

APPLICATION DETAILS

Application No:	18/0478/FUL
Location:	Gateway Middlehaven, Land between A66 and Riverside Stadium, Cargo Fleet Middlesbrough
Proposal:	Re-arrangement of the approved 3 no. retail units (including foodstore) to provide up to 5 no. retail units (A1), creation of outside garden centre on the northern side of building used in conjunction with adjacent unit, change of use of 1,305sqm of existing internal floorspace to gymnasium (D2), alterations to external elevations including new entrances to all units, 4.8-metre high fencing around garden centre, new car parking area, and new access steps and ramps.
Applicant:	Sainsbury's Supermarket Limited
Company Name:	Sainsbury's Supermarket Limited
Agent:	Mr Gary Morris
Company Name:	WYG
Ward:	Central
Recommendation:	Refuse

SUMMARY

The application seeks permission to sub divide the proposed approved scheme of a foodstore and up to two A1 retail units (M/FP/1262/14/P) to create 5 A1 retail units, a gym, and the addition of a garden centre.

There are a number of key issues to take into consideration when assessing this application. Not least of these is the fact that the existing permission is in the process of being built, and as such the

permission is extant. This permission allows for the unit when complete to be occupied as a foodstore and up to two A1 retail units. Once occupied as approved the current permission does not prevent further sub division subject to the resulting units complying with the restrictions placed on the levels of comparison and convenience floorspace. Since the original permissions were granted, there have been some significant material changes in circumstances which need to be weighed in assessing the application. This includes the changing retail environment, the health of the Town Centre, and impacts upon investment and regeneration aspirations.

Whilst there is an approved level of impact associated with the existing permission it is officer opinion that overall, the scheme, if implemented as per the current proposal would, having regard to local circumstances, have a significant impact upon the health of the Town Centre and undermine confidence in the centre to the detriment of investment. It is also officer opinion that the proposal would also undermine the Council's aspirations for further regeneration and economic growth in Middlehaven and the Town Centre.

SITE AND SURROUNDINGS AND PROPOSED WORKS

1. The application site is positioned to the northeast of Middlesbrough Town Centre, in an area identified as Greater Middlehaven. The site is located on the northern side of the A66, to the south of Cargo Fleet Road, to the east of Marsh Road, and to the west of Shepherdson Way. The site is at the eastern entrance to the Middlehaven regeneration area, and known as Gateway Middlehaven.
2. The existing site contains a largely complete foodstore building, associated car parking area, servicing arrangements and petrol filling station. Although the buildings on site form part of a planning permission granted in 2015, the site remains unoccupied. Immediately adjacent to the site is a small development of three units, which are occupied by a Marston's public house, a Costa coffee shop, and a KFC restaurant.
3. Historically, the site was occupied by Teesside Bridge and Engineering Works before falling derelict during the 1980s. Since which the area has been identified as part of a major regeneration area. The site now sits vacant but benefits from planning permission for use as a foodstore and up to two associated retail units.
4. The application seeks planning permission to re-arrange the approved foodstore and retail units and provide the following development:
 - a. The three units (approved under M/FP/1262/14/P) would be subdivided into five retail units (A1 use).
 - b. An outdoor garden centre (650 square metres) is proposed on the northwestern side of the building and would be used in conjunction with the adjacent retail unit. The garden centre would feature a 4.8-metre-high perimeter fencing.
 - c. Within the existing floorspace, to the rear of the five proposed retail units, a gymnasium (D2 use) is proposed which would result in a change of use from 1,300 square metres of A1 use.

- d. The external elevations would be altered, which includes the creation of new entrances for each of the proposed units, as well as to provide servicing requirements at the rear.
 - e. New framework for signage is proposed above the entrances to each unit (the existing signage frame would be removed).
5. Planning permission is being sought for this development under two different scenarios, which are as follows:
- a. Development of 4,893 square metres of Class A1 comparison retail floorspace (including an Argos retail warehouse), 1,691 square metres of Class A1 convenience retail floorspace, and 1,305 square metres of Class D2 (gymnasium).
 - b. Development of 6,653 square metres of Class A1 comparison retail floorspace, 1,691 square metres of Class A1 convenience retail floorspace, and 1,305 square metres of Class D2 (gymnasium).
7. It is understood that these scenarios are covered in order to provide flexibility in the future use of the development in the event that *Argos* decide not to occupy a unit at Gateway Middlehaven.

PLANNING HISTORY

8. As noted earlier, the land at Cargo Fleet was previously the site of the Teesside Bridge and Engineering works. The extensive fabrication sheds, travelling cranes and railway lines were all removed during the early part of the Teesside Development Corporation (TDC) period of office (1988-1998). The application site has a long and complex planning history primarily for retail developments. Of most relevance to the current application however, are the applications by Terrace Hill that sought planning permission for the food store, to be occupied by Sainsbury's, and additional retail development (M/FP/0773/13/P, M/FP/1262/14/P and M/FP/0770/13P).
9. It is worth noting that a number of applications have been submitted prior to the most recent applications listed above. The key relevant applications are listed below. As such the list does not include those applications submitted to and considered by the TDC.

TM/OUT/1073/97/P

Erection of non-food retail warehouse development; B1, B2 and B8 class development and car dealerships.

Approved conditionally on 3rd February 1998.

M/OUT/1116/99/P

Erection of retail store (class A1), food and drink (class A3) and business (class B1) development with park and ride facility, highways, access, parking and landscaping

Minded to approve conditionally on 16th November 2001 but refused by the Secretary of State after call-in inquiry (5th August 2004).

M/OUT/1377/00/P

Renewal of planning permission TM/OUT/1073/97/P for approval of all reserved matters by 3rd February 2001.

Approved conditionally on 12th February 2001.

M/RES/0144/01/P

Erection of non-food retail warehouse development, B1, B2 and B8 class development and car dealerships.

Approved 17th September 2001.

M/OUT/0257/05/P

Erection of non-food retail warehouse development; development within use classes B1, B2 and B8; and car dealerships.

Approved conditionally on 26th May 2005.

M/RES/0210/08/P

Approval of Reserved Matters under M/OUT/0257/05/P for erection of non-food retail development (use class A1) (units 1 to 4, and DIY/garden centre: 5686 square metres).

Approved conditionally on 2nd May 2008.

M/FP/0211/08/P

Erection of non-food retail development (use class A1) (units 5 to 8: 3161 square metres) with associated access, parking, servicing, and public transport facility.

Approved conditionally on 9th May 2008.

M/FP/0212/08/P

Erection of food and drink, hotel and leisure development (use classes A3 to A5) (8753 square metres) including sports and fitness centre and public house with associated access, parking and landscaping.

Approved conditionally on 9th May 2008.

M/FP/0311/11/P

Replacement of permission M/FP/0212/08/P subject to new time limit: construction of footpath and cycleway link.

Approved conditionally on 7th June 2011.

M/FP/0462/11/P

Replacement of planning permission M/FP/0211/08/P (new time limit) for the erection of non-food retail development (use class A1) (units 5 to 8: 3161 square metres) with associated access, parking, servicing and public transport facility.

Approved conditionally 29th August 2012.

M/FP/0463/11/P

Replacement of planning permission M/FP/0212/08/P (new time limit) for the erection of food and drink, hotel and leisure development (use classes A3-A5, C1 and D2: 8753 square metres) including sports and fitness centre, public house, with associated access, parking, servicing and landscaping.

Approved conditionally 29th August 2012.

M/FP/0750/11/P

Erection of non-food retail development (use class A1) (units 1 to 4 and a DIY/garden centre: 5686 square metres) with associated access, parking, and servicing. The approval was subject to a bulky goods only condition.

Approved conditionally 29th August 2012.

Applications submitted by Terrace Hill

M/FP/0773/13/P

Planning permission was initially granted in February 2014 (ref. M/FP/0773/13/P) for the *erection of a foodstore with associated petrol filling station, car parking, landscaping and boundary treatments, access and a bus terminus*. The foodstore comprised 11,528 sqm gross / 7,432 sqm net of Class A1 retail floorspace, and condition no. 15 attached to the permission limited the amount of floorspace dedicated to convenience goods to 4,008 sqm and the amount of floorspace dedicated to comparison goods to 3,344 sqm. Following the discharge of pre-commencement planning conditions, work began on site to implement this permission in September 2014. The unit was to be built for and occupied by Sainsbury's.

M/FP/0760/13/P

Although not an application for the Gateway Middlehaven site, it must also be noted that a parallel application was submitted for a mixed-use development on the site of the existing Sainsbury's foodstore (Wilson Street). This development primarily comprised 9 units of A1 (retail), A3 (restaurant) and A4 (drinking establishment) uses, and the construction of an 80-bed hotel with associated car parking. To facilitate this development, the existing Sainsbury's foodstore and petrol filling station would have been demolished.

The overall aim of the two applications (M/FP/0760/13/P and M/FP/0773/13P) was to relocate the existing Sainsbury's foodstore to the larger Gateway Middlehaven site, and redevelop and improve the offer of the Town Centre. Although the two applications were submitted together, they were not legally bound.

M/FP/1262/14/P

In light of the changing market and economic conditions, a further full application for planning permission was submitted in December 2014 (ref. M/FP/1262/14/P) and approved in January 2015 for the *re-arrangement of previously approved foodstore building layout M/FP/0773/13/P to provide up to 2 no. additional retail units (A1) with associated external changes, including revisions to service yard, car parking and landscaping*. It is this permission that the current application is seeking to amend.

Planning condition no. 1 lists the approved plans for the development, which show a single large foodstore unit and two adjoining smaller retail units. Condition nos. 15 and 16 restrict the operational floorspace of the development and the convenience/comparison goods split, but

there are no conditions explicitly preventing the subdivision of the units. Taken together, the 2015 planning permission related to a development of 4,512 sqm (net) of Class A1 comparison retail goods, and 3,000 sqm (net) of Class A1 convenience retail goods.

It is noted that the form of development granted by M/FP/1262/14/P has not been completed in accordance with the approved plans and has never been occupied by the intended operator.

PLANNING POLICY

National Planning Guidance

10. The Government's guidance is set out in the National Planning Policy Framework (NPPF), which states that the general principle underlying the town planning system is that it is 'plan led'. Put simply, this means all proposed development that is in accordance with an up-to-date Local Plan should be approved. Proposed development that conflicts should be refused unless other material considerations indicate otherwise.
11. Paragraphs 10-12 of the NPPF state that a presumption in favour of sustainable development is at the heart of the Framework, and requires development proposals that are in accordance with the development plan to be approved without delay. It emphasises that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Where a planning application conflicts with an up-to-date development plan, permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.
12. The NPPF states that decisions on planning applications should be in accordance with the relevant development plan and that new development should be in accordance with the relevant development plan for the area. However, other material considerations can be taken into account by the local authority providing they are relevant to the development being proposed. The weight of these other material considerations and how they balance against the policies in the development plan is fundamental to the consideration of this application by Members.
13. Specific Government guidance for town centre development and ensuring the vitality of town centres is held within Chapter 7 of the NPPF. The chapter states that town centres are at the heart of local communities and that planning decisions should support centres by taking a positive approach to their growth, management and adaptation. The NPPF emphasises the role of the Local Planning Authority to support the vitality and viability of town centres, and promote competitive town centres that provide customer choice and a diverse retail offer, and which reflect the individuality of centres. It also seeks to enhance centres by focusing new investment for leisure and retail within them. Where development is not in a designated centre, as is the case here, and thus not in accordance with the plan then the sequential test is required (para 86).
14. When considering edge-of-centre and out-of-centre proposals, preference should be given to accessible sites that are well connected to the town centre. Paragraph 87 advises that

applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge-of-centre sites are fully explored.

15. Paragraph 89 confirms that, when assessing planning applications for retail use that are outside of town centres and not in accordance with the local development plan, an impact assessment is required if the development is over a locally-set floorspace threshold (or a default threshold of 2,500 square metres where none exists). The impact assessment should 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 the vitality and viability of the town centre, including local consumer choice and trade in the town centre and wider retail catchment (as applicable to the scale and nature of the scheme).
16. Crucially, Paragraph 90 of the Framework states that, where an application fails to satisfy the sequential test or is likely to have a significant adverse impact in terms of the considerations set out above, it should be refused.
17. In so far as relevant, chapter 2b, paragraph 10 of the Planning Practice Guidance (PPG) on *'How should the sequential test be used in decision-taking?'* puts the onus on the applicant to show compliance with the sequential test. It states that *"It is for the applicant to demonstrate compliance with the sequential test (and failure to undertake a sequential assessment could in itself constitute a reason for refusing permission). Wherever possible, the local planning authority should support the applicant in undertaking the sequential test, including sharing any relevant information. The application of the test should be proportionate and appropriate for the given proposal. Where appropriate, the potential suitability of alternative sites should be discussed between the developer and local planning authority at the earliest opportunity."*
18. The PPG then explains that decision-makers should ask themselves: *"is there scope for flexibility in the format and/or scale of the proposal? It is not necessary to demonstrate that a potential town centre or edge of centre site can accommodate precisely the scale and form of development being proposed, but rather to consider what contribution more central sites are able to make individually to accommodate the proposal."*
19. The same paragraph goes on *"Compliance with the sequential and impact tests does not guarantee that permission is granted – local planning authorities will have to consider all material considerations in reaching a decision."*
20. Paragraph 11 of the PPG requires an applicant to demonstrate flexibility in terms of format and scale in applying the sequential test, there is no requirement to disaggregate a proposal. A consequence of not disaggregating is likely to be that there are fewer potential sites in sequentially preferable locations.
21. The key part of the PPG dealing with the impact test is paragraph 17. This continues: *"A judgement as to whether the likely adverse impacts are significant can only be reached in light of local circumstances. For example in areas where there are high levels of vacancy and limited retailer demand, even very modest trade diversion from a new development may lead to a significant adverse impact."*

Local Policy Context

22. The relevant policies in the Development Plan regarding this application are:
- H1 – Spatial Strategy
 - H2 – Greater Middlehaven
 - CS4 – Sustainable Development
 - CS5 – Design
 - DC1 – General Development
 - CS7 – Economic Strategy
 - CS13 – Town Centres etc Strategy
 - CS14 – Leisure Development
 - CS17 – Transport Strategy
 - H14 – Greater Middlehaven
 - H15 – Greater Middlehaven Development
 - H16 – Greater Middlehaven - Transport
23. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that, if regard is to be had to the development plan, applications must be determined in accordance with that plan unless material considerations indicate otherwise.
24. The Development Plan comprises the 'saved' policies of the Middlesbrough Local Plan (adopted August 1999 – relevant policies were saved through the direction of the Secretary of State in October 2008), read together with the Local Development Framework Core Strategy (adopted February 2008), the Regeneration Development Plan Document (adopted February 2009), and the Housing Local Plan (November 2014).
25. In addition to the above listed documents, it is also worth noting that the Local Plan is under review. The review has reached an advanced stage, with Publication ending and the Plan now moving to submission. The following policies of the emerging Local Plan are considered to be of relevance to this application:
- CITY1 - Creation of a City Centre
 - CITY2 - Centre Square
 - CITY4 - Middlehaven
 - CITY6 - Teesside Media and Innovation Village
 - EG1 - Economic Strategy
 - EG6 - Town, District and Local Centres
26. In considering development plan policies, it must be noted that Annex 1 (Paragraph 213) of the NPPF instructs that due weight be given to relevant policies in existing plans in accordance with their degree of consistency with the Framework. The saved Local Plan policies are of limited relevance to retail and town centre development and subsequently no further assessment will be given to these policies.
- Adopted Development Plan policies**
27. The Middlesbrough Core Strategy Development Plan Document (DPD) sets out key elements of the planning framework for Middlesbrough until 2023. The Regeneration DPD identifies a number of development and principal regeneration sites, including Greater Middlehaven. The Regeneration DPD provides more detail on the implementation of the strategic objectives in the Core Strategy.

28. The Proposals Map indicates that the Gateway Middlehaven site forms part of the Greater Middlehaven area, with Housing Local Plan Policies H1, H2, H14 being of relevance. Policy H1 aims at focusing significant new employment development in, amongst other things, the expanded Town Centre and Middlehaven, whilst ensuring that the employment needs of the local communities are met. Policy H2 maintains that Greater Middlehaven will be developed as a major sustainable mixed-use scheme, and provides quantum and phasing for specific uses. These measures are to ensure that the spatial vision is achieved.
29. Policy H14 sets out more specifically the mix of uses and phasing within Greater Middlehaven that are deemed to be acceptable. Of pertinence to this application, there is a specified quantum for retail and leisure uses, but the Policy acknowledges that there is some flexibility to allow development opportunities to be brought forward in response to changing market demands. The quantum for retail warehouse development identified in the policy reflects the planning permission granted for application ref: M/FP/0750/11/P and as such reference to retail warehousing in the policy needs to be seen in the context of this permission and PPG6 that was relevant at the time. The floorspace identified in the policy is referring to the sale of bulky goods.
30. Policy H15 guides the Council when considering development and design in Greater Middlehaven. The Policy explains that the development of Greater Middlehaven will be characterised by innovative and contemporary architecture that creates quality of place and reflects its status as a flagship regeneration scheme at the heart of the Tees Valley city region. In particular, the Policy sets out general principles to guide schemes to ensure that the aforementioned aspiration is achieved. Policy H16 identifies an integrated package of transport proposals and measures to improve connectivity within and beyond the area of Greater Middlehaven.
31. Policy CS13 sets out the retail hierarchy for the Middlesbrough local authority area and states that the Council will protect and enhance the hierarchy of vital and viable town, district, local and neighbourhood centres in the borough. Middlesbrough Town Centre is identified as the Main Centre within the borough; Berwick Hills and Coulby Newham are identified as the only District Centres within the borough. The nearest Local Centre to the application site is at North Ormesby, some 500 metres to the south. The primary retail area of the Town centre is some 1.3 km to the west of the application site. It is, therefore, considered that the site is an out-of-centre location in the context of the NPPF.
32. Policy CS13 continues and states that the development proposed through this hierarchy will be achieved by (amongst other things):
 - Encouraging development of town centre uses within a centre of an appropriate type and scale commensurate with its current and future function.
 - Safeguarding the retail character and function of centres by resisting developments that detract from their vitality and viability.
 - Ensuring shopping facilities are accessible by a range of means including by car, walking, cycling and public transport.
 - Ensuring new developments are of an appropriate high quality design particularly in the Town Centre.
33. The Council's Leisure Development strategy forms Policy CS14. This Policy states that the Council will ensure the provision of a wide and accessible choice of leisure facilities for the

community, and will be achieved by promoting the Town Centre as a sub-regional leisure destination, as well as promoting Middlehaven.

34. Policy CS17 sets out the Council's Transport Strategy that a sustainable transport network will be delivered which, whilst reducing the need to travel, will improve connectivity within the borough, and fosters economic growth and inward investment.
35. The Council's Economic Strategy is contained within Policy CS7, which states that the Council will support and encourage those employment proposals that assist in delivering economic prosperity and developing Middlesbrough's role as part of the heart of a vibrant and prosperous Tees Valley city region.
36. As well as the above-mentioned Regeneration and Strategic Policies, the general Development Control based Policies of DC1 (General Development), CS4 (Sustainable Development) and CS5 (Design) shall be taken into consideration.

Emerging Local Plan policies

37. The emerging Middlesbrough Local Plan has reached Publication Stage, and is currently awaiting submission. Under the provisions of the NPPF, the further a plan progresses through the system the more weight can be attached to its policies.
38. Policy CITY1 sets the overall strategy and aspirations for what the Council is seeking to achieve for Middlesbrough Town Centre. Central to this is the creation of city scale development. Amongst other things, this will be achieved through securing city-scale development focused on making Middlesbrough a centre for grade A offices, the continued regeneration of Middlehaven, the creation of Teesside Media and Innovation Village, and maintaining a strong and vibrant retail core and continued growth of the night time economy.
39. Policy CITY2 identifies the Council's aspirations for Centre Square which include the creation of a high quality development creating a cultural and commercial quarter of regional significance, provision of grade A offices, and an enhanced multi-functional entertainment and event space to support a wide range of activities.
40. Policy CITY4 sets the policy framework for Middlehaven. Within this, it identifies that it will be developed for a mix of uses comprising commercial, leisure and residential uses. Key is that development is seen as being of a high quality that is complementary to, and links with the Town Centre. References to the acceptable quantum of development that had been included in previous local plans have been removed. Retail is also no longer identified as a principal use.
41. Policy CITY6 sets the policy framework for the Teesside Media and Innovation Village. This is seen as providing a high quality commercial, education, cultural and leisure development.
42. Policy EG1 provides the economic strategy for the Local Plan. Key here are references to developing grade A offices, securing investment in nationally significant leisure schemes, and strengthening the role of Middlesbrough as the principal retail centre for Tees Valley.
43. Policy EG6 seeks to protect the vitality and viability of the Town, district and local centres.

CONSULTATION AND PUBLICITY RESPONSES

44. The application was subject to the standard consultation of neighbouring properties and sites. In addition, notices were displayed on 31st July 2018 at a number of different locations both adjoining and near to the site. Each format of consultation/notification identified the site and detailed the proposals.
45. Following the mandatory consultation exercise, ten letters of objection were received from or submitted on behalf of:
1. Cool Runnings Limited
 2. North East England Chamber of Commerce
 3. Stockton Borough Council
 4. Rounton Coffee Roasters
 5. Cable Properties and Investments Limited
 6. Dodds Brown
 7. Dundas Shopping Centre (Contract Experts Limited)
 8. Cleveland Shopping Centre (Waypoint Asset Management)
 9. Hill Street Shopping Centre (New River Retail)
 10. Captain Cook Square (La Salle Investment Management)
46. The comments made or issues raised within the letters of objection from the above principally focus on the following issues:
- The development represents a very real threat to the vitality and viability of the Town Centre.
 - The proposals have the potential to damage the Town Centre by pulling existing occupiers away from their current stores.
 - There are a number of potential investors in the Town Centre who are hesitant to make an investment because of the potential for competitors to move into this development.
 - The development has the potential to trigger significant displacement of retail rather than generate new investment.
 - [The existing retail landscape is so fragile] even de minimis deflection of trade could have catastrophic effects for the Town Centre.
 - The proposals will primarily provide space for high street retailers and will compete to a greater degree with Middlesbrough Town Centre than the extant [foodstore] scheme.
 - The main anchors (B&M, Iceland) are already represented within the Town Centre and these stores would clearly be under threat of closure.
 - The proposals alter the character of the scheme from a predominantly convenience goods offer to a mainly non-food offer.
 - The estimate of turnover of the scheme is too low.
 - There will be a higher percentage trade draw from the Town Centre than has been estimated.

- The health of the Middlesbrough Town Centre has declined since the 2015 application, and is in a more vulnerable position. The town has faced significant difficulties in recent months.
- House of Fraser is closing, and the two other anchors in the Town Centre – M&S and Debenhams – are both considering their long-term futures. Losing further anchors will only serve to undermine confidence.
- The impact of the House of Fraser closure will not yet be felt in real terms.
- The proposals are likely to have a harmful impact on the vitality and viability of other nearby centres.
- The Mayor has made the development of the Town Centre a central Economic Development priority and we feel this development would undermine that goal.
- There is already an oversupply of retail units possibly by as much as 30%.
- The capacity studies are not worth the paper they are written on. They do not take account of the effect the internet has had on capacity growth/decline.
- The unaccounted for space is likely to attract interest from leisure or food and beverage units, and pull existing footfall from the Town Centre.
- The development will not need the 850 parking spaces, adding risk to additional units within the car park.
- The proposals change the fundamental nature of the development into a retail park. Out of town shopping is already prevalent at Cargo Fleet Retail Park and Teesside Park and this site could create yet another out of town shopping facility further damaging existing retail both Town Centre and out of town.
- The development site is over 2500sqm and should require a sequential test to ensure that the units could not be accommodated elsewhere in the Town Centre. The sequential test has not been applied fully in this case.
- The scheme has the potential to undermine the letting space of the proposed snow centre.
- This development, particularly if it is allowed to expand, will only contribute to the existing traffic problems of Cargo Fleet Lane and the Eastern approach.
- Any 'out of town' retail scheme needs to compliment rather than take away from Middlesbrough Town Centre.

47. The application was also in receipt of two letters of support, which were from the nearby Costa Coffee drive thru and KFC operators. The letters, which were similar in content, can be summarised as follows:

- The proposal would finally put an end to the ghost-town feel of the site.
- It would show that Middlehaven, and indeed Middlesbrough as a whole, is open for business.
- The development would attract more businesses to the area and more people.
- The development is needed so that regeneration can continue.

- The development will provide a huge number of much needed jobs to the local community and fill an existing large empty retail unit.

Internal Technical Consultee Responses

- 48. **MBC Highways** – No objections subject to conditions.
- 49. **MBC Waste Policy** – No objections.
- 50. **Local Flood Authority** – No objections.
- 51. **MBC Environmental Health** – No comments received, but the conditions recommended for previous applications on site would be relevant.

External Consultee Responses

- 52. **Secured By Design** – No objections, but the proposed development should adhere to the principles of Secured by Design.
- 53. **Northern Gas Networks** – No objections, but there may be apparatus in this area that may be at risk during construction works.
- 54. **Northumbrian Water** – No objections, subject to condition regarding foul and surface water drainage.
- 55. **Environment Agency** – No objections, subject to condition that the development is built in accordance with the submitted Flood Risk Assessment.
- 56. **Stockton Borough Council** – Object due to the potential impact on Middlesbrough and Stockton Town Centres.
- 57. **Redcar & Cleveland Council** – No objections.
- 58. **Ecology** – The area of grassland is very much as described in the ecology report - species poor and of low ecological value. The area does not have any wildlife value in its own right, or as part of any contribution to the surrounding habitats.

Summary of Public Responses

Number of original neighbour consultations	72
Total numbers of comments received	12
Total number of objections	10
Total number of support	2
Total number of representations	0

BACKGROUND AND CONTEXT

59. The complexity and nature of this application mean that to consider it effectively, and in light of all relevant facts, it is necessary to provide some additional background information and context. This will focus on four key areas
- a. the requirement/need for a planning application to be considered;
 - b. the fall back position;
 - c. the planning history of the site, and the circumstances under which each of the applications was considered; and
 - d. the changing nature of retail patterns/turnover of the Town Centre.

Owing to the complexity of the application, officers have sought and obtained independent legal and retail planning advice to assist them in informing their interpretation of the issues and the preparation of this report.

Requirement/Need for a Planning Application

60. This is a full application for planning permission, which primarily seeks consent for the further subdivision of the existing foodstore building. In January 2015, under planning application M/FP/1262/14/P, permission was granted to provide up to 3 retail units (one foodstore and up to 2 additional retail units). The current application seeks planning consent to provide up to 5 retail units, convert part of the retail space to a gymnasium (D2 use), and create an ancillary external garden centre to be used in conjunction with the adjacent retail unit. As well as the subdivision, there would be alterations to the elevations including the provision of new individual entrances to all units, a new 4.8 metre high fence would be erected around the garden centre, and minor alterations to the existing car park.
61. Planning legislation would normally allow (without needing permission) for the subdivision of an existing building into smaller units within the same use class provided that the authorised use has already commenced, unless other restrictions apply. In this case, as the use of the building as a foodstore and additional retail units has not been implemented, the current building does not enjoy rights to subdivide into 5 units without planning permission.
62. Planning condition No. 1 on M/FP/1262/14/P lists the approved plans for the development, which show a single, large foodstore unit and (up to) two additional smaller retail units. Planning conditions 15 and 16 restrict the convenience/comparison goods split and the operational floorspace of the development, but there were no conditions on the planning permission explicitly preventing the subdivision of the units.
63. Whether there is a need for this planning application hinges on a number of factors.
- Whether planning legislation allows for the variation of a scheme to a degree that it no longer conforms to the description of development?
 - Is subdivision classed as 'development' in planning terms?
 - Whether the use of the building needs to have been implemented in order to acquire permitted development rights and be able to subdivide?

Variation of Approved Scheme

64. Section 73 of the Town and Country Planning Act 1990 allows applicants to seek permission for a minor material amendment (commonly referred to as a MMA) to a previously approved scheme, although there is no statutory definition of what constitutes a minor material amendment. Advice within the National Planning Practice Guidance states that such changes should be through the variation of condition application, and it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved.
65. Case law – *Coventry City Council Ex p. Arrowcroft Group Plc* establishes that a condition can only be varied in a section 73 application if that new condition could have been imposed when granting the original planning permission. This view was further endorsed by the 2017 case within the High Court in *R (Vue Entertainment Limited) v City of York Council* where the judge placed a clear emphasis on preserving the precise terms of the original grant of planning permission, that is, any amendment through Section 73 must keep the original description of development intact.
66. Mindful of the above case law, the description of the existing development refers to a foodstore and 2 additional retail units, and when read in context with Section 75 of the 1990 Act, it is clear that the building was designed for (and intended to be used as) a foodstore. In this context, any amendments to the scheme sought through Section 73 must preserve the terms of the permission M/FP/1262/14/P and comprise a foodstore and 2 no additional retail units. Accordingly, it was viewed that a new full planning application was required to increase unit numbers. The current application also adds an outdoor garden centre, introduces a D2 (gym) use and makes alterations to the exterior of the building, providing additional reasons for a full application.

Is Subdivision classed as ‘Development’?

67. Section 55(2)(a) of the 1990 Act states that internal works within an existing building, or those that do not materially affect its external appearance, are excluded from the definition of ‘development’. Provided that the physical works to facilitate sub-division meet this criteria, they would not require planning permission. For this exemption to apply, the building being altered must already be completed, including internally: *Sage v Secretary of State for the Environment*. External works to facilitate use of any subdivided units (new and separate entrances) would be likely to need planning permission.

Does the Vacant Building benefit from Permitted Development Rights?

68. First of all, it is important to make a clear distinction between any subdivision works which are not classed as development and thus do not require permission, and the ability to change use within A1.
69. In terms of subdivision works, the operational development required to erect the subject unit is described in the application M/FP/1262/14/P. The works that have taken place are considered to be largely in accordance with the approved drawings, and the resultant structure is a ‘building’ in the context of Section 55(2)(a) of the 1990 Act. As noted in the previous section, any internal works, such as subdivision, do not comprise ‘development’ and therefore do not require planning permission. As will be discussed below the Council do not however consider that the building is complete.

70. The initial use of a building or land must be in accordance with the planning permission which has been granted. In *Wilson v West Sussex County Council* planning permission was granted for an “agricultural cottage” without any condition restricting the nature of the use. The Court of Appeal held that the permission was to be construed as limiting the use of the proposed building to one intended to be occupied by an agricultural worker or one engaged in agriculture. The Court held that the initial use had to be by such an agricultural occupant.
71. Similar reasoning was applied by the Court of Appeal in *Winchester City Council v Secretary of State for Communities and Local Government* (also known as *Wall v Winchester City Council*). This case concerned a permission for the “change of use of agricultural land to travelling showpeoples’ site” and the legality of enforcement action in circumstances where the site was being used for the siting of caravans for occupation by persons who were not travelling showpersons. The Court of Appeal held that the description of development limited the purposes for which the site could lawfully be used to use as a travelling showpersons’ site (such that the stationing of caravans for residential purposes by persons who were not travelling show people was not authorised by the permission). Moreover, the Court made clear that the initial use had to reflect the purpose in the permission. As Sullivan LJ explained, it was only once this use had been implemented that there was then scope for varying the use:
- “...If the permitted use has been implemented, and a change to the permitted use takes place, then it will be a question of fact and degree whether that change is a material change of use”*
- “Inspector [must] consider whether the 2003 planning permission was implemented in the sense the site was initially used as a travelling showpeoples’ site, whether the alleged change of use has taken place and, if so, whether that alleged change of use amounts to a material change of use. If the answer to the last of those questions is “yes”, then the Inspector will have to go on to consider whether planning permission should be granted for that material change of use”*
72. In terms of other subsequent changes in the use of the subject unit, there is case law in *I’m Your Man v Secretary of State for the Environment* (1998) which established the principle that where planning permission is granted for a certain use, any limitation on the way that use is exercised must be imposed by express condition, and not just in the description of the development. In the case of the existing foodstore therefore, where the planning permission authorises the development of a foodstore and up to two additional units, the description of the development alone cannot prevent a subsequent change to unrestricted retail use (if the use of the unit(s) continues to fall entirely within use class A1 and complies with conditions 15 and 16, which restrict the breakdown of floorspace).
73. The above approach has been confirmed more recently through the courts in *Lambeth LBC v Secretary of State for Communities and Local Government* (2018), which confirmed that a change of use away from the description of development was lawful if it did not require planning permission. Clearly, this would be the case in the current planning application, which would change from a ‘foodstore’ (A1 use) (once the use has commenced) to other retail (A1 use). Essentially, it is for the planning conditions to explicitly limit the subsequent operation of a planning unit, and such limitations cannot be inferred through a description of development.
74. Critical to the case of the current application prior to any such change within the A1 use class (as well as any other permitted development) taking place, the scheme must first be implemented in accordance with the terms of the original planning permission. Whilst the

physical building works granted through the planning permission have largely taken place and completed, it cannot be said that the scheme has been carried out in accordance with the terms of the planning permission until the units have been meaningfully occupied as a foodstore and the additional unit(s). Once again, case law confirms this approach in *Kwik Save Discount Group Ltd v Secretary of State for Wales (1981)* which stated that the use must have commenced and constitute more than a 'token activity' before the planning unit can change goods-type within the relevant use class of the approved scheme.

75. On the basis of the above case law, it is not considered that the planning permission M/FP/1262/14/P has been fully completed in accordance with the terms of the permission, as the retail use has never been commenced. As a consequence of this non-commencement of the foodstore use, the unit is not considered to benefit from the ability to change within Class A1 without first submitting a new application.
76. In terms of the nature of submitting this new application, given the need to change the description of planning permission M/FP/1262/14/P in order to create five retail units, a gym and garden centre (and for the reasons given in the Variation of Approved Scheme section), a Section 73 application for a MMA would not be considered an appropriate mechanism. The scale and nature of the changes proposed would also rule out the use of a non-material amendment (Section 96a of the 1990 Act). As such, the submission of a new full application for planning permission was considered to be the only available option.

The Fall-back Position

77. Following on from the above, the fall-back position is that which Sainsbury's could carry out without the need for further planning permission, and where there is some prospect of doing so. Both Sainsbury's and the Council have sought legal opinion as to what comprises the fall-back position.
78. The Court of Appeal has recently clarified in *Mansell v Tonbridge and Malling Borough Council (2017)* that a fall-back position may be a material planning consideration where it is a 'real prospect'. For a prospect to be a 'real prospect', it does not have to be probable or likely, but merely a possibility. The degree of weight to be attached to that prospect is then a matter of planning judgement, having consideration of the particular circumstances of the subject application.

Sainsbury's/WYG position

79. In the Planning Statement submitted with the application, WYG explains that:

'The fall-back position, which is a robust material consideration, is that Sainsbury's will find occupiers for some, or all, of the units in their existing even if that meant part occupation of one or more units and the 'mothballing' of surplus space. The retailers committing to the Gateway Middlehaven development could trade from the existing units in accordance with the current planning restrictions. Once at least part occupied, the use of the development as retail would be deemed to have commenced and internal subdivisions (which do not require planning permission) could be created to facilitate occupation by additional retailers. The only planning requirements at that stage would be for changes to elevations to provide additional entrance doors. The gym could not trade from the existing permission as that would require a change of use from A1 to D1.'

80. As set out within the Retail Planning Statement, the extant planning permission (ref. M/FP/1262/14/P) granted consent for the development of 4,512 square metres of Class A1 comparison retail goods, and 3,000 square metres of Class A1 convenience retail goods on the application site. Within the Retail Planning Statement, it is confirmed that it is not possible for Sainsbury's to occupy the vacant unit in the current economic climate. Notwithstanding this, and in the context of *Mansell v Tonbridge and Malling*, it remains a possibility.
81. Sainsbury's have sought and provided legal opinion as to their interpretation of the fall-back position and that can be summarised as follows:
- a. There is no requirement for the building to be occupied for its permitted purposes before any works or physical sub division are carried out.
 - b. There is a "building", which "may be used" for retail development, but is not so used. The "permitted" use has not been "implemented". Therefore, there can be no material change of use by using the building for five retail units. Use as such falls within the retail "purpose" for which the building may be used and is not prevented by any condition.
82. After inviting WYG to comment further on the fall-back position, in a later submission, they sought to clarify that the fall-back position would in fact be more difficult to quantify, and could actually amount to any form of meaningful occupation of the as-built units by A1 uses and a foodstore. The implications of this being that a variant of the subject application proposal itself could in fact be brought into use without recourse to the planning system. Given that some elements would clearly require planning permission to be sought (for example, proposed alterations to external elevations), it is considered that far less weight can be attributed to this fall-back position. WYG have also since put forward a further fall-back position, 'Scenario D' which involves using the existing permission for 3 units and occupying the units with B&M home, Iceland, and Argos and mothballing 5,500sqm of floorspace (approximately half of the building).

Middlesbrough Council position

83. In response to the position stated by Sainsbury's legal opinion Middlesbrough Council sought its own. This considered two positions:
- a. Use of the site for the actual form and type of development approved in 2015 "Fall-back A"
 - b. Use of the site for five A1 retail units "Fall-back B"
84. In terms of "Fall-back A" Permission is in place for such use and all that is required is the completion of the internal layout, fit out and the opening of the stores. The prospects of that happening and the consequences are for the Council to assess, but it is noted:
- (i) That Sainsbury's have decided not to occupy the superstore;
 - (ii) There is no prospect of Sainsbury's allowing the superstore to be occupied by a rival foodstore, even if one could be found for a site that Sainsbury's now do not want;
 - (iii) Weight only attaches to Fall-back A if it will be the long-term use. A purely short term food store use may only be important in terms of what it leads to;
 - (iv) This impact has been considered acceptable in the circumstances of 2015.

85. “Fall-back B” involves three elements of potential development:
- (i) The physical creation of the subdivided units by internal walls;
 - (ii) The use of the building as five retail units;
 - (iii) External alterations which might be required for or which would assist the commercial attraction of the proposed five units, including customer doors and servicing/loading bays.
86. Legal advice was that the premises is not yet a “building” as it has not been completed in accordance with the approved plans. It is recognised however that this could easily be remedied by Sainsbury’s and does not mean that “Fall-back B” is not a realistic option.
87. Having established the purposes for which the premises may be used, the use must actually take place before the use may be changed to five retail units. In the court of appeal cases *Wilson v West Sussex County Council*, and *Winchester City Council v Secretary of State for Communities and Local Government* it follows that to begin the use in the 2015 permission, that the premises must initially be used as a food store and up to two A1 retail units. As such, Sainsbury’s, or another operator are required to use the premises as a food store in a meaningful manner before being able to rely upon there being a use.
88. The Council needs to reach a view on the likelihood of the food store use and the need for external alterations. This bears on whether there is a real possibility and if there is, the weight to be attached to that possibility. It is clearly relevant to this assessment that:
- (1) in practice constructing the missing internal wall is unlikely to pose Sainsbury’s any real difficulties;
 - (2) in contrast, initial use of the Premises as a food store is likely to prove an unattractive proposition for Sainsbury’s (and therefore less likely to take place). In this regard it is relevant that:
 - (a) Sainsbury’s has stated publicly that it does not intend to occupy the Premises; and,
 - (b) Sainsbury’s is unlikely to allow a competitor to occupy the Premises in any circumstances and especially where this risks diverting trade from their Wilson Street store.

Relevant to the apportionment of weight to planning considerations is the difference in retail impact between the 2015 permission, a five unit retail scheme which accords with the floorspace limits in the 2015 permission, and the current application. A similar point arises with regards on scenario D more recently identified by WYG, in that the foodstore will need to have been commenced before a change to a non-food Argos could occur.

Assessment of Fall-back position

89. In assessing the two considerations of impact set out within the NPPF, the Council is obliged to consider the important issue of any fall-back position that may be offered by the existence of the extant planning permission (ref. M/FP/1262/14/P). The fall-back position is important when considering and assessing the current application and its impacts and comparing these to what can be expected to be realistically delivered under the existing permission. In this

context it is also important to consider the view put forward by WYG that the use of the building for 5 stores or the 3 stores being offered as scenario D are both legitimate fall-back positions.

90. In summary, it is considered that the impacts of the subject application proposals should be considered in the context of the actual fall-back position: namely the development granted in January 2015 (for a foodstore and 2 no retail units). However, it is apparent that this fall-back development could come forward in a variety of different ways, which are summarised as follows
- i. The permitted development at Gateway Middlehaven is opened as a Sainsbury's foodstore, and Sainsbury's close their existing Wilson Street store;
 - ii. The permitted development at Gateway Middlehaven is opened as a Sainsbury's foodstore, and Sainsbury's keep open their existing Wilson Street store;
 - iii. The permitted development at Gateway Middlehaven is occupied by a different foodstore operator, and Sainsbury's close their existing Wilson Street store; and
 - iv. The permitted development at Gateway Middlehaven is opened as a Sainsbury's foodstore, and Sainsbury's existing Wilson Street store is re-let to a different foodstore operator.
91. Weight should be attributed to these different options in determining the subject application based upon the likelihood of that scenario taking place. In this context, in relation to options i, ii, and iv it has been confirmed by the agent that it is not possible for Sainsbury's to occupy the vacant unit in the prevailing climate so they should be attributed less weight. Furthermore, it would be a highly unlikely event for a main foodstore operator in the UK to let retail space to rival operators competing for market share in the convenience goods retail sector. This should also be taken into account in the weight attached to the third option described above.
92. WYG has also identified two alternative fall back scenarios that they feel can be implemented without the need for further planning permissions. These are the use of the building for five retail units, and for the use of three units for occupation by B&M Home, Iceland, and Argos. Neither of these are considered by the Council to be realistic fall-back positions as neither involves the first use of the larger unit as a foodstore which is a pre-requisite before any further sub division or other retail use can happen.

Historical Context

93. The recent planning history provides an important context in which to consider the current application.

M/FP/0773/13/P

94. As stated earlier in this report this application was for a 11,528 sqm foodstore to be occupied by Sainsbury's. The rationale provided by the applicant was that Sainsbury's existing store, on Wilson Street, was not trading strongly, and was unable to compete effectively with other large stores in the area. Sainsbury's had also indicated that it was not possible to reconfigure or redevelop their existing store to make it more competitive and meet its future needs.

95. In support of the application and to provide mitigation against the impacts of the new store the proposal was to close the Wilson Street store and redevelop it for 9 retail units and a hotel. The linkages between the two applications was highlighted in the planning and development committee report that recognised that a key consideration was the regeneration benefits associated with the redevelopment of the Wilson Street site. The regeneration benefits not only included additional new modern retail floorspace to bolster the vitality and viability of the Town Centre, but also create a new high quality entrance to the centre at a key gateway location from the west. Key was that the report identified that the redevelopment of Wilson Street was fundamental to the consideration of the application for a new store at Middlehaven. These strong linkages between the two schemes is emphasised by the applicants reliance upon the same documentation (i.e. combined planning & regeneration, and retail statements) for both applications. Given the manner in which the information was presented as a joint scheme, both elements were considered by Committee together.
96. The scheme was shown to have the following quantitative impacts upon the Town Centre

	Proposal	Cumulative	
		With Wilson Street	Without Wilson Street
Convenience	-2.6%	-6.6%	-6.6%
Comparison	-1.8%	-3.1%	-7.1%

(note: these figures omit any impact upon the Sainsbury's store in the Town Centre as the proposal was to relocate the store to the application site)

97. The proposal at Wilson Street provided significant mitigation against the Middlehaven proposal that enabled the Council to consider the application in a positive manner. It was taken on good faith, on the basis of the evidence submitted in support of the application and the significant investment required to develop the Middlehaven store, that Sainsbury's would relocate once built and that their Wilson Street store would be redeveloped as a consequence. As a consequence there was no mechanism, legal or otherwise, put in place linking the two schemes.

M/FP/1262/14/P

98. Less than 12 months after permission was granted for the foodstore at Middlehaven an application was submitted for subdivision of the unit. It was reiterated in the submitted planning and regeneration statement that Sainsbury's still sought to relocate because of the poor performance of their existing store and its inability to compete with other larger stores in the area. Whilst the reasons have not been stated Sainsbury's however, no longer required a store as large as that for which permission was secured. Instead, a revised application was submitted for a smaller foodstore of 8,021 sqm and two retail units. Whilst it was not stated the reasoning behind the need for the smaller store it was reaffirmed that Sainsbury's still intended to relocate to the Middlehaven site when the development was complete. A key element of the applicants case remained the regeneration benefits associated with the redevelopment of the Wilson Street site. This also remained a key consideration in the Council's deliberation of the revised scheme.

99. The quantified impacts of this scheme were identified as follows:

	Proposal	Cumulative
Convenience	-1.7% to -2.3%	-4.9% to -5.5%
Comparison	-1.4% to -0.9%	-0.3% to +0.2%

(note: these figures omit any impact upon the Sainsbury's store in the Town Centre as the proposal was to relocate the store to the application site)

18/0478/FUL

100. Whilst the unit was largely completed in 2016 Sainsbury's never took occupation of the building, this despite (as part of the previous applications) the continuing reaffirmation that their existing store was trading poorly and that they would relocate to the Middlehaven store. Sainsbury's submitted the current application citing changes in the retail market as the reason for not relocating. The rationale for the change has never been fully explained to the Local Planning Authority. During discussions regarding the application Sainsbury's intimated at the potential to close their Wilson Street store and relocate to an out of centre location. In a letter from WYG to the Council on 10th December 2018, Sainsbury's reaffirmed that if the application did not go before committee on the 11th January 2019, or was refused that they would need to reconsider their position within the Town Centre. In the supporting statement to the application Sainsbury's have indicated that they are firmly committed to the continued operation of their town centre store, identifying that they have invested in the site through the introduction of an in-house Argos store, and development of their grocery-online function. Whilst this appears to be emphasised by their recently offered commitment to enter into a unilateral undertaking to keep the Wilson Street store open for at least 5 years, this commitment to stay in the Town Centre is only on the basis that they secure planning permission for the submitted application.
101. The proposal at Middlehaven is to sub divide the unit into 5 retail units, a gym, and the addition of a garden centre. Three occupiers are confirmed as potential occupiers – B&M Home, Argos, and Iceland Warehouse. All three have also confirmed their commitment to retain their existing Town Centre stores open, but no non-closure agreement has been offered. Sainsbury's are only prepared to agree to a non-poaching clause for the two units they have not yet been able to let.
102. A significant difference between this scheme and the previous approvals is that the Middlehaven proposal is no longer linked or predicated upon the redevelopment of the Wilson Street site.
103. The quantified impacts of this scheme based upon the most recent information from Sainsbury's/WYG are identified as follows:

	Permitted scheme (No Sainsbury relocation)	WYG scenario D (Argos, Iceland, B&M)	18/0478/FUL
Convenience	-7.4%	-7.3%	-9.1%
Comparison		-0.9%	-1.9%

(note figures presented are for the proposal and do not show cumulative impacts – source WYG)

104. The permission for the redevelopment of the Wilson Street site has now lapsed and can therefore no longer be considered as a commitment.

Changing Retail Picture

105. In recent years, Middlesbrough Town Centre, like similar town centres and high streets in the UK, has been faced with many significant challenges. This tough climate has had the consequence of forcing a large number of high-profile retailers to close their stores on the High Street.
106. First of all, the 2007-2008 financial crisis and the associated credit crunch has had significant implications on the retail habits of shoppers, with consumer confidence low and people spending less money. In recent times, High Streets have also faced strong competition from online shopping, as more people choose to shop for convenience goods via electronic devices rather than visit town centres.
107. In addition to the above, out-of-centre retail parks have boomed over the past three decades and these continue to draw shoppers away from town centres and high streets. In Middlesbrough's case, the nearby out-of-centre Teesside Retail Park and Cleveland Retail Park continue to attract customers and substantially increase their turnovers, while the footfall in the Town Centre continues to fall and turnover has dropped significantly.
108. In 2016, the Council commissioned a Retail Study by WYG, which included comparisons of the turnover of Middlesbrough Town Centre, Teesside Retail Park, Cleveland Retail Park and Portrack Lane. Whilst the figures, which have been derived from this and previous retail studies, have not been adjusted to a common base, as is illustrated in the table below, performance of the Town Centre has worsened significantly whilst these out of centre locations have prospered at Middlesbrough's expense.

	2007	2013	2015
Middlesbrough Town Centre	£547.17m	£479.7m	£300m
Teesside Park	£211.6m	£178.8m	£427.8m
Cleveland Retail Park	-	£24.3m	£121.7m
Portrack Lane	£106.85m	£83.0m	£137.8m

109. Key findings from the 2016 Middlesbrough Retail Study can be summarised as
- the Town Centre's vacancy rate for retail and service units and vacant floorspace were high and significantly above the national average;
 - the high vacancy rate has a negative impact on parts of the Town Centre and in some parts contributes poorly to environmental quality;
 - the Town Centre's comparison goods offer is lower than to be expected and its market share has fallen drastically from 34.4% in 2013 to 16% in 2015, Over the same period figures for Teesside Park have seen rises from 12.8% to 23.8% and that of Cleveland Retail Park from 1.7% to 6.8%;
 - other centres and out-of-centre retail destinations are highly accessible from Middlesbrough and provide considerable competition to the Town Centre; and,

- developments at Cannon Park and Middlehaven have to be treated with caution to ensure that there is no further loss of market share from the Town Centre.
110. Vacancy rates in the Town Centre continue to remain high at just under 18% (Aug 2018), and an increase of some 2.5% since the GOAD survey in January 2018). This is almost twice the national average. Whilst the vacancy rate is higher than average it is the over reliance upon retail that makes Middlesbrough susceptible to impacts and turbulence in the retail economy. Just under half of the premises in the centre, 46%, are retail compared to the UK average of 40%. These structural issues make the Town Centre more vulnerable to any trade diversion impacts.
111. Adding to the mix of problems surrounding the vacancy picture in Middlesbrough is the significant number of occupiers in the Town Centre seeking Company Voluntary Agreements (CVAs) to reduce their rent obligations. A recent example of which is House of Fraser, whose future remains uncertain. This causes instability for both businesses and landlords. Additionally there are significant vacancy levels and units on short-term lets (less than 2 years) within the four shopping centres/malls. These vary from 20% of the floorspace in the Cleveland Centre to 73% of floorspace within the Dundas shopping centre.
112. The above gives a glimpse of the challenges being faced by Middlesbrough Town Centre, as nearby out-of-centres continue to attract customers that once visited the Town Centre. As the trend continues, and more and more consumers prefer the convenience of online shopping and visit out-of-centre retail parks, the Town Centre will continue to struggle to compete for customers and its turnover will likely fall further. The result will likely be the further erosion of the Town Centre and the loss of other high-profile retailers, which would severely impact on the vitality and viability of the town.
113. The importance of the above is that it illustrates the position and performance of the Town Centre at the time when the previous applications were considered compared to what it is currently. It highlights the significant changes in circumstances that are relevant in assessing the application including the level of impact. This is a material consideration in determining the application.

PLANNING CONSIDERATION AND ASSESSMENT

114. Turning to the consideration of the application itself. As is clearly evident from the representations received, it is contentious and raises a range of issues, which all need to be closely examined. The principal issues to consider are:
- a. application of the sequential test;
 - b. impact up-on vitality and viability of the Town Centre, including
 - i. assessment of trade diversion/impacts;
 - ii. impact upon investment;
 - iii. The health of the Town Centre and investor confidence; and,

c. economic and regeneration impacts and benefits

115. As stated earlier in this report, in retail policy terms the application site is situated in an out-of-centre location. The NPPF requires that proposals for new town centre uses located outside existing centres and not in accordance with the development plan should address the key tests of the sequential approach and impact.

The Sequential Test

116. The application was received and validated in July, at a similar time to the publication of the revised version of the NPPF. The key elements of the sequential test that were set out in the original version remain. This is particularly relevant to the subject application insofar as it relates to 'disaggregation' (that is, breaking down the development into its various component parts in assessing the suitability and availability of sequentially preferable sites). No reference to disaggregation is made within the revised NPPF, nor its predecessor, or the associated Planning Practice Guidance (PPG).

117. At paragraph 010 of 'Ensuring the Vitality of Town Centres', the PPG is clear that in applying the sequential test to decision making, the following factors should be taken into account:

- With due regard to the requirement to demonstrate flexibility, has the suitability of more central sites to accommodate the proposal been considered? Where the proposal would be located in an edge of centre or out of centre location, preference should be given to accessible sites that are well connected to the town centre. Any associated reasoning should be set out clearly.
- Is there scope for flexibility in the format and/or scale of the proposal? It is not necessary to demonstrate that a potential town centre or edge of centre site can accommodate precisely the scale and form of development being proposed, but rather to consider what contribution more central sites are able to make individually to accommodate the proposal.
- If there are no suitable sequentially preferable locations, the sequential test is passed.

118. Paragraph 011 of the PPG confirms 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. Where this is the case, robust justification must be provided, and, importantly here, land ownership does not provide such a justification.

119. Paragraph 012 goes on to confirm that, whilst the sequential test seeks to deliver the government's 'town centre first' policy, as promoting new development in town centre locations can be more expensive and complicated than building elsewhere, local planning authorities need to be realistic and flexible in terms of their expectations.

120. The above guidance reflects the following Supreme and High Court legal Judgments and decisions made by the Secretary of State, which are widely accepted as being leading case law regarding the interpretation and application of the sequential test at the present time. Firstly, the Supreme Court Judgment – *Tesco Stores Ltd v Dundee City Council* (dated March 2012) UKSC13 provides clarity on the lawful meaning of the sequential test. The Judgment rules that the sequential test, and its limb concerning 'suitable' sites closer to the town centre, is about explaining why alternative sites for the developer's scheme are not more suitable.

Therefore, 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 test.

121. In relation to the size of the alternative sites, the Judgment also establishes that, as long as the applicant has demonstrated flexibility with regards to format and scale, the question to be asked is whether such sites are suitable for the proposed development not whether the proposed development could be altered or reduced so that it can be made to fit an alternative site. The Judgment confirms that the local planning authority should not take inappropriate business decisions on behalf of the developer, and be mindful of the need for realism, and acknowledge that such developments are generated by the developer's assessment of the market that they seek to serve.
122. The application of *Dundee* in England has been confirmed by the High Court R (on the application of *Zurich Assurance Ltd (t/a Threadneedle Property Investments)*) v *North Lincolnshire Council* [2012] EWHC 3708 (Admin) and more recently *Aldergate Properties* [2016] EWHC 1670 (Admin). "Suitable" and "available" generally mean "suitable" and "available" for the broad type of development which is proposed in the application by approximate size, type, and range of goods. This incorporates the requirement for flexibility in the NPPF, and excludes, generally, the identity and personal or corporate attitudes of an individual retailer. The Court of Appeal also held in *Warners Retail (Moreton) Ltd v Cotswold District Council* [2016] that the NPPF contains no requirement to demonstrate need and / or commercial justification
123. This stance is also reflected in the Secretary of State's decision of 11 June 2014 in relation to the application by LXB RP (RUSHDEN) Limited on land adjacent to Skew Bridge ski slope, Northampton Road, Rushden (APP/G2815/V/12/2190175). This application proposed a mixture of commercial and retail uses and included the provision of a garden centre. This decision follows *Dundee*, stating clearly that it is not necessary for disaggregation to be considered and confirming that, if the Government had intended to retain disaggregation as a requirement, it would have explicitly stated this within the NPPF. This decision provides clear policy interpretation of the application of the sequential approach directly from the Secretary of State.
124. A more recent decision letter by the Secretary of State relating to out of centre retail and leisure development at Tollgate in Colchester confirms this interpretation of the sequential test in terms of suitability and appropriate flexibility. The Secretary of State's decision indicates that the alternative sequential site put forward by the Council and Rule 6 parties "would not be closely similar to the appeal scheme" and, hence, the site was not considered suitable. Alternative sequential opportunities must therefore provide accommodation that is broadly similar to the application proposals

Assessment of Potential Alternative Sites

125. The Retail Planning Statement submitted with the application indicates that consideration has been given to the existence of potential alternative sites within and on the edge of the following centres within the Primary Catchment Area (PCA) of the proposed development.
 - Middlesbrough Town Centre
 - Berwick Hills District Centre
 - Coulby Newham District Centre

- Eston District Centre
- Low Grange Farm District Centre
- Thornaby District Centre
- North Ormesby Local Centre

126. Within the submitted Statement, 17 (seventeen) sites have been listed that have been considered (which are mostly in relation to Middlesbrough Town Centre), along with their size and sequential status. The assessment undertaken concludes that all 17 sites are too small to accommodate the proposed development, with the largest one comprising around 2.9 hectares. A similar conclusion is reached in respect of existing vacant units within Middlesbrough Town Centre and the other centres listed above.
127. In the context of the above analysis of relevant case law, the assessment should not be required to demonstrate disaggregation of the various uses proposed for the application site. Notwithstanding this, however, with a mix of proposed uses, operators and unit sizes ranging from 919 square metres to 2,973 square metres within the application scheme, a more detailed consideration of the potential opportunities offered by the identified sequential sites would be expected, including demonstrating meaningful flexibility in terms of scale and format based on the multiple and varied types of operators that are proposed in the development.
128. Whilst WYG assert that they have demonstrated flexibility in reducing the prospective site size required from 5.8 hectares to 5.0 hectares, no evidence has been provided to demonstrate that consideration has been given to the contribution that more central sites in Middlesbrough could make individually to accommodate the proposal. Nor has there been any meaningful attempt to demonstrate flexibility in terms of the format of the proposal. This is contrary to the guidance set out within the second bullet point of Paragraph 010 of the PPG (set out earlier in this report).
129. WYG contend that, in relation to the issue of flexibility, they have taken the same approach that was taken in the assessment submitted with the previous application on the site (approved in 2015) for a foodstore and two retail units – which were ultimately constructed on the site (although not occupied). This view ignores the differences between the two schemes; whilst the overall quantum of floorspace is essentially the same (excluding the garden centre) the current application proposes five retail units and a gym, all of different sizes. So other than the level of floorspace the two schemes are not comparable and a different approach is justified. The *Aldergate* decision supports this in that it confirmed that suitability means for the broad type of development which is proposed in the application by approximate size, type and range of goods.
130. It would have been reasonable, therefore, to have expected WYG to have considered sites smaller than 5.0 ha which, with flexibility in terms of scale and format, could accommodate the proposed development. For example, no consideration appears to have been given to whether the development could be achieved over two storeys or with a smaller quantum of car parking. It is clear, from a review of the types of operators under consideration for the different units, that some of these operators – for example *Argos* (who often have storage over different levels) and the gymnasium – could realistically occupy units spread over more than one floor. It is considered that a development of this scale could be entirely appropriate in Middlesbrough Town Centre.

131. As explained earlier, it is clear that local authorities need to be realistic in their application of the sequential test, and should not seek to take inappropriate business decisions on behalf of the developer. In this context, there may be commercial reasons why the sites listed in the Retail Planning Statement are not suitable for the development proposed, even having demonstrated flexibility over scale and format. This however needs to be explained and justified, it cannot be assumed.
132. To conclude this section of the Sequential Assessment, it is noted, once again, that neither the NPPF nor the PPG contain any reference to disaggregation. The above considered legal judgments confirm that disaggregation does not form part of the sequential test. It is widely accepted by the Courts, the Secretary of State and various inspectors, that it is not the purpose of national policy to require development to be split into separate sites where this does not form part of an applicant's business model and where flexibility on issues such as format and scale has been demonstrated.
133. In this regard, it has been discussed that 17 sites have been identified, but it has not been indicated how each site has been assessed or how the requirement to demonstrate flexibility and consider the contribution of more central sites in the Town Centre has been taken into account. At the Council's request for additional information on how the sequential test had been applied WYG did provide additional information. Whilst the analysis remains fairly superficial they do confirm that B&M home, Argos, and Iceland Food Warehouse have committed to leases within the development, and that each has a specific business model requirements which necessitate a retail warehouse location catering for bulky good sales and level access for shopping trolleys. However, these individual requirements do not affect the sequential test – the focus is on the broad type of development in the application which is being made.
134. It is officer opinion that WYG has not fully applied the requirements of the sequential test as set out in the NPPF and that their assessment lacks the evidence to support their assertions. The likelihood is however, that given the issue surrounding disaggregation, a site of the size required to accommodate a development of this scale is unlikely to be readily available within the Town Centre.

Impact on Vitality and Viability of the Town Centre

135. Paragraph 89 of the NPPF states that impact assessments are required for applications for retail and leisure development, which are outside of town centres and not in accordance with an up to date development plan, where over a proportionate, locally set threshold (or 2,500 square metres gross if no such local threshold exists). Such assessments should include assessment of the proposal on:
- a) existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal.
 - b) town centre vitality and viability, including local consumer choice and trade in town centres and their wider retail catchment (as applicable to the scale and nature of the scheme).
136. In this context, given the scale of floorspace proposed, and the out-of-centre location of the application site, an assessment of the impact of the proposed development has been included

as part of the Retail Planning Statement. This has regard to a quantitative assessment of the likely trade diversion impacts which would be generated by the proposed retail floorspace.

Retail impact assessment

137. This section of the report reviews the base data and approach adopted by WYG and tests the validity of key assumptions. The original assessment considered the impact of the proposed development upon the combined convenience and comparison goods turnovers of existing centres and stores. Whilst updated trade diversion figures have been produced for Middlesbrough Town Centre, for both convenience and comparison goods impacts separately the updated information does not do so for other centres; nor have all of the background figures which would help to substantiate the identified impacts on the Town Centre been provided.

Design Year

138. The impact assessment is undertaken at the test year of 2021. Whilst the Planning Practice Guidance recommends an impact assessment be conducted for the period five years after the subject application, this test year is broadly consistent with the Guidance which indicates that the design year for impact testing should be the year that the proposal has achieved a 'mature' trading pattern (usually the second full year of trading). As, in this case, the unit has already been constructed and only minimal fit out works are required, it is considered reasonable to assume that the units could reach a normal trading pattern as early as 2021.

Catchment Area

139. The Primary Catchment Area used as part of the assessment, and different zones therein, is the same as that used in respect of the previous application proposals for the Gateway Middlehaven site. This comprises five separate zones, covering both the Middlesbrough Council area, and parts of the surrounding local authorities, which are titled Middlesbrough Central, Middlesbrough East, Eston, Thornaby and Rural South.
140. Given the scale of the floorspace that is proposed, and in the absence of any significant developments coming forward in the intervening period which would have had a significant affect upon shopping patterns since then, this is considered appropriate. In line with previous assessments on the site, the wider study area includes six other zones, which is also considered appropriate, given the need to understand and assess potential trade draws from, and impacts across, these wider areas.

Population and Expenditure

141. The assessment uses estimates of the turnover of individual stores and centres which are sourced from the latest (2016) Middlesbrough Retail Study. These turnover estimates are derived, in part, from the population and expenditure projections set out within this study.
142. The population projections of WYG were based on the Office of National Statistics (ONS) 2014-based Sub-National Population Projections (SNPP). Since the 2016 study was prepared, however, new (2016-based) projections have been produced by the ONS.
143. Levels of expenditure in the study were based on Experian's 2014 base year local expenditure estimates, projected forward in line with Experian's growth forecasts in Retail Planner Briefing Note 14 (November 2016) with deductions for special forms of trading (SFT – principally e-tailing). More recent growth forecasts and assumptions on deductions were included in Experian's Retail Planner Briefing Note 15 (December 2017), and 2016 base data is now also available from Experian. Notwithstanding the fact more up-to-date data is now available in

respect of both population and expenditure forecasts, it is considered that this would not materially affect the conclusions of the assessment.

144. A 2014 price base is adopted by WYG, reflecting the use of the 2014-based expenditure data. This is consistent with the price base from the 2016 Middlesbrough Retail Study, is considered acceptable, and allows an appropriate comparison between the two assessments.

Current Expenditure Patterns

145. As explained above, the submitted assessment uses estimates of the turnover of individual stores and centres which are sourced from the latest (2016) Middlesbrough Retail Study. An adjustment has been made to that of Middlesbrough Town Centre and Sainsbury's at Wilson Street, following the relocation of Argos into the latter store.
146. Tables 2(a), 2(b) and 2(c) within the assessment include these turnover estimates. As set out above, however, whilst convenience and comparison goods trade diversion impacts have been estimated, the full workings have not been made available by WYG, nor have separate estimates of the convenience and comparison goods turnovers of stores and centres within the Primary Catchment Area. It is therefore difficult to compare the turnover figures with those included in the Middlesbrough Retail Study (and indeed the Stockton Retail Study which provides similar turnover estimates for stores/centres within that local authority area, including those at Thornaby, Teesside Park and Ingleby Barwick)

Committed Developments

147. As part of their assessment, WYG factored in the likely impact of the committed new retail floorspace at Teesside Park. However, consideration does not appear to have been given to any other commitments (in Middlesbrough, Stockton or elsewhere) which could have a material effect upon convenience and/or comparison goods shopping patterns within the Primary Catchment Area. For example, the planning permission at Coulby Newham District Centre would, if implemented, affect comparison goods shopping patterns in Middlesbrough; likewise, planning permission has also recently been granted for a Food Warehouse store at Portrack Lane, on the eastern side of Stockton. Without such information it is not possible to identify whether these schemes would have a material impact or not upon the Town Centre.

Turnover of the Proposed Development

148. The impact assessment considers three different scenarios for the development in terms of forecast turnover.

WYG Permitted Scenario A

149. The first scenario relates to the most recent planning permission granted (M/FP/1262/14/P), and indeed the development which has been implemented on the site, comprising a Sainsbury's foodstore of 8,021 square metres gross/4,076 square metres net and two non-food retail units totalling 3,507 square metres gross/2,806 square metres net.
150. In Scenario A, it is assumed that the existing Sainsbury's store at Wilson Street would close (as was originally the intention at the point at which the committed Sainsbury's store at Middlehaven would open). Whilst this reflects only one of the four different fall-back scenarios (the four fall-back positions were listed earlier), it could be reasonably argued to represent the 'worst case' scenario, on the basis that the existing Sainsbury's site in Middlesbrough Town Centre would become vacant, and the Gateway Middlehaven development would be occupied

by a Sainsbury's foodstore and other non-food retail uses. Scenario A is, therefore, a reasonable basis upon which to assess the fall-back position.

151. Table 1 of the retail impact assessment indicates that the turnover of the Scenario A development at this out of centre site would be £33.1m for convenience goods and £27.4m for comparison goods.

WYG Proposed Scenario B

152. This scenario proposes units to be occupied by Iceland (1,382 square metres gross/1,042 net) and four non-food retail units – totalling 8,475 square metres gross/5,541 square metres net under Scenario B (including stores to be occupied by B&M and Argos).
153. It has been assumed that Unit D (to be occupied by Argos) would have a very low net sales area (372 square metres), when set against its gross floorspace (2,508 square metres) – however, this is typical of Argos stores. Furthermore, Table 1 in Appendix D (which sets out the forecast turnover all units) assumes that it would have a sales density of £20,038 per square metre – which is very high for a non-food retail operator, but broadly consistent with information from Mintel on Argos' company average turnover (after allowing for VAT). The net to gross ratios assumed for each of the units also appear to be reasonable.
154. Table 1 indicates that, under Scenario B, the convenience goods turnover of the proposed development would be £8.9m, and the total comparison goods turnover would be £25.9m.

WYG Proposed Scenario C

155. This scenario also proposes units totalling 8,475 square metres gross/7,301 square metres net (including B&M but not Argos – hence the higher net to gross ratio compared to Scenario B).
156. Table 1 indicates that, under Scenario C, the convenience goods turnover of the proposed development would be £8.9m, and the total comparison goods turnover would be £27.7m. The footnotes to Table 1 to the statement indicate that the sales densities for each of the scenarios are sourced from information provided by Global Data and Mintel, both of which are recognised industry sources. The sales density for the other retail warehousing floorspace (i.e. without end operators identified) which has been used is £4,350 per square metre. Based on a review of these sources, the sales densities used all appear reasonable and result in a realistic estimation of the convenience and comparison turnover of the proposed units.

WYG Proposed Scenario D

157. This scenario was put forward by WYG in a letter to the Council dated 10th December 2018 and was provided in response to concerns raised by officers in assessing the application. This proposal, also considered by WYG to be the implementable fall-back position, involves occupying the two A1 retail units with B&M Home, and Iceland. The large foodstore unit would be occupied by Argos with 5,500sqm of the store being mothballed. The size of the units respects the positions of the walls shown on the approved plans. A revised Table 1 shows the convenience goods turnover of £8.2m and total comparison goods turnover as £12.7m.. This does not, however, make an allowance for the potential impact from the mothballed element of the scheme.
158. The turnover figures adopted by WYG under each scenario also allow for an increase in turnover efficiency of 2% per annum between 2018 and 2021, which is based on recommended growth rates in Experian's December 2017 Briefing Note. In the context of the above, it is

considered that these forecast turnovers are a reasonable reflection of the likely turnover of the proposed development.

Trade Diversion

159. Tables 2(a), 2(b) and 2(c) within the retail impact assessment include estimates of the likely trade diversion impacts of the proposals upon existing stores and centres within the Primary Catchment Area, under the three scenarios set out above. They also include the cumulative impact of the proposals, when taking into account the approved development at Teesside Park. WYG have also subsequently provided a breakdown of the trading effects of the proposed development on Middlesbrough Town Centre in terms of convenience and comparison goods. However, in the absence of more detailed information on the separate convenience and comparison impacts of the subject development (which should also include the estimated convenience and comparison goods turnovers of each store/centre, and the turnover of any other committed developments, either within or just beyond the PCA) it is difficult to reach a firm conclusion on the acceptability of the impacts forecast.
160. In terms of the other assumptions adopted, it is understood from the footnotes that the spread of trade diversion impacts arising from the proposed development is based upon that forecast as part of the retail impact assessment undertaken to accompany the 2015 planning application. However, no consideration appears to have been given to whether these impacts would be different under the currently envisaged tenant mix. For example, the proposed Iceland foodstore would be significantly smaller than the Sainsbury's foodstore previously approved and, as such, could have greater potential to compete with facilities within existing centres. Furthermore, a significant proportion of the comparison goods turnover of the scheme (56%-59%) is forecast to be drawn from out-of-centre stores within the Primary Catchment Area, with just 25%-28% from Middlesbrough Town Centre, yet 33-35% of trade draw from Teesside Park. In their objection letter on behalf of the four centre owners within Middlesbrough Town Centre ELG estimate that the impact upon Middlesbrough Town Centre could be as high as 40%. It is likely that the true draw is somewhere between these figures. Without the robust justification requested from WYG as to rationale behind the split it is not possible to assess the true impacts of the proposal.
161. In relation to the committed developments, the spread of forecast trade diversion appears rather simplistic, in assuming that such diversion will all arise from either Middlesbrough Town Centre or Teesside Park. In practice, this impact will also be felt by other destinations, although it is acknowledged that this could have the effect of reducing that upon the Town Centre in particular.
162. Taken on face value, the proposed developments under Scenarios B and C would result in overall cumulative trade diversion impacts upon Middlesbrough Town Centre of -3.4% under Scenario B and -3.3% under Scenario C. Under Scenario D the proposed impact would be -2.3%, as noted above however this does not take into account the potential impact from the part of the store that is mothballed. The cumulative trade diversion impact under Scenario A would be -8.2% (due to the loss of the Sainsbury's foodstore in the Town Centre).
163. Clearly, there is only a marginal difference between Scenarios B and C (between a scheme with and without an Argos store) in quantitative terms, and both levels of impact are significantly lower than that of the 'fall-back' scheme – Scenario A. However, and as set out above, the Council should be mindful of the weight to attach to the fall-back position offered by Scenario A in reaching its decision on whether to grant planning permission for the subject

development. Scenario D whilst showing the lowest level of impacts still results in the future potential for further retail to come forward as part of the unit not used at some later date which would lead to a further and higher impact.

164. Notwithstanding this, all levels of trade diversion impact must be considered in the context of the current vitality and viability of existing centres and the potential impact upon the vitality and viability of those centres should planning permission be granted.

The Fall-Back Position

165. This issue was dealt with at length earlier in this report. However, notwithstanding these alternative fall-back scenarios, it should be noted that the trade diversion impacts of the 2014 application scheme were in part offset by the delivery of a large format comparison retail development on the site of the current Sainsbury's store within Middlesbrough Town Centre. This would no longer come forward as part of the current application proposals. This places increased importance upon the Council's consideration of the current and forecast vitality and viability of Middlesbrough Town Centre in determining the subject application.

Impact on Investment

166. As part of the Retail Planning Statement, the impact of the proposals upon proposed investment in three sites is considered, which is indicated to have been identified through pre-application discussion with Council officers. These comprise:
- a. Teesside Media and Innovation Village (TMIV), Middlesbrough Town Centre
 - b. Former Kwik Save site, Ormesby Road, Berwick Hills District Centre
 - c. Southern Service Yard and Dalby House, Coulby Newham District Centre

There are no other relevant, known, committed or planned investments relating to any specific development schemes, which could be prejudiced by the development. The above sites and schemes are each considered in turn below.

Teesside Media and Innovation Village

167. It is concluded within the applicants Planning Retail Statement that the proposed development would not prejudice any proposals which come forward for the TMIV site, as a result of the scale and nature of the uses involved. This reflects the fact that the emerging development plan identifies that the site is likely to accommodate high quality commercial, education, cultural and leisure development, a new high-quality bus interchange, and a high quality public realm including development of a new public square.
168. The emerging development plan also identifies that the site may provide an opportunity for Middlesbrough College of Art and Design to relocate from its campus on Green Lane in Linthorpe. In this context, the application development and the TMIV development are aimed at meeting very different needs and it would be the officer view that the proposed subdivision of the existing foodstore is unlikely to result in any significant adverse impact upon proposed investment in the TMIV.

Former Kwik Save, Ormesby Road

169. The submitted WYG statement concludes that the proposed development would not prejudice the delivery of the approved scheme on the former Kwik Save site. The approved development on the former Kwik Save site comprises a total of 1,056 square metres across eight separate units, and given this overall size, would clearly cater for different prospective occupiers.

170. The approved scheme for the former Kwik Save site at Ormesby Road, by providing small-format retail accommodation, would cater for different requirements and there would appear to be limited basis to conclude that the proposed development at Gateway Middlehaven with its much larger individual units would have a significant adverse impact upon its delivery.

Southern Service Yard and Dalby House, Coulby Newham

171. Full planning permission was granted in October 2016 (ref. M/FP/0665/16/P) for 5 additional units (totalling 3,997 square metres) within Coulby Newham District Centre, for use as either retail (A1), office/financial (A2), restaurant /cafe (A3), drinking establishment (A4), hot food takeaway (A5) and the reconfiguration of car park and the demolition of Dalby House.

172. The submitted Retail Planning Statement argues that the unit style of retail and leisure accommodation approved at the Coulby Newham site is different to that proposed at Middlehaven, on the basis that the former is seeking to attract operators who trade from smaller, High Street format units.

173. Whilst the Coulby Newham development, if implemented, would form an extension to the existing shopping centre, the development would include four new units, along with one refurbished unit (now occupied by Franks the Flooring Store), totalling 4,127 square metres gross floorspace. The new units would also benefit from directly accessible surface car parking, accessible directly from one of the Parkway Centre's perimeter roads. Two of the proposed units (comprising 1,886 square metres and 899 square metres respectively) are of a size which could accommodate uses currently proposed as part of the application at Middlehaven. On this basis, it is a development of a form which is comparable to the proposed development at Middlehaven and could cater for similar requirements.

174. Notwithstanding the above, the content of paragraph 16 (Ensuring the Vitality of Town Centres) of the PPG must be accounted for. This states that, where wider town centres developments or investments are in progress, it will also be appropriate to assess the impact of relevant applications on that investment. Key considerations will include:

- a. the policy status of the investment (i.e. whether it is outlined in the Development Plan),
- b. the progress made towards securing the investment (e.g. if contracts are established), and
- c. the extent to which an application is likely to undermine planned developments or investments based on the effects on current/forecast turnovers, operator demand and investor confidence.

175. In response to these considerations, it is noted that the Retail Planning Statement references media reports that Ellandi (the developer for the Coulby Newham scheme) has put the development on hold due to an anchor tenant withdrawing their interest in the scheme.

176. On this basis, and in light of Ellandi not likely to implement the permission, it is difficult to reach a firm conclusion on the true impact of the application scheme upon the committed development at Coulby Newham, but it is worthy of note that indications suggest that the scheme is stalled due to lack of occupier interest.

Other Investment in Middlesbrough Town Centre

177. In addition to the above schemes, the Council has drawn attention to two other significant planned investments in the Town Centre. It is considered that these investments may already

have been jeopardised by the proposed development at Gateway Middlehaven. These proposals both relate to the Dundas Shopping Centre and comprise:

- a) Change of use of the former Potters Club to a gymnasium. This scheme not only would refurbish the unit, but would introduce a new entrance to the Shopping Centre on Wilson Street. The total investment would have amounted to around £500,000. Since the submission of the current application, which includes a gym unit, the intended operator has now withdrawn their interest in the unit. Dodds Brown the agents acting on behalf of the owners of the Dundas Centre have cited the threat of a gym opening as part of the Middlehaven scheme being given as the reason for the scheme not being progressed.
- b) Relocation of B&M. The B&M unit currently anchors the Dundas Shopping Centre, and it is understood that the centre management was intending to relocate the operator to a larger, more prominent unit as part of wider improvement works. B&M are, according to agents of the owners of the centre, however unwilling to enter into discussions at this stage stating that they are considering other options at this stage. B&M have provided a letter to state that it is their intention to retain a Town Centre presence if they open a B&M home store at Middlehaven.

178. In this context, objections have been submitted, including representations on behalf of the four main shopping centre owners, within Middlesbrough Town Centre, alleging that the proposed development at Gateway Middlehaven would have a significant adverse impact on planned private investment in the Town Centre.

179. Planning Practice Guidance advises that, where wider town centre developments or investments are in progress, it will also be appropriate to assess the impact of relevant applications on that investment. The key considerations include:

- a. the progress made towards securing the investment (e.g. if contracts are established), and
- b. the extent to which an application is likely to undermine planned developments or investments based on the effects on current/forecast turnovers, operator demand and investor confidence.

180. In this regard, planning permission was granted in October 2017 for the introduction of a gym use into the Dundas Shopping Centre (17/0474/FUL) and, according to the centre management, the investment was well advanced prior to the announcement of the Gateway Middlehaven scheme. Evidently, the loss of this planned investment, the new leisure facility, and related external enhancements to the Shopping Centre, has the potential to undermine future investment in this centre and the wider Town Centre, thus adversely affecting the vitality and viability of the Town Centre as a whole.

Impact upon health of the Town Centre/Investor confidence

181. The submitted Retail Planning Statement assesses the impact upon Middlesbrough Town Centre in the context that the centre is 'performing well and displaying healthy levels of vitality and viability'. However, the Council would strongly disagree with this assessment of the health of the Town Centre, and considers it not to be reflective of the situation on the ground. The Retail Planning Statement does not appear to take into account the significant changes in the retail property markets which have taken place over the last year – and indeed the last six months in particular – which would indicate that the Town Centre may be more vulnerable than the assessment suggests.

182. For example, the recent work (August 2018) undertaken by Central Management Solutions for Middlesbrough Council to assess the economic vitality of the Town Centre identified the actual Town Centre vacancy rate at approximately 18%, with 123 units out of 689 vacant upon inspection (all use classes). This shows that, since January 2018 (last survey of the Town Centre), the number of vacant units increased by 2.5% (from 106 to 123 units – itself a rise in vacancy levels of some 16%), which is significantly above the national average. This position may be marginally better than when the 2016 Middlesbrough Retail Study was completed but it remains dangerously high and at risk of getting worse. Whilst the vacancy rate is higher than average, it is the over-supply of retail units and reliance upon retail (46% of the mix) that creates further structural issues in the centre. With just 11% of the premises classified as leisure (bar, club, café, cinema etc.), the town remains very reliant upon retailing.
183. During the course of the application, and after invitation by the Council, further information has been provided by WYG seeking to detail the underlying market conditions and indicators of vitality and viability within the Town Centre. A comprehensive analysis of the current situation is critical to understanding the impact of the application scheme upon the Town Centre's vitality and viability. Evidence could have included trends in Town Centre rents and yields, potentially working with local agents active in the Teesside property market.
184. In response, WYG provided a brief commentary from Colliers, regarding the health of the centre. This commentary looks at national PMA Retail Provision data for 2017, and concludes that the Town Centre has seen investment over the past 12 months, benefits from decreasing vacancy levels and is displaying healthy levels of vitality and viability.
185. Conversely, a letter of objection from ELG on behalf of key Town Centre stakeholders (including managers of Dundas Shopping Centre, Cleveland Shopping Centre, Hill Street Shopping Centre, and Captain Cook Square) reports that the health of the Town Centre has declined since the original Sainsbury's application from 2015, and the town has faced significant difficulties in recent months. This statement is reinforced through a number of independent sources, including the retail consultants Javelin Group, who identified Middlesbrough Town Centre as one of the ten 'most challenged' town centres in the UK in their 2018 Destiny Score White Paper. Middlesbrough also continues to fall down Javelin Group's Venuescore rankings.
186. The future of key anchor tenants within Middlesbrough Town Centre is also under threat. In particular, the House of Fraser recently announced that its Middlesbrough department store was to close, only to be bought by Sports Direct. Following this, the lease of the store was renewed for a 12-month period only, on the basis of a zero rent agreement. This suggests that the store is vulnerable to closure in the near future. In addition, Debenhams recently announced that 50 of its stores were to be closed, although it is not yet known whether these closures affect the store in Middlesbrough Town Centre. It would not be an exaggeration to state that these two department stores are crucial to a healthy and attractive town centre, and the uncertainty over their future reflects wider concerns regarding the local retail market. Without key anchor stores within the town centre there would be a further and substantial shift in the desirability of the Town Centre vs Out of centre areas.
187. On this basis, it is entirely reasonable to conclude that Middlesbrough Town Centre is now more vulnerable to trade diversion to a new development at Gateway Middlehaven than in 2015 when the previous planning permission was granted and this needs to be taken into account in assessing the potential impact of the proposed development upon the vitality and

viability of the centre. This is a position echoed in the representations received from the owners of the individual centres within the Town Centre

188. In light of the methodological queries raised above, the estimation of a cumulative trade diversion impact of -3.3% to -3.4% would be considered to represent a fairly optimistic assessment of the impact of the application scheme upon Middlesbrough Town Centre and, in practice, the cumulative impact may be higher if the assumed trade draw to the development were to be different, and if account were taken of other retail floorspace commitments in the surrounding area. It has not been possible to identify whether these matters would make a significant difference to WYG's figures, as they have not provided the justifications or background information in a transparent manner to assess. It is for the Council, however to consider on the basis of the information available to it as to whether this amounts to a 'significant adverse impact' on the Town Centre as a whole. The Council's decision in this regard is ultimately dependent upon both the weight attached to WYG's fall-back position in light of the factors identified above, and also the Council's own factual understanding of the vitality and viability of Middlesbrough Town Centre at the present time.

Regeneration and Economic Considerations

189. Notwithstanding the above discussions regarding the potential impacts on the vitality and viability of the existing town, district and local centres, in isolation the proposed development of 5 retail units and a gymnasium would assist with the Council's regeneration agenda. The Gateway Middlehaven site – an entranceway to the Council's flagship regeneration scheme at Greater Middlehaven – has remained vacant and unoccupied for decades. The previously approved development for the foodstore was considered to bring new life to the site prior to the worsening retail economic climate, which hindered Sainsbury's plans to vacate their existing Town Centre site and relocate to Gateway Middlehaven. The proposed development would enable the vacant building to be occupied, this however needs to be weighed against the loss of regeneration benefits that underpinned the original approvals.
190. The 2013 and 2014 applications as highlighted earlier in this report were predicated on the regeneration proposals associated with the redevelopment of Sainsbury's Wilson Street store, which weighed significantly in their favour. This was to create a new high quality entrance into the Town Centre and improved linkages with Canon Park. At the time, these weighed heavily in favour of the applications. With Sainsbury's indicating their intention to remain at the Wilson Street site these regeneration proposals are no longer an option. Whilst the retention of a major retailer in the Town centre is to be welcomed, it does weaken the regeneration ambitions for the western gateway, a key entrance point, into the Town Centre.
191. The largely complete building at Middlehaven goes some way to regenerating the area but falls short by remaining vacant. Whilst an active use is preferable the proposal if implemented as per this current application could undermine the Council's wider economic and regeneration aspirations for the town. These aspirations are expressed in the Mayor's Vision and the Council's Investment Prospectus. In turn these have been given expression in planning policy terms in the Publication Local Plan (2018)

Mayor's Vision

192. One of the priorities identified in the Mayor's Vision is strengthening the town through bold and innovative regeneration. Key to this is supporting the growth of the Town Centre as the heart

of the Tees Valley, attracting new investors, city-scale facilities and visitors, and working closely with the local independent retail sector to ensure its continued success.

193. Prioritisation will be given to the development of a unique, bold and diverse Middlehaven, restoring the area as the centre of commerce in the Tees Valley.

Middlesbrough Investment Prospectus

194. The investment prospectus, a key Council strategy for investment and regeneration, sets out the key projects and initiatives through which the Mayor's Vision will be delivered. These projects are seen as central to transforming Middlesbrough and its economy. These key projects are identified as:

- Completion of the snow centre development;
- Centre Square
- Teesside Media and Innovation Village (TMIV)

Publication Draft Middlesbrough Local Plan (2018)

195. The Mayor's Vision and Investment Prospectus have provided a strategic framework for the preparation of the Local Plan, which sets the planning framework for the delivery of these key schemes. As outlined earlier in this report the key policies are

CITY1: Creation of a City Centre

CITY2: Centre Square

CITY4: Middlehaven

CITY6: TMIV

EG1: Economic Strategy

EG6: Town, District and Local Centres

Assessment

196. WYG has identified in its assessment that the proposal will not impact upon the implementation of these schemes. This is primarily because they are assessing the impacts of like upon like, that is assessing retail versus retail. As such the proposal will not have a direct impact upon these regeneration schemes as they are, expect for the gym use, looking at different end users/occupiers. This oversimplifies the relationship between the proposal and the regeneration schemes.
197. The success of these schemes is dependent upon investor confidence in the Town Centre as somewhere to invest. Anything which impacts upon this confidence will impact upon the ability to deliver the necessary regeneration. Whilst the successful implementation of the schemes will lead to increase footfall that will help with the vitality and viability of the Town Centre it is important to ensure that the Town Centre remains in a healthy position to enable the investment in the first place. Looking at each of these schemes individually

Ski centre

198. The ski centre, which has already secured the necessary outline permissions, is seen as a key scheme central to not only the successful regeneration of Middlehaven but also with significant spin off benefits for the Town Centre. Development of the ski centre is anticipated to

significantly increase the number of visitors to Middlesbrough with associated increase in expenditure and ancillary uses. One of the occupiers of the ski centre is a gym. Whilst the ski centre is seen as a key element in the regeneration of Middlehaven such uses are on the margins of viability and require significant investment in other supporting uses to supplement the skiing operation. As already identified in this report a gym operator was identified for the ski centre, but with the advent of the current Sainsbury's application these discussions have ended. If the ski centre developers are unable to secure a gym they will need to find alternative uses, calling into question the viability of the scheme.

Centre Square

199. The first two office buildings are already under construction, one of which is to be taken by the Council for its new offices. In total, there is permission for 5 new office buildings. These buildings are being marketed at present. One of the key requirements is an attractive and vibrant Town Centre. The Centre Square office development is one of the schemes that when implemented will help with the restructuring of the Town Centre to help ensure its long term viability. Any proposals that undermine confidence in the Town Centre, and its future, hinder the ability to successfully bring these schemes forward. The current proposal at Middlehaven is one such proposal.

TMIV

200. As identified elsewhere in this report, WYG has assessed in its retail impact assessment the potential for the scheme at Middlehaven to impact upon investment at TMIV. As also expressed above this assessment is simplistic in that it concludes no impacts as the schemes are looking at different end users. TMIV is a significant regeneration scheme at the western end of the Town Centre that is looking to create additional floorspace for leisure and food and beverage uses. As with the Centre Square proposal this scheme will help diversify uses in the Town Centre, assist with the restructuring of the centre and help ensure its long term health, vitality and viability. Also, like the Centre Square proposal, it is dependent upon investor confidence and those seeking to invest seeing a healthy attractive centre.

Residual Matters

201. As well as the above issues relating to retail planning, other relevant factors need to be considered as part of the proposals. Inclusive in these are the issues of the implications on the Highways and Environmental Health matters, as well as the implications of flooding given the location of the site within a designated flood zone.

Implications Relating to Highways Matters

202. When assessing applications in Highways terms, consideration must be given to the lawful fall-back position that could be implemented without the need for further planning consents. Planning permission has been granted – and the approved building works implemented – for a foodstore (and ancillary retail units) on the site. The issues surrounding the levels of traffic generation, car parking numbers and access arrangements for a large-scale retail development on this site have been fully considered and approved previously.
203. The proposals now being considered have been supported by a Transport Statement, which has followed the same principles and approach as per the previous consents. With the exception of the creation of the garden centre element, there is no increase in the floor area.

204. The submitted Transport Statement is considered to be very robust and does not take into account the likelihood of customers visiting more than one unit during a visit (linked trips). The Statement has demonstrated that the current proposals are anticipated to generate less traffic during the peak periods of demand than both previous consents, which is as a result of the proposed retail uses having lower trip rates than the original approved food store. As a consequence, no further highway assessment is deemed necessary.
205. Access to the proposed development is as per the original consent and the level of car parking is unchanged. Cycle parking has been increased and provided in different locations relative to each individual unit.
206. Servicing arrangements are as per the original consent, being accessed from Marsh Road, and the swept path analysis has demonstrated that articulated HGVs can enter, turn and leave in a forward gear. A turning area for HGVs has been provided clear of the individual loading docks for each unit.
207. The application was also supported by a Travel Plan, which will seek to reduce dependence on the private car and a Car Parking Management Plan (CPMP). The CPMP proposes to introduce a maximum duration of stay to ensure efficient use of the car park. During match days, the duration of stay is reduced to 90 minutes to prevent fans utilising the car park and preventing customer use. This approach is consistent with the original consent for the site.
208. On balance, there are considered to be no highways objections to the scheme.

Implications Relating to Flood Risk and Drainage

209. It is apparent that the majority of the application site is located within Flood Zones 2 and 3 (those at greater risk of flooding). In order to consider the flooding implications, the application has been supported by a detailed Flood Risk Assessment (FRA), and the Lead Local Flood Authority and the Environment Agency have been consulted accordingly.
210. In its response, the Environment Agency advised that the proposed development would only meet the requirements of the National Planning Policy Framework if the measures as detailed in the FRA are implemented. These measures, which include protection and maintenance of existing floor defences, identification and provision of safe routes into and out of the site, and appropriate finished floor levels, could be secured by way of a planning condition if Members were minded to approve.

Conservation/Ecology

211. Due to the location of the proposed development being adjacent to a main water course, it is important to ensure that there are no adverse impacts on protected flora and fauna. In order to consider the implications of the proposed development on local ecology, the application was supported by an Ecological Appraisal. This document has been considered by an independent ecological expert.
212. After considering the report and visited the site, it was considered that the grassland has low ecological value, and that the area does not have any wildlife value in its own right, or as part of any contribution to the surrounding habitats. Overall, there would be no ecological justification to object to the proposals.

Conclusions

213. This is both a complex and contentious application to assess and consider. The key principle underlying the case put forward on behalf of Sainsbury's is that the building has been constructed and it has planning permission for retail uses. As such if they so wished Sainsbury's could relocate to the premises and up to an additional two A1 retail units could be occupied regardless of the impact upon the town and other centres.
214. As has been shown above it is a different set of circumstances now compared to when the 2013 and 2014 applications were considered and approved. Town centres and the retail industry are facing what is perhaps their most challenging times as the nature of retailing and the role of our town centres continue to change.
215. Central to the consideration of this application has been:
- a. what weight can be attached to the fall-back position, and therefore the realistic impacts of implementing the approved scheme;
 - b. would the current application have a greater or lesser impact than the fall-back position; and,
 - c. have there been any material changes in circumstances since the previous application was approved in 2015 to warrant a change in position by the Council.
216. As highlighted earlier in the report there is a disagreement between the applicant and the Council as to what the actual fall-back position is. What is clear however is that Sainsbury's have indicated that they no longer wish to occupy the unit. This is a significant change in position since the original schemes of 2013 and 2014 were granted approval. To satisfy the requirements of the extant permission the foodstore unit would need to be occupied substantially by another food retailer. WYG has recently confirmed that Sainsbury's have secured leases from three retailers B&M Home, Argos, and Iceland Food Warehouse. Under this new scenario D approximately half of the unit (5,500 sqm) would be mothballed. Whilst the uses are in line with the extant permission, the question is would the manner of the implementation be compliant with that permission and is it therefore a genuine fall-back option. It is officer opinion that this does not represent a genuine fall-back position in light of the legal advice that the Council has received and as such little weight can be attached to it. It is clear, however, that implementation of the existing permission as approved is not a realistic prospect, and as such little weight can be attached to it.
217. In correspondence from WYG (10 Dec 2018) they have confirmed that the impacts of this proposed new scenario, are greater than those of the 2014 scheme i.e. 7.3% impact on convenience compared to 1.7%, and 0.9% impact on comparison compared to 1.4% (these are solus impacts and not cumulative and therefore do not take into account the effects of the Wilson street scheme proffered as mitigation in support of the 2014 application). WYG also confirm that the current application would have a more harmful impact than Scenario D. The scheme will therefore have a greater impact upon the Town Centre than when the 2013 and 2014 applications were assessed and considered. The question however is would this impact be significant enough to justify refusing the application.
218. When the last permission was granted in 2015, the Town Centre was in a far healthier position than it is now. As has been demonstrated above turnover in the Town Centre was significantly higher and the Town Centre was competing more effectively with Teesside Park.

Middlesbrough has continued to fall in the VENUSCORE ratings. Middlesbrough is also amongst one of the ten most challenged town centres in the country. It is now more vulnerable to impacts than previously. Whilst as WYG indicate the threats faced by Middlesbrough, and the uncertainty over the future of some of the big names on the high street is not unique to the town, Middlesbrough as a centre is overly reliant upon retail. In a recent Centre for Cities report Middlesbrough was shown as having a much higher retail to other uses ratio than centres of a similar size and role. Middlesbrough is making strides to address this imbalance through initiatives such as Centre Square and TMIV. Their success however will be dependent upon ensuring that in the meantime the Town Centre remains viable and provides necessary levels of comfort to investors.

219. The application as stated by WYG is unlikely to have a direct impact upon these proposed investment schemes in the Town Centre as they are not competing for the same end users or expenditure. This ignores, however, the fact that if the Town Centre declines further as a retail centre that it will impact upon the ability to secure investment in these schemes. Investors want to come to a successful town, and if they are presented with a declining centre this will detract from such investment and will undermine the Council's aspirations for economic, population, and housing growth.
220. The very fact that Sainsbury's has submitted the application is already undermining confidence in the Town Centre. Whilst not apparently large in their own right proposals for two new gym operators are on hold. A gym proposed in the Dundas Shopping Centre would have brought with it a new entrance to the centre that would have acted as a catalyst for further new investment. The operator has since pulled out of the deal citing the Sainsbury's application. A potential gym operator as part of the ski centre proposals is no longer prepared to commit to the scheme because of the Sainsbury's proposal. This impacts upon the viability of the ski centre, a key regeneration and investment initiative in Middlehaven that would drive further investment activity in the area.
221. One significant change since the previous application was considered is that the significant regeneration benefits associated with Sainsbury's relocation through the redevelopment of their Wilson Street store are no longer an option. This weighed heavily in favour of the previous permissions.
222. It is considered that having taken in to account all relevant factors that the arguments for and against the proposal are finely balanced. It is, however, recommended that the application be refused for its impacts upon the vitality and viability of Middlesbrough Town Centre.
223. It is officer opinion that WYG have failed to apply the sequential test in accordance with the provisions of the NPPF in particular the issue regarding flexibility and lack of evidence to support their assertions. It is also officer opinion that given knowledge of the Town Centre there are no genuinely readily available sites to accommodate the proposal, even if a more flexible approach were to be adopted. As such, it is not felt that there is sufficient justification to refuse the application on the basis of failing to apply the sequential test in an appropriate manner.
224. It should be noted, however, that the current permission has very few restrictions in place to prevent intensification of retail uses once that permission is implemented in accordance with the approved scheme. If committee were to resolve to approve the application then it is

recommended that conditions be attached to the permission that tighten up future uses on the site. In particular the following would be recommended:

- a. Restrictions on the total level of floorspace;
- b. Restricting the number of retail units;
- c. Identifying a minimum unit size; and
- d. No poaching of existing Town Centre operators.

225. Sainsbury's have agreed to all of the above, as well as putting on the table a unilateral undertaking to maintain their Town Centre store open for a minimum of 5 years. It is recommended that in addition to the above that a restriction is placed on the two as of yet unlet units for convenience retail, and that for those occupiers already signed up to the scheme a commitment is made to maintain their stores open in Middlesbrough Town Centre.

RECOMMENDATIONS AND CONDITIONS

Refuse

1. Significant adverse impact on the vitality and viability of the Town Centre and investment in the centre

Notwithstanding previous approvals for the site / premises and taking into account notable changes in material circumstances since the previous approvals, in the opinion of the Local Planning Authority, the proposal would have an unacceptable and significant impact upon the vitality and viability of the Town Centre through impacting upon investment and undermining confidence in the Town Centre contrary to the guidance contained within Local Plan Policies CS13 emerging Local Plan Policy CITY1, CITY4, EG1, EG6, and the guidance of the National Planning Policy Framework (para 89).

2. Impact upon the delivery of the Council's regeneration and economic growth proposals

Notwithstanding previous approvals for the site / premise and taking into account notable changes in material circumstances since the previous approvals, in the opinion of the Local Planning Authority, the proposal would have an unacceptable and significant impact upon the Council's regeneration proposals and undermine its aspirations for economic growth contrary to the guidance contained within Local Plan Policies CS13 emerging Local Plan Policy CITY1, CITY4, EG1, EG6, and the guidance of the National Planning Policy Framework (paras 80 to 82).

Case Officer: Peter Wilson

Committee Date: 11th January 2018

