

Agenda Item:	5.1
---------------------	-----

Site:	Land Adjacent to Pirelli Factory, Derby Road, Stretton, Burton Upon Trent, DE13 0DW
Proposal:	Erection of four detached buildings to form foodstore (Class A1), drive through coffee shop/restaurant (Class A1 / A3 / A5), retail and service units (four units within Class A1 / A3 / A5 on the ground floor) and leisure unit as a gymnasium on the first floor (Class D2), builders merchants with outside storage - Units 5/6/7 (Sui Generis), extension of two existing buildings to form five employment units - Units 3/4/8/9/10 (Class B1c, B2 and B8) including associated access, car parking, balancing pond and landscaping

Report of Head of Service (Section 151 Officer)

This report has been checked on behalf of Legal Services by John Kirkham

[Hyperlink to Application Details](#)

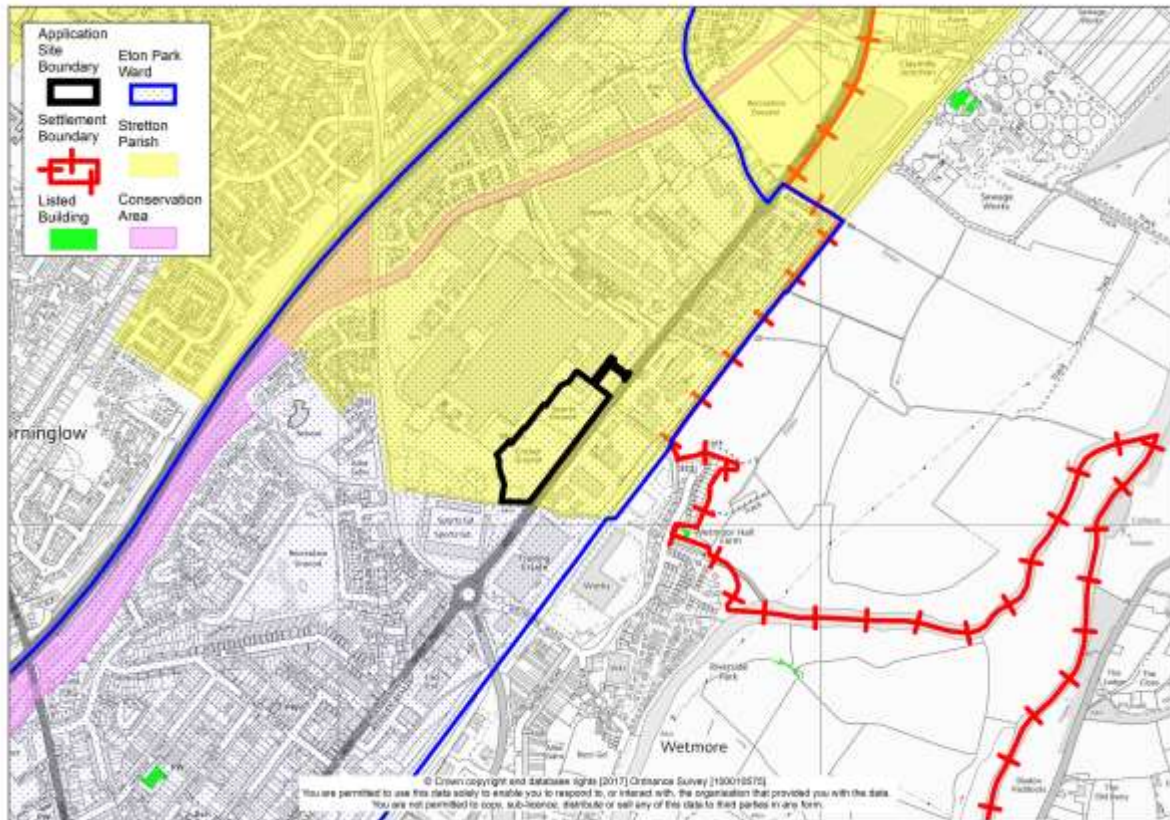
Application Number:	P/2017/00141	
Planning Officer:	Charlotte El Hakiem	
Type of Application:	Detailed Planning Application	
Applicant:	Planning Prospects Ltd	
Ward:	Eton Park	
Ward Member (s):	Councillor R J Clarke Councillor S Andjelkovic	
Date Registered:	21 March 2017	
Date Expires:	15 June 2017 Extension of time agreed	

1. Executive Summary

- 1.1 The application relates to the part of the Pirelli site that has outline consent for Class B1, B2 and B8 industrial units, hotel, public house and restaurant including demolition of existing buildings, alterations to existing service road and car park. The site is part of a wider redevelopment site which also included the provision of up to 300 dwellings, some of which are now occupied, others remain under construction.

- 1.2 The site is accessed from Derby Road and is adjoined by a mixture of commercial uses (B1, B2 and B8 industrial uses) on the adjoining phase of the development.
- 1.3 The application seeks full planning permission for this phase of the site to erect four detached buildings to form a foodstore (Class A1), drive through coffee shop/restaurant (Class A1 / A3 / A5), retail and service units (four units within Class A1 / A3 / A5 on the ground floor) and leisure unit as a gymnasium on the first floor (Class D2), builders merchants with outside storage - Units 5/6/7 (Sui Generis), extension of two existing buildings to form five employment units - Units 3/4/8/9/10 (Class B1c, B2 and B8) including associated access, car parking, balancing pond and landscaping.
- 1.4 The principle of the proposed development is guided by the consented outline development but also includes the consideration of the revised proposal complying with the relevant local and national planning policies in relation to retail development. This includes the sequential test. The intention of the sequential test is to ensure that retail and other development appropriate in town centres is not located in such a way as to draw trade away from the town centre. The sequential test is a major consideration in this application.
- 1.5 The design of the proposal would create a mixed use development in a contemporary and coherent way and the scale, massing and detailing of the buildings would be appropriate for the locality and improve the appearance of the site and locality.
- 1.6 Neighbours have been informed, with site notices displayed in the vicinity of the application site. A notice was also published in the Burton Mail. At the time of writing this report responses from 3 parties have been received in response to publicity on the application.
- 1.7 The application fails the sequential test however it is considered that the benefits of the proposal outweigh the significant weight to be afforded to this failure. Subject to a Section 106 agreement and conditions the development will be acceptable in terms of the impact on the highway network, highway safety, flood risk and drainage, air quality, contamination, ecological interests and the amenity of nearby residents.
- 1.8 The proposal is therefore considered to satisfactorily comply with the policies of the local plan and the NPPF and is considered to be sustainable development in social, environmental and economic terms.

Members are advised that the above is a brief summary of the proposals and key issues contained in the main report below which provides full details of all consultation responses, planning policies and the Officer's assessment, and Members are advised that this summary should be read in conjunction with the detailed report.

Map of site**2. The site description**

- 2.1 The site is an area of land accessed off Derby Road and forms the third phase of the redevelopment of the Pirelli site. The site is bordered to the east by existing commercial units approved under reserved matters consent P/2015/00197 for the erection of 11 employment units (Phase 1), Use Classes B1 (Business), B2 (General Industrial) & B8 (Storage & Distribution).
- 2.2 The parcel of land is to the south-east of the main Pirelli factory and is bound by Derby Road to the east, Beech Lane to the north-east and the Burton Albion Pirelli Stadium to the south-west. This part of the site was formerly Pirelli's tyre storage area and part of the Pirelli Sports and Social Club.
- 2.3 The overall development of the surplus land either side of the Pirelli facility is governed by an outline planning permission. For the Derby Road side this has been followed up by two reserved matters approvals to facilitate the delivery of two phases of employment units, and a third reserved matters approval to secure access into the area addressed by the current application.
- 2.4 The site is predominantly flat and is in places lower than the highway surrounding it. The Horninglow Channel crosses the Burton Albion Pirelli Stadium land and continues in a south-easterly direction to the north of the application boundary. The Stretton Brook, which is an open channel adjacent to the Trent and Mersey canal turns in a south easterly direction and runs adjacent to Beech Lane along the boundary of the site where it is predominantly culverted and runs under Derby Road, reappearing along the

rear of properties to the south of Horton Avenue and underneath the Birmingham – Derby Railway line to be discharged into the River Trent.

- 2.5 The whole of the site is within the Burton settlement Boundary as defined in the Local Plan and the site is identified as an employment allocation.

3. Planning history

- 3.1 OU/000127/079: Planning permission for the erection of a football stadium and public house, provision of a grass football pitch and a bowling green with pavilion, formation of an access, alterations to existing access and provision of associated parking facilities, including details of siting, design, external appearance and means of access, and to develop 2.85 ha for distribution purposes including details of means of access was granted in February 2005.
- 3.2 P/2011/01130 Outline application for a mixed use development scheme comprising residential up to a maximum of 300 units, Class B1, B2 and B8 industrial units, hotel, public house and restaurant including demolition of existing buildings, alterations to existing service road and car park, new and revised access points on Beech Avenue, Derby Road and Princess Way, and associated car parking and open space Approved November 2013
- 3.3 P/2015/00197 Reserved Matters application for the erection of 11 employment units (Phase 1), Use Classes B1 (Business), B2 (General Industrial) & B8 (Storage & Distribution), including details of landscaping Approved 29/04/15
- 3.4 P/2015/00214 Reserved Matters application for the formation of a vehicular access from Derby Road Approved 27/05/15
- 3.5 P/2015/00705 Reserved Matters application for the erection of 299 dwellings including details of access 07/08/2015

4. The proposal

- 4.1 The application proposes the development of vacant, brownfield land at Derby Road for a supermarket, drive through coffee shop / restaurant, retail / service, gym and employment units, including a builders' merchant.
- 4.2 The development is described as;

Erection of four detached buildings to form foodstore (Class A1), drive through coffee shop/restaurant (Class A1 / A3 / A5), retail and service units (four units within Class A1 / A3 / A5 on the ground floor) and leisure unit as a gymnasium on the first floor (Class D2), builders merchants with outside storage - Units 5/6/7 (Sui Generis), extension of two existing buildings to form five employment units - Units 3/4/8/9/10 (Class B1c, B2 and B8) including associated access, car parking, balancing pond and landscaping

List of supporting documentation

- 4.3 The following documents have been provided as part of the application:

AMENDED Landscape Proposals RECEIVED 13.10.17 (2016-105 Rev E).pdf
AMENDED OVERALL SITE LAYOUT RECEIVED 12.10.17(16001-GNA-MP-ST-DR-A-0002k).pdf

AMENDED PLANT SCHEDULE RECEIVED 13.10.17 (rev12Oct2017).pdf
AMENDED PROPOSED SITE LAYOUT RECEIVED 12.10.17 (16001-GNA-LP-
SP-DR-A-0003n).pdf
AMENDED SREET SCENE RECEIVED 12.10.17(sk-113b).pdf
Objection Letter.pdf
Objections.pdf
Pirelli Planning Statement Addendum FINAL.pdf
Technical Note_Response to LLFA RECEIVED 21.04.17.pdf
Phase 3 Design and Access Statement.pdf
Application Form.pdf
Building 3 Typical Section.pdf
Building 5-7 Typical Section.pdf
Comments.pdf
Covering letter.pdf
Drive thru elevations and floor plans.pdf
Existing site plan.pdf
Flood Risk and Drainage Statement.pdf
Highways Agency Consultation Response_14.6.2017.pdf
Landscape Proposals.pdf
Levels.pdf
Location Plan.pdf
Objection Letter.pdf
Objection.pdf
Overall site layout plan.pdf
Planning Statement.pdf
Proposed elevations of foodstore.pdf
Proposed floor plan of food store.pdf
Proposed site layout plan.pdf
Retail gymnasium elevations and floor plans.pdf
REVISED 16_03_2017 Technical note_Addendum to Transport
Assessment.pdf
REVISED PLAN 06_03_2017_Block Plan.pdf
REVISED PLAN 06_03_2017_Elevations and floor plan A1_A3_A5 and
gymnasium.pdf
REVISED PLAN 06_03_2017_Site Plan.pdf
REVISEDPLAN_06_03_2017_Location Plan.pdf
Section A-A Foodstore.pdf
Section BB-CC.pdf
Section DD-EE-FF.pdf
Technical Note Phase 3 Revised Submission.pdf
Technical Note REVISED 04_05_2017.pdf
Transport Assessment.pdf
Unit 3-4 Elevations and floor plans.pdf
Unit 5-7 Elevations and floor plans.pdf
Unit 8-10 Elevations and floor plans.pdf
Updated FRA Sequential Notes.pdf

4.4 The relevant findings are dealt with in section 8 onwards below.

5. Consultation responses and representations

5.1 A summary of the consultation responses is set out below:

Statutory and non statutory consultee		Response
5.2	Parish Council	No response received
5.3	SCC Highways	No objection subject to conditions
5.4	SCC Flood Risk Team	No objection subject to conditions
5.5	Environment Agency	No objections
5.6	Severn Trent Water	No objection subject to conditions
5.7	Architectural Liaison Officer	No objections
5.8	Highways England	No objections

Internal Consultees		Response
5.9	Environmental Health	No objections subject to conditions

6. Neighbour responses

6.1 Three were received.

Neighbour responses	
Principle	<ul style="list-style-type: none"> • Noncompliance with the development brief that was prepared July 2011- it should be a material consideration and hold maximum weight. • The brief was clear- hotel, pub, and restaurant, retail is not cited anywhere. • There is not substantial evidence that hotel and pub uses are unavailable in this location. • A hotel in this location would have a synergy with the adjacent football stadium and enhance the viability of the existing employment uses. • The proposal is 'out of centre' is likely to have a significant impact and should be refused. • Is a detailed Retail Impact Assessment required for the convenience store as even though its internal gross area would be just below the 1500 sqm threshold set by the Local Plan. Its external gross area would exceed this threshold and the NPPG refers to external not internal measurements (the NPPF and Local Plan is silent on which to use). The

	<p>application would have a GIA 1,857m² which is above the threshold.</p> <ul style="list-style-type: none">• The proposal may have a substantial trade diversion from the town centre.• There are commitments of investments already in the town Centre by the Octagon Centre and rugby club.• Peel Croft is a sequentially preferable site that is suitable for the food store that is proposed at the Pirelli site. The proposal is therefore contrary to development plan and national policy.• The Pirelli site is out of centre location and outside any other defined retail centre whilst Peel croft is within the town centre.• Paragraph 24 of the framework and Local Plan Policy 21 should be given considerable weight as the sequential test requires retail development to be located within the town centre. If there are no appropriate sites within the town centre then alternatives that are well connected to the town centre can be considered.• The impact test requires the impact of the proposal on existing, committed and planned public and private investment in the centre.• The impact of the proposal on the town centres vitality and viability including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made.• The food store fails the sequential test and therefore should be refused.• Need should not be considered in the decision making process.• Case law supports the importance of the sequential test and its importance in promoting town centres. The sequential test acts in public interest not private commercial interest.• For out of centre development the question is whether there is an alternative site suitable within or on the edge of centre.• Developers and retailers should be flexible and assess the suitability and availability of alternative sites and not against need.• Peel Croft is in the ‘edge of centre’ and is available.• Peel croft is well connected to the primary shopping area.• Peel Croft has planning permission for retail units.• Plans have been designed on Peel Croft in conjunction with Aldi.• The applicant has misunderstood the findings of the <i>Mansfield case</i> and it is misleading.• Legal opinion confirms and supports the objector’s conclusions.• The application should either be refused or the foodstore removed from the scheme.• It is well understood that the approved retail development at Peel Croft is of significant importance to the Council meeting its strategic requirements for outdoor sport delivery and
--	---

investment set out at Policies 7 and 32 of the Local Plan that requires the provision of a Sports Hub at Tatenhill. The evidence base for these policies is outlined in the Council's Outdoor Sport Delivery and Investment Plan.

- Not only does the Pirelli site development conflict with main town centre use policies, it poses a significant risk to the ability for the New Sports Hub at Tatenhill to be provided in conflict with the development plan. It follows that the approval will undermine the Council's Outdoor Sport Delivery and Investment Plan for outdoor sports facilities, which itself should be treated as a material consideration as it formed part of the evidence base for the development plan. The delivery of the New Sports Hub is of strategic importance.
- Not aware of any very powerful material considerations for the Local Planning Authority to recommend that the application is approved on the basis of any economic benefits outweighing the failure to satisfy the sequential test. The onus would be on the applicant to demonstrate that the benefits are so significant that it must be a material consideration to set aside both the development plan and established material considerations such as The Framework and the Council's Outdoor Sport Delivery and Investment Plan.
- The applicant has delivered identical employment development to that proposed directly to the north east of the application site. That development was delivered under the terms of Outline Planning Permission Reference P/2011/01130/JN/PO, which also included the delivery of employment development on the application site. The eight bullet at Paragraph 6.1 of the Planning Statement for the outline application clearly states that:

'the site is deliverable with no major infrastructure or other thresholds to overcome...'
- Not aware of any evidence that the foodstore is required to deliver Class B use employment development at the site. The evidence demonstrates that this is not the case and the applicant would have to demonstrate that the benefits cannot be achieved by other, policy compliant, land uses - e.g. assessing all forms of employment development, housing, leisure, recreation etc.
- It follows that the benefits in the case of the Pirelli site application cannot be considered to be at a level that they are significant to set aside the development plan and material considerations.
- It is therefore the case that the adverse impacts of the Pirelli site application significantly and demonstrably outweigh any

		<p>benefits that could be delivered.</p> <ul style="list-style-type: none"> It follows that if the applicant is advancing a case of economic benefits, that case is not sufficient to negate the duty on the Local Planning Authority to refuse the Pirelli application under Section 38(6) of the Planning and Compulsory Purchase Act 2004.
Impacts on Amenity		None received
Highways Impacts		None received
Flood and drainage impacts		<p>The Pirelli application site's only designation in the Staffordshire Borough Council Local Plan (adopted 15 October 2015) is that it is located in Flood Zones 2 and 3. A cross-reference to the Environment Agency's Flood Risk Map shows that - save for some very minor areas in Flood Zone 2 - the site is located in Flood Zone 3.</p> <p>Note from a review of the flood assessment supporting information, that the applicant has not provided any sequential assessment of the Rugby Club site in terms of the Flood Risk sequential test as required by Paragraph 103 of The Framework. The Rugby Club site is located in Flood Zone 2 in 'Areas benefiting from flood defences', whereas the Pirelli application site is not. The Rugby Club site is therefore in an area that is at a lower risk of flooding than the Pirelli application site. The Pirelli application site therefore fails the flooding sequential test as required by The Framework. As the onus is on the Local Planning Authority to determine this matter, trust that this reason will be applied to any recommendation on the application site.</p>

7. Policy Framework

National Policy

- National Planning Policy Framework
- National Planning Policy Guidance

Local Plan

- Principle 1: Presumption in Favour of Sustainable Development
- SP1: East Staffordshire Approach to Sustainable Development
- NP1: Role of Neighbourhood Plans
- SP3: Provision of Homes and Jobs 2012-2031
- SP5 Distribution of Employment Growth 2012 – 2031
- SP6 Managing the Release of Housing and Employment Growth 2012 – 2031
- SP12 Derby Road, Burton Upon Trent, Regeneration Corridor
- SP13 Burton and Uttoxeter Existing employment Land
- SP20 Town and Local Centres Hierarchy
- SP21 Managing Town and Local Centres
- SP24 High Quality Design

- SP25 Historic Environment
- SP27 Climate Change, Water Body Management and Flooding
- SP29 Biodiversity and Geodiversity
- SP35 Accessibility and Sustainable Transport
- DP1 Design of New Development
- DP2 Designing in Sustainable Construction
- DP5 Protecting the Historic Environment: All Heritage Assets, Listed Buildings, Conservation Areas and archaeology
- DP6 Protecting the Historic Environment: Other Heritage Assets
- DP7 Pollution and Contamination

'Made' Neighbourhood Plans

Stretton

- S2 – Protecting Landscape Character
- S6 – Flooding
- S10 – Local Employment
- S11 – Outdoor Sports, Recreation Facilities and Open Space
- S13 - Local Economic Facilities

8. Principle of Development

8.1 The NPPF states that at the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking. Paragraph 14 of the NPPF states that for decision-taking this means:

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

8.2 Paragraph 251 of the NPPF states that 'due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. The closer the policies in the plan to the framework, the greater the weight that may be given'.

8.3 The NPPF states that at the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking. Paragraph 14 of the NPPF states that for decision-taking this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
- specific policies in this Framework indicate development should be restricted.

8.4 Paragraph 251 of the NPPF states that 'due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. The closer the policies in the plan to the framework, the greater the weight that may be given'.

Local Plan

8.5 The Council has adopted a positive approach in seeking to meet objectively assessed development needs of the Borough. The policies in the plan provide a clear framework to guide sustainable growth and the management of change, thereby following the Government's presumption in favour of sustainable development.

8.6 Strategic Policy 1 sets out the East Staffordshire Approach to Sustainable Development. Principles listed in the policy include social, environmental and economic considerations to be taken into account in all decision making where relevant. The principles are:

- located on, or with good links to, the strategic highway network, and should not result in vehicles harming residential amenity, causing highway safety issues or harming the character of open countryside;
- it is convenient and safe to walk, cycle and travel by public transport between (and for larger sites, around) the site and existing homes, workplaces, shops, education, health, recreation, leisure, and community facilities and between any new on-site provision;
- retains, enhances, expands and connects existing green infrastructure assets into networks within the site and within the wider landscape;
- re-uses existing buildings where this is practicable and desirable in terms of the contribution the buildings make to their setting
- integrated with the character of the landscape and townscape, provides for archaeological investigation where this is appropriate and conserves and enhances buildings of heritage importance, setting and historic landscape character;
- designed to protect the amenity of the occupiers of residential properties nearby, and any future occupiers of the development through good design and landscaping;
- high quality design which incorporates energy efficient considerations and renewable energy technologies;
- developed without incurring unacceptable flood risk or drainage problems and uses Sustainable Drainage Systems (SUDS) where appropriate;
- does not harm biodiversity, but rather enhances it wherever possible, including increasing tree-cover, especially as part of the National Forest;
- creates well designed and located publicly accessible open space;
- would demonstrably help to support the viability of local facilities, businesses and the local community or where new development attracts new businesses and facilities to an area this does not harm the viability of existing local facilities or businesses;

- would contribute towards the creation of sustainable communities through the provision of a mix of housing types and tenures;
- uses locally sourced, sustainable or recycled construction materials (including wood products from the National Forest where this is appropriate), sustainable waste management practices and minimises construction waste;
- safeguards the long term capability of best and most versatile agricultural land (Grade 1, 2 and 3a in the Agricultural Land Classification) as a resource for the future; and
- would result in the removal of contamination and other environmental problems associated with the site.

8.7 Where relevant, the criteria above are addressed later in the report.

8.8 The Local Plan in Strategic Policy 5 allocates new employment development on Sustainable Urban Extensions and on sites at Burton Upon Trent and Uttoxeter. Strategic Policy 14 states that within Tier 1 and Tier 2 settlement boundaries and rural industrial estate boundaries employment development will be approved subject to meeting policies in the plan as a whole. Strategic Policy 13 aims to protect existing employment uses and refers to the Employment land review as a key source of evidence in both evaluating the need for new employment sites and listing those sites which should be retained as employment use within the Borough.

8.9 Policies SP20 and SP21 aim to see new leisure and retail uses be delivered within the town centres of Burton Upon Trent and Uttoxeter with existing town centre uses protected where this would affect the viability. Policy SP20 sets out the requirement for retail floorspace. Policy SP21 states that sequentially the Council will expect proposals for town centre uses to be sited within defined town centres. Applications for such uses on sites outside town centres will be subject to the sequential test.

8.10 The NPPF states planning policies should be positive, promote competitive town centre environments and set out policies for the management and growth of centres over the plan period.

8.11 Local planning authorities should assess and plan to meet the needs of main town centre uses in full, in broadly the same way as for their housing and economic needs, adopting a ‘town centre first’ approach and taking account of specific town centre policy.

8.12 The National Planning Policy Framework sets out 2 key tests that should be applied when planning for town centre uses which are not in an existing town centre and which are not in accord with an up to date Local Plan – the sequential test and the impact test. These are relevant in determining individual decisions and may be useful in informing the preparation of Local Plans.

8.13 Strategic Policy 20 identifies the requirement for 21,100 sqm of comparison goods floorspace and 5,750 sq m of convenience goods floorspace. The policy identifies the Town Centres, Local Centres and Rural Centres which have a different role to play in providing retail across the Borough. Strategic Policy 21 sets out a different set of criteria for proposals in town centres, local centres and rural centres. The policy highlights that impact assessments will be

required for town centre uses outside town centre boundaries when the floorspace proposed meets the following threshold:

- Burton – 1,500 sq.m gross or more of convenience retail floorspace, or 750 sq.m gross or more of comparison retail floorspace
- Uttoxeter – 750 sq.m or more of convenience retail floorspace, or 500 sq. M gross or more of comparison retail floorspace

8.14 Convenience retail is the provision of everyday essential items, such as food and comparison retail refers to items not bought on a frequent basis, for example televisions and white goods (fridges, dishwashers etc).

The Sequential Test

8.15 Paragraph 24 of the NPPF 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 authority should demonstrate flexibility on issues such as format and scale.

8.16 The sequential approach should not be applied to applications for small scale rural offices or other small scale rural development.

8.17 The NPPF in paragraph 27 states:

“where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the above factors, it should be refused”.

8.18 Paragraphs 12 and 13 of the NPPF state that the NPPF does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise. It is highly desirable that local planning authorities should have an up-to-date plan in place and the NPPF constitutes guidance for local planning authorities and decision-takers both in drawing up plans and as a material consideration in determining applications.

8.19 The sequential test should be considered first as this may identify that there are preferable sites in town centres for accommodating main town centre uses (and therefore avoid the need to undertake the impact test). The sequential test will identify development that cannot be located in town centres, and which would then be subject to the impact test. The impact test determines whether there would be likely significant adverse impacts of locating main town centre development outside of existing town centres (and therefore whether the proposal should be refused in line with policy). It applies only above a floorspace threshold as set out in paragraph 26 of the National Planning Policy Framework or in a Local Plan policy.

- 8.20 It may not be possible to accommodate all forecast needs in a town centre: there may be physical or other constraints which make it inappropriate to do so. In those circumstances, planning authorities should plan positively to identify the most appropriate alternative strategy for meeting the need for these main town centre uses, having regard to the sequential and impact tests. This should ensure that any proposed main town centre uses which are not in an existing town centre are in the best locations to support the vitality and vibrancy of town centres, and that no likely significant adverse impacts on existing town centres arise, as set out in paragraph 26 of the National Planning Policy Framework.
- 8.21 It is for the applicant to demonstrate compliance with the sequential test (and failure to undertake a sequential assessment could in itself constitute a reason for refusing permission). Wherever possible, the local planning authority should support the applicant in undertaking the sequential test, including sharing any relevant information. The application of the test should be proportionate and appropriate for the given proposal. Where appropriate, the potential suitability of alternative sites should be discussed between the developer and local planning authority at the earliest opportunity.
- 8.22 The checklist below sets out the considerations that should be taken into account in determining whether a proposal complies with the sequential test:
- 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.
 - is there scope for flexibility in the format and/or scale of the proposal? It is not necessary to demonstrate that a potential town centre or edge of centre site 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.
 - if there are no suitable sequentially preferable locations, the sequential test is passed.
- 8.23 In line with paragraph 27 of the National Planning Policy Framework, where a proposal fails to satisfy the sequential test, it should be refused. Compliance with the sequential and impact tests does not guarantee that permission is granted and conversely, the failure to pass the sequential test does not guarantee refusal, as with all decision making, local planning authorities will have to consider all material planning considerations in reaching a decision. Planning policy must be at the forefront of planning judgement, but it can be displaced by other material considerations if they are of sufficient weight.
- 8.24 The application is accompanied by a sequential test, identifying five sites within the town centre. Four of these locations, namely the car parks of the Octagon and Coopers Square and Bargates are not considered available or suitable for food retail. Officers agree with this conclusion. The fourth site, Burton Rugby Club/Peel Croft is described by the applicant as not suitable or available. This is due to the site already having outline permission for 9,800 sq m which is larger than the application proposal. The applicant also considers that the site is not available now, given that it is occupied by the rugby club and that at the time of

submission of the application, no reserved matters application on the Rugby Club site had been submitted for determination by the local planning authority. Since this time, an application for reserved matters has been submitted and approved. The definition of ‘available now’ is not set out in national planning policy however, taking into account case law, it is the situation that in order to be available, a site does not necessarily have to be available “now” or “immediately”, in the sense that development could commence today or tomorrow, but should be judged over a reasonable period of time. The issue is therefore one of judgement for the decision maker. It would be reasonable to consider timescales referred to in the Local Plan when concluding on the sequential test.

8.25 Turning to the Local Plan in more detail, a need for 4,025 sq metres of convenience retail floorspace is required which is made up of the following:

- In the short term period to 2016 the identified convenience retail floorspace requirement across the Overall Catchment Area (OCA) is negative. There is a requirement for 2,300 sq.m in the period to 2031. However, this does not take into account the need to increase convenience retail retention from 81.8% to 90% by 2031. Retention rate means the level of people who do their shopping in the study area, not outside the study area in the wider Overall Catchment Area, such as Swadlincote or Ashby.
- Food shopping should be undertaken on as localised a basis as possible. This approach would meet the increased number of residents arising from new development.
- With a higher retention rate, there is scope for approximately 2,700 sq.m of additional convenience sales area floorspace across the OCA in the period to 2021. In the longer term period to 2031, there is a requirement for approximately 5,750 sq.m of convenience sales area floorspace in addition to the current foodstore commitments in Uttoxeter and Burton. Of this approximately 70 per cent of this requirement arises within East Staffordshire (4,025 sq.m in the period to 2031), with the remainder going to other locations within the OCA but outside the borough.

8.26 The requirement figure referred to above does not include applications permitted at the time of the evidence base study which were the Asda and Waitrose stores in Uttoxeter and Tesco, Burton totalling 7,912 convenience floorspace. Therefore the figure required over the plan period is 11,937 sq m convenience floorspace.

8.27 There have been other convenience retail completions since the Local Plan was adopted totalling 7,365.50 sq m of which 845 sq m are in Burton upon Trent. The reserved matters for the Peel Croft (also known as the Rugby Club site) scheme includes a building for convenience retail of 1,728 sq m and other buildings for comparison retail.

8.28 Therefore it would be reasonable to consider these timescales in determining whether a site is available. Turning to the only disputed site, a reserved matters application for the rugby club site was submitted on 9th August 2017 and was

determined on 10th October 2017. The application includes a total floorspace of 1,728 sq m of convenience and 2,591 sq m of comparison retail.

- 8.29 Turning back to the sequential test, the applicant states the desire to open the foodstore by 2018, however this is not a relevant determinative factor in the sequential test. The applicant has also stated that the rugby club site outline permission was for a considerably larger site than that proposed in this application. However, the reserved matters application shows a mix of convenience and comparison floorspace and therefore the fact that the outline included a mix of other non-food uses is also not a determinative factor, as the assessment is concerned with the convenience element. The other uses proposed as part of the application are uses which could be accommodated outside the town centre without conflicting with policy and are also not a requirement of the foodstore. A further consideration is that the outline application included floorspace for a restaurant and hotel. The application site includes a building which is proposed to be for either A1/A3/A5 use. Therefore to summarise the issue with regards to the sequential test it is essential to consider whether the rugby club site is available within a reasonable timescale which in this case is considered to be by 2021, to accommodate a foodstore.
- 8.30 Taking into account the timescales of the application referred to above, it is considered that the rugby club site is available for the purposes of considering this application and therefore the sequential test has not been passed by the applicant. According to the NPPF, the application should therefore be refused. However, the Local Planning Authority is entitled to take account of other parts of the Local Plan town centre policies, and other material planning considerations, including other provisions in the NPPF.
- 8.31 As set out above, the Local Plan in Strategic Policy 20 states that there is a need for convenience floorspace. In calculating this, previous applications for food stores were taken into account. These applications included the Tesco store on Hawkins Lane totalling 3,756 sq m of convenience floorspace. Since this time, the proposal by Tesco has been withdrawn and the application site is now being promoted for alternative uses. It is clear that this previous retail proposal will no longer come forward. There have also been a number of retail completions and commitments in this time period totalling 7,365.50 sq m.
- 8.32 In summary, the Local Plan considered a floorspace requirement of 11,937 sq metres. Taking into account the completions and commitments since the adoption of the Local Plan in October 2015, these total 9,093 sq m. Therefore there remains a need of 2,844 sq metres of convenience floor space over the plan period. The application for 1,857 sq m would go towards meeting the requirement set out in Strategic Policy 20.

The impact test

- 8.33 An impact assessment is required on schemes over 1500 sq metres of convenience floorspace. Whilst the application has a floorspace of 1,857sq m, this area will not be taken entirely by convenience retail and it is proposed that 20% of the floorspace would be for comparison goods. The proposed site falls below the threshold for which an impact assessment is required. Nevertheless one has been provided by the applicant.
- 8.34 The NPPF states that the impact assessment should include an assessment of:

- 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.

8.35 The impact assessment estimates the expected trade diversion from other stores in Burton, the town centre as one location and other zones within the overall catchment area but outside East Staffordshire. The results of the impact test conclude that the estimated trade diversion figures are not high. It is expected that the largest diversion in percentage terms would be from the existing Aldi store. The greatest trade diversion in monetary terms would be from Morrisons. However this is the largest trading unit in Burton and the overall diversion is not considered significant. In addition, it is important to consider the aim of the Local Plan which is to protect the viability and viability of the town centre, not out of centre uses. The trade diversion from stores other than the main supermarkets in the town centre is estimated at just over 2%.

8.36 In concluding whether the impact is acceptable, it is relevant to consider the previously granted Tesco scheme on Hawkins Lane, where a higher impact in terms of spend from other stores was identified and accepted in principle. Taking the above context into account, it is considered that the overall impact of the proposal would not lead to a significantly negative impact on the viability and vitality of the town centre.

8.37 The Local Planning Authority adopted a Pirelli Factory Development Brief in August 2011. The purpose of the document is to provide guidance which will ensure that a high quality and sustainable development is achieved and one that will be sympathetic to surrounding uses. The document pre-dates the adopted Local Plan and also makes reference to the outline application which this application seeks to amend. The development brief identifies the following uses which were considered appropriate at the time:

- Pub
- Restaurant
- Hotel
- Light Industrial
- Storage and Distribution
- Workshops
- Offices

8.38 Given that some employment uses have already been granted and completed on the site it is necessary to consider whether a pub/restaurant/hotel remain appropriate. There is no policy requirement nor evidence before the local planning authority that there is a need or high demand for these types of uses which is not being met through existing supply in the centre or town more generally. Given that permission was granted for these uses on the outline application, the applicant has provided information as a way to demonstrate that there is no demand for such uses. Officers are satisfied that this

information adequately demonstrates that there is no demand for such uses in this location which is to be considered in coming to a recommendation.

8.39 In concluding whether the principle of the proposal is acceptable it is essential to first consider the sequential test which has not been passed. Significant weight should be given to the failure of the sequential test, in line with paragraph 27 of the NPPF and accordingly the application should be refused.

8.40 However in determining whether the principle is acceptable other material considerations can be taken into account as explained in paragraph 8.30. There are a number of material considerations which are to be considered relevant in the determination of this application which are:

- the outstanding need for convenience retail floorspace over the plan period, for which national planning policy states should be met in full,
- the figures set out in the Local Plan also do not represent maximum figures,
- planning permission was resolved to be granted for a larger scheme outside the town centre in 2012, at Hawkins Lane, which was considered to have a greater impact on the town centre and which has now been withdrawn and cannot therefore come forward to meet outstanding need,
- there is no demand for a hotel or local pub/restaurant in this location given that these uses are adequately represented in the town centre or more generally in the town and therefore there is uncertainty over the likelihood of the previously consented scheme being delivered
- economic benefits in terms of employment during the construction phase
- longer term economic benefits and opportunities in terms of employment when the proposed units are operational and also when all buildings are fully operational.

8.41 It is considered that these material considerations provide such benefits that they should be given significant weight in the planning balance and outweigh the significant weight which is attributed to the failure of the sequential test in this case.

8.42 In addition, the development plan for this area also includes relevant policies in the neighbourhood plan. Stretton 'Made' Neighbourhood Plan Policy S10 encourages new employment and redevelopment of brownfield sites. Neighbourhood Plan Policy S13 supports additional employment opportunities where there is good accessibility and close to existing facilities. It is considered that the application satisfactorily complies with both of these development plan policies.

9. Design and Impact on the character and appearance of the area

9.1 The NPPF attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. The NPPF states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

9.2 Strategic Policies 1 and 24 of the Local Plan state that development proposals must contribute positively to the area in which they are proposed. The policy

lists a number of criteria that developments are expected to achieve including creating a sense of place, reinforcing character, reflecting densities and where possible minimise the production of carbon through sustainable construction.

- 9.3 Policy DP1 of the Local Plan re-iterates the design principles set by SP24 stating that development must respond positively to the context of the surrounding area, exhibit a high quality of design and be compliant with the East Staffordshire Design Guide.
- 9.4 The East Staffordshire Design Guide requires the design of development to demonstrate a strong, considered and sensitive response to its context. Design which is relevant to the site and wider context will be important, as this can support local distinctiveness. The Guide allows for development which employs a more modern architectural style but in terms of its proportions and siting it should still complement its surroundings.
- 9.5 The East Staffordshire Design Guide similarly emphasises that high quality design should be the focus of all new development in order to improve the quality of the environment across the borough. The guide stresses that the impact of larger scale developments can be profound and such provide the opportunity to significantly enhance and improve the quality and character of the area. New commercial development needs to respect and respond positively to its context but it is acknowledged that appropriate and effective response to context does not normally require a specific architectural style. How development will be seen within the townscape, including long views of the development, is also stressed.
- 9.6 The above dovetails with later guidance of the NPPF regarding design. At Paragraph 58, for example, it is stated that ‘Planning decisions should amongst other things aim to ensure that developments will function well and add to the overall quality of the area for the life of the development; create attractive and comfortable places to live, work and visit; respond to local character whilst not discouraging appropriate innovation; create safe and accessible environments and be visually attractive by way of good architecture and appropriate landscaping.’ As per the East Staffordshire Design Guide is it also stated that ‘Decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation but should reinforce local distinctiveness’ (Paragraph 60).
- 9.7 The site is a brownfield site that currently contains no buildings and limited vegetation. It appears as a derelict site enclosed by buildings fronting the roads and commercial premises to the north and east. It does not make a positive contribution to the street scene. The site has no real townscape character presently and there is, therefore, great potential to improve this situation through appropriate redevelopment of the site.
- 9.8 The site proposes four detached buildings which have been designed to complement each other in the same architectural style. The proposed industrial units and builders merchants are a natural partner to the existing units already occupied on Derby Road. The proposed units are in line with the existing units and are of identical design. The continuation of the building line will provide enclosure to this main arterial route into the town. The materials are also proposed to match the existing buildings and there is the continuation of the landscaping belt in front of the building.

- 9.9 The remaining three detached buildings comprising of the A1 food store, drive through restaurant, gym and A1/A3/A5 unit would be distinctive with the principal elevation facing the car park and towards Derby Road being predominantly glass with the entrance lobbies, grey/silver cladding and charcoal brickwork. The side elevations would also use cladding leaving just the elevations facing the servicing areas being composite cladding. The buildings vary in scale subject to their proposed use, however it is considered that the scale of all of the buildings would be in context with nearby commercial buildings. Importantly, the juxtaposition of different materials on the front elevations would help break down the wide frontage into more visually comfortable and familiar elements, and the palette of materials would provide simplicity to the design and avoid blandness. It is acknowledged that shallow roofs can look monotonous, so introducing sloped roofs will help break up the roof plane in the skyline and add further interest to the buildings. The carefully located service yards and associated fencing would also greatly limit public views of the store servicing areas and plant.
- 9.10 Whilst it has been recognised that the commercial buildings already built and proposed through this application follow the same building line and are close to the road, this has been more challenging to achieve with the proposed foodstore. Due to the configuration of the site with the mix of uses proposed, and their associated servicing areas, it was considered that to provide a gap in the streetscene, pushing the food store back, would be more beneficial to the scheme overall. By locating the foodstore back in the site, it will enable the unsightly servicing areas to be screened.
- 9.11 The East Staffordshire Design Guide states that landscape design for commercial buildings should help bring buildings together and create a coherent and unified structure for the site. It also states that areas of car parking should be broken up with landscape and tree planting. There should also be clear pedestrian routes to link parking areas and arrival points at the site to the building entrances.
- 9.12 The proposal seeks to introduce a mixture of hard and soft landscaping, having particular regard to the main entrance to the store for both vehicles and pedestrians. Pedestrian access from this principal entrance point is served by a continuous and logical stretch of pavement providing access to the entrance of the store, with appropriate crossing points. Footpaths also run the length of the car park to enable users to walk reasonably safely between the store and cars.
- 9.13 Soft landscaping proposals include strategically located trees and shrubs throughout the car park with a focus on the boundaries between the application site and the main road. There is an existing mature hedge that runs along the boundary of the site with Derby Road. It is proposed to retain this natural edge to the development and soften the approach. New hedging will also be planted along the frontage of the drive thru unit. Overall it is considered that the hard and soft landscaping proposals will meet the requirements of the development plan and the East Staffordshire Design Guide subject to appropriate planning conditions attached to any permission.
- 9.14 Standard conditions could also be used to secure suitable floor levels, the exact choice of external materials for all buildings and appropriate, screened bin storage areas.

9.15 Overall it is considered that the siting, scale and massing of the buildings and their elevational treatment will ensure the buildings make a positive contribution to their surroundings and are suitably detailed and distinctive for their setting whilst still meeting their functional requirements. It is concluded that subject to various conditions the layout scale and form, materials, landscaping and sustainable design of the development would integrate well with the pattern and urban grain of the surrounding area, enhance the townscape by providing a distinctive and sustainable design whilst still fulfilling the functional requirements of the use of the buildings and allowing them to be functionally identifiable to the public. The proposal therefore complies with Local Plan Policies SP24 and DP1, the East Staffordshire Design Guide and relevant sections of the NPPF.

10. Residential Amenity

10.1 Local Plan Policy DP7 states that planning permission will only be granted where the proposal will not give rise to unacceptable levels of pollution in respect of noise, light or contamination of ground, air and water. The proposal is accessed off Derby Road and is predominantly opposite existing commercial premises. Derby Road is an existing busy main road and the nearest residential receptors are on Beech Lane and Horton Avenue. Therefore it is not anticipated that existing residents would be adversely affected by additional traffic movements, noise or disturbance from the occupation of the proposed units.

10.2 A condition can secure the submission and approval of external lighting to limit the potential impact of light pollution on local amenity and nearby residents in particular, in accordance with Paragraph 125 of the NPPF and Local Plan Policy SP34.

10.3 It is considered that the site is sufficiently distanced from nearby residential receptors and therefore the application complies with the provisions of Local Plan Policies DP1 and DP7.

11. Highway Matters

11.1 The NPPF in section 4 sets out the role transport policies play in facilitating sustainable development which contributes to wider sustainability and health objectives. Decisions should consider ensure development proposals have taken the opportunities for sustainable transport modes, ensure safe and suitable access to the site can be achieved for all people and improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

11.2 Policies SP1 and SP35 of the Local Plan aim to ensure development is located on sites with good links to the highway network, development is convenient and safe to walk, cycle and travel by public transport. Developments should not result in vehicles harming residential amenity, causing highway safety issues or harming the character of the open countryside. For those developments likely to have an impact on the wider highway infrastructure, proposals should be accompanied by a transport assessment clearly setting out how the likely impacts of the development will be addressed.

- 11.3 The Council's parking standards SPD sets out standards for different uses including space size, accessibility and the quantity of car parking spaces required for different uses.
- 11.4 The submitted proposal has been accompanied by a full Transport Assessment (TA) to highlight and address any issues outstanding relating to the development. Since the TA has been submitted there have been further submissions of a technical note following discussions relating to the proposed uses and trip rates. In short the modelling work undertaken demonstrates that the Derby Road roundabout junction will have some congestion on certain arms with the traffic generated by the consented uses. The traffic from this proposal will not change this and could potentially generate a slightly higher number of vehicles. However this impact would be unnoticeable from the consented use so not detrimentally worse.
- 11.5 The submitted Transport Statement presents a thorough assessment of the impact of traffic to and from the site including considering the capacity of junctions near to the site and around the town, which the Highway Authority has not raised issue with. The report indicates that the impact will be acceptable on Derby Road and the surrounding network and therefore the application complies with Local Plan Policies SP1 and SP35.
- 11.6 The Transport Assessment also presents the case that the level of parking proposed is appropriate and the submitted plans. The application proposes a total of 259 spaces which satisfies the parking SPD.
- 11.7 The Local Planning Authority accepts the Highway Authority's highway safety/capacity assessment subject to one further condition.
- 11.8 In terms of sustainable transport options, the site is within walking distance residential properties in the parish of Horninglow and Eton and Stretton and Derby Road is a main bus route.
- 11.9 Cycle parking facilities will also be conditioned and a staff Travel Plan will help limit non-sustainable modes of access to and from work. Such will be secured through a Section 106 Agreement, which will necessitate the payment of a Travel Plan Monitoring fee and the appointment of a Travel Plan Coordinator.

12. Historic Environment

- 12.1 Paragraph 126 of the NPPF states that Local Planning Authorities should recognise that heritage assets are an irreplaceable resource and conserve them in a manner appropriate to their significance.
- 12.2 In determining planning applications with respect to any building or other land in a conservation area, local planning authorities are under a statutory duty under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Case law has established that this means that considerable importance and weight has to be given to that statutory duty when balancing the proposal against other material considerations. Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the

substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss.

- 12.3 Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 provides that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Again, as for the Section 72 duty referred to above, case law has established that this means that considerable importance and weight has to be given to that statutory duty when balancing the proposal against other material considerations.
- 12.4 Strategic Policy 25 states that Development proposals should protect, conserve and enhance heritage assets and their settings, taking into account their significance, as well as the distinctive character of the Borough's townscapes and landscapes.
- 12.5 Detailed Policy 5 goes into more detail regarding Historic Assets, Listed Buildings, Conservation Areas and Archaeology. Detailed policy 6 aims to protect other heritage assets which are not necessarily covered by listed building or conservation area status, such as shopfronts and the setting of important historic landscapes.
- 12.6 The Trent and Mersey Conservation Area is located approximately 400 metres to the north of the proposed development. The nearest listed building is located approximately 300 metres to the west, Wetmore Hall Farm.
- 12.7 The location of the site is such that it falls outside of any defined conservation area. Given the prevailing built up land and commercial premises and railway line between the siting of the development, there is no direct inter-visibility between the proposed development and the closest heritage assets. It is not considered there will be any impact on Conservation Areas or Listed Buildings as a result of the proposal.
- 12.8 In light of the above, it is considered that in this case, both the statutory duties under Section 66 and Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 have been complied with and the historic environment implications of the proposed development are adequately addressed.

Flood Risk and Drainage

- 12.9 Section 10 of the National Planning Policy Framework seeks to ensure that new development is not at risk from flooding, or does not increase flood risk elsewhere. It advocates the use of a sequential test with the aim of steering new developments to areas with the lowest probability of flooding. The Environment Agency produces flood risk maps which classifies land according to probability of flooding. The areas of highest risk are classified as Flood Zone 3, with a 1 in 100 or greater annual probability of flooding, and the areas of lowest risk are classified as Flood Zone 1, with a less than 1 in 1000 annual probability of flooding.

- 12.10 Strategic Policy 27 expects all new development to incorporate Sustainable Drainage Systems (SUDS). Systems will discharge clean roof water to ground via infiltration techniques, limit surface water discharge to the greenfield run-off rate and protect and enhance wildlife habitats, heritage assets, existing open space, amenity areas and landscape value.
- 12.11 The site is located within Flood Zone 2 and 3 and a detailed Flood Risk Assessment has been submitted. Draft drainage details have also been submitted and firm commitments are made to sustainable urban drainage including limiting surface water runoff. A balancing pond is proposed. Clear methods for achieving this, in spite of the inability to use standard infiltration drainage given water quality impact issues, have been presented. The submitted information accords with that required by Section 10 of the NPPF and emerging Local Plan Policy SP27.
- 12.12 The Environment Agency and the Flood Risk Officer at Staffordshire County Council have no objections to the proposal in terms of flood risk subject to the development being carried out in accordance with the submitted FRA and setting the finished floor level of all buildings being no lower than 46.11m AOD. Limiting the surface water run-off generated by the all events over QBar critical storm so that it will not exceed 8.8 l/s and not increase the risk of flooding off-site.
- Provision of an appropriate volume of attenuation flood storage on the site to a 100yr+30% standard.
 - Confirm which responsible body will maintain the surface water system over the lifetime of the development according to an acceptable maintenance schedule and that is achievable.
- 12.13 Severn Trent similarly raises no objections subject to approval of the drainage scheme.
- 12.14 Subject to the conditions sought by the Environment Agency, the County's Flood Risk Officer and Severn Trent the development is considered acceptable in terms of flood risk and drainage including not creating any pollution problems related to the disposal of foul and surface water, the latter being as required by Section 11 of the NPPF and Local Plan Policy SP34.
- 12.15 The Environment Agency do however raise concerns over waste and surface water drainage and controlled waters. They recommend a contaminated land condition to ensure no contamination through the development into controlled waters.
- 12.16 In terms of the site being within flood zones 2 and 3 the LPA are required to consider the Flood Risk Sequential test.
- 12.17 The NPPF requires developers to consider sequentially preferable sites with reference to flood risk. These would be sites that would be considered less vulnerable in terms flood risk.
- 12.18 The applicant has submitted strategic commentary around the sequential test in the Technical Note dated February 2017. They had used the same approach to the FRA carried out on the original outline consent back in 2012. An objection has been made to the LPA which raises concerns that the applicants

have not complied with the sequential test as they have not considered a town centre location (Peel Croft Rugby Club) which is not within flood zones 2 and 3. The principle of the sequential test looks at disaggregation of elements of a scheme to assess whether a sequentially preferable location can be found.

- 12.19 In assessment the proposal as whole cannot be located at the town centre location Peel Croft (i.e. including the builders' merchant and employment units and drive through) as these would not be appropriate town centre uses.
- 12.20 In terms of whether the supermarket element might be split away and considered at Peel Croft from a flood risk sequential test perspective, the following points should be made, whilst noting at the outset that the NPPF does not impose disaggregation as a requirement for the flood risk sequential test. It refers to the development, and the proposed development, not to parts of the proposed development.
- 12.21 First, there is a spatial element to the retail need and the purpose the scheme is intended to serve. The development is intended principally to fill a clear gap in the distribution of supermarkets on the northern side of Burton. Development on the Peel Croft site would not meet this need or serve this purpose. It would be reasonable in these circumstances for the authority to consider that in flood risk sequential terms sites on the south side of the town centre should be excluded.
- 12.22 Second, even if the Peel Croft site were to be developed, additional sites for supermarkets would still need to be identified. This is not a case where a limited development need is looking for a single site, but rather where substantial development needs have to be accommodated on a range of sites in Burton.
- 12.23 It is important for Members to consider the site in flood risk terms where a mix of uses has been previously approved by outline consent which is now extant. It is concluded that the site specific flood risk issues have been considered at length and in detail, and where measures have been identified and agreed to ensure that development here can be brought forward satisfactorily from a flood risk perspective. The scheme comprises "less vulnerable" uses which are appropriate in this setting. The scheme is acceptable in flood risk terms, representing as it does a final phase, and following the principles, of the previous development to the north which was also acceptable from a flood risk perspective.
- 12.24 It is therefore considered the application complies with Local Plan Policy SP27, Stretton Neighbourhood Plan S6 and Section 10 of the NPPF.

Biodiversity

- 12.25 Paragraph 118 within Section 11 of the National Planning Policy Framework states that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, planning permission should be refused.

- 12.26 The Natural Environment and Rural Communities Act 2006 states that public authorities in England have a duty to have regard to conserving biodiversity as part of policy or decision making.
- 12.27 Strategic Policy 29 lists criteria including development retain features of biological interest produces a net gain in biodiversity in line with Staffordshire biodiversity action plan species and supporting developments with multi-functional benefits.
- 12.28 Section 11 of the NPPF states that when determining planning applications local planning authorities should aim to conserve and enhance biodiversity. These aims are reflected in Emerging Local Plan Policy SP29 in terms of biodiversity.
- 12.29 Given its past use and limited levels of vegetation the site is of very limited ecological value currently and is hence not afforded any nature related designations. Its ecological potential would be enhanced by the submitted landscape scheme that includes native shrub and tree planting. The submitted survey does, however, acknowledge the potential for the site to offer habitat for nesting birds at certain times of the year, including ground nesting birds and those making use of scrub areas.
- 12.30 Nesting birds are afforded protection under European legislation but harm to them will be avoided by either not undertaking site clearance during the bird nesting season or only carrying such works under the supervision of an ecologist. This commitment in the submitted ecology reports (2010 original and 2014 update) can be secured by condition and an informative can refer to the applicant's/developer's general responsibilities regarding protected species.
- 12.31 Subject to the provision of the submitted landscaping scheme and compliance with the ecology reports regarding site clearance, the development is considered to suitably comply with the Section 12 of the NPPF, including ecological enhancement.

Air Quality

- 12.32 Paragraph 124 of the NPPF requires development to be considered in terms of the impact on local air quality including taking account of Air Quality Management Areas and being consistent with the local air quality action plan. Local Plan Policy DP7 requires development to minimise air pollution and mitigate where appropriate.
- 12.33 As detailed above, the submission includes an assessment of the development's likely impact on air quality at various stages including the construction and operational stages. This suggests that the impacts will be minimal and subject to a dust management plan to limit dust emissions during the construction phase.
- 12.34 Derby Road is covered by an Air Quality Management Area, which seeks to improve and manage the air quality in that area. Concerns were raised that the additional traffic to the site would increase the levels, however an air quality assessment has been carried and concluded that the additional traffic would be insignificant and not have an adverse impact on the levels in this location.

12.35 Environmental Health raises no objections in terms of air quality. It is concluded, therefore, that the development is acceptable in relation to air quality and the aims of the NPPF and related Development Plan policies.

Section 106 Contributions

12.36 Paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations 2011 (as amended) set tests in respect of planning obligations. Obligations should only be sought where they meet the following tests:

- Necessary to make the development acceptable in planning terms;
- Directly related to the development; and
- Fairly and reasonably related in scale and kind to the development.

12.37 National Planning Practice Guidance states that when CIL is introduced (and nationally from April 2015), the regulations restrict the use of pooled contributions towards items that may be funded via the levy. At that point, no more may be collected in respect of a specific infrastructure project or a type of infrastructure through a section 106 agreement, if five or more obligations for that project or type of infrastructure have already been entered into since 6 April 2010, and it is a type of infrastructure that is capable of being funded by the levy.

12.38 The following contributions are sought. These contributions are set out below:

Item	Planning Obligation	Cost (where applicable)
Travel plan monitoring / off site highway works	Travel Plan Monitoring fee and off site highway works	£11,325

13. Conclusions

13.1 The NPPF aims to achieve sustainable growth and sustainable patterns of development including improving townscape and not harming the environment, the reasonable amenities of existing land users.

13.2 The site is a brownfield site, within the settlement boundary of Burton defined in the adopted local plan, which has the benefit of outline consent for mixed use development. The NPPF states that at the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking. Paragraph 14 of the NPPF states that for decision-taking this means:

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

- specific policies in this Framework indicate development should be restricted.

13.3 The proposal has not passed the sequential test and therefore should be refused in line with paragraph 27 of the NPPF and Strategic Policy 21 of the Local Plan. Significant weight should be given to the failure to pass the sequential test. In coming to a recommendation, other significant material considerations have been taken into account. These considerations are listed below:

- the outstanding need for convenience retail over the plan period, which national planning policy states should be met in full,
- the retail floorspace figures set out in the Local Plan do not represent maximum figures,
- planning permission was resolved to be granted for a larger scheme, outside the town centre in 2012, which was considered to have a greater impact on the town centre,
- there is no demand for a hotel or local pub/restaurant in this location given that these uses are adequately represented in the town centre or more generally in the town and the economic benefits in terms of bringing into use a brownfield site
- economic benefits in terms of employment during the construction phase
- longer term economic benefits and opportunities in terms of employment when the proposed units are operational and also when all buildings are fully operational.

13.4 These material considerations are so significant that they are considered to outweigh the very significant weight which is to be attached to the failure to pass the sequential test.

13.5 In addition, the design of the proposal would create a mixed use development in a contemporary and coherent way and the scale, massing and detailing of the buildings will be appropriate for the locality and improve the appearance of the site.

13.6 The proposed development is not within a conservation area and given the separation distances and the form of existing built development, it is not considered that the proposal would have an impact on views into, or those out of, the nearest conservation area nor is any Listed Building or its setting affected. The statutory duties under Section 66 and 72 are therefore not engaged.

13.7 Subject to the Section 106 requirements set out above and conditions, the development will be acceptable in terms of the impact on the highway network, highway safety, flood risk and drainage, air quality, contamination, ecological interests and the amenity of nearby residents.

13.8 RECOMMENDATION

For the reasons set out in the above report **PERMIT** subject to the completion of a Section 106 agreement covering the matters set out in paragraph 10.47 above and the following conditions:

- 1 Time Limit conditions 0000001a
- 2 Approved Plans 00002
- 3 Restrict net retail floorspace in the foodstore to that applied for in terms of net comparison floorspace and net convenience floorspace.(bespoke)
- 4 Samples and details of all external materials and finishes.00002F
- 5 Approval of floor level of all buildings. 00016c
- 6 The submission and approval of a Construction Traffic Management Plan.00016g
- 7 The submission, approval and implementation of a foul and surface water drainage scheme including drainage of all roads, parking, serving and turning areas and the maintenance of the implemented drainage scheme for the life of the development.00005a
- 8 Standard contaminated land condition to secure further details, implementation and closure reports as proof of completion of all approved remediation.00010a
- 9 The submission and approval of a lighting scheme and subsequent compliance with that approved.(bespoke)
- 10 Construction of the development in accordance with the Flood Risk Assessment including all flood resilience measures (including the stated surface water and discharge rates and the finished floor levels of all buildings being no lower than 46.11m AOD and submission of an evacuation plan. (bespoke)
- 11 The completion of the approved access, parking and servicing areas in bound material with bays delineated in accordance with agreed details and retention thereafter. 00004a
- 12 Hours of A3/A5 opening hours to be agreed.00011b
- 13 Implementation of the landscaping scheme, which includes native species as an ecological enhancement measure.00003b
- 14 Cycle storage to be submitted and provided and retained at retail stores and A3/A5 unit.00004e
- 15 Implementation of approved boundary treatment scheme 00003d
- 16 Trolley bays as approved only unless suitable alternative first agreed in writing by the LPA (bespoke)
- 17 Mechanical ventilation of kitchens A1 and A3/A5 and details of such to be approved. Provision of grease traps for the Class A1 and A3/A5 units.00016h
- 18 Approval of bin storage facilities across site.(bespoke)

13.9 Informatives

- 1 Advice regarding the submission of Discharge of Condition details for pre-commencement type conditions.
- 2 Referral to the comments of the Architectural Liaison Officer with reference to relationship between planning requirements and security suggestions.
- 3 Referral to Highway Authority's comments in terms of what the

Construction Management Plan requires, S38 agreement.

- 4 Reference to Protected Species responsibilities including towards any protected species that may colonise the site between the planning decision being issued and site development occurring.
- 5 Advise of the need for separate advertisement application/s for various building mounted and free standing signage.
- 6 Summary of how the application has been handled in terms of the 'Engagement' required by the NPPF.

14. Background papers

14.1 The following papers were used in the preparation of this report:

- The Local and National Planning policies outlined in the report above
- Papers on the Outline Planning Application file reference: P/2011/01130
- Papers on the Planning Application file reference: P/2017/00141

15. Human Rights Act 1998

15.1 There may be implications under Article 8 and Article 1 of the First Protocol regarding the right of respect for a person's private and family life and home, and to the peaceful enjoyment of possessions. However, these potential issues are in this case amply covered by consideration of the environmental impact of the application under the policies of the development plan and other relevant policy guidance.

16. Crime and Disorder Implications

16.1 It is considered that the proposal does not raise any crime and disorder implications.

17. Equalities Act 2010

17.1 Due regard, where relevant, has been had to the East Staffordshire Borough Council's equality duty as contained within the Equalities Act 2010.

For further information contact: Charlotte El Hakiem
Telephone Number: 01283 508729
Email: charlotte.elhakiem@eaststaffsbc.gov.uk