

Land at Maylands Avenue, Hemel Hempstead

Retail Review

On behalf of **Dacorum Borough Council**



Project Ref: 33945| Rev: C | Date: September 2015



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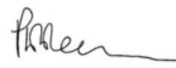

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1 Introduction

1.1 Terms of reference

- 1.1.1 Peter Brett Associates LLP (PBA) have been instructed by Dacorum Borough Council (DBC) to undertake an independent review and critique of the submitted retail evidence that has accompanied a planning application for the proposed A1, A3 and B1 mixed-use development on land at land at Maylands Avenue, Hemel Hempstead.
- 1.1.2 This report focuses on the compliance of the retail element of the planning application with relevant national and local policy, and in particular the 'sequential' and 'impact' tests set out in the National Planning Policy Framework (NPPF).
- 1.1.3 The agreed scope for undertaking this assessment relates to the A1 and A3 floorspace proposed within the application scheme and includes the following:
- Review of relevant background material and establishing the development plan position;
 - Review of the compliance of the application with the sequential test;
 - Review of the compliance of the application with retail impact tests, establishing whether a 'significant adverse impact' is likely to arise on investment within the town centre, or the vitality and viability of the centre as a whole; and
 - Make recommendations to the Council as to whether the supporting material has proved a sufficiently robust retail planning case to enable to granting of planning permission.
- 1.1.4 Based on this scope, our report is set out as follows:
- The remainder of this section sets out our understanding of the application scheme.
 - Section 2 considers the national and local planning policy position, having regard to adopted and emerging development plan guidance.
 - Section 3 reviews the planning history of the application site.
 - Section 4 considers the compliance of the application with the sequential test.
 - Section 5 considers the compliance of the application with the impact test.
 - Section 6 sets out our conclusions and recommendations to the Council.

1.2 Application site and scheme

- 1.2.1 The proposed retail floorspace is intended to be provided in the form of a supermarket, extending 2,356 sqm (GIA)/1,767 sqm net sales, and 10,147 sqm (GIA)/7,495 sqm net sales of non-food (comparison) retail. In relation to the proposed convenience floorspace, there is some discrepancy between the main text of the Planning Statement (para. 3.5) and Appendix 7 (Table 6). It is assumed that Appendix 7 is the correct figure; thus the foodstore is assessed on the basis of a 75%/25% convenience/comparison split; permission is therefore sought on the basis of 1,414 sqm net convenience goods and 7,848 sqm net comparison goods floorspace.
- 1.2.2 No retail operators are named in the application. However, the 'prospective anchor tenant' for the 2,695 sqm (GIA) non-food unit is described as selling both bulky and non-bulky (clothing and footwear) goods. The other non-food floorspace is described as 'retail warehouse

premises'. It is stated that it is intended to 'complement rather than compete' with Hemel Hempstead town centre. Further submissions made on behalf of the applicant have provided greater clarity on the intended role of the comparison floorspace, setting out that clothing and fashion would be controlled to specific formats/ranges and that the 'core product ranges sold from the floorspace are anticipated to be furniture and furnishings'.

- 1.2.3 Additionally, as an outline application, no detail is provided on the intended unit sizes of the residual 4,800 sqm (GIA) of non-food floorspace, other than that they will be 'large format' (PS para. 3.8).
- 1.2.4 The submitted evidence is contained within a 'Planning Statement' (PS) prepared by Savills, dated March 2014; however, having reviewed the PS, it is assumed that the report was prepared in March 2015.

1.3 Initial comments on the application

- 1.3.1 PBA provided the Council with some initial comments on the PS which were shared with the applicant inviting a response before the comprehensive review was undertaken. These comments included:
- Sequential approach to site selection:
 - Status of the application site: PBA consider the site to be out of centre in retail planning terms, such that the parameters of the sequential search must be extended to edge-of-centre sites in order to satisfy the tests in policy.
 - Further information from the applicant to demonstrate that sufficient flexibility of format and scale has been adopted when assessing sequentially-preferable sites.
 - Impact methodology:
 - Adjustments to make allowance made for the growth in the proportion of expenditure taking place on the internet (special forms of the trading),
 - Justification of the design/impact year: in the absence of any additional evidence, a design year of 2018/19 is considered to be a more appropriate timescale within which to assess impact,
 - Justification of the projected level of inflow expenditure to the proposed development;
 - Provision of trade draw and diversion assumptions on a zone-by-zone basis;
 - Further trade draw and diversion sensitivities to take account of the potential range of comparison goods that could be sold from the proposed development under the terms of the application.
- 1.3.2 A response was received from the applicant in June 2015 (dated 11 June: 'the June submission') which dealt primarily with the sequential queries but also provided some initial points on the impact assessment. The June submission referred to forthcoming revised quantitative impact tables; the revised tables were subsequently received in July 2015 (dated 30 June 2015). The latter submission ('the July submission') supersedes the majority of the comparison goods impact assessment provided in the original PS (Appendix 8) and it is the latter submission that is therefore considered in this review.

2 Planning policy context

2.1 National Planning Policy Framework

- 2.1.1 The NPPF articulates a town-centre first approach to development. In decision-making terms these objectives are embodied at paragraphs 24 and 26 which relate to the sequential approach and impact respectively.
- 2.1.2 In respect of the sequential test, the NPPF sets out three important considerations which include:
- the sequential status of the application site;
 - the extent of connectivity with the town centre; and,
 - the extent to which flexibility on format and scale has been demonstrated.
- 2.1.3 The NPPF requires applications for retail development in excess of 2,500 sqm that are 'outside of town centres which are not in accordance with an up-to-date Local Plan' to 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.'*
- 2.1.4 Finally, paragraph 27 of the NPPF makes it clear that an application can only be refused on retail grounds where it 'fails to satisfy the sequential test or is likely to have significant adverse impact'.

2.2 The Development Plan

- 2.2.1 For the purposes of this application, the adopted development plan comprises the Core Strategy (adopted 2013), saved policies from the Local Plan 1991-2011 (adopted 2004). Whilst the Council originally intended to prepare a Development Management Document which would have set out detailed policies for the consideration of planning applications, it is now intended that these will be brought forward as part of the forthcoming single Local Plan.
- 2.2.2 The current Local Plan was adopted by the Council in 2004. From September 2007, a number of policies were saved by direction of the Secretary of State; however, many of these policies have been superseded following the adoption of the Core Strategy in 2013, including all of the previously adopted policies on shopping. The Core Strategy is therefore the main development plan document.
- 2.2.3 Core Strategy Policy 16 'Shops and Commerce' states that the retail hierarchy will be strengthened. New retail development, which will be assessed in terms of its location, scale and impact, will be permitted provided it accords with the retail hierarchy and conforms to the sequential approach. Hemel Hempstead is identified as the main destination in the Borough for comparison goods shopping, leisure, entertainment and civic and cultural activities while other centres should provide core shopping facilities and services for their local communities.
- 2.2.4 The policy confirms that development of new out-of-centre retail floorspace will only be permitted if: 'the proposal complies with the sequential approach as set out in the NPPF and

the retail impact assessment demonstrates a positive overall outcome' which is understood to be interchangeable with the NPPF's term 'significant adverse impact'.

2.3 Material considerations

Pre-Submission Site Allocations Document

- 2.3.1 The Pre-Submission Site Allocations Document (September 2014) has undergone several stages of public consultation and therefore carries a degree of weight in considering the current application.

East Hemel Hempstead Area Action Plan

- 2.3.2 The emerging East Hemel Hempstead Area Action Plan ('the draft AAP') is being progressed in partnership with neighbouring St. Albans District Council and carries a degree of weight since the document has been subject to an initial 'Issues and Options' consultation. The draft AAP draws on the Maylands Masterplan which was adopted by the Council as a planning policy statement in September 2007. Although it does not form part of the development plan, it is a material consideration in the consideration of planning applications.
- 2.3.3 The Masterplan provides a framework for the regeneration Maylands Business Park. The vision for Maylands includes: 'improving the appearance of the business area, together with providing a high standard of commercial accommodation, shops and amenities, as well as delivering renewable energy, developing the Maylands Gateway, and regeneration the Heart of Maylands'. The Masterplan divides the Maylands Business Park area into a number of Character Areas which each have a different function and where different uses are allocated.

Maylands Gateway Development Brief

- 2.3.4 Published in 2013 in advance of the adoption of the Core Strategy, the MGDB is a material consideration in respect of planning applications and sets out an overriding aspiration for employment-led development in the Gateway area. It will also inform the forthcoming East Hemel Hempstead AAP.
- 2.3.5 The application site is included within the boundary of the Gateway area. With regard to non-employment uses, paragraph 4.4.1 notes that:

'Small-scale food and drink and childcare provision may be permitted. Such uses should not detract from the aim of the Maylands Master Plan to create a specific social 'heart' for the business area along Maylands Avenue, but facilities to suit the local market within the Gateway may be appropriate'

3 Planning history

- 3.1.1 Section 2 of the PS includes a summary of the planning history; the majority of which relates to B Class uses.
- 3.1.2 It is noted that paragraph 2.18 makes reference to an implemented permission for uses including an ancillary Class A1 building. The committee report associated with the application notes that the approved building would extend 928 sqm and would provide not just retail but also 'meeting facilities and a security and management suite'.
- 3.1.3 The permission includes the following condition:
- 'Unless otherwise agreed in writing by the local planning authority, the ancillary building indicated as Building 11 on the approved plans shall only be used for purposes falling within Classes A1, A2 or A3 of the Schedule to the Town and Country Planning (Use Classes) Amendment Order 2005 or security and management suite/facilities ancillary to the overall office use of the development hereby permitted.'*
- 3.1.4 This confirms the ancillary nature of the approved retail floorspace i.e. the floorspace could not be operated independently of approved office use. Therefore, under a revised planning application, it is considered that no significant weight can be afforded to this approved ancillary floorspace as a fall-back position. PBA note that the applicant has not attempted to suggest anything that would run counter to this view.

4 Sequential approach

4.1 Status of the application site

- 4.1.1 The applicant asserts that the site should be regarded as edge of centre. This is based on the following justification:

'The formal boundary of the Heart of Maylands Local Centre is to be defined by the East Hemel Area Action Plan. The application site is anticipated to be less than 300 metres to the south of the Heart of Maylands and therefore can be considered to be an edge of centre site as defined by the NPPF.' (PS para. 6.2)

- 4.1.2 As set out in the initial comments provided to DBC and shared with the applicant, PBA do not agree with this assertion.

- 4.1.3 In coming to this view, it is relevant to consider the definition of edge of centre as set out in the NPPF (Annex 2):

'For retail purposes, a location that is well connected and up to 300 metres of the primary shopping area. For all other main town centre uses, a location within 300 metres of a town centre boundary. For office development, this includes locations outside the town centre but within 500 metres of a public transport interchange. In determining whether a site falls within the definition of edge of centre, account should be taken of local circumstances.' (emphasis added)

- 4.1.4 As the applicant acknowledges, the formal boundary of the Heart of Maylands local centre has yet to be defined. Indeed, the Heart of Maylands, whilst allocated as a new local centre in the Core Strategy, PBA understand that construction is only due to start in late 2015.

- 4.1.5 It is acknowledged that the NPPF and PPG offer little in the way of guidance on the definition of the status of a site in sequential terms. However, it is relevant to note the conditions under which the sequential test is required in the first instance:

'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.' (para. 24, emphasis added)

- 4.1.6 In this context, it is clear that the Heart of Maylands cannot be classified as an 'existing' centre. It then follows that sites outwith a centre that does not currently exist cannot be defined with reference to that centre.

- 4.1.7 In any event, it is considered that even when the Heart of Maylands is developed, the application site cannot be deemed to constitute edge of centre. This view has regard to the approved layout of the new centre and the quality of linkage with the proposed development.

- 4.1.8 The layout of the Heart of Maylands local centre, as approved under application 4/00676/14/MFA, includes two blocks separated by a public square and fronting onto Maylands Avenue, comprising retail and community uses at ground floor with residential uses above. The proposed retail floorspace is exclusively located in Block A (the northern block); as and when a primary shopping area or local centre boundary is designated, it is only likely to include the northern block. As such, based on the illustrative representation of the proposed development included within the Design and Access Statement, none of the proposed retail uses are within 300m of the Heart of Maylands.

- 4.1.9 Notwithstanding this point, the definition of 'edge of centre' provided in the NPPF sets out that 'account should be taken of local circumstances' in the determination the definition of an edge-

of-centre site. The illustrative layout suggests that the office/commercial element of the proposed development will be located on the northern-most (and narrowest) part of the application site i.e. physically separating the new local centre from the proposed retail development. Whilst it is acknowledged that the application is submitted in outline and layout is reserved for later determination, given the intended function of the proposed floorspace to provide large-format retail units, it is questionable whether an alternative layout would significantly alter this configuration. With reference to the NPPF test, it is again worth noting the wording of the edge-of-centre definition the reference to such sites being 'well connected'.

- 4.1.10 The local circumstances in this instance are provided by the policy framework in the development plan. Policy CS16 designates Heart of Maylands as a new local centre with the 'principal function' of providing '*a range of mainly small shops, services and facilities of a local nature, serving a small catchment*'. In relation to the new retail development, the policy goes on to state that '*it will be permitted if it accords with the retail hierarchy and conforms with the sequential approach*'.
- 4.1.11 Paragraph 13.9 explains this approach further identifying the top tier of the sequential approach to be '*locations in shopping areas in appropriate existing centres*'. The adoption of the Core Strategy post-dates the publication of the NPPF; the policies and guidance within it was therefore found to be compliant to the NPPF by the Inspector and has been adopted on that basis. It follows that the policy must carry significant weight in determining how the sequential approach, as articulated in both the NPPF and the Core Strategy is applied.
- 4.1.12 The proposed development is clearly out of scale with the new local centre allocation.

4.2 Implications of the planning history

- 4.2.1 As set out in Section 3, no material weight is afforded to the extant permission's approval for an element of ancillary A1 floorspace.

4.3 Guidance and recent case law

- 4.3.1 With regard to the sequential test, paragraph 009 of the NPPG states that in order to satisfy the test applications must demonstrate that the following points have been considered:
- The suitability of more central sites to accommodate the proposal with due regards to the requirement to demonstrate flexibility.
 - The contribution that more central sites are able to make individually to accommodate the proposal.
- 4.3.2 Paragraph 010 of the PPG states that the application of the sequential test should be proportionate and appropriate for the given proposal. The PPG states that the sequential test is passed if there are no suitable sequentially preferable locations and confirms that where a proposal fails to satisfy the sequential test, it should be refused.
- 4.3.3 It is acknowledged that the recent judgments referred to by the applicant in the PRS, together with the Secretary of State's decision at the Rushden Lakes call-in inquiry have served to limit the parameters within which the sequential approach to site selection is applied. Having regard to these decisions, it is agreed that there is no requirement under the NPPF to disaggregate elements of the proposed development.
- 4.3.4 That said, it is noted that the Core Strategy, which was adopted following both the publication of the NPPF and the Dundee judgment, continues to require applicants to demonstrate flexibility in terms of scale, format, car-parking provision and the scope for disaggregation. Irrespective of the timing of the adoption of the Core Strategy, it is considered that applying the policy in decision-making terms must still be done in the context of particularly the Dundee

judgment’s clear statement that sequential sites must be considered in the ‘real world in which developers seek to operate’.

4.4 Parameters of search

4.4.1 Paragraph 6.22 of the PS sets out that:

‘The applicant has included flexibility in terms of scale and format when considering alternative sites in accordance with the requirements of the NPPF and NPPG. Sites below 4ha would require a material change to the nature of the proposed development and are therefore deemed unsuitable purely based on their scale.’

4.4.2 Following PBA’s initial comments to DBC, the applicant provided additional information in relation to the parameters of search in their June submission which is welcomed. With regard to the area of search, the applicant confirms that the search has focused on Hemel Hempstead and justifies this approach with reference to existing expenditure patterns and the intended role of the proposed floorspace to reduce leakage to other centres in the study area. PBA agree that this approach is reasonable.

4.4.3 Whilst the June submission includes a section relating to ‘flexibility’, PBA do not consider that this provides any additional clarity on the approach taken in relation to establishing the minimum threshold of 4ha adopted by the applicant. The statement that ‘any sites that are below the minimum threshold would require a material change to the development proposed so that it would not meet the same consumer or operator demand’ is not explained by the applicant. Thus, whilst PBA acknowledge that a material change would go beyond the requirements of policy, the applicant has not provided compelling justification as to why a site of less than 4ha would constitute a material change.

4.4.4 In the absence of further justification, given the application site extends to 6.4ha, considering sites 62.5% of that size appears to represent a reasonable degree of flexibility in principle. However, it is not made clear in the PS how a smaller site might affect the scale of proposed floorspace, whether in relation to the A1, A3 or B1 elements.

4.5 Sequential site assessments

4.5.1 Because the applicant considers the site to be edge of centre, the PS focuses on in-centre sites in Hemel Hempstead, in addition to one out-of-centre site, under the sequential assessment. Whilst this was raised in PBA’s initial comments, the applicant has not provided any analysis of further sites.

4.5.2 In the following table, PBA consider the analysis provided by the applicant and also assess the proposed development with reference to other sites identified in the Hemel Hempstead Masterplan and in the emerging Site Allocations Document.

Site	PS Analysis	Review
Hemel Hempstead town centre	Largest vacant unit identified as extending 350 sqm (151 Marlowes). Considered that because of the extensive nature of the proposed floorspace, no sites within the centre are suitable or available.	The on-the-ground findings presented by the applicant have not been verified, but no information provided by DBC that indicates that any of the vacant units represent suitable sites. No objections have been received from either of the major stakeholders in the town centre, to indicate that units could be amalgamated or existing tenants relocated to provide larger floorplate units.

Site	PS Analysis	Review
		Accordingly, it is considered that these vacancies can be regarded as not suitable for the proposed development.
Gade	<p>Costs of acquiring and redeveloping the site considered to render the proposed development unviable.</p> <p>Considered that the proposed development would be contrary to emerging policy for the site (replacement college, new public sector quarter and housing).</p> <p>Concluded that the site is neither suitable nor viable.</p>	<p>No specific sites identified by the applicant, therefore unclear how the various development blocks identified in the Masterplan have been considered with reference to the proposed development.</p> <p>Although the applicant suggests that retail provision would be contrary to the emergent policy, the 'mix of uses are to include educational, leisure and commercial uses including retail uses (possibly including a food store)'. Thus there is clear support in for an element of retail provision on this site. However, it is also clear that this forms one component of a wider aspiration for the site.</p> <p>The draft Site Allocations identifies the West Herts College and Civic Zone site for mixed use development (Written Statement page 19). A replacement college new Public Service Quarter and housing (500-600 homes) are proposed on this 6 hectare site.</p> <p>It is understood that some development has been approved in parts of the zone. The southern part of the College/Civic Zone site has planning permission for the Forum (formerly called the Public Service Quarter) and housing. It is understood that civic offices site will be available for redevelopment once the Forum is completed in early 2017; however, the college element is not anticipated to come forward until 2020.</p> <p>The Market Square forms part of this zone. It is understood that DBC is currently exploring the possibility of a cinema and restaurants development, so it is not suitable for the proposed development.</p> <p>Whilst it is anticipated that there will be surplus land available for development, notably the central part, which the applicant has not fully assessed, discussions with DBC indicate that the residual sites are expected to play a role in meeting housing supply. Accordingly, it is agreed that the site is not suitable or available for the proposed development.</p>

Site	PS Analysis	Review
Old Town	Not considered by the applicant.	PBA consider that there are no suitable or available sites within the Old Town zone that could accommodate the proposed development, even allowing for flexibility of scale and format.
Original Marlowes	Not considered by the applicant.	PBA have been advised by DBC that none of the elements are of the site are likely to become available in the short-term, and so rule this out as a sequential alternative.
Jellicoe Water Gardens	Not considered by the applicant.	PBA are aware that the zone is in an established use which is unlikely to come forward for redevelopment. Furthermore, work is starting this month on a major refurbishment of the Water Gardens. It is accepted that the site is neither suitable nor available in sequential terms.
Hospital	Not considered by the applicant.	PBA understand that there remains an on-going requirement for this facility, such that any redevelopment would need to reprovide the hospital. Information provided by DBC indicates that the land needed for the replacement hospital facility is not yet known; additionally, the emerging Site Allocations indicates that the site is needed accommodate further housing and a new primary school. It is therefore agreed that the site is not suitable for retail-led development. It appears the majority of the zone remains in active use and not considered to be available. Furthermore, it is considered that, given the range of uses promoted through the draft allocation, it is not suitable.
Plough	Not considered by the applicant.	It is understood from DBC that the building the telephone exchange is still operation and therefore cannot be considered to be available within a reasonable timeframe.
Jarman Fields	Defined as an out-of-centre site in the Core Strategy so not considered to be sequentially preferable to the application site.	PBA agree that the site is not sequentially preferable.

4.6 Conclusions on the sequential approach

- 4.6.1 As set out in Section 4.1, PBA do not agree that the application site can be considered 'edge of centre' in planning terms. Compliance with the sequential approach is therefore considered in the context of the site being out of centre.
- 4.6.2 In relation to the parameters of search and consideration of flexibility, it is noted that the requirements of Policy CS16 in relation to demonstrating flexibility in applying the sequential approach to site selection are more onerous than the NPPF. Whilst there is continued reference to disaggregation in that policy, it is considered that this does not recognise the commercial reality of development, as confirmed in the Dundee judgment and the recent Rushden Lakes appeal, and subsequently in the Coalition Government's response to the DCLG Select Committee on the operation of the NPPF which specifically ruled out disaggregation. Having regard to the reduced land take adopted by the applicant of 62.5% of the proposed site area, it is considered that the applicant has demonstrated reasonable flexibility.
- 4.6.3 Irrespective of the disagreement of the status of the site, even when additional edge-of-centre sites are considered, PBA conclude that the proposed development is compliant with the sequential approach.

5 Impact

5.1 Guidance

5.1.1 The PPG states that when assessing impact, this should be done on a like-for-like basis in respect of the particular sector. The outline nature of the proposed development and the lack of confirmed operators makes this necessarily more complicated such that in order to robustly assess an application for largely open comparison-led retail development, a range of scenarios need to be considered.

5.2 Methodology

5.2.1 As summarised in Section 1, the initial review carried out by PBA identified a number of technical concerns over elements of the applicant's approach to assessing quantitative impact. The additional/replacement tables submitted on behalf of the applicant in July 2015 comprise:

- Replacement Tables 2 (Study Derived Comparison Turnover), 7 (Pattern of Comparison Goods Trade Draw and Impact at 2020) – superseding those contained at Appendix 8 of the PS
- Assessment of Increasing Market Share of SFT on impact (Appendix 3 to July submission)
- Zonal Composition Assessment i.e. trade draw and diversion on a zonal basis (Appendix 5 to July submission)

5.2.2 The convenience impact assessment as set out in Appendix 7 of PS is therefore unchanged.

Household survey

5.2.3 A new household survey was commissioned in support of the application. This provides a significantly more up-to-date snapshot of shopping patterns than the 2008 survey which underpins the 2011 Retail Study and is therefore considered to form a robust basis upon which to understand the 'no-development scenario' and forecast anticipated quantitative impacts.

5.2.4 The household survey area, defined with reference to a 10-minute drivetime, gravity modelling of Hemel Hempstead's and nearby centres' catchment area and the 2008 survey, is split into four zones:

- Central: comprising the majority of the urban area of Hemel Hempstead
- South: covering the area to the south of Hemel Hempstead, including Kings Langley and Abbots Langley
- West: including Berkhamstead and the western fringes of Hemel Hempstead
- North: including the northern fringes of Hemel Hempstead urban area, together with Redbourn and Flamstead

5.2.5 1,090 questionnaires were completed across the survey area, with more than 100 responses gathered from every zone.

Assumptions

- 5.2.6 In relation to the assumptions employed by the applicant in the PS, PBA make the following comments and observations:
- **Catchment area:** having regard to the justifications over the definition of the survey area provided by the applicant, the catchment area of the proposed development is considered to be reasonable.
 - **Population and expenditure data:** the applicant has sourced data from Pitney Bowes Business Insight. Whilst PBA do not use this data provider, it is a recognised source of population and expenditure data.
 - **Expenditure growth and SFT:** derived from Pitney Bowes and adjusted to exclude SFT in the base year. Following PBA's initial comments, the July submission included three additional tables which SFT to grow in line with national growth rates. These additional submissions are considered in further detail in Section 5.4.
 - **Main food/top up shopping:** available expenditure has been split 75%/25%. This is the same split adopted in the 2011 Retail Study. Whilst the proportion of top-up expenditure may be greater than this, there is no additional evidence within the applicant's household survey that runs counter to the previous assumption. PBA do not consider adopting this approach unreasonable.
 - **Design year:** the assessment adopts 2020 as the design year within which impact is assessed. With reference to the NPPF, paragraph 26 is clear that impact should be assessed 'up to five years from the time the application is made' (PBA emphasis). Further explanation is provided in the PPG which sets out that impact should be assessed in the second full year of trading after opening, no evidence has been provided by the applicant to explain the development programme. Given the site is largely clear, it seems highly plausible that the proposed retail development would commence trading before 2018. The applicant's June submission appears to misunderstand the requirement of NPPF and despite confirming that the development is likely to commence trading in 2017 (i.e. 2019 design year), continues to assert that 2020 or even 2022 are appropriate. The implications of this deficiency in the impact assessment are considered below.
 - **Proposed turnover:** the proposed comparison floorspace is forecast to achieve a turnover of £38.8m in 2020, assuming sales densities of between £4,000/sqm and £8,000/sqm and allowing for 1.8% annual sales efficiency gains. The proposed convenience floorspace is anticipated to turnover at £12,000/sqm; allowing for sales efficiency growth of 0.4% per annum, the proposed development is expected to achieve a convenience turnover of £17.31m in 2020. The total turnover in 2020 is therefore £56.1m. PBA consider the assumptions adopted in this regard to be robust.

5.3 Quantitative convenience impact

- 5.3.1 The applicant has not provided any further detail on trade draw over the catchment area. Diversion and impact of the proposed development are therefore expressed at a global level.
- 5.3.2 The applicant has assumed that 97% of expenditure will be drawn from the catchment area (proximate to a ten-minute drivetime). This approach is considered to be reasonable, given the more localised nature of convenience shopping patterns.
- 5.3.3 The majority of proposed convenience floorspace turnover will be diverted from stores in and around Hemel Hempstead (93%), with the residual 4% being drawn from Berkhamsted.

- 5.3.4 The greatest levels of diversion are experienced by out-of-centre stores, notably Tesco at Jarman Park and Sainsbury's at Apsley Mills (£3.81m from each), followed by the two Aldi stores (£1.73m from each). A total of £5.54m is expected to be diverted from existing in-centre facilities: comprising £2.76m from Hemel Hempstead town centre, focused on the Asda store; £1.73m from Woodhall Farm district centre (Sainsbury's); £0.7m from Berkhamsted; and the remaining £0.35m from Adeyfield local centre.
- 5.3.5 Whilst the PS does not set out these impacts as percentages, it is noted that the forecast diversion will have the following effects on the town centres:
- 5.5% impact on Hemel Hempstead
 - 1.3% impact on Berkhamsted
 - 8.7% impact on Woodhall Farm
 - 7.8% impact on Adeyfield
- 5.3.6 As noted above, these are the forecast impacts in 2020. Accordingly, the impact of the proposed development in a more appropriate design year will be greater.
- 5.3.7 Whilst it is noted that the assessment suggests relatively high impacts on Woodhall Farm and Adeyfield, these are focused on individual stores. There is no evidence before DBC to suggest that the operators of these stores (Sainsbury's and Co-op) might close if the proposed development were to go ahead. PBA therefore do not consider that these levels of diversion can be construed as resulting in significantly adverse impacts.
- 5.3.8 In line with the requirements of the NPPF, this potentially greater impact is considered in the context of the impact on the Hemel Hempstead and Berkhamsted as a whole, taking account of the comparison retail and other uses that contribute towards the overall vitality and viability of those centres in Section 5.6 below.

5.4 Quantitative comparison impact

- 5.4.1 The applicant has provided additional tables in relation to the trade draw of and diversion to the proposed development on a zone-by-zone basis. This has only been provided on a partial basis and relates only to the defined main centres in the catchment area. It is acknowledged that it is impact on these centres that this the relevant consideration under paragraph 26 of the NPPF; however, in order to come to a view on whether the overall trade draw and diversion assumptions are reasonable, it is relevant to also understand the implications for out-of-centre provision.
- 5.4.2 Taking into account the effect of increased expenditure on SFT, the impacts below are taken from Appendix 3 of the July submission. Again though, as noted above, these are the forecast impacts in 2020. Accordingly, even if these levels of diversion were accepted at face value, the impact of the proposed development in a more appropriate design year will be greater:
- 2.8% impact on Hemel Hempstead
 - 3.7% impact on Berkhamsted
 - 2.2% impact on Watford
- 5.4.3 Impact on St Albans and Luton taking into account SFT it is not provided in Appendix 3. With reference to the revised Table 7, a 4.5% solus impact is forecast on both centres. Taking into account SFT on the same basis as that adopted in the July submission, it is estimated that the impact would increase to 4.6% to 4.7%.

- 5.4.4 Having reviewed the methodology adopted in respect of SFT, the approach is not considered to be conventional but having remodelled it following a more conventional approach, the resultant impacts are not discernibly different to those forecast by the applicant.
- 5.4.5 It is notable that in forecasting diversion, the applicant has assumed that there will be diversion from the now-lapsed Jarman Park permission. Accordingly, whilst impacts are presented as 'solus' in that they do not factor in diversion to the Jarman Park scheme, they are not truly 'solus' in impact terms because they assume 15% of the proposed development's turnover will be drawn from the lapsed Jarman Park scheme. The implication of this permission now having expired is that diversion from existing centres and locations will be greater than previously forecast by the applicant, notably in respect of Hemel Hempstead town centre, where 30% of the Jarman Park scheme was anticipated to divert its turnover.
- 5.4.6 For these reasons, PBA consider that the impacts as forecast by the applicant are likely to represent underestimates, particularly in relation to Hemel Hempstead.

5.5 Impact of the proposed A3 floorspace

- 5.5.1 The applicant has not provided any quantitative assessment of the impact the proposed A3 floorspace might have on existing town centres. Whilst this would not necessarily be problematic because of the less developed methodology surrounding the impact of leisure floorspace and the more discretionary nature of leisure expenditure patterns, the applicant does not appear to have provided any qualitative assessment either. This is shortcoming of the submitted assessment.
- 5.5.2 PBA note the June submission states that the intention is to create a 'home and lifestyle' shopping destination. It is unclear how such a substantial quantum of A3 floorspace is accommodated within this vision. Indeed whilst it may be the case that the floorspace could provide a role for the existing business community at Maylands, DBC have a clear aspiration that this role should be met in the Heart of Maylands local centre. Albeit scale is not a test enshrined in the NPPF, it is notable that the quantum proposed is not dissimilar to the overall floorspace of permitted for the whole of the new local centre.
- 5.5.3 The implications of this element of the proposal are considered further below.

5.6 Impact on town centre vitality and viability

Hemel Hempstead

- 5.6.1 The applicant includes a brief assessment of the vitality and viability of Hemel Hempstead town centre at Appendix 4 of the PS. However, PBA have more recently provided DBC with advice on the health of the town centre (May 2015). This informs the following assessment.
- 5.6.2 The PPG states that in order to judge whether the adverse impacts will be significant this must be considered in light of local circumstances. In considering local circumstances, it is relevant to factor in the concerns identified in relation to effects of recent developments (out-of-centre convenience and leisure improvement, together with improvements in the comparison offer of centres outside Dacorum) on the performance of Hemel Hempstead town centre.
- 5.6.3 In reviewing the existing offer within the centre, the applicant's health check notes that the comparison offer is strong, focused on the 'middle mass' market with a high number of national multiple fashion retailers. The representation of such retailers is not disputed; however, it is relevant to note that many of these retailers operate from premises that are undersized or lack visibility, particularly if located within the Marlowes Shopping Centre.
- 5.6.4 Similarly, in relation to services, the list of national leisure operators listed is underlines that limited nature of the offer, particularly when viewed in the context of the evidence provided by

the applicant in relation to the catchment population profile and its 'significantly above average proportion of adults within the most affluent AB social group'. This is in contrast to the recently expanded restaurant offer at Jarman Park which now includes Nando's, Bella Italia, Frankie and Benny's, Coast to Coast and Hungry Horse, and will be expanded further following the grant of permission for the conversion of one of the cinema auditoria into four new restaurants. This suggests that the town centre is failing to capture its share of A3 expenditure; which is reflected in operators' willingness to co-locate with the Empire cinema at Jarman Park rather than take vacant space within the centre.

- 5.6.5 Whilst it is accepted that vacancy rates appear to be broadly in line with national average, there is no consideration of where these vacancies are within the centre or the nature of the vacant floorspace. It is noted that there are vacancies clustered in the Marlowes Shopping Centre, which, as a managed shopping centre in a single ownership would generally be expected to have a lower level of vacancies relative to the rest of the town centre. This point is amplified by the existence of vacant units in the other managed shopping centre, the modern Riverside development, which are understood to have been empty since the complex opened.
- 5.6.6 Although the applicant's health check notes that there are 68 retailer requirements in Hemel Hempstead, no details further details are provided. As PBA have previously noted, Dorothy Perkins/Burton recently left the town centre and, as far as PBA are aware, the Arcadia Group have shown no interest in acquiring new premises in the centre in spite of sizeable vacant units in prime locations. This would appear to suggest that, in line with the wider strategy within the Arcadia Group to streamline the store portfolio as leases on existing store expire, Hemel Hempstead is no longer viewed as a town centre in which they require representation. Thus, whilst the applicant points to 'strong retailer demand', this demand appears to be caveated to 'new floorspace', suggesting that vacancies will remain a problem within the centre as existing floorspace is not deemed fit for purpose. Given the wider trends towards polarisation amongst centres as retailers seek to rationalise their portfolios as part of a more 'omni-channel' retailing model, PBA suggest that the weight awarded to apparent retailer demand in the centre should be limited.
- 5.6.7 It is acknowledged that the corollary of the poorer performance of Hemel Hempstead town centre is increased leakage to competing retail destinations. It is therefore relevant to consider whether the proposed development may then play a role in effecting more sustainable shopping patterns by clawing back expenditure leaking to other destinations.
- 5.6.8 In the absence of any named retailers there is an inherent uncertainty surrounding the nature of diversion. For example, if the proposed development simply relocates existing town centre anchors or other retailers that are currently in Hemel Hempstead, it is not reasonable to expect that this would result in any substantive shift in shopping patterns beyond that of losing expenditure from Hemel Hempstead town centre to an out-of-centre location. Conversely if the proposed development accommodates retailers not currently found in Hemel Hempstead but that are currently attracting shoppers to competing destinations such as St Albans and Watford then it is more reasonable to suppose there would be a degree of clawback and that the impact on the town centre would be lessened.
- 5.6.9 Added to this, it should also be noted that because of the proximity of Hemel Hempstead to both Watford and St Albans, it is entirely reasonable to expect the catchments of the centres to overlap to the extent that whilst some expenditure going to Watford and St Albans may technically be categorised as 'leakage', this is in part of product of the way in which the catchment area has been defined.
- 5.6.10 In the absence of any controls, the fundamental point remains that because of the terms of the application, it would be entirely possible for the proposed development to enable key anchor retailers to relocate from Hemel Hempstead town centre and deliver limited benefits in terms of clawback. In this respect, it is noted that the June submission by the applicant included

some additional detail on the anticipated retailer profile of the proposed comparison elements of the proposed development.

5.6.11 As part of this submission, a number of suggested conditions on the proposed retail floorspace were also tabled. Several of these are material when considering the impact of the proposed development on Hemel Hempstead, notably those relating to the range of goods that could be sold. The June submission explains that:

'the proposed retail floorspace is not intended to create a shopping park or fashion oriented destination. The sale of clothing and footwear will be strictly controlled to specific formats or specific ranges (e.g. sports clothing and footwear). Instead, it is anticipated that the retail floorspace at the site will establish itself as a 'home and lifestyle' shopping destination.'

5.6.12 PBA summarise the effects of the suggested conditions as follows:

- No retail units to be used for the 'primary' sale of clothing and footwear, jewellery and fashion accessories and health and beauty products.
- Up to 1,350 sqm of clothing and footwear and jewellery/fashion accessories floorspace. This floorspace could only be accommodated within a single unit and that unit must sell a combination of other 'bulky' comparison goods ranges over a similar or greater amount of floorspace.
- Up to 825 sqm to be used for sports clothing and footwear. Again this floorspace could only be accommodated in a single unit.

5.6.13 With regard to these suggested conditions, PBA note that whilst there appears to be a restriction across the majority of the comparison floorspace to limit clothing, accessories and health and beauty sales, this is not the same as wholesale restriction. It would be entirely possible for the proposed retail units to use up to half the proposed comparison floorspace for these uses and argue that it was not their 'primary' purpose. Given our concerns over the vitality and viability of the town centre, we suggest the Council consider the consequence of any planning conditions very carefully.

5.6.14 In assessing vitality and viability, the applicant draws attention to the fashion offer in the town centre: Marks & Spencer, Topshop/Topman, Debenhams, TK Maxx, Next are all highlighted in the applicant's health check. Other notable retailers include River Island, New Look, Primark and H&M. Experian GOAD identify a number of these as 'key attractors'. It follows that the loss of such 'key attractors' would reduce the draw to shoppers of the town centre relative to competing centres, out-of-centre locations or the internet. The consequence of such a loss could be serious in respect of consumer choice and quality, increased vacancies, reduced footfall and the failure to take into advantage of very significant investment from the Council in the regeneration of the town centre (including public realm improvements).

5.6.15 As evidenced by the loss of Dorothy Perkins and Burton from the centre, there is a risk to the centre in terms of other retailers choosing not to renew leases or retain a town centre presence. To date, Hemel Hempstead's out-of-centre retail offer has been primarily limited to either foodstores or 'bulky' goods operators, thus fashion retailers have been unable to consider alternative locations in the town.

5.6.16 PBA recognise the intention behind the conditions; however, DBC must have regard to all the potential consequences of such conditions in respect of the future trading characteristics of the development. Whilst the conditions impose some restrictions on the type of retail development that could come forward, PBA are concerned that allowing the principle of fashion floorspace in all the retail units would significantly alter the profile of the way in which the town centre competes with the out-of-centre floorspace in Hemel Hempstead to the overall detriment to the vitality and viability of the town.

5.6.17 The applicant forecasts a combined 3.2% impact on Hemel Hempstead town centre (2020 impact year, no allowance for increased expenditure going to SFT). This assumes that 20% of the proposed development's turnover will be diverted from the in-centre comparison stores. In the absence of any named occupiers and considerable uncertainty over the range of goods likely to be sold from the development, PBA anticipate that the forecast impact will be higher. This has regard to a number of factors including:

- Given the proposed development could include a significant proportion of fashion floorspace, diversion from the retail parks appears to be have been overstated;
- The combined convenience, comparison and leisure offer will create a significant cluster of floorspace which will encourage linked trips between the different uses, amplifying the impact on existing centres;
- Allowance was made for diversion from the Jarman Park commitment which has now lapsed¹;
- Impact should be assessed in 2018;
- SFT should be deducted at source.

5.6.18 The implications are considered below in the context of assessing the significance of the impact on Hemel Hempstead town centre.

Berkhamsted

5.6.19 A modest degree of diversion is forecast from the town centre. PBA do not consider that this is of scale that can be construed as significantly adverse.

5.7 Impact on planned investment

5.7.1 When assessing the impacts of the proposals on town centre developments and investments that are in progress applications should consider:

- the policy status of the investment
- the progress made towards securing the investment
- the extent to which an application is likely to undermine planned developments or investments based on the effects on current/ forecast turnovers, operator demand and investor confidence.

Existing centres

5.7.2 The PS reviews planned investment in the context of the Hemel Hempstead town centre and Berkhamsted town centre and, on the basis that the applicant is not aware of any planned investment, concludes that it will not have an adverse impact.

5.7.3 PBA agree that, particularly given the change in aspirations for the Civic Centre/Gade site in Hemel Hempstead, following the withdrawal of the planning application for a foodstore-led development, the proposed development would not immediately prejudice any planned investment in that part of Hemel Hempstead town centre. Nor is there any evidence to suggest it prejudice investment in Berkhamsted town centre.

¹ It is understood that an application will be made to DBC for a similar scheme to the recently lapsed permission; however, this has yet to be received and will be determined on its own merits.

Heart of Maylands

- 5.7.4 As set out in Section 2, a new local centre at the Heart of Maylands is designated in the Core Strategy. In line with this designation, planning permission was granted at the end of 2014 for a mixed-use scheme which includes 11 units at ground floor, extending to 1,300 sqm gross, for a range of commercial uses (A1-3,5, B1 and D1). The largest unit is 441 sqm gross. Whilst construction is underway on the development, there are no confirmed occupiers of the commercial units. The new local centre is located c.200m from the nearest point of the application site.
- 5.7.5 The applicant has not considered the potential implications of investment in this planned new centre. Furthermore, because of the broad brush nature of the convenience impact assessment, it is not possible to establish what proportion of turnover the applicant anticipates will be derived from top-up convenience shopping and therefore competing with any convenience provision as part of the Heart of Maylands.
- 5.7.6 Having regard to the overall convenience turnover of the proposed development in the region of £17m, it would not be unreasonable to suppose that in the region of £4m might be accounted for as top-up shopping expenditure. The key question to consider is whether this top-up expenditure being absorbed by the proposed foodstore would prejudice occupier confidence in the Heart of Maylands such that finding a convenience store operator to take the unit in the new centre would be difficult.
- 5.7.7 It is acknowledged that the permitted scheme at the Heart of Maylands comprises a number of uses and units to enable the new centre to provide the range of local uses that would be expected within a centre of this size. In addition to convenience retail, this is likely to include local comparison retail such as a chemist or florist, service retail uses e.g. hairdressers and local community uses e.g. crèche. However, typically within these centres, it is the presence of a convenience store that drives footfall within the local centre and results in the linked trips that would make the location attractive to these complementary occupiers. In addition, the proposed development includes a significant quantum of A3 floorspace which would compete for operators and customers with the Heart of Maylands. The risk then is that failing to secure an anchor convenience store would prejudice the establishment of a vital and vibrant local centre as envisaged in planning policy.
- 5.7.8 However, as PBA have previously advised DBC when considering potential impacts on planned investment at the Heart of Maylands, in the absence of any formal objection from the developer of the Heart of Maylands local centre to indicate that they anticipate that the application will have a negative impact on attracting tenants to the development, it is recommended that DBC adopt a cautious approach when considering the degree of weight that should be attached to this anticipated adverse impact under paragraph 26 of the NPPF. However, the Council may also wish to consider the effect on planned regeneration as a material consideration.

5.8 Cumulative impact

- 5.8.1 In assessing impact, the applicant has included the permission at Jarman Park within the assessment. This permission was extant at the time of the submission of the application; however, PBA understand that the Jarman Park permission lapsed on 19 August 2015. As such, this is no longer relevant to the consideration of the proposed development. Additionally, a fresh application for a retail development at Jarman Park was refused by the Council in June 2015 on the grounds of retail impact. Whilst an appeal has been lodged, there is no extant permission on the Jarman Park site and therefore this is not relevant to the consideration of the proposed development.

- 5.8.2 Although this is not a point that has been directly considered by the applicant, PBA are aware of another out-of-centre retail application that is currently before DBC for determination for a discount foodstore in close proximity to the application site.
- 5.8.3 Given the proximity of the proposed development to the proposal at the former Breakspear House, it is likely that the two foodstores would largely compete with one another, albeit it may result in some additional impact on Hemel Hempstead town centre.
- 5.8.4 This is not something that PBA have assessed in detail and the above initial view should be considered in such light. In the event DBC is minded to grant permission for both applications, in order to ensure the combined impact of the two developments on Hemel Hempstead Town Centre is acceptable, it is recommended that further work be undertaken on cumulative impact.

5.9 Conclusions on impact

- 5.9.1 The test outlined at paragraph 27 of the NPPF as to whether a refusal is justified on retail impact grounds relates to whether the application is likely to have a significant adverse impact on existing town centres.
- 5.9.2 In PBA's view, the key concern arising relates to the effects of the forecast trade diversion on the vitality and viability of Hemel Hempstead town centre.
- 5.9.3 In its current form, having regard to the suggested conditions proposed by the applicant, PBA consider that there is a likelihood that the proposed development would result in significantly adverse impacts on the vitality and viability of Hemel Hempstead town centre. This would warrant a refusal under paragraph 27 of the NPPF. Therefore, if the Council is minded to grant planning permission and is seeking to ensure that the impact from the development does not result in a likelihood of the impact of being 'significant', then it will need to consider mitigation measures. The most straightforward approach to mitigating impact is to ensure that planning permission is granted with appropriate conditions attached to control the trading characteristics of the development to ensure the level of competition with Hemel Hempstead town centre is controlled and limited.
- 5.9.4 PBA do not agree with the applicant's view that Hemel Hempstead 'is clearly vital and viable'. Having regard to the fragile health of Hemel Hempstead town centre, PBA consider that this impact could be best mitigated through a restriction on the range of comparison goods sold from the development and other conditions that control the manner in which the development functions. Recommendations on potential conditions are therefore set out in Section 6.
- 5.9.5 It should be noted that PBA do not consider the impact on Berkhamsted, Woodhall Farm or Adeyfield to be significantly adverse with reference to the tests in paragraph 26 of the NPPF.

6 Conclusion

6.1 Compliance with the sequential approach

- 6.1.1 A comprehensive review of the evidence provided by the applicant has been undertaken. PBA can conclude that the application complies with the NPPF's test as set out at paragraphs 24 and 27, as well as Policy CS16.

6.2 Impact of the proposed development on existing centres

- 6.2.1 The applicant has undertaken an assessment of both quantitative impact and, to a lesser extent, qualitative impact on Hemel Hempstead and Berkhamsted town centres. Although the submissions made have pointed to the application site's edge-of-centre location, no assessment of the impact on this emergent centre has been undertaken.
- 6.2.2 As noted in Section 5 above, PBA consider that the applicant has understated the level of impact the proposed development may have on Hemel Hempstead town centre. This stems from both methodological shortcomings in the assessment, as well as considerable uncertainty over the future role of the development given the range of convenience, comparison and leisure floorspace proposed. There is a real risk that the proposed development will divert expenditure away from the town centre, as well as retailers and A3 operators that may currently or might in the future occupy premises within Hemel Hempstead town centre. Therefore, PBA are concerned that there is a likelihood of a significant adverse impact to the vitality and viability of the town centre.
- 6.2.3 In addition, given the proximity of the application site, the development may pose a risk to the establishment of the successful local centre at the Heart of Maylands by reducing the attractiveness of the location for a convenience store operator to anchor the new centre. As PBA have advised in relation to the current application at the former Breakspear House, the failure to attract a convenience anchor would limit footfall in the new local centre such that attracting those complementary shops and services necessary to underpin a vital and viable centre could be constrained. The same would be true of the proposed development, particularly given the amount of A3 floorspace also proposed. PBA are therefore concerned that there is a risk of a significant adverse impact to the vitality and viability of the new local centre at the Heart of Maylands. The effect on planned regeneration of the Heart of Maylands is also a material consideration that the Council may wish to consider.

6.3 Recommendations

- 6.3.1 PBA consider that, in the absence of any planning conditions to control the trading characteristics of the proposed development, its impact on the vitality and viability of Hemel Hempstead town centre is likely to be significantly adverse and therefore contrary to paragraphs 26 and 27 of the NPPF and Policy CS16. This would warrant a refusal of the application.

6.4 Potential conditions

- 6.4.1 In the event DBC is minded to grant planning permission and is seeking to ensure that the impact of the development does not result in a likelihood of significantly adverse on Hemel Hempstead town centre, then it will need to consider measures to mitigate impact. The most straightforward approach to mitigating impact is to ensure that planning permission is granted with appropriate conditions attached to control the trading characteristics of the development to ensure the level of competition with Hemel Hempstead town centre is controlled and limited. Whilst it is appreciated that the applicant has put forward conditions, we remain concerned that the development may still have a likelihood of a significant adverse impact.

6.4.2 Taking into account our comments on the Hemel Hempstead town centre and its vitality and viability, the following conditions are recommended in order to protect the vitality and viability of the town centre:

- Restriction on total net sales area (9,262 sqm net) and gross floor area (12,503 sqm GIA);
- Control over the proportions of net sales area devoted to the sale of convenience (1,414 sqm net) and comparison goods (7,848 sqm net);
- Convenience retail floorspace to be restricted to a single unit; the net sales area of that unit limited to 1,767 sqm;
- Minimum unit size: imposing a lower threshold of 650 sqm gross on units;
- Range of goods: prevention of the sale of clothing and footwear;
- Revoking permitted development rights.