

APPLICATION DETAILS

Application No:	19/0316/FUL
Location:	Gateway Middlehaven, Land between A66 and Riverside Stadium, Cargo Fleet Middlesbrough
Proposal:	Re-arrangement of scheme permitted under M/FP/1262/14/P to provide 5 no retail warehousing units with associated entrance doors, removal of existing lobby and concession block, alterations to car park and service yard.
Applicant:	Sainsbury's Supermarket Limited
Company Name:	Sainsbury's Supermarket Limited
Agent:	Mr Gary Morris
Company Name:	WYG
Ward:	Central
Recommendation:	Approval subject to conditions and S106 Agreement

SUMMARY

The application seeks permission to subdivide the approved scheme of a foodstore and up to two A1 retail units (M/FP/1262/14/P) to create five A1 retail warehousing units with associated entrance doors, the removal of the existing lobby and concession block, and alterations to the car park and service yard.

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 subdivision 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.

A previous application to subdivide the development into 5 retail units and a gym was refused by the Planning and Development Committee at its meeting in January 2019. The reasons for this refusal were that the development would have a:

- Significant adverse impact on the vitality and viability of the Town centre and investment in the centre; and,
- Impact upon the delivery of the Council's regeneration and economic growth proposals

The current application differs from the previous refusal through the removal of the gym component. Additionally, there have been some material changes in circumstances that are relevant to the consideration of the scheme. These include a change in the policy framework, progress with regards to the implementation of regeneration and economic development proposals, and the mitigation being provided to offset any potential impacts from the scheme.

The level of impact of the proposed scheme is less than that of the previous refusal, and below that of the approved scheme. Whilst the health of the Town Centre remains a cause for concern, this impact is not considered to be significant and is offset by the mitigation measures to be put in place which will have the benefit of enhancing the attractiveness of the Town Centre, its environment and general offer, assisting and supporting the Council's aspirations for further regeneration and economic growth in Middlehaven and the Town Centre, and protecting the Town Centre from loss of existing retailers to the proposal. The Council will also gain greater control over further subdivision and nature of occupiers of the proposed scheme.

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 west of Marsh Road, and to the east 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 retail units (approved under M/FP/1262/14/P) would be subdivided into five retail warehouse units (A1 use).
 - b. 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.
 - c. 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 as follows:

Unit	Occupier	Gross (sqm) GIA	Net Retail Sales (SQM)
A	Argos	2,392	372
B	Iceland Food Warehouse	1,328	1,042
C	unknown	1,713	1,456
D	unknown	1,272	1,081
E	B&M Bargains Retail Warehouse	2,323	2,625

6. It is worth noting that the previous application considered two proposed scenarios – one with Argos occupying one of the retail warehouse units, and one without Argos. It is understood that Argos has now confirmed its commitment to occupying one of the units in the proposed development, therefore only one scenario is proposed as part of the current application.

PLANNING HISTORY

7. 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). In addition, the application 18/0478/FUL, which was refused in January 2019 is also of note.

8. 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.

Applications submitted by WYG on behalf of Sainsbury's

18/0478/FUL

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.

Planning permission was refused to change the development to one comprising 5 retail units, garden centre and gym. The reasons for refusing the application were due to the impacts on the town centre and future retail investment in the centre. The proposals were also considered to harm the delivery of the Council's regeneration and economic growth proposals.

18/0676/AMD

Non material amendment to M/FP/1262/14/P to make various alterations to the elevations of the store

Refused 12th November 2018

18/0673/FUL

Ancillary garden centre area to the side of existing retail unit and erection of associated 4.8m high boundary fence

Approved 11th January 2019

18/0742/FUL

Alterations to the elevations of the existing building and removal of existing lobby and concession block

Refused 11th January 2019

19/0133/CLU

Application for a certificate of lawfulness for the proposed use of part of the property for the sale of convenience goods

The application for a Certificate of Lawful Use seeking clarification for an approved use of part of the foodstore unit was considered to be insufficient in scale and not justify commencement of the approved use. The Council considered the vacant foodstore unit not to have permitted development rights and could not be lawfully subdivided.

PLANNING POLICY

National Planning Guidance

9. 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.
10. 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. 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.
11. 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).

12. 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.
13. 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).
14. 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.
15. 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."*
16. 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."*
17. 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."*
18. 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.

19. 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

20. At the time of considering the previous application the Council had just finished public engagement on the Publication Draft Local Plan (Oct 2018) and was preparing for Submission to the Secretary of State. This plan contained policies that were relevant to the decision on that application, and were considered to carry significant weight because of the stage the Plan had reached in its preparation. This Plan was withdrawn by Council at its meeting in July 2019. As such it cannot be considered in assessing this application and the policies referred to then are no longer applicable.
21. The relevant policies in the Development Plan regarding this application are therefore:
- H1 – Spatial Strategy
 - H2 – Greater Middlehaven
 - CS4 – Sustainable Development
 - CS5 – Design
 - DC1 – General Development
 - CS7 – Economic Strategy
 - CS13 – Town Centres etc Strategy
 - CS17 – Transport Strategy
 - H14 – Greater Middlehaven
 - H15 – Greater Middlehaven Development
 - H16 – Greater Middlehaven - Transport
22. 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.
23. 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).
24. 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.
25. 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.

26. 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.
27. 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.
28. 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.
29. 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.
30. 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.

31. 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.
32. 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.
33. 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.

CONSULTATION AND PUBLICITY RESPONSES

34. 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.
35. Following the mandatory consultation exercise, five letters of objection were received from or submitted on behalf of:
 1. Ward Councillor Linda Lewis.
 2. 5 Kildale Court.
 3. Stockton Borough Council.
 4. Contract Experts Limited (Dundas Shopping Centre).
 5. Ellandi LLP (Coulby Newham LLP, Parkway Shopping Centre).
36. The comments made or issues raised within the letters of objection from the above principally focus on the following issues:
 - The Coulby Newham District Centre [Parkway Shopping Centre] is considered close enough and comprises of a similar and comparable tenant line-up such that it will inevitably encounter a loss of trade as a result of the proposed development.
 - It also has the potential to impact on the ability to deliver the proposed extension to the Parkway Shopping Centre (M/FP/0665/16/P) – a proposal which could represent a sequentially preferable site to accommodate the proposals (or configured in such a way to accommodate the proposal in part).
 - The proposed development could impact on investment and potential occupiers of the Parkway Centre due to the potential overlap in provision between the application and the District Centre.
 - The proposed warehousing will increase traffic, noise levels, rubbish in the area, and poor air quality. The value of private home will drop.

- 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 (WYG figure of 28% is considered too low).
- 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.
37. The application was also in receipt of one other representation, from Middlesbrough Football Club. The letter advises that the football club is supportive of the development of the Middlehaven area, but states the following concerns that it would like to be considered and addressed.
- The length of stay to be permitted in the car park and would request measures to avoid Riverside Stadium attendees parking at the site for free.
 - Splitting the site into more units will potentially increase the number of vehicles using the route. With this greater traffic flow it would make sense for a further matchday traffic survey to be performed.
 - It is important to note that Emergency Vehicle access to the Riverside Stadium is required via Heath Road and Cargo Fleet Road due to the road restrictions that are in place at the roundabout on Shepherdson Way.

Internal Technical Consultee Responses

38. **MBC Highways** – The proposed development has been designed to accommodate the number of vehicles anticipated by five units. There are no objections from Highways.
39. **MBC Waste Policy** – The waste collection can be accommodated within each unit and the service yard. There are no objections from Waste Policy.
40. **Local Flood Authority** – The development should be constructed in accordance with the details within the submitted Flood Risk Assessment. There are no objections from a drainage perspective.
41. **MBC Environmental Health** – The submitted noise assessment has been considered. There are no objections from an Environmental Protection view.

External Consultee Responses

42. **Secured By Design** – The proposals should adhere to the principles of secured by design.
43. **Northern Gas Networks** – No objections, but there may be apparatus in this area that may be at risk during construction works.
44. **Northumbrian Water** – No objections.
45. **Environment Agency** – No objections, subject to condition that the development is built in accordance with the submitted Flood Risk Assessment.

46. **Stockton Borough Council** – Object due to the potential impact on Middlesbrough and Stockton Town Centres.
47. **Redcar & Cleveland Council** – No objections.
48. **Ecology** – The area of grassland is 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	84
Total numbers of comments received	6
Total number of objections	5
Total number of support	0
Total number of other representations	1

BACKGROUND AND CONTEXT

49. 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

50. 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 5 retail warehousing units. As well as the subdivision, there would be alterations to the elevations including the provision of new individual entrances to each unit, minor alterations to the existing car park and service yard.

51. 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.
52. 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.
53. 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

54. 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.
55. 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.
56. 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 seeks to make alterations to the exterior of the building, providing additional reason for a full application.

Is Subdivision classed as 'Development'?

57. 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?

58. 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.
59. 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.
60. 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.
61. 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"
62. 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).

63. 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.
64. 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.
65. 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.
66. 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 warehouse units (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

67. 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 previously sought legal opinion as to what comprises the fall-back position.
68. 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

69. In the Planning Statement submitted with the previous 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.'

70. 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.

71. 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.

72. In the previous application, 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 previous 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 also put forward a further fall-back position, 'Scenario D' which involved 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

73. In response to the position stated by Sainsbury's legal opinion, Middlesbrough Council sought its own. Whilst this opinion was initially sought for the previous refused application it has been confirmed that it is still relevant in the consideration of the current proposal, and that no additional information provided by the applicant alters this opinion. 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"
74. 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.
75. "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.
76. 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.
77. 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.
78. 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

79. 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.
80. 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.
81. 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.

82. Under the previous proposal WYG also identified two alternative fall back scenarios that they believed could 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 prerequisite before any further sub division or other retail use can happen. WYG maintain their position that the development does not first need to be occupied by a foodstore to implement the fall back position. Equally the Council maintains its legal interpretation.

Historical Context

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

M/FP/0773/13/P

84. 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.

85. 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 boost 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 applicant's reliance upon the same documentation for both applications (i.e. combined planning & regeneration, and retail statements). Given the manner in which the information was presented as a joint scheme, both elements were considered by Planning Committee together.

86. 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)

87. 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 consequently. There was no mechanism, legal or otherwise, put in place linking the two schemes.

M/FP/1262/14/P

88. 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 were not stated, Sainsbury’s 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 the reasoning behind the need for the smaller store was not stated, it was reaffirmed that Sainsbury’s still intended to relocate to the Middlehaven site when the development was complete. A key element of the applicant’s 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.

89. 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

90. 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 application citing changes in the retail market as the reason for not relocating. The rationale for the change was never 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 indicated that they were 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.

91. The application sought to subdivide the unit into 5 retail units, introduce a gymnasium, and add a garden centre. Three occupiers were confirmed as potential occupiers – B&M Home, Argos, and Iceland Warehouse. All three also confirmed their commitment to retain their existing

Town Centre stores open, but no non-closure agreement was offered. Sainsbury's were only prepared to agree to a non-poaching clause for the two remaining un-let units.

92. A significant difference between this scheme and the previous approvals is that the Middlehaven proposal was no longer linked or predicated upon the redevelopment of the Wilson Street site.
93. The quantified impacts of this scheme based upon the information from Sainsbury's/WYG were 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)

94. It was noted that the permission for the redevelopment of the Wilson Street site had lapsed and could no longer be considered as a commitment.

Changing Retail Picture

95. Like town centres and high streets across the country, Middlesbrough Town Centre has been faced with many significant challenges in recent years. The tough climate has had the consequence of forcing a large number of high-profile retailers to close their stores on the High Street.
96. 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.
97. 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.
98. 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

99. 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.

100. 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.

101. 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 continues to remain 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.

102. The above gives a glimpse of the challenges that Middlesbrough Town Centre continues to be faced with, as nearby out-of-centre locations keep attracting customers that once visited the Town Centre. As the trend continues, and more and more consumers prefer the convenience of online shopping and visiting out-of-centre retail parks, the Town Centre will continue to struggle to compete for customers, and its turnover is 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.

103. The importance of the above is that it illustrates the position and performance of the Town Centre at the time when the initial 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 current application.

PLANNING CONSIDERATION AND ASSESSMENT

104. The following paragraphs turn to the consideration of the application itself. Similar to the previous application, this continues to be a contentious proposal that 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 upon 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.
105. 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

106. The application shall be considered against the updated NPPF (2019); the key elements of the sequential test that were set out in the original version remain unaltered. 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).
107. At paragraph 010 of 'Town Centres and Retail', 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.
108. 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.
 109. 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.
 110. 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.
 111. 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.
 112. 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
 113. 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.

114. 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

115. The Retail Planning Statement (May 2019) and the Addendum (September 2019) submitted with the application indicate 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
116. Within the submitted Statements, 17 (seventeen) sites have been listed that have been considered (most of which are 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 (Site 9) comprising nearly 2.9 hectares (land bounded by Albert Mews, Wilson Street and Corporation Road). A similar conclusion is reached in respect of existing vacant units within Middlesbrough Town Centre and the other centres listed above.
117. 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 potential operators and unit sizes ranging from 1,272 square metres (Unit D – unknown operator) to 2,392 square metres (Unit A – Argos) within the application scheme, the Council would seek a developer to consider in detail the potential opportunities offered by the identified sequential sites. This would include demonstrating meaningful flexibility in terms of scale and format based on the multiple and types of operators that are proposed in the development.
118. In the previous application, whilst WYG asserted that they had demonstrated flexibility in reducing the prospective site size required from 5.8 hectares to 5.0 hectares, no evidence was provided to demonstrate that consideration had been given to the potential individual contribution of more central sites in Middlesbrough to accommodate the proposals. Nor was there considered to be any meaningful attempt to demonstrate flexibility in terms of the format of the proposal. This was deemed contrary to the guidance set out within the second bullet

point of Paragraph 010 of the PPG (set out earlier in this report). For the previous application, the Council was of the view that WYG needed to consider sites smaller than 5.0 hectares in terms of flexibility of scale and format to accommodate the proposed development.

119. In the Addendum report, WYG assess the largest site – Site 9 (2.9 hectares) – and its potential to accommodate the proposals. The site is assessed by WYG as being in beneficial use, which includes two operational hotels and substantial residential accommodation. Both hotels are fully operative – one of which was completed just last year – and the residential blocks are occupied and active. The site also accommodates Vancouver House, which WYG explain was subject of a planning approval in 2018 for additional storeys and its conversion to a hotel for Best Western. As a consequence, WYG consider these parts of this site to be unavailable and, moreover, there is no evidence of these uses ceasing.
120. Although WYG consider Site 9 to be unavailable, they have given consideration as to whether the site (if available) could make a meaningful contribution to accommodating the proposed development. Mindful of the operational hotels and the recent planning approvals at Vancouver House and the Premier Inn, WYG have excluded these and therefore considered a reduced Site 9, which is around 1.5 hectares. At 1.5 hectares, Site 9 is approximately a quarter of the size of the proposed development site and evidently could not accommodate the development in the proposed format. Detailed consideration has been afforded in the Addendum report to the operational requirements of the proposed development and whether it could be accommodated on Site 9.
121. In the previous application, the Council considered that WYG had not fully applied the requirements of the sequential test as set out in the NPPF. One of the reasons for this was that no consideration was given to whether the development could be achieved over two storeys or with a smaller quantum of car parking. In the Addendum report, WYG determine that owing to the nature of the bulky goods that would be sold from each of the units (except for the Iceland foodstore), multi-storey trading, or where one operator is located above another, would not work for commercial reasons. WYG go on to explain that the few stores that do operate as such do so in purpose-built shopping malls that have multiple levels. Whilst WYG accept that some retailers could possibly operate with levels or introduce mezzanine floors, it advises that the nature of retail warehousing would limit this potential, as well as suggesting that operators would need a ground floor presence for access purposes. Overall, it advises that the footprint of the building could be reduced to 1 hectare.
122. As well as the operational difficulties inside the retailing units, WYG considers the external operational requirements as well as the proposed car park. First of all, it is understood that the Argos unit requires a 0.1 hectare delivery yard which, for operational reasons, is required to be at the same level as the store's warehouse. WYG accepts that the 850 space car park could be multi-storey, but this would occupy a footprint of around 1 hectare.
123. Without factoring in the complexities of the site, implications on neighbouring properties, internal connectivity, site access and other fundamental matters, WYG conclude that Site 9 is incapable of accommodating even a compromised form of the proposals. Based on the above – introducing storeys, mezzanine levels and a multi-storey car park – WYG calculate that the components of the development would need 2.5 hectares of land, whereas the developable area of Site 9 is 1.5 hectares, and therefore considered not to represent a sequentially preferable site.

124. The next largest site within the list of sites identified as being potentially sequentially preferable is Site 10 (land to south and west of Teesside Combined Court Centre). Evidently at 1.86 hectares in size, this site would be deemed by WYG to be too small to accommodate even the condensed form of the development. Not only that, but it is also known that this site has recently seen two Grade A office block developments, and is therefore no longer available. For similar reasons to Site 10, WYG suggest that Site 9 fails the sequential assessment.
125. It is also noted that an objection was raised on behalf of the Ellandi LLP who operate the Parkway Centre in Coulby Newham. This Parkway Shopping Centre Service Yard was listed at Site 17 in the supporting Statements. Planning permission was granted in October 2016 with a condition for works to commence within five years, thus not expiring until 2021 and should be given due consideration. Of the five units permitted by the planning consent, only one of the units (approximately 1800 square metres) would be able to accommodate part of the proposed development.
126. 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, WYG explain that there are commercial and operational reasons why the sites listed in the Retail Planning Statement and its Addendum are not suitable for the development proposed, and have demonstrated flexibility over scale and format.
127. 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.
128. In this regard, it has been discussed that 17 sites have been identified and the indication of 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 and considered to be acceptable. In the previous application, the Council requested additional information on how the sequential test had been applied and WYG has now provided additional information in this regard. WYG confirm that B&M home, Argos, and Iceland Food Warehouse have committed to leases within the development (subject to planning permission), and that each has 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.
129. It is officer opinion that WYG has now applied the requirements of the sequential test as set out in the NPPF and that evidence has now been provided in their assessment to support their assertions. It is concluded that, given the issue surrounding disaggregation, a site of the size required to accommodate a development of this scale is not readily available within the Town Centre, and as such there are no grounds to substantiate a refusal for failing to satisfy the sequential test to site selection.

Impact on Vitality and Viability of the Town Centre

130. 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).
131. In this context, given the scale of floorspace proposed, and the out-of-centre location of the application site, an assessment of the likely 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

132. This section of the report reviews the base data and approach adopted by WYG in the current application and tests the validity of key assumptions. The submitted Retail Impact Assessment and the Addendum report consider the impact of the proposed development upon the combined convenience and comparison goods turnovers of existing centres and stores. Through the submitted assessment and the subsequent addendum report WYG have sought to address a number of the issues raised regarding that submitted in support of the previous application. In its objection, Stockton Council raise the issue that the retail assessment should also address impacts on Stockton and Billingham centres. The scope of the assessment is the same as that for the previous application and it is not considered necessary to expand it to cover other centres.
133. Initially WYG had submitted a quantitative retail impact assessment demonstrating that the forecast cumulative trade diversion impact of the scheme upon Middlesbrough Town Centre would be just 3.4%. Whilst recent Inspectors' appeal decisions have confirmed that trade diversion impacts should be considered in the context of any underlying vulnerabilities in the vitality and viability of the Town Centre, and WYG's evidence regarding the current health of Middlesbrough Town Centre remains unconvincing, the forecast trade diversion impact of the development is so low that it would be very difficult to argue that these levels of impact would have a significant adverse impact upon the vitality and viability of Middlesbrough Town Centre.
134. As part of their subsequent Addendum Retail Planning Statement, WYG has provided an updated quantitative impact assessment, including a new telephone household survey of shopping patterns, to supersede that previously relied upon from the 2016 Middlesbrough Council Retail Study. This new survey was conducted in May 2019. The survey retained the 11 zones utilised for the 2016 Retail Study, and included at least 100 surveys in each zone. This is considered to provide a robust and up-to-date basis for the quantitative impact assessment.
135. Based upon these survey results, Middlesbrough Town Centre is found by WYG to have a total survey derived retail turnover of £384.7m in 2018. This represents an increase on the figure of £347.1 in 2016 derived from the 2016 household surveys. In terms of the remainder of their

impact assessment, WYG continue to adopt the same assumptions as those presented within their 2018 report in terms of the design year, catchment area, turnover of the proposed development, expenditure patterns, and committed developments. Committed development at Teesside Park is now taken into account in WYG's assessment of shopping patterns. However, no account is made for the planning permission for an extension to the Parkway Shopping Centre in Coulby Newham (which, as set out above, Ellandi continue to pursue) or the planning permission recently granted for an Iceland Food Warehouse at Portrack Lane.

136. In terms of the trade draw estimates adopted, WYG has reduced the level of trade anticipated to be drawn from the Town Centre for both the proposed Iceland Food Warehouse and the newly-bulky goods restricted comparison goods retail units. This purportedly reflects the decreased level of trade envisaged to be drawn from the existing Sainsbury's store on Wilson Street (due to its lower market share and turnover within the latest household surveys) and also the reduced likelihood of bulky goods units competing with in-centre provision.
137. The forecast turnover of the application proposal remains £9.4m for convenience goods, however the comparison goods turnover has decreased from £26.7m to £25.2m for comparison goods. This is due to the fact that that the two proposed non-food retail warehouse units (Units C and D) are now proposed to be restricted to bulky comparison goods only, by way of condition, and as a result have a lower turnover per sqm.
138. Taken together, these updates to the assessment result in a cumulative trade diversion impact on Middlesbrough Town Centre of -2.2% in 2022 (a solus impact of -1.5%), as opposed to the -3.4% cumulative impact in the previous assessment. Importantly, the forecast impact is materially lower than that forecast as part of Sainsbury's previous application. Even accounting for the comments above regarding the omission of certain committed developments from the assessment (or reverting to the previous, higher assumptions on trade draw from the Town Centre), it is unlikely that the current application proposals would give rise to a cumulative impact of more than -2.5% to -3.0%.
139. Whilst recent appeal cases, as described above, have clarified that even relatively low quantitative impacts may give rise to significant adverse impacts upon centres where those centres exhibit underlying vulnerabilities, this is clearly a modest level of trade diversion.

The Fall-Back Position

140. This issue was dealt with at length earlier in this report. Notwithstanding the alternative fall-back scenario, it should be noted that the trade diversion impacts associated with the 2014 proposed development were in part offset by the proposed delivery of a large format comparison retail development on the site of the current Sainsbury's store within Middlesbrough Town Centre. This can no longer come forward as part of the current application proposals, however, as the original permission for the mixed-use development relating to the existing Sainsbury's site has expired.
141. Notwithstanding the above, the Council has been in discussion with Sainsbury's regarding potential physical improvements to their existing Wilson Street foodstore and the surrounding built environment through financial investment through a Section 106 legal agreement. These prospective enhancements to the existing foodstore and the local environs would seek to make this part of the town centre a more attractive environment, potentially increasing people movement and overall footfall. Evidently, this could be considered to assist the vitality and viability of Middlesbrough Town Centre and would be a material consideration when

determining the subject application. The details of these improvements shall be discussed later in the report.

142. As part of the updated Retail Planning Statement, the impact of the proposed development upon proposed investment in three sites is considered, which, like the previous application, has been identified through pre-application discussion with 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

Since the previous application, there are considered to be 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 (TMIV)

143. It is concluded within the submitted 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 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. 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

144. The submitted WYG statement concludes that the proposed development would not prejudice the development at the former Kwik Save site, Ormesby Road. The approved development on the former Kwik Save site, which at the time of writing was largely complete and future tenants being identified, comprises a total of 1,056 square metres across eight separate units, and given this overall size, would clearly cater for different prospective occupiers.
145. The approved scheme for the former Kwik Save site at Ormesby Road, by providing small-format retail accommodation, caters 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 warehouse type units would have a significant adverse impact upon the committed and largely-completed smaller scale retail development at Ormesby Road. The scheme has now been constructed and units are in the process of being let and occupied.

Southern Service Yard and Dalby House, Parkway Centre, Coulby Newham

146. 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.
147. 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.

148. 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.
149. Notwithstanding the above, the content of Paragraph 015 of 'Town Centres and Retail' of the PPG must be accounted for. This 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:
 - 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.'
150. Responding to these considerations in the Retail Planning Statement, WYG explains that it understands the proposals at the District Centre 'remain on hold' and not likely to be implemented before the expiry of the application. It must be noted, however, that WYG incorrectly references the expiry date of the application as October this year, when the planning permission was granted for 5 years (expires October 2021).
151. Although the above assumption has been made by WYG, no fresh evidence has been produced by Ellandi that their approved development will be implemented within the next 24 months. Due primarily to the distance between the two schemes and the different, albeit overlapping, catchment areas they would serve, it is not considered likely that the application scheme would have a significant adverse impact upon the proposed investment in Parkway Shopping Centre.
152. Also in its letter of objection, Ellandi criticise the sequential assessment carried out by WYG on the basis that it fails to disaggregate the uses with the development, as parts could be accommodated within the Parkway Centre expansion. The issues of disaggregation have, however, been appraised earlier in this report. Their objection also challenges the trade draw assumptions made by WYG, but it is considered that there is little evidence to argue that stores within the Parkway Centre serve the same catchment area of the proposed development at Gateway Middlehaven.

Other Investment in Middlesbrough Town Centre

153. In the previous application for the subdivision of the existing building, a gymnasium was also proposed alongside the 5 retail units. One of the reasons for the refusal of the previous application was that the Council considered the proposals to have the potential to significantly impact upon the vitality and viability of the town centre and undermining confidence in

investment. The proposed gymnasium was considered to be an undermining factor, as it was understood that the operator of the gym had withdrawn its interest in the town centre whilst the Middlehaven scheme was under consideration. Evidently, with the gymnasium element removed from the proposals, it is only the retailing elements to consider as part of the current application.

154. Reference was also given to the potential relocation of the town centre B&M store, which is situated in the Dundas Shopping Centre. The B&M unit currently anchors the Dundas Shopping Centre and was understood that the centre management were intending to relocate the operator to a larger, more prominent unit as part of wider improvement works. Previously, the Council was made aware from the owners of the centre that B&M was unwilling to enter into discussions stating that they are considering other options. Although a letter (dated 13th September 2018) was provided from B&M – which has been included as an appendix to the Addendum to the Retail Planning Statement – that indicated its intention to retain a town centre presence, reservations did remain over the potential impact on this anchor store.
155. In this context, objections have been submitted, including a representation on behalf of Contract Experts Limited (owners of the Dundas Shopping Centre within Middlesbrough Town Centre), which concludes that the proposed development at Gateway Middlehaven would have a significant adverse impact on the vitality and viability of the Town Centre.
156. Paragraph 14 of the 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.’
157. It must be noted that the planning permission granted for a gymnasium at Dundas Shopping Centre in October 2017 (17/0474/FUL) also included significant external work, most notably a facelift to the entrance of the Shopping Centre fronting onto Wilson Street. Whilst the committee report for the previous application noted that the proposed gymnasium at Gateway Middlehaven may already have jeopardised investment at the Dundas Shopping Centre, it is apparent that uncertainty of the proposals for Gateway Middlehaven has not undermined the ability to bring about the external enhancements. These investment improvements are recognised.
158. Although the gymnasium element has been removed from the current application, the letter of objection from ELG makes no reference to the likely future of the approved gymnasium at the former Potters Club in Dundas Street. In ELG’s letter of objection to the previous application, it was stated that *‘the [gym] operator has now confirmed they are unwilling to proceed whilst there is a threat that The Gym Group will open a competing gym at the [Gateway Middlehaven]’*. Based on this statement, it would be reasonable to conclude that if the approved gymnasium is not implemented at Dundas Shopping Centre, this cannot now be attributed to the proposals at Gateway Middlehaven. Moreover, with the implementation of the external alterations at Dundas Shopping Centre, the gymnasium can now be implemented at any time.

Impact upon health of the Town Centre/Investor confidence

159. WYG updated their health check of Middlesbrough Town Centre in March 2019, concluding that “... *the centre remains healthy with recent and ongoing investment including evidence of new occupiers opening premises in the Town Centre.*” This follows on from a similar assessment made in the Retail Planning Statement submitted with the previous application. The Council strongly disagreed with this assessment of the health of the Town Centre previously, and maintains its belief that this is not an accurate reflection of the situation on the ground. Vacancy rates at the time of the latest WYG survey (March 2019) was some 19%, compared to 15% at the time of WYG’s previous survey in January 2018. Previous requests for WYG to provide a more detailed analysis of the underlying market conditions and indicators of vitality and viability within the Town Centre, for example on matters such as trends in town centre rents and yields, have not been addressed. Notwithstanding this, work undertaken by Central Management Solutions in August 2018 identified an 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. Retail consultants Javelin Group also identified Middlesbrough Town Centre as one of the ten ‘most challenged’ town centres in the UK in their 2018 Destiny Score White Paper, and Middlesbrough continues to fall down Javelin Group’s Venuescore rankings. The future of key anchor tenants within Middlesbrough Town Centre is also under threat. In particular, following the acquisition of House of Fraser by Sports Direct in 2018, the lease of this 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. Debenhams is also currently undertaking a number of store closures, although it is not yet known whether these closures will affect their store in Middlesbrough Town Centre.
160. In addition, and of particular relevance to the subject application, recent press reports have revealed that Sainsbury’s intend to close 125 stores, including main supermarkets. Given the current performance of the existing Sainsbury’s store on Wilson Street, which WYG’s own surveys indicate to be trading significantly below company benchmark levels, there is speculation locally that this store may be at risk of closure. Whilst purely conjecture at present, this serves to evidence the vulnerability of both the existing Sainsbury’s store and, by association, the wider Town Centre.
161. On the basis of this evidence, Middlesbrough Town Centre is vulnerable to trade diversion from new development – and that limited reliance can be placed upon WYG’s assessment of the current vitality and viability of the centre. Against this background, WYG’s Addendum Retail Planning Statement has confirmed Sainsbury’s provisional agreement to a number of new planning conditions which would help to mitigate the impact of the proposed development upon Middlesbrough Town Centre. These conditions include:
- a. no sub-division of the proposed units to create separate units of less than 929 sqm. (net);
 - b. no poaching clauses for Units C and D, where no end-user is currently specified;
 - c. restriction of the use of Unit A (Argos) to a catalogue showroom;
 - d. restriction on unit sizes to a total combined retail sales area for units B, C, D and E of 6,204sqm. No retail unit shall have a net sales area of less than 929sqm; and

- e. a maximum of 30% of the combined net sales area permitted for units B, C, D and E may be used for the sale of convenience goods. A maximum of 70% of the combined net sales area of units B, C, D and E shall be used for the sale of comparison goods, of which a maximum of 25% may be for the sale of non-bulky items.

162. In addition, Sainsbury's will provide a commitment via a S106 Agreement to

- a. undertake a range of environmental and public realm improvements to Wilson Street within the vicinity of their existing store. This would act to enhance the attractiveness of the Town Centre and, to some extent, therefore offset an element of the trade diversion impacts upon the Town Centre arising from the application scheme; and
- b. commit to 'keep open' their Wilson Street store for a period of at least five years.

163. These planning conditions and obligations would both introduce a level of control over the future use of the unit which does not currently exist under the terms of the extant planning permission, and also act to directly offset a proportion of the impact felt within the Town Centre. When considered in the context the modest level of trade diversion impact forecast (-2.2%), and subject to securing a further 'keep open' commitment to SSL's existing Wilson Street store, WYG's latest submissions would make it extremely challenging to defend a refusal of the current application on grounds of 'significant adverse impact' upon Middlesbrough Town Centre.

Regeneration and Economic Considerations

164. 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 warehouse units would assist with the Council's regeneration agenda. The Gateway Middlehaven site – an entranceway to what continues to be the Council's flagship regeneration scheme at Greater Middlehaven – has remained vacant and unoccupied since the late 1980s. The 2015 approved development for the foodstore and associated retail units 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 large vacant building and its associated site to be occupied, generate activity, and bring jobs to the area. Whilst the active use of the site would go some way to regenerating the area, the proposals would need to be weighed against the loss of regeneration benefits that underpinned the original approvals.

165. 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 Cannon 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, coupled with the fact that the application for the mixed-use development at the Wilson Street site has expired, these regeneration proposals are no longer an option. Whilst the retention of a major retailer in the Town Centre is welcomed, it does limit the regeneration ambitions for the western gateway, a key entrance point, into the Town Centre.

Off-Site Mitigation Measures at Wilson Street

166. Although the retention of the existing Sainsbury's store at Wilson Street would prevent any major regeneration opportunities as part of the Western Gateway, as indicated above the Council has been in discussions with Sainsbury's over potential improvements to the built environment at, and surrounding, the existing store. These works could include alterations to the road network to improve traffic movement into and around the site, new soft and hard landscaping along the Wilson Street side of the store to improve pedestrian movements. Not only would these works reassure the Council of the continued commitment to the Town Centre by Sainsbury's, but also improve the pedestrian connectivity between the foodstore and the Hill Street Centre.
167. As these prospective improvements are off-site, the mechanism for securing these beneficial works would be through a legal contract in the form of a Section 106 agreement.

Middlesbrough Investment Prospectus

168. The Investment Prospectus, which has been a key Council strategy for investment and regeneration, sets out the key projects and initiatives. Whilst the Investment Prospectus and the projects listed are likely to be re-evaluated and may be prioritised differently, it remains a material consideration. Albeit one with limited weight as the planning policy framework which was provided by the emerging Local Plan is no longer in place following its withdrawal by Council in July 2019.

Assessment

169. Similarly to the conclusions within the previous application, WYG has identified in its assessment that the proposal will not impact upon the implementation of the schemes identified in the Investment Prospectus. The reason given for this stance was that it was assessing the impacts of like upon like, that is assessing retail versus retail. As such WYG concluded that the proposal will not have a direct impact upon these regeneration schemes as they were looking at different end users/occupiers. This was deemed by the Council to oversimplify the relationship between the proposal and the regeneration schemes.
170. The success of delivering these schemes is reliant upon investor confidence in the Town Centre as somewhere to invest. Anything which impacts upon this confidence is likely to impact upon the ability to deliver the necessary regeneration. Whilst the successful implementation of the schemes will lead to increased footfall that will help with the vitality and viability of the Town Centre, it is important to ensure that the Town Centre remains in as healthy a position as possible to enable the investment in the first place. Since the previous application was considered there have been changes which are material to the consideration of impact. The following looks at each of the schemes individually.

Snow Centre

171. The proposed snow centre is seen as a leading scheme that is central to the successful regeneration of Middlehaven. It is also seen as providing significant spin-off benefits for the wider Town Centre. It is noted that the proposed snow centre has already secured the necessary outline planning permission; a detailed application is anticipated in due course. Development of the snow centre is anticipated to greatly increase the number of visitors to Middlesbrough (over 2 million visitors each year) with associated increase in expenditure and ancillary uses.

172. One of the proposals within the previous application was for a gymnasium, which was seen as not only jeopardising the delivery of a gymnasium proposal within the Dundas Shopping Centre, but also a potential gymnasium operator at the snow centre. The inclusion of a gymnasium within the proposals of the previous application was considered by the Council as potentially jeopardising the safe delivery of the key regeneration initiative for Middlehaven. The potential need to secure an alternative gymnasium operator or find an alternative ancillary leisure use could have threatened the viability of the scheme. With the proposals at Gateway Middlehaven now being retail warehousing only, this threat to the safe delivery of the snow centre by the proposal has been removed.

Centre Square

173. Outline planning permission was granted for various development within the area known as Centre Square. The first two office buildings have been constructed, with a total of five having outline consent. It is understood that negotiations on leasing these buildings are at an advanced stage, this is expected to help restructure the Town Centre to ensure its viability in the long term. Any proposals that have the potential to undermine confidence in the Town Centre and its future, prevent the ability to effectively bring schemes like Centre Square forward. The submission of the current application, and the level of interest shown in the current office developments does not appear to have dented investor confidence or the viability of the scheme. The benefits now being sought from, and offered by, Sainsbury's via the S106 Agreement as already demonstrated should assist in improving confidence in the town centre.

TMIV

174. WYG has assessed in its retail impact assessment the potential for the current scheme at Middlehaven to impact upon investment at TMIV – a significant regeneration scheme at the western end of the Town Centre looking to create additional floorspace for leisure and food and beverage uses. As with the Centre Square proposal, the TMIV scheme will help diversify uses in the Town Centre, assist with its restructuring 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, and again the benefits being sought from Sainsbury's should assist with this process.

175. Although the proposals at Gateway Middlehaven are considered likely to impact on the Town Centre, given the contrasting nature of the developments, on balance, it is not likely to significantly affect the delivery of the TMIV scheme.

Residual Matters

176. 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

177. 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.

178. The current proposals now being considered have been supported by an updated Transport Statement, which has followed the same principles and approach as per the previous consents.
179. 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.
180. 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.
181. 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.
182. 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.
183. There are considered to be no highways objections to the scheme.

Implications Relating to Flood Risk and Drainage

184. 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, a detailed Flood Risk Assessment (FRA) has been submitted, and the Lead Local Flood Authority and the Environment Agency have been consulted accordingly.
185. 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

186. 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, an Ecological Appraisal has been submitted. This document has been considered by an independent ecological expert.
187. 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

188. As with all the previous applications on this site, the current proposals remains a complex and contentious matter to assess and consider. The key principle underlying the case put forward on behalf of Sainsbury's continues to be that the building has been constructed and it has planning permission for retail use. If Sainsbury's wished to do so, they could relocate their Town Centre operations to the Gateway Middlehaven premises and occupy along with two additional A1 retail units irrespective of the potential impact upon the town and other nearby centres.
189. Town centres, and the retail industry in general, continue to face challenging times as the nature of retailing and the role of town centres nationwide changes. Central to the consideration of this application are:
- a. how much weight can be attached to the fall-back position and the genuine impacts of implementing the approved scheme;
 - b. whether the current application would have a greater or lesser impact than the fall-back position, taking into account the mitigation proposals put forward; and,
 - c. any material changes in circumstances since the previous application was approved in 2015 to warrant a change in position by the Council.
190. As highlighted earlier in this report there is a difference in opinion between the Council and the applicant as to the nature of the fall back position. Regardless of these differences it remains a fact that there is an extant permission at Middlehaven that could be implemented without delay or need for further planning approvals. This could in the Council's opinion involve the food store element being occupied by Sainsbury's or another operator. Whilst Sainsbury's have indicated their intention to stay at Wilson Street, occupation by another operator would impact upon their existing store and the viability of that store at a time when the Company are undertaking a programme of closures. In doing so it would could further undermine the health of the Town Centre. In the event that the existing approval at Middlehaven is implemented in accordance with that permission, it again could be subdivided into any number of retail units without, other than need to amend the external appearance of the building, the need for planning permission. This again could have a detrimental impact on the Town Centre. The issue is however the likelihood of the fall back position being implemented. As per the previous consideration it is felt that it is unlikely to happen and therefore limited weight can be given to it.
191. Turning to other matters.
192. On the basis of the information available it is not considered that there are any sequentially preferable alternative sites which could accommodate the development as proposed. In this context, there would not appear to be any basis upon which the Council could substantiate a reason for refusal for the re-submitted application on grounds that the application fails the sequential test.

193. In relation to the impact of the proposed development upon planned and committed investment in existing centres, there would not appear to be any basis to refuse planning permission due to the scheme's impact upon planned investment in Middlesbrough Town Centre, Coulby Newham District Centre, or any other identified centre.
194. This leaves the matter of the scheme's impact upon the vitality and viability of Middlesbrough Town Centre. In quantitative terms, and when accounting for both WYG's updated evidence and their proposed planning conditions to restrict the range of goods to be sold from the proposal, the forecast trade diversion impact of the scheme upon the Town Centre has decreased to just -2.2% in 2022. Even accounting for concerns regarding the omission of certain committed developments from the assessment (or adopting the previous, higher assumptions on trade draw from the Town Centre), it is unlikely that the current application proposals would give rise to a cumulative impact of more than -2.5% to -3.0%.
195. Whilst recent Inspectors' appeal decisions have confirmed that trade diversion impacts should be considered in the context of any underlying vulnerabilities in the vitality and viability of the Town Centre (and WYG's evidence regarding the current health of Middlesbrough Town Centre remains unconvincing in this regard), the planning conditions and obligations proposed by Sainsbury's would introduce a level of control over the future use of the unit which does not currently exist, and would also act to directly offset a proportion of the impact on the Town Centre. In addition given the commitment by Sainsbury's to both provide physical improvements to the Wilson Street area, and to keep their town centre store open, the level of impact from the proposal is not considered to have a significant adverse impact upon the vitality and viability of Middlesbrough Town Centre. It is considered that this mitigation goes some way to addressing the regeneration benefits associated with the now expired permission to redevelop Wilson Street.
196. If Members of the Committee were minded 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. Restricting the uses of the units;
 - d. Identifying a minimum unit size; and
 - e. No poaching of existing Town Centre operators.
197. In addition to the above conditions the permission should be subject to a S106 Agreement that provides a commitment by Sainsbury's
- a. To undertake agreed environmental works and access improvements to Wilson Street and its environs, and
 - b. To maintain their Wilson Street store open for a minimum of 5 years.

RECOMMENDATIONS AND CONDITIONS

Approve subject to the following conditions and a Section 106 Agreement.

1. Time Period

The development hereby permitted shall begin not later than three years from the date of this decision.

Reason: To ensure a satisfactory form of development and for the avoidance of doubt.

2. Approved Plans

The development hereby permitted shall be built in complete accordance with the plans and specifications listed below dated 22nd May 2019.

- a) Site Location Plan (A-PL-300)
- b) Proposed Site Plan (A-PL-302 Rev B)
- c) Proposed Shell Plan (A-PL-303 Rev B)
- d) Proposed Elevations (A-PL-304)

Reason: To ensure a satisfactory form of development and for the avoidance of doubt.

3. Overall Net Retail and Gross Floorspace

Notwithstanding the ability for additional floorspace (including but not restricted to mezzanines) to be provided within retail premises without the need for planning permission, the individual Units B, C, D and E hereby approved, and as identified on the approved plans, shall not provide more than the following maximum floorspace.

- a) Unit B – a net retail sales area of 1,042 sqm.
- b) Unit C – a net retail sales area of 1,456 sqm.
- c) Unit D – a net retail sales area of 1,081 sqm.
- d) Unit E – a net retail sales area of 2,625 sqm.

The combined gross floorspace of Units B, C, D and E, including net sales areas, servicing and other areas, shall not exceed 9,732sqm.

Reason: To define the permission and restrict the nature of retailing at the site in order to minimise the impact of the use of the approved development on the vitality and viability of the defined Town Centre. This would ensure accordance with the considerations of the decision making process and the guidance contained within the National Planning Policy Framework and Local Plan Policy CS13.

4. Restrictions on Subdivision

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that order), no subdivision of the units hereby approved shall take place within the building that would have the effect of creating a separate retail unit of less than 929sqm. (net sales area).

Reason: To ensure the approved Units within the development are the appropriate sizes in order to safeguard the vitality and viability of the Town Centre as defined in the Local Plan. Such measure will accord with the relevant guidance within the National Planning Policy Framework.

5. Use of Unit A

Unit A shall be used for a catalogue showroom/online retailer (defined for the purpose of interpreting this condition as a retailer selling a wide range of goods selected by the visiting public from a catalogue on site or selected and/or purchased online/by telephone and made available fully packaged for collection from the premises). Unit A shall not be used primarily to display goods for self-selection and purchase, other than in an ancillary manner to the main function of the unit.

Reason: To define the use of floorspace and types of goods sold within Unit A in the interests of an appropriate form of development which minimises the impacts on the Town Centre as defined within the Local Plan. Such restrictions would limit the impact of the development on the vitality and viability of the Town Centre in accordance with the requirements of the National Planning Policy Framework.

6. Uses of Units B, C, D and E combined

Within Units B, C, D and E, as identified on the approved plans, the permitted net retail sales area shall accord with the following provisions:

- a) A maximum of 30% of the net retail sales area shall be permitted for the sale of convenience goods.
- b) A maximum of 70% of the net retail sales area shall be permitted for the sale of comparison goods, of which a maximum of 25% shall be for the sale of non-bulky items.

For the purpose of this condition, bulky goods would include but not necessarily be limited to: furniture, carpets and flooring, home improvement, DIY, plumbing and hardware, timber and building products, garden supplies, some electrical goods, gas appliances, some homeware products and furnishings, computers, office equipment, pets and some pet products, motor accessories, play equipment, pushchairs and other maternity/baby and some child care products.

Reason: To define the use of floorspace and types of goods sold within these Units in the interests of an appropriate form of development which minimises the impacts on the Town Centre as defined within the Local Plan. Such restrictions would limit the impact of the development on the vitality and viability of the Town Centre in accordance with the requirements of the National Planning Policy Framework.

7. No-Poaching Clause for Units C and D (where no end-user is currently identified)

- (ii) Otherwise than in the circumstances set out at (ii) below, for a period of five years from the date on which the development hereby approved is first open to the public, the retail floorspace in Units C and D (as shown on approved plans) shall not be occupied by any retailer who at the date of the grant of this permission, or within a period of 12 months immediately prior to the initial occupation of the development hereby approved, occupies retail floorspace which exceeds 250 sqm. [Gross External Area] within Middlesbrough Primary Shopping Frontage area as defined on the Regeneration DPD (2009) Proposals Map.

- (iii) Such occupation shall only be permitted where such retailer as identified in (i) above submits a scheme which commits to retaining their presence as a retailer within Primary Shopping Frontage area following the date of their proposed occupation of unit C or D hereby approved, and such scheme has been approved in writing by the Local Planning Authority.

Reason: To minimise the impact of the proposed development on Middlesbrough Town Centre, which is considered to be vulnerable to trade diversion. Such measures will help to mitigate the impact of the development on the vitality and viability of the defined Town Centre in line with the requirements of the National Planning Policy Framework.

8. Approved Flood Risk Assessment

The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) prepared by WYG dated October 2018 and the following mitigation measures detailed within the FRA:

1. The protection and maintenance of existing flood defences will be able to take place when required.
2. Identification and provision of safe route(s) into and out of the site to an appropriate safe haven.
3. Finished floor levels will be set no lower than 4.88m above Ordnance Datum (AOD).

The mitigation measures shall be fully implemented prior to occupation of the development and subsequently in accordance with the timing/phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the Local Planning Authority.

Reason:

1. To ensure the structural integrity of existing flood defences thereby reducing the risk of flooding.
2. To ensure safe access and egress from and to the site.
3. To reduce the risk of flooding to the proposed development and future occupants

9. Car Park Management

The respective parts of the development hereby permitted shall be brought into use in accordance with the Car Park Management Plan (SSLMiddlehaven.1, May 2019) prepared by Mayer Brown. The Management Plan shall then be in use in perpetuity.

Reason: To ensure the appropriate control of traffic and parking in the interests of highway safety.

10. Travel Plan

Within three months of the units hereby approved being open for trading with the public, a Travel Plan that is based on the submitted Framework Travel Plan by Mayer Brown containing details of:

- a) Initiatives to promote cycling and walking
- b) Initiatives to reduce the use of the private car
- c) Targets and programme for the achievement of those initiatives

Shall be submitted to the Local Planning Authority and such travel plan shall be agreed in writing and the implementation of this plan shall be inaugurated as soon as is practicable following this agreement. This Travel Plan shall thereafter be monitored by a person

nominated by the landowner who shall report in writing on the achievement of the agreed targets on an annual basis to the Local Planning Authority for a period of five years.

Reason: In the interests of sustainability and to ensure that the targets in the Travel Plan are achieved.

REASON FOR RECOMMENDATION:

- 1 The application for the rearrangement of the permitted scheme under M/FP/1262/14/P to provide 5 no. retail warehousing units with associated entrance doors, removal of existing lobby and concession block, alterations to car park and service yard is considered to be appropriate for both the application site itself and within the surrounding area in that the proposal is in accordance with national and local planning policies, statements and guidance.
- 2 In particular, this proposed development broadly meets the national planning policy framework and the local development framework policies regarding the efficient use of land, economic development and impacts on town centre vitality and viability, the appropriate design and layout of development, sustainable development, and accessibility that would result in a development that would be in keeping with the scale and character of the surrounding townscape, and thus would not be detrimental to the local amenities of the area.
- 3 Issues of the principle of the proposed retail development, its sustainability, the impact of the proposed scale and design, the highways and transportation implications of the proposal, and of local amenity have been fully considered and are not considered to give rise to any inappropriate or undue affects subject to the identified mitigation measures.
- 4 Accordingly, the local planning authority considers that there are no material planning considerations that would override the general assumption that development be approved unless other material factors determine otherwise. On this basis, the recommendation to approve conditionally is as set out for these reasons.

Case Officer: Peter Wilson

Committee Date: 1st November 2019

