport Assessment which included traffic predictions, as well as accident and junction analyses. The Local Planning Authority considers that there are no grounds of objection to the proposal on highway engineering matters.

In order to accommodate the traffic implications of the appeal proposal, the Appellant submitted details of off-site highways improvements, including the introduction of traffic signals on the A1231 Sunderland Highway slip roads junctions with Spire Road. The new traffic signals would also include pedestrian phases, thereby assisting pedestrians to/from the Barmston area. A Toucan crossing was also proposed on Spire Road to improve access to Phase 2 of the Peel Centre (including McDonalds). Furthermore, public transport improvements were also proposed via the provision of bus shelters to the adjacent bus stops.

A representation was submitted on behalf of MiKing in light of the fact that they have a secondary access to their premises that is located to the south east of the appeal site. This secondary access is in close proximity to the signals being proposed by the appeal proposal. Mott MacDonald submitted a report on behalf of MiKing which reviewed the traffic assessment work carried out by WYG i.e. the Appellant's highway consultants.

MiKing's representation considered the supporting traffic assessment to have underestimated traffic movements in and around the application site. However, City Council's City Services (Network Management) section on assessing the application from a highway engineering and safety perspective noted that WYG's traffic modeling for the proposed traffic signals accounted for the usage of this southern access and therefore considered the appeal proposal to have provided for a robust assessment.

Mott MacDonald also considered WYG's traffic modeling to be imperfect due to limited stacking lengths. However, City Services (Network Management) again considered WYG's modeling to have effectively quantified the queue lengths predicted at the end of red stages whilst also noting that the co-ordination of traffic signals would also take into account the dynamic effects of traffic flows during phases.

Regarding Mott MacDonald's view that the southern access should be kept clear of queuing vehicles, City Services (Network Management) considered that if necessary, 'Keep Clear' markings could be added to the road surface of Spire Road. Furthermore, responding to the request for signalisation of the southern access onto Spire Road, City Services (Network Management) considered this to be unnecessary as it could reduce the efficiency of the main junction operation.

Finally regarding Mott MacDonald's concern that a safety audit was not carried out, City Services (Network Management) stated that a standard Safety Audit procedure comprising various stages would be an inherent part of any Agreement under Section 278 of the Highways Act 1980, for the implementation and approval of off-site highway works. The requirements of the Agreement would be binding upon the developer.

In conclusion therefore the proposed scheme of off-site highway improvements (which could be secured through a negative Grampian condition and an agreement under Section 278 Highways Act 1980) are considered to provide sufficient mitigation measures to enable the site to be safely accessed by all highway users.

- Design Considerations

The Council considers that the comprehensive design rationale of the application proposal, as stated within the submitted D&AS, provides for an acceptable basis on which to proceed at an outline matters stage. It is considered that a food store built on stilts, located at the rear of the site, efficiently utilises the site, whilst the surrounding built development enables

the size of store proposed, as detailed in the indicative elevation drawings that accompanied the original planning submission.

- Physical Regeneration

The Council considers that the proposal will have limited physical regeneration benefits in that the Peel Centre site is already in beneficial use and, as the Appellant argues, it benefits from the two fallback positions (which the Local Planning Authority accept to be realistic). Thus, the physical regeneration benefit is limited to the intensification of retail use on a site already used for retail purposes and to improvements in the physical appearance of the buildings.

- Impact on Local Employment

The Local Planning Authority's Retail Planning consultant has assessed the appeal proposal in terms of the net employment impact, using the methodology set out in the English Partnerships Additionality Guide of October 2008. This assessment of the net employment impact has, as a starting point, considered an assessment of the gross employment impact, but it has then deducted 'deadweight' (i.e. what would happen on the application site if the application is refused, i.e. continuation of existing use or implementation of one of the fallbacks), 'leakage' (which is the proportion of jobs being taken by those outside the Washington target area) and 'displacement' (which is the jobs lost through the competitive effects of the appeal proposal on employment in retail facilities in Washington Town Centre and elsewhere in the catchment area).

Following this assessment methodology the Local Planning Authority, on balance, consider the appeal proposal to provide for a positive net employment impact within the primary catchment area of Washington Town Centre in the range 50 to 175 full and part-time jobs. Accordingly the Local Planning Authority gives weight to this positive benefit.

- Social inclusion

The index of multiple deprivation reveals that Washington's catchment area does not suffer from the concentrations of high levels of deprivation that are experienced in Central Sunderland and in North Sunderland. Nevertheless, the Local Planning Authority acknowledges both positive and negative impacts in relation to meeting social inclusion objectives. The main positive social inclusion impact is the access to jobs that would be created at the appeal site for residents in a cluster of Lower Super Output Areas (LSOAs) that fall within the 10 to 20 per cent most deprived in England. The main negative social inclusion impact is the harm to consumer choice in Washington Town Centre and Concord Local Centre given that these centres are more accessible to residents of the wider Washington catchment area than the out-of-centre appeal site.

- Ecology

An extended phase 1 habitat survey of the site was submitted as part of the planning submission. The survey incorporated a data search for a 1km radius from the site's centre and included an inspection of the buildings on site for the presence of bats (carried out on 20 September 2011). The Local Planning Authority considers that the survey's report covers the main areas of concern from an ecological perspective. The Local Planning Authority notes the recommendations and enhancements proposed, as detailed in section 6 of the survey report.

- Air Quality

An air quality assessment was submitted as part of the appeal proposal's original planning submission. On the basis of the assessment the Local Planning Authority considers that the significance of the cumulative effects of the proposed development with respect to nitrogen dioxide and particulate matter exposure to be negligible. No local receptors are predicted to exceed any of the National Air Quality Objectives.

- Contamination

The Local Planning Authority has noted that the application site has previously accommodated a commercial/industrial activity which may have resulted in contamination of the land. In view of the outline nature of appeal proposal the Local Planning Authority considers it acceptable subject to the imposition of industry standard land contamination conditions.

- Noise, Demolition and Construction Works

The Local Planning Authority considers that in view of the appeal proposal being located within an existing Retail Park, surrounded by an Industrial Estate to the north and west and a Trunk Road (A1231) to the south, noise issues are not envisaged to be significant when considering its construction or when the store is operational. Accordingly there are no objections to the appeal proposal on these grounds, subject to an appropriate construction methodology condition.

- Flood Risk

The planning submission was accompanied by a Flood Risk Assessment (FRA). The submitted FRA explained that surface water drainage for the appeal proposal was to connect into the existing sewerage system, mirroring the existing connection and having a like-for-like discharge rate. In order to achieve an acceptable discharge rate and in view of the appeal proposal increasing the impermeable area on site, an attenuation measure will be necessary e.g. a soakaway. However, the Local Planning Authority recognises that as the appeal proposal was submitted in an outline stage the final solution will be dependent on further site investigation and the development of a detailed design.

Furthermore, the Local Planning Authority considers that the request of the sewerage operator, Northumbrian Water, to incorporate a condition requiring the agreement of a scheme for the diversion of its apparatus, in conjunction with the Environment Agency's requested condition, which requires surface water from hardstanding parking areas to be passed through oil interceptor(s), to be both reasonable. The Local Planning Authority therefore considers the appeal proposal to represent a low risk to surface water matters.

10. Conclusion and Recommendation

In conclusion, it is considered that there are no other material considerations to which such weight should be given as to offset the significant adverse impact of the development proposal on the vitality and viability of Washington Town Centre under Paragraph 26 of the NPPF and its conflict with the UDP's Shopping Policies and Area Proposals for Washington. Officers consider, therefore, that the application should be refused given the provisions of Paragraphs 14 and 27 of the NPPF. As a consequence, officers are seeking the endorsement of Members to the views of the planning officers on this application as set out in this report for the purposes of the forthcoming public inquiry.

RECOMMENDATION: That Members endorse the views of the Council's officers on the application proposal and that Members be minded to refuse the application