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Dear Councillor

**PLANNING COMMITTEE - TUESDAY, 27TH APRIL, 2021**

I now enclose, for consideration the following late report that was unavailable when the agenda was published.

Agenda Item No. 13(a) Proposed Response to the Down Town Designer Outlet Re-Consultation (pages 2 – 16).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Catharine Saxton', written in a cursive style.

Catharine Saxton  
Democratic Services Officer

## PLANNING COMMITTEE – 27 APRIL 2021

In accordance with Section 100(B)(4)(b) of the Local Government Act 1972, the Chairman has agreed to take this item as a late item of business. The timescales involved with the determination of the application are not clear, and so it is felt necessary to formulate and submit a response as efficiently as possible.

## PROPOSED RESPONSE TO THE DOWNTOWN DESIGNER OUTLET RE-CONSULTATION

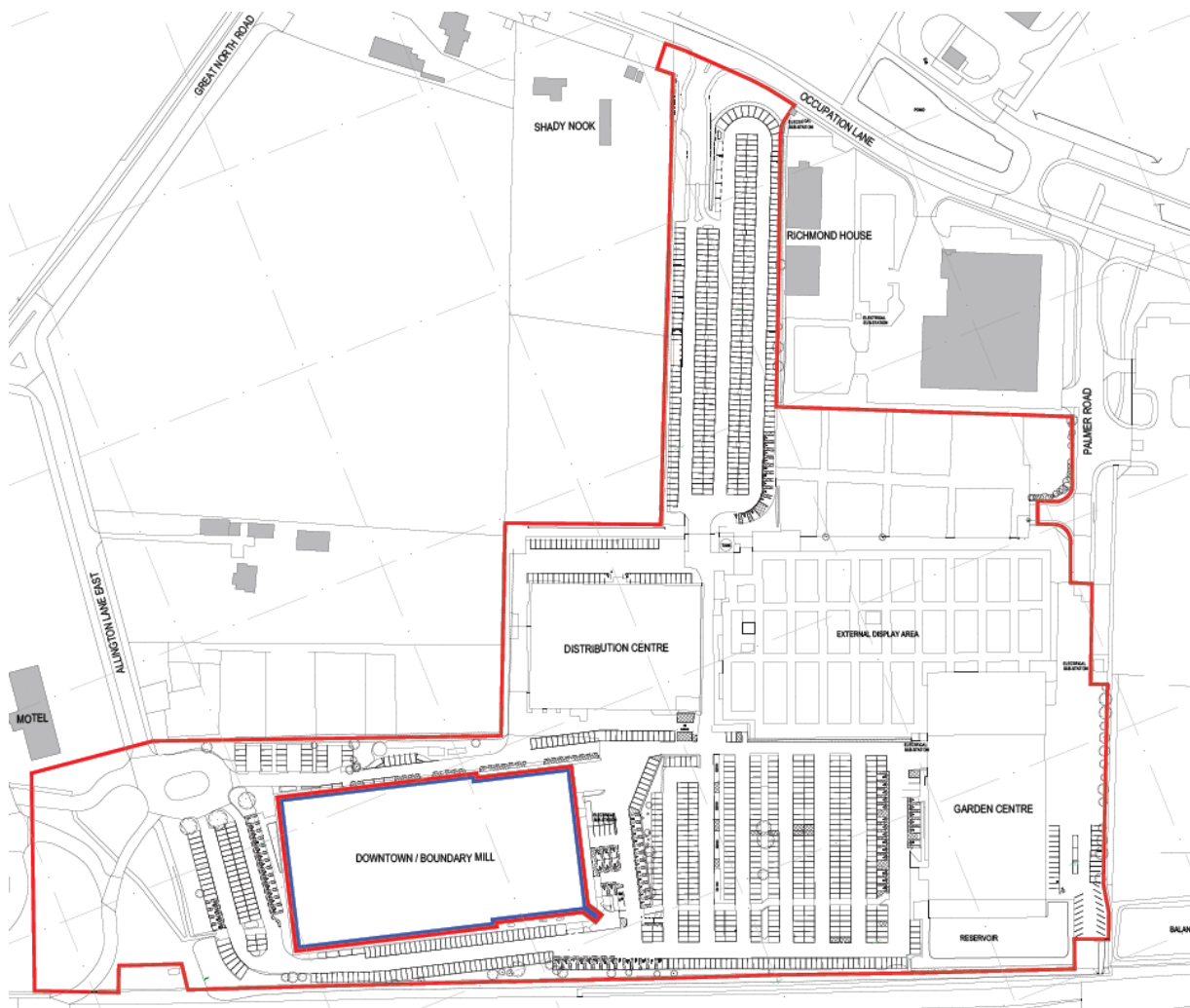
|                        |   |                      |
|------------------------|---|----------------------|
| <b>Application No:</b> | Newark and Sherwood District Council: 17/02120/NPA<br>South Kesteven District Council: S17/2155   |                      |
| <b>Proposal:</b>       | Outline planning permission for the erection of a Designer Outlet Centre of up to 20,479 sqm (GEA) of floorspace comprising retail units (A1), restaurants and cafes (A3), and storage. Additional large goods retail (5,574 sqm GEA), garden centre (5,521 sqm GEA) and external display area for garden centre (1,393 sqm), tourist information and visitor centre, training academy, leisure unit and offices. Demolition of existing garden centre and sales area and existing warehouse. Improvements to existing Downtown Grantham store elevations. Reconfigured car parking and provision of new multi-storey car park. Increased coach parking. Access improvements, drainage works, hard and soft landscaping and all ancillary works. All matters reserved with the exception of access. |                      |
| <b>Location:</b>       | Downtown Garden Centre, Old Great North Road, Great Gonerby   |                      |
| <b>Applicant:</b>      | Oldrid and Co. Ltd.   |                      |
| <b>Registered:</b>     | 16.11.2017  | Target Date: Unknown |

### Introduction

Having previously objected to the proposed development in South Kesteven District, Newark & Sherwood have been re-consulted on the above planning application – providing the further opportunity to raise any concerns which it may still possess. The chronology of events is set out in the planning history section of this report.

### The Site

The application site falls within the county of Lincolnshire and within the administrative boundary of South Kesteven District Council (SKDC), and concerns the existing Downtown Garden Centre located approximately 15km to the south of Newark Town Centre on the A1. The below image shows the extent of the application site.



### Relevant Planning History

Officers previously provided a holding objection in December 2017 to the proposed development until such time as the outcome of the application at Tollemache Road on land south of Grantham (17/01380/NPA, S17/1262) was determined. This concerned a Designer Outlet Village, comprising of two phases. With up to 20,479 sqm (gross) of floorspace comprising retail units (A1), restaurants and cafes (A3), management suite and tourism unit, play areas and parking for up to 1,675 cars and 13 coaches in the first phase. Followed by up to 12,550 sqm (GEA) of floorspace comprising retail units (A1), restaurants and cafes (A3), hotel and up to 709 car parking spaces within the second phase. Consent was duly granted and that application is now being implemented.

Following the decision made at the meeting of Newark & Sherwood's Planning Committee on the 8th May 2018, the District Council lodged a strong objection in January 2019. This was followed by a further objection in May 2019, both sets of correspondence are appended to this report. The grounds of these objections, were based around the failure to pass the Sequential Test and the forecast impact on the vitality and viability of Newark Town Centre. Nevertheless South Kesteven resolved to grant permission for the Downtown proposal (17/02120/NPA, S17/2155) in February 2019, subject to a Section 106 agreement. Subsequent to that decision Newark & Sherwood formally requested that the Secretary of State recover the application for determination, which proved to be unsuccessful. It is understood that the contents of the Section 106 have now been agreed, though the agreement remains unsigned.

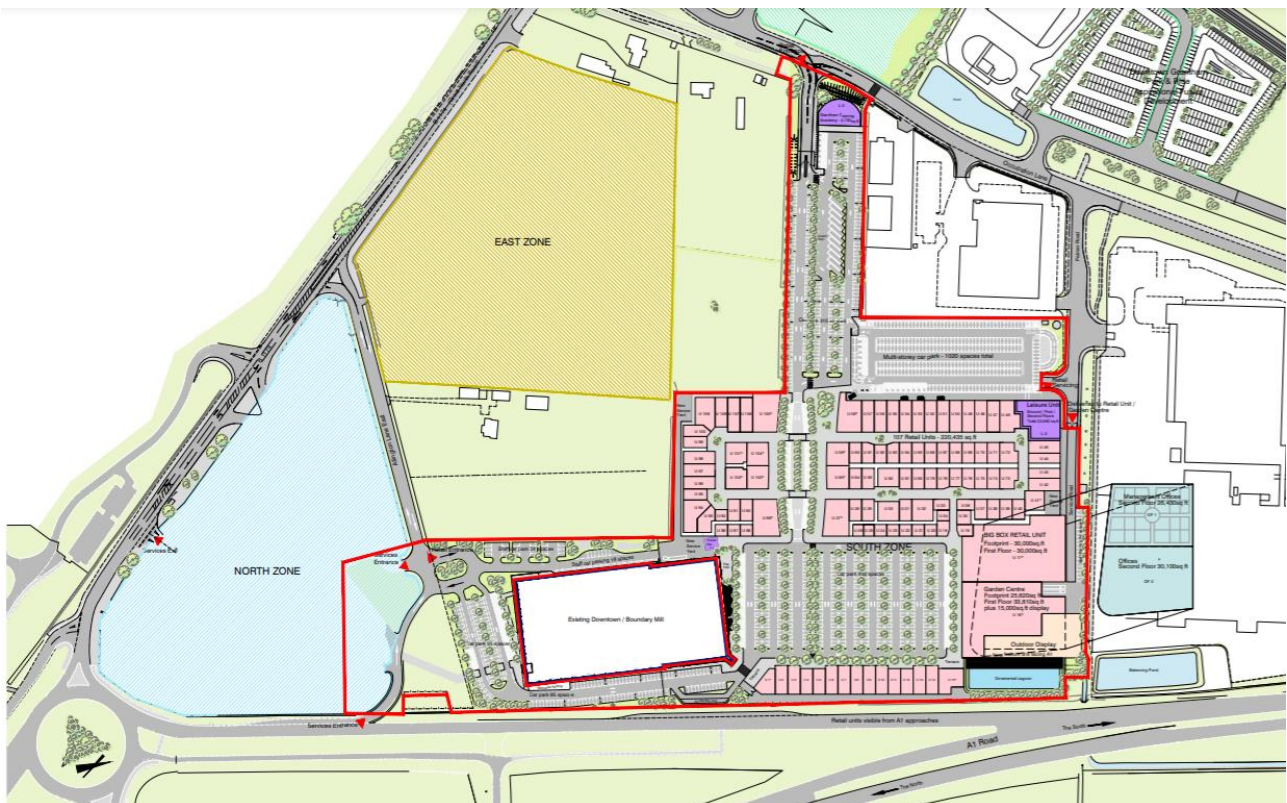
In the intervening period, adoption of the South Kesteven Local Plan occurred in January 2020. Which, in the view of the determining Authority has resulted in a change of planning context- with the effect that it feels it to be necessary to return the application to its Planning Committee for ratification.

### The Proposal

The development proposal seeks outline consent for up to 31,574 sqm (gross) retail floorspace with the bulk of this (20,479 sqm) accommodated within a ‘designer outlet’ (comprising some 107 shops ranging between 57 and 474 sqm (gross)) and a lesser order of new floorspace for a new Downtown@Home store and replacement Downtown Garden Centre (5,574 and 5,521 sqm (gross) respectively). In addition A3 leisure floorspace (1,252 sqm (net)) and a separate 2096 sqm (gross) of D2 leisure floorspace are also proposed. Cumulatively the proposal concerns some 33,670 sqm (gross) of new floorspace in an out-of-town location.

The applicant anticipates that the outlet will act as the principal attractor, drawing visitors from ‘far afield’. With the business model proposing to consist of high-end, premium retailers and brands not available in nearby town centres, specialising in the sale of heavily discounted outlet stock. Downtown@Home’s offer will be around ‘bulky’ goods including furniture, electricals and lighting over two floors. The replacement Garden Centre would result in a net reduction in floorspace for this use, down from the current 8,403 sqm (gross).

In terms of the leisure uses, the A3 offer comprises ‘family friendly’ restaurants and cafes, intended to support the retail offer, and to ‘establish’ the destination as well as to increase ‘dwell-time’. With respect to the D2 uses, these are designed to provide opportunities for a range of indoor activity-bases uses. The most up-to-date layout supporting the application is provided below.



## Consultations

N/A

## Planning Policy Framework

NSDC have received the application as a consultation request and therefore it remains that SKDC will be the determining authority for the application. SKDC will assess the application against their adopted Development Plan. Notwithstanding this, the NPPF and its associated guidance, will form part of the material considerations on which SKDC will make their judgement against.

## **Comments of the Business Manager – Planning Development**

The following comments are offered in respect of the proposed development.

### Principle of Development

The site is in an out-of-town location and is not allocated for retail purposes by SKDC. As a consequence the application will need to pass the Sequential and Impact tests, present within national policy.

### Sequential Test

National policy operates a 'sequential approach' towards 'main town centre uses' such as those proposed through this application. Under which, these uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered. Where an application fails the Sequential Test then national policy is clear that it should be refused.

Through its previous comments the District Council has accepted that there is no single 'reasonably available' site within Newark & Sherwood which is both capable of accommodating the development as a whole, and sequentially preferable to that on which consent is sought. Notwithstanding this the District Council considered that it would be appropriate to disaggregate the uses for the purposes of applying the Sequential Test. With the designer outlet, large format retail, leisure and offices uses being isolated from one another. The failure to consider the availability of alternative sites on this basis, led to the conclusion that the Sequential Test had not been passed – a position maintained within both objections made by this Council.

Since the proposal was last considered the flexible role of the office space/hub has been amended, with that floorspace now intended to directly serve office and staff functions for the designer outlet and operator (Oldrids). To continue to push for this element to be disaggregated would therefore seem disproportionate, though it is recommended that appropriate controls are sought – to ensure that any change in occupier requires permission. Notwithstanding this the previous concerns around the outlet, large format retail and leisure uses remain. It is therefore recommended that the Sequential Test objection be continued.

### Impact Test

Through national policy the application will be required to test its impact on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal. Alongside the impact of the proposal on town centre vitality and viability, including local

consumer choice and trade in the town centre and the wider retail catchment. Where a proposed development has a significant adverse impact on one or more of those considerations, then it should be refused.

Up to this point the District Council's consideration of impact has been guided by input from Carter Jonas, and then subsequently Lambert Smith Hampton. The original impact assessment by the applicant (October 2017) suggested that the proposed development would have a solus impact (i.e. that from the development alone) on Newark Town Centre of £5.1m (3.7%), rising to £7.5m (5.4%) when considered cumulatively (alongside other committed development). However the forecasting carried out by Carter Jonas for Newark & Sherwood (February 2018) placed this at £7.4m (5.4%) on a solus basis, and £11.8m (8.6%) cumulatively. Member's considered this evidence and agreed that the application would have a significant adverse impact on Newark Town Centre. Consequently this formed part of the District Council's first objection.

Following this objection the applicant undertook further sensitivity testing, with a revised position over impact being made available in November 2018. This sought to consider the cumulative impact of the proposal at Downtown and the Tollemache Road permission both being implemented. With the applicant deeming this as being likely to have a £12.8m (6.79%) impact on Newark Town Centre, under their worst case scenario. The subsequent advice provided by Lambert Smith Hampton did not revisit the Carter Jonas modelling, emphasising that under the applicants revised figures it still remained below the level previously forecast in that advice. Notwithstanding this, even taking the applicant's figure it was recommended that, within the *'current economic and retail climate an impact of 6.8% could on the face of it be deemed to be 'significantly adverse' and therefore contrary to the NPPF test (as set out in para 89)'*. This was reflected in the second objection made by the District Council.

The applicant has prepared new retail impact information (dated July 2020) to support the proposal. This now forecasts a solus impact on Newark Town Centre of £3.9m (3.6%) in 2025, falling below the level identified in the October 2017 assessment - and in percentage terms sitting above that modelled for the nearest centre of Grantham at 3.2% (£5.2m). Their assessment of the cumulative impact has sought to take account of the competition which would occur between the application proposal, and the consented scheme at Tollemache Road. This has been achieved through modelling a range of scenarios with lower sales densities. Under the worst case scenario (a reduction of 25% in the sales densities of both schemes) the applicant puts the cumulative impact on Newark Town Centre, at £11.2m (8.1%). Thus exceeding the level of impact this Authority has previously objected to.

In considering the implications of this forecast impact, the applicant refers to the variation of Condition 25 (18/01137/OUTM) of the retail consent off Northgate, Newark approved in June 2019. Taking the line that the application took account of the two South Kesteven schemes and concluded that the proposed variation would not be detrimental to the vitality and viability of Newark Town Centre. However as outlined in the advice provided by Lambert Smith Hampton (dated 28<sup>th</sup> May 2019) the applicant did not take account of any commitment, other than that of the original outline planning permission on the Northgate site. Accordingly the two South Kesteven schemes were not factored into the assessment of cumulative impact. Indeed given that there is no signed Section 106 agreement, and so no valid planning permission, there was no formal planning commitment at the Downtown site to take account of. Whilst both schemes (caveated as a resolution to grant in the case of Downtown) should have been taken account of in assessing the Northgate proposal – it is evident that this did not occur. The positive determination of that particular proposal therefore has no bearing on how impact should be considered in this

instance.

Supplementing the applicant's case, is a health check of Newark Town Centre, which concludes that it remains an attractive and healthy town centre which is performing well. It is worth noting that the health check has not been supported by site visits – with those previously undertaken at earlier stages being relied upon. Instead data around composition and vacancies etc. have been drawn from other data sources – including our own Town Centre and Retail Study (2016), an Experian Goad report (July 2019) and a Promis report on Newark (April 2020). This is despite annual retail monitoring information compiled by the District Council being publically available.

With respect to vacancies the applicant draws on figures from Goad reports undertaken in 2015 and 2019, calculating there to be 54 vacant units or 12.9% of the total units - slightly above the national average of 11-12%. However the Council's most recent Retail Monitoring Report (2019/20) has this higher, at 61 units (9.21%). The difference in percentage figures, suggests a disparity in what the two assessments have taken to represent the Town Centre. Nevertheless the number of units is higher within our own evidence base. Furthermore the applicant has sought to minimise the effect of the vacancies by suggesting that the majority are located on secondary shopping streets. This is however not a position reflected within the District Council's figures which show close to half the vacancies (28 units) as being located within the Primary Shopping Frontage, with lesser numbers found within the Secondary Shopping Frontage (17 units) and the remainder of the Town Centre (16 units). It is considered that the vacancy rate is in reality worse than that taken account of by the applicant, both in numeric terms and with respect to its distribution. This has the effect of undermining the robustness of the health check, and it should also be noted that in both instances the data referred to above will not take full account of the effects of the Coronavirus pandemic on the high street.

The fact that Newark has been successful in securing the maximum funding (£25m) available as part of the Government's Towns Fund initiative is of relevance. Through which the aim is to drive the sustainable economic regeneration of Towns, and deliver long-term economic and productivity growth. Clearly the Town Centre represents a key element within this, with the regeneration of the vacant Marks & Spencer's unit a specific objective. Beyond the landmark schemes emerging through the Bid, it will also be necessary to deliver supplementary measures to support and rejuvenate the Town Centre over the coming years. Even before Newark was deemed to face sufficient challenges to be successful in its Towns Fund bid- and the further negative effects of the Coronavirus pandemic emerged – the Town Centre was found to be vulnerable to competition from higher order centres, investment in out-of-centre shopping/leisure destinations and the growth in internet shopping. This vulnerability is likely to have increased as a result of an acceleration in the trends which are undermining the vitality and viability of Town Centres. Should these vulnerabilities continue to grow unchecked, then there is the potential that the success of planned investments and policy objectives around the future of the Town Centre could be undermined.

Accordingly, it is not considered that the applicant has satisfactorily demonstrated Newark Town Centre to be both vital and viable to the extent that a cumulative trade diversion of £11.2m (8.1%) could be withstood without this resulting in significant adverse impact. Indeed it is again worth underlining that even the latest figure remains below that modelled on behalf of the District Council at the earlier stages of this application.

## Controls

A range of controls have been included within the Section 106 agreement, intended to limit the operation and trading of the proposed development. This includes a 'no poaching' clause, through which existing retailers in Grantham, Newark and Balderton are not permitted to occupy space within the development unless they commit to maintaining a town centre presence for at least five years. This applies to both the existing and proposed retail floorspace. This included restricting occupation of the 'Designer Outlet Centre' to 'Tier 1 retailers' and a 'no poaching clause'. It was considered that 'Tier 1 retailer' represented a nebulous term - which could include mass market retailers found in Newark such as (at the time) Marks and Spencer and Next. The District Council also expressed concerns around the poaching clause, both with respect to its limiting to 5 years and the ability to properly enforce such an obligation. There would be a lack of clear definition to what retailing firms would be affected by the clause, given modern retailing practices. For example would the restriction relate to a fascia name over the shop, or to the identity of a group which may own multiple retailing brands? Consequently it was not considered that the proposed measures would be effective in mitigating the forecast cumulative impact, with objections being made on this basis.

It is now understood that the Section 106 lists a range of 'permitted Class A1 retailers', whilst the A1 use class has now been subsumed into the new E use class this approach does give greater clarity over the type of retailer the scheme seeks to attract. Notwithstanding this, there are a number of prominent retailers on the list which do have a presence within the Town Centre. This includes Pandora, White Stuff and Phase Eight, furthermore it is also the case that many of the independent stores within the Town Centre will stock a product range from other retailers included on the list (Oxygen and Masdings being two such examples). These independent retailers will in reality also find themselves in competition with elements of the proposal, given the overlap in offer. The independent sector within Newark Town Centre is a key component of its vitality and viability. In addition, were the scheme prove unable to attract the type of retailers anticipated – then the determining Authority would likely come under pressure to ease this control, and accept the presence of other retailers commonly found within a Town Centre such as Newark's. This underlines why the concerns over the effectiveness of the 'no poaching' condition remains important.

There remain significant concerns around the effectiveness and enforceability of the controls within the Section 106 agreement. It is not considered that, as proposed, they are capable of bringing the impact of the proposal to a level below that of significant adverse. It is therefore recommended that the District Council maintain its previous objections on this matter.

However, were SKDC minded to ratify the approval then it is important that the permission and the controls attached to it are precise and effective. The concern here arises through the reference to A1 within the description of development, and in some of the proposed measures to control a permission. It is important that the implications from the removal of the A1 use class, and the much wider permitted development rights offered by the replacement E class are properly reflected. It is therefore recommended that the response from the District Council suggest that, if approved, the permission and its associated controls need to be tightened and the permitted uses more clearly defined.

## Proposed Approach

The timelines around determination of the application are not clear, and so it is advised that the



District Council's response should be formulated and submitted as efficiently as possible. On this basis it is proposed that a formal response, taking account of the above, be brought together in consultation with the Chair and Vice Chair of Planning Committee. Given the determining Authority is seeking to ratify the application, it may be that their procedures will not allow representatives to speak at the Committee meeting. Notwithstanding this, it is proposed that the request be made.

## **Conclusion**

Based on the above it is proposed that the previous objections to the proposed development, based around the Sequential Test and impact on Newark Town Centre are maintained.

## **RECOMMENDATION**

**That an objection based on the comments of the Business Manager is brought together, in consultation with the Chair and Vice Chair of Planning Committee, and submitted to SKDC as the formal response of NSDC.**

## **Background Papers**

Application Case File

For further information, please contact Matthew Tubb on ext. 5850.

All submission documents relating to this planning application can be found on the following website [www.newark-sherwooddc.gov.uk](http://www.newark-sherwooddc.gov.uk).

**Lisa Hughes**  
**Business Manager – Planning Development**

South Kesteven District Council  
Development Management  
Council Offices  
St Peters Hill  
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Your ref: S17/2155  
Our ref: 17/02120/NPA

Sent via email to:

[planning@southkesteven.gov.uk](mailto:planning@southkesteven.gov.uk)

30 May 2018

Dear Mr Johnson,

Notification of Application

**Proposal:** Outline planning permission for the erection of a Designer Outlet Centre of up to 20,479 sqm (GEA) of floor space comprising retail units (A1) restaurants and cafes (A3) and storage. Additional large goods retail (5,574 sqm GEA) garden centre (5,521sqm GEA) and external display area for garden centre (1,393 sqm) tourist information and visitor centre, training academy, leisure unit and offices including high-tech hub/start-up offices. Demolition of existing garden centre and sales area and existing warehouse. Improvements to existing Downtown Grantham Store elevations. Reconfigured car-parking and provision of new multi storey car park. Increased coach parking. Access improvements, drainage works, hard and soft landscaping and all ancillary works. All matters reserved with the exception of access.

**Address:** Downtown Garden Centre Old Great North Road Great Gonerby Lincolnshire

I refer to the above consultation received by this Authority on 16<sup>th</sup> November 2017 in relation to the above application. Please find below the formal response from NSDC in relation to the above application being considered by your authority at Downtown Grantham.

- (i) **Strong objection to the proposed development at Downtown Garden Centre**
- (ii) **Formally request attendance by both an Officer and elected Member to speak at South Kesteven District Council's Planning Committee to set out the reasons Newark and Sherwood District Council are objecting to the scheme (due to the retail impact on Newark town centre as per advice set out by Carter Jonas as retail consultant to Newark and Sherwood District Council).**

Background to Newark and Sherwood District Council's (NSDC) objection:

Following the granting of the consent of the King 31 application on Tollemache Road to the south of Grantham NSDC issued a holding objection to the pending Downtown application until such time as Council's retail consultant (Carter Jonas) and colleagues within planning policy could review the submitted information. It was considered that as a standalone application the proposed development would not result in a significant adverse impact on the vitality of the District Centre subject to the imposition of a condition similar to that proposed as part of the recent Thoresby Colliery scheme. The condition relating to retention of retailers in district centres has been the subject of a legal challenge (Skelmersdale Limited Partnership v West Lancashire Borough Council Case No: C1/2016/0625) and was judged to be lawful by Lord Justice Sales and Lord Justice Briggs.

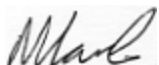
However, at the NSDC planning committee meeting on 8<sup>th</sup> May 2018, following the receipt of further advice following publication of the Planning Committee, Officers advised that an objection be raised to the proposed development given that the previous lack of objection as detailed within the Committee Agenda was based on the application as a standalone proposal and did not take a view on cumulative harm. The previous no objection subject to condition recommendation from CJ was stipulated on the basis that the market would be unable to support the implementation of the King 31 scheme and the proposal at Downtown given the similarity in the retail offers being proposed. The Officer view presented to Committee was that the Downtown scheme must be considered cumulatively with that of the already approved King 31 scheme. A recommendation of objection to the proposed development was therefore detailed by Officer's to Members and for clarity the minutes of this meeting are appended below.

You will note Members resolved to raise a strong formal objection to the proposed development raising concern that cumulatively the Downtown proposal with that of the recently approved King 31 development to the south of Grantham could have a significant adverse impact on the retail vitality of the Newark District Centre and would therefore fail to accord with paragraph 27 of the NPPF.

You have already been forwarded all supporting assessment documentation produced on our behalf by Carter Jonas and as detailed above NSDC formally request that one of its elected Members and an Officer be invited to attend and speak at the upcoming SKDC planning committee meeting when this item is heard. We would be grateful for your written confirmation of acceptance to this request at the earliest opportunity and prior to the application being determined. We as a Council will also be writing to our local MP requesting that the application be called in for determination by the Secretary of State.

I trust you will take the above comments into consideration when assessing the application.

Yours sincerely



Matt Lamb  
Business Manager  
Growth and Regeneration

## 8<sup>th</sup> May Planning Committee Minutes

The Committee considered the report of the Business Manager Growth & Regeneration which related to a planning application seeking outline planning permission within the neighbouring South Kesteven District for the erection of a Designer Outlet Centre of up to 20,479 sqm (GEA) of floor space comprising retail units (A1) restaurants and cafes (A3) and storage. Additional large goods retail (5,574 sqm GEA) garden centre (5,521 sqm GEA) and external display area for garden centre (1,393 sqm) tourist information and visitor centre, training academy, leisure unit and offices including high-tech hub/start up offices.

Demolition of existing garden centre and sales area and existing warehouse. Improvements to existing Downtown Grantham Store elevations. Reconfigured car-parking and provision of new multi storey car park. Increased coach parking. Access improvements, drainage works, hard and soft landscaping and all ancillary works. All matters reserved with the exception of access.

Members were informed that the Council had been consulted on the above planning application and were invited to make comments on the scheme to the decision maker, South Kesteven District Council. A Holding Objection was issued to South Kesteven District Council until such time as the Council had secured professional retail advice on the scheme. The report set out what officers considered those comments should be for Members consideration.

A schedule of communication was tabled at the meeting which detailed correspondence received after the Agenda was published from Carter Jonas – Retail Consultant. The Business Manager Growth & Regeneration advised Members of the application before them and informed them that the Retail Consultant had advised that it was unlikely that the market would be able to support two large-scale schemes within such close proximity. If one scheme was in place the impact would be £7.1m loss to Newark, the consultant had advised that the impact was just short of significant impact, albeit it was for Members to debate this issue. In any event the Business Manager informed that the view of Queens Counsel had been obtained regarding the proper retail planning test to consider. The issue for us to assess is whether the impact of 2 no. planning consents would be acceptable on the vitality and viability of Newark town centre. Retail advisors to the Council consider that the impact of both schemes to Newark Town Centre would be £11.8m. The Council was also considering the pending application for Marks & Spencer to relocate to Newark North Gate, which would also have an impact on the Town Centre. The Business Manager suggested that both a Planning Officer and an elected Member should attend South Kesteven District Council's Planning Committee to speak against the application, in addition to providing a strong written objection.

Members considered the application and agreed that the application would have a significant adverse impact on Newark Town Centre, particularly when viability margins were lower than ever in difficult market conditions. The loss of a significant town centre retailer would further exacerbate any significant adverse harm. It was suggested that the Newark MP should be informed and asked to seek confirmation that the Secretary of State call the matter in for his own determination should SKDC be minded to approve the application. Members also confirmed they supported attendance of both a Planning Officer and an elected Member at the South Kesteven District Council Planning Committee to raise their objection.

AGREED (unanimously) that:

- (i) Strong objection be placed in writing to South Kesteven District Council; and
- (ii) attendance at South Kesteven District Council both an Officer and elected Member to speak at their Planning Committee against the scheme due to the retail impact on Newark town centre as per advice set out by Carter Jonas – Retail Consultant as detailed in the late items schedule.

South Kesteven District Council  
Development Management  
Council Offices  
St Peters Hill  
Grantham  
Lincolnshire

Telephone: 01636 650000  
Email: [planning@nsdc.info](mailto:planning@nsdc.info)  
Your ref: S17/2155  
Our ref: 17/02120/NPS

Sent via email to:  
[planning@southkesteven.gov.uk](mailto:planning@southkesteven.gov.uk)

31<sup>st</sup> January 2019

Dear Mr Johnson,

**Grantham – Downtown Retail Site, Gonerby Moor, Grantham**  
**Planning Application for Erection of a Designer Outlet Centre, Large Format Retail Units,**  
**Leisure Use and Associated Development (Planning Application Ref: S17/2155)**

I refer to ongoing consideration of the above application, which I understand will be considered at the meeting of the Council's Planning Committee on the 6<sup>th</sup> February 2019. As we have previously set out, NSDC would like to send representatives to speak at the Committee.

I set out below an additional formal response on behalf of Newark & Sherwood District Council, guided by retail planning advice from Lambert Smith Hampton (the author having moved from Carter Jonas, who produced the previous report). The previous response from the Authority, dated 30 May 2018, provides the background context to this objection. The position of the Authority remains as follows.

- (i) Strong objection to the proposed development at Downtown Garden Centre**
- (ii) Formally request attendance by both an Officer and elected Member to speak at South Kesteven District Council's Planning Committee to set out the reasons Newark and Sherwood District Council are objecting to the scheme (due to the retail impact on Newark town centre as per advice set out by Carter Jonas and subsequently Lambert Smith Hampton<sup>1</sup> as retail consultants to Newark and Sherwood District Council).**

No reference has been made to an updated sequential assessment, or consideration of further sites. The Authority still deems a disaggregated approach to be suitable in these circumstances, as detailed in our earlier submission. With a reasonable approach being to isolate the Designer

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<sup>1</sup> The retail planning team at Carter Jonas moved to Lambert Smith Hampton in January 2019. Retention of the team as consultant to the Authority has ensured consistency in advice.

Outlet Centre, large format retail, leisure and office elements respectively. On this basis the Authority does not consider the sequential test adequately demonstrated as passed.

Turning to impact, the position of the Authority is based on the cumulative impact of the approved, King 31 scheme and the pending proposal at Downtown. The King 31 scheme represents a valid consent capable of implementation. The legal opinion provided to this Authority confirms that it is therefore incumbent upon the determining Authority to assess the cumulative impact of the two proposals, along with other committed development. Indeed archaeological conditions attached to the King 31 consent have been discharged and a non-material amendment to the scheme was approved earlier this year. This would appear to indicate a strong intention on the part of Buckminster Estates and Rioja Developments to implement their consent.

Turning now to the additional information provided in support of the application. Retail Impact Sensitivity Testing has been carried out, with the applicant's figures forecasting a worst case cumulative impact on Newark Town Centre of 6.79%. Notably this is the single largest town centre impact, with Grantham at 5.26% and Oakham 4.76%. Given the much closer geographic proximity of Grantham Town Centre to the proposal the Authority strongly questions the credibility of the impact assessment. We note that that the level of forecast impact falls below the 8.6% previously estimated by Carter Jonas on behalf of this Authority in February 2018 (previously provided). Notwithstanding this the latest advice provided to this Authority (appended) deems that within the current economic and retail climate even an impact of even 6.8% could be deemed as 'significant adverse', and so contrary to the relevant NPPF test.

The Newark & Sherwood Town Centre & Retail Study (2016) concluded, in respect of Newark Town Centre, that the centre appeared to be performing well against a number of key (health check) performance indicators, but that it remained vulnerable to competition from higher order centres (principally Lincoln and Nottingham), investment in out-of-centre shopping/leisure destinations and the growth in internet shopping. Given that this conclusion dates to 2016, the current challenging state of the retail market and the announced closure of Newark's Town Centre Marks & Spencers store the vulnerability of the Centre has substantially increased.

In this respect the Authority would point to the recent Cribbs Causeway Appeal (APP/P0119/V/17/3170627 – October 2018) where despite Bristol City Centre being considered a "vital and viable shopping centre" and not a "weak or failing centre" it was nevertheless subject to "underlying weaknesses". Here trade diversion, specifically a solus impact of 6.4% on comparison goods turnover, was deemed to have the potential to lead to a significant harmful impact on the Centre's vitality and viability (para(s) 32, 647, 655).

The letter from Fisher German (the agents acting on behalf of Downtown), dated 14<sup>th</sup> November 2018, highlights that a 'significant suite of conditions' have been agreed between SKDC and the applicant, in order to control the proposed development and the existing retail on site. It is also stated that these conditions have been agreed through extensive consultation and negotiation, and in some instances informed by representations – including those from adjoining Authorities. No engagement on the detail of proposed conditions has taken place with this Authority, which would have been welcomed given that the greatest impact is forecast to fall on Newark Town Centre.

In order to mitigate the forecast impact on Newark Town Centre it is proposed to restrict occupation of the 'Designer Outlet Centre' to 'Tier 1 retailers' and to include a 'no poaching

clause'. The Authority has not been able to ascertain what would fall within the definition of a Tier 1 retailer, and as such it represents a nebulous term- which could include mass market retailers such as Marks and Spencer and Next. The 'no poaching clause' intends to restrict the ability of existing retailers present in Newark Town Centre to occupy space within the proposed development, unless they commit to maintaining a Town Centre presence. As drafted this would however be time limited and so leave the Centre vulnerable upon expiry of the 5 year term, limiting its effectiveness.

The advice provided by Lambert Smith Hampton emphasises the likelihood of the commercial market prevailing and that absolute protection cannot necessarily be achieved in a market economy. This is reflected in the appeal decision at Land North of Ashcombe Road and Barnes Way, Kingswood, Hull appeal (APP/V2004/W/17/3171115) where the Inspector noted that a 'no poaching clause' may be ineffective owing to the lack of a clear definition of what retailing firms would be affected and that would need to enter into such an agreement; in particular, whether the restriction relates to the fascia name over the shop or to the identity of a group which may own multiple retailing brands. Even if the condition were effective, it would only apply for a limited period, and could still be insufficient to encourage long term investment in the city centre (para(s) 151 and 152). Consequently it is not considered that the proposed condition will be effective in mitigating the forecast cumulative impact on the vitality and viability of Newark Town Centre to a level below that of significant adverse. There are also strong concerns over the enforceability of this type of planning control.

On the basis of the above Newark & Sherwood District Council maintains its strong objection to the proposed development. The applicant has failed to demonstrate the sequential test as passed, and the cumulative impact on Newark Town Centre is deemed as likely to be significant adverse, with the package of proposed conditions (the details of which remains undisclosed to this Authority) insufficient to restrict this to a more acceptable level. Consequently the proposal should be refused in line with national retail policy. Were the determining Authority be minded to grant approval then the application should be referred to the Secretary of State for a decision as to whether he wishes to call it in under the terms of the Town and Country Planning (Consultation) (England) Direction 2009. Newark & Sherwood District Council will likely be making clear to the Secretary of State that the matter should be called in for his consideration by way of a public inquiry.

Yours sincerely,



Matt Lamb  
Business Manager – Growth & Regeneration