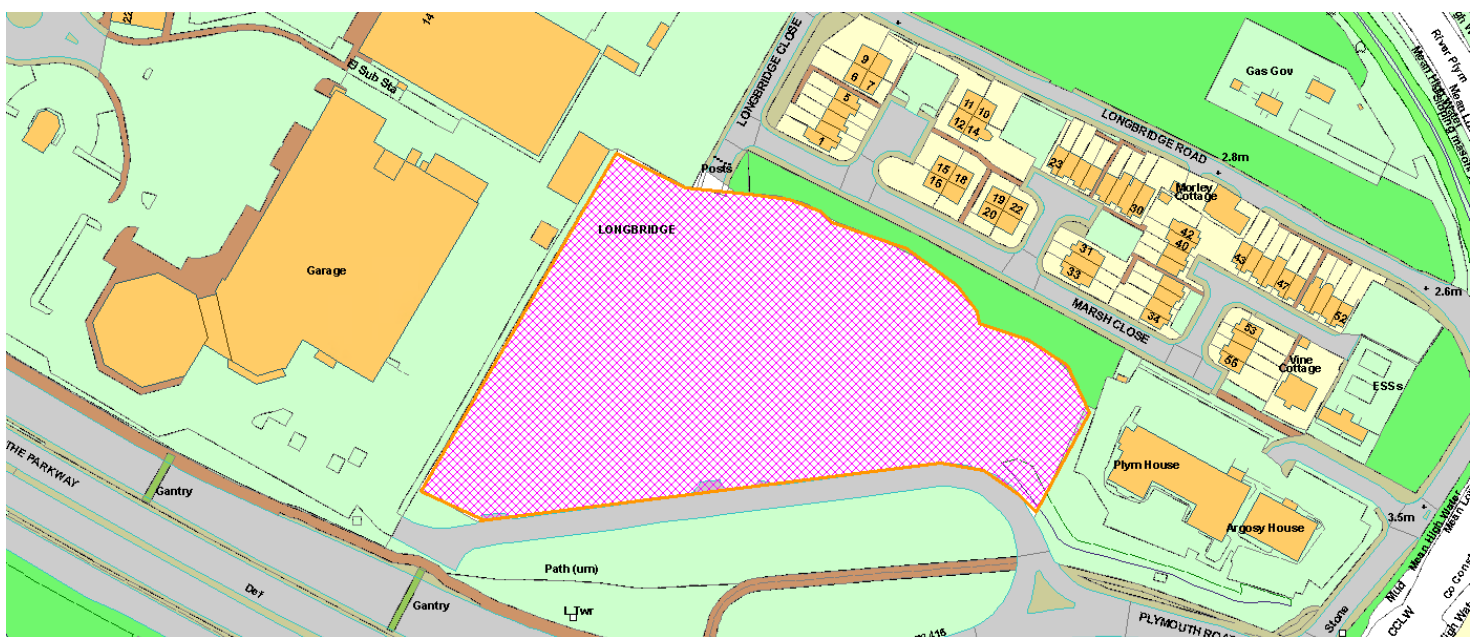


# PLANNING APPLICATION OFFICERS REPORT



<b>Application Number</b>	17/01167/S73	<b>Item</b>	<b>03</b>
<b>Date Valid</b>	30.05.2017	<b>Ward</b>	MOORVIEW
<b>Site Address</b>	Legacy Plymouth International Hotel 270 Plymouth Road Plymouth PL6 8NH		
<b>Proposal</b>	Vary condition 30 of application 17/00150/S73		
<b>Applicant</b>	Eop II Prop Co I S.A.R.L		
<b>Application Type</b>	Removal or variation of a condition		
<b>Target Date</b>	<b>29.08.2017</b>	<b>Committee Date</b>	<b>27.07.2017</b>
<b>Extended Target Date</b>	<b>N/A</b>		
<b>Decision Category</b>	Assistant Director of SPI		
<b>Case Officer</b>	Mr Alistair Wagstaff		
<b>Recommendation</b>	Grant Conditionally		



The application has been referred to Planning Committee by the Assistant Director of Strategic Planning and Infrastructure due to finely balanced policy and precedent issues.

## **1. Description of Site**

The site is the former Legacy Hotel; it is a site of approximately 2.1 hectares north of the principal junction into Plymouth from the A38 Parkway at Marsh Mills. The hotel has now been demolished and the site is vacant with the central section boarded with protective hoarding.

Access to the site is via an existing junction with Plymouth Road which provides a direct route onto the site from the Marsh Mills roundabout with egress onto Plymouth Road eastward only. The access road extends along the front of the site.

A large area of soft landscaping occupies the area in front of the site which contains a number of bushes and trees. Further grassed areas and planting extend around the remaining boundaries of the site.

The site is bounded by a simple, three-storey, red brick, commercial office development to the east and the large units of Marsh Mills retail park to the west. To the north of the site is residential development arranged around a series of parking courts which are accessed from Marsh Close. These are principally two storeys and are of a similar dark red brick to the nearby office development.

## **2. Proposal Description**

The planning application is a Section 73 application which seeks to vary condition 30 of the previously approved application 17/00150/S73 (which is one of a number of Section 73 applications relating to planning application 12/02320/FUL) which granted consent for 4 retail units which are located along the western edge of the site with car parking to the east in front of the units and a restaurant/takeaway along the eastern edge of the site. In determining this application the consideration relates to the acceptability of the proposed change rather than the acceptability of the full proposal and other approved changes as this has already been granted planning consent under application 12/02320/FUL as amended by 16/01102/S73 and 17/00150/S73.

This application seeks to amend the bulky goods restriction (condition 30)  
The existing condition restricts the proposed development to bulky goods:

“Notwithstanding the permitted use of the retail units hereby permitted falling within Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification) the development shall only be used for the sale of bulky goods falling within any of the following categories (and for no other purposes within the Town and Country Planning (Use Classes) Order 1987 (or any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification):

- (i) DIY products, materials, tools and machinery for the repair, maintenance or improvement of the home, the garden and motor vehicles;
- (ii) Electrical goods and other domestic appliances of a bulky nature;
- (iii) Furniture, beds, floor coverings, wall tiles, soft furnishings and textiles of a bulky nature;
- (iv) Cycles, motor and cycle accessories of a bulky nature;
- (v) Kitchen units and accessories of a bulky nature;
- (vi) Office Furniture and Equipment of a bulky nature.

For the avoidance of doubt, only the above products and no others shall be sold at any time.”

This application originally sought to add additional text to that condition allowing an increased range of goods to be sold from Unit one of the scheme only, however during the course of the application it has been agreed with the applicant that a separate condition should be added instead. The new condition is to include the following wording:

“Notwithstanding Condition 30 and the permitted use of the retail units hereby permitted falling within Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification), Unit 1 (as identified on drawing reference 10163\_L01.01) shall also be used for the sale of the following goods of a bulky nature: child and baby home and travel products (including prams, pushchairs, strollers, car seats and booster seats); baby entertainment goods (including baby walkers, bouncers, swings and highchairs); nursery furniture (including cots, wardrobes, chests, changing units, nursing chairs, travel cots and mattresses); and baby baths.

If the unit is used for the above range of goods the following additional goods may also be sold:

- (i) clothing, footwear and accessories for babies and children (up to 10 years of age) and maternity clothing and accessories; (from a maximum area of 465 square metres);
- (ii) Baby feeding products and equipment;
- (iii) baby monitors; cot mobiles; other products designed to meet the need of babies, children (up to 10 years of age) and mothers-to-be;
- (iv) toys, games, party and play equipment for babies and children (from a maximum area of 93 square metres); and
- (v) soft furnishings including duvets, rugs, bedding, towels and changing mats for babies and children (up to 10 years of age).

The maximum cumulative area to be used for the sale of the above products (i-v above) shall not exceed 799 square metres.

For the avoidance of doubt, up to 10% of the gross internal area of Unit 1 may also be used as a café and/or play area.”

This change as set out in the application is to enable Mothercare to take occupation of Unit 1 within the development. However, in considering the application, it should be highlighted that planning permission runs with the land and is not operator specific and as such the determination of the application relates to the broad range of goods sought to be sold and not the identified operator.

### **3. Pre-application enquiry**

Formal pre-application engagement has taken place on the application which focused on establishing the required documentation to support the application rather than the acceptability of the proposal.

### **4. Relevant planning history**

17/00150/S73 - Section 73 application to modify conditions: 2 (plans), 31 (Hours of Delivery and Collection), and 37 (Floor Space Restriction) of Application Reference Number: 16/01102/S73 - Granted Conditionally

16/01102/S73 - The application seeks amendment to the following conditions: 2 (plans), 11 (car parking provision), 14 (car parking management), 19 (odour control), 20 (delivery hours), 39 (hot food takeaway), 40 (opening hours) of application 12/02320/FUL to allow re-siting of unit 5 (168 sqm) A3 restaurant/café and to trade between 7am - 11pm – Granted Conditionally

16/01100/FUL – Erection of drive-thru restaurant (Class A3/A5) with access and servicing arrangements, car parking, landscaping and associated works - Granted Conditionally

12/02320/FUL - Full planning application for demolition of the existing hotel and development of a maximum of 7,900 square metres of A1 retail floorspace and a maximum 712 square metres of A3 restaurant/café floorspace, with access parking, landscaping and associated works - Granted conditionally

99/01123/ADV – Provision of new flag pole and re-siting of existing flag pole – Granted conditionally

94/01044/ADV – Illuminated welcome sign – Granted conditionally

94/00748/ADV – Illuminated welcome sign – Withdrawn

86/01831/FUL – Construction of new entrance/exit road and alterations to car park – Granted conditionally

81/00058/FUL – Erection of 101 bedroomed hotel (amendment to approved plans) – Granted conditionally

79/02608/FUL – Erection of 125 bedroomed hotel including 12 staff bedrooms – Granted conditionally

## **5. Consultation responses**

Economic Development Department – Object to the application in relation to impact on the City Centre from both the immediate impact and also the precedent it sets for future adverse impacts.

## **6. Representations**

One received from Plymouth City Centre Company - The application site has tight restrictions on the sale of goods, which the Council went to great lengths to secure, to protect the City Centre. The weakening of these conditions will allow further applications in out of centre locations to alter the bulk goods restrictions having a cumulative negative impact on the City Centre.

Also are not convinced the wording will stand the test of time to stop sale of adult clothing and footwear should Mothercare exit the unit.

Do not consider sufficient attention has been given to the former BHS unit and potential for subdivision of the block on the western side of Armada Way recently acquired by AEW who are seeking to extend the block to allow large units, which could include Mothercare. If approved the loss of a national brand like Mothercare from the City Centre will impact investment in the City Centre. The approval of Next at Marsh Mills opened the doors to such applications. The Council should not weaken the conditions to protect the City Centre and as such the application should be refused.

## **7. Relevant Policy Framework**

Section 70 of the 1990 Town and Country Planning Act requires that regard be had to the development plan, any local finance and any other material considerations. Section 38(6) of the 2004 Planning and Compensation Act requires that applications are to be determined in accordance with the development plan unless material considerations indicate otherwise.

The development plan comprises of the Local Development Framework Core Strategy (Adopted April 2007).

The Plymouth and South West Devon Joint Local Plan (the JLP) will replace the Core Strategy and other Plymouth Development Plan Documents as the statutory development plan for Plymouth once it is formally adopted.

Annex I of the National Planning Policy Framework (the Framework) provides guidance on determining the weight in relation to existing and emerging development plan policies.

For Plymouth's current development plan documents, due weight should be given to relevant policies according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

For the JLP which is an emerging development plan, the weight is to be determined by the stage of its preparation, the extent to which there are unresolved objections, and its degree of consistency with the Framework.

The JLP is at a relatively advanced stage of preparation, with the pre-submission version formally approved by Plymouth City Council, West Devon Borough Council and South Hams District Council for a six-week period for representations, pursuant to Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations. It is also considered consistent with the policies of the Framework as well as based on up to date evidence. However, until the Regulation 19 stage has concluded, and the scale and nature of the representations known, it is considered that the JLP's policies will generally have limited weight within the planning decision. The precise weight will need to be determined on a case by case basis, having regard to all of the material considerations. Other material considerations include the policies of the Framework itself and guidance in National Planning Practice Guidance (NPPG).

## **8. Analysis**

1. This application has been considered in the context of the development plan, the Pre-Submission Joint Local Plan, the Framework and other material policy documents as set out in Section 7. The key policies relevant to the consideration of the application are Policies, CS06, CS07, CS08, CS09, AV3, AV9, CS28 and CS34 of the Core Strategy and Policies SPT 1, SPT5, SPT6, DEVI, DEVI6, DEV20, PL7, PLY8, PLY10, PL11, PL12, PL13, PLY38, of the Pre-Submission Joint Local Plan and the relevant paragraphs of the NPPF.

2. The key considerations in determining the application are considered to relate to the following matters: retail considerations relating to the sequential test; impact of the proposal and the retail strategy for the city; highways considerations; and the impact on residential amenity.

3. The application is a section 73 application which seeks to amend details set out within condition 30 of application 17/00150/S73, through a new condition, therefore the consideration of this application focuses upon the changes proposed and their acceptability, rather than the acceptability of the scheme as a whole, which has already been established in the granting of the previous planning consents on the site.

### **Retail consideration**

4. The application proposes the addition of a new condition which would allow unit 1 to sell an enlarged range of goods to that set out in condition 30 of 17/00150/S73 to allow the following goods of a bulky nature: child and baby home and travel products (including prams, pushchairs, strollers, car seats and booster seats); baby entertainment goods (including baby walkers, bouncers, swings and highchairs); nursery furniture (including cots, wardrobes, chests, changing units, nursing chairs, travel cots and mattresses); and baby baths. If the unit is used for the above range of goods the following additional goods may also be sold:

- (i) clothing, footwear and accessories for babies and children (up to 10 years of age) and maternity clothing and accessories; (from a maximum area of 465 square metres);
- (ii) Baby feeding products and equipment;
- (iii) baby monitors; cot mobiles; other products designed to meet the need of babies, children (up to 10 years of age) and mothers-to-be;
- (iv) toys, games, party and play equipment for babies and children (from a maximum area of 93 square metres); and

(v) soft furnishings including duvets, rugs, bedding, towels and changing mats for babies and children (up to 10 years of age).

The maximum cumulative area to be used for the sale of the above products (i-v above) shall not exceed 799 square metres. It would also allow, up to 10% of the gross internal area of Unit 1 may also be used as a café and/or play area

5. Unit 1 currently extends to 1,338 square metres (gross at ground floor level) and the applicant advises that a further 279 would be provided at mezzanine level for back of house purposes, this mezzanine extension would be permissible under condition 31 of application 17/00150/S73. Under that condition, unit 1 could be further extended at mezzanine level as long as the total gross internal floor area of the 4 retail units does not exceed 7,875 square metres in total and the mezzanine level of the units does not exceed 3,242 square metres of gross internal area in total.

6. In considering the scheme there are three key interrelated retail considerations. These are (1) the compliance with the sequential test, (2) the impact of the scheme on the vitality and viability and investment in the network of centres required by paragraph 24-27 of the NPPF, (3) how the scheme impacts the spatial retail strategy set out in the Core Strategy and Joint Local Plan. In considering these matters, the focus is on how the future use of the unit is to be controlled in relation to the range of goods to be sold.

7. The restrictions set out in the condition restrict the goods to be sold to in part bulky goods. While these are different to those set out in the existing condition as previously worded, they are bulky goods which can have specific locational requirements. It is however acknowledged that the 799sqm for additional goods are not bulky and this matter and the range of goods set out equally require detailed consideration. While the application is explicit that the proposal relates to Mothercare, as already set out, planning permission runs with the land and is not operator specific. It is also the case that this will not be a personal consent, as such the consideration relates to the broad range of goods to be sold. In this regard while the consideration of the proposal being for Mothercare is not in itself a key consideration, the condition as worded would restrict potential operators able to occupy the unit to those such as Mothercare, Kiddicare or Mamas and Papas and it is this consideration that the determination of the application focuses upon.

#### Plymouth's Retail Strategy and policy context

8. Plymouth has a strong retail strategy for the future of the city and it is important that proposals for retail and other town centre uses are considered in this context. This strategy is set out in the adopted Core Strategy and Pre-submission Joint Local Plan. The Core Strategy takes a supportive approach to new retail development which maintains and enhances the City Centre's role as a major shopping destination, protects the primary retailing role of the City Centre and supports and strengthens the network of District and Local Centres. The Core Strategy also requires proposals to comply with the sequential approach and not have an unacceptable adverse impact on the City Centre, district and local centres. These requirements are set out in Strategic Objective 7, Policies CS06 and CS08 of the adopted Core Strategy. Policy CS09 recognises the role and function of the retail parks at Marsh Mills and, subject to the consideration of the other policies in the Core Strategy, it identifies that the Council will take account of proposals to enhance recognised short comings of the retail parks.

9. The Pre-Submission Joint Local Plan continues this strategy with SPT5 setting out that proposals which meet a compelling qualitative need will be considered favourably. Specifically of relevance to this application is the requirement of the policy to secure 'continued improvement of the overall provision of retail floorspace within the City Centre'. This is a key consideration in relation to the acceptability of the application of the Sequential Test and Impact Assessment which are set out in Policy DEV16. Point 4 of DEV16 also provides specific guidance in relation to proposals for bulky

goods. It supports a limited amount of such goods but only where it is robustly demonstrated that it relates to a format of store which has particular market and locational requirements and cannot be located in 'in Centre' locations.

10. The Core Strategy and Joint Local Plan set out a clear retail strategy which it is important to consider the proposal against. The proposal relates to a consented retail park and seeks to alter the proposed range of goods to be sold from a single unit. While the proposal seeks to increase the offer to sell a broader range of goods, the proposal does retain the units in part to a bulky goods store which on the face of it could be considered to be consistent with the retail strategy. However, it is important to consider whether the increase in the units product range would substantially alter the appeal of the retail park and wider Marsh Mills area and therefore impact on the wider retail strategy and should therefore be located in a more central location. These matters need to be considered in the context of the national and local planning policies relating to the sequential test and impact assessment.

### Sequential Test

11. Paragraph 24 of the NPPF deals with the requirement for a sequential approach for main town centre uses. The application site is not in a defined centre or in an edge of centre location and as such it is necessary for the applicants to demonstrate that there are not any sequentially preferable sites. A Sequential Assessment has been submitted alongside the application. While the applicant sets out the case for why the assessment should focus on the whole development it does however adopt the approach recommended by officers to focus on the individual unit which the proposed amended condition relates to, rather than the wider scheme. This is considered to be the correct interpretation and application of the sequential test.

12. In considering flexibility in the sequential test the applicant set out their search for sequentially preferable sites focussed on sites with a floor area of 1,170 sqm with the majority at ground floor level (approximately 30% reduction of the scheme's floor area). This is considered to present a robust approach by officers. The applicant also set out that it needs to be in a commercially viable location such as main road frontage or adjacent to appropriate footfall generators. This point is also accepted, however the officer view is that City Centre or potential District Centre location would satisfy this requirement and will be considered by officers in reviewing sites.

### Locational requirement

13. The applicant's assessment includes a letter from Mothercare and further information submitted in the addendum report. These elements seek to establish that there are specific operational, market and locational requirements as acknowledged in paragraph 11 (ID: 2b-011-20140306) of the NPPG and in point 4 of Policy DEV16 of the Pre-Submission Joint Local Plan. These matters need to be considered if they could have a bearing on the application of the sequential test. While the letter is from Mothercare, the position set out could equally apply to other similar operators in relation to the proposed condition. These include the need to sell a wide product range, specifically the display of range of bulky goods items including prams, pushchair and baby furniture such as cots. This is something that the operator's current store is not able to facilitate being just 440sqm of net retail floor space. The evidence submitted also establishes the need for a car fitting service for car seats to be in close proximity to the store. The addendum note also sets out the need for the bulky items which are available for immediate purchase to be transported easily to adjacent car parking. This point, while argued by many operators, is in this instance unlike other schemes considered legitimate. This is given the large bulky nature of such items and that items unlike some other retailers are able to be purchased and taken away from the store directly rather than always buy order and home delivery.

14. The addendum letter also identifies the need for larger circulation space due to customers being accompanied by children in pushchairs, which is a specific operational requirement of such operators.

It is equally the case that the customers of such operators do place a more important need for car parking specifically for parent and children close to the store to meet the needs of customers. While not all these matters are accepted by officers, they are in part considered to have a bearing on the application of the sequential test and have been robustly demonstrated in relation to the type of potential occupiers in relation to the specifics of the application given the condition which would control the nature of the potential occupiers.

15. It is therefore considered, subject to the condition, that the proposal could be considered in this instance to (as set out in the applicants assessment) have specific operational, market and locational requirements as acknowledged in paragraph 11 (ID: 2b-011-20140306) of the NPPG and in Policy DEV16 of the Pre-Submission Joint Local Plan in applying the sequential test.

16. In considering the sequential sites the applicant has followed the sequential hierarchy. This begins with the City Centre sites they have considered a range of sites this includes the following: Cornwall Street including land identified in PLY10 and PLY11 of the Pre-Submission Joint Local Plan. While their assessment is not detailed, officers are not aware of any currently available sites in these areas able to come forward for this scheme in a reasonable time frame. This conclusion is also in part related to the locational requirements set out which are specific in relation to the application which would impact the suitability of the location.

Former BHS Store - The detailed consideration of this site is not necessarily agreed by officers and the site is currently available. However in relation to the locational requirements, the ability for bulky products to be easily transported to customer vehicles and the fitting services for child car seats, a subdivided part of this unit is not considered suitable in this specific instance. The consideration set out by the City Centre Company has been considered but given the specific matters in this application it is not considered by officers to be suitable for the proposal.

Colin Campbell Court – the applicant's evidence is accepted in relation to this site in the context of the emerging policy for the site which is set out in Policy PLY7 of the JLP and is not therefore considered suitable for the development proposed.

Former Derrys Department Store- it is acknowledged by officers that this site is currently being redeveloped and that the site would no longer be suitable or available for the proposed unit considered in the application.

Other City Centre sites - the applicant has also reviewed other potential sites and concluded these are not suitable; the City Centre Company letter also identifies a further unit which is understood to be either the site included in proposed allocations PLY11 or PLY12. At present officers are not aware of any scheme which would be currently available in these locations and there are no large vacancies. Given the locational requirements of the proposal, officers are satisfied that at present there are not currently any available units within these proposed policy allocations. While there are a range of other vacancies within the City Centre and proposed allocations, officers have concluded given the specifics of the application and the availability of sites in a reasonable time frame that there are no sites either within or on edge of the City Centre which are both available and suitable for the proposed development.

17. The second location in the hierarchy of centres in the City relates to the existing and proposed district centres. Officers are satisfied that there are not any suitable and available locations in the network of existing district centres.

18. Policy CS07 of the Core Strategy allocates two proposed centres one in Weston Mill and the other in Derriford. The Weston Mill centre is identified to be for a new medium sized food store with complimentary comparison goods as part of a mixed use centre. While this proposed centre



has not been considered by the applicant, the proposal is not considered to comply with the policy aspiration in CS07. It is also important to consider that the Pre-Submission Joint Local Plan does not carry forward the proposed centre and instead the site is allocated through Policy PLY58 for the re-provision and enhancement of sports facilities with a new food retail store as enabling development.

19. Policy CS07 of the Core Strategy also identifies a new centre is to be provided in Derriford. Area Vision 9 identifies the Council's objectives in the Derriford and Seaton Area. This includes the development of district shopping centre, centred on the western side of the A386. Therefore the proposed centre needs to be considered in the sequential search; however there is no defined location for the proposed centre. This position is updated by the Pre-Submission Joint Local Plan Policy SPT6 which again seeks to provide a new mixed use district centre in Derriford. This is amplified by the strategy for Derriford Commercial Centre set out in Policy PLY38 of the Joint Local Plan which will have the status of a District centre.

20. The applicant's assessment of the proposed centre seeks to establish that the site is not available or suitable. It considers the strategy for the centre set out in the Core Strategy and makes reference to the Derriford Area Action Plan and the strategy set out in the JLP and Policy PLY38 it concludes that the site is not suitable or available for the proposal. This view is not shared by officers, as a proposed centre it cannot simply be assumed that the proposal could not include such uses (and therefore be considered suitable) although it is acknowledged that the volume of floor space proposed would not be considered to be complimentary comparison goods to a new supermarket which policy CS07 requires.

21. The question of the site's availability is also important. It is the case that there has been little progress on the proposals for the district centre schemes which are identified on the Council's website. However with the publication of the Pre-Submission Joint Local Plan, the position on the district centre has altered from that set out in the Core Strategy, although it is acknowledged that the Core Strategy is the Development Plan in place at the time of determining this application. However, as set out in section 7 of this report as the Regulation 19 Proposed Submission Development Plan the Joint Local Plan does have weight in the decision making process. It provides the most up to date position on the proposed centre and given that unlike the Core Strategy, the Local Plan identifies the site, the weight afforded to the specific policy is considered to have a key bearing on this application.

22. Of particular significance to the consideration of the proposal is Policy PLY38, which seeks to allocate the Commercial Centre which will have the status of a district centre. The policy identifies that in relation to the district centre composition, non-food and other retail facilities in the centre should be limited to a scale and type that will not have a significant adverse impact on the city centre. In this regard (as set out in the Impact Section below) the proposal is not considered to have a significant adverse impact on the city centre so the proposal could be considered on face value to be a suitable use in the centre. Therefore the consideration needs to move to if the centre and the parts there of are truly suitable and available for the development proposed.

23. In relation to Policy PLY38, the requirements in relation to the North West Quadrant part of the site seeks the area to be intensely developed and specifically in relation to Town Centre uses requires smaller retail and food and drink uses and small to medium sized retail units suitable for food retail. The inclusion of large format stores, including bulky goods, does not accord with the strategy for this part of the centre. It is also noted that this area has challenging topography and a range of existing infrastructure which makes the area unsuitable for the proposed scheme to form part of the proposed district centre.

24. In relation to the former Seaton Barracks Parade Ground area this part of the commercial centre is identified for a range of uses including the potential for larger format retail which there is

insufficient space in the northern part of the site. It is considered that this part of the commercial centre could therefore be considered suitable for the proposal. Given this position, it is important to establish therefore if the site is available. On face value the site is largely vacant scrub land and as such could be considered to be available.

25. Part of this site is currently the subject of planning application 17/01288/FUL for a new retail store and office development by the Range. This element of the site is not therefore available. On a previous application 16/02106/FUL, the Council's Economic Development Department advised that the rest of the land in their ownership which extends to 2.93 hectares (7.23 acres) is proposed for BI offices and uses which would contribute to a commercial district centre and that they do not consider that the remaining available development land to be suitable for the bulky retail units proposed in that application and as a result is not available. It is acknowledged that this proposal is for less development than contained in application 16/02106/FUL, however a clear position from the land owner has been given. Correspondence between the applicant and the Council's Economic Development Department has been provided. This correspondence advised the following 'We are in the process of appointing consultants to prepare a masterplan for Seaton Barracks which will include a mixed range of uses to create a Derriford commercial centre. Whilst this will include retail uses it would not be suitable for the type of development proposed in your note.'

26. The position of the Council's Economic Development Department as land owner accords with the strategy for this part of commercial centre set out in PLY38, although the scheme contained in application 17/01288/FUL has yet to be determined in detail through the planning application process. It is therefore considered that although on face value the district centre proposed in policy PLY38 is suitable and available in relation to the proposal, after further interrogation it is concluded that in relation to this proposal specifically it is not available. This position is specific to this scheme, at this point in time and is not considered to set a precedent for future proposals which will need to be considered on their own merit and material circumstances. On balance it is therefore considered that in relation to the proposed Derriford District Centre set out in the Core Strategy and Joint Local Plan that this is not a location which is suitable and/or available.

27. Given that there are no suitable and or available sites available in the City Centre, District Centres including the proposed District Centres it therefore turns to whether there are any better located and more accessible locations. In this regard it is acknowledged that the location itself is in a highly accessible location and is well served by public transport and that there are no sites which are considered more sequentially preferable. It is therefore concluded in relation to the sequential test set out in para 24 of the NPPF and policies DEV16 of the Joint Local Plan and the CS08 of the Adopted Core Strategy that the proposal passes the sequential test. This conclusion is however reached in the context of the locational requirements and position at this current time.

#### Impact Assessment

28. Paragraph 26 of the NPPF requires the impacts of proposals on the investment in and vitality and viability of town centre locations to be considered. This is also required by policies DEV16 of the Joint Local Plan and CS08 of the Core Strategy.

#### Impact on the vitality and viability of the Network of Centres

29. The applicant has provided a Retail Impact Assessment which is further elaborated by the addendum report which was submitted following queries raised by GVA who are assisting officers with the consideration of the retail impact of the proposal. The assessment by the applicant considers the impacts of the proposed change resultant from this application. It also considers it cumulatively with updated figures for the wider scheme on the former Legacy Hotel site and then with commitments. It identified sales densities for unit 1 of £4,672 per sqm with total estimated turnover of £5.7 million. It updates the sales density of the wider scheme to £3,250 per sqm with the other 3 units having a total turnover of £15.3 million which together with the proposed changes

to unit one equal a total turnover of £21 million for the wider Legacy hotel site scheme. This is a difference of £1.7 million from the existing scheme for the site granted under the original application 12/02320/FUL in their assessment. Table 3.1 of the addendum report summarises the impacts of the proposal on the City Centre and network of District Centres. The impacts of the proposal alone is envisaged to be -0.4% on the City Centre and the impact on the network of district centre with the exception of Transit Way is all under -0.8% with Transit Way being -2%. Importantly, the consideration of impact also needs to include the cumulative impact with known commitments and in this regard the total cumulative impact on the City Centre is -1.7% and the impact on the network of the district centres is under -6.5% on each of the centres. This cumulative impact is not more than -0.3% than that of the existing consent on the site granted under 12/02320/FUL and the commitments on the City Centre and not more than -0.4% on any of the individual District Centres in the view of the applicant.

30. Both the consultation response to this application from the Council's Economic Development Department and also the letter of representation from the City Centre Company raise concern over the impact of the proposal on the City Centre and its potential to have further impacts with other future development. In considering the impact of the proposal, guidance from GVA has been sought. GVA have considered the envisaged impact and advised that they do have a range of concerns with the data present by the applicant in their evidence. These concerns by GVA include; underestimating trade diversion from the City Centre, differing view on the impact of commitments, and the level of trade diversion from outside Plymouth. In relation to specific impact of the proposal given the concerns with the figures used by the Applicant, GVA have undertaken their own assessment of the potential impact of the scheme.

31. In considering the impact of the proposal on the vitality and viability of the network of centres, GVA consider, having undertaken their own assessment, that the impact on the network of district centres will not be significantly adverse however, the impact on the City Centre is a more finely balanced consideration.

32. In relation to the impact on the City Centre GVA have considered the impact including the cumulative impact of the proposal. GVA consider the impact of the original scheme under 12/02320/FUL including commitments to be -3.1% and the impact of the change allowed by the current application to amend condition 30 to be -3.5%. These impacts are an approximately 2% greater impact than the applicant envisaged and in monetary terms GVA consider the financial impact of the proposed scheme to be £3.1m while the applicant's view point is £2.3M. Based upon the assessment GVA have undertaken their consideration is that the difference in turnover from the extant scheme to that proposed is not a significant one in relation to the impact on the City Centre. GVA do however recommend that the Council do not just consider the difference in financial impact of the proposal but consider the wider impact of the scheme. This relates to two key elements, the scope of the proposed change and the cumulative impact with the other development.

33. In relation to the scope of the proposed change, GVA have identified concern specifically in relation to the sale of toys and clothing and the ability to sell the range of additional goods without the bulky baby and child goods being sold. These concerns are shared by officers and have already been addressed by officers with the applicants and the wording as set out in this report further restricts and controls the future proposal in a way that helps deal with the concerns raised by GVA in the advice received. This includes tying the sale of additional non bulky goods to the sale of bulky goods for children and babies rather than the wider bulky goods allowed by the original condition and limiting the amount of floor space for clothing and toys and restricting the clothing for children up to 10 years only.

34. Consideration is now given in relation to cumulative impact with other consented out-of-centre scheme on the City Centre. In considering this cumulative impact it is important to refer to planning application 15/01831/FUL for 'Erection of retail unit, associated car parking, landscaping and access' for a flagship Next store. In determining that application officers and GVA advised the Planning Committee that it was considered that the impact of that proposal was significantly adverse on the health of the city centre. This was based on that scheme having an impact of -1.4% on the city centre. Part of the reason for this concern related to the quantum of the impact on the expenditure on clothing and fashion within the City Centre and the trading overlap of that proposal.

35. The application was approved following members of the Planning Committee reaching an alternative view to officers in their determination of the application. In relation to retail impact they concluded that the proposal would have an adverse impact on the City Centre but not a significantly adverse impact. In the advice received on this application GVA have concluded that while their view point is that the impact of application 15/01831 was significantly adverse, in relation to this application the additional impact of this current application over and above the Next application and other commitments will not make a material difference in the impact on the city centre. Officers agree with the guidance provided to them by GVA and this consideration is reached in part in relation to the recent Secretary of State decision at Scotch Corner Ref. APP/V2723/V/15/31/32873 which clarified that while the cumulative impact of a proposal is important in relation to the test set out in paragraph 26 of the NPPF, it is also the impact of the proposal itself which needs to be considered if it is significantly adverse. As previously stated, having taken the advice of GVA, officers are satisfied that this application would not significantly alter the impact on that already allowed including that of 15/01831/FUL on the City Centre and as such would not have a significantly adverse impact on the health of the City Centre.

#### Impact of the proposal on the Investment

36. In considering the impact of the proposal, it is also important to consider whether the impact would effect the existing, planned and future investment in the network of centres. In relation to the network of existing centres, it is not considered that there would be an impact on likely investment given the limited range of goods the amended condition allows which do not have a significant overlap with the core offer of these centres. In relation to the proposed centres, consideration is given to the more up to date direction set out in the JLP as part of this consideration. The Weston Mill centre was never envisaged to include such operators (as proposed in this application) and the Policy PLY58 (which removes the proposal for a District Centre) further confirms this difference from the proposal, giving no rise to concern. In relation to the proposed Derriford Centre as envisaged in the existing Core Strategy, there is limited progress in advancing a specific scheme which this proposal could impact on. In relation to the updated policy strategy set out in the JLP and Policy PLY38, the proposal, given its limited expanded offer (from the consented scheme) and lack of direct relationship to the type of development envisaged in the policy, is not considered to impact on future investment in the proposed Derriford District Centre.

37. The City Centre is a more finely balanced matter and this is identified in both the letter of representation and consultation response received to this application. It is clear that the potential operators (for the proposal) of such a scheme do, as is the case with Mothercare, operate in City Centre locations and that seeing high street operators vacate from the City Centre could reduced confidence in the centre (as identified by GVA). This point was a key consideration in application 15/01831/FUL, however in that instance the size of the proposal, the wide range of products available and the key role of fashion in the City Centre gave rise to officers considering that the impact on investment was significantly adverse. In this instance, while there are overlaps with the product offer with other City Centre operators, few operators provide direct competition with the specific offer as set out in the condition. It is also the case that there are very few occupiers who could operate under the condition. These matters help reduce concern about the impact of the proposal on investment in the City Centre.

38. It is acknowledged that the provision of Mothercare, Kiddycare or Mamas and Papas would have the potential to further alter the offer in the Marsh Mills area. This could increase the appeal of the location particularly with the approval of 15/01831/FUL and it is clearly the case that this could have an adverse impact on the City Centre, however the test set in the NPPF is not whether the impact of the proposal is adverse it is whether the impact is significantly adverse. In this case and bearing in mind the limited market of such operators and their role in the City Centre it is not in this case considered this higher level of impact is reached by this proposal. With development such as that at Drake's Leisure, Former Derry's Department Store and strategy set out in the City Centre Master Plan and JLP the potential for a significant adverse impact is on balance not considered to result from this application.

### Retail Conclusions

39. Having considered the sequential test and impact assessment, consideration therefore falls back to the other local policy requirements of the Council's retail strategy set out in the Core Strategy and Joint Local Plan. Given the application meets the above tests, it is not considered that the proposal will compromise the retail strategy of the Core Strategy or Joint Local Plan. Should the proposal ultimately be occupied by Mothercare the loss of this retailer from the City Centre would be a loss to the City Centre but this does not alter the conclusions reached above. In relation to policy CS09, the applicant's proposal which forms a new retail park at Marsh Mills will improve the physical appearance of the Marsh Mills retail parks through the redevelopment of the former Legacy Hotel Site with an enhanced landscaping plan. That scheme will deliver improvements to the access to the site and the installation of MOVA at the Marsh Mills Junction and junctions along Plymouth Road. The proposal is considered to help to address the recognised short comings of the Marsh Mills retail parks required by policy CS09. While the Joint Local Plan does not require improvements to the Marsh Mills Retail Park, similar requirements are set out in policy DEV16 for the location of proposals and as such are also considered to accord with that part of the policy. It is therefore considered that the proposal meets the retail policy requirements of the NPPF, Joint Local Plan and Core Strategy.

### **Highways**

The proposed changes to condition 30 are not considered to alter the highways matter in relation to the wider scheme and as such the scheme is considered to accord with the requirements of policies SO14 and CS28 of the Core Strategy or policies SPT9, SPT10, and DEV31 of the pre-submission Joint Local Plan

### **Amenity**

The proposed changes to condition 30 in relation to Unit 1 of the wider scheme are not considered to alter the impacts of the wider scheme to the surrounding residential properties. As such the proposed changes are not considered to alter the acceptability of the wider scheme granted in 17/00150/S73 in relation to the requirements of policies CS34 of the Core Strategy and SO11, DEV1 and DEV2 of the Pre-Submission Joint Local Plan.

## **9. Human Rights**

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

## **10. Local Finance Considerations**

The Proposal is not liable to pay CIL, which only applies to residential development and retail superstores.

## **11. Planning Obligations**

The purpose of planning obligations is to mitigate or compensate for adverse impacts of a development, or to prescribe or secure something that is needed to make the development acceptable in planning terms. Planning obligations can only lawfully constitute a reason for granting planning permission where the three statutory tests of Regulation 122 of the CIL Regulations 2010 are met.

Planning obligations were agreed on application 12/02320/FUL and carried across to application 16/01102/S73 which required the following contributions:

- £10,000 towards parking restrictions in the vicinity of the site and the provision of a residents parking zone within Marsh Close.
- £20,000 contribution towards the provision of the Strategic Cycle Network including improvements to National Cycle Network 27 in the vicinity of the site and connections to it in the Marsh Mills/Coypool area.
- £35,000 contribution to enable biodiversity improvements to be delivered in accordance with the Efford Marsh Local Nature Reserve Management Plan.
- £6,500 Planning Obligations Management Fee relating to the administration, monitoring and management of the Planning Obligation.

All of the above are payable upon commencement of development.

These contributions were paid in full following the granting of 16/01102/S73 and as such no further section 106 contributions are required as a result of this amendment application as the mitigation monies have been paid.

## **12. Equalities and Diversities**

The proposed development will be available to all members of the public and will not prejudice against age, gender, religion, sexuality, ethnic background or nationality. The development will be fully compliant with the Disability Discrimination Act and therefore access for the disabled is provided.

The site is accessible to people from all areas of the city as the site is extremely well served by public transport, being adjacent to an existing Park and Ride site. The development will also provide car parking and cycle storage. The development will be available to all equality groups. The application therefore does not have any adverse impacts on any equality groups.

## **13. Conclusions**

Officers have taken account of the NPPF and S38(6) of the Planning and Compulsory Purchase Act 2004 and concluded that the proposal accords with policy and national guidance and specifically the requirements of paragraphs 24-27 of the NPPF, Policies, CS06, CS07, CS08, CS09, AV3, AV9, CS28 and CS34 of the Core Strategy and Policies SPT 1, SPT5, SPT6, DEV1, DEV16, DEV20, PL7, PLY8, PLY10, PL11, PL12, PL13, PLY38, of the Pre-Submission Joint Local Plan and the relevant paragraphs of the NPPF.

The proposal is considered to be in accordance with the retail strategy set out in the Core Strategy and Joint Local Plan and the national requirements in relation to the Sequential Test and Impact Assessment, subject to the amended condition set out. The wider scheme is also considered to enhance the recognised short comings of the retail parks in Marsh Mills area.

The proposal is not considered to alter the relationship to the surrounding residential area and will not alter the impact on the local highway network.

It is therefore recommended that the development be conditionally approved subject to the amended conditions set out below.

#### **14. Recommendation**

In respect of the application dated **30.05.2017** it is recommended to **Grant Conditionally**

#### **15. Conditions / Reasons**

The development hereby permitted shall be carried out in accordance with the following approved plans:

##### **I CONDITION: APPROVED PLANS**

Softworks Plan I0163\_L93.01 Version P

Other KEYLOCK CONCRETE BLOCK PAVING

Other ROOF AND WALL PANELS KS600-1000

Other TRAPEZOIDAL ROOF UK\_R-RW\_KS1000

Other OP000042930- LD07332 Version LR Layout

Other SHEFFIELD CYCLE STANDS Version A

Landscape Management Plan LANDSCAPE MANAGEMENT PLAN Version A

Other FURNITUBES ZENITH BOLLARDS

Other FURNITUBES ZENITH LITTERBINS

Other MARSHALLS PERFECTA PAVING

Other MARSHALLS PRIORA POROUS BLOCK PA

Other RENEWABLE ENERGY PLANNING REPORT

Site Plans I0163\_LO1.01 Version W received 09/01/17

Ground Floor Plan I0163\_LO2.01 received 09/01/17

5th Floor Plan I0163\_LO2.2 Version O received 09/01/17

Proposed Sections I0163.103.01 Version O received 09/01/17

Plans and Elevations I0163\_L04.01 Version G received 09/01/17

External Works I0163\_L92.01 Version T2 received 09/01/17

External Works I0163\_L92.02 Version T3 received 09/01/17

Hardworks Plan I0163\_L93.01 Version Q received 09/01/17

Secure by Design Plan I0163\_L93.10 Version A received 09/01/17

Boundary Plan I0163\_L94.02 Version C received 09/01/17

Boundary Plan I0163\_L94.03 Version B received 09/01/17

Planting Plan I0163\_L94.05 Version B received 09/01/17

Site Plans I0163\_L01.01 Version V received 09/01/17  
Site Plans I0163\_L01.02 Version C received 09/01/17  
Cycle Detail I0163\_L01.04 Version A received 09/01/17  
Elevations I0163\_L04\_06 Version 0 received 09/01/17  
Boundary Plan I0163\_L94\_04 Version B received 09/01/17  
Other OP000042930-LD07332 Version LR Report received 09/01/17

Reason:

For the avoidance of doubt and in the interests of good planning, in accordance with policy CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007, and paragraphs 61-66 of the National Planning Policy Framework 2012.

## **2      CONDITION 41: BULKY GOODS RESTRICTION UNIT I**

Notwithstanding Condition 30 and the permitted use of the retail units hereby permitted falling within Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification), Unit I (as identified on drawing reference I0163\_L01.01) shall also be used for the sale of the following goods of a bulky nature: child and baby home and travel products (including prams, pushchairs, strollers, car seats and booster seats); baby entertainment goods (including baby walkers, bouncers, swings and highchairs); nursery furniture (including cots, wardrobes, chests, changing units, nursing chairs, travel cots and mattresses); and baby baths.

If the unit is used for the above range of goods the following additional goods may also be sold:

- (i) Clothing, footwear and accessories for babies and children (up to 10 years of age) and maternity clothing and accessories; (from a maximum area of 465 square metres);
- (ii) Baby feeding products and equipment;
- (iii) Baby monitors; cot mobiles; other products designed to meet the need of babies, children (up to 10 years of age) and mothers-to-be;
- (iv) Toys, games, party and play equipment for babies and children (from a maximum area of 93 square metres); and
- (v) Soft furnishings including duvets, rugs, bedding, towels and changing mats for babies and children (up to 10 years of age).

The maximum cumulative area to be used for the sale of the above products (i-v) shall not exceed 799 square metres.

For the avoidance of doubt, up to 10% of the gross internal area of Unit I may also be used as a café and/or play area.



## Reason

In order to protect the vitality and viability of the City Centre and other centres in Plymouth from significant harm, to ensure the range of goods sold is appropriate for the site's location and is in line with that tested in the submitted Retail Impact Assessment and the Sequential Assessment; to ensure the range of goods sold complies with policies CS01, CS06, CS07 and CS08 of the adopted Local Development Framework Core Strategy (2006-2021) 2007, together with paragraph 24 and 26 of the National Planning Policy Framework.

### **3 ADDITIONAL CONDITION**

The officer recommendation is subject, in addition to the condition set out above, which supplements condition 30 of the original application, to the conditions 2- 40 as set out on the decision notice which remain unchanged from those which form granted consent on application 17/00150/S73.

## **Informatives**

1 **INFORMATIVE:** (1) The management plan shall be based upon the Council's Code of Practice for Construction and Demolition Sites which can be viewed on the Council's web pages, and shall include sections on the following:

- a. Site management arrangements including site office, developer contact number in event of any construction/demolition related problems, and site security information;
- b. Proposed hours of operation of construction activities and of deliveries, expected numbers per day and types of all construction vehicles and deliveries, routes of construction traffic to and from the site (including local access arrangements, timing of lorry movements, and weight limitations on routes), initial inspection of roads to assess rate of wear and extent of repairs required at end of construction/demolition stage, location of wheel wash facilities, access points, location of car parking for contractors, construction traffic parking, details of turning facilities within the site for site traffic and HGVs, and a scheme to encourage public transport use by contractors; and
- c. Hours of site operation, dust suppression measures and noise limitation measures.

2 **INFORMATIVE:** (2) No work within the public highway should commence until engineering details of the improvements to the public highway have been approved by the Highway Authority and an agreement under Section 278 of the Highways Act 1980 entered into. The applicant should contact Plymouth Transport and Highways for the necessary approval.

3 **INFORMATIVE:** (3) The document required in connection with the Travel Plan should be based upon the Council's guidance for Travel Plans published on the Council's website and should, where possible, be created using iTRACE, an online travel plan management tool available through Plymouth Transport and Infrastructure. The applicant is advised to contact Plymouth Transport and

Infrastructure prior to preparation of this document for site-specific advice on the requirements for the Travel Plan, which are likely to include:

- (a) appointment and contact details of a Travel Plan Coordinator
- (b) recommendation of the use of iTRACE
- (c) site specific targets, measures and management/monitoring plan.

4      **INFORMATIVE:** (4) An adequate number of toilet and hand washing facilities should be provided for use by customers as well as staff, in order to meet the provision laid down in Approved Document G and BS 6465-1:2006 & A1:2009. The aforementioned documents must be referred to in order to determine the number of facilities required in each unit in which people are invited to sit and eat based on the number of covers and staff. The facilities should be adequately ventilated with a minimum of 15 air changes per hour to remove stale air and odour.

5      **INFORMATIVE:** (5) The drainage in a food preparation area should be fitted with a grease separator in line with Building Regulations Approved Document H and prEN1825-1:2004, design in accordance with prEN1825-2:2002 or other effective means of grease removal.

6      **INFORMATIVE:** (6) The applicant/s should submit details of the proposed layout and design of any proposed kitchen to the food safety and standards team prior to the installation of any equipment in order that comments can be made regarding the layout and compliance with hygiene regulations.

7      **INFORMATIVE:**      (7) The Local Planning Authority has assessed that this development, although not exempt from liability under the Community Infrastructure Levy Regulations 2010 (as amended), will not attract a levy payment, due to its size or nature, under our current charging schedule. The Levy is subject to change and you should check the current rates at the time planning permission first permits development (which includes agreement of details for any pre-commencement conditions) see [www.plymouth.gov.uk/cil](http://www.plymouth.gov.uk/cil) for guidance. Index-linking may also apply.

8      **INFORMATIVE:** (8) Before the access road shown on the approved plan is constructed the public highway access rights over part of the associated land shall be formally extinguished in accordance with Section 247 of the Town and Country Planning Act.

Reason:

In the interests of public safety and amenity in accordance with Policies CS28 and CS34 of the Local Development Framework Core Strategy (2006-2021) 2007 and policies and provisions of the NPPF.

9      **INFORMATIVE: (9)** In accordance with the requirements of Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 and paragraphs 186 and 187 of the National Planning Policy Framework the Council has worked in a positive and proactive way with the Applicant including pre-application discussions and has negotiated amendments to the application to enable the grant of planning permission.