

St Modwen Developments Ltd

Derby Road, Stretton Proposed Mixed Use Development

Planning Statement – Addendum (v4)

Planning Prospects Ltd May 2017

Introduction

Planning Prospects Ltd (PPL) were instructed by St Modwen Developments Ltd to submit a planning application for the development of a supermarket, drive through coffee shop / restaurant, retail / service, gym and employment units, including a builders' merchant, with associated access and car parking on land at Derby Road, Stretton, towards the north eastern end of Burton upon Trent ("the Proposed Scheme"). This is to represent a further phase of the "Albion Gateway" scheme, comprising employment units developed on land adjacent (immediately to the north). The planning application was registered with reference number P/2017/00141.

The planning application was supported by documents including a Planning and Retail Statement, prepared by PPL and dated February 2017 ("the Statement"). Officers subsequently raised questions around aspects of this, including:

- The approach to the sequential test
- The assessment of sites under the sequential test
- The assessment of convenience goods impact

This Addendum sets out a response to each of these questions, in turn.

It was initially prepared in draft for discussion with Officers around the points listed above, but also mindful that there might be third party interest in some of these issues. Following completion of a draft version of the Addendum PPL were made aware that such interest had in fact been expressed in the form of an objection to the application prepared by Savills on behalf of the proposed developer of the Burton Rugby Club site ("the Savills Objection"), supported by an Opinion prepared by Paul Tucker QC ("the PTQC Opinion"). The structure of the Addendum has been amended accordingly, still addressing the questions raised by Officers, as previously, but now also adding a section at the end to consider the points raised in the Savills Objection and the PTQC Opinion.

The Approach to the Sequential Test

Officers drew attention to the judgment of Mr Justice Ouseley in *Aldergate Properties Ltd and Mansfield District Council and Regal Sherwood Oaks Ltd, [2016] EWHC 1670 (Admin)*. As set out in the Statement, the sequential exercise was undertaken having regard to *Mansfield*, and followed that approach, i.e. recognising that it needs to be blind to the identity of the occupier (para 4.52 - 4.55 of the Planning Statement, plus first bullet on page 40).

To be clear, in the Officers' ultimate assessment of the scheme from a sequential perspective, the identity of the occupier of any relevant part of it – e.g. Aldi – should not have a bearing on the outcome, and this should be made clear in any committee report. The identity of the occupier might be regarded as relevant in other respects, for example in terms of the benefits the scheme would provide in delivering good quality, affordable groceries to the growing community in this part of Burton, but this is distinct from consideration from a sequential perspective.

Officers have asked what Aldi's requirement is in terms of timescale for store opening; the answer to that is an expectation by Aldi that this store will be opened in 2018. This might be regarded as relevant in terms of the certainty it would bring to the delivery of benefits including, for example, regeneration, investment and job creation, as well as serving the growing community in the northern part of the town. Again, though, the specific requirements of Aldi in this regard should be separated out from the application of the sequential test, and not seen to inform it.

However, it is relevant in this regard that, irrespective of Aldi's required store opening programme, there is a clear need for major new convenience retail development to serve Burton, very significantly in excess of the quantum that would be delivered by the Proposed Scheme. This is considered at paragraph 6.25 et seq. of the Statement. The Local Plan was adopted in October 2015, and sets out (Strategic Policy 20) an additional minimum requirement for convenience goods floorspace; for the reasons set out in the Statement this requirement dwarfs the floorspace that would be delivered by the Proposed Scheme, which would leave significant capacity for further retail development. The NPPF provides (paragraph 23) that, "It is important that needs for retail, leisure, office and other main town centre uses are met in full and are not compromised by limited site availability" (emphasis added). It also includes amongst the Core planning principles (paragraph 17) that, "Every effort should be made objectively to identify and then meet the housing, business and other development needs of an area, and respond positively to wider opportunities for growth."

In fact, the position set out in the Statement in this regard should be updated. This observed (paragraph 6.34 – 6.35) that;

"...the [evidence base for the Local Plan] was prepared on the assumption that the permitted Tesco scheme [at Hawkins Lane] would be developed. In fact, this will not now be the case and a much smaller store is proposed. As discussed above there is a strong argument to say that even this smaller store will not be built, but in any event the PBA Report [comprising the evidence base for the Local Plan] makes an allowance against convenience goods spending capacity for the Tesco store of £41.9 million at 2016. The Planning and Retail Statement submitted in support of the revised, smaller store assumes this would generate convenience goods sales of £28.1 million at 2016.

As such, if the smaller store now proposed for this site were to be included within the PBA analysis and all other assumptions held constant, an additional (£41.9 - £28.1 =) £13.8 million capacity would arise at 2016. The estimated convenience goods turnover of the current proposal is (1,254 sq m (sales area) x 80% (convenience space) x £10,700 / sq m (convenience sales density) =) £10.7 million, i.e. £3.1 million less than this additional capacity. In other words, if both the smaller store for the Tesco site, and the current proposal, were to be introduced to the PBA work instead of the earlier Tesco scheme the analysis would suggest increased capacity and a greater floorspace requirement than is expressed in Strategic Policy 20. The two

stores could be developed, and the residual need would still be in excess of that identified in the Local Plan.”

It is now the case that neither the original Tesco proposal will be developed following their withdrawal from the scheme, nor the subsequent smaller store in circumstances where that application was withdrawn before a decision was issued. The site is now instead being promoted by Maplevale Developments Ltd for residential development. The allowance made in the Council’s evidence base for the retail development of this site – some £41.9 million of convenience spending, and £25.4 million of comparison spending at 2016 – will now not be taken up, and contributes to capacity in addition to that identified in the Local Plan, which is already very significantly in excess of that required to support the Proposed Scheme.

As such, the Local Plan, in place for some time now, identified a significant requirement for convenience (and indeed comparison) retail development, very considerably in excess of that which would be delivered as part of the Proposed Scheme on the application site. For the reasons set out in the Statement and above the actual requirement is in fact far greater than calculated in the evidence base and translated into policy. The NPPF underlines the importance of such development needs being met in full. Again in general terms, setting aside the requirements of Aldi, it is clear that the need for retail development is a large, pressing and immediate one. The Proposed Scheme offers an immediate opportunity to meet some of this need. This should be borne in mind when considering the potential of alternative sites.

Expanding on the discussion set out in the Statement, in terms of the "availability" of other locations the test is whether a site is available now; this is reflected in the *Braintree* case (see quote at paragraph 4.42 of the Statement), but also *Rushden Lakes*. The latter is referred to at paragraphs 4.37 - 4.40 of the Statement, although this does not include the relevant quote from that Inspector (endorsed by the SoS) on this point, which is that, "In terms of availability, NPPF [24] simply asks whether town centre or edge of centre sites are “available”. It does not seek to ask whether such sites are likely to become available during the remainder of the plan period or over a period of some years...The site was not currently available and that was what was required by the sequential test". As such, if sites are not available "now" they can be discounted, irrespective of questions around suitability.

The commentary on *Rushden Lakes* in the Statement made reference to the fact that there is no requirement to consider the disaggregation of development proposals. This has been endorsed more recently in relation to the *Scotch Corner* Secretary of State Appeal Decision, December 2016 (APP/V2723/V/15/3132873 & APP/V2723/V/16/3143678) where the Inspector found (and the Secretary of State agreed), "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..."

Subject to the clarification provided above, it is considered that the approach to the sequential test set out in the Statement is the appropriate one.

This notwithstanding, by way of cross checking, we have also undertaken a brief review of the application of the sequential test by examining how it has been applied elsewhere in schemes promoted by Savills, as a leading national planning consultancy. This review has been carried out to understand if the approach applied

by other leading practitioners differs materially to the approach described in the Statement. Subject to the point raised quite recently in *Mansfield*, this exercise showed broad consistency between the two positions, i.e. that adopted by PPL, and that adopted by Savills. The themes emerging from this review included, for example:

- Recognition of the important point discussed above in relation to paragraph 23 of the NPPF (and reflected in paragraph 17), i.e. that, “It is important that needs for retail, leisure, office and other main town centre uses are met in full and are not compromised by limited site availability.” The sequential approach must be applied in a way that allows the identified need to be fully met.
- Whilst there is a requirement for flexibility (by LPAs and applicants), there are limits to this, these being requirements that would materially or fundamentally change the nature of what is being proposed. The degree of flexibility will be a matter of planning judgement.
- An assessment only needs to look at sites that are available at the time of considering the application (i.e. the “now” point as discussed above), and also not those currently being actively promoted for development alternative to the proposal, where not available. The sequential approach is only concerned with sites that are available now, and not some indeterminate point in the future.
- Alternative sites should be considered in terms of their ability to accommodate the development as proposed, without disaggregation.
- Development that is not within a centre should not be regarded as inappropriate, where it meets the relevant tests.
- There may also be a range of additional factors which mean that sites can be discounted as potential sequentially preferable alternatives.

Again, therefore, it is considered that the approach to the sequential test taken in the Statement is appropriate.

The Assessment of Sites Under the Sequential Test

It is considered that the analysis of sites set out at paragraph 6.17 et seq. of the Statement remains appropriate. These sites are identified in the sketch plan at Appendix 1. However, a number of additional observations can be made, as follows.

The Council have agreed that the *Bargates* site will be promoted for development by Jessup, who are to work up a mixed use scheme here including retirement and other housing. It is neither suitable nor available for the Proposed Scheme.

The northern part of the *Coors* site, to the south of Bargates, remains fully occupied and in office use. It is not available. The southern part contains three listed buildings. The site as a whole is within the conservation area. It is clearly not suitable for the comprehensive clearance and redevelopment that would be required for the Proposed Scheme.

The *Coopers Square Car Park* is constrained by the properties fronting Station Street to the north; all but three of the units at ground floor are occupied, and there are also occupiers at the upper levels. Servicing and access is required to the rear. The car park is an important and well used town centre asset; it is frequently very busy, and is not available for development.

The *Octagon Centre Car Park* is in front of retailers including Asda and Iceland. It is not suitable for development which would block sight lines to these key tenants. The car park is also well used, and cannot be regarded as available for development of the type proposed.

The *Rugby Club* site has been the subject of longstanding aspirations for retail development. An application for outline planning permission was first submitted in September 2011 and approved in March 2012 (P/2011/01093/JPM/PO), with a duplicate application submitted in December 2014 and approved in June 2015 (P/2014/01563). As such, this scheme has been promoted for some six years now, without being delivered. At the outset, then, there must be some doubt and uncertainty around its deliverability. Indeed, this was acknowledged following the original grant of planning permission here with the observation in the Council's evidence base (October 2013 East Staffordshire Retail and Leisure Study) that the Council and landowner had discussed its promotion for residential development.

The application site for the Proposed Scheme is available for development now, the access has already been formed, and the scheme designed to enable the rapid and straightforward implementation of a full planning permission as soon as it is granted, as a continuation of the earlier phase of employment development which has already been completed. Agreements are already in place for the majority of the space, including for example the foodstore, the drive through, and most of the employment space. It is capable of being brought forward rapidly to help meet the immediate and significant requirement for retail floorspace evident in the borough, as discussed above.

Conversely, to facilitate the redevelopment of the rugby club's current Peel Croft site, there appears to have been no attempt to discharge conditions, or seek reserved matters approval, despite the passage of time discussed above. At the very least, a reserved matters application for the Peel Croft site would need to be worked up and submitted for this (Peel Croft) site to reach a comparable stage in planning as an approval for the Proposed Scheme. Delay would also be expected around the highways agreements necessary to enable the formation of the access points to the redeveloped Peel Croft site.

It is also uncertain whether the current outline planning permission could be worked up through the reserved matters process to accommodate the Proposed Scheme. For example:

- Condition 4 requires the development to be carried out "substantially in accordance with" Illustrative Site Layout Plan 5188-19. It is not immediately apparent that a supermarket approximating to the type, scale and configuration proposed, and incorporating sufficient car parking including the greater demands of a foodstore, could be accommodated "substantially in accordance with" this layout, and that would need to be tested through the planning process.
- The Illustrative Site Layout Plan includes some smaller units totalling 312 sq m, whilst the smaller units in the Proposed Scheme are almost 50% bigger at

465 sq m. Even allowing for some flexibility, it is not certain that this element could be accommodated "substantially in accordance with" the illustrative layout.

- The Illustrative Site Layout Plan includes a restaurant, but no drive through element; once again, it is not certain that this element could be accommodated to comply with Condition 4.
- Condition 22 of the outline planning permission provides that, "No waste handling or collection activities shall take place in the proposed service yard 08:00hrs and 18:00hrs." It is considered that some supermarket operators would regard this condition as unacceptable, in circumstances where their delivery vehicles are also used to remove food and recyclable waste. Any requirement to handle waste in association with all deliveries – many of which will take place before 08:00 and after 18:00 – would mean that this condition would need to be removed to accommodate such an operator, giving rise to the need for a new planning permission.
- Moreover, the outline planning permission does not allow for the gym use included within the Proposed Scheme. This could not be introduced through the reserved matters process, and a new planning permission would be required.

For these reasons it is considered that for the Proposed Scheme to be delivered on the rugby club site it would rely on the landowners working up a new planning application with use, access, layout and conditions formulated to accommodate the scheme. This would need to be scrutinised by the relevant consultees, including for example Historic England and Sport England. Again, this would need to be a full planning application for the Peel Croft site to reach the same stage in planning as an approval for the Proposed Scheme. This gives rise to uncertainty, and undoubtedly delay, before it could be determined if the Peel Croft site is suitable for the Proposed Scheme.

It is also of course the case that the rugby club site is not currently available, as it is home to an active rugby club. It will not become available until the club has relocated. Whilst a relocation to a site at Branston Road has been permitted in the past, no obvious start having been made to this development is apparent, and any progress is certainly not advanced. The online record of the planning history here is incomplete, but on the face of it and from the information that is available there appears to be some uncertainties around this, including for example:

- Planning permission was first granted for the relocated rugby club on 4 September 2009, with conditions including that a start was required within three years (PA/32378/003/JPM). However, it appears that pre-commencement conditions attached to that permission were not approved until October and November 2012 (P/2012/00728 and P/2012/01094 respectively), i.e. more than three years after the initial grant of planning permission. It is not clear how a lawful start can be made under this planning permission.
- Under legislation introduced to assist with progressing development following the financial crisis, a further planning permission (P/2012/01084) was granted on 23 November 2012, with conditions including that a start was required within four years. The practical effect of this was to allow an "extension" to

the original planning permission, but through the grant of a brand-new planning permission. It does not appear that applications have been made to discharge pre-commencement conditions attached to the new permission, and more than four years have now passed since this was granted. Again, it is therefore not clear how a lawful start can be made under this planning permission.

- Press coverage in November 2016 suggests that a start on site was anticipated, but with no time frame established for this. This appears to indicate that a start had indeed not been made. Once again, it is difficult to see how the development could have been lawfully commenced under the earlier planning permissions.

This suggests that a new planning permission is required if the relocation is to take place. Even if this is not the case, and there are aspects of the planning history which are not apparent from the online record which would enable a start on site without a further permission, an extended period for the construction of the new facility at Branston Road, and then the demolition and clearance of buildings at the existing Peel Croft site, would need to take place, before it could be redeveloped for a retail led scheme. The existing rugby club site at Peel Croft is not available now to facilitate the Proposed Scheme.

It is also considered it cannot reasonably be argued that the Proposed Scheme would have a material negative impact on the prospect of investment in the existing rugby club materialising. The proposals on the rugby club site have been promoted and pursued throughout the period when there was an expectation of a large Tesco superstore being developed at Hawkins Lane, and then the potential for a smaller superstore. The release of that site now for residential development means that the retail expenditure it would have absorbed will now instead be available for other development.

This is in addition to the already substantial requirement for convenience and comparison retail spending identified on the Local Plan, that is required to be provided to meet development needs. There is a Development Plan requirement for retail space considerably in excess of that which could be accommodated at the rugby club and the Proposed Scheme application site combined, and the development of one should not obstruct the development of the other. If development needs are to be met in full, as encouraged by the NPPF then both sites – and more – are required to come forward.

It remains the case that there are no suitable sequentially preferable alternatives which are available to accommodate the Proposed Scheme.

The Assessment of Convenience Goods Impact

For the reasons set out at paragraphs 4.14 and 4.15 of the Statement it is considered that there is no policy requirement to assess the convenience goods impact of the scheme. It should also be noted that the Council previously reached the view that the impact of the Tesco scheme at Hawkins Lane, and the smaller scheme that followed, would have been acceptable. The former had an estimated convenience goods turnover about four times that which would be generated by the Proposed Scheme, and the latter over two and a half times greater. The Hawkins Lane site will not now come forward. It would be perverse for the Council now to take the view that a scheme with a significantly lower turnover would be unacceptable in impact terms, when the much larger Hawkins Lane schemes were considered acceptable.

As discussed above, the Proposed Scheme should also be understood in the context of a Local Plan requirement very substantially greater than the amount of floorspace that will be delivered on the application site.

This notwithstanding, and purely to assist officers with their consideration of the Proposed Scheme, an assessment has been undertaken to provide some guidance in terms of the likely distribution of trade diversion that would be associated with the scheme. In the context set out above it is appropriate that a proportionate approach is taken, based on the Council's existing evidence base (the East Staffordshire Retail and Leisure Study, prepared by PBA), and focused on Burton ("Zone 7" in the PBA study) rather than other locations.

As a first step, Table 1 (below) sets out an estimate of convenience goods turnover for each trading destination at 2016. This is based on the information at Tables 3b and 8b of the PBA study. The analysis is carried out at 2016 to coincide with data readily available in the PBA study, rather than 2018 (when the store will open) or later (when the store will reach settled trading patterns). In this way it is considered to be particularly robust, as it does not allow for the effect of future growth in available spending diluting the trade diversion.

Table 1 Burton Stores Convenience Goods Turnover 2016 (£M)

Morrisons, Wellington Street	61.66
Sainsbury's, Union Street	20.33
Tesco, Bond End Wharf	29.91
Asda, Octagon Centre	17.93
Aldi, Horniglow Street	12.62
Other – Burton Town Centre	9.20
Other – Zone 7	16.64

Table 2 sets out an assessment of the proportion of the store's trade that will be diverted from each trading destination; so, for example, it is estimated that 40% of the proposed store's turnover will be derived from Morrisons, which is the dominant food store locally. This is based on the principle of "like competes with like"; i.e. the proposal, which will principally perform a main food shopping function, will tend to compete most directly with other main food stores. It is also based on shopping patterns within Zone 7 revealed by the PBA study.

Table 2 Proportion of Proposed Store Convenience Sales – Origin

Morrisons, Wellington Street	40%
Sainsbury's, Union Street	9%
Tesco, Bond End Wharf	13%
Asda, Octagon Centre	10%
Aldi, Horniglow Street	10%
Other – Burton Town Centre	2%
Other – Zone 7	6%
Other – beyond Zone 7	10%
Total	100%

Finally, Table 3 applies this trade diversion pattern to the estimated convenience goods turnover of the proposed store to estimate the impact for each trading destination. So, for example, it is estimated that £4.28M would be diverted from Morrisons, equivalent to an impact of 6.9%.

Table 3 Convenience Goods Impact (£M and %)

Morrisons, Wellington Street	4.28	6.9%
Sainsbury's, Union Street	0.96	4.7%
Tesco, Bond End Wharf	1.39	4.7%
Asda, Octagon Centre	1.07	6.0%
Aldi, Horniglow Street	1.07	8.5%
Other – Burton Town Centre	0.21	2.3%
Other – Zone 7	0.64	3.9%
Other – beyond Zone 7	1.07	N/A
Total	10.7	N/A

It should be noted that these figures are likely to be higher than the actual impact arising from the scheme. As discussed above, the analysis is conducted at 2016, meaning that growth in sales between then and the proposed store reaching settled trading patterns is not accounted for; if an allowance was made for this, it would have a downward effect on impact. Also, the PBA work does not make an allowance for the inflow of expenditure from beyond the study area; in practice, the turnover of each of the trading destinations would be expected to be somewhat higher than indicated above. Again, if an allowance was made for this it would have a downward effect on impact.

That said, even on the basis of the robust approach taken here, it can be seen that the estimated trade diversion figures are not high. The greatest trade diversion in percentage terms would be from the existing Aldi store, which is of course to be expected given the nature of the Proposed Scheme. This store currently trades well, and Aldi are clearly satisfied that this would continue to be the case with the opening of a further outlet. The greatest trade diversion in monetary terms would be from Morrisons; this store trades extremely well, and is located out of centre, so not protected by planning policy. Trade diversion from stores other than the main supermarkets in the town centre is estimated at just over 2%.

On this basis it is considered that the proposal should be regarded as acceptable in impact terms. There is always some trade diversion associated with any store opening, but in this case the impact would be low. The proposal would make a contribution to meeting the significant and immediate need for retail provision identified in the Local Plan. It would serve a growing population in a part of Burton which is not currently well provided for by supermarket floorspace. It should be supported.

The PTQC Opinion and The Savills Objection

The *PTQC Opinion* summarises the background to Mr Tucker's instructions, and the relevant principles of law, in relation to what is identified as an edge of centre site at Peel Croft. It also, helpfully, highlights (paragraphs 2.10 and 3.18) an important point that was overlooked in the Statement, namely that, "Conflict with national retail policy even where that policy mandates refusal is not a bar in law to the grant of planning permission provided that such a conflict is properly understood by the local planning authority and is then properly weighed in the planning balance against the proposals".

It is important to acknowledge this at the outset, i.e. that it is open to the Council to grant planning permission even if (and wrongly in our view) they consider that the Proposed Scheme does not pass the sequential test (noting that the test is "binary", i.e. it can only be passed or failed), as long as this is properly understood and

weighed in the balance. If the conclusion is reached that a scheme fails one of the retail policy tests this need not necessarily be fatal to that proposal. Other material considerations – such as (for example) economic, investment and regeneration benefits – can outweigh conflict with the retail policy tests, i.e. the decision maker is perfectly entitled to conclude that (say) the sequential test is not met, or adverse impact is significant, but the benefits of the scheme are such that planning permission should be granted anyway, as long as the relevant tests have been properly applied and assessed.

As discussed above and in the Statement, material considerations in this case (in addition to those around for example job creation, investment and regeneration) include the benefit associated with filling the gap in foodstore provision in the growing northern part of Burton, and contributing to meeting a significant and pressing need for convenience retail identified in the Development Plan.

The PTQC Opinion (paragraphs 3.2 and 3.6) refers to the suitability of the Peel Croft site and the grant of planning permission there, but makes no reference to the points raised above in terms of whether a supermarket can in fact be accommodated without the grant of a new planning permission having regard to conditions controlling layout and waste collection. No reference is made to the inability of Peel Croft to accommodate the Proposed Scheme as proposed, i.e. including a gym, without a new planning permission. The ability of the Peel Croft site to deliver a supermarket through the reserved matters process is untested, and there is no evidence that it is the developer's intention to submit a new planning application such that a gym could additionally be included.

It is helpful, though, that attention is drawn (paragraphs 3.2 and 3.16) to a scheme having apparently been drawn up and agreed with Aldi for the Peel Croft site. Whilst possibly implicit in the Statement and the comments above the point has not previously been made by or on behalf of St Modwen that Aldi might in fact be prepared to develop a further two stores in Burton, one at Derby Road and one at Peel Croft, but this inference can be drawn from Mr Tucker's observations here. As discussed above, Aldi have confirmed to St Modwen that they hope to open the Derby Road store in 2018. If, as suggested by the PTQC Opinion, Aldi are also seeking to develop a store at Peel Croft the point would seem to become one around the timing of delivery of two stores rather than consideration of a sequential alternative. It does not appear to be the objector's position that only one further store can be accommodated in Burton; indeed it would be difficult to sustain such a position given the requirement identified in the Development Plan, and the apparent confirmation now that at least one occupier is contemplating at least two sites.

The observations about the *Mansfield* case are noted. As discussed above, it will be important that this (and all other relevant case law) is properly and explicitly considered.

The PTQC Opinion discusses (paragraph 3.7 et seq.) the approach to be taken in considering whether the Peel Croft site is available now. Use of the term "available now" by PPL in this context is not intended to relate to the phraseology in footnote 11 of the NPPF (paragraph 3.8); this is coincidental. It is helpful, though, that the PTQC Opinion confirms (paragraph 3.12) that what is called for in considering "availability" is, "a planning judgement based upon all of the circumstances of the case."

Any such assessment in this case must be made in the context of at least nine years' discussion around a prospective move away from Peel Croft. There is still no public commitment from the Club in terms of when that move might take place. As

discussed above there is some uncertainty around the planning status of the proposed relocation site, and in any event it is very far from ready to host rugby. It is not clear what measures would be required in planning to accommodate a supermarket at Peel Croft, what progress has been made in terms of highways agreements, and there is no indication that the developers are contemplating the new planning application that would be required to accommodate the Proposed Scheme as a whole. The site cannot be regarded as “available” in perpetuity without any firm and clear indication that the rugby club, mindful also of their community responsibilities, is finally going to move.

The view at paragraph 3.11 of the PTQC Opinion that “available” should not be interpreted as “immediately available” is noted. Again, though, the relevant time horizon should be judged having regard to the circumstances of the case. In this case, there has been a longstanding requirement for significant convenience (and comparison) retail floorspace. Minimum floorspace requirements are established in the Local Plan. Planned retail development at Hawkins Lane will not now come forward, there has been a longstanding lack of retail development in Burton, and the requirement for new floorspace is greater even than that identified in the Local Plan, but it has not been met. Residential expansion is planned for Burton – including in the northern part of the town where the Proposed Scheme is located, and which currently has no supermarket provision.

These factors suggest that in Burton the proper judgement is one that applies a narrow time horizon to the term “available”. For the reasons set out above and in the Statement it is considered that in this particular context Peel Croft should not be regarded as “available”. The need is a pressing one, and the Derby Road site can contribute to meeting it without delay. Following the development of the Proposed Scheme a significant requirement for retail development (convenience and comparison goods) would remain. Furthermore, the PTQC Opinion suggests that Aldi would additionally deliver a store at Peel Croft.

In these circumstances it is considered that the Proposed Scheme meets the requirements of the sequential test. However, even if the Council took the view that this was not so, and the sequential test had been failed, the circumstances of this case are such that (as discussed above) planning permission should be granted in any event. A breach of national policy should be at the forefront of the planning judgement, but in this specific case there are very clear material considerations which outweigh this.

It is not clear whether this point is understood in the *Savills Objection* which states (pages 1 and 8) that there are no grounds to support or approve the application, and suggests that this position is supported by the PTQC Opinion. This is not the case. Mr Tucker explicitly, very clearly, and fairly, acknowledges that the Council are entitled still to grant planning permission if they prefer the objector’s conclusion on the sequential test to the applicant’s. The rationale for, and benefits of, the scheme, and the particular local circumstances, are explained in the Statement (and expanded upon above). The Council should take all of this into account and it is considered that these factors should direct them to a positive decision, even if ultimately they conclude the sequential test has been failed.

Similarly, either the observation by Savills (page 7) that failure to satisfy the sequential test “leaves the LPA with no choice but to refuse planning permission” is wrong, or the Opinion of Leading Counsel (paragraphs 2.10 and 3.18 of the PTQC Opinion) is wrong. One directly contradicts the other, but it is considered that Mr

Tucker's position is the correct one. The Council is perfectly entitled to grant planning permission.

The Savills Objection is correct in its observation (pages 2 – 3) that “need” has not, for some time, been a development management test for retail proposals. However, it is wrong to suggest that need, “has no basis in the decision making process for retail applications.” As discussed above, national policy tells us that development needs should be identified and met; indeed, “every effort” should be made to achieve this. It is plainly material in this case that the Development Plan identifies a very significant need for retail development that has not been met, and the Proposed Scheme should be understood in this context.

The Savills Objection helpfully confirms (page 5) their position that there are no sequentially preferable opportunities within the Primary Shopping Area. It also seems to reinforce the objector's position that Aldi would pursue a further store at Peel Croft, i.e. in addition to one at Derby Road.

Much of the rest of the Savills Objection covers ground also addressed in the PTQC Opinion, which has been commented on above where relevant. However, the paragraph at the top of page 8 is confusing in that it appears to suggest the scheme could be disaggregated. There is no policy requirement to disaggregate the scheme; rather it is the planning application that should be tested, including the various centre uses proposed.

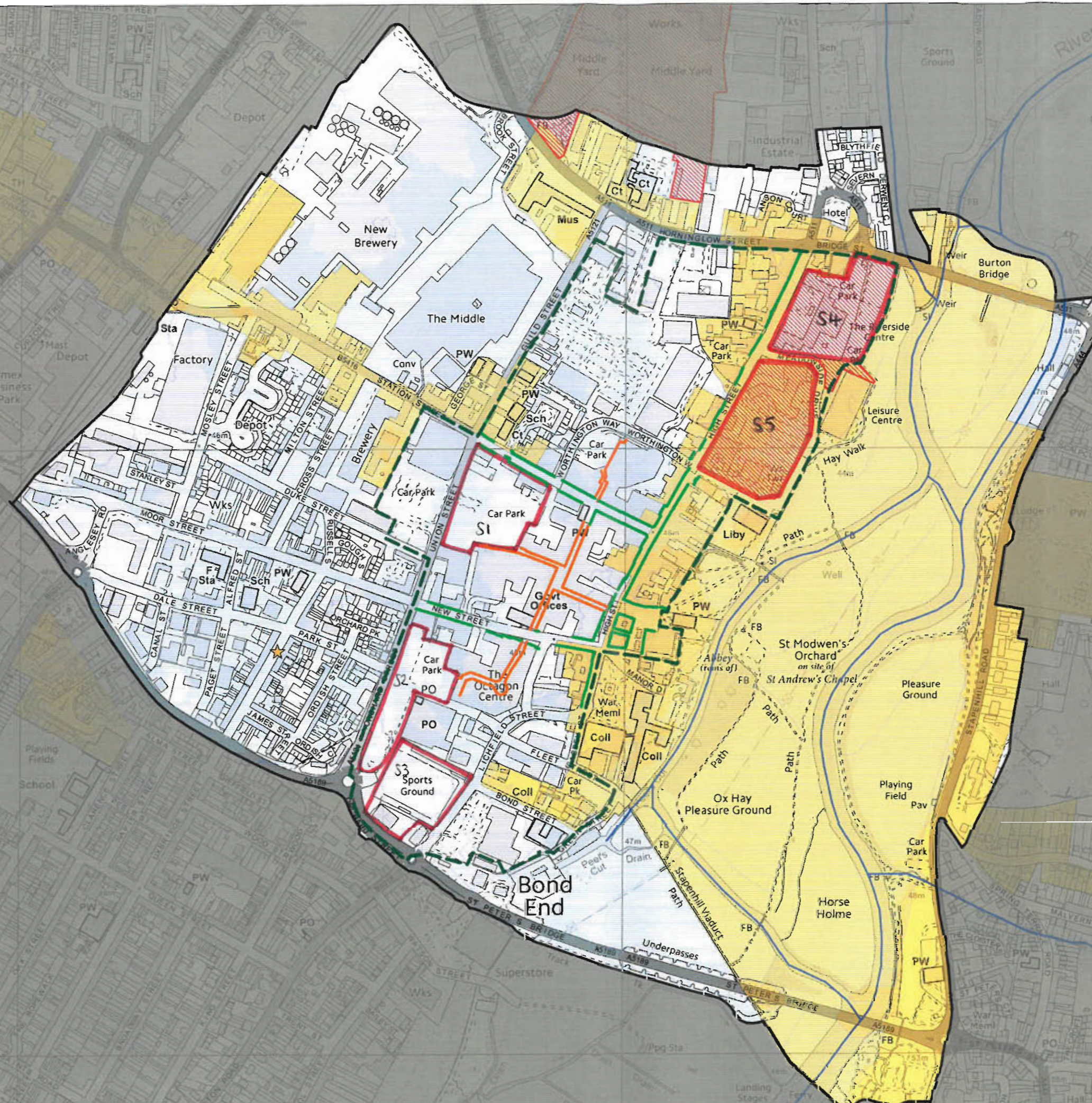
Conclusion

The approach to the sequential test has been assessed further, and it is considered that it has been applied appropriately to the Proposed Scheme, having regard to case law, planning decisions, and work undertaken by other practitioners. The potential alternative sites have been re-examined, with a particular focus on the existing rugby club site at Peel Croft. It remains the case that there are no suitable sequentially preferable alternatives which are available to accommodate the Proposed Scheme. Whilst it is not considered necessary to assess convenience goods impact this has nonetheless been examined. It is considered that the proposal should be regarded as acceptable in impact terms.

Objections raised by those promoting development at Peel Croft have been reviewed, and are addressed here. It is considered that they raise no points which should prevent planning permission being granted. In fact, they raise a number of points which count in favour of the Proposed Scheme.

Appendix 1

Sequential Sites



**Inset No 2:
Burton Town Centre**

Legend

Conservation Area	Town Centre Boundary	River
Housing Strategic Site Allocation	Primary Shopping Area	Floodzone 3
Secondary Shopping Frontage	Secondary Shopping Frontage	Floodzone 2
Local Centres	Local Centres	
Town Centre Inset Boundary	Area outside of Burton Town Centre (See Inset No 1)	

* For all other environmental constraints, please see the Borough Policies Map.

North
Scale: 1:3,200

East Staffordshire Borough Council
Adopted Local Plan 2012 - 2031

Planning Policy
The Maltsters
Wetmore Road
Burton upon Trent
DE14 1LS
Tel: 01283 508000
www.eaststaffbc.gov.uk

Key:

S1 – Coopers Square Car Park and land fronting Station Road

S2 – Octagon Centre Car Park

S3 – Burton Rugby Club / Land fronting Orchard Street

S4 - Bargates

S5 – Molson Coors