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Land North of Eastway, Preston

Appraisal of the Retail Policy Aspects of an Outline Planning Application for Mixed-Use Development on Land to the North of Eastway, Preston (ref: 06/2018/0055)

On behalf of Preston City Council

16th August 2018

HV139

FINAL REPORT



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Contents

1	INSTRUCTIONS, THE KEY ISSUE, WORK UNDERTAKEN AND OUTLINE OF REPORT	1
	Instructions	1
	The Key Issue.....	1
	Work Undertaken.....	4
	Outline of Report.....	5
2	PLANNING HISTORY AND APPEAL INSPECTOR’S REPORT	7
	Planning History for Application Site	7
	Planning History of Cottam Brickworks	8
	Inspector’s Report in Respect of Appeal Ref: APP/N2345/W/15/3130141	10
3	KEY DIFFERENCES BETWEEN THE CURRENT APPLICATION AND THE APPEAL PROPOSAL	18
	Key Differences	18
	Consistency in Decision-Making	20
4	APPRAISAL OF THE APPLICATION AGAINST THE RETAIL POLICY ASPECTS OF THE DEVELOPMENT PLAN	21
	Introduction	21
	The Development Plan in North-West Preston	22
	Conclusion on the Development Plan	25
5	NATIONAL POLICY FOR TOWN CENTRES AND SUSTAINABLE DEVELOPMENT	27
	Introduction	27
	Sustainable Development	27
	The Presumption in Favour of Sustainable Development.....	27
	Ensuring the Vitality of Town Centres	29
	Decision Taking	30
	Principles Confirmed in the new NPPF	30
6	THE SEQUENTIAL AND IMPACT TESTS	32
	Introduction	32
	The Sequential Test	32
	Conclusion on the Sequential Test.....	37
	The Impact Tests	38
	Conclusion on the Impact Tests	40
7	CONCLUSIONS AND RECOMMENDATIONS	41
	Conclusions	41
	Recommendations.....	43

1 INSTRUCTIONS, THE KEY ISSUE, WORK UNDERTAKEN AND OUTLINE OF REPORT

Instructions

- 1.1 In April 2018, Preston City Council instructed HollissVincent to advise on the retail policy aspects of an outline planning application, submitted by Hollins Eastway Limited, in respect of mixed-use development on a site to the north of Eastway (ref: 06/2018/0055). The application seeks to provide for: a supermarket of up to 1,800 sq.m gross internal area (GIA); six further units for Class A1 retail or Class A3 restaurant/café uses, totalling 1,160 sq.m GIA; a Class A3 restaurant of 900 sq.m GIA; and a drive-thru restaurant/café of 200 sq.m GIA in Use Classes A3/A5.

The Key Issue

- 1.2 The application site, which measures 1.91ha, is located within Allocation MD2 of the Preston Local Plan (the PLP), adopted in July 2015. Policy MD2 identifies land for a residential-led, mixed-use development, comprising the construction of approximately 5,300 dwellings and associated local centres, together with the infrastructure to facilitate the creation of a sustainable community. The allocation under Policy MD2 is in line with the Central Lancashire Adopted Core Strategy (the CS), which identifies the North-West Preston Strategic Location (the NWPSL) as being a broad sweep of greenfield land, south of the M55, stretching from the west of Cottam to the east of the A6, including land to the north of Eastway and south of the M55.
- 1.3 Paragraph 5.47 of the CS states that, the NWPSL *'...is complementary to the strategic site at Cottam and provides a rounding off of the urban form of Preston, with a clearly defined boundary of the M55 to the North, M6 to the East and the local authority boundary with Fylde to the West.'*
- 1.4 Paragraph 4.18 of the explanatory wording to Policy MD2 of the PLP states that:

‘Residential development of the scale envisaged in the North West Preston Strategic Location will need to be accompanied by local centres. It is envisaged that there will be a “main” local centre. This main centre, which will include a mix of uses including health and community based services as well as retail outlets, will be supported by smaller neighbourhood centres. None of these centres will be of a scale that exceeds “Local Centre” in the retail hierarchy. The absence of such facilities could create issues related to social isolation, promoting unsustainable patterns of development within the Strategic Location. The North West Preston Masterplan provides more detail on the type of facilities likely to be required and indicative sustainable locations given the likely distribution of population within the area.’

1.5 The Masterplan referred to in Paragraph 4.18 of Policy MD2 is the North West Preston Masterplan, which was approved by the City Council, *‘as guidance’*, in February 2014. Figure 5 of the 2014 Masterplan does not identify the application site as being an indicative location for a Local Centre. However, further work has been undertaken on the Masterplan since the adoption of the PLP and, in March 2017, a revised version of the Masterplan was approved as a Supplementary Planning Document (SPD). In this more recent SPD, the land to the North of Eastway is identified as being a *‘Potential additional small-scale mixed-use local centre’*.

1.6 Thus, the key retail policy issue is whether the current application proposal can be construed to be a *‘Local Centre’*, which is defined in Appendix A of the CS in these terms:

***‘Local Centres:** Include a range of small shops of a local nature, serving a small catchment, typically local centres might include, amongst other shops a small supermarket, a newsagent, a sub-post office and a pharmacy. Other facilities could include a hot food takeaway and laundrette.’*

1.7 The reason why we consider this to be the key issue is that, if the Local Planning Authority reaches a planning judgment that the current application proposal does represent a *‘Local Centre’*, for the purposes of the definition given in the development plan, then it is likely to reach a conclusion that the proposal accords with the retail policy aspects of the development plan. In these circumstances, and in the absence of any other reasons for

refusal, the application would benefit from the presumption in favour of sustainable development set out in Paragraph 11 of the new National Planning Policy Framework (the new NPPF). Moreover, Section 38(6) of the Planning and Compulsory Purchase Act 2004, provides that:

'If regard is to be had to the Development Plan for the purpose of any determination to be made under the planning acts, the determination must be made in accordance with the plan, unless material considerations indicate otherwise.'

- 1.8 Conversely, if the Local Planning Authority was to reach a decision that the current application proposal could not reasonably be deemed to be a *'Local Centre'*, for the purposes of the definition given in the development plan, then the application would not benefit from the presumption in favour of sustainable development. This is because it would not accord with an up to date development plan and because the development plan is not out of date. Likewise, Section 38(6) would indicate a refusal.
- 1.9 Thus, if the Local Planning Authority was to reach a decision that the current application proposal does not constitute a *'Local Centre'*- as was the case in the Inspector's decision on the earlier appeal (APP/N2345/W/15/3130141) - it would need to have regard to the case law relating to *'consistency in decision-taking'*. Therefore, if the current planning application is considered to be *'indistinguishable'* from the dismissed appeal application (ref: 06/2015/0283), then great weight must be accorded to the Inspector's decision in appeal. It should be noted, however, that the Court of Appeal held, in *North Wiltshire* (1992 JPL 955), that like cases do not have to be decided alike, although the decision-maker must give reasons for departure from previous decisions. This Judgment applies, however, only if the applications are *'indistinguishable'*, which, for the reasons given later in this report, we consider not to be the case.
- 1.10 If the Local Planning Authority is unable to reach a definitive conclusion as to whether the current application proposal can be deemed to be a *'Local Centre'*, then we would advise that it should proceed on the basis that it is not a Local Centre, therefore requiring application of the national policy tests set out in Paragraphs 86 to 90 of the new NPPF.

Work Undertaken

1.11 In undertaking our instructions, we have:

- inspected the planning application form, the application drawings and the supporting Planning Statement;
- undertaken site visits, in the company of the case officer at the City Council, to the application site; to the indicative locations for the Main Local Centre and other Local Centres identified on Map 05 of the North West Preston Masterplan SPD; and to the Cottam allocation, under Policy MD1 of the PLP, including the Cottam Brickworks site;
- undertaken consultations with the applicant (Hollins Eastway Limited) and with representatives of Cottam Hall Properties, including its planning consultant De Pol, which had submitted an objection to the application proposal by way of its letter to the City Council of 27th February 2018;
- examined the planning history of the application site and, in particular, the Inspector's report in respect of an earlier appeal by Hollins Strategic Land for a larger scale mixed-use proposal, which covered the site of the current application and land to its immediate east;
- reviewed the relevant parts of the evidence given to the appeal Inquiry by retail experts acting on behalf of the applicant (Mr Pudney of Pudney Shuttleworth) and on behalf of Cottam Hall Properties (Mr Brady of Brady Chartered Surveyors);
- reviewed the planning history of the Cottam Brickworks site, which is identified as the site of a new District Centre in the PLP;
- examined other relevant planning commitments, including the extant consents for:
 - mixed-use development at Sidgreaves Lane/Hoyles Lane (ref: 06/2013/0428);
 - a residential-led, major mixed-use development on land to the north of Eastway at Fulwood, which is being promoted by the Homes and Communities Agency (ref: 06/2013/0349) and includes a site of 0.7ha for mixed uses including Class A1 to Class A5 uses, but for which the most recent reserved matters permission

- suggests that the site identified for mixed-use development will now comprise a neurological care facility and four semi-detached bungalows; and
- a retail-led mixed-use development at Oliver’s Place, which was granted outline consent for retail and Class D2 development in April 2015 (ref: 06/2014/0373), and for which the most recent reserved matters consent was granted in June 2018 (ref: 06/2018/0185), including Class A1 retail warehouse floorspace amounting to 4,311 sq.m, which could provide for a foodstore of a similar size to that contained in the application proposal which we are assessing;
 - appraised the relevant provisions of the Inspector’s report in relation to the Preston Local Plan, of June 2015;
 - reviewed the relevant provisions of the Central Lancashire Retail and Leisure Review (the CLR and LR), prepared by GVA Grimley in March 2010 and the relevant provisions of the Preston City Centre Retail and Leisure Study of May 2013;
 - consulted relevant officers at Lancashire County Council concerning the likely timing of the construction of the Preston Western Distributor (PWD), the East/West Link Road and the Cottam Link Road; and
 - undertaken an examination of the application proposal against the relevant retail policy provisions of the development plan, which comprises the Central Lancashire Adopted Core Strategy, of July 2012, and the Preston Local Plan, adopted in July 2015.

Outline of Report

1.12 With this background in mind, the remainder of our report is structured as follows:

- **Section 2** summarises the relevant planning history of the application site and the site of the proposed District Centre at Cottam Brickworks, with a detailed appraisal of the Inspector’s conclusions in relation to the earlier appeal proposal for a larger mixed-use development, incorporating the application site and land to its immediate east (ref: APP/N2345/W/15/3130141);

- **Section 3** outlines what we consider to be the key differences between the current application proposal compared to the appeal proposal and reaches a conclusion as to whether they are '*distinguishable*' for the purposes of consistency in decision-making;
- **Section 4** provides our appraisal of the current application proposal against the retail policy aspects of the development plan, taking into account, also, the provisions of the North West Preston Masterplan SPD;
- **Section 5** then outlines the requirements of national policy in relation to town centres and sustainable development;
- **Section 6** provides our appraisal of the current application proposal against the key sequential and impact policy tests set out in in Paragraphs 86 to 90 of the new NPPF; and
- **Section 7** sets out our overall conclusions and recommendations.

2 PLANNING HISTORY AND APPEAL INSPECTOR'S REPORT

Planning History for Application Site

- 2.1 In February 2014, Hollins Strategic Land submitted an outline application to the Council for up to 6,395 sq.m of main town centre uses (ref: 06/2014/0092), comprising:
- a foodstore (Class A1) of up to 4,000 sq.m gross, together with an ancillary petrol filling station;
 - a drive-thru restaurant of 170 sq.m (Class A3/A5);
 - a public house of up to 1,050 sq.m (Class A4);
 - small-scale units in Use Classes A1/A3/A5, totalling 475 sq.m; and
 - a Class D1/D2 unit of up to 700 sq.m.
- 2.2 This application was refused by the Council in November 2014, against officer advice. This refusal led to an appeal (ref: 3002607), which was subsequently withdrawn, following the submission of a second outline application in March 2015 (ref: 06/2015/0283). This second application was recommended for refusal for three reasons, which were broadly similar to the reasons for refusal in respect of the first application, these being:
- i) unacceptable impact on the viability and deliverability of Cottam District Centre, contrary to CS Policy 11, and PLP Policies EP3 and MD1;
 - ii) failure of the sequential test in relation to existing defined centres and the proposed Cottam District Centre, which is contrary to CS Policy 11, the NPPF and Policies EP3, MD1 and MD2 of the PLP; and
 - iii) the severe impact on the local and strategic highway network, contrary to Policy ST2 of the PLP and the NPPF.
- 2.3 However, this second application was withdrawn before the Planning Committee meeting was held and an appeal was lodged (ref: APP/N2345/W/15/3130141), on the ground of non-determination.

- 2.4 The second application, which was the subject of the appeal, comprised:
- a Class A1 foodstore of up to 2,325 sq.m (assumed to be a gross measurement);
 - A1 units (said to be non-food) for up to 2,140 sq.m;
 - small-scale units for A1/A3/A5 uses, totalling 465 sq.m;
 - a mixed A3/A5 unit of 400 sq.m;
 - an A3 café of 105 sq.m;
 - an A4 pub of 1,050 sq.m; and
 - a Class D1/D2 use of 700 sq.m.
- 2.5 Thus, the second application, which was the subject of the appeal, had a total gross floorspace of 7,185 sq.m and a total Class A1 retail floorspace of 4,465 sq.m (assuming that all of the small scale units are for A3/A5 Uses).

Planning History of Cottam Brickworks

- 2.6 In March 2012, the City Council granted planning permission, subject to a Section 106 agreement, for a hybrid application at the site of Cottam Brickworks (ref: 06/2009/0499). The hybrid application comprised:
- a) a full application for a Class A1 food retail superstore, of 4,366 sq.m (originally aimed at Tesco), together with a petrol filling station, associated car parking and servicing; creation of a local nature reserve; construction of a marina; and construction of the main access/on-site roads; and
 - b) an outline planning application for up to 206 residential units, Class B1 offices, a restaurant/public house (Class A3/A4) and ground floor commercial uses in Use Classes A2, A3, A4, B1a and D1.
- 2.7 The Section 106 agreement was signed on 8th March 2012 and related, in the main, to:
- i) the provision of footpaths, cycle lanes and bridleway landscaping;

- ii) preparation of a travel plan which seeks to reduce single occupancy car trips to the site and increase accessibility by non-car modes of transport;
- iii) provision of a subsidised bus service, although it is not clear where the service is to operate; and
- iv) provision of affordable housing, in accordance with an agreed formula.

2.8 The Inspector's report in respect of the earlier appeal proposal on Land to the North of Eastway (ref: APP/N2345/W/15/3130141) records (IR7) that: *'Some parts of [the hybrid] planning permission [at Cottam] have been progressed and the full part has been implemented, although no start has been made on the foodstore'*.

2.9 Indeed, our understanding is that the intended operator of the food superstore at Cottam (Tesco) withdrew its interest in the site. As a consequence, a further outline planning application was submitted by Cottam Hall Properties, in December 2014 (ref: 06/2015/0085). This further planning application was resolved to be approved by the Council in June 2015, subject to the completion of a Section 106 agreement, relating to off-site highway works, footpath and cycle links, a bus service and a travel plan, in line with extant planning consent ref: 06/2009/0499.

2.10 The resolved to be approved outline application at Cottam Brickworks (ref: 06/2015/0085) comprises:

- i) retail development, up to 6,105 sq.m;
- ii) food and beverage units, of up to 1,380 sq.m, in Use Classes A3/A4/A5; and
- iii) a health hub, in Use Classes D1/D2, of up to 2,035 sq.m.

2.11 Thus, the total floorspace associated with the minded to approved outline application at Cottam Brickworks amounts to 9,520 sq.m (excluding a PFS of 88 sq.m). The Indicative Site Plan (ref: 8517-P02) associated with this minded to approve application continues to show a food superstore unit of 4,316 sq.m, with two further retail units, each of 700 sq.m, and three smaller retail units, each of 113 sq.m.

- 2.12 Our understanding, however, is that, despite the passage of three years since the minded to approve resolution was taken in June 2015, there has been no Section 106 agreement entered into. The reasons for the lack of progress in executing the agreement are not known to ourselves.

Inspector's Report in Respect of Appeal Ref: APP/N2345/W/15/3130141

- 2.13 The appeal Inspector's report (IR23) identifies three Main Issues, the third of which, relating to impact on the highway network, is outside the scope of our instructions. We turn first, therefore, to Main Issue 1, which was *'whether the proposed development would accord with the retail hierarchy and development strategy for North-West Preston'*.

Main Issue 1 – The Retail Hierarchy and Development Strategy for North-West Preston

- 2.14 The first aspect of the Inspector's conclusions in relation to Main Issue 1 that we draw attention to is the *'...general agreement between the parties that there is a gap in the provision of shopping facilities to serve the existing residents in North-West Preston, but there is disagreement regarding the extent of the need...'* (IR24).
- 2.15 Secondly, we emphasise the Inspector's acceptance (IR28) that *'...additional retail provision is envisaged and indeed expected within the NWPSL... The difference between the parties is whether or not the appeal proposal is an appropriate and policy-compliant way of achieving some of this additional retail provision, in accordance with the retail hierarchy'*.
- 2.16 Thus, with this background in mind, we draw attention to the following conclusions of the Inspector in relation to Main Issue 1:
- i) The CS defines a *'District Centre'* as comprising *'...groups of shops, often containing at least one supermarket and a range of non-retail services such as banks, building societies and restaurants, as well as local public facilities such as a library'* (IR29). This definition contains no limit on the size of shops and no limit on the size of the

catchment (IR29). Thus, it is appropriate that Cottam District Centre (CDC) serves as the District Centre for NWPSL.

- ii) There is no Tier 3 District Centre in NWPSL, as this area is to be served by CDC (see IR30 and page 38 of the 2014 Masterplan).
- iii) The supporting text to PLP Policy MD2 explains that the NWPSL itself is to be served by a 'main' Local Centre, supported by smaller Neighbourhood Centres, none of which are to be of a scale that exceeds Local Centre in the retail hierarchy (IR30). Indeed, the Local Plan Inspector specifically rejected an '*all-encompassing larger centre*' within NWPSL (see paras 53 and 54 of the report of the Local Plan Inspector, as referred to in IR30 of the appeal).
- iv) Local Centres are identified as falling within Tier 4 in the CLR and LR, with the definition provided in Appendix A of the CS. The essential characteristics of Local Centres are that they should contain a range of '*small shops of a local nature, serving a small catchment and might typically include a small supermarket, a newsagent, a sub post office, a pharmacy, a hot food takeaway and launderette*' (our emphasis).
- v) Thus, unlike District Centres, Local Centres are defined in terms of the scale of facilities they provide and the type/size of catchment that they are intended to serve (IR31).

2.17 The Inspector then compared the appeal proposal to the eight existing Local Centres in Preston, as identified under Policy EP4 of the PLP. Five of these are traditional shopping streets containing between 23 and 84 separate units, with three being purpose-built centres of 4 to 8 units. The Inspector identifies small supermarkets in the three purpose-built centres as being EH Booth, Nisa and Tesco Express (IR33), but not stores of the size typically operated by Aldi and Lidl.

2.18 The largest shopping street Local Centre, at Lane Ends, has a Class A1 retail floorspace of 2,893 sq.m and a total overall floorspace of 6,420 sq.m. The largest purpose-built Local Centre, at Sharoe Green, has a total Class A1 retail floorspace of 2,736 sq.m and a total overall floorspace of 2,936 sq.m (IR34). Thus, the overall amount of Class A1 retail

floorspace in the existing eight Local Centres, in Preston, ranges from 445 sq.m to 2,893 sq.m, whilst non-A1 floorspace in these centres ranges from 200 sq.m to 5,028 sq.m.

- 2.19 The appeal proposal, which had a total Class A1 retail floorspace of 4,465 sq.m and a total overall floorspace of 7,185 sq.m, was therefore larger than any of Preston’s Local Centres, both in terms of overall floorspace and Class A1 floorspace (**Table 2.1**). Indeed, the appeal proposal had a total floorspace (7,185 sq.m) that was 75 per cent of the total floorspace associated with the latest application at CDC (9,520 sq.m).

Table 2.1: The size of the current application compared to the appeal proposal, the latest application at CDC and the largest of Preston’s traditional and purpose-built Local Centres

	Appeal Proposal Sq.m gross	Current Application Sq.m gross	CDC Sq.m gross	Lane Ends Local Sq.m gross	Sharoe Green Local Sq.m gross
Class A1 food	2,325	1,800	Unknown	1,203	2,260
Class A1 non-food	2,140	1,160	Unknown	1,690	276
TOTAL CLASS A1	4,465*	2,960	6,105	2,893	2,536
A3/A5 units	970	1,100	1,380		
Class A4 Pub	1,050	0	0		
Class D1/D2	700	0	2,035		
NON-CLASS A1	2,720	1,100	3,415	3,527	200
TOTAL FLOORSPACE	7,185	4,060	9,520	6,420	2,736

* Ignores the possibility of any of the small units being taken for Class A1 uses

- 2.20 The Inspector emphasises that the definitions of District and Local Centres in the CS provide a distinction in terms of a) size of catchment area and b) whether they contain a ‘supermarket’ or a ‘small supermarket’. His overall conclusion was that the foodstore component of the appeal proposal could not be considered to be a ‘small supermarket’ (IR44).
- 2.21 Nevertheless, he also concludes that whether a proposal amounts to a Local Centre cannot simply be determined on the basis of floor areas, or the categorisation of any foodstore it contains. It has to have regard to the type and nature of the overall provision proposed. He then reaches a conclusion that the appeal foodstore would provide for ‘main shopping trips’ and that the non-food element would serve a ‘wider than local catchment’ (IR45).

- 2.22 The Inspector concludes, therefore, that the inclusion of the non-food retail units also made the appeal proposal incompatible with the Local Centre definition (IR46). Indeed, the Inspector further concludes (IR48) that the appeal proposal would be very similar in composition to that proposed at CDC and would function in a broadly similar way to CDC, acting as a focus for main shopping trips and having a wider than local catchment. He says, therefore, that the appeal proposal would not accord with the definition of a Local Centre as set out in the CS, and would not function as a Local Centre as envisaged in the CS and PLP, especially in the context of the NWPSL (IR48).
- 2.23 As a consequence, the Inspector says that the appeal proposal was at odds with the intentions and objectives of PLP Policies MD1, MD2 and EP3, as being carried forward by the then-emerging Masterplan (2014 edition), which identifies CDC as the *'designated district centre for this part of Preston'*.
- 2.24 The Inspector then notes that the emerging Masterplan makes it clear that larger-scale facilities should be directed to the Main Local Centre, but that the scale of these facilities should not affect the viability and deliverability of the proposed CDC (IR50).
- 2.25 The Inspector's summary (IR53) is very clear. A Local Centre *'...should contain small shops, of a local nature, serving a small catchment'*. In contrast, the definition of a District Centre *'...contains no restriction on the size of shops and no limitation on the size of the catchment'*. He therefore found the appeal proposal to be more akin to a District Centre, both in terms of its composition and the area it would be likely to serve.
- 2.26 Thus, the Inspector finds (IR54) that the appeal proposal would not accord with either the retail hierarchy or the development intentions for North-West Preston, as being pursued through the PLP and the emerging Masterplan. The appeal proposal would therefore harm the planned development of the NWPSL and would fail to complement the CDC. As such, it would be in conflict with CS Policy 11 and PLP Policy MD2.

Main Issue 2 – The Sequential and Impact Tests, and Effect of the Proposed Development on the Viability and Deliverability of Cottam District Centre

Sequential Test

- 2.27 The first conclusion reached by the Inspector, under Main Issue 2, was that the appeal proposal could not be regarded as providing a Local Centre in the context of the NWPSL (IR55) and could not be considered to be development within an existing or proposed centre. As a consequence, the appeal proposal was held not to be in accordance with an up-to-date local plan, so that the sequential test needed to be applied. Furthermore, the Inspector agreed with the Council that *‘...it would not be reasonable to restrict the area of search for an alternative site to the NWPSL alone’* (IR55). Nevertheless, he rejects the opportunity at the Horrocks Quarter/Queens Retail Park, on the ground that it would serve a predominantly different area (IR56).
- 2.28 Thus, the Inspector forms the view that the sequential search should take account of the catchment that the appeal proposal sought to serve, i.e. North-West Preston (IR57), and that the proposed Cottam District Centre (CDC) *‘...is intended to support both the Cottam strategic site and the whole of the NWPSL’* (IR57). As a consequence, the Inspector concludes that CDC and the appeal proposal *‘...would have substantially overlapping catchments and would therefore be competing for much the same “pot” of local retail expenditure’* (IR58).
- 2.29 Of crucial importance, therefore, is the Inspector’s conclusion that the appeal proposal could form part of the CDC proposal, as conceded by the appellant’s retail witness (IR60). Thus, although the Inspector rejects Oliver’s Place as a potential opportunity, because it does not serve the same or similar catchment to the CDC, he finds that *‘...it is entirely appropriate to include the former Cottam Brickworks site in the area of search for a sequentially preferable location for the appeal proposal’* (IR62).
- 2.30 The Inspector then notes the representations submitted on behalf of Aldi and Lidl, which suggest that the latter would not be interested in the Cottam site, because of the proximity of its existing store at West Strand, but that Aldi was, at that time, interested in

taking a foodstore at the CDC site (IR63), although later he notes that Aldi would need to review its position regarding a store at Cottam Brickworks, if the appeal proposal was to be approved. Nevertheless, he concludes that *'...I am not persuaded that the expressions of interest or disinterest by individual operators should carry significant weight in my consideration of the sequential test'* (IR64). The Inspector's overall conclusion, therefore, is that Cottam Brickworks *'...does represent a suitable and available alternative to the appeal site, capable of accommodating the proposed development, and preferable to the appeal site as it is designated for development as a district centre on the PLP Proposals Map, covered by Policy EP3'* (IR65).

- 2.31 As a consequence, the Inspector concluded that the appeal proposal failed the sequential test set out in Paragraph 24 of the earlier NPPF, and that it was at odds with the retail hierarchy and development intentions for the NWPSL, set out in CS Policy 11 and PLP Policy MD2 (IR65). Indeed, he considered that the minded to approve outline application ref: 06/2015/0085 at Cottam Brickworks was *'...for a broadly similar scheme to the appeal proposal... and therefore has to be considered available to accommodate the appeal proposal'* (IR65).

Impact Test

- 2.32 The Inspector makes it clear that the key issue for the purposes of the investment impact test relates to operator demand and whether the retailer associated with the foodstore at the appeal site would impact on operator demand at CDC (IR68).
- 2.33 In this context, the Inspector found it difficult to come to a definitive view on how much trade the proposed foodstore at the appeal site would take from CDC (IR77). Nevertheless, he is firmly of the view that CDC and the appeal proposal would have overlapping catchments and a similar pattern of trade draw. As such, he concluded that both schemes would be competing for the same available expenditure, rather than being complementary to each other, as sought through PLP Policies MD1, MD2 and EP3 (IR77).
- 2.34 He also concludes that the appeal proposal and CDC would be competing for the same type of operators (IR78), but that, from a commercial standpoint, the appeal site offers

advantages over the Brickworks site, because of its good visibility from Eastway and the absence of contamination/topography issues (IR79).

2.35 Thus, the Inspector gives particular weight to a letter from Aldi Stores Limited, dated 21st October 2015, which states that *'...if the appeal proposal was to be approved, Aldi would need to review its position regarding its proposed Cottam Brickworks store, with the strong likelihood that it would withdraw'* (IR80). Aldi's letter also expresses the view that the proposals for CDC would be threatened by the range of uses being put forward in the appeal proposal.

2.36 Furthermore, the Inspector found the appeal site to be an attractive and easily developable location that would have little difficulty in securing occupiers. This reinforces the Inspector's view that the appeal proposal would represent a significant competitor to the approved CDC, which is intended to serve the whole of the NWPSL (IR82). Indeed, the Inspector notes that the appellant's own figures suggest a 20 per cent diversion from CDC, which he regards as being *'not insignificant'* (IR82 and 83). This finding, together with the weight that he gives to the letter from Aldi, lead to his conclusion that there is *'...a strong likelihood that CDC would lose its likely food anchor'* and that this *'...would result in a potentially significant adverse impact on the viability of CDC, as in such circumstances there is general agreement that the CDC scheme would not be deliverable... which would clearly be harmful to the development plan strategy for the NWPSL'* (IR83).

The Inspector's Overall Conclusion in Relation to Main Issues 1 and 2

2.37 The Inspector's overall conclusions in relation to Main Issues 1 and 2 (IR 84) were that the appeal proposal would:

- i) fail to satisfy the sequential test;
- ii) have an adverse impact on the deliverability and viability of the proposed CDC;
and
- iii) be at odds with the development plan strategy for North-West Preston set out in PLP Policies MD1, MD2 and EP3.

- 2.38 His summary conclusions (IR122), therefore, were that:
- i) the proposed development would not accord with the CS definition of a ‘*Local Centre*’ and that the appeal site is not suitable for a development of the size, scale and nature of the appeal proposal;
 - ii) the appeal proposal does not satisfy the sequential test; and
 - iii) the appeal proposal would have a harmful impact on the viability of CDC.
- 2.39 Thus, notwithstanding his favourable findings in relation to impacts on the highway network, his adverse conclusions on the first and second main issues lead him to conclude that ‘...*this proposal would be in clear conflict with the development plan and, accordingly, would not constitute sustainable development in the terms set out in the NPPF*’ (IR122).

3 KEY DIFFERENCES BETWEEN THE CURRENT APPLICATION AND THE APPEAL PROPOSAL

Key Differences

- 3.1 Table 2.1, in Section 2 of our report, shows that the current application proposal has a total gross floorspace (4,060 sq.m) that is 57 per cent of the gross floorspace associated with the appeal proposal (7,185 sq.m). Similarly, Table 2.1 reveals that the maximum total Class A1 retail floorspace associated with the current application, of 2,960 sq.m gross, is 66 per cent of the total A1 Floorspace associated with the appeal proposal. Furthermore, we would emphasise that the current application proposal has a total floorspace (4,060 sq.m gross) which is only 43 per cent of the total floorspace proposed in the most recent application at CDC (9,520 sq.m). There is also a clear distinction with the latest proposal at CDC in terms of the total retail floorspace associated with the current application proposal, which, at 2,960 sq.m, is only 48 per cent of that proposed for CDC.
- 3.2 We note, nevertheless, that the foodstore component of the current application proposal has a gross floorspace (1,800 sq.m), which is 77 per cent of the size of the foodstore component of the appeal proposal (2,325 sq.m). Of crucial significance, however, is the fact that the foodstore component of the current application is of a size which is smaller than the largest of the supermarkets in Preston's existing local centres, which is the Booths store at Sharoe Green Local Centre. Indeed, Volume 2 of GVA's Central Lancashire Retail and Leisure Review (the CLR and LR) reveals that the Booths store at Sharoe Green has an estimated convenience floorspace of 2,260 sq.m gross. This Booths store is referred to in paragraph 44 of the Inspector's report in relation to the appeal proposal, and it can be inferred (although he does not specifically say so) that a store of its size (i.e. 2,260 sq.m) is compatible with Sharoe Green's designation as a 'Local Centre'.
- 3.3 Thus, although we note that the largest foodstore in the remaining local centres, which is the Nisa Extra store in Miller Road Local Centre, has a convenience floorspace of just 1,176 sq.m, we accept that, in putting forward a foodstore of 1,800 sq.m gross, the applicant has attempted to reflect the 'small supermarket' aspect of the definition for a

'Local Centre' provided in Appendix A of the CS. Nevertheless, we consider that the foodstore component is at the maximum end of any reasonable definition of a 'small supermarket', so that, in the event that the Local Planning Authority is of a mind to grant permission for the latest application, it should attach a condition which ensures that the gross floorspace associated with a supermarket component does not exceed 1,800 sq.m.

- 3.4 There are, however, a number of further significant differences between the current application proposal and that put forward in the appeal. The differences of most relevance are:
- i) the fact that the current application proposal does not contain any large non-food units, whereas the appeal proposal sought a total non-food Class A1 floorspace of 2,140 sq.m, disaggregated into three units;
 - ii) the fact that the current application proposal provides for six small units, totalling 1,160 sq.m, which are to be used for Class A1 or Class A3 uses and which will clearly have a highly localised pattern of trade draw;
 - iii) the fact that the current application proposal does not contain any D1/D2 Uses, which the applicant accepts would be more appropriately located in the 'Main Local Centre'; and the fact that
 - iv) the current application proposal does not contain a large pub in Class A4.
- 3.5 We do note, however, that the current application proposal does incorporate a large restaurant unit, of up to 900 sq.m, in Use Class A3.
- 3.6 In our planning judgement, therefore, there are three aspects of the current application proposal that make it materially different to the appeal proposal considered by the Inspector; these are:
- a) the absence of any large non-food retail units, which would have a propensity to draw in trade from residents beyond the NWPSL;
 - b) the reduced size of the foodstore, which, at 1,800 sq.m GIA, would be too small for the current generation of Lidl store proposals (outside of London), with Lidl's ideal

requirement being between 2,400 sq.m and 2,600 sq.m GIA, although we accept that a store of 1,800 sq.m GIA falls within Aldi's preferred store size range; and

- c) the absence of any health and community facilities (Class D1) and absence of any leisure facilities (Class D2), which would be more appropriately located in the Main Local Centre, which is proposed in the North-West quadrant of the intersection of Sandy Lane and the East/West Link Road.

- 3.7 As a consequence, we consider the current application proposal, which comprises a supermarket of 1,800 sq.m GIA and six small units suitable for Class A1 and Class A3 uses, together with a drive-thru and large restaurant, can be interpreted as representing a 'Local Centre'. However, the foodstore component, at 1,800 sq.m GIA, is at the maximum end of what we would judge to be a 'small supermarket' and hence the need for a planning condition that limits the size of the foodstore to no more than 1,800 sq.m GIA, including, for the avoidance of doubt, any mezzanine area.

Consistency in Decision-Making

- 3.8 Our overall conclusion, therefore, is that the current application proposal is clearly 'distinguishable' from the appeal proposal, so that there would be clear grounds for the Local Planning Authority to reach a different decision on the current application proposal, compared to the Inspector's decision on the materially different appeal proposal.
- 3.9 Nevertheless, if the Local Planning Authority was to reach a planning judgement that the current application is in fact 'indistinguishable' from the appeal proposal, then the Inspector's decision in respect of the latter would clearly be a material consideration to which considerable weight should be given. However, even in these circumstances, we note that the Court of Appeal has held, in *North Wiltshire* (1992 JPL 955), that like cases do not have to be decided alike, provided that the decision-taker gives adequate reasons for departure from previous decisions and has regard to the importance of consistency in decision-taking. This applies, however, only if the applications are 'indistinguishable', which, for the reasons stated earlier in this section of our report, is not considered to be the case.

4 APPRAISAL OF THE APPLICATION AGAINST THE RETAIL POLICY ASPECTS OF THE DEVELOPMENT PLAN

Introduction

4.1 Section 70(2) of the Town and Country Planning Act 1990 provides that in dealing with an application for planning permission, the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.

4.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that:

'If regard is to be had to the Development Plan for the purpose of any determination to be made under the planning acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.'

4.3 The first test, and the statutory starting point, is whether the application is *'in accordance with the plan'*, which is a phrase that has been the subject of debate in the High Court in the context of Section 54A of the Town and Country Planning Act 1990. In his Judgment of 31 July 2000 (R v Rochdale Metropolitan Borough Council ex parte Milne), Mr Justice Sullivan (as he then was) concluded as follows:

'...I regard as untenable the proposition that if there is a breach of any one Policy in a development plan a proposed development cannot be said to be "in accordance with the plan"...'

'For the purposes of Section 54A, it is enough that the proposal accords with the development plan considered as a whole. It does not have to accord with each and every policy therein.'

4.4 This Rochdale Judgment is applicable to the interpretation of Section 38 (6) of the 2004 Act and the Council must reach a decision, therefore, as to whether the application is in accordance with the development plan, when it is considered as a whole.

The Development Plan in North-West Preston

- 4.5 The development plan in North-West Preston comprises:
- i) the Central Lancashire adopted Core Strategy Local Development Framework, approved in July 2012 (the CS); together with
 - ii) the Preston Local Plan Site Allocations and Development Management Policies, adopted in July 2015 (the PLP).

Central Lancashire adopted Core Strategy Local Development Framework (the CS), adopted in July 2012

- 4.6 The Spatial Strategy set out in Section 5 of the CS identifies Cottam as one of four **Strategic Sites** that are said to be ‘...*central to the achievement of the Core Strategy*’ (Paragraph 5.25). The Strategic Site at Cottam comprises mostly greenfield land (60ha) – known as Cottam Hall – that is in the ownership of the Homes and Communities Agency (the HCA). This greenfield land forms part of a larger urban extension to Central Lancashire New Town, which commenced in the 1980s but is only around half complete. However, part of the Cottam Strategic Site (14ha) represents urban brownfield land in the form of the former Cottam Brickworks site.
- 4.7 The CS makes provision for around 1,300 new homes across the Cottam Hall and Brickworks sites, of which 599 units have already been granted permission, including the outline consent for 93 dwellings at the Brickworks site (ref: 06/2017/0255).
- 4.8 The CS also identifies three **Strategic Locations**, including North West Preston, which are also said to be ‘...*central to the achievement of the Core Strategy*’ (Paragraph 5.26). The North West Preston Strategic Location (the NWPSL) is a broad sweep of mainly greenfield land, to the south of the M55, stretching from the west of Cottam eastwards to areas known as Bartle, and extending to the east of the A6. Paragraph 5.47 of the CS states that: ‘*The Strategic Location [the NWPSL] is complementary to the Strategic Site at Cottam*’, and Paragraph 5.48 of the CS states that: ‘*The area will contribute up to 2,500 dwellings over the plan period (to 2026)*’. This dwelling contribution has obviously

substantially increased, following the adoption of the subsequent PLP, Policy MD2 of which envisages the construction of around 5,300 dwellings and associated local centres.

- 4.9 Policy 11 of the CS sets out the overall hierarchy of centres in Preston and it identifies Cottam as being the location for a proposed district centre and a key element in the overall hierarchy. Indeed, the Policy seeks to maintain, improve and control the mix of uses in such centres, so as to appropriately serve local needs and it requires that main town centre uses are focussed in the defined town centres. Thus, it seems clear that the CS envisages that the district centre at Cottam will serve the whole of the NWPSL.

The Preston Local Plan Site Allocations & Development Management Policies (the PLP), adopted in July 2015

- 4.10 Allocation MD1 of the PLP identifies Cottam as a Strategic Site for development, noting that most of the greenfield land (known as Cottam Hall) is owned by the Homes and Communities Agency. Paragraph 4.5 of the PLP then refers to the City Council's Interim Planning Statement, which identifies the former Cottam Brickworks site for a mixture of uses, including retail, residential and employment. Indeed, it is noted that the overall allocation at Cottam will provide for around 1,300 homes, of which around 1,100 will be at the Cottam Hall site, with the remainder being located at Cottam Brickworks.
- 4.11 Thus, Policy MD1 of the PLP identifies Cottam as being the location for a new district centre, which will provide for a range of uses appropriate to a major residential area. The explanatory wording in support of Policy MD1 also refers to a new link road being built between Cottam Hall and the proposed Western Distributor Road, and to the construction of a new railway station. Thus, given these significant infrastructure requirements, Paragraph 4.10 explains that *'...a key consideration moving forward will be protecting the viability of development'*.
- 4.12 Policy MD2 of the PLP then identifies North West Preston as being a Strategic Location, as identified on the Policies Map, which will have the capacity to accommodate approximately 5,300 new homes and associated local centres, together with the infrastructure to facilitate the creation of a sustainable community. The boundary of the

Masterplan area coincides with the area covered by Policy MD2. Thus, Paragraph 4.17 of the PLP advocates the provision of appropriate ‘community centres’, where services, such as shops, health and education, will be located, with the East-West Link Road being the primary transport distributor.

4.13 Of crucial importance is the statement in Paragraph 4.18 of the PLP, to the effect that:

‘Residential development of the scale envisaged in the North West Preston Strategic Location will need to be accompanied by local centres. It is envisaged that there will be a “main” local centre. This main centre, which will include a mix of uses including health and community based services as well as retail outlets, will be supported by smaller neighbourhood centres. None of these centres will be of a scale that exceeds “Local Centre” in the retail hierarchy. The absence of such facilities could create issues related to social isolation, promoting unsustainable patterns of development within the Strategic Location. The North West Preston Masterplan provides more detail on the type of facilities likely to be required and indicative sustainable locations given the likely distribution of population within the area.’

4.14 The North West Preston Masterplan SPD, of March 2017, provides further guidance; it emphasises that ‘...Cottam Brickworks is the designated district centre for this part of Preston, so it is important to ensure that the scale of new retail provision at North West Preston respects this’. The Masterplan also specifies that the Main Local Centre is to be at the junction of the East-West Link and Sandy Lane, and that it is this Main Local Centre to which larger-scale retail facilities should be directed, albeit that ‘...these should not affect the deliverability and viability of the proposed district centre within the Cottam Strategic Site’. . Thus, in order to be ‘complementary’ to the Strategic Site at Cottam, it is clear that the application proposal must not be of a scale that exceeds ‘Local Centre’ in the retail hierarchy

4.15 Policy EP3 of the PLP identifies Cottam Brickworks as being the site for the proposed Cottam District Centre and it states that ‘...mixed-use retail and commercial development that supports the role and function of a district centre will be permitted’. Indeed, the explanatory wording in Paragraph 6.46 envisages that appropriate uses within the district

centre will include *'...a supermarket, food and drink, leisure uses, public and community uses and other uses complementary to local shops'*. Appendix A of the CS also elaborates on the definition of 'District Centres', and suggests that they should contain *'...at least one supermarket and a range of non-retail services, such as banks, building societies and restaurants, as well as local public facilities such as a library'*.

- 4.16 Policy EP4 of the PLP identifies the eight existing Local Centres within Preston, as defined on the Policies Map, with new local centres proposed under Policy MD2 within the NWPSL. The explanatory wording in Paragraph 6.42 emphasises that Local Centres play an important role in Preston's retail hierarchy, as well as acting as social centres and places of employment, providing the function of convenience shopping, a range of services and community facilities. Paragraph 6.42 also notes that the existing Local Centres in Preston vary in size, with some having only a handful of units, whilst other are larger and support a number of local shops and basic services, meeting local residents' daily top-up shopping needs.
- 4.17 The actual wording of Policy EP4 seeks to prevent the over-proliferation of non-retail uses, at the expense of local retail provision in the local centres, but does allow for non-retail uses, subject to the criteria set out Criteria 2(a) and 2(b) of the policy.

Conclusion on the Development Plan

- 4.18 Our planning judgement, on balance, is that the current application proposal can reasonably be deemed to represent a *'Local Centre'*, albeit that the size of the foodstore is at the maximum end of any reasonable definition of *'small supermarket'*. If the Local Planning Authority accepts our planning judgement in this respect, then it follows that the current application proposal does accord with the retail policy provisions of the development plan. Thus, if there are no other reasons for resisting the application arising from issues that are outside the scope of our instructions, then the current application would benefit from the presumption in favour of sustainable development set out in Paragraph 11 of the new NPPF and Section 38(6) of the 2004 Act would require an approval, unless material considerations indicate otherwise.

4.19 However, if the Local Planning Authority reaches a planning judgement that the current application proposal does not represent a '*Local Centre*', then it would not be in accord with the provisions of Policies MD1, MD2 and EP3 of the PLP, so that, in these circumstances, the current application should be refused, unless material considerations indicate otherwise.

5 NATIONAL POLICY FOR TOWN CENTRES AND SUSTAINABLE DEVELOPMENT

Introduction

- 5.1 The new National Planning Policy Framework (the new NPPF) was published in July 2018 and it sets out the Government's planning policies for England and how these should be applied. Paragraphs 2, 12 and 47 of the new NPPF continue to emphasise that planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. Paragraph 2 also confirms that the NPPF is a material consideration in planning decisions.

Sustainable Development

- 5.2 Paragraph 7 of the NPPF explains that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 then states that *'Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways, so that opportunities can be taken to secure net gains across each of the different objectives'*. Thus, the three overarching objectives are:

- an **economic** objective, to help build a strong, responsive and competitive economy;
- a **social** objective to support strong, vibrant and healthy communities; and
- an **environmental** objective to contribute to protecting and enhancing our natural built and historic environment.

The Presumption in Favour of Sustainable Development

- 5.3 Paragraph 10 of the NPPF confirms that *'...at the heart of the Framework is a presumption in favour of sustainable development'*. Paragraph 11 states that:

For **decision-taking** this means:

- approving development proposals that accord with an up-to-date development plan without delay; or
- where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - ii. 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.

5.4 The second decision-taking bullet point in Paragraph 11 of the NPPF only comes into force where there are no relevant development plan policies, or where policies of most importance for determining the application are out of date. The development plan for North-West Preston comprises:

- i) the Central Lancashire adopted Core Strategy Local Development Framework, approved in July 2012 (the CS); together with
- ii) the Preston Local Plan Site Allocations and Development Management Policies, adopted in July 2015 (the PLP).

5.5 Thus, both elements of the development plan post-date the March 2012 publication of the previous NPPF. Furthermore, we consider that the development management policies for main town centre uses in the new NPPF are not materially different from its predecessor. As a consequence we consider that the CS and PLP remain consistent with national policy and that the application being considered on the land to the North of Eastway will benefit from the presumption in favour of sustainable development if the

local planning authority deems it to be a Local Centre, for the purposes of the definition given in Appendix A of the Core Strategy.

Ensuring the Vitality of Town Centres

- 5.6 Section 7 of the new NPPF sets out the Government's planning policies for ensuring the vitality of town centres. Paragraph 85 emphasises the need to support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation. Thus, planning policies should:
- define a network and hierarchy of town centres and promote their long term vitality and viability.
 - define the extent of town centres and primary shopping areas and make clear the range of uses permitted in such locations.
 - retain and enhance existing markets.
 - allocate a range of suitable sites in town centres to meet the scale and type of development likely to be needed, looking at least 10 years ahead.
 - allocate appropriate edge of centre sites if suitable and viable town centre sites are not available; and
 - recognise that residential development often plays an important role in ensuring the vitality of centres.
- 5.7 Paragraphs 86 and 87 then set out the sequential test that applies to planning applications for main town centre uses which are neither in an existing centre, nor in accordance with an up-to-date Plan. Paragraph 86 states that *'Main town centre uses should be located in town centres, then in edge-of-centre locations, and only if suitable sites are not available (or expected to become available in a reasonable period) should out-of-centre sites be considered'*. In considering edge and out-of-centre proposals, Paragraph 87 states that *'...preference should be given to accessible sites that are well-connected to the town centre'*. In applying the sequential test, Paragraph 87 also requires

applicants and local planning authorities to demonstrate flexibility in relation to issues such as format and scale.

5.8 Paragraph 89 of the NPPF then sets out the impact tests for applications for retail and leisure development that are located outside town centres and which are not in accordance with an up-to-date Local Plan. Paragraph 89 requires applications for such development, which are over 2,500 sq.m (or a locally set threshold), to include an assessment of:

- a) *‘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*
- b) *‘the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider retail catchment.’*

5.9 Paragraph 90 of the NPPF confirms that *‘Where an application fails to satisfy the sequential test, or is likely to have a significant adverse impact on one or more of the considerations [in paragraph 89], it should be refused’.*

Decision Taking

5.10 We draw attention ,also, to Paragraph 38 of the new NPPF, which states that *‘Local Planning Authorities should approach decisions on proposed development in a positive and creative way... and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision takers at every level should seek to approve applications for sustainable development where possible’*

Principles Confirmed in the new NPPF

5.11 The new NPPF confirms a number of fundamental principles which are of relevance in determining the application proposal which is the subject of this report; we draw attention, in particular, to the following:

- a) The new NPPF continues to emphasises the role of the development plan as the statutory starting point in the consideration of planning applications, so that

applications which accord with an up-to-date development plan should be approved without delay, whereas if there is conflict with the development plan, applications should be refused, unless material considerations indicate otherwise.

- b) The NPPF itself is a material consideration, to which we give significant weight.
- c) In decision taking, the presumption in favour of '*sustainable development*' applies not only where development proposals accord with an up to date development plan, but also in circumstances where there are no relevant development plan policies, or the policies that are most important are out-of-date.
- d) The new NPPF maintains previous policy in seeking to promote competitive and healthy town centres.

5.12 For the reasons set out in Section 4, we consider that the development plan is not absent, or out-of-date. Moreover, our planning judgement is that the current application proposal can reasonably be deemed to be a '*Local Centre*', so that it accords with the retail policy aspects of the development plan. Thus, if the Local Planning Authority accepts that the application is in accordance with the development plan, then the sequential and impact tests set out in Paragraphs 86 to 90 of the new NPPF would not apply.

5.13 Nevertheless, for the sake of completeness, we do apply these tests in the next section of our report, given the possibility that the Local Planning Authority may not agree with our conclusions in relation to the appraisal of the application against the provisions of the development plan.

6 THE SEQUENTIAL AND IMPACT TESTS

Introduction

- 6.1 The sequential and impact tests set out in Paragraphs 86 to 90 of the new NPPF only apply when considering applications that are located outside of town centres and which are not in accordance with an up-to-date local plan. This section of our report only applies, therefore, if the Local Planning Authority disagrees with our assessment of the application against the retail policies in the development plan.

The Sequential Test

- 6.2 The appeal Inspector concluded that the appeal application was not a 'Local Centre' in the context of the NWPSL and the requirements of PLP Policy MD2, so that the sequential test needed to be applied. However, for the reasons set out earlier in our report, we consider that the current application proposal is materially different to the appeal proposal and that it is reasonable to conclude that it does represent a 'Local Centre' within the context of the development plan.

The Provisions of the NPPF

- 6.3 Thus, with this background in mind, we note that Paragraphs 86 and 87 of the new NPPF sets out the sequential test that applies to planning applications for main town centre uses that are not in an existing centre and not in accordance with an up-to-date Local Plan. Paragraph 86 states *that 'Main town centres uses should be located in town centres, then in edge of centre locations, and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered'*. In considering edge and out-of-centre proposals, Paragraph 87 states that *'...preference should be given to accessible sites that are well-connected to the town centre'*.
- 6.4 In applying the sequential approach, Paragraph 87 requires applicants and local planning authorities to demonstrate flexibility on issues such as format and scale. However, in line with Paragraph 24 of the previous NPPF, Paragraph 87 makes no specific mention of the words *'car parking'* and *'disaggregation'* in applying the flexibility component of the test.

- 6.5 Indeed, we note that the Inspector for the Vulcan Road appeal in Sheffield (ref: APP/J4423/A/13/2189893) stated, in Paragraph 34 of his decision of 3rd July 2013, that *'...the absence of any reference to other elements of flexibility such as car parking provision and disaggregation [in the previous NPPF]... is both telling and intentional'*. Furthermore, in his decision of 11th June 2014, in respect of a major mixed-use development proposal at Rushden Lakes (ref: APP/G2815/V/12/2190175), the Secretary of State confirms, in Paragraph 16 of his decision letter, that *'...there is no requirement to disaggregate'*.
- 6.6 Moreover, neither Paragraph 86 nor Paragraph 87 of the new NPPF make any specific reference to the issue of viability in assessing the suitability of sites. Nevertheless, we consider that viability is an important aspect of the suitability component of the sequential test. Indeed, we would emphasise that helpful clarification on this matter has been provided by the Inspector's report in respect of the aforementioned Rushden call-in Inquiry, in which he concludes that *'...the task is to identify sequentially preferable sites that are suitable and available which necessarily includes consideration of deliverability/viability'* (IR Paragraph 8.54, our emphasis); and we note that the Secretary of State's decision letter does not contest this conclusion.

Planning Policy Guidance (the PPG)

- 6.7 Paragraph ID: 2b-010 of the Government's Planning Policy Guidance (the PPG) provides further advice on how the sequential test should be used in decision taking. It confirms that it is for the applicant to demonstrate compliance with the sequential test, with support from the local planning authority, which has a duty to share any relevant information. The PPG confirms that there is a requirement, in assessing the suitability of more central sites, to demonstrate flexibility, with respect to format and scale.
- 6.8 Paragraph ID: 2b-011 states that *'...use of the sequential test should recognise that certain main town centre uses have particular market and locational requirements which mean that they may only be accommodated in specific locations'*. The Guidance states,

however, that there must be a robust justification if a location-specific requirement is being advanced, and that land ownership does not provide such a justification.

- 6.9 Finally, we note that Paragraph ID: 2b-012 requires local planning authorities to recognise that town centre locations can be more expensive and complicated than building elsewhere, so that they should be *'...realistic and flexible in terms of their expectations'*.

Important Court Judgment

- 6.10 Before we turn to our own appraisal of the application against the sequential test, we wish to highlight the findings of the Supreme Court Judgment in respect of *Tesco Stores Ltd (the appellant) v Dundee City Council (the respondent)*, which was issued on 21st March 2012. This Judgment provides a ruling on the interpretation of the 'suitability' component of the sequential test. In this case, the Court had to decide whether the word 'suitable' means *'suitable for the development proposed by the applicant'*, or *'suitable for meeting identified deficiencies in retail provision in the area'* (see Paragraph 21 of the Judgment). Subject to the requirement for the applicant to demonstrate flexibility, the Court endorsed the former and rejected the latter. The reasoning and clarification are set out in paragraphs 28, 29, 30, 36, 37 and 38 of the Judgment.
- 6.11 In Paragraph 28 of the Judgment, Lord Reed confirms that *'suitable'* means *'suitable for the development proposed by the applicant'*, but he adds the qualification that there is a need for *'...flexibility and realism from developers and retailers as well as planning authorities'*. In Paragraph 29, he adds that provided the applicant has shown flexibility and had regard to the circumstances of the particular town centre, the question that remains is *'...whether an alternative site is suitable for the proposed development, not whether the proposed development can be altered or reduced so that it can be made to fit an alternative site'*.
- 6.12 Finally, we draw attention to paragraph 38 of the Dundee Judgment in which Lord Hope confirms that *'...the whole [sequential] exercise is directed to what the developer is proposing, not some other proposal which the planning authority might seek to substitute for it which is for something less than that sought by the developer'*. He goes on to state

that ‘...developments of this kind are generated by the developer’s assessment of the market that he seeks to serve...’ and that the sequential criteria ‘...are designed for use in the real world, in which developers wish to operate, not some artificial world in which they have no interest doing so’.

- 6.13 The Inspector in the aforementioned Rushden call-in inquiry describes the Dundee Judgment as being of ‘*seminal importance*’ (IR 8.44) and he states (IR 8.45) that it establishes:
- a) ‘*that if a site is not suitable for the commercial requirements of the developer in question then it is not a suitable site for the purposes of the sequential approach*’; and
 - b) ‘*that in terms of the size of the alternative site, provided that the Applicant has demonstrated flexibility with regards to format and scale, the question is whether the alternative site is suitable for the proposed development, not whether the proposed development could be altered or reduced so that it can be made to fit the alternative site*’ (Inspector’s underlining).

Does Cottam Brickworks Represent an Available and Suitable Opportunity for the Current Application Proposal?

- 6.14 Our consultation with the Principal Estate Surveyor at Lancashire County Council suggests that the Compulsory Purchase Order in respect of the Inquiry into the Preston Western Distributor, the East-West Link Road and the Cottam Link Road is unlikely to be confirmed by the Secretary of State until towards the end of 2019. Moreover, we understand that the overall build contract is likely to be approximately three and a half years. Thus, although development of the District Centre at Cottam Brickworks would appear not to be dependent on completion of the Cottam Link, it seems reasonable to suggest that retail operator demand would be stronger in circumstances where all of the road infrastructure works had been completed and also in circumstances where more of the new residential development within the Policy MD1 area has been completed.
- 6.15 We also note, from our consultation with Cottam Hall Properties, that its anticipated build out period, which we understand incorporates the need for further works dealing

with contamination, is estimated to be 18 months. We have some doubt, therefore, as to whether the Cottam Brickworks site should be deemed to meet the new NPPF requirement for sequential sites to be '*available within a reasonable period*'. We accept, however, that the appeal Inspector considered that the existence of the outline application at Cottam Brickworks, for which the Council passed a minded to approve resolution in June 2015, was sufficient for him to conclude that Cottam Brickworks was available for development.

- 6.16 Nevertheless, given our conclusions in relation to the nature of the current application proposal, and the need for Local Centres within the MD2 allocation, we do not consider that the Brickworks site represents a '*suitable*' opportunity for the type and scale of development sought by the applicant. The Cottam site is, after all, identified as the site for a new District Centre, which will be of a considerably greater scale and incorporate a wider range of main town centre uses than the current application proposal to the North of Eastway.

Does the Location of the Main Local Centre Indicated on Map 05 of the Masterplan Represent an Available and Suitable Opportunity for the Current Application Proposal?

- 6.17 In order for the site for the Main Local Centre to be deemed to be '*available*', we consider that it would be necessary for the East-West Link Road to be at least partially completed, from its start, at Tom Benson Way, to its intersection with Sandy Lane, and that, without such progress, there would be no retail operator demand at the indicative site for the Main Local Centre. Thus, given that the completion of the East-West Link from Tom Benson Way to Sandy Lane is likely to take two to three years, we do not consider that the site of the Main Local Centre represents an '*available*' opportunity for the current application proposal.

Are There Any Other Indicative Locations for Local Centres within the Policy MD2 Area that would Represent an Available and Suitable Opportunity for the Current Application Proposal?

- 6.18 We are aware of an extant consent for a major residential-led mixed-use development, located at the junction of Hoyles Lane with Sidgreaves Lane (ref: 06/2013/0428), and that this extant consent makes provision for a small local centre on a site of 0.25ha, which was earmarked for a range of services in Use Classes A1/A2/A3, D1 and D2. Our understanding, however, is that no progress has been made in relation to the local centre component of this application, and that it is not being actively progressed.
- 6.19 Similarly, we are aware of a major residential-led, mixed-use development proposal on land to the north of Eastway, at Fulwood (ref: 06/2013/0349), for which the outline consent provides for a site of 0.7ha for mixed-use development. However, the latest reserved matters permission in respect of this parcel of land (ref: 06/2017/1083) proposes a neurological care facility and four semi-detached bungalows, with no scope for any retail provision.

Conclusion on the Sequential Test

- 6.20 Our overall conclusion on the sequential test is that it does not apply, because the current application proposal can reasonably be deemed to represent a Local Centre, in line with the provisions of the development plan. Nevertheless, if we are wrong on this point, we do not consider that the site at Cottam Brickworks represents a suitable opportunity for meeting the type and scale of proposal being put forward in the current application to the north of Eastway. The purpose of identifying the Brickworks site is to bring forward a considerably larger district centre, with a wider range of main town centre uses, that can serve both Cottam and the NWPSL. Nor are there any suitable and currently available opportunities for local centres at the other indicative locations shown in Map 05 of the North West Preston Masterplan SPD.

The Impact Tests

- 6.21 The appeal Inspector also concluded that the impact tests set out in Paragraph 26 of the previous NPPF needed to be applied to the appeal proposal, on the ground that it was not in accordance with the development plan.

Impact on Investment

- 6.22 So far as the first of the impact tests is concerned, relating to impact on existing, committed and planned public and private investment, the Inspector's main concern was whether the likely operator of the foodstore component of the appeal would deter operator interest in the opportunity at CDC. He formed the view (IR77) that CDC and the appeal proposal would have overlapping catchments, and that the schemes would be competing for the same available expenditure, rather than being complementary developments, as sought through PLP Policies MD1, MD2 and EP3. He also formed the view (IR78) that the two schemes would be competing for the same commercial operators.
- 6.23 Thus, the Inspector appears to have given weight to the representation submitted by Aldi, dated 21st October 2015, which stated that *'...if the appeal proposal was to be approved, Aldi would need to review its position regarding its proposed Cottam Brickworks store, with the strong likelihood that it would withdraw'* (IR80). As a consequence, he formed a view that CDC could lose its likely food anchor and that this would represent a *'significant adverse'* impact (IR83).
- 6.24 Obviously, there has now been almost three years elapsed since Aldi submitted its representation to the appeal Inquiry, and in that period a substantial quantum of residential development has occurred in the Policy MD1 and Policy MD2 areas. Indeed, the City Council's Monitoring Database suggests 145 completions at Cottam Hall, as at 31st March 2018, with a further 185 dwellings scheduled to be completed at Cottam Hall over the next three years. Similarly, the City Council's database suggests 628 completions within the Policy MD2 area, up to 31st March 2018, with a further 1,024 completions projected within the MD2 area over the next three years, up to March 2021.

- 6.25 Thus, for the MD1 and MD2 areas, combined, the City Council's database suggests 1,997 new dwellings in the period up to March 2021, which, in turn, suggests a new population of around 4,800 persons. If we apply Experian's national average for convenience goods spending per capita in 2021, of £2,186 per person, these new residents would have a convenience goods spending power of approximately £10.5m. Such a quantum of convenience goods spending would more than meet the convenience turnover requirements of the current application proposal.
- 6.26 Thus, given that two or three of the indicative locations for Local Centres in the 2017 Masterplan SPD are unlikely to come to fruition, and given that the delivery of the Main Local Centre is probably at least three years away, we do not share, fully, the Inspector's concern in relation to the likely impact on potential investment in Cottam District Centre. Nevertheless, we must record the concern expressed by the respondents to our consultation with Cottam Hall Properties, which suggested that a planning permission for the current application to the north of Eastway would cause considerable delay of many years to the delivery of the District Centre at Cottam Brickworks.
- 6.27 However, whilst the risk of delay to the delivery of the CDC is clearly a factor against the current application proposal to the north of Eastway, we consider that the concerns expressed by the consultees may be overstated. As a consequence, we do not consider that the risk of some delay would represent a '*significant adverse impact*' that should prove decisive to the Council's consideration of the current application to the north of Eastway, which will clearly be meeting the needs of the considerable number of new residents that already exist, or will be in place by March 2021.

Impact on Vitality and Viability

- 6.28 So far as the second of the impact tests is concerned, we note the difficulty faced by the Inspector in reconciling the conflicting evidence before him, being put forward by the Council and the appellant. We note, however, that the Inspector seems to find the appellant's assessment of a 20 per cent impact to be '*not insignificant*' (see IR82 and IR83). However, as demonstrated in Table 2.1, the current application proposal has a total

retail floorspace (2,960 sq.m GIA) which is only two thirds of the retail floorspace associated with the appeal proposal (4,465 sq.m). Moreover, the current application contains no large non-food units and the small units included in the current scheme would be suitable for both A1 and A3 uses, with a localised trade draw.

- 6.29 In these circumstances, we consider that there is no clear evidence to suggest that the current application proposal would have a '*significant adverse impact*' on the overall vitality and viability and trading levels in Cottam District Centre, or in relation to any other local centre within the Policy MD2 area.

Conclusion on the Impact Tests

- 6.30 Our overall conclusion is that the impact tests incorporated in Paragraph 89 and 90 of the new NPPF do not apply to the current application proposal to the north of Eastway, given our planning judgement, on balance, that it represents a '*Local Centre*' that is in line with the provisions of the up-to-date development plan. Furthermore, even if the Local Planning Authority reaches a different view in relation to whether the current application accords with the retail policy aspects of the development plan, we consider that the expenditure growth associated with the recent and committed housing developments in the NWPSL and at Cottam Hall mean that '*significant adverse impacts*' on investment and trading levels at the proposed Cottam District Centre, or in relation to any other local centre within the MD2 area, are unlikely.

7 CONCLUSIONS AND RECOMMENDATIONS

Conclusions

7.1 The key retail policy issue is whether the current application proposal to the north of Eastway can be construed to be a 'Local Centre' for the purposes of the definition given in Appendix A of the Core Strategy, which states that:

'Local Centres: Include a range of small shops of a local nature, serving a small catchment, typically local centres might include, amongst other shops a small supermarket, a newsagent, a sub-post office and a pharmacy. Other facilities could include a hot food takeaway and laundrette.'

7.2 Our own planning judgement, on balance, is that the current application proposal can be construed to be a 'Local Centre', so that it accords with the retail policy aspects of the development plan. In these circumstances, and in the absence of any other reasons for refusal, the application would benefit from the presumption in favour of sustainable development set out in Paragraph 11 of the new National Planning Policy Framework (the new NPPF) and Section 38(6) of the Planning and Compulsory Purchase Act 2004 would also require an approval, unless other material considerations indicate otherwise.

7.3 Furthermore, in our view, the current application proposal is clearly 'distinguishable' from the appeal proposal, with material differences being:

- a) the absence of any large non-food retail units, which would have a propensity to draw in trade from residents beyond the NWPSL;
- b) the reduced size of the foodstore, which, at 1,800 sq.m GIA, would be too small for the current generation of Lidl store proposals (outside of London), with Lidl's ideal requirement being between 2,400 sq.m and 2,600 sq.m GIA, although we accept that a store of 1,800 sq.m GIA falls within Aldi's preferred store size range; and
- c) the absence of any health and community facilities (Class D1) and absence of any leisure facilities (Class D2), which would be more appropriately located in the Main

Local Centre, which is proposed in the North-West quadrant of the intersection of Sandy Lane and the East/West Link Road.

- 7.4 Thus, given our conclusion that the current application proposal is clearly '*distinguishable*' from the appeal proposal, there would be clear grounds for the Local Planning Authority to reach a different decision on the current application proposal, compared to the Inspector's decision on the materially different appeal proposal.
- 7.5 Nevertheless, if the Local Planning Authority was to reach a planning judgement that the current application is in fact '*indistinguishable*' from the appeal proposal, then the Inspector's decision in respect of the latter would clearly be a material consideration to which considerable weight should be given. However, even in these circumstances, we note that the Court of Appeal has held, in *North Wiltshire* (1992 JPL 955), that like cases do not have to be decided alike, provided that the decision-taker gives adequate reasons for departure from previous decisions and has regard to the importance of consistency in decision-taking. This applies, however, only if the applications are '*indistinguishable*', which, for the reasons stated in our report, is not considered to be the case.
- 7.6 Our planning judgement, on balance, is that the current application proposal can reasonably be deemed to represent a '*Local Centre*', albeit that the size of the foodstore is at the maximum end of any reasonable definition of '*small supermarket*'. If the Local Planning Authority accepts our planning judgement in this respect, then it follows that the current application proposal does accord with the retail policy provisions of the development plan. Thus, if there are no other reasons for resisting the application arising from issues that are outside the scope of our instructions, then the current application would benefit from the presumption in favour of sustainable development set out in Paragraph 11 of the NPPF and Section 38(6) of the 2004 Act would require an approval, unless material considerations indicate otherwise.
- 7.7 However, if the Local Planning Authority reaches a planning judgement that the current application proposal does not represent a '*Local Centre*', then it would not be in accord with the provisions of Policies MD1, MD2 and EP3 of the PLP, so that, in these

circumstances, the current application should be refused, unless material considerations indicate otherwise.

- 7.8 The sequential and impact tests set out in Paragraphs 86 to 90 of the new NPPF only apply when considering applications that are located outside of town centres and which are not in accordance with an up-to-date local plan. Thus, given our conclusion that the proposal does accord with the retail policy aspects of an up-to-date development plan, we consider that the sequential and impact tests do not apply.
- 7.9 Nevertheless, given the possibility that the Local Planning Policy may not accept our conclusion in relation to the current application's compliance with the development plan, we have given consideration to both the sequential and impact tests.
- 7.10 So far as the sequential test is concerned, we do not consider that the site at Cottam Brickworks represents a suitable opportunity for meeting the type and scale of proposal being put forward in the current application to the north of Eastway. The purpose of identifying the Brickworks site is to bring forward a considerably larger district centre, with a wider range of main town centre uses, that can serve both Cottam and the NWSPL. Nor are there any suitable and currently available opportunities for local centres at the other indicative locations shown in Map 05 of the North West Preston Masterplan SPD.
- 7.11 So far as the impact tests are concerned, we consider that the expenditure growth associated with the recent and committed housing developments in the NWPSL and at Cottam Hall mean that *significant adverse impacts'* on investment and trading levels at the proposed Cottam District Centre, or in relation to any other local centre within the MD2 area, are unlikely.

Recommendations

- 7.12 We recommend that the Local Planning Authority accepts that there are no retail policy reasons to resist the current application proposal to the north or Eastway that is the subject of our report.
- 7.13 Nevertheless, given that the size of the foodstore component of the application proposal, at 1,800 sq.m GIA, is at the upper limit of what might reasonably be regarded as a *'small*

supermarket for the purposes of the definition of *Local Centre* given in Appendix A of the Core Strategy, and given the basis on which we have assessed the overall application, we recommend conditions, which seek to secure the following objectives:

- i) the supermarket component of the application proposal shall not exceed 1,800 sq.m GIA and the net sales area of the supermarket component shall not exceed 1,260 sq.m, which represents a net sales area to gross ratio of 70 per cent;
- ii) the total Class A1 floorspace associated with the application shall not exceed 2,960 sq.m gross;
- iii) the six small units identified for Class A1 or Class A3 uses shall have an aggregate floorspace of no more than 1,160 sq.m GIA and none of the individual units shall exceed 280 sq.m, in line with the threshold incorporated within the Sunday Trading laws;
- iv) the 900 sq.m unit identified as a Class A3 restaurant shall be used as a restaurant, and for no other purpose, notwithstanding the provisions of the General Permitted Development Order;
- v) the total amount of *'main town centre uses'* included in the application shall not exceed 4,060 sq.m GIA.