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31st 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 6th 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 Hampton¹ 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

¹ 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 14th 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