

Peel Property (Investments) Ltd

**Description 1:** 2015/0987: Variation of condition 1 of planning permission B/05/1165/BA (which was previously varied by planning permission 2014/0663 to allow non-food retail use with upto 30% food retail use, of units 3C, 5 and 6) to allow additional retail goods to be sold at units 2, 3A, 3B and 3C, 4, 5, 6, 7 and 8.

**Description 2:** 2015/0988: Variation of condition 7 of B/88/0294/BA to allow additional retail goods to be sold at units 1A, 1B and 1C.

The Peel Centre, Dryden Road, Barnsley, S71 1JE

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One Objection Received

### **Site Description**

The Peel Centre is located on Dryden Road to the east of and close to, Barnsley town centre. It is a retail park with the units arranged in an 'L' shape with a central, hard surfaced car park. It is situated in a well established wider retail and commercial area, and forms part of Barnsley's overall retail offer. It is by some distance the closest retail park to the town centre.

At ground floor level, it currently comprises approximately 12,399sq. m of retail and leisure floorspace, arranged over 11 units. There are a mixture of occupants within the site including national names such as Halfords, Bathstore, The Range, Pets at Home, Maplins, Argos, DW Sports, Currys and Pizza Hut.

The Retail Park is accessed via a signalised gyratory junction with Harborough Hill Road (the A61). From the Gyratory, routes such as Old Mill Lane connect the town centre with the site. The site lies approximately 0.5km from Barnsley railway station.

To the north of the site is partly vacant retail warehousing, which along with other adjoining land, is currently subject to an application, also by Peel, for a new foodstore development. To the north west, on the island created by the gyratory, is a B&M Bargains store, surrounded by Old Mill Lane and Harborough Hill Road and to the north west of this is the Asda Superstore.

To the west beyond Harborough Hill Road is a large residential area and to the south and east are large areas of open space and agricultural land.

### **Planning History**

The most relevant planning history is outlined below:

- Outline Permission was granted on 3 April 1999 for the refurbishment, redevelopment and extension of the Peel Centre (ref. B/98/0641/BA). Three of the conditions (4, 5 and 11) limited the categories of retail goods permitted to be sold.
- On 11 March 2004 permission was granted to vary Condition 5 (retail use) of the 1998/99 outline permission to 'reverse' the wording of the condition from listing those goods which could be sold, to instead list goods which could not be sold (ref. B/03/2180/BA).
- This condition was then further varied on 5 August 2005 under permission reference 05/1165/BA to enable the sale of pet products. It is this amended condition that now controls the use of the majority of the units. It states:

*'(1) Other than Unit 7, no unit shall be used for the retail sale (other than related to the principal use of the premises) of food, alcoholic drink, tobacco, watches or clocks, books, newspapers or magazines, clothing or footwear, fashion accessories, jewellery, toys, perfume and toiletries, music, records, audio or video tapes, pharmaceutical goods or sports goods except where such goods are sold for use for animals'*

- A further variation was granted in 2009 to allow Argos to trade from Unit 4.
- An application, relating to units 3C, 5 and 6, was approved on 08/09/2014 for 'variation of condition 1 of 05/1165/BA to allow any non-food retail and maximum of 30% of net sales area to be used for sale of food' (Ref: 2014/0663)

## **Proposed Development**

The applicant seeks permission to vary condition 1 of application B/05/1165/BA which states;

*'Notwithstanding the Town and Country Planning (use classes) Order 1987, or in any provision equivalent to that class in any statutory instrument revoking and re-enacting that Order with or without modification) other than unit 7[to be occupied as a leisure facility and sports goods retail premises] no unit shall be used for the retail sale [other than related to the principle use of the premises] of food; alcoholic drink; tobacco; watches or clocks; books; newspapers or magazines; clothing or footwear; fashion; accessories; jewellery; toys; perfume and toiletries; music, records or video tapes; pharmaceutical goods or sports goods without the prior written consent of the Local Planning Authority except where such goods are sold for use of animals.'*

The condition was further varied by application 2014/0663 which states:

*'Notwithstanding the Town and Country Planning (Use Classes) Order 1987, or any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification, with the exception of:*

- (1) unit 7 (to be occupied as a leisure facility and sports goods retail premises); and*
- (2) units 3C, 5 and 6 (which may be used for any non-food retail purpose and for the sale of food from a maximum of 30% of the net sales area of any of these individual units);*

*no unit shall be used for the retail sale (other than related to the principal use of the premises) of food; alcoholic drink; tobacco; watches or clocks; books; newspapers or magazines; clothing or footwear; fashion accessories; jewellery; toys; perfume and toiletries; music, records, audio or video tapes; pharmaceutical goods or sports goods without the prior written consent of the Local Planning Authority except where such goods are sold for use for animals'.*

*Reason: To ensure that the use of the premises is in compliance with saved policies S3 & S5 of the Council's Unitary Development Plan.*

By varying those conditions it would allow the units subject to these applications to sell a wider range of goods. However, in response to concerns regarding the potential impact on planned investment (the Better Barnsley town centre redevelopment scheme), the applicant is offering a condition which would prevent sale of the wider range of goods sought for 5 years but review clauses linked to progress on the Better Barnsley scheme.

It should be noted that these applications are being considered concurrently with a further application (2015/1028) for the erection of a retail unit located immediately east of the Range store and measuring around 977 sq. m.

An application has also recently been approved to provide a new garden centre at the western side of The Range unit (ref. 2015/0552). The relocated garden centre provides an opportunity to develop a logical infill to the existing units on the current garden centre site. The new unit would be subject to the same retail use.

## **Policy Context**

Planning decision should be made in accordance with the development plan unless material considerations indicate otherwise and the NPPF does not change the statutory status of the development plan as the starting point for decision making. The development plan consists of the Core Strategy and saved Unitary Development Plan policies. The Council has also adopted a series of Supplementary Planning Documents and Supplementary Planning Guidance Notes, which are other material considerations.

The Council has produced the Publication Consultation Document of the Local Plan. It establishes policies and proposals for the development and use of land up to the year 2033. The document is a material consideration and represents a further stage forward in the progression towards adoption of the Local Plan. As such increasing weight can be given to the policies contained within the document although this is still limited by the need to consider any comments received during the consultation and with the knowledge that the Inspector can require changes to the plan.

### Saved UDP Policies

S3 (Retail Development Outside Defined Shopping Centres) directs retail development towards the defined centres followed by edge of centre then out of centre sites that are suitable, viable and available.

S5 (Retail Development Outside Defined Shopping Centres) outlines that all retail development which would create a new shopping unit or units in excess of 930 m<sup>2</sup> outside of the central and principle shopping centres will be subject to planning conditions which control the range and type of goods to be sold and the maximum or minimum unit size as measures by the gross floor area.

### Core Strategy

Policy CSP8 'The Location of Growth' relates to the preferred locations for growth and states:

*'Priority will be given to development in the following locations:*

- Urban Barnsley*
- Principal Towns of Cudworth, Wombwell, Hoyland, Goldthorpe (Dearne Towns), Penistone and Royston*

*Urban Barnsley will be expected to accommodate significantly more growth than any individual Principal Town to accord with its place in the settlement hierarchy...'*

Policy CSP31 'Town Centres' relates to centres. It states:

*'Barnsley Town Centre is the dominant town centre in the borough. To ensure it continues to fulfill its sub regional role the majority of new retail and town centre development will be directed to Barnsley Town Centre.*

*The District Centres have an important role serving localised catchments and meeting more local needs. To ensure they fulfil this role and continue to complement and support the role of Barnsley Town Centre new retail and town centre development will also be directed to the District Centres. The Local Centres serve smaller catchments and development here will be expected to meet the needs of the local area and not adversely impact on the vitality or viability of other nearby centres.*

*All retail and town centre developments will be expected to be appropriate to the scale, role, function and character of the centres in which they are proposed.*

*A sequential approach will be used to assess proposals for new retail and town centre development. This will help to achieve the spatial strategy for the borough and will focus development on identified centres in the first instance. Edge of centre and out of centre development will only be allowed where it meets the requirements of Planning Policy Statement 4’.*

## NPPF

The National Planning Policy Framework sets out the Government’s planning policies for England and how these are expected to be applied. At the heart is a presumption in favour of sustainable development. Development proposals that accord with the development plan should be approved unless material considerations indicate otherwise. Where the development plan is absent, silent or relevant policies are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole; or where specific policies in the Framework indicate development should be restricted or unless material considerations indicate otherwise.

In respect of these applications, relevant paragraphs include:

Paragraph 7 – 12 Core Planning Principles

Paragraph 19 - Significant weight should be placed on the need to support economic growth.

Paragraph 24 – Sequential test

Paragraph 26 – Impact Assessment

Paragraph 32 - Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

Paragraph 72 - The Government’s objectives include to promote the vitality and viability of town centres and meet the needs of consumers for high quality and accessible retail services.

Paragraph 77 - Local planning authorities should apply a sequential approach to planning applications for retail and leisure uses that are not in an existing centre and are not in accordance with an up to date Local Plan.

Paragraph 78 - Local planning authorities should prefer applications for retail and leisure uses to be located in town centres where practical, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered.

Paragraphs 95 -99 – Low carbon future, adaptation to climate change.

## National Planning Practice Guidance – ‘Ensuring the Vitality of Town Centres’

This provides guidance in relation to the sequential test and in respect of assessing the retail impact. It also provides guidance on how to consider impact on planned investment, which is a significant consideration in this instance given the Better Barnsley scheme. It states 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. Key considerations will include:

- The policy status of the investment (i.e. whether it is outlined in the Development Plan)
- The progress made towards securing the investment (for example if contracts are established)

- 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.

In assessing retail impact, 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.

### Retail Caselaw

#### *Tesco Stores Ltd v Dundee City Council (2012)*

The Supreme Court in *Tesco Stores Ltd v Dundee City Council* ([2012] UKSC 13, 21 March 2012) considered how the sequential test should be applied, concluding that ‘it is the proposal for which the developer seeks permission that has to be considered when the question is asked whether no suitable site is available within or on the edge of the town centre.’ The Supreme Court was clear that a developer or retailer should not be required to fundamentally change their proposed development so as to operate in some artificial world. Lord Reed states at paragraph 38 of the transcript:

*‘The whole exercise is directed to what the developer is proposing, not some other proposal which the planning authority might seek to substitute for it which is for something less than that sought by the developer... ‘But these (sequential assessment) criteria are designed for use in the real world in which developers wish to operate, not some artificial world in which they have no interest doing so.’*

Therefore in terms of flexibility, the applicant should not be expected to significantly alter the size of the proposed development so that it can be accommodated on an alternative smaller site, especially where the retailer has confirmed that the application site is the most suitable available site in terms of size and location.

#### *Relevant Appeal Decision – Cortonwood Retail Park (ref. APP/P4415/A/13/2197947)*

In the Cortonwood appeal decision, the Inspector applied the Dundee judgment to conclude at paragraph 22:

*‘In this case there is no prospect of the retail units being developed, in full or in part, at any other location. The proposal is wholly specific to the appeal site as a means of redeveloping a partially used warehouse for a more commercially viable return.’*

Peel argue that their proposals are a means of securing the re-letting of existing vacant retail warehouse space which cannot be met by either the construction of new retail warehousing, or the relaxation of restrictions on existing retail warehousing, anywhere else. They suggest that to expect or require the proposals to be located elsewhere would be to enter the ‘artificial world’ which the Dundee ruling guards against.

#### *Zurich vs North Lincs and Simons Developments (2012)*

The High Court’s decision in *Gunness* (Scunthorpe) confirms that *Dundee* applies in England.

It also confirms, with the following wording, that if a decision maker is not convinced the sequential test has been satisfied, a balancing exercise is still required of positive and negative factors: *‘The applicant having failed to persuade the officer that the sequential test is passed, the officer performs the exercise which he must perform to see whether the presumption of refusal....is*

*outweighed by other material considerations’ and ‘to determine whether the presumption is displaced, the extent and consequences of the breach of sequential provisions may be relevant.’*

In other words, in such cases, the local planning authority is not required to automatically refuse permission, notwithstanding the wording of the NPPF.

### *Aldergate Properties Ltd vs Mansfield District Council*

The case concerned a challenge by Aldergate Properties Limited to the decision of Mansfield District Council to grant planning permission for a 1,925 sq.m foodstore at an out-of-centre sites approximately 3.5 miles from Mansfield Town Centre. Aldergate Properties Limited own a site within Mansfield Town Centre with planning permission for a mixed use development, including a minimum of 4,000 sq.m of unrestricted retail floorspace.

Aldergate contended that the proposed development would have a significant effect on the ability of its town centre site to attract investment, to which policy required a convenience store, such as that proposed, to be directed. The challenge was made on the following grounds:

- i. The District Council erred in its approach to the sequential test by ignoring sites in Mansfield Town Centre because Aldi would not locate there in view of the nearby location of other existing or permitted Aldi stores;
- ii. The District Council imposed a condition personal to Aldi without considering relevant planning policy objections to such a condition;
- iii. The District Council failed to consider whether the proposal accorded with the Development Plan, and policy R6 in particular, also failing to consider the adverse impact which the proposal could have on the viability and vitality of Mansfield Town Centre, including future investment there; and
- iv. Failed to consider the Claimant’s contentions about the extent of the store’s catchment area.

The potential implications for the Peel proposals primarily focus on the application of the sequential test and, in the Mansfield case, the judgement found that the sequential test had been misapplied as it excluded sites in Mansfield Town Centre, as they were not suitable to meet the requirements of Aldi. However, the judgement found that the identity of the applicant or proposed occupier is largely irrelevant for the purposes of the application of the sequential test. The judge interpreted ‘suitable’ and ‘available’ to generally mean ‘suitable’ and ‘available’ for the broad type of development which is proposed by the applicant by approximate size, type and range of goods. This approach incorporates the requirement for flexibility in Paragraph 24 of the NPPF and excludes, generally, the identity and personal or corporate attitudes of an individual retailer.

The application for the Peel Centre is accompanied by a sequential site assessment which assesses the ability of a number of sites within the town centre to accommodate the broad type of development proposed (i.e. a multi-unit retail warehouse scheme of at least six units totalling at least 9,325 sq.m with associated car parking and servicing) and no case was advanced based on specific operator requirements. It has previously been accepted that the proposals satisfy the requirements of the sequential test and it is not considered that the Mansfield case would in any way alter these conclusions.

## **Consultations**

England & Lyle (Retail Consultants) – The proposal will not have a significantly adverse impact on the town centre or on planned investment within the town centre.

Highways – No objections

Air Quality Officer – Mitigation required to offset the impact on the adjacent AQMA.

Legal Officer – No objections

## **Representations**

One representation has been received. This was from BMO Real Estate Partners, who own the Alhambra Centre. The issues raised are as follows:

### *Sequential Assessment*

BMO consider that the sequential test has not been passed. They base this on the same availability argument as Queensbury and reiterate the point that granting permission would conflict with the town centre first policies in both the NPPF and the adopted development plan.

### *Retail Impact*

BMO suggest that the current health of the town centre can be considered vulnerable to negative impacts from new or amended out-of-town retail provision such as that proposed. Accordingly they consider that any increase in town centre vacancy rates would have a significantly detrimental impact on the vibrancy and vitality of the town centre.

They also consider that existing linked trips between the Peel Centre and the Town Centre only existing because of the bulky goods restrictions placed on the Peel Centre and that there is a realistic prospect that linked trips would cease if there was a sufficient critical mass of unrestricted A1 uses with a diminished town centre offer. Should this happen they suggest that the impact on the town centre would be greater than currently forecast.

They then argue that there are serious shortcomings in the methodology used by the applicant in calculating turnover and resulting trade impact so as to dilute the magnitude of the impact on the town centre. Furthermore, they argue that due consideration has not been given to the cumulative impact of these proposals and the previously allowed relaxation that Peel secured (2014/0663).

### Queensbury

Queensbury, who are the Council's appointed Retail & Leisure Development Management Organisation in relation to Better Barnsley Phase 2 scheme, initially had reservations in relation to the potential impact of the application on the delivery of Better Barnsley. However, following additional information from the applicant and advice from England and Lyle they are satisfied that the applications would not have a significantly adverse impact, subject to conditions restricting the timescale of delivery.

A summary of Queensbury's initial concerns are outlined below for information;

### *Sequential Assessment*

Raise significant concerns regarding the sequential assessment and argue that the sequential test is not passed because the Better Barnsley site is available within a reasonable timescale and is sequential preferable. They therefore consider that circumstances are materially different to when the Cortonwood appeal was allowed.

Ultimately they argue that the variations seek to allow traditional high street retail on a bulky goods retail warehouse site. They therefore consider that the applicant should demonstrate more flexibility over car parking provision because traditional high street retail has less need for proximity parking as it doesn't require bulky goods to be carried long distances. They therefore

consider that some sequentially preferable sites should not have been discounted on the grounds of suitability.

### *Impact on Planned Investment*

Queensbury point out that the Better Barnsley scheme is more advanced than when the Cortonwood appeal was allowed and a number of significant milestones have been passed. The scheme is now at its most critical stage when it is necessary to secure pre-lets, particularly for the large A1 units, which the Peel Centre site would compete with.

### *Economic Benefits of the Peel Scheme*

Queensbury contend that the economic benefits associated with the Peel scheme are deadweight given that existing units are already occupied and could readily be re-occupied.

## **Assessment**

### Principle of Development

Saved Policy S5 stipulates that all retail development which would create a new shopping unit or units in excess of 930 sq. m outside of the central and principal shopping centres will be subject to planning conditions which control the range and type of goods to be sold, and the maximum or minimum unit size as measured by the gross floor area. This policy therefore provided the rationale for imposing the conditions originally.

Policy S3 is also saved, and relates to retail development outside the Central Shopping Area of Barnsley town centre and the defined Principal Shopping and Commercial Centres. It states that all new retail development outside of the centres will only be permitted:

- On a site allocated for that purpose in the plan
- Where there is not a suitable site available within the defined centre or where there is no available allocated site, then on a site at the edge of a defined centre; or
- Where there is no suitable site available either within any of the centres defined above or in accordance with the requirements of (a) or (b), then an out-of-centre site in a location accessible by a choice of means of transport.

In relation to the first criterion, the site is allocated for large scale retailing of comparison goods (rather than an allocation for unrestricted retail) so the proposals represent a departure from policy S3. However, it is now necessary to assess the proposal against the more recent Core Strategy policy CSP31 and national policies and guidance.

In order to enable a robust assessment to be carried out, the applications have been supported by a Retail Impact Assessment and Transport Assessment. The Council has commissioned independent experts in these fields, namely England and Lyle and AECOM, to assess the information submitted and provide technical advice and recommendations. The findings and conclusions are explored under the headings below;

### Sequential Test

Paragraphs 24 and 26 of the NPPF explain that local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre, and are not in accordance with an up-to-date Local Plan. In this case, the proposal is not for new development, it is for a relaxation of controls on existing units which are located on a site specifically allocated for large scale comparison goods retailing in accordance with policies which were saved at a time when National Policy for retail development were not materially different to those now in force under NPPF.



The sequential test undertaken concluded that none of the units identified as being available and over the set threshold are suitable and viable for the proposed development. The majority of the units that are located within wider sites allocated for either mixed-use or retail development are insufficient in size to accommodate the proposal or would be economically unviable to undertake the required alterations to ensure the units are suitable for retail purposes. These findings are consistent with those of the planning inspector who allowed the appeal at Cortonwood. Accordingly, on the face of it, none of the units are available, suitable and viable for the proposed development.

However, this permission cannot be implemented straight away. If it could, the applications would almost certainly have been recommended for refusal on the basis of the impact on the Planned Investment in the Better Barnsley scheme. For the reasons explained under the heading 'Impact on Planned Investment', the Units will only become available gradually and it is therefore reasonable to assume that circumstances will change over this period. As such, there is a prospect that large units will become available through the delivery of the Better Barnsley scheme and that the positive impact this has on the viability of the town centre could help to bring forward proposals on currently unviable edge of centre sites.

In response to this point, the applicant has cited a decision referred to in their planning statement known as the "Rushden Lakes decision", This was made by the Secretary of State (SoS) after endorsing a Planning Inspector's report, confirmed how the sequential test should be applied. The Inspectors Report for that decision states at paragraph 8.55 that:

*'In terms of availability, NPPF [24] simply asks whether town centre or edge of centre sites are "available". It does not ask whether such sites are likely to become available during the remainder of the plan period or over a period of some years.'*

The applicant therefore argues that 'The SoS states at paragraph 15 agrees with the Inspectors overall conclusion on the sequential approach. It follows that the SoS endorses the specific individual conclusions drawn by the Inspector on the matters i.e. the way in which the test of 'availability' is applied as described above. Rushden Lakes is clear that for a site to be considered sequentially preferable it must be available. It is important to note that the scheme under consideration in Rushden Lakes was large scale and that it is the nature of such large schemes that they can only be delivered over a number of years, or what could alternatively be described a prolonged period. There is no suggestion in the Rushden Lakes decision that where a scheme would take a number of years to deliver, the sequential test should be applied on any basis other than that alternative sites should be available. This is all completely consistent with the confirmation by the Secretary of State (para 16 of the decision letter) in the same decision that disaggregation is no longer any part of policy'.

This has been referred this back to our appointed retail consultant (England & Lyle), who confirm that they are in agreement with the applicant's commentary in relation to the application of the sequential test. Accordingly, in view of recent case law, they remain of the opinion that it would be very difficult to sustain a reason for refusal on sequential grounds.

If we were minded to refuse the application on sequential grounds, we would be relying on an argument that the floorspace which the applications relate to should be disaggregated (i.e. subdivided into the individual units) and that we should assess future availability over several years rather than looking at what is currently available. Whilst there appears to be a justification for doing this on the basis that the units already exist (and so we wouldn't be entering into an artificial world by insisting on significant flexibility in the format and/or scale of the proposal and by considering what contribution more central sites are able to make individually and collectively i.e. disaggregation) and that we are relying on the scheme being implemented over a prolonged period in order to avoid a significant adverse impact on the Better Barnsley scheme, such an argument would be in direct conflict with the current wording and legal interpretation of the NPPF and associated guidance which focus on whether or not a site is available now.

Moreover, as explained under the heading 'Impact on Planned Investment', the condition offered by Peel would ensure that the units are only occupied for unrestricted A1 if 5 out of the 6 largest units in the Better Barnsley scheme have been pre-let (in which case they wouldn't be available for the purpose of the sequential test) or if insufficient progress has been made securing pre-lets (again meaning units would not be available). Accordingly, whilst there is some logic in saying that the sequential test shouldn't be on the basis of availability now, the condition does provide some comfort that sequentially preferable units in the Better Barnsley scheme would also be unavailable in the future. The condition doesn't cover the point that during this period other in centre or edge of centre sites might become available and be both suitable and viable but unlike the Better Barnsley scheme, they are not currently being brought forward for development. Consequently, given current case law, it is not considered that we can substantiate a reason for refusal on sequential grounds.

In reaching a conclusion on the sequential test it is important to note that local and national planning policy still contain a town centre first approach to unrestricted retail uses. As such, the condition imposed on the original permission still remains up to date. The proposal therefore represents a departure from saved UDP policy S3. Nevertheless, given the wording of the National Planning Policy Framework and recent case law, it is considered that the sequential test has been passed.

### Retail Impact

The impact of the proposal on Barnsley Town Centre and particularly the Better Barnsley scheme is a key consideration and has resulted in officers insisting on additional information being requested from the applicant in order to substantiate their claims that the proposal will not have a significant adverse impact on either the town centre or on planned investment.

Before assessing this in detail it is important to recognise that there is a significant leakage of expenditure from Barnsley to retail destinations outside the borough. The applicant asserts that because of the proximity of the Peel Centre to the Town Centre and associated evidence on linked trips between the two, relaxing restrictions on the type of good that can be sold will help clawback a significant level of existing comparison goods expenditure leakage. This is acknowledged by England & Lyle but the fact the permission can only be implemented over time dilutes the applicant's assertion that to relax restriction will help the town to immediately claw back retail spending on comparison goods that currently goes outside the borough to destinations such as Cortonwood, Parkgate and Meadowhall. Furthermore, we cannot be certain that these linked trips will remain if the Peel Centre becomes occupied by more high street type retailers. Having said this, we do recognise that the Peel Centre is limited in scale and format such that it is likely to retain a reasonable quantum of bulky goods retailers and over the longer term, it is recognised that because of its connectivity to Barnsley town centre, it would be preferable to have a fully occupied Peel Centre with an attractive offer that can successfully compete with more remote out of town destinations.

Overall, the evidence presented on retail impact suggests that the effect on the town centre will be just 1.7 to 1.8%, which the applicant asserts is not deemed significantly adverse. This evidence has been independently assessed by England & Lyle and their conclusion is that the figures presented are realistic. Accordingly, whilst the town centre is considered vulnerable to further unrestricted out-of-centre retail floorspace, the proposal is not considered have a significantly adverse impact on Barnsley Town Centre as a whole. In addition, when looking at the cumulative impact associated with the previous planning permission, the proposal would still not have a significantly adverse impact.

### Impact on Planned Investment

Planning permission was granted for the Better Barnsley scheme in July 2015. The redevelopment of the town centre and associated markets has been a long term objective of the

Council, it being a critical scheme from a Barnsley economic and regeneration perspective. Accordingly, when assessing the impact on planned investment against the first criterion in the NPPG (policy status of the investment), it is clear that there is compelling support, both corporately and in respect of planning policies, for the proposal.

There has also been good progress made towards securing the investment, £50 million already committed, and works are currently being undertaken on site (demolition of central offices and creation of the surface car park on the former CEAG site). Milestones have also been established for submission of the reserved matters application and for the finalising of the terms of the remaining investment. The resultant timetable therefore envisages completion of the scheme in April 2019.

In this regard, given that the scheme is progressing and that the Council is committed to funding approximately half of its total cost, it could be argued that the proposals at the Peel Centre pose little threat to the delivery of the Better Barnsley scheme.

However, when assessing 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), it is important to note that 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. Given that the Better Barnsley scheme has been in the offing for over a decade it is reasonable to be cautious about the impact of these proposals on the ability to secure the additional investment necessary to complete the Better Barnsley scheme.

England and Lyle identified that there would be some overlap in the type of goods to be sold from the existing and proposed units at the Peel Centre and the type of goods that would be sold from the consented retail floorspace within the Better Barnsley scheme. The expansion of the comparison goods offer at the application site therefore theoretically increases competition which could potentially make it more difficult to secure sufficient tenants for the Better Barnsley scheme.

However, the impact on the Better Barnsley scheme needs to be viewed in the context of the speed at which Peel would be able to utilise the proposed relaxation of goods controls. There are 12 trading units currently on the park with another one leased to Carpetright but not currently occupied. When assessing the leases, there will only be three that come up for renewal during the timescale for delivery of the Better Barnsley scheme. Peel point out that there are some very important general points to note about the expiry of leases such as those on the Peel Centre. Firstly as a matter of course tenants have a legal right to a new lease when their existing lease expires. Under the Landlord & Tenant Act, there are only very limited and specific grounds on which Peel can attempt to oppose such renewal. A wish to replace the tenant with a different occupier is not such a ground. This point has been verified by colleagues in Legal Services and it is therefore accepted that units are unlikely to become available before the expiry of leases unless there is business failure.

Peel also assert that it is not in their interests to wish tenants to leave at expiry of leases, the usual approach being to negotiate a new lease, especially where the incumbent tenant is a National retailer with good covenant strength. This information has been verified by England & Lyle who agree that a whole new tenant line up could not be achieved overnight. As such, even if there was an overlap between prospective tenants, given the scale of the Better Barnsley scheme and the piecemeal nature of any changes to the tenant line-up at the Peel Centre, any impact could only reasonably be classed as modest or minor.

They accepted the information provided by Savills in that regard and, on the basis of the additional justification provided, they consider that it would be difficult to sustain a reason for refusal citing a significant adverse impact on planned investment in the town centre, particularly in view of the

conclusions drawn in the Cortonwood appeal and the need to stem the leakage of comparison goods expenditure to destinations outside the Borough.

Given that Peel has other landholdings close by they could theoretically incentivise existing bulky goods retailers to move elsewhere in order to secure a higher value high street retailer at the Peel Centre. Whilst Peel maintains that this is not realistic, they have offered a condition which would prevent existing units being occupied for unrestricted A1 for a period of five years. This is something that officers have pushed for because a shorter period of say three years would mean their units would be available at roughly the same time as the Better Barnsley scheme is scheduled for completion.

In a scenario where the condition only applied for three years, retailers would have the choice between being guaranteed a unit on an existing retail park or agreeing a pre-let within a town centre scheme which is still to be delivered. The latter therefore represents a greater risk and could detract some retailers who are looking for a new unit within the next 3-4 years. The condition would therefore force some retailers to wait longer for a unit at the Peel Centre, which would give the Council more time to secure pre-lets and offer greater certainty to retailers who might otherwise consider taking a unit at the Peel Centre.

In agreeing to five years Peel have suggested that there should be break clauses so that the condition no longer applies once Queensbury have secured pre-lets of 5 out of the 6 largest A1 retail units. The rationale for this is that it is only the larger units that Peel would compete with because their planning permission prevents units being sub-divided. Moreover, the success of phase 2 of the Better Barnsley scheme mainly hinges on securing tenants for the larger A1 units as experience shows that smaller units will be taken up once tenants have been secured for the larger units.

Peel have also requested that the condition ceases to apply if Queensbury fail to make reasonable progress securing pre-lets for the larger units. They base this on what happened with the previous 1249 scheme, which wasn't delivered and argue that they should not be prevented from implementing their proposals if the planned investment isn't forthcoming.

Having considered the matter in detail, officers consider that the suggested condition is sufficient to address concerns regarding impact on planned investment and whilst Queensbury would rather the application be refused, they have reviewed the terms of the unilateral undertaking and also accept that it represents a reasonable compromise given the independent advice from England & Lyle.

### Highways

The Peel Centre is accessed via a signalised junction onto Harborough Hill Road, which, in this locality, is of dual carriageway standard. The access road is called Dryden Road providing access to the retail park car parks and beyond to the service yards.

The Peel Centre junction sits at the southern corner of Harborough Hill gyratory, which provides a junction between the A61 and A635, before the A61 crosses over the River Dearne at Old Mill Lane.

The gyratory is a multiple lane arrangement with three signalised entries for A61 and A635 approaches. The A61 approach from the south incorporates Dryden Road (access to Peel Centre) into the signals arrangement. The A61 signals arrangement from the north incorporates a bus gate. There are a number of priority controlled access points within the gyratory, namely Twibell Street, Meadow Street, Canal Way, and lastly access to B&M Bargains on the island in the centre of the gyratory. There are several controlled pedestrian crossing points, including at the Peel Centre Dryden Road junction.

There are currently 524 standard spaces (including parent & child) within Peel Centre. This equates to 1 space per 23.7 m<sup>2</sup> GFA at present and 1 per 25.6 m<sup>2</sup> with the proposals both of which complies with the maximum permitted (1 space per 20m<sup>2</sup>) through Barnsley's Local Development Framework Supplementary Planning Document on Parking (adopted March 2012).

The location of the site is considered to have a good level of non-car accessibility, particularly given its location near a major bus corridor and within acceptable walking distance of Barnsley Interchange. This is borne out by the evidence provided by the exit survey, which shows that approximately one in six visitors to the park travel by non-car modes.

As part of a previous application in connection with the Twibell Street retail site, Peel instructed full traffic counts at the gyratory which tracked movements around the whole gyratory (June 2014).

The peak periods for consideration in respect of highway impact are the weekday PM and Saturday afternoon periods. The peak hours for the retail park and the gyratory as a whole coincide. They are 1600 – 1700 hours on the Friday and 1345 to 1445 hours on the Saturday.

The supporting assessments demonstrate that the worst case development impact is clearly the Saturday peak as tested. This Saturday peak hour impact is just 113 additional movements (this accounts for the 2no. applications which are running concurrently with this one) on the gyratory (an average of less than one in/out per minute), and which incidentally is less than the background traffic growth considered.

The impact of development cannot reasonably or credibly be considered to have a 'severe' impact on the operation of the highway. Therefore, the proposal is in accordance with the NPPF which states in Paragraph 32 that 'development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

Furthermore, the Transport Assessment and additional requested technical notes have been fully assessed by the Councils Highways Officers along with independent assessments from AECOM. Following on from these assessments they concluded that the impact would not be severe and have raised no objections.

### Summary

The applicant has demonstrated that there are no sequentially preferable sites currently available to accommodate the proposed development and that subject to the suggested condition, the proposal will not have a significant adverse impact on the Town Centre or the planned investment in the Better Barnsley scheme. Accordingly, each of the applications are recommended for approval.

### **Recommendation for Planning application 2015 0987**

Grant planning permission subject to the following conditions:

- 1 Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, and the Town and Country Planning (General Permitted Development) Order 1995, or any equivalent provisions in any statutory instrument amending revoking and/or re-enacting either or both of those Orders:

- Unit 7 shall be occupied as a leisure facility and sports good retail premises.

(A) Until the earlier of (a) the expiry of a period of 5 years from the date of this permission or (b) the date of the occurrence of that one of the circumstances mentioned in (C)(1) and (2) below as is first to occur:

(1) Unit 4 shall only be used by a catalogue showroom retailer for sale and display of items listed within their catalogue. The following exceptions to the items that can be sold from the catalogue shall apply: pharmaceuticals, hot or cold food, groceries, sweets, alcoholic and non- alcoholic drinks, tobacco, magazines and newspapers, for which there shall be no sales permitted whatsoever;

(2) Units 3C, 5 and 6 may be used for any non-food retail purpose and for the sale of food from a maximum of 30% of the net sales area of any of these individual units;

(3) Not more than 1,394 sq.m. of net sales area in total, across all of Units 1A, 1B and 1C, 2, 2A, 3A, 3B and 3C, 4, 5, 6 and 8, may be used for the retail sale of food and drink (in relation to Units 3C, 5 and 6 that being (if applicable) in addition to any area permitted by A(3) above, which shall not be taken into account in calculating the net sales area permitted by this paragraph).

(B)

Until the earlier of (a) the expiry of a period of 5 years from the date of this permission or (b) the date of the occurrence of that one of the circumstances mentioned in (C)(1) and (2) below as is first to occur, after which any non-food retail purpose is permitted and for the sale of food and drink, subject to the limitations within A(3) above, none of the Units 1A, 1B, 1C, 2, 3A, 3B and 8 shall be used for the retail sale (other than related to the principal use of the premises) of food (except where permitted in A(4) above) or for the sale of any of alcoholic drink; tobacco; watches or clocks; books; newspapers or magazines; clothing or footwear; fashion accessories; jewellery; toys; perfume and toiletries; music, records, audio or video tapes; pharmaceutical goods or sports goods without the prior written consent of the Local Planning Authority except where such goods are sold for use for animals, except;

By an existing tenant, defined as a retailer who is in occupation of one of these units at the date of this permission, in which case that retailer may use that unit for any non-food retail purpose (with the exception of fashion retail - clothes, shoes & jewellery, where a maximum of 10% of the net sales area of each unit would be allowed).

(C)

The circumstances referred to in (A) and (B) above are:

(1) an agreement for lease or leases have been entered into in relation to five of the six anchor / MSU retail units on the proposed Better Barnsley redevelopment scheme (unit references A1, MSU 1, 2, 4, 5 and SU16 as shown on IBI drawing reference SP\_00\_001); or

(2) a period of 2 years having expired since the date of this permission, without agreements for lease having been exchanged, or leases entered into, relating to two or more of those six units referred to in C(1) above;

(D)

The references to numbered units within this condition are references to the units so numbered on drawing number MH877-03.

**Reason: In order to offer protection to the Better Barnsley Scheme and in accordance with saved UDP policy S3.**

- 2 No outside storage shall at any time take place on the site, except within such purpose designed enclosures.  
**Reason: In the interests of the visual amenities of the locality in accordance with Core Strategy Policies CSP 29 and CSP 40.**
- 3 No surface water shall be discharged through the petrol/oil interceptor.  
**Reason: To ensure the proper drainage of the site.**
- 4 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 and any subsequent amendments the retail units shall not be subdivided without the prior written approval of the Local Planning Authority.  
**Reason: Support will be given to maintaining and enhancing the vitality and viability of Barnsley Town Centre in accordance with CSP31 'Town Centres' and saved UDP policy S3.**

### **Recommendation for Planning Application 2015 0988**

- 1 Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, and the Town and Country Planning (General Permitted Development) Order 1995, or any equivalent provisions in any statutory instrument amending revoking and/or re-enacting either or both of those Orders:
  - (A) Until the earlier of (a) the expiry of a period of 5 years from the date of this permission or (b) the date of the occurrence of that one of the circumstances mentioned in (C)(1) and (2) below as is first to occur:
    - (1) Not more than 1,394 sq.m. of net sales area in total, across all of Units 1A, 1B and 1C, 2, 2A, 3A, 3B and 3C, 4, 5, 6 and 8, may be used for the retail sale of food and drink (in relation to Units 3C, 5 and 6 that being (if applicable) in addition to the 30% of the net sales area of the individual units previously approved), which shall not be taken into account in calculating the net sales area permitted by this paragraph).
  - (B) Until the earlier of (a) the expiry of a period of 5 years from the date of this permission or (b) the date of the occurrence of that one of the circumstances mentioned in (C)(1) and (2) below as is first to occur, none of the Units 1A, 1B & 1C shall be used for the retail sale (other than related to the principal use of the premises) of food (except where permitted above in A (1) above) or for the sale of any of alcoholic drink; tobacco; watches or clocks; books; newspapers or magazines; clothing or footwear; fashion accessories; jewellery; toys; perfume and toiletries; music, records, audio or video tapes; pharmaceutical goods or sports goods without the prior written consent of the Local Planning Authority except where such goods are sold for use for animals.

By an existing tenant, defined as a retailer who is in occupation of one of these units at the date of this permission, in which case that retailer may use that unit for any non-food retail purpose (with the exception of fashion retail - clothes, shoes & jewellery, where a maximum of 10% of the net sales area of each unit would be allowed).
  - (C) The circumstances referred to in (A) and (B) above are:
    - (1) an agreement for lease or leases have been entered into in relation to five of the six anchor / MSU retail units on the proposed Better Barnsley redevelopment scheme (unit references A1, MSU 1, 2, 4, 5 and SU16 as shown on IBI drawing reference SP\_00\_001);  
or

(2) a period of 2 years having expired since the date of this permission, without agreements for lease having been exchanged, or leases entered into, relating to two or more of those six units referred to in C(1) above;

(D)

The references to numbered units within this condition are references to the units so numbered on drawing number MH877-03.

**Reason: In order to offer protection to the Better Barnsley Scheme and in accordance with saved UDP policy S3.**

2 No outside storage shall at any time take place on the site, except within such purpose designed enclosures.

**Reason: In the interests of the visual amenities of the locality in accordance with Core Strategy Policies CSP 29 and CSP 40.**

3 No surface water shall be discharged through the petrol/oil interceptor.

**Reason: To ensure the proper drainage of the site.**

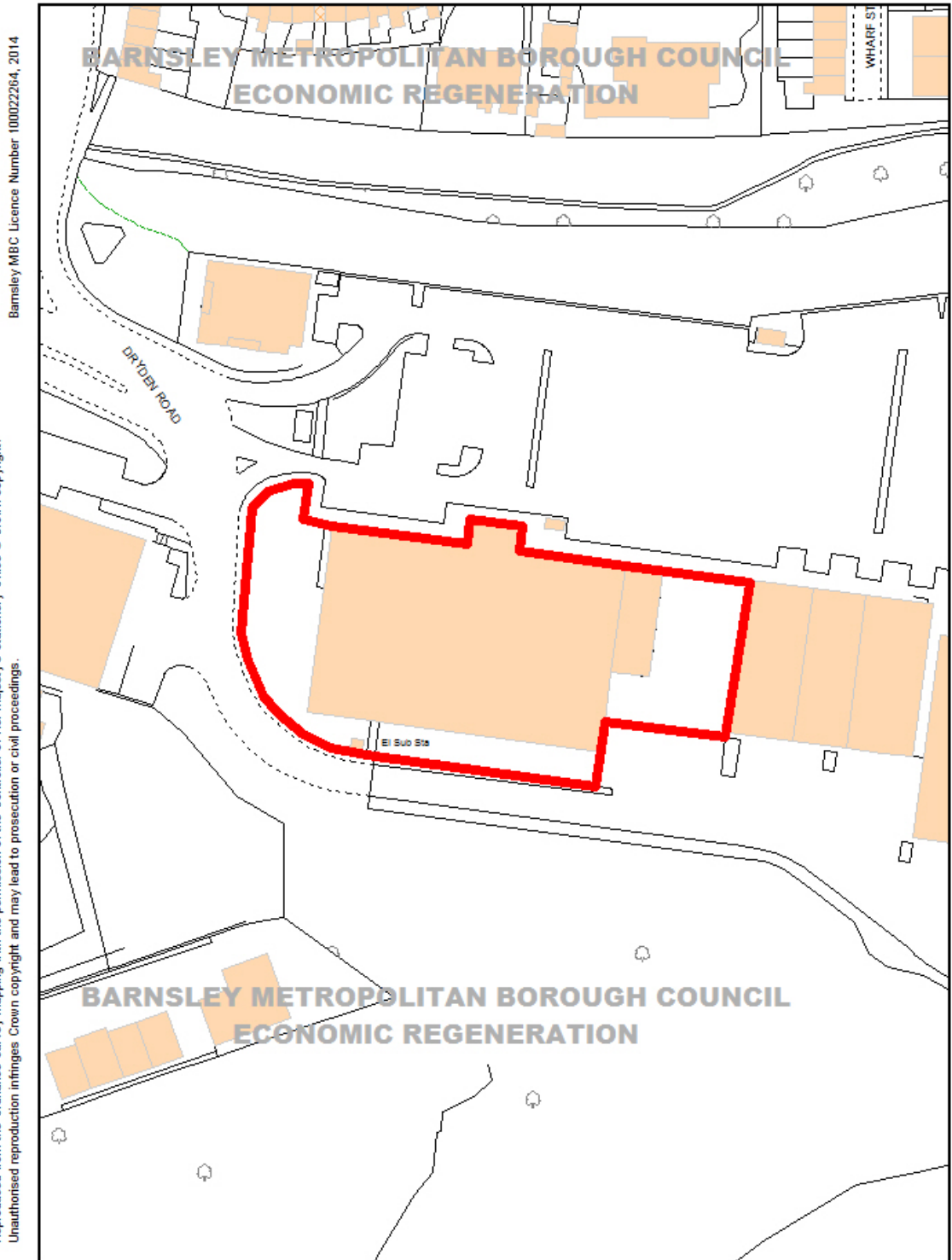
4 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 and any subsequent amendments the retail units shall not be subdivided without the prior written approval of the Local Planning Authority.

**Reason: Support will be given to maintaining and enhancing the vitality and viability of Barnsley Town Centre in accordance with CSP31 'Town Centres' and saved UDP policy S3.**



PA reference :-

2015/0987



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