

MC/16/1084

Date Received: 7 March, 2016

Location: Plot 1 Anthony's Way Medway City Estate Rochester ME2 4NS

Proposal: Construction of retail development (Use Class A1) together with associated access, servicing and infrastructure works, car parking and landscaping

Applicant: Location 3 Properties

Agent: Mr R Birtles Simply Planning Limited 25 Manchester Square  
London W1U 3PY

Ward Strood Rural

Case Officer Chris Butler

Contact Number 01634 331700

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**Recommendation of Officers to the Planning Committee, to be considered and determined by the Planning Committee at a meeting to be held on 30 August 2017.**

### **Recommendation - Refusal**

- 1 The proposed development would introduce an out-of-centre retail park that, if permitted, would have a significant adverse impact on the vitality and viability of Chatham, Strood and Gillingham, including impact on in-centre trade/turnover from the scheme and other commitments, and on investment. Therefore the development cannot be considered to be sustainable as it fails to:
  - Contribute to building a strong, responsive and competitive economy, being a development in the wrong location that would fail to support growth and innovation (The Economic Role) and ;
  - Support strong, vibrant and healthy communities, by providing a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being (The Social Role).

In the light of all of the above, the proposed would not if permitted amount to sustainable development as detailed in Paragraph 7 of the National Planning Policy Framework and, if permitted, would be contrary to paragraphs 14, 23, 24, 26 and 27 of the National Planning Policy Framework and saved Policies S1, S2, S5, R1, R2, and R13 of the Medway Local Plan 2003.

- 2 In the absence of the provision of a park and ride facility, there is no justification, when assessed against the adopted Development Plan policy, for the provision of any retail, commercial or industrial development on the site. This out-of-centre retail park would be prejudicial to the ability to develop infrastructure to widen transport choice for which the site was allocated in the first instance amounting to an unsustainable development in terms of the economic and social roles identified at paragraph 7 of the National Planning Policy Framework. The development, if permitted, would therefore not amount to a sustainable form of development and would be contrary to the objectives of Paragraphs 7, 30, 35 and 41 of the National Planning Policy Framework and Policy T17 of the Medway Local Plan.

## **Proposal**

This proposal seeks full planning permission for the construction of an A1 retail development together with associated access, servicing and infrastructure works, car parking and landscaping.

The proposal, if permitted, will provide a total of six new retail units to be occupied by a range of retailers selling both convenience and comparison goods. The applicant has indicated that the retailers who might take space at the site include a deep discount food retailer, a pet supplies retailer, a textiles retailer and a homewares retailer, albeit there is no operator commitment at this stage. The applicant has been resistant to entering into any meaningful discussion in regard to conditions on the basis that the existing 2010 Sainsbury's submission permitted an unrestricted A1 retail use, with the exception of offering a no poaching condition and conditions preclusion on the sale of fashion or footwear (unless ancillary to the main product range) and sports goods and clothing. This being the case, in addition to a deep discount food retailer, the units could, therefore, be occupied by operators selling goods from any of the comparison goods categories including, for example, homewares, electrical goods, pharmaceutical products, cards and stationery, books and toys.

In addition to the main terrace of six retail units, four retail pods are also proposed at the entrance to the development. These units are all shown to be 111.5m<sup>2</sup> (Gross Internal Area (GIA)) and the applicant considers that these are likely to attract food and drink uses such as a coffee shop and sandwich outlet, together with retailers such as a phone shop. Indeed the applicants have indicated that they are in discussions with three A3 retailers in relation to three of four of these pod units. The applicant states that these pod units will provide an ancillary and complementary service to customers of the main retail units together with those people working in the wider Medway City Estate.

The main retail units are arranged in a terrace towards the southern end to the site with their service area facing Vanguard's Way. To the front, north facing elevation, of the retail stores a customer car park is proposed, which will provide parking spaces for 324 vehicles. In the north-east corner of the site 4no. pod units will be provided.

In term of the parking arrangements referred to above, of the 324 spaces proposed there will be 26 disabled spaces, 19 parent and child spaces and 3 electric car parking

spaces provided. A further 43 car parking spaces are proposed to be provided in the service yard for staff parking. Cycle parking is provided immediately in front of the proposed stores.

In elevational terms, the stores will be constructed of blockwork, glazing and composite panels.

The individual units proposed are of the following sizes

Unit	Ground Floor (GIA) M <sup>2</sup>	Mezzanine Floor (GIA) M <sup>2</sup>	Total Floorspace M <sup>2</sup>
1	1,894	0	1,894
2	1,022	464	1,486
3	697	0	697
4	1,022	232	1,254
5	1,022	232	1,254
6	1,394	392	2,323
7 (Pod Unit)	111.5	0	112
8 (Pod Unit)	111.5	0	112
9 (Pod Unit)	111.5	0	112
10 (Pod Unit)	111.5	0	112
Total	7,497	1,857	9,354

### Relevant Planning History

- MC/14/1413 Application for a Lawful Development Certificate (Existing) to confirm the lawful commencement of planning permission MC/10/2125  
Approval 29 July, 2014
- MC/10/2125 Construction of a Park and Ride facility and Class A1 retail store together with associated car parking, delivery yard, vehicular access, highway improvement works, landscaping and other works including land reclamation.  
Approval With Conditions 6 May, 2011
- MC/10/0936 Town and Country Planning [Environmental Impact Assessment] [England and Wales] Regulations 1999 - request for a scoping opinion for development of a Class A1 retail food store with associated facilities and a park and ride facility -  
EIA Required - 19 April, 2010
- MC2009/0671 Variation of conditions of planning permissions MC2003/1301 (construction of park & ride car park with ancillary building; non food retail warehouse with ancillary builders yard; garden centre & car parking; & engineering & other works including land reclamation), MC2007/0238 (variation of condition 18 of planning consent MC2003/1301 to allow a wider range of goods to be sold being; crockery, glassware china and kitchenware; books and

stationery; and televisions, video recorders, dvd players, hifi's, microwave ovens, ovens and similar new DIY electrical equipment) and MC2007/0239 (variation of condition 19 of planning consent MC2003/1301 to allow sub-division of retail unit into separate units of no less than 929m<sup>2</sup>  
Approved with Conditions, 15 January 2010

MC2007/0239 Variation of condition 19 of planning consent MC2003/1301 to allow sub-division of retail unit into separate units of no less than 929m<sup>2</sup>.  
Approved with Conditions, 13 June 2007

MC2007/0238 Variation of condition 18 of planning consent MC2003/1301 to allow a wider range of goods to be sold being; crockery, glassware china and kitchenware; books and stationery; mobile phones; and televisions, video recorders, dvd players, hifis, microwave ovens, ovens and similar new DIY electrical equipment Approved with Conditions, 13 June 2007

MC2003/1301 Construction of park & ride car park with ancillary building; non-food retail warehouse with ancillary builders yard; garden centre & car parking; & engineering & other works including land reclamation  
Approved with Conditions, at 'Call In' Public Inquiry  
25 September 2006

## Representations

The application has been advertised on site and in the press and by individual neighbour notification to the owners and occupiers of neighbouring properties.

The EDF Energy, Environment Agency, Frindsbury Extra Parish Council, Frindsbury and Wainscott Community Association, Gravesham Borough Council, Historic England, Kent Police, Kent Wildlife Trust, the National Planning Casework Unit, Natural England, Medway Ports, The Royal Society for the Protection of Birds, The Royal School of Military Engineering, Southern Gas Networks, Southern Water, the Marine Management Organisation and Tonbridge and Malling Borough Council have also been consulted.

The **Environment Agency** has written advising that they consider that planning permission could be granted for the proposed development, as submitted, subject to the imposition of appropriate planning conditions and or informatives, as appropriate, in relation to:

- Groundwater and contaminated land;
- The fact that the site lies adjacent to the River Medway and associated creek and overlies a principal aquifer;
- The need to ensure that any remediation must be carried out in a strictly controlled manner to ensure that contaminants are not exposed and releases allowed to air, land or controlled waters, which could cause pollution, harm or nuisance;

Clearance of the site, including clearing areas by, in particular, removing hardcover, seeking to ensure that this is done in a manner not likely to expose contaminants to flushing by incipient rainfall or surface water run-off on the site;

- Temporary surface water controls and management of any materials movement on site, being critical to ensure protection of controlled waters near the site;
- The disposal of waste, including contaminated soils; and
- Matters related to fisheries and biodiversity.

Without these conditions, the EA advises that the proposed development on this site would pose an unacceptable risk to the environment and they would object to the application.

In addition to the above comments, in response to the applicants response on ecological matters, the EA have written advising:

“The requested condition regarding wild flower/grass planting and a reduction in shrubs was focused on the areas marked (1) on the concept landscape plan. However an ecologically richer planting and management could also be utilised on many of the other areas, notably (2), (4), (5) and possibly even (6).

In modern retail developments litter accumulation within scrub and bushes is sadly inevitable, and whilst the buffer to the creek will reduce the amount entering the creek directly from the development, which is good, the rest of the development does not need this habitat type. Particularly for area (1) where an ecologically richer habitat would be more beneficial than the current landscaping proposal.

It is accepted that the creek benefits from screening by the existing scrub and therefore much of this should be retained. This would cover area (3). Given that the buffer habitat in total covers a sizeable area, being 32m wide in places, some management of it, even if minimal is to be expected, to preserve suitable habitat for key species already identified and ensure the buffer is overall optimised for wildlife. This may include regular litter collection and 10 year scrub management plan for example, but keeping or managing some open areas within the scrub would also diversify the range of wildlife able to use it.”

Finally for information purposes only, the EA have stated they “...*would consider saltmarsh part of the creek and therefore not part of the buffer to the creek, as saltmarsh is an important part of the inter-tidal habitat.*”

Officer Comment – In terms of the land contamination issues the EA were asked for clarification in regard to the use of their standard land contamination conditions, as the applicant felt these would be excessive, especially in the light of the fact that their Geo-Environmental Assessment Report (Document reference 224-r-01 dated September 2015) reviewed the history of the investigations and fundamentally confirms that nothing has changed since the previously submitted Arup Contaminated Land Assessment reports submitted to Medway Council in with the 2010 Sainsbury’s Application submitted under planning reference MC/10/2125. The applicant’s Geo-environmental Assessment Report submitted with this application reached the conclusion that the previously approved remediation strategy is still relevant and that all that needs to be secured by the condition is the implementation of the previously

agreed strategy and the standard condition relate to un-expected contamination finds during construction operations.

In response to this query the EA advised they always include their whole condition, as it is all linked, although the EA usually note acceptance of any submitted PRA in a Note under part i) of the conditions. However, the EA advise that if the Council want to accept that those aspects are already met and just include the conditions covering requirements for a detailed Remediation Implementation Plan (RIP) and validation report, that is up to the Council and the EA would have no objection on groundwater protection grounds on this occasion. The EA advise that the Council would need to include a requirement for the RIP, including additional monitoring, as the import of materials and placement could surcharge the site and displace gas or perched leachate laterally and cause off-site impacts, so these issues need to be agreed in any implementation of remedial works and in a verification plan.

**Frindsbury Extra Parish Council** has written advising that they have no objections to this application.

**Kent Police** (KP) have written advising that they have met with the applicant's architect in relation to the proposed development. They also advise that they have considered the planning application from a Crime Prevention Through Environmental Design (CPTED) concept, in accordance with the National Planning Policy Framework 2012 (Section 7 Para 58 & Section 8 Para 69) and the DCLG Planning Practice Guidance March 2014 (Design Section - Paras 10 & 11) - Crime Prevention, the Kent Design Initiative (KDI) - Design For Crime Prevention document dated April 2013.

In the light of this KP advice that having reviewed the submission, it is clear that the applicant has given crime prevention consideration and has sought to attempt to apply the seven attributes of CPTED in their Design and Access Statement (D&AS). They also advised that it was pleasing to note that the development will include Secured By Design (SBD) Commercial and The British Parking Association (BPA) Park Mark scheme principles, should the proposed development receive planning consent.

With the above in mind, KP have confirmed that they have no concerns regarding the layout and general principles for the site from a CPTED aspect, but recommend that an additional vehicle gate or barrier be installed adjacent to the height control barrier of the main customer car park entrance in order to deter possible anti-social vehicle misuse when the site is closed. They advise that the suggested barrier or gates need only be used should vehicle anti-social misuse become an issue in the future and could remain locked open under normal circumstances, such a barrier or gate may also deter potential fly tipping etc.

They also recommend CCTV is used in relation to the whole site in order to cover the main vehicle entrances (customer and commercial) along with the car parking areas and other key elevations and entrance/exits into the units.

Finally they recommend that the bin stores be securely gated, particularly those bin stores that are located outside the secure area behind units 1 to 6. KP advise that bins can be used as a means to commit crime or even become an arson hazard.

Officer Comment - The observations / comments of KP have been forwarded to the applicant.

**Natural England** (NE) advice that they have no objection regarding the impact of the development on any Statutory Nature Conservations Sites (SNCI's). They state that subject to the development being undertaken in strict accordance with the details submitted, the development will not damage or destroy the interest features for which Tower Hill to Cookham Wood Site of Special Scientific Interest (SSSI) has been notified and that the SSSI does not represent a constraint in determining the application.

NE have referred the Council to their standing advice on protected species, which is a material planning consideration and that the Local Planning Authority should ensure that it has sufficient information to fully understand the impact of the proposal on local sites before it determines the application. NE also refer to Biodiversity enhancements and the LPA's obligation under the Natural Environment and Rural Communities Act, 2006 in regard to conserving biodiversity and seeking such enhancements. NE have also highlighted in regard to landscape enhancements and SSSI Impact Risk Zones.

**Southern Gas Networks** (SGN) has written advising of the presence of low/medium/intermediate pressure gas main in the proximity of the application site. It is advised that no mechanical excavations are to take place above or within 0.5 metres of the low pressure and medium pressure systems and 3 metres of the intermediate pressure systems. SGN have also advised that the applicant will need to ensure that they confirm the position of mains using hand dug trial holes and of the need to undertake safe digging practices. Additionally they have advised that other gas transporters/private owners may have separate gas infrastructure in the area and that it is for the applicant/developer to ensure that they are fully aware of all gas infrastructure within the area. Finally SGN have provided a copy of the Health and Safety Executive document entitled "HSG47 – Avoiding Dangers from Underground Services" and advised about the risks of direct or consequential damage to gas plant and the fact that SGN will charge for any damage resulting to their gas plant.

**Southern Water** (SW) has written confirming that their initial investigations indicate that they can provide:

- i) foul sewage disposal to service the proposed development; and
- ii) a water supply to the site can be provided.

However, they will require the applicant and / or developer to make a formal application to them for connection to these services, including on-site mains.

Additionally they have provided a plan showing the approximate position of water mains, foul and surface water sewers within the site and that the exact position of the site constraints must be determined on site by the applicant before the layout of the proposed development is finalised.

They advise that it might be possible to divert the public foul rising main (225mm & 130mm), so long as this would result in no unacceptable loss of hydraulic capacity,

and the work was carried out at the developer's expense to the satisfaction of Southern Water under the relevant statutory provisions.

In terms of the 130 mm & 225 mm diameter rising main SW advise that they require a clearance of 3 metres either side of the sewer to protect it from construction works and allow for future access for maintenance. Additionally they state that no development or new tree planting should be located:

- within 3 metres either side of the centreline of the foul rising mains and surface water sewer;
- within 3.5 metres either side of the centreline of the surface water sewers.
- within 4 metres either side of the centreline of the water mains
- within 5 metres either side of the centreline of the water mains

Additionally they advise that no new soakaways should be located within 5 metres of a water mains, foul rising mains and surface water sewers and that all existing infrastructure, including protective coatings and cathodic protection, should be protected during the course of construction works.

In order to protect drainage apparatus, SW have request a condition be attached to any planning consent granted on this site that the developer must advise the local planning authority, in consultation with SW, of the measures undertaken to divert the public sewer, prior to the commencement of the development.

In terms of the Sustainable Urban Drainage Systems (SUDS), it is noted that the applicant refers to the use of SUDS. Under current legislation and guidance SUDS rely upon facilities which are not adoptable by sewerage undertakers. Therefore, the applicant will need to ensure that arrangements exist for the long term maintenance of the SUDS facilities. It is critical that the effectiveness of these systems is maintained in perpetuity. Good management will avoid flooding from the proposed surface water system, which may result in the inundation of the foul sewerage system. Thus, where a SUDS scheme is to be implemented, the drainage details submitted to the Local Planning Authority should:

- Specify the responsibilities of each party for the implementation of the SUDS scheme
- Specify a timetable for implementation
- Provide a management and maintenance plan for the lifetime of the development.

This should include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The application details for this development indicate that the proposed means of surface water drainage for the site is via a watercourse and the Council's technical



staff and relevant authority for land drainage consent should comment on the adequacy of the proposals to discharge surface water to the local watercourse and an appropriately worded condition should be imposed in relation to surface water disposal.

Additionally, SW note that land uses such as general hardstanding may be subject to oil/petrol spillages and that in permitting any such applications the Local Planning Authority should be drained by means of oil trap gullies or petrol/oil interceptors. Bearing this in mind SW have highlighted that the proposed development lies within a Source Protection Zone (SPZ), around one of SW's public water supply sources, as defined under the EA's Groundwater Protection Policy. As such a consultation with the EA is essential to ensure the protection of the public water supply source.

Finally SW has requested that the developer be advised that due to changes in legislation that came in to force on 1<sup>st</sup> October 2011, regarding the future ownership of sewers, it is possible that a sewer now deemed to be public could, be crossing the above property. Therefore, SW advise that should any sewer be found during construction works, an investigation of the sewer will be required to ascertain its condition, the number of properties served, and potential means of access before any further works commence on site. They advise the applicant to discuss the matter with Southern Water them in regard to this matter.

**Tonbridge and Malling Borough Council** have written advising that they have **no objections**.

### **Other Representations**

**A letter of objection has been received, which is written on behalf of the owners of the Pentagon Shopping Centre.** The letter advises that they strongly object to the planning application on the following summarised grounds:

- The Applicant has placed far too much emphasis on the fall back position. The extant planning permission for the site is materially different to the proposal for which the Applicant now seeks consent. The proposal is for an Open A1 retail park without a park and ride facility. It will compete head-on with nearby town centres for customers and retailers;
- The Application is wholly speculative in nature. No business case has been provided by the Applicant to demonstrate that the scheme has to be of the scale and format that it is and there are no occupiers aligned to scheme. In this regard, the Applicant has failed to properly interpret and apply the sequential test. When applied correctly the application fails the sequential test and should be refused;
- The Applicant has failed to take into account the health of allocated centres in Medway in undertaking its assessment of impact. The judgement as to whether the impact of a proposal (in trade draw terms) is 'significantly adverse' can only be reached by taking into account local circumstances which is derived from a qualitative assessment of the health of the centre. For a struggling Town Centre such as Chatham, even very modest reductions in the level of trade can have a significant adverse impact on existing and planned investment and the Town

Centre's vitality and viability;

- The proposal is for a predominantly open A1 retail scheme with no restrictions. The likely target occupiers are those that are currently in situ in Chatham Town Centre. The impact associated with the proposed retail park will therefore compete on a like for like basis with these stores. The loss of any of these stores from the Town Centre through relocation to the proposed retail park will impact severely on consumer choice and trade within the Town Centre. The result will be a substantial reduction in footfall as consumers will choose to shop at the retail park with its free parking. The impact on the vitality and viability of the Town Centre will therefore be significantly adverse;
- The proposed scheme and its occupiers will compete head on with anchor stores in Chatham Town Centre, even if new retailers were to take occupation. A reduction in trips to these anchor stores will have knock-on effects on smaller businesses which rely on these anchor stores to attract visitors to the Town Centre;
- The proposal will undermine investor confidence in the Town Centre and erode attempts to make improvements to the Centre through, for example, the refurbishment / extension of the Pentagon Centre and the Chatham Placemaking Project. In this regard, the proposal will have a significant adverse impact on existing and planned investment;
- The proposal will result in the displacement and relocation of jobs rather than a net increase in employment. This is due to the very likely outcome that the scheme will draw existing occupiers from the Town Centre, or if new occupiers are secured, these will sell the same or substantially similar goods to those found within key anchor stores within the Town Centre; and
- The application fails to demonstrate that the scheme is compliant with national and local policy objectives which seek to maintain and strengthen the vitality and viability of town centres. Indeed, approving the application would run counter to the explicit intentions of national guidance which is to be afforded substantial weight in the determination of this application. Moreover, there are no material considerations that go anyway towards outweighing the very significant policy presumption against approval.

**A letter of concern, which has been written on behalf of the freehold owners of Hempstead Valley Shopping Centre (HVSC) has been received.** Their concerns are summarised as:

- The proposal is a departure from the development plan and does not fully satisfy the requirements of the NPPF;
- The proposal seeks to rely upon the previous 'enabling' consent (MC/10/2125); and
- The proposal could significantly harm planned investment in Medway's existing centres and particularly HVSC.

They have elaborated on these points advising that this current proposal is a departure from the development plan and does not fully satisfy the requirements of the NPPF. They consider that this is primarily due to the fact that the proposal is for out-of-centre development on land allocated for a park and ride facility. The writer state that this allocation has now been superseded but in any event the NPPF adopts a 'town centre first' approach to retail planning aimed at promoting and safeguarding existing centres. Main town centre uses should be directed to town centres in the first instances and in the interest of supporting their vitality and viability.

The writer states that a key requirement of the National Planning Policy Framework is to ensure that out-of-centre proposals do not result in a significant adverse impact upon existing centre's vitality and viability or planned investment.

In addition to the above, the writer also points out that the application does not confirm who the retailers will be and without named operators it is not possible to accurately assess the impact of the proposal upon existing centres and planned investment. They consider that the applicant's assessment of impact also heavily relies upon the findings of the as yet unpublished Medway Retail Capacity Study (prepared by GVA). They consider that as this information is not in the public domain it is impossible to objectively assess the applicant's findings or for that matter the assumptions underpinning the Council's retail evidence base. In the circumstances the writer questions the appropriateness of the Council considering the application further until such time as the Council's Study has been endorsed by Members and made publicly available.

The proposal seeks to rely upon the previous 'enabling' consent (MC/10/2125). The writer considered that the applicants place considerable weight upon the site's planning history, in particular the May 2011 consent (MC/10/2125), which permitted a new Sainsbury's store. However, this consent was predicated upon an 'enabling' argument to deliver a park and ride which is no longer being offered. The writer considers that this element of the development was clearly a significant factor in the determination of the previous consent, which is now absent from the current proposal under consideration.

Furthermore the writer considers that it is questionable if the Sainsbury's consent is as claimed, a 'fall back' position, given the lack of interest from the foodstore operators in units of the scale consented. They consider that it is questionable whether such a proposal could be delivered and the weight that should be afforded these material considerations should be carefully considered before reaching a decision on the application.

The writer considers that the proposal could significantly harm planned investment in Medway's existing centres and particularly HVSC.

If despite these clear concerns the Council concludes to grant planning permission the writer has recommended that the planning application is suitably conditioned to ensure that the Council can control the type and scale of retail provision being proposed.

Furthermore they consider that given the out-of-centre location of the proposal, it is their view that an over-arching condition is required to restrict the maximum amount of Class A1 comparison bulky goods sales across the entire development and restrict the unit size. If such a condition is not acceptable to the applicant then the writer considers that an alternative impact scenarios will need to be tested by the applicant.

In conclusions to their comments the writer states that their clients, as a major investor in Medway, have serious concerns primarily on the basis of: the proposal being contrary to the development plan; the applicant's approach to satisfying the NPPF; their reliance upon a previous enabling consent and the as yet unpublished Council data. In the absence of these apparent short comings being resolved the writer considers that this application should be refused.

**A letter of objection has been received on behalf of the freehold owners of Strood Retail Park.** Their objection is summarised below:

- Strood retail park plays an important anchor role in drawing trade to the town centre and supporting it's on-going viability and vitality. Any loss of trade experienced by the retail park as a result of the proposal has the potential to disproportionately impact on other shops and services within the town centre;
- The applicants Planning and retail statement (March 2016) has been prepared having sight of the household survey data underpinning the Medway Retail Study 2016, which is not yet available within the public domain. Therefore, it is not possible to verify the applicants retail analysis;
- There are discrepancies in the estimated convenience goods turnover for Strood town centre and it has not been possible to see how the extant Sainsbury's planning consent on this site has been factored into the capacity forecast as a commitment and the extent to which the current proposals may or may not represent a further 'take' on comparison goods capacity for which there is a negative need in the immediate short-term;
- The applicant has failed to properly evidence or consider the impact of the proposal on Strood Retail Park, nor have they undertaken any health check analysis of existing centres. The submission is not fully compliant with the National Planning Policy Framework, especially Paragraph 26;
- The proposal would have a direct and adverse impact on town centre investment, as can already be evidenced by negotiations with retailer already being significantly hindered as a result of this current proposal. The Strood Retail Park plays an important role in the wider town centre and will have a wider impact on the vitality and viability of the Town Centre, which the applicants have overlooked;
- The emphasis on the planning history and significant weight afforded by the applicant to the extant consent is flawed, in that the previous consents included a significant element 'enabling development' in the form of a Park and Ride facility that would not otherwise come forward without private investment. The Planning history does not establish the acceptability of the scheme in isolation. The park and Ride scheme was a significant weighing factor in the determination of the previous

applications, but is not included in the current submission and it is considered that there is no case for retail development in this location without the park and ride facility, only harm; and

- Questions the fallback position, as the writer does not consider that there is any realistic prospect of that approved development being delivered. As such the writer considers limited weight to the fallback position should be afforded to the current proposal. The writer quotes Zurich Assurance v North Lincolnshire Council in support of their comments in this regard and claims that the applicant's proposal, as currently submitted, demonstrates that the extant consent is not a viable proportion for the developer to progress.

**In response to the Simply Planning Addendum Planning and Retail Statement dated June 2016 a further letter has been received, which is written on behalf of the owners of the Pentagon Shopping Centre.** They advise that they maintain their objection on the basis that the proposal clearly fails the retail tests results in Paragraph 27 of the NPPF directing that planning permission should be refused. A summary of their additional objections are listed below:

- The applicant maintains that the site is allocated for commercial development under Policy T17 of the Medway Local Plan (2003) and that this would include retail uses. Policy T17 explicitly states that the site is allocated for development of a park and ride facility with commercial and industrial development which takes advantage of that facility [the park and ride] supported on any surplus land. The park and ride facility made up a significant part of the scheme and was the sole reason that some commercial development supporting the role of the park and ride facility and Medway City Estate could be considered. Without a park and ride facility the site is no longer a sustainable location for major commercial development. The applicant's reasoning that should a park and ride facility no longer be required then commercial and industrial uses remain appropriate in this location is misguided and in conflict with Policy T17. Without this the current application proposals should be assessed for what they are – a speculative open A1 retail park in an out of centre location.”
- The applicant repeatedly overstates the fall-back position.
- The Committee Report for the extant permission recommended refusal of the planning application. Whilst this was subsequently overturned by Members at Committee it should be noted that the case officer felt it necessary to impose conditions which would control the format of development approved. Members accepted the conditions and recognised the need for them. In considering the current planning application proposals, which are materially different to the fall-back position, the Council should take account of the previous restrictions which were placed upon the 2010 permission. Unless the applicant is proposing to continue with a foodstore development, then the fall-back position is of little to no weight as the trading impacts of a retail park are very different to that of a foodstore. The quantitative element of impact is only one small part of a balanced impact assessment which must focus on qualitative impacts which arise from the format of a retail proposal.

- The applicant has also stated that the extant permission could be implemented and occupied by occupiers such as Marks & Spencer, Debenhams or John Lewis. We concur with Bilfinger GVA's (BGVA) assessment of the fall-back position and would question the likelihood of this being exercised in reality. Should it be a viable scenario there would be no need for the current application proposals to have been submitted in the first place. The above stores would only develop a new store in co-location with another major anchor such as Next and a substantial number of retail units which must include fashion operators. Clearly that scenario cannot be delivered by the previous permission.
- In addition, and for the extant scheme to proceed the park and ride facility which forms part of the permission would need to be implemented. This contradicts the basis for the current application proposals which comprise retail floorspace only and therefore dilute any fallback position which may exist."
- With regard to the sequential approach the writer states: "We remain firmly of the view that the Applicant has provided insufficient justification, for the scheme and must therefore apply substantial flexibility in format and scale.
- The Applicant also places considerable emphasis on the conclusions of the Secretary of State's decision in respect of Rushden Lakes without taking note of the unique circumstances that underpin that case. Furthermore, at Rushden Lakes the assessment of the need for flexibility was grounded in the fact that the scheme represented a much greater quantum of floorspace to achieve a 'step change' in retail provision and job creation and was directed at establishing substantial growth in proximity to a higher order centre. There were also major named operators to anchor the scheme which allowed a reasonable estimate of the infilling tenants to be made. This is very different to the approach at Anthony's Way which is a speculative out of centre scheme and can legitimately be subject to far greater flexibility on scale and format.
- The Applicant has not provided any details about initial approaches to retailers and the particular types of operators that are likely to be targeted more rigorously in the event that Planning Permission were granted. As such, it cannot be considered that the Applicant has demonstrated a realistic degree of flexibility with regard to the proposed size of the units within the development. This approach again serves to underline the speculative nature of the application proposals.
- Town centres are afforded significant policy protection and it is perfectly legitimate for Ellandi to express concern regarding the potential impact on Chatham. Accordingly, we request that the Council give proper consideration to the proposals in the context of national and local policy and are not swayed by the applicant's comments.
- The acquisition of the Pentagon Centre in December 2015 represents a significant financial investment by Ellandi and reflects its long term commitment to Chatham Town Centre. The Centre itself is uniquely placed to kick start the revitalisation of the Town Centre following a period of decline brought about by recession and the growing influence of out of centre shopping. This has been further heightened by the proximity of Bluewater which performs as a higher order retail destination and

therefore has required a shift in the offer provided by Chatham.

- Ellandi is working in conjunction with Medway Council to deliver improvements to the Pentagon Centre which includes the amalgamation / reconfiguration of units, the refurbishment of the existing mall space and options for the major refurbishment and redevelopment of the first floor of the shopping centre. This will create larger floorplates capable of accommodating a range of potential town centre occupiers including, amongst others, fashion, food & drink, health, leisure, financial services and community services / facilities.
- These investment opportunities, which have the potential to act as a catalyst for improvements across the Town Centre, will be greatly undermined if speculative out of centre development such as that proposed is allowed to come forward.
- The lack of named occupiers as well as a lack of proposed restrictions (no subdivision, mezzanines etc) means that we are unable to reach any conclusions as to whether potential tenants will be likely to sell products and goods that can currently be purchased in Chatham Town Centre (like for like impacts as set out in Paragraph: 016 Reference ID: 2b-016-20140306 of the NPPG). In the current retail market, the proposed open A1 units will generate significant interest from retailers who would normally have taken space in the Town (or are already in the Town Centre) and undoubtedly will include a large proportion of fashion and footwear operators, homewares and discount convenience.
- The number of units which remain vacant still exceeds the national average. Moreover, some of those units which are currently occupied are likely to become vacant in the short to medium term due to closures (i.e. Store 21, Blue Inc etc) and / or are coming to the end of their lease period. In addition, a number of units are currently being let on a temporary basis in order to avoid empty rates. In this regard, whilst vacancy rates are improving on the surface, this does not mean the centre is now vital and viable; vacancy rates are therefore only one indicator of health.
- The above factors combine to illustrate that Chatham remains highly vulnerable in the face of competition from speculative out of centre retail proposals.

Following initial advice having been received from Bilfinger GVA (BGVA), the Council's appointed Retail Consultant in regard to this planning application, **a further letter of representation has been received, written on behalf of the freehold owners of Strood Retail Park.** They have written advising that they wish to make the following additional comments:

- The likelihood of the 'fall-back' scheme coming forward is doubtful and this reinforces our own view that there is no realistic prospect of the 'fall-back' being delivered in accordance with the extant Sainsbury's permission and it should not therefore carry any weight in the determination of this application.
- BGVA refer to the principle of retail development being firmly established in this location. However in clarification the objector points out that the principle of retail development and a park and ride facility has been established in this location, but in the absence of a park and ride facility, the weighing factor in the approval of

previous permissions does not exist and the retail development in isolation is not justified.

- BGVA do not appear to have noted the planned investment in Strood Retail Park and claims that these proposals have already significantly hindered negotiations with retailers for the new retail units proposed at the retail park, which in the writers opinion has a direct and significant adverse impact on town centre investment, contrary to the NPPF.
- BGVA make several references to the North Kent SHENA - Retail Study (NKRS) which has yet to be made available for public scrutiny. The writer understands that the delay in the release of this document lies with Gravesham Borough Council but given the significance of the proposals the writer considers that the Council should delay its determination of this application until this information had been made available for public scrutiny.

In addition to the above responses written on behalf of **the freehold owners of Strood Retail Park they have made further representations following receipt of the Addendum Planning and Retail Statement (June 2016) prepared by Simply Planning Limited (SPL) on behalf of the Applicant.**

Having reviewed SPL's response to their objections they clarify certain matters as set out below:

- "We would reiterate that the likelihood of the 'fall-back' scheme being delivered in accordance with the extant Sainsbury's permission is in significant doubt. Even in the event that it presents a material consideration, any weight to be attached to the 'fall-back' should be limited accordingly.
- Strood Retail Park has long been recognised as an important contributor to the town centre's retail function. The Retail Needs Study carried out for Medway Council by Nathaniel Lichfield and Partners (June 2009) asserts that the retail park effectively functions as part of the Strood Town Centre, stating that:

'The retail offer of Strood comprises the defined Core Retail Area and the adjacent Strood Retail Park. Although they are separated in planning policy terms, they effectively function as a connected centre and are viewed as such here, given that Goad survey includes both areas as part of the Strood Town Centre Plan. Given the proximity and connectivity of Strood District Centre and Strood Retail Park they do function as a single attractor' (paragraph 12.1)

More recently, the North Kent Strategic Housing and Economic Needs Assessment (SHENA) undertaken by GVA in March 2015, notes that 'the presence of Strood Retail Park in such close proximity to the town centre could be better realised, in order to benefit the wider vitality and viability of the centre' (paragraph 6.46). It falls therefore that any impact on the performance of Strood Retail Park will undermine its potential to contribute to the wider town centre, to the town centre's detriment and contrary to the objectives of the NPPF to support town centres.

- SPL make several references to 'firm commitments' from retailers to occupy the new floorspace at Strood Retail Park. As a point of fact, there have been no retail



lettings and whilst there are ongoing discussions with retailers, there have been no signed agreements and we do not expect there to be until this application has been determined. The potential to secure new retailers to the retail park therefore remains highly uncertain and related to the decision here.”

**A letter of objection was received on behalf of the owners of Temple Park** (The Former Alloy Wheels Employment Site, Strood). Their objections are summarised below:

The fallback position is predicated on the extant planning permission granted for a 9,354m<sup>2</sup> of Class A1 retail store by Medway Council in May 2011 (permission reference MC/10/2125) and is a highly significant material consideration. However, the writer disagrees with the applicant's reasoning with respect to a fallback position for the following reasons:

- i. The extant permission is an integrated development of a 9,354m<sup>2</sup> gross (6,276m<sup>2</sup> net) Class A1 retail store and a park and ride facility. In the substance of the decision to grant permission, and on the face of that permission, the integration of these two limbs of the permission are incapable of disaggregation such that the retail limb is capable of being implemented alone. For example, condition 12 (piled foundations), conditions 14 and 15 (shared parking between foodstore and park and ride), condition 16 (cycle parking) all require the submission of details predicated on an integrated development of an A1 retail store and a park and ride facility.
- ii. The extant permission requires a significantly larger area of land than the application site. The extant permission would require reclamation of land which is currently saltings and mudflats within Whitewall Creek which are excluded from the application site. For a fallback position to exist between an extant permission and a proposed development, the site of both developments has to be substantially the same area of land not materially different extents of land.
- iii. Two conditions of planning permission MC/10/2125 limit the existing permission to being operated as a 9,354m<sup>2</sup> gross (6,276m<sup>2</sup> net) Class A1 retail store. Condition 27 requires that there is no sub-division of the retail unit. Condition 30 requires that the net retail floorspace created by the development should not exceed the 6,276m<sup>2</sup>. The extant permission can only be implemented as a single, stand-alone retail unit, therefore, without recourse to Medway Council under a Section 73 application seeking removal or variation of these conditions and the grant of a new planning permission.
- iv. The decision by Sainsbury, having purchased the site, not to implement the extant permission is a clear sign that it has no appetite in current market conditions for a 9,354m<sup>2</sup> gross (6,276m<sup>2</sup> net) Class A1 retail store. Of the other major food retailers, ASDA, Tesco and Morrisons' each have two large stores in the Medway Towns already, while Tesco has determined not to implement a planning permission for a significantly increased floorspace at its Strood store. Thereby there are market and viability reasons why the major foodstore operators would not take up the extant permission on the application site

- v. Permission MC/10/2125 is currently tied by way of the accompanying Section 106 Agreement to the provision of a park and ride facility for Medway Council on the application site. The retail permission was the enabling development for the park and ride facility. Consequently, any developer or retailer seeking to implement that extant permission would need to have recourse to Medway Council to be released from that Section 106 obligation and there is no certainty that such a release would be secured;
- vi. Medway Council has made no public pronouncement that it has abandoned Policy T17 of the adopted Medway Local Plan, which allocated part of the application site for a park and ride facility. Contrary to what the Planning and Retail Statement accompanying the application infers at paragraph 7.16, the record of the decision to allow a fire station on another park and ride site at Marconi Way, Rochester, does not confirm any intention by the Council to abandon Policy T17 of its Local Plan which is specific to the park and ride facility on part of the application site.

Without such confirmation by the Council, there can be no basis for setting aside that policy provision on part of the application site which also represents sustainable development.

The writer considers, for the reasons set out, that the implementation of the extant permission is no more than a theoretical prospect and cannot provide a basis for a fallback position to the current application. As such the fallback position should be given no weight as a material consideration in the determination of the current application.

In terms of the existing Planning Policy and the New Local Plan the writer states that the applicant considers that the Medway Local Plan 2003 is out of date, a proposition to which the writer does not disagree.

They point to Paragraph 14 of the NPPF with its presumption in favour of granting planning permission therefore applies to the determination of this application. The NPPF, paragraphs 23 to 27, require that any retail development proposal satisfy the two tests of sequential assessment and impact on town centre vitality and viability before planning permission can be granted. Where either test is not satisfied then the NPPF is clear that an application should be refused.

The writer does not consider this application satisfies through its sequential assessment in Chapter 5 of the Planning and Retail Statement the first of these tests.

They consider that the application site cannot be considered either town centre or edge of town centre and that in the context of the NPPF, the application site is out of centre. In planning policy terms, the application site is not sequentially preferable to any other out of centre site that is suitable and available for the proposed development.

The writer points to National Planning Policy Guidance (NPPG) at paragraph 010 which sets out the considerations which should apply to any sequential assessment in such circumstances, as follows:

*"Where the proposal would be located in an edge of centre or out of centre location, preference should be given to accessible sites that are well-connected to the town centre."*

The writer considers that the applicant's sequential assessment has only considered sites within or on the edge of Medway's town centres but has not had regard to other out of centre sites that are well-connected to the town centre.

They stress that sustainability is a golden thread running through the NPPF and one aspect of sustainability is to locate development where it is accessible by public transport and on foot or by cycle rather than requiring all users to travel to it by private car.

In the light of this the writer considers that the applicant's, promoting an out of centre site, and having demonstrated that no suitable or available town centre or edge of centre sites can be found for their development should have gone on to consider out of centre sites that meet the criteria in NPPG paragraph 010 and which might also be more sustainable in transport terms, such as their own site at Temple Park, which they consider to have better accessibility and connectivity being able to provide for linked shopping trips based on the retail offer within Strood town centre.

They state that they do not consider the application site to be within walking distance of any town centre or even the closest residential areas in Frindsbury, and note that it has very restricted bus services to other parts of the Medway Towns. The writer considers that to permit this application would be to allow a standalone retail destination.

In addition to the above the writer states that they consider that the applicant in discussing the new local plan for the Medway Towns places reliance on the projected comparison and convenience goods floorspace capacity identified in Medway Council's Strategic Housing and Economic Needs Assessment (SHENA). However, they point out that the SHENA's retail capacity assessment has not been made publicly available to date and that neither they, nor any other party commenting on this application, have any information available on future retail floorspace requirements in the Medway Towns on which to place reliance and use as a basis for assessing the applicant's proposals. Consequently they consider that very little, if any, weight should be given to the very limited information on future retail capacity that has emerged to date as part of the new local plan evidence base and which is relied upon by the applicant.

Moving onto the published Employment Land Needs Assessment of the SHENA, the writer points out that identifies that there is a shortfall in future employment land requirements compared to current planning commitments. They point out that this part of the SHENA refers to additional land that is available for potential future employment uses adjoining Medway City Estate. In the light of this the writer considers that in determining this application, the Council should have regard to these future employment land requirements and the 3.7 hectare contribution that the application site might make to these requirements. The writer states *"given that Medway City Estate is one of the Medway Towns primary employment areas, employment is a preferred use of the application site compared to retail when the sequential*

*assessment and sustainable transport implications of a retail use are factored in.”*

**Helvig Ltd**, who were **the former owners of Temple Park, Strood** (Formally known as Alloy Wheels, Strood) who objected to the development have subsequently written to the Council advising that they have disposed of their interest in the Temple Park and therefore **they have withdrawn their objections**.

Since the above comments and representations were received a **further letter of objection**, has been received, written **on behalf of the owners of the Pentagon Shopping Centre, which maintains their objection**. The writers concerns are summarised below:

- The objection to the applicant's claimed fall back position is maintained. However, the writer makes reference to an appeal decision, which held that in dismissing the appeal, that a comparison of the new position with the fall back position is irrelevant unless there is evidence that the implementation of the fallback use is a real possibility. In this case, the Applicant's own submission confirms that the supermarket sector has fragmented and accordingly they are now seeking a different model to that which planning permission was previously sought. There is no evidence provided that there is a realistic possibility of Sainsbury's implementing the approved scheme
- The development will compete on a like for like basis with key stores in Chatham and the Pentagon Centre, with the impact disproportionately falling on the Pentagon Shopping Centre and key national stores that underpin the centres performance. The applicant has not appropriately considered or tested these concerns. Retailer demand nationally and indeed locally remains subdued and any additional factors that unsettle occupiers, such as direct, like-for-like competition from out of centre retail stores, makes it harder to secure existing tenants on reasonable lease terms, or indeed retain them. Additionally such factors also deters potential new entrants to the market and that if the Pentagon Shopping Centre begins to fail, it will remove the key driver of footfall throughout Chatham Town Centre leading to a significantly adverse impact on vitality and viability of the centre resulting in a direct and adverse impact on existing investment;
- This development if granted will adversely impact planned investment within the Pentagon Centre. Within the Pentagon Centre there are two areas where the amalgamation of existing units is to be undertaken. One of these two areas will result in a new unit that takes in units 51- 55 (ground floor) and 82 – 91 (first floor) and would provide 1,675 sqm of floorspace across the ground and first floors. The potential occupier is currently a national toy retailer. The second unit, is a unit of 2,800 Sq.m but will be influenced by whether an existing tenant stays, with the space being reconfigured to meet their modern requirements or alternatively this space being re-let, to what the owner hopes would be a homewares operator. However, should the current development proposal at Plot 1 attract a Toy Retailer and/or a homewares retailer then interest will diminish with such provision in an out of centre location.
- The applicant's turnover figures for the development are questionable and the applicant has made no amendments to the trade draw assumptions. Such an

approach is not credible in terms of retail impact assessments and that the proposed range of goods likely to be sold will, to a large extent, replicate the goods offer of the key stores that underpinning Chatham Town Centre and the Pentagon Centre;

- The applicant's conclusion that the scheme would provide a form of retailing that would claw back trade from Bluewater is wrong. This "*...assertion... is patently wrong yet the trade draw figure from Bluewater remains the same.*" The Council should seek its own independent advice, which is supported by evidence, view on the Applicant's trade draw assumptions and provide clarity on the wider assumptions of SFT, Price Base and population growth figures that underpin the Applicant's assessment (these are not set out and will have a material impact on the results). The likely trade draw impacts of the proposed development must be set against committed retail development elsewhere (such as the proposals at Bluewater and Hempstead Valley) (i.e. the retail impact assessment must include a cumulative assessment of impact). Furthermore, quantitative impact is only half of the impact assessment exercise and the likely impact of a scheme on qualitative indicators must be given full consideration and weight as this is the area of impact assessment that places the sterile, quantitative calculation into its appropriate, local context. In this case, Chatham Town Centre remains vulnerable and even a small quantitative impact will be likely to result in a significant adverse impact. Steps to transform the centre are being undertaken, with for example significant investment in the public realm, but even these steps can very easily be undermined through inappropriate and unnecessary out of centre development;
- The Applicant's submissions on qualitative issues remain perfunctory and do not cover the indicators required by the Planning Practice Guidance including: • diversity of uses; • proportion of vacant street level property; • commercial yields on non-domestic property; • customers' views and behaviour; • retailer representation and intentions to change representation; • commercial rents; • pedestrian flows; • accessibility; • perception of safety and occurrence of crime; and • state of town centre environmental quality;
- In relation to the proposed pod units, A3 retail uses at the application site will enhance the attraction of the retail park and remove another reason for shoppers to visit the Town Centre. This will not only result in a loss of trade to the A3 occupiers in the Town Centre but it will also increase the patronage of the retail park and increase the likelihood of people diverting their trade to the proposed retail park from the Town Centre. The uses within the pod units are not integral to the Applicant's proposal; they are an addition to increase dwell time and patronage of the retail park. Our previous representations on the issue of flexibility remain unaltered in relation to different components of a scheme in light of Tesco vs. Dundee. This position has not altered. Indeed, the Great Yarmouth appeal, referred to by the Applicant, concluded that additional, bolt-on, uses such as that proposed should be capable of being accommodated separately from the main retail function of this type of proposal; and
- The proposals will likely result in a significant adverse impact on Chatham town centre and there are no material considerations that weigh in the balance for approval of this scheme. In particular, with the lack of park and ride facilities there

is now no improvement to local accessibility to defined town centres. Whilst the previous Sainsburys foodstore was approved against officer recommendation, it must be remembered that the delivery of the park and ride facility and improvement of accessibility was a key matter in which members alighted on in approving that development. Those factors no longer apply to this development proposal.

**One Local Resident** has written a **qualified letter of support** of this submission stating:

“It will bring badly needed retail facilities within easy access of those... who live on the peninsular, makes a great use of this site (which has remained unused wasteland for many years), as well as bringing much needed jobs.” The writer goes on to state that “...as with many others we food shop outside of Medway currently as it is too hard to fight your way through Strood at the weekend, this would allow us to shop locally.”

However, the writer in qualifying the above comments states “...my only concerns around the application as it stands which I feel need addressing are:

- The planned improvements to the A289 road/roundabouts needs to happen before this retail development opens due to the current traffic issues; and
- Improvements are needed to where Upnor road exits onto the A289 in the direction towards the site. At the moment it is extremely hard to get out of this exit, the additional traffic will make it almost impossible without road improvements.”

**Two local residents** have written making **comment**.

The first writer comments that “...*looking at the proposal, it looks like it could be of value to Medway*”. However the writer asks a number of questions:

- What are the developers going to do to improve the state of George Summers Close?
- The road outside my some of the unit floods on a regular basis. As such are the developers going to improve the drainage at this point?
- Maybe they could help, by providing a foot path on their side of George Summers Close too;
- Will the developer look to make George Summers a publicly owned road, rather than keep it a Private Road?; and
- The road junction at McDonald's already struggles with the traffic on it now. Are the developers, going to improve this too?

Finally the first writer comments that the road surface is in a bad state of repair and isn't built to take the weight of the lorries being proposed and that it is a shame that the development will block signage on adjoining businesses potentially resulting in a negative impact on those adjoining business.

The Second writer queries points within the applicants Transport Assessment pointing out:

- Parts 2.10 and 2.11 show walking/cycling isochromes through the Medway Tunnel - which is not allowed;
- Part 6.5 - assumes that improvements made by Council will include traffic signal control at the Vanguard roundabout. The writer states that this was not included in the plans presented to the public recently;
- The improvements to make the road dual carriageway further back will have limited improvements to journeys as unofficial dualling already takes place; and
- Asks why is the Park and Ride no longer deemed necessary?

### **Development Plan**

The Development Plan for the area comprises the Medway Local Plan 2003 (Local Plan). The Local Plan policies referred to within this document were saved by Direction issued by the Secretary of State on 21 September 2007 and have been assessed against the National Planning Policy Framework, 2012 (NPPF) and are considered to conform.

### **Planning Appraisal**

The application site comprises some 3.7 hectares of land which is generally flat and is overgrown with rough vegetation, together with areas of inter tidal mud flats. This land is located to the east of Anthony's Way and to the south Vanguard Way (A289). Anthony's Way is the main or principal access into the Medway City Estate, while Vanguard Way is a dual carriageway and links to the Medway Tunnel, which leads to Chatham, Gillingham and those parts of the Medway Towns to the east of the River Medway.

The development site has a frontage onto Anthony's Way and is bounded to the north and east by Whitewall Creek, a tidal inlet of the Medway. To the south, the site is bounded by George Summers Close, which serves units on the wider industrial estate to the south. To the immediate north of the site there is a Mc Donald's drive-thru restaurant and BP petrol filling station, which including a small convenience store. To the south of the development site lies the main portion of Medway City Estate, which comprises a range of industrial and warehousing units.

Strood Town Centre is approximately 2.3km to the south-west of the site while Chatham Town Centre is some 3.2km to the south-east on the opposite side of the River Medway.

### **Main Considerations**

The starting point for the consideration of this application has to be the consistency of the relevant Local Plan policies with the NPPF and what weight should be applied to those policies. Consideration then needs to move on to the fallback position and

establishing whether past consents can still be implemented or where past consents have been implemented what extent it remains possible to continue to implement that consent. Once this is established, the application needs to be considered in terms of the development retail impact. The Government key retail policy and guidance related to retail development proposals are set out in Part 2 (Ensuring the vitality of town centres) at paragraphs 23 to 27 of the NPPF. Paragraph 23 sets out a number of objectives which include:

- Promote competitive town centres that provide customer choice and a diverse retail offer and which reflect the individuality of town centres;
- The allocation of a range of suitable sites to meet the scale and type of retail, leisure, commercial, office, tourism, cultural, community and residential development needed in town centres; and
- Set policies for the consideration of proposals for main town centre uses which cannot be accommodated in or adjacent to town centres.

To aid in assessing the suitability of such sites, the NPPF also set out tests within Paragraph 24 and 26. The first test relates to the sequential approach, whilst the second test relates to retail impact. In terms of Paragraph 26 of the NPPF it is clear that the sequential approach should be applied to all planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date local plan.

Once the position in terms of retail policy has been discussed, the Council then needs to balance the potential benefits of the development against any disbenefits in terms of 'the planning balance' and then consider whether the development is sustainable in terms of its economic, social and environmental roles, as referred to in paragraph 7 of the NPPF.

In addition to the above, the Council will also need to consider matters related to: Design and appearance of the development; The developments impact on amenity, both visual & aural and in terms of potential impacts in terms of noise, dust, air quality, lighting, Etc. Consideration also needs to be given to issues related to: Land contamination; Flood risk and drainage; Ecology/biodiversity; and Highways matters, including trip generation, access and traffic impacts, Traffic Impact on the wider network, Pedestrian access and parking. Finally, consideration will need to be given to any matters that would need to be secured via a legal agreement, should the application be considered for approval.

#### Relevant Local Plan Policies and Consistency with the NPPF.

Section 36(8) of the Planning and Compulsory Purchase Act 2004 (as amended) states: "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."

The National Planning Policy Framework is such a material consideration and in relation to the Council's Medway Local Plan 2003 (Local Plan), the current Local Plan,



paragraph 215 of the NPPF state that due to age of the Local Plan "...due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)."

As Members will be aware, in the absence of relevant up to date development plan policies, the balance is tilted in favour of sustainable development and granting planning permission except where the benefits are 'significantly and demonstrably' outweighed by the adverse impacts or where specific policies in the NPPF indicate otherwise. This is known as 'the Tilted Balance'. So in the consideration of this application it is important to understand the level of conformity of Local Plan Policies that are key to the consideration of this submission when assessed against the NPPF. The key policies in relation to this proposal, as contained in the current Local Plan are policies S1, S2, S5, R1, R2, R13 and T17.

Policies S1 and S2 set out the Council's development strategy and strategic principles, whilst policy S5 sets out the Council's vision of Medways City Centre.

Policy S1 is considered to be consistent with paragraphs (18), (19), (20), (21), (23), (35), (37), (109), (111), (112), (114), (117), (118), (126), (136), (156) of the NPPF, in that it recognises: the Importance of economic growth; The need for sustainable development including balance & integration of land use and transport; Encourages sustainable transport modes; Identification of strategic sites; Focus on town centres & re-use of brownfield land (i.e. investment in urban area); Seeks positive planning; and Seeks the protection of natural environment and heritage.

Policy S2 is considered to be consistent with paragraphs: (23), (24), (30), (32), (35), (56) of the NPPF, in that it seeks to: Ensure design & quality of development; Protection of natural and local environments; Provide a balance of land use and provision of local facilities to support healthy communities; Supports the sequential approach to development (both in respect of town centres and transport issues); and seeks to support sustainable transport.

Policy S5 sets out positive vision for area as required by NPPF and seeks to support town centres and allocation of sites/areas for town centre development consistent with para (23) of the NPPF.

Policy R1 is the Council's policy related to comparison retailing in Chatham and confirms for the most part with paragraph 23 of the NPPF, whilst Policy R2 relates to convenience retailing in Chatham. Both Policies R1 and R2 are supportive of the role of town centres, being positive, promotes a competitive town centre, encourages economic activity (especially where town centres are in decline). Furthermore it defines a network and hierarchy of centres to provide customer choice and a diverse retail offer and defined the extent of town centres and primary shopping areas, making clear which uses will be permitted. These policies also allocate suitable sites to meet the scale and type of retail needed in town centres, including edge of centre sites that are well connected to the town centre where suitable and viable town centre sites are not available and sets policies for meeting identified needs & assessing proposals for town centre uses in other locations if suitable town centre/edge-of-centre sites are not available;

Paragraphs (24) & (26) of the NPPF are also relevant in terms of Policies R1 and R2, insofar as relevant in terms of the need to undertake sequential test for town centre uses proposed in edge of centre and out of centre locations, whilst paragraph (24) in particular states that preference for edge of centre sites should be for “accessible sites that are well connected to the town centre.” Paragraphs (30) & (35) of the NPPF are also relevant in relation to this policy insofar as it relates to sustainable transport and the relationship of the pattern of development to this.

In addition to the above points, Policy R1 identifies Chatham as Medway’s main retail centre with a priority for retail investment and this accords with paragraph (156) of the NPPF that: “set out the strategic priorities for the area in the Local Plan, [including] ...the provision of retail, leisure and other commercial development ...”

In terms of Policy R13 this policy relates to retail uses and the sequential approach. The sequential approach is generally in conformity with paras (23), (24), (26) & (27) of the NPPF, as is provision of criteria for assessing out-of-centre proposals. Additionally, the transport requirements of this policy are generally in conformity with paragraphs (32) & (35) of the NPPF.

Finally policy T17 relates to the provision of park and ride on the proposed development site and is considered to be consistent with paragraphs (30) & (35) of the NPPF, which support the promotion of sustainable transport, whilst paragraph (41) of the NPPF supports the allocation/protection of sites to develop infrastructure that can widen transport choice.

Bearing in mind all of the above, the key Local Plan policies identified above are considered to be consistent with the NPPF. As such it is considered that significant weight can be applied to these policies in this instance and that ‘the Titled Balance’ does not apply.

#### Background and the fallback position.

The planning history for this development site is detailed earlier in this report. It is clear from this Planning History Section that various previous planning consents have been granted on this development site.

The earliest of these applications, planning reference MC2003/1301, was granted by the Secretary of State following a call-in public inquiry and related to a B&Q warehouse development together with park & ride. This scheme was granted consent having regard to the considerations surrounding the B&Q Gillingham appeal decision. Namely that no sequentially preferable sites existed for a B&Q ‘Warehouse’ format store and that there was an unmet need for a store of that type and as such was therefore a very specific departure from the development plan. The Secretary of State applied conditions that reflected the exceptional nature of that consent. These covered the types of goods that could be sold (which explicitly exclude food, toiletries and other ‘convenience’ goods), and sub-division of the premises.

There have been a number of consents in the intervening period and in 2009 an application seeking to consolidate those earlier consents and vary conditions was

granted. (See planning reference MC2009/0671). That scheme allowed for the sub-division of the building previously approved and also allowed a wider range of goods to be sold on site, effectively allowing a retail warehouse park with convenience goods trading, albeit still restricted by planning condition that prevented the sale of: food; alcoholic drinks; tobacco; fashion clothing and footwear including children's clothing; chemist/pharmaceutical goods; f) jewellery/fancy goods and luggage; g) perfume and toiletries; sports clothing and equipment; i) mobile phones and j) newspapers, greeting cards, stationery and writing/drawing equipment.

Both of the above mentioned previous applications had the potential to be implemented up until 25 September 2011. However, they have both now lapsed and can no longer be implemented.

Whilst the above permissions have lapsed, they both had the capability of being implemented in 2010 when the Sainsbury's planning application, Planning Reference MC/10/2125, was being considered and they were material considerations in relation to that planning application, when it was granted consent, on the 06 May 2011.

The Sainsbury's planning permission, Planning Reference MC/10/2125, allowed consent for the construction of a Park & Ride facility and Class A1 retail food store with a gross external area totalling approximately 9,822sq.m of which 6,276sq.m would provide the net retail floorspace. In addition to this retail food store, the application also proposed associated car parking, delivery yard, vehicular access, highway improvement works, landscaping and other works including land reclamation. The site area in total extended to an area of approximately 7.85 hectares (19.40 acres).

Clearly a number of planning conditions were attached to the above mentioned consent, two of which limit the consent to only being able to operated as a 9,354m<sup>2</sup> gross (6,276m<sup>2</sup> net) Class A1 retail store (Condition 30) and prevents the sub-division of the retail unit (Condition 27). Therefore the extant permission can only be implemented as a single stand-alone retail unit, without further recourse to Medway Council. Furthermore the extant consent, MC/10/2125, is currently tied by way of the accompanying Section 106 Agreement to the provision of a park and ride facility on the application site.

A Certificate of Existing Lawful Use or Development (CELUD) was issued by the Council, under Planning Reference MC/14/1413, on the 29 July 2014, confirming that the Sainsbury's planning permission MC/10/2125 had been lawfully commenced. The applicant for this current planning submission places significant emphasis on the Sainsbury's Consent and its implementation as the fallback position. They state at paragraph 1.11 – 1.14 (inclusive) of their Planning and Retail Statement (PRS):

*"1.11 The planning history is, as such, extremely important to the consideration of these proposals. Its sets the base parameters or 'backstop' position against which these proposals should be judged. In particular, it establishes that:-*

- There has been a long history of permitting a significant quantum of retail floorspace at this location stretching back to 2005;*
- The Secretary of State, in 2006, endorsed the acceptability of retail development on the site;*

- *The principle of the site being developed to provide a retail warehouse park is well established by the consents of June 2007 and January 2010;*
- *The site continues to benefit from an extant consent for some 9,354m<sup>2</sup> of unrestricted retail floorspace which could be built out today.*

*1.13 In short, the principle of the development of this site for a significant quantum of either comparison or convenience floorspace (or a combination of the two), well in excess of that contemplated in this application, is long established. Moreover, the most recent consent (the Sainsbury's consent) which allows for 9,354m<sup>2</sup> of open A1 floorspace remains extant and could be built out without further recourse to the Council. That consent could be occupied by a foodstore such as say Sainsbury's or Asda or equally could be occupied by any other retailer including fashion retailers such as Marks and Spencer, a department store such as Debenhams or John Lewis or a mixed retailer such as B&M Bargains.*

*1.14 Accordingly, in any assessment of this current proposal, and in particular in any consideration of retail impact, this fall-back or back-stop position carries very significant weight."*

Whilst the CEULD was issued confirming the commencement of MC/10/2125, that amounted to an agreement that the pre-commencement conditions had been appropriately discharged and that work had commenced in the form of the laying out of part of a road, which were considered to represent a material operation for the purposes of Section 56(4) of the Town and Country Planning Act 1990 (as amended). However, it must be remembered that this planning consent also related to a larger development proposal, which included the provision of a park and ride facility and not just supermarket and its ancillary infrastructure. In this regard it is considered that the applicant's claim in regard to the fall back position is incorrect.

Clearly there are two parts to planning permission MC/10/2125 and under the current planning consent they cannot be separated, such that the retail limb of that consent cannot be implemented in isolation from the park and ride element of that consent. The Section 106 legal agreement also prevents the operation of the retail element of the development in the absence of the provision of the park and ride facility.

Bearing the above factors in mind, it is considered that the current development proposal is materially different from the extant planning consent, not least in the composition and potential trade draw from the two differing schemes. In terms of the extant planning permission condition 27 restricts the sub-division of the supermarket (Condition 27) whilst condition 30 restricts the gross and net developable floor space. The justification for the imposition of these conditions was to enable the Local Planning Authority to control the development in accordance with retail policy and the provisions of, at the time, Planning Policy Statement (PPS) 4. Whilst this has subsequently been superseded by the NPPF and National Planning Practice Guidance (NPPG) the overarching objectives contained within PPS4 have been carried forward into the NPPF and the key sequential and impact tests for retail proposals outside existing centres remain.

In addition to the above, it must be remembered that the permitted scheme is of a scale comparable to the largest superstores in the country and would inevitably have included both convenience and comparison goods. However, as a 'main food' shopping destination, with non-food under the same roof, this would behave very differently in terms of its shopping patterns than the proposed new scheme, which comprises a number of non-food units and anchor tenants creating a retail park 'destination' for comparison goods expenditure and would materially affect how the retail floor space would operate. Indeed the proposals are significantly different in composition, layout and prospective operator line-up, with very different retail impact implications.

Finally, the decision of the applicant of MC/10/2125, Sainsbury's, not to develop out their extant permission indicates that there is unlikely to be any appetite in current market conditions for a open A1 retail food store of the size permitted. Whilst the extant consent could include both convenience and comparison goods, the use is restricted to a single planning unit by the prevention of sub-division within that unit, by planning condition. The extant development is therefore only likely to attract developers that provide main food shopping destinations, such as the main supermarket retailers and in this regard the other supermarket operators within the area, including ASDA, Tesco and Morrisons' each have two large stores in the Medway, whilst Tesco has determined not to implement a planning permission for a significantly increased floor space at its Strood store. This suggests that there are market and viability reasons why the major foodstore operators would be unlikely to take up the extant permission on the application site. As such it is not considered that there is any evidence of market appetite for a stand alone comparison operator for a development of the extant consent permitted.

In regard to the fallback position, bearing the above in mind, the Council sought legal advice from Counsel who has confirmed the following in regard to this development site.

First of all permission was granted for a substantial retail operation with a park-and-ride. In the policy context at the time, the provision of a park-and-ride was an important consideration in granting permission. The permission is extant but indivisible in this regard as the provision of the park-and-ride is a requirement of implementation. The store cannot operate without it. Although the permission has been implemented, the fact that there is little prospect of this particular scheme being further implemented to completion not least because of the expense of the provision of the park and ride facility as promoted, is remote. Given this linkage, the existing consent does not, per se, set a precedent for an alternative retail scheme without a park-and-ride.

Although the previous consents provide in principle support for retail development, they do so against the requirement of the provision of a park and ride having regard to policy objectives. The statutory policy context remains the same.

To the extent that it remains possible to continue to implement it, Counsel advises that the weight to be given to the fall-back position is a matter for the decision maker and whilst it cannot be discounted and remains a material consideration, the little likelihood of this happening means that the weight to be afforded to this as a fall-back position as a material consideration must be very limited indeed.

Counsel also advises that the history of other retail related consents on the site are also material considerations and must be similarly taken into account.

As noted above, whilst there have been other retail consents on this site, most notably MC2003/1301 and MC2009/0671, those consents were tied to the provision of the park and ride facility and are now time expired. On this basis, it is considered that limited weight can be applied to those consents as material planning considerations. Furthermore, for the reasons set out above, it is also considered that little weight can be given to MC/10/2125 as the fallback position.

### Principle

Medway's Development Plan comprises the saved policies of the Local Plan, until it is replaced by a new local plan. Work has begun on a new local plan but adoption is not anticipated until late 2018. However, documents that have been prepared to inform the new local plan are considered to be relevant, albeit only having limited weight in terms of them being a material consideration due to the fact that they are at the early stage in the development planning process.

In terms of the principle of the development, the Council has to have regard to the NPPF, which is supported by the NPPG, and the conformity and compliance of the Council's current saved policies of the Local Plan.

The NPPF has a presumption in favour of sustainable development and at paragraph 14 states that in terms of decision taking the presumption means:

1. 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 planning permission unless:-
  - Any adverse impacts of doing so would significantly demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
  - Specific policies in this framework indicate development should be restricted.

Paragraph 7 of the NPPF states:

*"There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:*

- *An economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;*

- *A social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being; and*
- *An environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy."*

In addition to the above, the NPPF at paragraph 17 sets out 12 core principles, including, as summarised, planning should: be genuinely plan-led; proactively drive and support sustainable economic development; secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings; contribute to conserving and enhancing the natural environment and reducing pollution; encourage the effective use of land by reusing land that has been previously developed; promote mixed use developments, and encourage multiple benefits from the use of land in urban and rural areas, actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable; and take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs.

The key retail policy and guidance contained in the NPPF is set out in Part 2 (Ensuring the vitality of town centres) at paragraphs 23 to 27. Paragraph 23 sets out a number of objectives for town centres which include to:

- Promote competitive town centres that provide customer choice and a diverse retail offer and which reflect the individuality of town centres;
- Allocate a range of suitable sites to meet the scale and type of retail, leisure, commercial, office, tourism, cultural, community and residential development needed in town centres. It is important that needs for retail, leisure and office and other main town centre uses are met in full and are not compromised by limited site availability; and
- Set policies for the consideration of proposals for main town centre uses which cannot be accommodated in or adjacent to town centres.

To aid in assessing the suitability of such sites, the NPPF set out tests within Paragraph 24 and 26. The first test relates to the sequential approach, whilst the second test relates to retail impact. In terms of Paragraph 26 of the NPPF it is clear that the sequential approach should be applied to all planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date local plan. This paragraph states:

*“Local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with*

*an up-to-date Local Plan. They should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. When considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale.”*

In terms of the retail impact Paragraph 26 of the NPPF states that such assessments should include:

- *“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.”*

Paragraph 27 of the NPPF is very clear that *‘where an application fails to satisfy the sequential test or is likely to have significant adverse impact ... it should be refused’*. However, this policy requirement should be considered alongside all other material considerations.

In terms of the Council's relevant saved Local Plan policies, the planning status of the application site is established in ‘saved’ policy T17 and other policies such as general retail policy across Medway and those covering development in the town centres are also of relevance.

Policy T17 of the Local Plan allocates the site for a park & ride facility subject to design details. This policy goes on to indicate that on any surplus land, commercial and industrial development may also be accepted providing it takes advantage of the park and ride facility, although clearly such development would have to be subject to other appropriate saved policies within the adopted Local Plan. This policy is considered to be consistent with Paragraphs 30, 35 and 41 of the NPPF, in that these paragraphs require LPA's: when preparing Local Plans to support a pattern of development which, where reasonable to do so, facilitates the use of sustainable modes of transport; seek to *“...exploit opportunities for the use of sustainable transport modes for the movement of goods or people...”*; and requires LPA's to *“...identify and protect, where there is robust evidence, sites and routes which could be critical in developing infrastructure to widen transport choice.”*

The primary objective of the policy is to allocate land for the park & ride function with surplus land having some development potential though the policy does steer towards commercial or industrial. In the instance of the current planning application the applicant has specifically excluded the provision of any park and ride facility stating at paragraph 1.9 of their Planning and Retail Statement (PRS) that: *"The cost implications of filling in the Creek, including the significant ecological mitigation works, were one of the principal reasons why the previous retail proposals did not proceed."* Indeed the applicant make much of their contention that the park and ride element of



Policy T17 has been abandoned, pointing to the sale of the former park and ride site at Marconi Way.

In this regard it should be noted that there is no indication or resolution from the Council in regard to abandoning its policy objective of Policy T17 of the Local Plan at this time. Whilst the Council has sold the former Park and Ride site at Marconi Way, that sale was based on a review of the costs and benefits of providing the park and ride facility on that site. Following that review, the Council made an informed decision in regard to withdraw the bus service that served that particular park and ride site and consequently close that car park. Indeed Medway Council's Cabinet granted delegated authority to allow the specific park and ride site at Marconi Way to be declared surplus to requirement on the 13 March 2013 and that site was subsequently sold. However, no such similar decision in relation to the principle of delivering a park and ride facility at Medway Cite Estate, within the area of Policy T17 of the Local Plan, exists.

Saved Policy T17 of the Local Plan states:

*“Whitewall Creek, at Anthony’s Way, on the Medway City Estate, as defined on the proposals map, is allocated for a new bus Park and Ride site and, on any surplus land, commercial and industrial development which takes advantage of that facility.”*

The Council has not abandoned this policy, at this time, and it is still current and a material consideration and remains part of the statutory development plan. Without confirmation by the Council, that there is an intention to abandon the policy there is no basis for setting aside that policy provision on part of the application site. Therefore, in the absence of any formal resolution to abandon this policy, it is still considered to be relevant.

Policy T17 allocates the site for a new bus park and ride and only allows development on any surplus land for commercial and industrial development which takes advantage of the park and ride facility. In the absence of the park and ride element and bearing in mind the Council has made no formal statement of intent with regard to abandoning the policy related to park and ride provision the proposal fails to comply with the objectives of policy T17, and in this regard would also be contrary to the objectives of Paragraphs 30, 35 and 41 of the NPPF.

Moving on to more specific retail planning policy in the Local Plan Policies R1 and R2 allocate a major site in Chatham for both convenience and comparison goods floorspace, whilst Policy R13 is concerned with retail uses and the application of the sequential approach outside of the main defined centres of Chatham, Strood, Gillingham, Rainham and Rochester. This policy is partially in compliance with the sequential and impact tests set out in the paragraphs 24 and 26 of the NPPF and although dated can be afforded some weight. Policies R4, R5 and R6 set a general presumption in favour of additional provision in the Strood, Gillingham and Rainham core areas and allocate specific sites in Gillingham and Rainham. Except where stated the above policies are considered to accord with Paragraphs 23, 24, 26, 30 and 35 of the NPPF.

Policy S2 of the Local Plan puts the application of the sequential approach at the very heart of the planning strategy for the area and is also considered to accord with Paragraphs 23, 24, 26, 30 and 35 of the NPPF. When assessing the development site against paragraph 24 and policy S2 of the Local Plan the application site clearly falls into the definition of an 'out of centre' location, as it is located considerably more than 300 metres from any of Medway's primary shopping areas. Paragraph 24 of the NPPF is very clear in that Local Planning Authorities (LPAs) should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. This paragraph also sets out that *"When considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre."*

As the site is located in an 'out-of-centre' location the applicant has submitted a PRS, which has been subsequently reviewed by the applicant in their Addendum to the PRS (APRS) and in their subsequent letter to the Council of the 13 July 2017. As part of these documents, the applicant has included an assessment of sequentially-preferable in-centre and edge-of-centre sites within an agreed catchment area. This exercise was undertaken in the PRS, as amended by the APRS and the applicant's letter of the 13 July 2017. The Council's appointed Retail Planning Consultant (RPC), Carter Jonas (CJ), have reviewed these documents and advised the Council accordingly.

#### Review of the Sequential Test

In April 2017, the Council commissioned CJ to undertake a high level review of the applicant's sequential test, along with GVA's previous advice to the Council. Prior to April 2017 GVA were acting as the Council RPC in relation to this development proposal. As part of the CJ review a detailed assessment of the availability and/or suitability of the sites identified and assessed by the applicant was undertaken and based on that review, it was considered that the first key consideration in this case was whether the applicant had clearly and robustly demonstrated sufficient 'flexibility on issues such as format and scale' in their sequential approach, in compliance with the NPPF (para 24) and the NPPG.

Members will be aware that the sequential test encapsulated in para 24 of the NPPF requires applications for main town centre uses to be located in town centres first, then in edge-of-centre locations and only if suitable sites are not available should out-of-centre sites be considered. When considering edge and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre. Applicants and local planning authorities should also demonstrate flexibility on issues such as format and scale and the NPPF advises at paragraph 27 that permission should be refused where there is a sequentially preferable site. However, the latter requirement should be tempered, by the duty of a local planning authority to have regard to all material considerations and apply a proper balancing exercise notwithstanding the weight to be given to the NPPF as a statement of Government policy.

The NPPG provides more detailed guidance on the application of the sequential test and makes it clear that the sequential test guides main town centre uses towards town

centre locations first, then, if no town centre locations are available, to edge of centre locations, and, if neither town centre locations nor edge of centre locations are available, to out of town centre locations, with preference for accessible sites which are well connected to the town centre. It supports the viability and vitality of town centres by placing existing town centres foremost in both plan-making and decision-taking [paragraph 008] (Reference ID: 2b-008-20140306). Paragraph 010 (Reference ID: 2b-010-20140306) provides that with due regard to the requirement to demonstrate flexibility, has the suitability of more central sites to accommodate the proposal been considered? Where the proposal would be located in an edge of centre or out of centre location, preference should be given to accessible sites that are well connected to the town centre. Any associated reasoning should be set out clearly, such as: Is there scope for flexibility in the format and/or scale of the proposal? However, it is not necessary to demonstrate that a potential town centre or edge of centre sites can accommodate precisely the scale and form of development being proposed, but rather to consider what contribution more central sites are able to make individually to accommodate the proposal and it is this point which can be read as requiring the consideration of the disaggregation of a proposal.

The interpretation and application of 'flexibility' in the assessment of the 'availability' and 'suitability' of sites has been subject to significant discussion and debate since the publication of the NPPF and NPPG; as illustrated by a number of recent and relevant Supreme Court, High Court, appeal and call-in decisions, some of which have been referenced by the applicant in the various assessments submitted by them. Most of these cases have turned on their own facts, but the situation has not been assisted by appeal decisions that appear to pull in different directions since 2014.

The applicant, in this case, has placed significant weight on the Dundee and Rushden Lakes decisions to inform and guide their sequential approach.

The Council's RPC, CJ, noted that the Council's former RPC (GVA) had previously advised the Council, in October 2016, that they were satisfied that the applicant had demonstrated a "sufficient degree of flexibility" in their approach, and there was no requirement to demonstrate the "disaggregation" of the proposed floorspace. On this basis Council's former RPC, GVA, had concluded in their Retail Appraisal (Addendum) (RAA) (para 1.69) that, in their opinion, there were no sequentially preferable sites that could accommodate the proposed development. However, following the high level review the Council's newly appointed RPC, CJ, advised that in the intervening period, there have been a series of appeal decisions published that have provided further interpretation and clarification of the sequential test; specifically on the issues of format and scale, the treatment of "disaggregation", and the interpretation of what constitutes a "reasonable period of time".

It is important to note that the assessment of 'availability' and 'suitability', and the degree of flexibility to be applied, are matters of planning judgement for the decision-maker (i.e. the Local Planning Authority (LPA) in this instance) according to the circumstances of each case. For example, even in the often quoted Rushden Lakes decision the Inspector explicitly pointed to "flexibility" as including consideration of:

"...flexibility in a business model, use of multi-level stores, flexible car parking

requirements or arrangements, innovative servicing solutions and a willingness to depart from standard formats” (para 8.49).

This approach to “flexibility” is supported by the Inspector in the Section 79 called-in decision issued on 30<sup>th</sup> June 2016 where the Secretary of State agreed with the Inspector’s conclusion and refused the application for a mixed use development at land north of Honiton Road and west of Fitzroy Road, Exeter (Ref: APP/Y1110/W/15/3005333). In terms of the sequential test the appellant had acknowledged that although an alternative edge-of-centre site could accommodate the quantum of retail floorspace proposed, it would necessitate a reconfiguration of the proposed floorspace. Furthermore the appellant stated that the alternative site could not accommodate the proposed access road, parking areas or the drive-through aspect of the proposed restaurants. In response, the Inspector concluded that the configuration of floorspace needed “would be no more than showing reasonable flexibility” (para 11.32). He also concluded that it would be “unreasonable” to insist on the same requirement for parking and access in a town centre, as the town has ample parking, service roads and excellent links to public transport (para 11.33).

The same approach was taken by the Inspector in the Scotch Corner inquiry [APP/V2723/V/15/3132873 & APP/V2723/V/16/3143678]. This was in relation to a designer outlet centre selling the types of goods that could be found on the high street. Notwithstanding arguments about the qualitative differences between discounted fashion goods and up to date fashion goods available on the high street, the Inspector stated:

*“In carrying out the sequential test it is acknowledged that whilst Framework paragraph 24 indicates that applicants should demonstrate flexibility on issues such as format and scale, it does not require the applicant to disaggregate the scheme. The sequential test seeks to see if the application, i.e. what is proposed, can be accommodated on a town centre site or on sequentially preferable sites. There is nothing in the evidence before me to suggest that the applicant has pitched the scale of the scheme so that it would be impossible to identify a town centre site.”*

In the Tollgate Appeal [APP/A1530/W/16/3147039], which is a recent appeal determination related to an out of centre retail development, issued on the 4<sup>th</sup> August 2017, the Inspector stated at paragraphs 8.3.11 – 8.3.14 (inclusive):

*“Under disaggregation or sub-division what would be required is the splitting up of the proposal into smaller parts spread to a variety of sites in, and on the edge of, Colchester Town Centre. The sequential test looks to see if there are suitable sites which can accommodate the broad type of development that is proposed in respect of the approximate, rather than precise, size, type and range of goods that are proposed. It is common-sense that a development split into several disparate parts does not amount to approximately the same size or type of development. The task to assess sequentially preferable sites (plural) means in order to see whether any one (singular) of them can accommodate what is proposed.*

*The sequential test within the NPPF falls to be interpreted on its own terms, and not by reference to previous policy and guidance which made express reference to disaggregation. Those references were not carried forward. Neither the NPPF nor the*

*PPG make any reference to disaggregation or sub-division. This was a deliberate choice when formulating current policy. Warners Retail confirms that it is not appropriate to interpret the sequential test by reference to withdrawn guidance.*

*The suggestion that the PPG is 'not inconsistent' with sub-division is misplaced. It relies on what contribution more central 'sites' (plural) can make "individually to accommodate the proposal." This is a question of whether any one of the sequentially preferable sites be able to accommodate what is proposed, having applied flexibility, not whether a number of them can cumulatively add up to the same or similar in total. Being 'not inconsistent' is a long way from positively requiring disaggregation.*

*"Finally, the SoS's decisions in Rushden Lakes and Scotch Corner both conclude that disaggregation is not required to demonstrate flexibility. This interpretation is to be preferred to the decisions of individual inspectors who have, wrongly as a matter of law, determined that disaggregation must still be considered (the Inspector who decided the Great Yarmouth case did so without any legal submissions concerning the meaning of the sequential test)."*

The case law does not provide explicit guidance on the issue. However, two cases do provide some assistance, *Warners Retail Ltd v Cotswold DC* [2016] EWCA Civ 606 and *Aldergate Properties v Mansfield DC* [2016] EWHC 1670 (Admin).

In the first case Lindblom LJ stated:

*"30. Under paragraph 24 of the NPPF both applicants and local planning authorities are expected to "demonstrate flexibility on issues such as format and scale". What bounds can reasonably be set on an applicant's preference and intentions as to "format and scale" in any individual case will always, and necessarily, depend on the facts and circumstances of that particular case. The policy in paragraph 24 of the NPPF should not be seen as prescriptive in this respect. It plainly is not.*

*"31. Flexibility was also called for under the practice guidance, in somewhat more elaborate terms. It is very clear from paragraphs 6.42 and 6.45 that the identification of a relevant "need" or "need/demand" for the purposes of the sequential approach was not intended to be merely a self-serving exercise on the part of the developer himself. As paragraph 6.45 made plain, sites were not to be rejected on the strength of the "self-imposed requirements or preferences of a single operator ..." Otherwise, the sequential approach would likely become a merely self-fulfilling activity, divorced from the public interest. It is also clear, however, that the authors of the practice guidance regarded the developer's own intentions as generally having some bearing on the application of the sequential test. One sees this, for example, in paragraph 6.37 – in the reference to "the need or demand which the proposal is intended to meet"; in paragraph 6.42 – in the concept of "what aspect(s) of the need are intended to be met by the site(s)", the recognition that a more central site does not have to be able to "accommodate precisely the scale and form of development being proposed", and the need to consider what contribution such a site might make to "meeting the same requirements"; in paragraph 6.45 – in the reference to the "need/demand [the applicant's] proposal is intended to serve"; and also in paragraph 6.46 – in the reference to "the scale/form of town centre uses proposed ..."*

Further on in this judgment the judge stated as follows:

*“44. In this case there can, I think, be no complaint about the legal soundness. In the context of the policy for the sequential approach as it was in PPS4 and in the practice guidance, the Supreme Court's observations on the approach to be taken under the Scottish policies it had to consider in Tesco v Dundee City Council were acknowledged by Hickinbottom J. in R. (on the application of Zurich Assurance Ltd., trading as Threadneedle Property Investments) v North Lincolnshire Council [2012] EWHC 3708 (Admin) (at paragraphs 53 to 64). Having noted those observations Hickinbottom J. found that in the particular circumstances of that case, under the policy regime applicable to it, the local planning authority's committee was entitled to conclude, on the material before it, that “the applicant had demonstrated flexibility in terms of the sequential approach so far as the possible disaggregation of the Marks & Spencer operation is concerned” (paragraph 62).*

*“45. I think one must be careful here. The Government's policy for the sequential approach in paragraph 24 of the NPPF and the practice guidance are not in all respects the same as the NPPG8 and development plan policies construed by the Supreme Court in Tesco v Dundee City Council. They are similar in broad intent, but they are not in identical terms. An obvious similarity, though the language is different, lies in the concept of “flexibility”. The requirement in the final sentence of paragraph 24 of the NPPF for both applicants and local planning authorities to “demonstrate flexibility on issues such as format and scale”, as amplified by the advice in paragraphs 6.42 to 6.46 of the practice guidance, bears some similarity to the requirements for “flexibility and realism” on the part of both developers and retailers and planning authorities in paragraph 13 of NPPG8 and the requirement for planning authorities to be responsive to the needs for retailers in paragraph 14. That much is clear. But one should not simply read across the Supreme Court's interpretation of the Scottish policies in Tesco v Dundee City Council as if it were the construction of the differently worded policy in paragraph 24 of the NPPF and the corresponding parts of the practice guidance. It is not.”*

In the second case Ouseley J stated:

*“36. I shall approach this first by construing the NPPF, without considering Tesco v Dundee City Council because the language of the Scottish policies is to some extent different, and it did not consider the language of the English policies relevant to this case. First, although the language of “suitable” and “available” features in both the plan-making policy in [23] NPPF and in the development control policy in [24] NPPF, it is inevitable that their focus will be different at the two stages. But there is a sensible relationship between them; they are not to be read simply in isolation from each other. The plan-making policies plainly do focus on allocating sites to meet retail needs, as a town centre use; but policies and site allocations have to be sound and their effectiveness depends on their commercial realism. That approach properly involves planning for development to go to commercially realistic allocated sites where a particular type of development is seen as publicly beneficial, and discouragement, to the point of refusal, for such development elsewhere. The development control policy in [24] NPPF deals with applications for town centres uses out of centre where there is no up to date Development Plan embodying the policies of [23] NPPF. But the development control policy aims to achieve as much of what an up to date plan would*

achieve as possible. It is not intended that the absence of an up to date plan creates a rather different world in which retailers could enjoy a much greater degree of temporary freedom based on their individual commercial interests.

*“37. Second, and related, 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 policies which advise developers and retailers to have regard to the circumstances of town centres, as in Tesco v Dundee [28]. It is the purpose of the planning system to control development that is to permit, prevent, encourage, inhibit or limit and condition it, so that the individual private or commercial interest and the broader public interest meet in reconciliation however uneasily. 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.*

*“38. Third, and of critical importance here, still less can it 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. That would be clear language for such an odd result to be achieved.*

*“39. Any alternative approach would reduce the sequential test to one of the individual operator’s preference, with the suitability of centres, sites and their availability varying from applicant to applicant each proposing the same broad type or even identical form of development.”*

Taking the above into account it is clear that disaggregation has to be considered on two levels. The first is in relation to proposals for single stores where it has been contended that the offer ought to be disaggregated. Quite clearly the above authorities do not support this and this is considered to be entirely in line with the *Tesco* decision. In the case of a retail park comprising a number of units a different problem is posed, principally because the issue of flexibility (a matter which has to be applied on a case by case basis and according to the facts: *Lindblom LJ*) has a potentially broader focus. The issue of disaggregation will be further considered later.

### *Availability*

In terms of the assessment of “availability”, although it is acknowledged that the NPPF and the NPPG have reduced the timescales for assessing the availability of sites, the LPA considers that it is unreasonable to discount a potentially sequentially preferable site and/or building because it is not available immediately at the time the application is made.

The assessment of whether a site is available should be considered in the context of the timescales for development of the application proposals (if permission is granted), and on the facts of the case (including local plan policy and regeneration objectives). For example, there will be cases where a site may not be immediately available at the time of the sequential assessment, but it is clear that it will become available within a

relatively short time period (and certainly within the reasonable time period for an application to be determined, developed out and occupied, subject to planning). This interpretation of “availability” is supported by the Inspector’s appeal decision on Home Bargains in the Peel Centre, Cheltenham (APP/U1620/A/14/2214917), in which he concluded that:

*“...depending on the circumstances of the case, having to be immediately available for occupation seems somewhat too restrictive”* (IR, para 17).

It is clear that the assessment of the availability of a site for development will depend on a number of factors and these have to be reasonably assessed on a case-by-case basis. In the “real world” experience shows that proposals are rarely brought forward at exactly the same time, and City/Town Centre schemes (i.e. those located within and/or on the edge of Primary Shopping Areas) can inevitably take longer to plan and deliver than out-of-centre schemes. Given that national and local plan policy supports a ‘town centre first’ approach – and this has been consistently endorsed by the DCLG and Ministers - it is material to our assessment of availability to consider when sites may be capable of delivering development rather than whether they are necessarily available at the time a competing application is made.

Notwithstanding this, the Council must “err on the side of caution” and not place significant weight on more central sites where it is clearly apparent that the planning and development of these sites is likely to take a substantial period for various reasons; including, for example, the need to secure land assembly and funding.

### *Sequential Sites Update*

Following advice received from the Council’s RPC, the Council issued a letter to the applicant on 20<sup>th</sup> June 2017 seeking further clarification and analysis on a number of the key issues identified above in order to inform their decision-taking, and specifically to establish whether the proposed scheme fully satisfies the requirements of the NPPF and NPPG.

The key issues raised by the letter included the following:

- Based on the interpretation of “flexibility” in recent Case Law, the Council advised that greater flexibility should be applied by the applicant in assessing the “availability” and “suitability” of potential alternative sites within and on the edge of existing centres to accommodate the proposed floorspace.
- In the light of recent appeal decisions (e.g. Truro, Exeter and Colchester, as referred to above), it was also considered by the Council that there was greater scope to assess the potential for “disaggregation” of retail floorspace.
- The need for evidence that indicates why the development has to be of the scale it is, or that the relationship between the larger format units and the smaller ‘pod’ units is necessary and fundamental to the “business model”.
- Consideration should be afforded to the potential to significantly reduce and/or exclude the need for car parking as part of the overall assessment of the



availability and suitability of alternative sites.

- Based on recent case law the Council concluded that greater flexibility should be applied to the interpretation of what constitutes a “reasonable period of time”.

In terms of common ground, prior to the above letter, the applicant and Council had previously agreed that the application site is in an out-of-centre location in retail planning terms and was therefore subject to the sequential test set out in the NPPF (para 24). There is also common ground with regard to the search area defined by the appellant (See PRS; para 5.26).

Nine sites in Chatham, Strood, Rochester and Gillingham were originally identified and agreed between the applicant and Council during the pre-application process (See PRS; para 5.28). These sites were all assessed and dismissed by the applicant in their March 2016 PRS and subsequent submissions.

Further to the Council’s letter of 20 June 2017, a separate email was also sent to the applicant by the Council on 4 July setting out an updated list of sites to be considered and assessed by the applicant in light of CJ’s initial review and advice. For ease of reference the sites identified by the Council are as follows:

1. Tesco store (and surrounds), Commercial Road, Strood
2. Civic Centre (and surrounds), High Street, Strood
3. Riverside Regeneration Area, Rochester (x)
4. Land at Corporation Street, Rochester
5. Chatham Waterfront Regeneration Area, Chatham (x)
6. Pentagon Shopping Centre, Chatham
7. Land at Richard Street / Best Street, Chatham
8. Trafalgar unit in Chatham
9. Land at High Street, Gillingham (x)
10. Co-Operative/Budgens store, High Street, Gillingham
11. Old post office on Green Street (no.47), Gillingham
12. Club on Green Street (no.48), Gillingham
13. Horsted Retail Park

It should be noted that the first nine sites identified above had previously been assessed and dismissed by the applicant. Sites 10-13 were new sites and/or vacant buildings recently identified by the Council.

Furthermore, the Council accepted in an email of 4 July that sites 3, 5 and 9 (marked with a (x) above) are not currently available and they were not therefore assessed further.

It is against this background the Council have reviewed and appraised the applicant’s updated sequential assessment presented in their letter of 13 July 2017.

#### Appraisal of Sequential Sites

In response to the Council’s letter of the 20 June 2017, it is apparent that the applicant fundamentally disagree with the Council’s interpretation and application of the

sequential test, and specifically the issue of “disaggregation”. The applicant restated in their letter of 13<sup>th</sup> July that they are seeking consent for a retail warehouse park of 9,354 sq.m to be served by some 367 car parking spaces. They state that it is “...*the development as a whole to which flexibility must be applied not an approach which breaks it up into its constituent parts and then seeks to see whether some of those individual units could fit onto a town centre site if flexibility is applied to them. To take the latter approach would ignore the commercial reality of the proposal whereby it is the adjacency of complementary retailers that attracts individual tenants to the whole.*”

However, the Council disagrees with the applicant on this point, and refer the back to recent Case Law (including, for example, Exeter) as referred to above. However, even though the applicant did not agree with the Council or its RPC on the issue, they have nevertheless adopted a more flexible sequential approach than in their previous assessments and have tested the following criteria:

- They have assumed that the development could be provided on a town centre site without the current parking provision; and
- They have allowed for a reduced quantum of floorspace and have assessed sites in terms of their ability to accommodate 80% (7,483 sq.m) of the scheme’s total floorspace. This would require a reduced site area of circa 0.95ha.

Notwithstanding this, careful consideration and review of the remaining 10 potential sequential sites identified by the Council in their email of 4<sup>th</sup> July has been undertaken. The following sites, as detailed in Table 1 below, are agreed as either being not available and/or suitable for the larger format units 1-6 and/or the ‘pod’ units 7-10.

Table 1

Site 1: Tesco store (and surrounds), Corporation Street, Strood	Currently occupied by Tesco. There is no indication that this unit is available or likely to become available with a reasonable period of time.
Site 2: Civic Centre (and surrounds), High Street, Strood	Identified by the Council’s Masterplan for a residential-led scheme and significant investment is needed on flood defences to bring the site forward. In the view of the Council’s RPC the site is not suitable for a retail-led scheme at this time.
Site 4: Land at Corporation Street, Rochester	In the judgement of the Council’s RPC the site is not available or suitable for a retail-led development for a number of reasons – including issues of land assembly, historic setting, policy, access & site constraints.
Site 11: Old post office on Green Street (no.47), Gillingham	The Council’s RPC agrees with the applicant’s assessment that this building is too small to accommodate the reduced floor area and would be unsuitable, even after assuming some flexibility in approach.

Site 12: Club on Green Street (no.48), Gillingham	This existing building and site is too small to accommodate the application proposal and in the view of the Council's RPC it would be unsuitable for the proposed scheme, even assuming greater flexibility in terms of format and scale.
Site 13: Horsted Retail Park	This existing out-of-centre retail park is fully occupied and there is no indication that existing retailers will vacate the existing units in the near future. The Council's RPC also understand that the owners of the site are planning to sub-divide Toys R Us to create a new Aldi and to build a KFC on the car park (this is based on the Applicant's appraisal). However, no application has been submitted to the Council to date and therefore the (sub-divided) new units do not exist and are not available, and may not become available as they will be subject to planning.

Despite having reached the above conclusion in relation to sites: 1; 2; 4; 11; 12 and 13, further consideration has to be given to sites/buildings: 6; 7; 8; and 10 as it was not immediately apparent from an initial review that they were necessarily unavailable and/or unsuitable for the proposed scheme.

#### Site 6: Pentagon Centre, Chatham

Even when applying a greater flexibility than tested by the applicant, which goes beyond what is required, it is apparent that the Pentagon Centre cannot currently provide the number and scale of units identified for the application proposal. In the recent representations (dated 1st August 2017) prepared by the planning consultants acting on behalf of the owners (Ellandi), they highlight the fact that there is potential to amalgamate certain units in the scheme to create larger floorplates providing a total floorspace of 1,675 sq.m across ground and first floors. They also point to the potential to create a unit of 2,800 sq.m, but this is subject to the unit being vacated by an existing tenant. Notwithstanding this, we note that the planning consultants acting on behalf of Ellandi do not present the existing shopping centre and floorspace as part of the sequential test, but in relation to the impact on investment (under NPPF para 26). It has therefore been concluded that the shopping centre does not have the critical mass of available larger format units for it to be considered as a sequentially preferable location at this time.

#### Site 7: Land at Richard Street / Best Street, Chatham

This edge-of-centre site currently comprises public car parks and an Enterprise Car Rental outlet. It is located in the defined Core Retail Area (CRA) and is of a sufficient size in our view to accommodate the application proposal, assuming some flexibility. It has also been identified and allocated (Policy R1) for new retail-led development. However, there are no proposals or plans for a retail-led scheme on this site and accommodating the application proposal on this site will be constrained by issues of land assembly (there are a number of different ownerships) and the potential loss of an important town centre car park. Although it may be suitable for the proposed

developed, subject to more detailed viability testing, it is not to our knowledge available or likely to become available within a reasonable period of time.

#### Site 8: Trafalgar Centre/unit, Chatham

The Trafalgar Centre is located at the south-eastern extreme of the High Street in a secondary shopping location. The fact that it has been vacant since 2014 reflects its peripheral location, and in our judgement it is not suitable for the proposed development.

#### Site 10: Budgens (formerly Co-Operative), High Street, Gillingham

As part of their APRS the applicant has argued that this site was not available as it was occupied by Co-op (formerly Somerfield) at the time of their assessment. This store, along with 35 others in Co-op's portfolio, was sold to Food Retailer Group in May 2016 and rebranded as Budgens. They conclude that at 2,000 sq.m it would be too small to accommodate the application proposal, even a reduced scale proposal.

Returning to the matter of disaggregation, in regard to this point, and whether a greater degree of flexibility can be applied, the Council having sought legal advice considers that neither the NPPF or para 10 of the NPPG provides a basis upon which to require disaggregation. Furthermore Paragraph 10 states that it is not necessary to demonstrate that a potential town or edge of centre site can accommodate precisely the scale and form of development being proposed (underlining is officers emphasis). It is also noted that there is no justification within the NPPF or NPPG in terms of requiring the applicant to established a business model. Rather the NPPG talks in terms of the contribution that more central locations can make individually to accommodate elements of the proposal. It does not however require the disaggregation of the development into smaller units to such a degree that it bears no resemblance to the level of the development proposed. Indeed reference in terms of flexibility suggests that a reduction of 20% in floorspace is appropriate in testing disaggregation and if there is no alternative sequentially preferable site that could accommodate such a development, then the Council should conclude that there is no sequentially preferable location for the development.

On this basis, it is not considered that the applicant in this case is required to demonstrate a significant degree of flexibility by disaggregating one of the larger units from the remainder of the proposal. Therefore, the Budgens (formerly Co-Operative), in officers judgement it is not suitable for the proposed development, as a whole, when you apply a more realistic level of flexibility and this site cannot be said to be sequentially preferable.

#### *Conclusion of this section*

In conclusion, following the Council's letter of 20 June 2017, the applicants have adopted a more flexible approach in their most recent assessment (compared with previous assessments) of the potential sites/buildings identified by the Council in email of 4 July and even when applying this more flexible approach the Officers of the Council are satisfied that there are no sequential preferable site, when considering the evidence presented by the applicant.

## Impact on In-Centre Trade/Turnover

The assessment of the economic impact of new retail schemes on town centre trade/turnover at some point in the future is not an exact science and the robustness of the impact forecasts is dependant on the approach adopted, which should be carried out in compliance with the advice set out in the NPPG (see NPPG Guidance paragraph 017; Ref ID: 2b-017-20140306 and paragraph 018; Ref ID: 2b-018-20140306). All judgements should, where possible, be informed by up-to-date evidence.

Based on the review of applicant's impact method, it is considered that they have adopted a standard (step-by-step) impact methodology in line with the advice set out in the NPPG. The following key assumptions and forecasts, which underpin the applicant's impact methodology, are also broadly accepted by Council Officers:

- Catchment area
- Base year (2016) and impact ('design') year (2020)
- Population and Expenditure Forecasts
- Shopping patterns and market shares; and
- Turnover of existing centres and stores.

It is on this basis that the applicant's assessment of the 'solus' impact of the proposed scheme on the existing convenience and comparison goods turnovers of the main centres, specifically Chatham and Strood Town Centres, in line with the advice set out in the NPPF and NPPG has been reviewed and appraised.

An assessment in terms of the 'cumulative' impact of the other (known) retail commitments, as identified by the LPA in our e-mail of 4<sup>th</sup> July 2017, on the convenience, comparison and total turnovers of Chatham and Strood was also undertaken.

## Convenience Goods Impact Assessment

In response to the Council's letter of 20<sup>th</sup> June 2017, the applicant revised their retail assessment to reflect the latest company average turnover level for convenience sales of their prospective occupier for unit 1. They estimate that the convenience turnover increases to £11.3m. This compares with their original turnover estimate for unit 1 of £7.2m, as set out in their PRS (para 6.10). It is noted that the applicant has not provide an estimate for their prospective occupier for unit 1 for likely comparison goods sales area or turnover in their most recent assessment.

Against this background the table below sets out our understanding of the convenience and comparison goods sales area of the prospective occupier for unit 1 and our assessment of its predicted convenience/comparison turnover.

	Net Sales (sqm)	Average Sales (£/sqm)	2017: Total Turnover (£m)	2018: Total Turnover (£m)	2019: Total Turnover (£m)	2020: Total Turnover (£m)
Comparison:	360	£6,000	£2.16	£2.18	£2.23	£2.34
Convenience:	1440	£7,760	£11.17	£11.13	£11.12	£11.10
<b>TOTAL/AVERAGE</b>	<b>1,800</b>	<b>£7,408</b>	<b>£13.33</b>	<b>£13.31</b>	<b>£13.35</b>	<b>£13.43</b>

Note: The net convenience sales area of the proposed store (1,440 sqm net) is derived from SPL's PRS (March 2016, para 6.10). We have assumed that an additional 20% of sales area will be set aside for the sale of comparison goods. This results in a total sales area of 1800 sqm net, which is 75% of the gross floorspace of 2,400 sqm.

In line with standard approaches for retail capacity and impact assessments floorspace “productivity” growth rates have been applied to the store’s predicted retail (convenience and comparison) goods turnover over the study period, to 2020.

In this case Experian’s annual growth rates for convenience goods reflect the slowdown in the grocery sector over the last five years, and show negative growth for 2018 (-0.4%) and 2019/20 (-0.1%). Although negative growth rates have been applied to the turnover for the applicant’s prospective occupier for unit 1 significant growth in their market shares and turnovers for deep discounters, have been experienced by such operators over the last 5 years compared with the ‘top 5’ grocers (i.e. Tesco, Sainsbury’s, Asda, Morrisons and Waitrose). For example, the prospective occupier of unit 1 experienced a +27% growth in its average sales levels for the period 2015/16, which followed a +15% growth between 2014/15. Other deep discount operators have also experienced over a +19% growth in its average sales levels since 2013, also based on Mintel’s latest published company turnover figures. Based on past trends and the forecast growth in “deep discounters”, we would expect the prospective operator of unit 1 to significantly increase its average sales level and total turnover over the next 5 years. On this basis it is our view that the forecasts is likely to be an under-estimate of the prospective tenants to unit 1, in terms of potential turnover at 2020, and therefore the scale of impact on the main stores/centres identified.

Notwithstanding the fact that an end occupier has been named for Unit 1, the operator is not currently “contractually committed” to the application at this time and conditions have not been formally agreed with the applicant that would restrict occupation of the unit to the prospective end occupier, as identified by the applicants. It follows that the convenience floorspace could be taken up by a number of other foodstore operators trading at significantly higher average sales levels. For example, Mintel’s latest published figures show that Tesco stores are achieving a company average of £10,596 per sqm, which is higher than for Sainsbury’s (£10,342 per sqm) and lower than Asda (£11,427 per sqm), Morrisons (£12,688 per sqm) Waitrose (£10,915 per sqm) and Aldi (£10,776 per sqm).

Against this background, it is considered reasonable to test the sensitivity of a potential foodstore operator trading at a higher sales level, in this instance. The alternative turnover assumptions, as prepared by the Council’s RPC are set out in the table below:

	Net Sales (sqm)	Average Sales (£/sqm)	2017: Total Turnover (£m)	2018: Total Turnover (£m)	2019: Total Turnover (£m)	2020: Total Turnover (£m)
Comparison:	360	£6,000	£2.16	£2.18	£2.23	£2.34
Convenience	1440	£10,500	£15.12	£15.06	£15.04	£15.01
<b>TOTAL/ AVERAGE</b>	<b>1,800</b>	<b>£9,600</b>	<b>£17.28</b>	<b>£17.24</b>	<b>£17.28</b>	<b>£17.35</b>

The above table forecasts a higher convenience turnover for unit 1 of £15.12m in 2017. Whilst it is acknowledged that the forecast turnover level at 2020 could apply to one of the ‘top 5’ grocers, it is considered that it could easily reflect the trading potential for the prospective named operator of unit 1 given the strong growth in the performance of the ‘deep discounters’ over recent years.

## Trade Draw Assumptions

The table below summarises the different trade draw assumptions tested by the applicant in their PRS, APRS and most recent letter to the Council dated 13<sup>th</sup> July. As a guiding principle the NPPG states that impact should be assessed on a “like-for-like” basis, and it is generally assumed that retail uses tend to compete with their more comparable competitive facilities.

In this case, the applicant’s have indicated the potential end user of plot 1, which is often referred to as a “*deep discounter*” or “*Limited Assortment Discounter*”. On this basis, the Council’s RPC have assessed the impact of the proposed convenience floorspace, subject to the imposition of reasonable conditions that restrict the occupier to a “deep discounter”, on the basis that it will mainly compete “like-for-like” with other “deep discounter” floorspace (i.e. Lidl, Aldi and other similar stores) in the defined catchment. The proposed store will also draw shoppers and trade from other food retailers (such as Tesco, Morrisons, Asda and Sainsbury’s), particularly where it represents a more convenient and attractive proposition for shoppers than their existing food shop. The Council’s RPC advise that based on their understanding of existing food shopping patterns, and the current attraction and market shares of existing foodstores in the defined catchment, it is consider that the applicant, in their most recent impact assessment (13 July 2017), have under-estimated the trade draw from the existing Aldi stores in Strood Town Centre. The Council's RPC consider the draw will be at least 35% of its turnover from the existing Aldi.

	SPL PRS (March 2016) (1)	SPL APRS (June 2016) (2)	SPL (13 July 2017) (3)
<b>STROOD TOWN CENTRE</b>			
Aldi, Friary Place	27%	15%	20%
Asda, High Street	2%	8%	5%
loeland, High Street	1%	1%	1%
Other Stores, Strood	0%	0%	0%
<b>TOTAL:</b>	<b>30%</b>	<b>24%</b>	<b>26%</b>
<b>STROOD - EDGE/OUT OF CENTRE:</b>			
Morrisons, Strood	4%	8%	8%
Tesco, Charles Street	6%	12%	10%
<b>TOTAL:</b>	<b>10%</b>	<b>20%</b>	<b>18%</b>
<b>CHATHAM TOWN CENTRE:</b>			
Sainsbury's, Pentagon Centre	2%	2%	2%
loeland, High Street	0%	0%	0%
Tesco, The Brook	0%	0%	0%
Other Stores, Chatham	0%	0%	0%
<b>TOTAL:</b>	<b>2%</b>	<b>2%</b>	<b>2%</b>
<b>HEMPSTEAD VALLEY:</b>			
Sainsbury's	4%	4%	4%
Marks & Spencer	0%	0%	0%
Other Stores	0%	0%	0%
<b>TOTAL:</b>	<b>4%</b>	<b>4%</b>	<b>4%</b>
<b>GILLINGHAM</b>			
Co-Op, High Street	1%	1%	1%
Other Stores	0%	0%	0%
<b>TOTAL:</b>	<b>1%</b>	<b>1%</b>	<b>1%</b>
<b>OTHER OUT-OF-CENTRE STORES:</b>			
Aldi, Gillingham	26%	15%	20%
Tesco, Courteney Rd	4%	4%	5%
Asda, Maidstone Rd, Walderslade, Chatham	2%	5%	2%
Morrisons, Walderslade	2%	5%	2%
<b>TOTAL:</b>	<b>33%</b>	<b>29%</b>	<b>29%</b>
<b>DRAW FROM OTHER CENTRES/STORES:</b>	<b>20%</b>	<b>20%</b>	<b>20%</b>
<b>TOTAL TRADE DRAW:</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Notes: (1) Table 16, Doc 4  
(2) Tables 16A/16B; Doc 3

The Council's RPC also consider that the applicant has over-estimated the draw from other centres/stores both within and outside the defined catchment. This is supported by the Council's 2016 NKRLS which confirms that Medway as a District is a largely self-sufficient convenience goods shopping destination and "...*there is very limited expenditure leakage*" (para 8.22). The study concludes that this suggests "...*the existing network of foodstores is fit for purpose*".

Their preferred trade draw assumptions and the resultant impact forecasts are set out below.

### Impact on In-Centre Convenience Goods Turnover

According to the applicant Strood Town Centre will experience the highest convenience goods trade diversion (£m) and impact (%) from the proposed store. The applicant's forecast impacts range from -4.5% (based on an assumed turnover average sales level of £5,000 per sqm (as set out in their PRS (Table 16) and APRS (Table 16A)), increasing to -6.9% based on their latest forecasts (See letter from Simply Planning dated 13<sup>th</sup> July – Table 16B (Document 2)) The next highest forecast impacts are on out-of-centre stores (principally Aldi in Gillingham). Having said this it should be noted that edge and out of centre stores are not afforded any policy protection by the Local plan or NPPF. In terms of Chatham, Hempstead Valley and Gillingham centres the applicant's forecast impacts of below -1%.

For the reasons stated previously, it is considered that the applicant has incorrectly included the edge of centre Tesco (Strood) as part of the town centre's total convenience goods turnover. Thus, rather than a turnover of £57.64m at 2020, as assumed by the applicant, the Council's RPC are advising that Strood should correctly be assessed as having a turnover of £33.1m. As a result, this increases the applicant's forecast impact to -8.8% based on their most recent assessment (13 July 2017). This is equivalent to a trade diversion of -£2.9m.

The Council's RPC are advising that based on their preferred trade draw and turnover assumptions, the following impacts are forecast:

- Strood Town Centre – an impact of -14.1% (-£4.66m) on its convenience goods turnover at 2020 under Scenario 1, increasing to -19.1% (-£6.3m) based on a higher assumed store turnover under Scenario 2. In comparison, the applicant's (13 July 2017) forecast a lower impact on Strood Town Centre of -8.8% (-£2.9m).
- Chatham Town Centre – an impact of -0.7% (-£0.22m) under Scenario 1, increasing to -0.9% (-£0.3m) under Scenario 2. Our forecasts are broadly comparable to the applicant's latest impact figure for Chatham of -0.7% (-£0.2m).

In terms of the impact on all other centres/stores, the Council RPC advises that, under Scenario 1, their forecasts are broadly comparable with the applicant's latest forecasts set out in their letter of 13 July 2017. However, in terms of impacts forecasts under Scenario 2 these are higher than those forecast by the applicant. Setting aside the higher impact forecasts under Scenario 2, there are concerns in this case as to the forecast level of impact on Strood's convenience goods turnover under Scenario 1 of -14.1%. The Council's RPC advises that in their experience this is high by any



measure.

Notwithstanding, the above comments it should be noted that there is no accepted “threshold” or “benchmark” above which it is accepted that impact moves from being “adverse”, to “significantly adverse” (which is the key consideration in applying the impact test under the NPPF). The NPPG states:

*“A judgement as to whether the likely adverse impacts are significant can only be reached in light of local circumstances. For example, 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”.*

### Comparison Goods Impact Assessment

To help inform the Council's appraisal of the applicant's revised comparison goods impact forecasts (as set out in their letter of 13 July), the Council's RPC have also necessarily reviewed the applicant's previous retail assessments and the subsequent appraisals carried out by the Council's former RPC, GVA.

Against this background the Council's RPC have set out their informed judgements as to the likely impact (%) of the proposed comparison goods floorspace on the main centres and stores within the defined catchment area.

#### *Turnover Forecasts*

The applicant's for the first time in February 2017 identified potential occupiers for the proposed development's larger format units (1-6). In the light of the applicant naming potential occupiers the Council requested the applicant review and update their quantitative and qualitative retail impact assessment to take account of the likely turnover and “like for like” trading implications of the named operators. In response, The applicant presented revised comparison goods turnover forecasts for the potential operators they had identified

In assessing these details, the Council's RPC questioned the recent sales areas identified by the applicants, as they differed from those set out in their other assessments and pointed out that the latest published company sales averages identified in Mintel's ‘UK Retail Rankings’ (April 2017) show that the prospective occupiers of unit 4 are achieving an average sales level of £6,348 per sqm in 2015/16, which is significantly higher than the £2,500 per sqm assumed by the applicant. Additionally the Council's RPC point out that the applicant has made no allowance for the growth in the “turnover efficiency” (or “floorspace productivity”) of the proposed retail floorspace in line with standard approaches for retail assessments. The Council's RPC notes that Experian's latest Retail Planner Brief Note forecasts annual growth of +1% for 2018 and +2.3% for the period 2019-2023.

Against this background, the table below sets out the Council's preferred (Scenario 1) assessment of the turnover potential of the proposed scheme's different named end users; based on the most recent sales areas identified by applicant above. As the table shows, the Council's RPC forecast higher comparison turnover of £23.38m at the base year (2017), increasing to £24.71m by the design year (2020).

	Net Comparison Sales (sqm)	Average Sales (£/sqm)	2017: Total Turnover (£m)	2018: Total Turnover (£m)	2019: Total Turnover (£m)	2020: Total Turnover (£m)
Unit 1						
Unit 2	1,114	£2,618	£2.92	£2.95	£3.01	£3.08
Unit 3	1,078	£6,000	£6.47	£6.53	£6.68	£6.84
Unit 4	1,114	£6,348	£7.07	£7.14	£7.31	£7.47
Unit 5/6	2,252	£2,443	£5.50	£5.56	£5.68	£5.82
Unit 7-10	355	£4,000	£1.42	£1.43	£1.47	£1.50
Total/Average	5,913	£3,954	£23.38	£23.61	£24.15	£24.71

Notwithstanding the predicted turnover performance of the named operators, no agreement had been reached between the Council and applicant with regard to reasonable conditions to restrict the scheme's retail offer to the named end users on a unit-by-unit basis. As a result it has been necessary to also test the potential implications of allowing more wide-ranging retail goods to be sold across the retail park and the larger format units. On this basis the Council's RPC advised that it is reasonable, robust and appropriate in this case to test the implications of the proposed scheme achieving a higher average sales level of at £6,000 per sqm. The resultant higher (Scenario 2) turnover forecasts are set out below

	Net Comparison Sales (sqm)	Average Sales (£/sqm)	2017: Total Turnover (£m)	2018: Total Turnover (£m)	2019: Total Turnover (£m)	2020: Total Turnover (£m)
<b>TOTAL/AVERAGE</b>	5,913	£6,000	£35.48	£35.83	£36.66	£37.50

It is considered that the Scenario 1 and 2 turnover forecasts are preferred to those put forward by the applicant's figures and form the basis for the impact appraisal below.

#### *Trade Draw Assumptions*

The table below summarises the different trade draw assumptions tested by the applicant in their previous and most recent retail assessments.

	SP L PRS (March 2016) (1)	SPL APRS (June 2016) (2)	SP L APRS (June 2016) (3)	SPL (13 July 2017) (4)
CHATHAM	25%	25%	25%	25%
STROOD	3%	3%	8%	3%
ROCHESTER	3%	3%	3%	3%
GILLINGHAM	12%	12%	12%	12%
RAINHAM	1%	1%	1%	1%
HEMPSTEAD VALLEY	10%	10%	10%	10%
STROOD RETAIL PARK	5%	5%	7%	5%
HORS TED RETAIL PARK	5%	5%	5%	5%
MEDWAY VALLEY LEISURE PARK	2%	2%	2%	2%
GILLINGHAM RETAIL PARK	5%	5%	5%	5%
DOCK SIDE OUTLET CENTRE	1%	1%	1%	1%
BLUEWATER	10%	10%	3%	10%
MIDSTONE	2%	2%	2%	2%
GRAVESEND	1%	1%	1%	1%
OTHER FACILITIES IN LOCAL AREA	5%	5%	5%	5%
OTHER FACILITIES BEYOND LOCAL AREA	10%	10%	10%	10%
<b>TOTAL TRADE DRAW</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Notes: (1) Table 17; Document 4  
(2) Tables 17A/17B; Document 3  
(3) Table 17C; Document 3  
(4) Table 17B; Document 3

This table shows that the applicant has consistently assumed in most of their retail assessments that the proposed scheme will draw some 25% of its total comparison turnover from Chatham town centre, 12% from Gillingham, 10% from Hempstead Valley and just 3% from Strood Town Centre.

The exception to this is in the applicant's APRS (Table 17C; Document 3), where they responded to the Council's former RPC (GVA) RAA and tested the implications of a higher trade draw from Strood Town Centre (increased from 3% to 8%) and Retail Park (from 5% to 7%), and a reduced draw from Bluewater (from 10% to 3%).

The Council's RPC have reviewed the applicant's trade draw assumptions, and from their understanding of the potential tenant mix and range of goods proposed by the applicant for the scheme, they consider that the proposed development will compete "like for like" with the predominantly value-led and mid-range non-food retailer offer that characterises both Chatham and Strood Town Centres.

They also advise that the proposed scheme will also compete "like for like" with the existing and committed retailers at Strood Retail Park. Although they note that this retail park is located on the edge of Strood Town Centre, and is therefore not classified as being in the town centre in policy terms. They do nevertheless consider that it makes a significant contribution to the town's overall vitality and viability through the generation of linked trips, footfall and spending to the benefit of the centres other shops and businesses.

Furthermore, given the application site's proximity to both Strood Town Centre and Retail Park (approximately 1.5 miles or a circa 5 minute drive) and to Chatham Town Centre (approximately 2.5 miles, which is equivalent to a 6/7 minute drive), the Council's RPC considers that in their judgement that the proposed scheme will draw a higher proportion of its trade from these two Medway towns and the Retail Park than assumed by the applicants in their previous and more recent retail assessments.

The Council's RPC consider a trade draw of at least 40% from Chatham Town Centre, approximately 5% from Strood Town Centre and 15% from Strood Retail Park are reasonable and robust assumptions in this case.

#### Impact on In-Centre Comparison Good Turnover

Based on the applicant's different turnover and trade draw assumptions, they forecast the following impacts:

- Chatham Town Centre – impacts ranging from -1.9% (SPL PRS (Table 17B and 17C)), up to -4.3% (SPL PRS (Table 17A) – based on a higher turnover of £33.38m). In the applicant's most recent (July 2017) assessment they forecast a -2% impact, which is equivalent to a monetary trade diversion of -£3.97m based on an assumed turnover of £15.88m.
- Strood Town Centre – impacts ranging from -1.9% (SPL PRS (Table 17B) and SPL letter of 13<sup>th</sup> July 2017 (Table 17B)) up to -5% (SPL PRS (Table 17C) – assumed an increase in the draw from Strood Town Centre from 3% to 8%, based on a turnover of £15.24m). In their most recent (July 2017) assessment the applicant forecasts a -1.9% impact on the town centre, which is equivalent to a monetary trade diversion of -£0.48m based on an assumed turnover of £15.88m.
- Strood Retail Park - impacts ranging from -2% (SPL PRS (Table 17B) – assumed a 5% draw from the retail park, based on a turnover of £15.24m) up to -4.4% (SPL PRS (Table 17A) – assumed a 5% draw from the retail park, based on a turnover of £33.38m). In their most recent (July 2017) assessment the applicant forecasts a -1.9% impact on the town centre, which is equivalent to a monetary trade diversion of -£0.48m based on an assumed turnover of £15.88m.

In terms of the other main centres and comparison goods shopping destinations identified by the impact assessment, the applicant's most recent impact forecasts (as at 13<sup>th</sup> July 2017) show a -1.8% impact on Gillingham, -1.6% on Rochester, -1.5% on Hempstead Valley and -0.8% on Rainham.

However, for the reasons set out above, the Councils RPC consider that in this case that the applicant has under-estimated the potential trade draw from, and impact on Chatham and Strood Town Centres, and Strood Retail Park. The table below sets out our preferred trade draw (%), diversion (£m) and impact forecasts (%) based on assumed turnover levels of £24.7m (Scenario 1) and £37.5m (Scenario 2).

	CJ IMPACT SCENARIO 1: Assume Units 2-7 achieve a total comparison goods turnover of £24.7m at 2020				CJ IMPACT SCENARIO 2: Assume Units 2-7 achieve a total comparison goods turnover of £37.5m at 2020			SPL IMPACT (13 July 2017) Table 17B (Revision 1): Document 3		
	2020: Turnover Derived from Catchment	Trade Draw	Trade Diversion	Impact	Trade Draw	Trade Diversion	Impact	Trade Draw	Trade Diversion	Impact
	£m	%	£m	%	%	£m	%	%	£m	%
CHATHAM	£195.71	40%	£9.88	-5.1%	40%	£15.00	-7.7%	25%	£3.97	-2.0%
STROOD	£24.55	5%	£1.24	-5.0%	5%	£1.88	-7.6%	3%	£0.48	-1.9%
ROCHESTER	£30.39	3%	£0.74	-2.4%	3%	£1.13	-3.7%	3%	£0.48	-1.6%
GILLINGHAM	£104.16	6%	£1.48	-1.4%	6%	£2.25	-2.2%	12%	£1.91	-1.8%
RAINHAM	£21.11	1%	£0.25	-1.2%	1%	£0.38	-1.8%	1%	£0.16	-0.8%
HEMPSTEAD VALLEY	£109.17	6%	£1.48	-1.4%	6%	£2.25	-2.1%	10%	£1.59	-1.5%
STROOD RETAIL PARK	£37.67	15%	£3.71	-9.8%	15%	£5.63	-14.9%	5%	£0.79	-2.1%
HORSTED RETAIL PARK	£48.37	5%	£1.24	-2.6%	5%	£1.88	-3.9%	5%	£0.79	-1.6%
MEDWAY VALLEY LEISURE PARK	£24.92	2%	£0.49	-2.0%	2%	£0.75	-3.0%	2%	£0.32	-1.3%
GILLINGHAM RETAIL PARK	£48.37	3%	£0.74	-1.5%	3%	£1.13	-2.3%	5%	£0.79	-1.6%
DOCKSIDE OUTLET CENTRE	£9.92	1%	£0.12	-1.2%	1%	£0.19	-1.9%	1%	£0.16	-1.6%
BLUEWATER	£149.82	2%	£0.37	-0.2%	2%	£0.56	-0.4%	10%	£1.59	-1.1%
MAIDSTONE	£72.81	1%	£0.25	-0.3%	1%	£0.38	-0.5%	2%	£0.32	-0.4%
GRAVESEND	£12.43	1%	£0.25	-2.0%	1%	£0.38	-3.0%	1%	£0.16	-1.3%
OTHER CENTRES IN/OUTSIDE CATCHMENT		10%	£2.47	-	10%	£3.75	-	15%	£2.38	-
		100%	£24.71		100%	£37.50		100%	£15.88	

In summary the Council's RPC forecast the follow impacts:

- Chatham Town Centre – Under Scenario 1, based on the proposed end users, the Council's RPC predict that the proposed scheme will divert approximately £9.9m from the town centre's existing shops and stores, which would be equivalent to a -5.1% impact on its forecast comparison goods turnover at 2020. Assuming a higher turnover for the proposed scheme, the forecast diversion increases to £15m under Scenario 2, which results in a higher impact of -7.7%. These impact ranges compare with the applicant's most recent impact forecasts of -2% (-£3.97m).
- Strood Town Centre – The forecast impacts range from -5% (-£1.24m) under Scenario 1, up to -7.6% (-£1.88m) for Scenario 2. In comparison, the applicant's forecast a lower impact of -1.9% (-£0.48m) on the town centre.
- Strood Retail Park – As described above the Council's RPC predict a much higher "like for like" impact from the proposed scheme on the existing retail parks and its tenants. In the judgements of our RPC the forecasted impact under Scenario 1 is of -9.8% (£3.71m), increasing to -14.9% (-£5.63m) under Scenario 2. Although the Retail Park is classified as being in an edge-of-centre location, and therefore not part of the town centre per se, any loss of shoppers and trade from the retail park will have an additional impact on the town centre due to a reduction in linked trips and expenditure.

## Forecast Impact on Total Town Centre Turnover

In compliance with the NPPF the Council's RPC have also assessed the overall impact of the proposed scheme on the total retail (convenience and comparison) goods turnover of Chatham and Strood Town Centres.

The table below summarises forecast impacts based on the different turnover and trading assumptions applied by the Councils RPC under Scenarios 1 and 2. The table also sets out applicant's impacts by way of reference and comparison.

	CJ IMPACT SCENARIO 1: Assume Unit 1 achieves a convenience turnover £11.10m and Units 2-7 achieve a total comparison goods turnover of £24.7m at 2020			CJ IMPACT SCENARIO 2: Assume Unit 1 achieves a convenience turnover of £15.01m and Units 2-7 achieve a total comparison goods turnover of £37.5m at 2020		SPL IMPACT (13 July 2017) Assume Unit 1 achieves a convenience turnover of £11.17m and Units 2-7 achieve a total comparison goods turnover of £15.88m at 2020	
	2020: TOTAL TURNOVER £m	Trade Diversi on £m	Impact %	Trade Diversi on £m	Impact %	Trade Diversi on £m	Impact %
CHATHAM	£227.79	£10.11	-4.4%	£15.30	-6.7%	£4.19	-1.8%
STROOD <sup>(1)</sup>	£57.62	£5.90	-10.2%	£8.18	-14.2%	£3.38	-5.9%
STROOD - MORRISONS & TESCO	£700.1	£2.11	-3.0%	£2.85	-4.1%	£2.01	-2.9%
STROOD RETAIL PARK	£37.67	£3.71	-9.8%	£5.63	-14.9%	£0.79	-2.1%

Notes: (i) CJs estimates of the convenience turnover of Strood Town Centre under Scenarios 1/2 do not include Tesco at Charles Street which is defined as being edge of centre

As the table shows, under Scenario 1 the Council's RPC forecast for Strood that the proposed scheme will have a -10.2% impact on the town centre's total (convenience and comparison goods) turnover, which is equivalent to a -£5.9m trade diversion. As stated above with regard to the forecast impact on the town's convenience turnover, there are serious concerns in this case as to the scale of trade diversion on Strood and the potential implications for the vitality and viability for the town centre as a whole.

In addition to this the Council's RPC have forecast that there will be a -3% (£2.11m) impact on Morrisons and Tesco in Strood, and a further -9.8% (-£3.71m) impact on Strood Retail Park. Although these stores and shops are defined as being edge-of-centre in retail planning terms, there will be an additional impact on the town centre's trade due to the loss of linked shopping trips and expenditure. It should be noted that this additional impact on the town centre has not been quantified by the applicant at any point in their analysis.

For Chatham the Council's RPC have forecast a -4.4% (-£10.11m) impact on the town's total (convenience and comparison goods) turnover under Scenario 1, potentially increasing to -6.7% (-£15.3m) under Scenario 2 based on the proposed scheme achieving a higher turnover level. This compares with the applicant's much lower forecast of a -1.8% (-£4.19m) impact on the town centre as a whole.

## Cumulative Impact Assessment

The Council in our letter dated 20 June 2017 asked the applicant to consider the cumulative impact of other major known retail commitments (either planned, or under construction, or recently opened) on the main town centres identified.

In our subsequent email to the applicant, dated 4 July 2017, the Council identified a list of comparison commitments and their respective net sales floor areas. The Council also identified a number of convenience commitments and their respective net sales floor areas:

In addition to these commitments within the Medway Council area, a number of significant retail commitments located outside the local authority area were also identified as having an impact, to varying degrees, on current (food and non-food) shopping patterns and trade within the proposed developments catchment area. These included:

- Bluewater – 30,000+sqm (Class A1-A5);
- Eclipse Park, Maidstone – A1 (Waitrose) (2,694sqm of which 1,738sqm conv, 404sqm comp and 552sqm other); and
- Ebbsfleet, Eastern Quarry (231,000 sq.m of mixed-use floorspace) – EDC/17/0048.

The above commitments represents a substantial list and demonstrates that a significant quantum of new convenience and comparison floorspace is clearly planned and/or under construction both within and outside the Medway Council area.

In response, the applicant's letter dated 13<sup>th</sup> July 2017 refers to the permission granted in April 2017 for the extension to Bluewater Shopping Centre, and specifically to the cumulative retail impact assessment carried out in support of that extension by the planning consultants (Quod) acting on behalf of the applicant. In that case the cumulative impact assessment covered the current application MC/16/1084 and the following known retail commitments:

Commitments Forecast to Impact on Chatham and Strood	Commitments Forecast to have <u>no</u> Impact on Chatham and Strood
Hempstead Valley extension	Lakeside Shopping Centre extension
Maidstone East	Spirit of Sittingbourne
Heritage Quarter, Gravesham	Royal Victoria Place, Tunbridge Wells
Queensborough / Sheerness	Chelmsford
Ashford Designer Outlet Centre	Ebbsfleet, Eastern Quarry
	Whitgift Centre, Croydon

It should be noted that the Quod assessment prepared in support of the Bluewater extension did not cover all the commitments identified by the Council in their recent email to the applicant dated 4 July 2017. On this basis it is not considered that the applicant has carried out a comprehensive cumulative retail impact assessment in this case in compliance with policy and guidance.

What the applicant's have provided is a high level assessment of the likely cumulative impact on Chatham and Strood Town Centre's from the commitments considered as part of the Bluewater extension. However, there are a number of inconsistencies and errors in the applicant's table submitted with their assessment, but in summary it shows the following forecast cumulative impacts on Chatham and Strood Town Centres:

- Chatham Town Centre – a £4.57m comparison goods trade diversion to Bluewater and a £13.14m diversion to the other named commitments (although, as noted above, this does not include all the commitments listed by the Council in their email of 4 July). This represents a substantial trade diversion of £17.71m, even before taking into account the current application proposal. Based on the applicant's assessment the total cumulative trade diversion increases to £21.68m (including the proposed scheme), and the forecast impact on the town centre is -8%. However, it is noted that the total town centre comparison turnover presented in the applicant's table is substantially higher than the turnover assumed by the applicant in all their previous assessments; including their most recent assessment. Based on the Council's recent evidence-based studies, and the applicant's own retail assessments, it is considered that the higher turnover figure submitted by the applicant significantly overstates the town's comparison trading potential at 2020. Applying the turnover level that has consistently been adopted by the applicant's of £195.71m results in a higher cumulative impact forecast of 11.1% on Chatham's comparison goods turnover.
- Strood Town Centre – the applicant's forecast comparison good trade diversion to the proposed scheme of -£0.48m is added to the total forecast diversion of -£4.22m, this results in a total cumulative diversion of -£4.7m (It should be noted that the applicant's table has a number of inconsistencies with regard to the impact figures, some of which are clearly incorrect). According to the applicant the forecast cumulative impact on the town centre is -5.2%. However, as noted above for Chatham, the total town centre comparison turnover presented in the applicant's table (i.e. £90.82m at 2020) is substantially higher than the turnover assumed by them in all their previous assessments, including most recent assessment (i.e. £24.55m at 2020). As for Chatham, it is considered that this higher figure significantly overstates the town's comparison trading potential.

Applying the turnover figure that has consistently been adopted by the applicant of £24.55m results in a much higher cumulative impact forecast of -19.1% on Strood's comparison goods turnover. On reflection, this higher comparison goods turnover figure could include the turnover of the retail park, which would effectively increase the total turnover to £62.22m. If this assumption is correct then the cumulative impact on the total comparison goods turnover of the town and retail park as a whole would be approximately -7.6% (please note that this does not take into account the forecast convenience trade diversion from the town centre).

Notwithstanding the apparent inconsistencies and errors in the applicant's cumulative impact table, it is clear that the impact of the proposed scheme and the identified commitments (which do not include all the commitments identified by the Council in our email of 4 July) on the comparison goods turnovers of both Chatham and Strood Town Centre will be significant in this case.

The Council's RPC have carried out their own cumulative impact assessment based on the Bluewater application and their own trade diversion forecasts for the proposed scheme. The results are set out in the table below:



**CJ CUMULATIVE IMPACT SCENARIO 1:**

Assume Unit 1 achieves a convenience turnover of £11.10m and Units 2-7 achieve a total comparison goods turnover of £24.7m at 2020, and allow for all commitments modelled as part of the Bluewater application

**CJ CUMULATIVE IMPACT SCENARIO 2:**

Assume Unit 1 achieves a convenience turnover of £15.01m and Units 2-7 achieve a total comparison goods turnover of £37.5m at 2020, and allow for all commitments modelled as part of the Bluewater application

	2020: TOTAL TURNOVER £m	Trade Diversion to Application £m	Trade Diversion to Commitments £m	Cumulative Impact %	Trade Diversion to Application £m	Trade Diversion to Commitments £m	Cumulative Impact %
CHATHAM	£227.79	£10.11	£17.71	-12.2%	£15.30	£17.71	-14.5%
STROOD (1):	£57.62	£5.90	£4.23	-17.6%	£8.18	£4.23	-21.5%

Notes: (i) The total turnover of Strood Town Centre does not include Tesco at Charles Street or the Retail Park which are defined as being edge of centre

The above table shows a -12.2% cumulative impact on Chatham and -17.6% impact on Strood under Scenario 1, which increases to -14.5% and -21.5% respectively for Scenario 2, assuming the proposed scheme achieves a higher convenience and comparison goods turnover.

In summary of this section of the report, the table below summarises the ‘solus’ impact of the application proposal on Chatham and Strood Town Centres, and on the foodstores and retail park located outside Strood that, to varying degrees, contribute to the town’s overall vitality and viability through linked trips, footfall and expenditure.

	CJ IMPACT ‘SOLUS’ IMPACT SCENARIO 1 (1):			CJ IMPACT ‘SOLUS’ IMPACT SCENARIO 2 (1):			SPL ‘SOLUS’ IMPACT (13 July 2017) (3)		
	Convenience Impact %	Comparison Impact %	TOTAL IMPACT %	Convenience Impact £m	Comparison Impact %	TOTAL IMPACT %	Convenience Impact £m	Comparison Impact %	TOTAL IMPACT %
CHATHAM:	-0.7%	-5.1%	-4.4%	-0.9%	-7.7%	-6.7%	-0.7%	-2.0%	-1.8%
STROOD:	-14.1%	-5.0%	-10.2%	-19.1%	-7.6%	-14.2%	-8.8%	-1.9%	-5.9%
STROOD - MORRISONS & TESCO	-3.0%	-	-3.0%	-4.1%	-	-4.1%	-2.9%	-	-2.9%
STROOD RETAIL PARK	-	-9.8%	-9.8%	-	-14.9%	-14.9%	-	-2.1%	-2.1%

Notes: (1) Assume Unit 1 achieves a convenience turnover of £11.10m and Units 2-7 achieve a total comparison goods turnover of £24.7m at 2020

Notes: (2) Assume Unit 1 achieves a convenience turnover of £15.01m and Units 2-7 achieve a total comparison goods turnover of £37.5m at 2020

Notes: (3) Assume Unit 1 achieves a convenience turnover of £11.17m and Units 2-7 achieve a total comparison goods turnover of £15.88m at 2020

Focusing on the impacts arising from Scenario 1 (which are broadly based on the trading potential of the named operators identified by the applicant in their most recent letter), there are serious concerns with regard to the forecast -14.1% impact on Strood Town Centre’s convenience goods turnover and the -10.2% overall impact on its total turnover. These concerns are heightened by the fact that this ‘solus’ impact figure does not take account of the further impact on linked trips and trade that will arise, resulting in higher trade diversions and impacts than forecast.

For Chatham the forecast ‘solus’ impacts of the application proposal under Scenario 1 on the town centre’s convenience (-0.7%) and comparison (-5.1%) goods turnover would not, by itself, normally give cause for concern. However, as demonstrated above, the ‘cumulative’ impact of other known commitments both within and outside Medway Council does significantly increase the impact on the town centre’s total

turnover to circa -12.2% based on our forecasts. The Council's RPC also advise that the 'cumulative' impact will be higher than forecast because, as far as they are aware, this impact figure does not take account of all the commitments identified by the Council in their email of 4 July 2017.

In terms of impact on town centre vitality, viability and investment and the implications of the forecast 'solus' and 'cumulative' trade diversions (£m) and impacts (%), it is evident that the impacts on in-centre trade/turnover and investment are interrelated, and judging their significance requires a proper understanding of vitality and viability, and ultimately a centre's vulnerability to any further loss of trade, vitality and viability.

As outlined in the NPPG this should be informed by an assessment of the Key Performance Indicators (KPIs); including changes in diversity of uses, vacancies, footfall, market demand, commercial values, etc. It follows that trade diversion and impact on a centre, or key sectors (i.e. convenience and comparison), can be assessed as being significantly adverse where it seriously undermines a centre's overall vitality and viability resulting in reduced footfall, increased vacancies, a more 'down market' offer, etc. Furthermore, some centres may be particularly vulnerable and in these cases even relatively low quantitative impacts can result in significant adverse impacts. Additionally, the loss of a key town centre use or anchor, or the loss of demand from a prospective operator needed to reinforce the existing offer may be highly significant in some centres.

To assist in inform this assessment significant weight is placed on the evidence and key findings presented in the Council's most recent NKRLS, published in November 2016. Account has also been taken of the applicant's most recent audit of the main centres carried out on 9<sup>th</sup> July 2017 and reported in their letter of 13<sup>th</sup> July, along with other submissions and material evidence; including the representations prepared on behalf of Ellandi, the owners of the Pentagon Shopping Centre in Chatham Town Centre and other third parties.

It is against this background that the relative health, attraction, vitality and viability of Chatham, Gillingham and Strood Town Centres, in particular, have been assessed.

### *Impact on Vitality and Viability*

#### Chatham Town Centre

The Council's NKRLS helps to identify any potential vulnerability to impact from the application proposal and other known commitments. In summary the headline findings of the NKRLS are as follows:

- Chatham is the largest of the Medway towns and is defined as a town centre in the Medway Local Plan (2003);
- The town centre has a mixture of established national retailers and smaller specialist retailers. The focus of retail activity is along the pedestrianised High Street and in the Pentagon Shopping Centre;
- The town's convenience offer is limited and this has been further exacerbated by

the closure of a large Tesco foodstore located at the junction of The Brook and the A2 New Road in April 2015. The study states that the ability of the town to meet day-to-day shopping needs has *“...unquestionably been compromised by the closure of the Tesco store, which has left the town centre without a supermarket which is capable of meeting residents’ larger food shopping needs. The only remaining supermarkets in the centre – Sainsbury’s and Iceland – are of sufficient size to only perform a ‘top up’ shopping function, and the Sainsbury’s in particular is a poor quality, dated store”* (para 5.23);

- The study also concludes that the town’s comparison goods shopping offer is *“...sub-standard for a centre at this level in the retail hierarchy, being generally mid to low market, with discount / charity stops interspersed with national retailers along much of the primary shopping area”* (para 5.24);
- Evidence that the centre is underperforming and not fulfilling its role as the highest order centre in Medway is further demonstrated by the fact that it does not draw more than one-third of the available comparison goods spending from any of the survey zones, and has a very limited trade draw from beyond its immediate catchment area (zones 11 and 13);
- The retail offer in the town is anchored by a TK Maxx store to the western edge of the town centre and, following the closure of Tesco, the Debenhams store on the High Street now forms the eastern-most ‘anchor’ store, although this in itself feels slightly detached from much of the prime retail offer in the town (para 5.25). The focus of the retail activity is around the Primark store and ground floor of the Pentagon Shopping Centre;
- With regard to the Pentagon Centre, the study states that the shopping centre *“...suffers from a dated internal appearance, and many of the units are too small and consequently are struggling to be let to the type of comparison goods operators which Chatham needs to attract in order to improve its retail offer”* (para 5.25). The representations submitted on behalf of Ellandi indicate that the asset management strategy and investment planned for the centre includes the provision of larger format shops through the amalgamation of existing units;
- In terms of vacancy rates, the study identified that levels were above the national average, and the highest of all of the Medway towns. The study pointed to the fact that the vacancy rate had increased (up to November 2016) and this was further exacerbated by the closure of the WH Smith store. The study states that a *“particular concern”* is that a number of the vacant units *“...are located in the prime retail pitch – within and adjacent to the Pentagon Centre. Supply is not meeting demand, and recent lettings of vacant units have been to generally poor-quality or temporary retailers”* (para 5.26);
- According to the study the environmental quality of the rest of the centre requires substantial investment and enhancement. The pedestrianised High Street is reasonably well-maintained but investment is needed to bring a number of the buildings, and in particular shop fronts, up to an acceptable quality;
- The wider spin-off regeneration benefits from improvements to the town’s physical

fabric (including the new bus interchange and removal of through-traffic) have *“to date, been relatively limited”*;

- The development briefs produced for Chatham Town Centre identify a number of opportunities in the town centre which could accommodate additional comparison goods retail floorspace, and the study identified that *“the key to their realisation will be to stimulate and facilitate operator demand/representation. There are clear opportunities to accommodate new development and redevelopment in Chatham town centre, and these should be protected and promoted over the plan period through pro-active planning and the resistance of out-of-centre competition”* (para 10.31);

Overall the study concluded that:

*“With the impact of the changing economic climate, change in retail operator business models, online shopping trends, threat of out of centre proposals and inability to respond to market needs in its current form ... Chatham faces a significant challenge. It therefore remains vulnerable to growing sub-regional competition and footfall being drawn away to proposals in edge and out of centre locations”* (paragraph 5.34).

*“Stimulating operator demand is key and the Council should seek to resist edge/out-of-centre proposals that seek to restrict this aspiration. Chatham is not a healthy centre, clearly portrayed by its underperformance and low value retailer representation, but has the potential to respond positively to the Council’s plans and aspirations to retain it as the highest order town centre”* (paragraph 5.35).

The applicant in the submission points to a reduction in vacancies since the retail study was conducted in November 2016 and list a number of units that have secured new tenants. They also state that Chatham has seen *“...some significant upgrading and improvements over the past year to 18 months and provides an attractive shopping environment”*.

Whilst these comments of the applicant are noted, the Council’s RPC have advise that having viewed the centre, based on their site visits and research, it is clearly vulnerable to further loss of trade/turnover to both the application proposal and the significant commitments identified by the Council both within and outside Medway Council area. The further loss of shoppers and reduction in footfall across the town centre will inevitably undermine private sector confidence and operator demand for representation in Chatham both now and in the future. This also has to be considered against the backdrop of the continued growth of internet shopping and changing retailer business models, which mean that once traditional high street retailers are withdrawing from town centres altogether and/or are relocating to larger format stores, with lower operating costs and free car parking in highly accessible and convenient out-of-centre locations.

The Council’s retail study also advises that, over the short term, the priority for Chatham town centre is to improve its prime pitch retail offer. Central to this will be improvements to the Pentagon Shopping Centre, which the study advises is *“not fit for purpose in its current form: units are too small, the interior is dated, and footfall is low”* (para 10.38). On this point the most recent representations submitted on behalf of the

owners – Ellandi – highlight plans for the amalgamation of units in order to make them more attractive to national/multiple retailers. The study concludes that the improvement and redevelopment of the Pentagon “*is considered integral in securing the long-term vitality and viability of the town centre*” (para 10.38).

In conclusion having considered the submitted evidence of the applicant and in consideration of the advice received from the Council’s RPC Council Officers are not persuaded by the applicant’s assessments that Chatham is vital and viable. It is considered that the forecast levels of trade diversion and impact from the application proposal and other known commitments will result in a significant adverse impact on the town’s overall vitality and viability, and will harm investor confidence in the town centre; including the ability for the town centre and specifically the Pentagon Centre in the current climate to retain existing businesses and, as important, to attract new retail and leisure operators.

Turning to the impact of the development on Strood Town Centre, the Council’s NKRLS concluded the following with regard to Strood’s overall vitality and viability:

- Strood is a small district centre on the western side of the River Medway, separated from the other Medway towns but readily accessible by road and public transport connections;
- The centre has a good convenience goods function, with three supermarkets within the defined district centre boundary (Asda, Aldi and Iceland), and a further two supermarkets (a large Morrisons and a smaller Tesco) outside the boundary but within a short walking distance; albeit with poor linkages to the district centre offer;
- The supermarkets, along with a Wilko store, act as the centre’s main ‘anchor’ stores. The household survey evidence confirms that for almost three-quarters of respondents (74%) food shopping was their main reason for visiting the centre;
- The comparison offer is largely pitched towards meeting day-to-day shopping needs, and is generally of a “fairly low grade” (para 5.48), with limited choice in any one category;
- A small market is held in Commercial Road car park twice-weekly;
- The vacancy rate in the centre is above the UK average. The study identified that much of the vacant floorspace stock is small units, mostly in secondary areas, where demand for premises is not strong;
- Strood does not benefit from the historic character of the other centres in Medway, and appears to have suffered from a lack of investment in the public realm. The result is a poor quality public realm throughout, and a centre that feels ‘tired’ in character as a whole;
- Strood Retail Park, Tesco and Morrisons are located on the edge of the centre. The study identified that: “*Connectivity between the different retail elements within*

*and surrounding the centre, the High Street, retail park, market (when trading) and foodstores is disjointed, resulting in a retail environment that is lacking cohesion and not clearly navigable” (paragraph 5.51); and*

- Strood Retail Park is achieving a comparison turnover far in excess of the town centre. Current occupiers include Next, Argos, Brantano, KFC, Matalan and Poundland, and it is served by a large (free) surface car park. M&S Simply Food and B&M are scheduled to open in August, following permission to replace the former B&Q store (MC/14/3317), along with Maplins and Pure Gym.

The Council’s retail study concluded that Strood:

*“The vulnerability of this centre is reflected by its poor vitality and viability (reflective of its limited and poor quality offer), vacancies, poor environmental quality and interrupted pedestrian flow. The vitality and viability of Strood District Centre is one of the weakest of all Medway towns with its convenience role playing a fundamental role in contributing toward it’s vitality and vibrancy. Impact on its convenience role could fundamentally impact on the wider vitality and viability of the centre” (para 5.55).*

The applicant points to the recent refurbishment and take-up of units in the edge-of-centre retail park as a positive indication of new investment in the town. As for Chatham, the applicant also notes that vacancies have *“improved markedly”*.

The Council’s RPC advises that having review of the evidence and having undertaken their own site visits, they agree with the applicant’s that the recent investment in Strood Retail Park, the attraction and opening of new retailers and improvements to the public realm are positive indicators. However, they also advise it is apparent from their economic impact forecasts that there will be significant levels of comparison goods trade diversion from the retail park to the application proposal, and this will inevitably have an additional impact on linked trip expenditure and footfall to other shops and businesses in the town centre. On this point the applicant’s have accepted in their letter of 13 July that the Strood Retail Park does generate strong footfall (linked trips) with the town centre.

However, the Town Centre itself is clearly struggling in terms of its vitality and viability, and is heavily reliant on its food and convenience offer to generate trips, footfall and expenditure. There are limited signs of private sector investment in the centre itself, although in terms of public sector investment, the Council are currently working towards an updating of the public realm with the Strood Town Centre and Public Realm Strategy. However, the latter public realm investment does not address the main concerns in relation to the forecast level of trade diversion and impact on the town centre’s main food and convenience stores from the application proposal. Based on the Council’s RPC economic assessment, it is forecast a -14.1% impact on the centre’s convenience goods turnover, with a -19.4% impact on Aldi, which will compete “like for like” with the proposed prospective occupier of unit 1 and a -7.3% impact on Asda. Although the evidence indicates that Aldi is trading above ‘benchmark’ levels, it also highlights that Asda is significantly under-performing. The study identifies that this may indicate there may be *“a degree of saturation of the convenience goods market in this part of Medway” (para 10.41).*

Against this background it is considered that the further loss of trips, trade and footfall from the town centre to the out-of-centre proposal represents a serious concern. Overall it is concluded that the forecast impact on Strood's convenience goods turnover will be "*significantly adverse*", particularly when considered against the key findings of the Council's own evidence-based retail study which concluded that a "*threat to its convenience retail function could have significant adverse impacts on its health*" (para 10.35) and that "*proposals which would significantly adversely impact on their trading performance should be resisted*" (para 10.41).

### *Impact on Investment*

As stated above the impact on a town centre's vitality and viability, investment and consumer choice are all inter-related. When carrying out an impact assessment the NPPF (para 26) specifically identifies the need to assess the "the impact proposals on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal".

As informed by recent appeal decisions, it is clear that reference in the NPPF related to "existing" investment refers to investment that has already been made (e.g. The Pentagon Centre in Chatham) and "committed" investment is that which is contractually committed (private) or subject to resolution (public).

In the context of the Council's RPC assessment of the relative vitality and viability of the main centres they have advised that there are serious concerns with regard to the impact of the application proposal on "existing" investment in these centres. They have advised that in their view the key considerations inevitably cover the effects on current/forecast turnovers, operator demand and investor confidence. The representations submitted on behalf of the owners of The Pentagon Centre and Hempstead Valley (Strood Retail Park separate to these as it is defined as being out-of-centre) provide evidence that current investors in these centres are concerned by the application proposal. The level of risk to existing investment and its significance in planning terms depends on addressing a number of key issues/questions, including:

- Will the proposal lead to a reduction in the turnover and market share of town centres, making it more difficult to retain existing retailers and attract operator demand?
- Whether the proposal and existing centres are competing for the same market opportunity, and/or for key retailers/occupiers?
- Whether the 'cumulative' impact of the proposal and other known commitments is a cause for concern?

Based on the advice received from the Council's RPS it is considered that the application proposal will compete on a "like for like" basis with existing centres and existing investments in these centres, specifically in terms of the range of (convenience and comparison) goods proposed to be sold, and the value/mid-range retailers identified by the applicant. This will significantly impact on the (convenience and comparison goods) turnover of the main centres, and specifically Chatham and Strood; and it will make it more difficult to retain existing retailers and attract new businesses to the centres, particularly in the current climate. The recent representation submitted on behalf of Ellandi, which highlights the fact that the

application proposal and proposed tenant line-up will have a disproportionate impact on the Pentagon Centre is also of concern and it is noted that this has not been recognised or tested by the applicant in any of their submission to date.

Furthermore, there is also a concern related to the potential impact of the application proposal on Gillingham Town Centre, especially in terms of investment in the former Budgens (previously Co-op) store on the High Street could be blighted by permission for a new foodstore as part of the application proposal. This is significant in the opinion of Council Officers, especially in the light of the fact that the applicants themselves concluded that *"...re-provision of convenience retail would be key to maintaining the vitality and viability of Gillingham Town Centre"*.

The above concern related to the *"re-provision of convenience retail would be key to maintaining the vitality and viability of Gillingham Town Centre"* is also underlined by the findings of the NKRLS, which identifies that the redevelopment of this site is important in securing the vitality and viability of the district centre, and in improving consumer choice and competition with the strong-performing out-of-centre Aldi store. Clearly, permission for another ("deep discounter") foodstore on the application site will impact on the potential investment, operator demand and delivery of this vacant unit/site, and on the wider town centre's vitality and viability; this is before taking into account the potential 'cumulative' impacts of other commitments both within and outside of Medway Council on the town centre. On this point the NKRLS also concluded that the centre *"...is vulnerable and requires an appropriate strategy to respond more positively"* (para 5.61).

On the basis of the above, it is considered that the impact of the application proposal on existing investment and potential operator demand across Chatham, Strood and Gillingham will be significantly adverse.

In terms of planned investment it is noted that what constitutes "planned" investment is not specifically defined by either the NPPF or NPPG. However, the NPPG at Paragraph 16 Reference ID: 2b-016-20140306 states: *"...where wider town centre developments or investments are in progress, it will also be appropriate to assess the impact of relevant applications on that investment"*

Key considerations will include:

- the policy status of the investment (i.e. whether it is outlined in the Development Plan);
- the progress made towards securing the investment (for example if contracts are established); and
- the extent to which an application is likely to undermine planned developments or investments based on the effects of current/forecast turnovers, operator demand and investor confidence.

To be clear, what the NPPG says about the application of the impact test is guidance and not policy. How "advanced" an investment has to be for it to constitute "planned" investment has to be a matter of planning judgement depending on the circumstances of each case. Notwithstanding this, it is noted that the Inspector in his consideration of the Section 77 appeal for a Designer Outlet Centre at Scotch Corner, North



Yorkshire (Appeal References: APP/V2723/V/15/3132873 & APP/V2723/V/16/3143678) stated that the three key considerations set out in the NPPG indicated to him that “...to be considered as planned investment a project has to be at a very advanced stage” (IR 11.16).

As far as it is understood by Officers of the Council, Ellandi has not entered into any recent pre-application/application discussions that demonstrates that plans “are in progress” (in line with the PPG advice). On this basis, it is not considered that there would be any ‘significant adverse’ impact on any current known planned private investment in Chatham Town Centre based on the criteria set out in the PPG, and the various recent case law decisions. The same position applies to planned private investment in Strood Town Centre at the current time.

Notwithstanding this, it is apparent that Ellandi has purchased the shopping centre with the intention to invest in it and to improve its overall offer and value through the initial internal refurbishment and remodelling of units (as set out in their recent representations), with the potential for more substantial redevelopment and extension to follow. This is in line with their business strategy and the significant investments they have made over recent years in comparable shopping centres across the UK.

In conclusions of the retail impact assessment of this report it is considered:

- In regard to the “*sequential test*”, the applicant has applied greater flexibility in their latest assessment and no sequentially preferable sites have been identified; and
- In terms of the “*impact*” of the application proposal, it is considered that the proposed development with its prospective named end users will have a significant adverse impact on the vitality and viability of Chatham, Strood and Gillingham, including impact on in-centre trade/turnover from the scheme and other commitments, and on investment. On this basis it is considered that this proposal should be refused in compliance with the NPPF (para 27). It follows that if the proposed scheme was to achieve a higher turnover, based on a different tenant mix and a wider range of goods sold, then it would have a significantly higher and even more adverse impact on the main centres identified. Therefore this development proposed is considered to be unacceptable and contrary to paragraphs 14, 23, 24, 26 and 27 of the NPPF and saved Policies R1, R13 and T17 of the Medway Local Plan 2003.

Against the above background the applicant argues that the proposed development offers various benefits which must be weighed against the dis-benefits. Indeed the applicant points out that for the dis-benefits to justify a refusal of consent they must be significant and demonstrably outweigh the benefits.

### The Planning Balance

In support of the proposal the applicant argues that: There are economic, regeneration and job creation benefits; and The proposal will result in the development of a vacant site.

In terms of the economic, regeneration and job creation benefits that are argued by the applicant, they consider that these would be wholly beneficial with an investment in Medway of in excess of £30M and significant job creation. The applicant advises that the jobs to be created will be both full-time and part-time and will be across a range of skills, including an estimated 250 jobs created over the 12 month construction programme. The applicant states that the jobs created with the development and the immediate economic spin-offs are clear benefits of the proposal and should be seen in the context of:-

- Medway's economy runs at just over two thirds of the national level in terms of output;
- Medway is amongst the lowest performing Authorities in economic terms across the South-East and lag behind both the Kent and England averages;
- Growth in Gross Value Added with Medway for the period 2001 to 2014 was just 5% compared to 14% across the whole of Kent; and
- Out commuting for employment is a significant issue for the area with just 51% of Medway's economically active residents working within the area.

The applicant states that the application proposals, in a small way, will help to address each of these issues and that they consider that the proposal support for economic development and job creation, delivering substantial positive benefits in terms of regeneration, investment and job creation.

In terms of the development of a vacant site the applicant argues that the site is a highly prominent location at the entrance to the Medway City Estate and at the western exit of the Medway Tunnel. They argue that despite its prominence and allocation within Development Plan Documents the site has stood idle and unused for many years. The applicant considers that their proposal will deliver the site's development and, in doing so, will:-

- Result in a significant visual enhancement of the entrance to the Medway City Industrial Estate which can only serve to bolster its prominence and reputation;.
- Be a strong physical sign of investment in the Industrial Estate and this part of Medway which can only serve to enhance confidence in the Estate and potentially encourage further investment nearby;
- Will provide retail outlets that may be used by those working on the wider Medway City Estate. At present,
- there is a dearth of retail outlets elsewhere on the Industrial Estate;
- Will result in a significant visual enhancement of the site when viewed either from the river itself or from the historic dockyards on the eastern bank of the Medway.

Overall, the applicant argues that development of the site, in the manner proposed, can only serve to act as an enhancement to this part of the Medway Towns and would amount to a clear and unambiguous benefit of the scheme sending a clear message about continued investment in the area by well-known national retailers.

Irrespective of the above, the applicant's perceived benefits, as mentioned above, need to be considered in the light of the concerns raised in terms of the resultant impact on Chatham Gillingham and Strood Town Centres. Whilst it is acknowledged that this development represents a significant investment in Medway, it is not

considered that that investment would be without detriment to the above mentioned centres in that it is believed that the development would draw trade away from those centres to a significantly adverse degree which would have the potential to result in existing retailers closing or substantially reducing their offer in those centres. This would have the knock on effect of loss of retail employment in those centres and consequently resulting in a further impact on trade

Whilst the applicant have referenced construction job creation in their submission, they have been silent on employment figures related to the retail operation of the development itself. Indeed the application form states 'To be confirmed' and the iterations of their PRS are silent on this matter. Bearing the above concerns in mind the arguments concerning employment benefits, as claimed by the applicant, are considered to be weak and unsubstantiated. Furthermore the claimed investment in Medway does not take into account the significant adverse impact identified by the Council's RPC and the significant impact this development will have the Chatham, Gillingham and Strood Town Centres.

Finally, the development fails to provide the park and ride facility and is thereby contrary to the adopted development plan policy which states "*Whitewall Creek, at Anthony's Way, on the Medway City Estate, as defined on the proposals map, is allocated for a new bus Park and Ride site and, on any surplus land, commercial and industrial development which takes advantage of that facility.*" (Policy T17 of the Local Plan). This policy allocates the site for a Park & Ride facility, and only indicates that commercial and industrial development may also be accepted on any surplus land, providing it takes advantage of the park and ride facility. Policy is considered to be consistent with Paragraphs 30, 35 and 41 of the NPPF, in that these paragraphs require LPA's: when preparing Local Plans to support a pattern of development which, where reasonable to do so, facilitates the use of sustainable modes of transport; seek to "...exploit opportunities for the use of sustainable transport modes for the movement of goods or people..."; and requires LPA's to "...identify and protect, where there is robust evidence, sites and routes which could be critical in developing infrastructure to widen transport choice."

Finally, irrespective of the arguments put forward by the applicant in terms of the planning benefits of the scheme, and although some limited weight should be placed on the previous permissions for retail development (which must be seen in the context of achieving the objective of a park and ride), it is considered that these are out-weighed by the dis-benefits of the development, as outlined above and in terms of the significant adverse impact the development will have on the vitality and viability of Chatham, Strood and Gillingham, including impact on in-centre trade/turnover from the scheme and other commitments, and on investment. On this basis it is considered that this development if permitted would amount to an unsustainable form of development in that it fails to:

- Contributing to building a strong, responsive and competitive economy, being a development in the wrong location that would fail to support growth and innovation (The Economic Role) and ;
- Support a strong, vibrant and healthy communities, by providing a high quality built environment, with accessible local services that reflect the community's

needs and support its health, social and cultural well-being (The Social Role).

## Design

The site consists largely of marsh land and includes the distinctive Whitewall Creek- a small inlet that reaches almost up to the main roads of Anthony's Way and the approach road to the Medway Tunnel. The site is in a highly prominent position adjacent to the approach road and overlooking the estuary and the covered slips of Chatham Dockyard.

The proposal is for a small retail park to replace the permission for a park and ride facility and a superstore. The reduced footprint of the current proposal, plus greatly reduced car parking as compared to the Sainsbury's scheme, means that Whitewall Creek will be preserved along with a fair proportion of the immediate marshy ground from a streetscape perspective. In terms of streetscape, this scheme is therefore far more sensitive to its estuarine setting than the former Sainsbury's superstore scheme.

The layout consists of a row of fairly uniform retail 'sheds' at right angles to Anthony's Way and the river, and facing out towards the Tunnel Approach Road. Parking and associated landscaping on a forecourt in front. In this respect the design and layout of the retail park is conventional.

The design responds to its context by having a fairly muted colour palette of grey and blue. Further distinctiveness is given by the provision of a free standing colonnade that stands forward of the main front facade to provide a covered walkway and to add three dimensional modelling to the facade. The colonnade will feature straightforward steel 'I' beams and connections and will have an industrial feel. This is not inappropriate given Medway's maritime manufacturing history and the site's proximity to Chatham Dockyard.

Signage is integrated by being located in large panels between the columns of the colonnade. The corner of the prominent end unit adjacent to Anthony's Way is given additional prominence by standing forward of the main colonnade.

The 'I' beam motif is continued in the landscaping scheme where steel 'I' beam bollards with integrated lighting are used to control and demarcate car parking and pedestrian routes. Interpretation boards, similar to the pressed metal boards used at Chatham Historic Dockyard, will be placed to overlook the estuary and towards the Dockyard. These will provide a further connection to the area's past.

The one weakness of the scheme is the proposal for a row of smaller retail units along the entrance edge of the site. Whilst smart enough in themselves, they will present their featureless rear elevations to the entrance approach road. This is mitigated to an extent by proposed supersized signage that is designed as a landscape feature at the entrance to the site, and to screen the rear of the units.

Overall, the scheme will be smart and well designed. Distinctiveness is given by materials and detailing that alludes to the area's industrial past. It is considerably more sensitive to its estuarine and landscape setting than the park and ride facility and a superstore scheme that was previously granted consent. The proposal is therefore

considered acceptable in design terms pursuant to Policy BNE1 of the Local Plan.

### Amenity

Given the nature of the surrounding uses, which are primarily industrial and commercial, the proposed development raises no issues in terms of the receipt of light, privacy or outlook. Therefore it is not considered that there would be any conflict with the provisions set out under Local Plan Policy BNE2.

### *Noise/Dust – Construction phase*

In terms of noise and dust impacts on amenity, during the construction phase of the development, the Council's Environmental Protection team have advised that this can be suitably controlled from an amenity perspective by the imposition of a planning condition requiring a Construction Environmental Management Plan (CEMP) to be submitted and approved in writing by the LPA, prior to the commencement of the development. The CEMP would include amongst other matters details of: noise and vibration controls, including screening/mitigation and hours of construction working; dust control measures, including wheel cleaning/chassis cleaning facilities; site illumination including any cowls to be fitted to ensure that light spillage on sensitive areas is avoided, etc.

As such matters could be reasonably controlled by the imposition of a planning condition no objection are raised in terms of noise and dust arising from this development in terms of amenity impacts.

### *Lighting*

With regard to lighting, this proposal includes a scheme of lighting. The Council's Environmental Protection Officers have considered lighting from a residential amenity perspective. However, as there are no residential properties located within close proximity of the site they have raised no concerns in regard to lighting impacts on residential amenity. The implications of the proposed lighting on visual amenity have been addressed above. However, in terms of its impact on ecology and biodiversity, this is considered under the heading Ecology and Biodiversity below.

### *Air Quality*

In terms of air quality the Council's Environmental Protection Section have commented that the proposed retail use is likely to attract significant additional vehicles trip to the area. Some of these are likely to pass through the central Medway Air Quality Management Area which is close to the site. It is noted that there are likely to be increases in peak vehicle trips, however it is not clear what the predicted additional total daily trips associated with the development are.

Although an Air Quality Assessment is not in specifically required in terms of the impact on the Council's Air Quality Management Areas, it is considered appropriate that air quality mitigation is secured in regard to off-setting the vehicle emissions associated with the development in line with the requirements of the 2016 Medway Air Quality Planning Guidance. It is noted that there is a commitment to providing 3

electric vehicle charging points in the car park; however, the Medway guidance would require the development to provide charging points at the following rate for commercial/retail/industrial development as standard mitigation:

*“10% of parking spaces to be provided with Electric Vehicle charge points\* which may be phased with 5% initial provision and the remainder at an agreed trigger level. (\* this shall be the best technology available at the time of planning approval)”*

In addition to the standard mitigation above, an air quality emissions mitigation assessment and statement should be produced which assesses the likely local emissions from the development, and determines the appropriate level of mitigation required to help reduce the potential effect on health and the environment. It is considered that these air quality management matter can be appropriately dealt with post determination and as such, should planning consent be forthcoming a condition will be recommended seeking to secure:

- *the submission of an air quality mitigation assessment and statement for approval, that outlines air quality mitigation equivalent to, or greater than, the calculated damage costs as calculated using the 2016 Medway Air Quality Planning Guidance;*
  - i) *Standard air quality mitigation consisting of electric vehicle charging points (as per the above rate). This is in addition to mitigation outlined in the mitigation assessment and statement;*
- *If the above is not achievable, or there is an underspend, then a contribution should be made to wider air quality mitigation measures, as outlined in Medway Council's air quality action plan, through a Section 106 agreement;*
- *Mitigation in accordance with the IAQM guidance on the assessment of dust from demolition, via either a specific dust management plan or a wider construction environmental management plan.”*

#### Land contamination

In term of land contamination, the Environment Agency (EA) was consulted and their responses are set out above in the representations section of this report. In summary they have advised that they consider that planning permission could be granted for the proposed development, as submitted, subject to the imposition of appropriate Planning Conditions and/or informatives, as appropriate. In terms of the Council's Environmental Protection Section they have noted the EA's comments relating to the extant planning permission for the site and the fact that the EA's previous concerns have been incorporated into the approved remediation strategy, which is also applicable to this proposed development. Bearing this in mind and taking into account the numerous previous investigative works carried out and the previous and extant planning permissions applicable to the site, and to avoid repetition, it is considered that conditions could be imposed should planning consent be forthcoming, which incorporates the detailed work required prior to commencement of development

contained within the Geoenvironmental Assessment Report, as submitted with the application, would be acceptable from a land contamination perspective.

### Floodrisk and drainage

The applicant has submitted a Flood Risk Assessment (FRA), together with a Surface Water Strategy and a Sustainable Drainage System Assessment. This has been prepared by CSG Consulting on behalf of the applicant and was prepared in February 2016.

Having assessed the development against the EA's floodplain mapping for Planning, the majority of the development lies within flood zones 1 with small areas of the site around the north and eastern boundaries are located in Flood Zone 2. In terms of the EA's Flood Data Mapping related to risk of flooding from rivers and seas once again the majority of the site is located in an area which is considered to be a very low risk of flooding, being the chance of flooding being less than 1 in 1000 or a 0.1% risk, whilst the parts of the site to the northern and eastern boundaries are identified as 'Low flood risk'. Low flood risk is defined as lying between 1 in 1000 (0.1%) risk and a 1 in 100 (1%) risk.

The NPPF's - Technical Guidance indicates that where possible new development should be directed to locations within Flood Zone 1 and that elsewhere development at any particular location should take into account the flood risk vulnerability of land uses and consider reasonably available sites in Flood Zone 2, applying the Exception Test if required. Only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 be considered, taking into account the flood risk vulnerability of land uses and applying the Exception Test, if required.

In terms of the sequential test related to Zones 1 and 2, the Technical Guidance to the NPPF contains a vulnerability classification for different land uses and summarises the vulnerability classification of appropriate land uses for each Flood Zone. In this instance the vulnerability classification specified in the Technical Guidance to the NPPF identified "*Buildings used for shops, financial, professional and services...*" as 'Less Vulnerable'. When assessing these findings against the 'Vulnerability and Flood Zone Compatibility' table within the Technical Guidance to the NPPF it confirms the site is acceptable in terms of flood risk.

Irrespective of the above, the applicant has advised that in accordance with good practice the proposed buildings are located within the Flood Zone 1 and in terms of the Flood Zone 2 classifications on the northern and eastern boundaries of the site will only contain the extremities of the proposed car parking area. Furthermore the applicants have confirmed that the site levels within the site will not be being altered to any great extent such that it would effect the flood zone designations

Bearing in mind the above, this development is considered to conform to the sequential and exceptions test as set out in the NPPF's Technical Guidance. No objections have been raised by the EA and the proposed development is considered to be acceptable in terms of paragraphs 99 - 103 of the NPPF and policy CF13 of the Development Plan.

### Site Drainage and Sustainable Urban Drainage.

In terms of site drainage, the Lead Local Flood Authority (LLFA) has confirmed that they have no objection to the principle of the scheme proposed. However, they point out that any new outfall will require Flood Defence Consent from the EA under the Water Resources Act 1991 and associated byelaws. They advise that any outfall should be set above the Mean Low Water Spring (MLWS) level and should include a flap to prevent ingress during higher tides into the system and suitable toe protection where required.

The LLFA goes on to advise that the system should be designed to accommodate a tide locked situation, and refer to a joint probability analysis where relevant. Some attenuation / treatment should be provided for the "first flush" rainfall event.

Bearing in mind the above the LLFA has recommended that a suitably worded condition be imposed, securing the details of the above being submitted to and approved in writing by the LPA, should consent be forthcoming.

### Ecology and Biodiversity

The LPA has sought advice from its Consultant Ecologists in regard to the proposed development and they have advised that the applicant and their ecologists have a good understanding of the ecological constraints associated with this site.

In terms of reptiles, the Council's Consultant Ecologists advise that having reviewed the reptile mitigation strategy, they are generally satisfied the proposed mitigation and receptor site is appropriate to retain the reptile population. Should planning permission be granted they advise that mitigation strategy must be implemented as a condition of planning permission prior to any works commencing on site. The Council's Consultant Ecologists have however identified a number of minor points within the mitigation strategy which need to be amended, but advise that they are satisfied that the mitigation strategy does not need to be updated and resubmitted for comments prior to determination of the planning application. Therefore, subject to the imposition of an appropriately worded condition should planning permission be forthcoming, this proposal is considered to be acceptable in terms of its impact on reptiles.

With regard to breeding birds, the information submitted with the application details that the grassland and scrub was going to be cut during the winter months to prevent birds nesting within the site. The Council's Consultant Ecologists advise that if this did not occur an ecologist must survey the site prior to the reptile mitigation strategy commencing. If any nesting birds are recorded no vegetation clearance can commence within that immediate area (approx. 5-10 metre buffer) until all the young have fledged.

In terms of hibernacula, it is noted that a hibernacula is proposed to be located along the northern boundary of the receptor site. Some works are proposed in relation to the roads within that area and (MC/16/0300) although the exact scheme has not been finalised it would be appropriate to relocate the hibernacula further south within the site. This will ensure that the hibernacula will not be negatively impacted by adjacent works and can be suitably controlled by Planning Condition, should planning



permission be forthcoming.

The mitigation strategy has made recommendations for long term management and monitoring of the receptor site and this should also be secured by planning condition should planning permission be forthcoming

Whitehall Creek is adjacent to the proposed development site and the proposed development has been designed to include a clear boundary between the proposed development and the Creek. Native shrubs/trees will be planted along the boundary of the development to create a screen. Such a screen must be designed in consultation with their ecologists to ensure that the planting is beneficial to the creek and the birds using the creek and mudflats and this being the case, should planning permission be forthcoming a condition will be required to ensure the details of the screen are first submitted to and agreed in writing by the LPA before any development commences on site.

It is noted that Breeding and Wintering Bird surveys were carried out in 2002 and 2010 and it confirmed that UK Priority Species and RSPB red and amber listed birds of conservation concern were present within the creek and mudflat area. Whilst no updated survey was carried out in 2015/16 no significant changes to the Creek or immediate area have occurred since the surveys were carried out and the Council's Consultant Ecologists have agreed with the conclusions that the survey results are still valid. The phase 1 survey has made a number of recommendations to protect the creek and associated species during the construction and operational phase of the development and the Council's Consultant Ecologists recommend that these be secured by planning condition, should planning permission be forthcoming, in terms of being incorporated in to a CEMP. The CEMP should also include details of the timings of the proposed works which will create large vibrations/noise (such as piling) should be carried out outside the most sensitive time of year for breeding/wintering birds. Should planning consent be forthcoming such a condition is recommended.

In terms of the proposed lighting, from an ecology/biodiversity perspective, the Council's Consultant Ecologists have advised that they accept that there is a high level of artificial lighting within the surrounding area. However, they consider that there is a need to ensure that the proposed development does not result in an increase in lighting within the Creek and adjacent habitats. Whilst a lighting plan has been submitted with the planning application, it does not provide any context to the immediate surrounding area so should planning permission be forthcoming a planning condition must be imposed requiring an updated lighting plan, which includes a map of the surrounding area, which includes lighting that is outside of the development site (i.e. is not limited to the proposed development site) is submitted to and approved in writing by the Local Planning Authority.

In terms of a management and monitoring plan the Council's Consultant Ecologists consider that should planning permission be granted a site wide management and monitoring plan must be produced. Such a plan must incorporate the receptor site area and the habitat between the proposed development site and the Creek. Should planning consent be forthcoming a condition seeking to secure an ecological management and monitoring plan is recommended.

## Highways

### *Trip Generation*

The Transport Assessment uses the TRICS trip generation database to predict that the proposed development would generate 91 vehicle movements during the AM peak period, up to 324 movements during the evening peak and 588 movements between 1200 and 1300 on Saturdays. Across all the peak periods, the development would generate around 70% less traffic than the previously consented scheme for a large supermarket and a Park and Ride site. It is likely that existing commercial development to the south would generate some footfall, and that existing bus services along Anthony's Way would provide staff and customers with an alternative travel option. The Transport Assessment provides some multi-modal travel data, which indicates that the development could generate up to 76 arrivals by bus and 76 arrivals on foot during the weekday peak periods.

### *Access and Traffic Impact*

It is proposed to introduce signal control on Anthony's Way at its junctions with Terrance Butler Avenue and Enterprise Close, and to widen Anthony's Way to provide two lanes on the southbound carriageway. These highway works were secured as part of the previously approved scheme.

The proposed development would generate significantly fewer vehicle movements overall than the previously consented scheme. However, the impact of the development on the Terrance Butler Avenue/Anthony's Way junction would be much greater during the evening and Saturday peak periods: 159 arrivals from the north during the evening peak and 296 arrivals during the Saturday peak hour, compared with a maximum of 35 arrivals if the site was operating as a Park and Ride facility. The distance between the junction and the Anthony's Way roundabout is 126 metres. Following signalisation and the addition of development traffic, the longest queues on the south-bound approach are predicted to comprise up to 14 vehicles in each lane, an approximate distance of 77 metres. This would leave around 55 metres of spare storage capacity in each lane.

The applicant's Transport Assessment does not provide any queue length data for the north bound approach to the Anthony's Way roundabout. Survey data held by the Council indicates that a vehicle queue of up to 19 vehicles in each approach lane is evident during the evening peak period. A queue of this length is likely to reach the junction with Terrance Butler Avenue which, assuming yellow box markings are in place to keep the central area of the junction clear, could mean that only a small number of vehicles are able to leave the development during each cycle. It is unlikely that the Highway Authority would prioritise egress from the development over the main road flow during the peak periods, and therefore vehicle queues on Terrance Butler Avenue (which is not adopted highway) are to be expected at these times.

The pedestrian crossing facility at the signalised junction would operate on demand and is currently shown as going straight across all four lanes on Anthony's Way. This arrangement would, however, require traffic in both directions to be stopped for around 32 seconds - a significant disruption to the flow of traffic on Anthony's Way at

peak times. The Council's Traffic Signals Engineer has therefore requested the crossing be staggered. The pedestrian crossing phases over each side of the carriageway could then operate separately, maximising traffic flow through the junction. This would involve repositioning the crossing of the northbound carriageway and amendments to the central reservation to create a stagger.

In relation to the outline design put forward by the application, the Council's Road Safety Engineer has requested that details of the inter-visibility zones at the junctions with Anthony's Way be submitted, along with confirmation that suitable visibility can be provided within land controlled by the applicant or the Local Highway Authority.

#### *Traffic Impact on the wider network*

The previously approved application for a large supermarket and Park and Ride development included off-site highway improvements to Anthony's Way, Anthony's Way roundabout and the Sans Pareil roundabout. The Transport Assessment estimates that the development now proposed would add a maximum of 209 vehicle movements to the Anthony's Way roundabout during the weekday peak and 394 vehicles movements during the peak shopping hour on Saturdays. The Sans Pareil roundabout would experience up to 149 additional movements during the week day peaks and 318 movements during the Saturday peak. As this would represent a much smaller impact, the applicant argues that the off-site works secured as part of the previous scheme should not be applied to the current proposal in their entirety. It is therefore proposed to implement the improvements to Anthony's Way only. This is based on a broad analysis of the costs for implementing the off-site highway works previously secured and a pro-rata calculation based on a 70% reduction to traffic generation. In reality, the improvements to Anthony's Way would represent around 50% of the cost of all the off-site highway works and therefore this proposal is considered acceptable. In any event, the Council is currently re-designing the Anthony's Way and Sans Pareil roundabouts as part of a strategic transport improvement scheme, which it aims to be delivered in 2017/18. The outline design for these junctions moves away from the signalisation proposals that were secured as part of the previous planning consents, putting forward a straightforward enlargement of the existing roundabouts. This scheme is fully funded.

#### *Pedestrian access & Sustainable travel*

Signal controlled pedestrian crossings are proposed at the site access, the bell mouth of Enterprise Close and the northern arm of Anthony's Way. These crossings would not provide suitable facilities for pedestrians accessing the development from the south, however, as a lengthy diversion to their desire line would be required. It is therefore requested the development provides a suitable crossing facility to the south of Enterprise Close, to be secured by planning condition or through a Section 106 Agreement. In addition, it is recommended that the provision of a new section of footway along the northern side of Anthony's Way, and on George Summers Close, be secured by planning condition. This footway would include an existing bus stop. In order to encourage sustainable travel to the site, the applicant has agreed to enhance facilities at the bus stop through the provision of a bus shelter, a raised kerb and clear way. These details, including the precise location of the bus stop, should also be secured by planning condition and thereafter implemented prior to occupation of the

development.

The applicant has agreed to provide a Section 106 contribution of £75,000 towards estate-wide sustainable travel initiatives. These could comprise the development of an estate-wide Travel Plan, improvements to public transport service provision, enhanced cycle infrastructure and parking and improved promotion of the Medway Car Share scheme. It is also requested that a Travel Plan for the development itself be secured by planning condition.

### *Parking*

The Council's Parking Standards indicate that the development should provide a maximum of 479 spaces based on the proposed floor space. The application proposes 367 spaces, which complies with this Standard. The Transport Assessment uses arrival and departure profiles predicted by the Trip Generation Assessment to estimate that the peak trading hours would generate a demand for up to 210 spaces. The application also proposes to separate customer car parking from parking for staff, which is proposed adjacent to the service yard. The application indicates that cycle parking would be provided in accordance with the Council's Standards, together with on-site showering and changing facilities, and it is recommended that details of this be secured by planning condition. Subject to this, no objection is raised in respect of Policy T13 of the Local Plan.

### *Conclusion of Highway's Section of this Report*

The proposal development would generate significantly fewer vehicle movements than the development previously granted planning permission. Notwithstanding this, the application carries forward the approved signalisation of the Anthony's Way/Terrance Butler Avenue junction. Whilst this would disrupt the free flow of traffic on Anthony's Way, and may cause some congestion within the development site at peak times, it would include a controlled crossing facility for pedestrians and cyclists to link the development with the wider area and improve the safety of right-turn movements from Terrance Butler Avenue and Enterprise Close. Furthermore, the Transport Assessment demonstrates that the vehicles waiting at the signals are unlikely to queue back on to the Anthony's Way roundabout junction. The application site is accessible by public transport and the development would provide enhanced passenger waiting facilities on Anthony's Way, together with funding for the Council to promote sustainable travel across the Medway City Estate. Subject to this contribution, and the provision of the off-site highway works outlined above, it is considered the application complies with the saved transport policies of the Medway Local Plan and the provisions contained within the NPPF.

### Local Finance Considerations

None

### **Conclusion**

Section 36(8) of the Planning and Compulsory Purchase Act 2004 (as amended) states: "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.”

In this instance in the absence of the provision of a Park and Ride facility has no justification, when assessed against the Local Plan policy, for the provision of any commercial or industrial development on the site. The proposal if permitted would fail to take advantage of alternative sustainable modes of transport, as well as fails to protect and exploit opportunities to facilitate the use of sustainable transport modes for the movement of goods or people. The result of not providing the park and ride facility will have the potential to prejudice the Council's ability to develop infrastructure to widen transport choice in the future which was the clear intention of allocating the site for a park and ride facility in the first instance. Therefore, the development, if permitted, would therefore be contrary to the objectives of Paragraphs 30, 35 and 41 of the National Planning Policy Framework and Policy T17 of the Medway Local Plan.

Furthermore, the proposed development, if permitted, would introduce an out-of-centre retail park that would directly compete with Chatham, Gillingham and Strood Town Centres. The out-of-centre retail uses proposed would result in a significant adverse impact on the vitality and viability of these Town Centres, especially Chatham in its role and function as the main sub-regional shopping centre of Medway. Therefore the development which is the subject of this application would, if permitted, be contrary to paragraphs 23, 24, 26 and 27 of the NPPF and saved Policies S1, S2, S5, R1, R2, R3 and R13 of the Medway Local Plan 2003.

The saved Local Plan policies, as identified above, are considered to be relevant upto date and consistent with the NPPF and as such it is considered that significant weight can be applied to them in this instance. As such 'the Titled Balance' in favour of sustainable development and granting planning permission except where the benefits are 'significantly and demonstrably' outweighed by the adverse impacts or where specific policies in the NPPF indicate otherwise, set out in paragraph 14 of the NPPF, does not apply. Even should this conclusion on 'the Titled Balance' be incorrect:

- the failure of the development to providing the park and ride facility, contrary to Policy T17 of the Local Plan, will prejudice the Council's ability to develop infrastructure to widen transport choice in the future, whilst failing to take advantage of alternative sustainable modes of transport and failing to protect and exploit opportunities to facilitate the use of sustainable transport modes for the movement of goods or people; and
- would result in a development that will result in a significant adverse impact on the vitality and viability of Chatham, Gillingham and Strood Town Centres, especially Chatham in its role and function as the main sub-regional shopping centre of Medway.

These harms would significantly and demonstrably outweigh any benefits which would arise from the development and therefore it is recommended that planning permission should be refused.

As can be seen from the above the application by its nature raises a number of complex issues that are most appropriately considered by the Planning Committee

rather than under officer delegated powers.

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### **Background Papers**

The relevant background papers relating to the individual applications comprise: the applications and all supporting documentation submitted therewith; and items identified in any Relevant History and Representations section within the report.

Any information referred to is available for inspection in the Planning Offices of Medway Council at Gun Wharf, Dock Road, Chatham ME4 4TR and here <http://publicaccess.medway.gov.uk/online-applications/>