

## **PLANNING COMMITTEE – 4 SEPTEMBER 2018**

<b>Application No:</b>	<b>18/01118/FUL</b>	
<b>Proposal:</b>	<b>Application to Retain Existing Building and Use as a Sui Generis Retail Warehouse Club with ancillary B1 (Business) and B8 (Storage and Distribution) uses</b>	
<b>Location:</b>	<b>Future Fishing Ltd, Unit 17, Hardys Business Park, Hawton Lane, Farndon, NG24 3SD</b>	
<b>Applicant:</b>	<b>Frank Hardy &amp; Sons (Farndon) Limited - Mr Jack Hardy</b>	
<b>Registered:</b>	<b>13 June 2018</b>	<b>Target Date: 08 August 2018</b> <b>Extension of Time: 16 August 2018</b>

**This application is being presented to the Planning Committee in line with the Scheme of Delegation as in the judgement of an Authorised Officer, the specifics of the application warrant determination by the Planning Committee. In this particular case, the application is finely balanced. In addition, the description of development requires careful assessment due to potential CIL and enforcement implications.**

### **The Site**

The 0.15 Ha site relates an existing building at Hardy' Business Park. It is a warehouse style building with mezzanine floor located immediately to the south west of another building. A garden centre and other business park buildings and are located immediately to the south west, west and north of the building. The application building is a steel portal framed building with plastic coated green sheet walls and roof. The building has two side doors and a main entrance with large roller shutter at the front of the building.

The site located in the open countryside and is served by an existing access off Hawton Lane which leads through the Business Park and to the site. Agricultural fields are located around the edge of the wider site.

The position of the building and the majority of its access is located in Flood Zone 3. A small part of the access is located within Flood Zone 2.

### **Relevant Planning History**

*The planning history below sets out the planning history relevant to the wider Hardy's Business Park site. For the avoidance of doubt, the plot on which the proposed building is located does not benefit from any previous planning permission albeit it was previously used as a menage. The building was built in 2016 or later (according to aerial photography records).*

18/01117/FUL Application to Retain Existing Building and Use Building and Forecourt for Use as a Gym (Use Class D2) – permission 01.8.18.

18/01121/FULM Application to Retain Existing Buildings and Use Buildings for a Mixed Use of B1 (Business); B2 (General Industry); and B8 (Storage and Distribution) – permission 1.8.18

18/00770/LDC Certificate of Lawfulness to continue the existing mixed Use of: 1) for B8 Storage Involving External Storage (at no more than 2m high from the adjacent ground level) and Internal Storage within Shipping/Storage Containers; 2) the siting of a maximum of 9 Shipping/Storage Containers (that shall be no higher than 3.2m in height from the adjacent ground level); 3) the Parking of a maximum of 3 HGV Lorry Trailers; and 4) the siting and storage of a maximum of 6 items of plant and machinery (that shall be no higher than 3.2m in height from the adjacent ground level) – Certificate issued

04/01022/FULM Change of use from existing agricultural buildings to industrial units classes B1-B2 – permission 09.07.2004

95/50583/FUL Agricultural storage building – permission 29.06.1995

11901358 Siting of mobile café – permission 04.06.1991

### The Proposal

The proposal seeks full planning permission to retain the existing building and use as a Sui Generis Retail Warehouse Club with ancillary B1 (Business) and B8 (Storage and Distribution) uses. The application is retrospective in nature and the building has been in situ since May 2016 according to the planning application forms. The building has a floorspace of 731m<sup>2</sup>.

The red line boundary of the application site contains no parking spaces albeit the application form states that there are 6 car parking spaces which I assume are available for use on the wider Business Park site (within the blue line boundary of the application site).

The use described as a ‘members only’ club is managed and maintained through the on-site electronic till and online registration NB with a sign in the entrance stating that membership is free. It employs 3 full time members of staff. The site operates 09:00 – 18:00 Monday to Saturday and 10:00 – 16:00 Sundays and Bank Holidays according to the submitted application form.

The planning application is accompanied by the following supporting documents:

- Supporting Statement
- Flood Risk Assessment and Sequential Test
- Uses Within Building Statement

### Departure/Public Advertisement Procedure

A site notice was posted adjacent to the site on 26.06.2018.

### Planning Policy Framework

#### **The Development Plan**

*Newark and Sherwood Core Strategy Adopted March 2011*

Spatial Policy 1 - Settlement Hierarchy

Spatial Policy 2 – Spatial Distribution of Growth

Spatial Policy 3 - Rural Areas

Spatial Policy 6 – Infrastructure for Growth

Spatial Policy 7 – Sustainable Transport

Core Policy 6 – Shaping our Employment Profile

Core Policy 8 – Retail Hierarchy

Core Policy 9 – Sustainable Design

Core Policy 11 - Rural Accessibility

Core Policy 12 – Biodiversity and Green Infrastructure

Core Policy 13 - Landscape Character

*Allocations and Development Management DPD Adopted July 2013*

Policy DM5 – Design

Policy DM7 – Biodiversity and Green Infrastructure

Policy DM8 – Development in the Open Countryside

Policy DM11 – Retail and Town Centre Uses Policy

Policy DM12 – Presumption in Favour of Sustainable Development

### **Other Material Considerations**

- National Planning Policy Framework 2018
- Planning Practice Guidance
- Newark and Sherwood Amended Core Strategy DPD 2017
- The Newark and Sherwood Landscape Character Assessment SPD

### Consultations

**Farndon Parish Council** – Support proposal.

**NCC Highways** – The Highway Authority is satisfied that the level of off-street parking provision within the site is sufficient to accommodate the proposed uses. We therefore do not wish to raise an objection.

**Highways England** – No objection

**Environment Agency** –

*Comments received 30.07.2018:*

If the finished floor levels are indeed a minimum of 13.0mAOD, then yes, the suggested condition would be acceptable to us:

‘Within three months of the date of this decision, a scheme of mitigation to protect against flood risk as set out in the approved Flood Risk Assessment (FRA) compiled by WtFR Ltd (ref: WTFR-FRA-2018/04/Q24 Unit 9, Units 10-12 and Units 13-16) on 30th May 2018, shall be submitted to and approved by the Local Planning Authority. For the avoidance of doubt, this scheme shall include:

- Identification and provision of safe routes into and out of the site to an appropriate safe haven.
- Details flood resilient design measures incorporated into the final design as stipulated within section 9.3 of the FRA (including any undertaken retrospectively).
- timing / implementation arrangements of all mitigation measures identified.

The mitigation measures set out in the approved scheme shall be fully implemented in accordance with the timing / implementation arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

Reason: To ensure safe access and egress from and to the site and to reduce the risk of flooding to the proposed development and future occupants.’

*Comments received 26.06.2018:*

The proposed development will only meet the requirements of the National Planning Policy Framework if the following measures as detailed in the Flood Risk Assessment submitted with this application are implemented and secured by way of a planning condition on any planning permission.

Condition:

The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) compiled by WtFR Ltd (ref: WTFR-FRA-2018/04/Q24 Unit 17) on 30<sup>th</sup> May 2018 and the following mitigation measures detailed within the FRA:

- Identification and provision of safe routes into and out of the site to an appropriate safe haven.
- Finished Floor Levels (FFL) to be set no lower than 13.03mAOD for unit 17as indicated within sections 4.1, 9.1 and 10 of the FRA.
- Flood resilient design measures incorporated into the final design as stipulated within section 9.3 of the FRA.

The mitigation measures shall be fully implemented prior to occupation 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:

- To ensure safe access and egress from and to the site.
- To reduce the risk of flooding to the proposed development and future occupants. The FRA mentions that the stipulated FFL of 13.03mAOD may not be able to be achieved due to planning constraints. It should be noted that although specific site ground levels have not been provided in the FRA, LIDAR data suggests ground levels ranging between 12.4mAOD and 13.4mAOD on site and therefore the suggested FFL should be achievable. If this level cannot be achieved then we would like to be re-consulted with revised FFL. I also wanted to point out that the FRA uses 20% climate change allowances when informing FFL. You

should be aware that climate change guidance has been updated and both 30% and 50% climate change allowances should now be considered when proposing FFL. While we do not currently have updated modelled data to reflect these changes we have seen that, on models which have been updated the 1 in 1000 year levels closely reflect those of the 50% climate change allowance outputs.

As the proposed use is less vulnerable and fully within FZ2 we are satisfied that the site will remain safe with these floor levels however we would suggest incorporating flood resilient design with a 300mm freeboard above the 1 in 1000 year level (i.e. 13.19mAOD) to add a further level of resilience and protect the business during times of extreme flooding.

#### Advice to LPA:

The Environment Agency does not normally comment on or approve the adequacy of flood emergency response procedures accompanying development proposals, as we do not carry out these roles during a flood. Our involvement with this development during an emergency will be limited to delivering flood warnings to occupants/users covered by our flood warning network. The Technical Guide to the National Planning Policy Framework (paragraph 9) states that those proposing developments should take advice from the emergency services when producing an evacuation plan for the development as part of the flood risk assessment.

In all circumstances where warning and emergency response is fundamental to managing flood risk, we advise local planning authorities to formally consider the emergency planning and rescue implications of new development in making their decisions.

#### Advice to applicant:

While the Environment Agency do not object to the FFL being set at 13.03mAOD it may be prudent to incorporate an additional 300mm of flood resilient construction above the 1 in 1000 year level of 12.89mAOD (i.e. 13.19mAOD for unit 17) in to the final design. This will give an added level of flood resilience to the building and in the event of extreme flooding will reduce the impact on the business.

Flood proofing measures include barriers on ground floor doors, windows and access points and bringing in electrical services into the building at a high level so that plugs are located above possible flood levels.

Consultation with your building control department is recommending when determining if flood proofing measures are effective.

Additional guidance can be found on the [www.gov.uk](http://www.gov.uk) website pages under the heading 'Prepare for a flood and get help during and after'. These pages can be found by clicking on the following link – [Prepare for a flood and get help during and after - GOV.UK](https://www.gov.uk/government/guidance/prepare-for-a-flood-and-get-help-during-and-after)

#### **NSDC Planning Policy –**

Warehouse clubs are included within the definition of retail development provided in the NPPF, and consequently policy relevant to main town centre uses is applicable.

#### Sequential Test

I'm not of the view that the proposal falls within the exemptions to the sequential test listed at para 88 of the updated NPPF, consequently the test should be applied in line with local and national policy.

Application of the 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. Robust justification must be provided where this is the case, and land ownership does not provide such a justification. In addition we also need to be mindful that there may be viability concerns associated with sequentially preferable locations and so need to be realistic and flexible in terms of our expectations.

I'm content that there is in all likelihood a particular market/locational requirement which suggests that the application of the test should be limited to a select number of defined centres in the Newark Area. I would suggest that the applicant's suggestion of the Newark Urban Area should be widened to incorporate the Local Centre at Collingham, which is located within reasonable proximity to the River Trent and former gravel pits (features which the applicant has suggested contribute towards the active fishing community in the area). I do not concur that possession of, or the ability to provide, dedicated parking provision ought to necessarily form a site requirement though. Particularly where a site within a Town Centre is being considered, given the availability of parking elsewhere to serve the unit.

In terms of the exercise undertaken by the applicant, potential alternative sites with a minimum 500 sqm floorspace have been considered – demonstrating flexibility on their part, and so I would be comfortable with those discounted below this level. I'm also satisfied with those ruled out due to present unavailability (Northgate, the NSK allocation and the Local Centres associated with the strategic sites), even having had regard to the widened test within the updated NPPF which explicitly allows for consideration of suitable sites which are expected to become available within a 'reasonable period'. I have no reason to doubt the figures presented over business rate and rent increases contributing towards the dismissal of the remaining sites identified by the applicant. If a site had been ruled out due to one of those financial factors then it may have been worthwhile seeking further more detailed information from the applicant to allow us to consider what increase could feasibly be supported. However I am mindful of the need to be realistic over our viability expectations and the need for the test to be applied in a proportionate manner. Having looked through our recent monitoring surveys I cannot identify any additional vacant units which the applicant should consider within Newark Town Centre or either of the Balderton Local Centre's.

Turning now to Collingham Local Centre Units 1 and 2, High Street (the former Co-op store) appear to remain vacant. However my understanding is that the unit would fall significantly below the 500 sqm threshold. On balance I would consider it unlikely that there would be any other edge-of-centre or superior out-of-centre locations able to accommodate the business.

I would therefore be comfortable in reaching the conclusion that there unlikely to be any sequentially preferable locations able to accommodate the unit / business having had reasonable regard to the requirements of the business.

### Impact Test

The unit exceeds the impact thresholds within the amended Core Policy 8 emerging through the review of the Core Strategy. I would disagree with the applicant over the weight that they can be afforded as part of the Development Management process – which I would deem to be significant, consistent with the tests at para 48 of the NPPF. This reflected the approach we have followed with retail proposals elsewhere.

Nevertheless the business as currently trading is fairly specialist in nature and unlikely to compete with the existing offer in any of the centres within the Newark Urban Area or at Collingham's Local

Centre. Whilst I accept that Sports Direct and Millets (both located in Newark Town Centre) are likely to retail some similar goods this would make-up only a small proportion of their overall offer. It is also, in my view, reasonable to assume that any diversion which does occur is extremely unlikely to be significant adverse in terms of its impact on Newark Town Centre.

Where my concern would lay is with an unrestricted warehouse club consent that could accommodate convenience or bulky comparison goods at some point in the future, the potential impact of which could be very different. These concerns could however be addressed through agreeing the use of a suitably worded condition restricting the warehouse club to the retailing of angling related goods.

**NSDC Environmental Health (contamination)** – No observations.

**NSDC Access Officer** - It is recommended that the developer be advised to give consideration of inclusive access to and use of the proposal for all, with particular reference to access and facilities for disabled people. Inclusive access for all around the site and to, into and around the proposal should be carefully considered.

It is recommended that the developer's attention be drawn to BS 8300: 2018– 'Design of an accessible and inclusive built environment - Code of Practice' as well as Approved Document M of the Building Regulations, which contains further useful guidance in this regard. It is recommended that a separate enquiry be made regarding any Building Regulations matters. It is further recommended that the developer be mindful of the provisions of the Equality Act.

**Neighbours/Interested Parties** – No letters of representation received.

#### Comments of the Business Manager

#### **Principle of Development**

##### *Description of Development:*

The description of development has been amended during the lifetime of the application to reflect the fact that the proposed B1 and B8 Uses within the building are ancillary to the main use of the building by Future Fishing Ltd.

The main use applied for as part of this application is a sui generis retail warehouse club use. In the 2005 amendments to the Use Classes Order 1987, a sui generis use of "a retail warehouse being a retail club where goods are sold, or displayed for sale, only to persons who are members of that club" was added.

Advice contained within DCP Online states that '*It has been argued that this form of shopping is not strictly "retailing", and this was confirmed in the Thurrock court case. Here, it was held that a Costco warehouse club that involved the sale of goods to members who paid a subscription, did not fall within use Class A1. Of course, the reality is that a club warehouse is tantamount to retailing and that impact on existing centres is just as likely as in the case of a store where goods are sold to any visiting member of the public*'.

In the case of Future Fishing, the membership is free and not therefore in my opinion difficult to sign up to unlike Costco for example which is a retail warehouse club where you are required to

provide ID and pay an annual membership which makes it much more difficult to attract/enable passing trade.



Photo of sign on shop entrance taken 26.06.2018

Also, the main ethos behind a Retail Warehouse Club is that they sell bulkier goods in large quantities and then sell onto to smaller traders more cheaply than A1 shops. I can't see that this is the case with Future Fishing and in my opinion is therefore more akin to A1 retail.

Given this view, further advice was sought from the Council's legal department who have advised the following with respect to the proposed sui generis retail warehouse club use:

*'The leading authority in this field is R v Thurrock EX p. Tesco Stores Ltd 92 L.G.R. 321; [1993]. This is widely known as the "Costco" case.*

*In the Costco case, Schiemann J said "In my judgment, if there is a restriction on those who can come and buy then the premises are not prima facie properly described as being used for the sale of goods to visiting members of the public and in consequence do not fall within class A1 of the order. I say prima facie because I am conscious of cases such as Lewis v Rogers 82 LGR 670 . That was a case brought in relation to the Sunday trading provisions of the Shops Act. Shop keepers who wished to trade on Sundays sought to avoid those provisions by the creation of a club to which one could belong for life upon payment of £5, with no further restriction on eligibility for membership. The court rejected an argument to the effect that, because the consumers were limited to that section of the public which had first paid £5 to join a club, therefore no retail trade or business was carried on there. That conclusion in the context of that case is not surprising. The club was a mere sham designed, and solely designed, to sidestep the Sunday trading provisions of the Shops Act. Lewis v Rogers however is of no assistance in the present case. We are here concerned, not with what was the Parliamentary intention in enacting the Shops Act, but rather what was the planning authority's intention in requiring the s.106 agreement?*

*"The restriction of potential shoppers to club members in the present case appears to be motivated on the part of the applicant by understandable non-planning considerations, and not to be a sham designed to avoid some restriction, and I see no reason why the planning authority should not take the club at face value or (if it be relevant) why I should not do so. From the authority's point of view, the restriction of potential shoppers to those who wished to indulge largely in bulk shopping removed a planning disadvantage, and there was no reason to suppose that the applicants did not wish to achieve that restriction and did not think that the methods they had adopted in the New World to that end might not be successfully transplanted to the Old".*



*He had said earlier "it seems legitimate to assume that it was the presence in the applicant's proposal of the limitation of shoppers to those who –*

- a. Were prepared to pay a significant annual subscription*
- b. Wished to shop in bulk*
- c. Were prepared to shop in a huge shopping facility which, while offering many product categories, nevertheless offered little choice within each category".*

*On balance, Future Fishing does not appear to fall within a retail warehouse club and will more likely fall within A1 retail'.*

On this basis, it has not been demonstrated that the proposed use falls within the definition of a sui generis retail warehouse club. The Agent has declined to amend the description of development on this basis. This does lead me to some difficulty in assessing the application before me. However, legal advice is that I should assess the application as described in the application. For the avoidance of doubt, I am not assessing the retail use which I consider is taking place and that use will be subject to separate enforcement action. I am consequently assessing the proposal as an application to retain the existing building and to use it as a proposed Sui Generis Retail Warehouse Club with ancillary B1 (Business) and B8 (Storage and Distribution) uses. The NPPF inclusion of warehouse clubs within the definition of retail development means that policy considerations in relation to retail remain relevant in any event.

Members should be aware that a Sui Generis use is not CIL liable whereas an A1 retail use is.

*Location:*

It is established that the starting point in assessing a development rests with the Development Plan and that the NPPF should form an important material consideration in the decision making process.

The core of the village of Farndon is located to the north of Fosse Road. In this case, the site is located to the south of Fosse Road and is clearly detached from the main built up part of the settlement with an approximate 60 metre field separating the edge of the wider business park site from Fosse Road. As such, the site is considered to be within the open countryside.

I note the Agent's assertion that the site forms part of the settlement of Farndon however I disagree. The Agent is correct in identifying that the Amended Core Strategy Inspector has suggested, through the issuing of his 'post-hearing note 2', that main modifications will be necessary to make Spatial Policy 3 in its submitted form sound. Clearly the main modifications are yet to be made public and consulted on, however the Inspector's note provides helpful direction. This is set out in full below:

*"However, while I understand what the Council is trying to achieve, I agree with views expressed at the Hearing that the reference to 'the main built-up areas of villages' under the heading Location, in Spatial Policy 3 is a little ambiguous. Some clarity is needed and I wonder whether it might be better to delete the phrase. Any proposals that come forward that would extend a village into the countryside, or have a similar detrimental impact of concern to the Council, could be safely resisted under the later heading of Character."*

Implicit in the above is the anticipation that the policy in its modified form will still need to be able to deal with those locations and circumstances where SP3 ought to facilitate appropriate development and other countryside locations beyond this – where a stricter approach would be necessary (the Inspector's reference to the extension of villages into the countryside as a 'detrimental impact' is notable here). The way in which the modification (currently being considered by the Inspector) has been drafted seeks to reflect this.

The applicant has suggested that the reference within Policy DM8 to the 'main built-up area' renders the policy out-of-date. It is however considered that a more nuanced reading and interpretation is necessary. Beyond the Principal Village level of the hierarchy SP3 allows for some forms of development in certain locations and circumstances, outside of this in the open countryside. Policy DM8 sets the detailed context for what would be appropriate. Whilst the locations where Policy SP3 would support some development will change as a result of the main modifications, it is clear that a distinction with the open countryside will remain. Policy DM8 is clearly orientated around controlling development in open countryside locations, and whilst the amendment of SP3 will have implications for what this includes it is not considered that the current references to 'main built-up area' go to the heart of DM8. The policy remains an appropriate basis for considering development proposals within the open countryside.

Policy DM8 of the DPD states that development away from the main built up areas of villages, in the open countryside, will be strictly controlled and limited to certain types of development. Supporting text to this policy states that *'appropriate development can preserve the countryside as a natural resource whilst contributing to the prosperity of the District but inappropriate development can conversely have an irrevocably harmful effect'*.

In my opinion, the proposal does not sit comfortably under a single development type listed and as such, is not considered to meet any of the exceptions under Policy DM8. However, for completeness it is considered appropriate to assess the proposal against 2 of the most relevant categories listed:

1. Rural diversification – This part of the policy states that *'proposals to diversify the economic activity of rural businesses will be supported where it can be demonstrated that they can contribute to the local economy. Proposals should be complimentary and proportionate to the existing business in their nature and scale and be accommodated in existing buildings wherever possible'*. The supporting text to this policy states that *'the Council will be firm in distinguishing between proposals for genuine diversification and those for independent businesses that may be more sustainably located elsewhere'*.

I am not fully convinced that the proposal represents a typical form of rural diversification given that many of the uses on the site are more typical to those found on industrial estates within urban areas rather than an agricultural unit. Moreover, the nature of the proposed use as by Future Fishing is a different in terms of use class to the many other uses on site which are more typical to B1, B2 and B8 uses of a business park albeit I acknowledge that there may be some similarities with the retail elements of the established farm shop and garden centre.

I note that the Supporting Statement states that fishing is predominantly a rural/countryside activity and the proposal provides a complementary activity to the other rural/countryside activities on the site. However, fishing is not an activity that takes place on site or even adjacent to the site (albeit I note the River Trent is close by approximately 850 to the north west of the site) and cannot therefore be considered complimentary to an

existing recreational use of the site. Nor do I agree with the assertion within the submitted Planning Statement that the proposed use directly results in any tourism or community benefits in terms of angling participation and give very little weight to this in the overall planning balance.

Supporting information submitted with other recent planning applications on this site states that the site forms *'part of the overall working farm holding of Frank Hardy & Sons (Farndon) Ltd that has diversified to maintain the overall economic viability by securing a rental income from businesses using and operating from the site'* and the *'buildings are currently used and these occupants provide valuable income to the Business Park and overall farm holding which would be lost if these buildings were not present'*.

Whilst I don't doubt that the business operating from the site contributes to the local economy, it is clear that the proposal would be occupied by an independent business that could be more sustainably located elsewhere. This is particularly the case as I would envisage the customer of this base of this business to be greater than what I would consider to serve the immediately local rural economy given that customers are likely to be from a geographical area which encompasses a number of more sustainable locations e.g. Newark.

2. Employment uses – This part of the policy states that *'Small scale employment development will only be supported where it can demonstrate the need for a particular rural location and a contribution to providing or sustaining rural employment to meet local needs in accordance with the aims of Core Policy 6'*.

Core Policy 6 further states that development sustaining and providing rural employment should meet local needs and be small scale in nature to ensure acceptable scale and impact. It also states that most growth should be in the Sub-Regional Centre of Newark, and a lesser scale in the Service Centres and Principal Villages. The NPPF is supportive of sustainable economic growth and states that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.

Notwithstanding my views set out in 'Description of Development' section above, the proposed uses fall within a sui generis 'retail business club' use class. This is not therefore a use class which strictly falls to be assessed under Core Policy 6. The site only employs three full time member of staff which equates to 244m<sup>2</sup> of floorspace per member of full time staff which is low in comparison to the recently approved B1, B2 and B8 uses in adjacent building which equated to 118m<sup>2</sup> of floorspace per member of full time staff. As such, I give little weight to the proposed development as an employment use despite its location on the edge of an established business park. In addition, I attach little weight to the loss of the site as employment land given that its use for employment purposes ancillary to the wider business park use has never been secured through a formal planning application.

Overall, I am not convinced that a need for this particular rural location has been demonstrated by the individual business proposed within the building and the proposal is not therefore considered acceptable in principle. The proposal does not represent the growth or expansion of an existing business. This view is supported in paragraph 83 of the NPPF which states that *'the sustainable*

*growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings' will be supported.*

I am however aware of NPPF in paragraph 117 which requires policies to make as much use as possible of previously-developed or 'brownfield' land except where this would conflict with other policies in this Framework and I note that this land was previously occupied by a menage (which whilst never regularised through a formal planning application, was in situ for a period in excess of 10 years). Despite the open countryside location, the nature of the proposed use is somewhat compatible with the nature of the uses on the wider business park and does provide some benefit (albeit limited) to the rural economy in terms of employment and the re-use of brownfield land in this case. These factors must be weighed in the overall planning which includes a consideration of all other policy considerations including availability of alternative sites and other site specific circumstances as set out below.

#### *Main Town Centre Use:*

Notwithstanding the views set out in 'Description of Development' section above, the proposed use fall within a sui generis 'retail business club' use class. This use is defined within Annex 2 of the NPPF as being a Main Town Centre Use. I note that that some of the goods sold are larger and that the proposal also incorporates ancillary B1 and B8 uses. However, this is not dissimilar to many town centre uses and I do not therefore consider that this is sufficient reason to discount the proposed use as a main town centre use in this case.

Core Policy 8 of the Core Strategy sets out the retail hierarchy within the District and seeks to protect vitality and viability of existing centres and also provide for new centres within strategic sites across the district. The policy further states that retail development in out of centre locations will be strictly controlled and that proposals would need to demonstrate their suitability through the sequential site approach and provide a robust assessment of the impact on nearby centres.

#### *Town Centre Use Sequential Test:*

Paragraph 86 – 88 of the NPPF states that '*Local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre 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.*

*When considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. 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.*

*This sequential approach should not be applied to applications for small scale rural offices or other small scale rural development'.*

On the basis of my findings with regards to 'Location' above, I do not consider the proposal to represent small scale rural development on the basis that the need for a rural location of the business has not been demonstrated in this instance and the proposal represents some 731m<sup>2</sup> of floorspace. As such, I consider the application of the sequential test to be necessary.

Paragraph 11 of the PPG further states 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. Robust justification must be provided where this is the case, and land ownership does not provide such a justification’. The NPPF at para 90 states *‘where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the considerations in paragraph 89, it should be refused’*.

The site is located in the open countryside and not within a defined town centre as set out in Core Policy 8. The nearest centres to the application site are Newark Town Centre (approximately 3km to the north east (as the crow flies) and land South of Newark (situated approximately 1.5 km to the east of the site).

The site is located out-of-centre. The Supporting Statement submitted with the application states that there are currently no sequentially preferable sites for the proposed development within Newark Urban Area. I concur with the views of the Planning Policy set out in the Consultations section above which conclude that there unlikely to be any sequentially preferable locations able to accommodate the unit / business having had reasonable regard to the requirements of the business. I therefore consider the proposal to pass the town centre use sequential test.

#### *Impact on Nearby Centres:*

Notwithstanding the adopted policy, a review of both the Core Strategy and the Allocations and Development Managements Plan Documents is currently in progress and in the case of the Core Strategy review is well advanced. The Amended Core Strategy, which contains a revised Core Policy 8, was examined by the appointed Inspector in February 2018. The revised Core Policy 8 follows the recommendations of the December 2016 Town Centres and Retail Study (TC&RS) and seeks to require retail development over 350 GIA outside of the Newark Urban Area to be “robustly assessed, through the undertaking of an impact assessment proportionate to the scale and type of retail floorspace proposed.” At 731m<sup>2</sup> (and 648m specifically for the retail element of the overall floorspace) the proposed floorspace exceeds this threshold and the NPPF makes it clear that retail development includes warehouse clubs. An impact assessment has not been submitted with the application.

I note that Core Policy 8, as revised, differs from the adopted Policy DM11 of the Allocation and Development Management DPD in terms of the threshold at which detailed retail justification will be required. DM11 states that “Retail development in all out-of-centre locations will be strictly controlled. Retail proposals creating more than 2500 sq m of floor space outside of town, district and local centre locations will require justification through the sequential test and robust assessment of the impact on nearby centres and the following:

- The impact on the range and quality of the comparison and convenience retail offer; and
- The impact of the proposal on allocated sites outside town centres being developed in accordance with the Development Plan.”

For the purposes of paragraph 216 of the NPPF (stage of preparation, extent of unresolved objection and degree of consistency with national policy), it is considered that the emerging Core Policy 8 content satisfies the tests to the extent that 1) it is at an advanced stage, with the Examination taken place in February 2018 and only the modifications to be finalised and consulted upon and 2) there are no unresolved objections to the local thresholds set within the emerging

policy. Accordingly, I consider that significant weight can be attached to the policy, and even more importantly the impacts on vitality and viability, on an overall planning balance.

The impact on the vitality and viability of nearby centres is a clear material planning consideration and it is not unreasonable to expect the applicant to provide a proportionate assessment of the likely impact of the proposal. The Supporting Statement submitted with the application does offer some commentary on the retail impact of the proposal.

I concur with the view of Planning Policy set out in the Consultations section above which states that it is 'reasonable to assume that any diversion which does occur is extremely unlikely to be significant adverse in terms of its impact on Newark Town Centre'. This is because Future Fishing is likely to attract customers from a niche market and I am not aware of any shops which focus on mainly on a fishing offer located within Newark Town Centre or other nearby centres. As such, it is not reasonable for me to suggest that proposal would result in the diversion of trade from an existing centre. As a sui generis use, I am also aware that planning permission would not be as easily interchangeable as would be the case if the application had been proposed as an A1 retail use. However, I would still consider it appropriate to impose a condition to restrict the warehouse club to the retailing of angling related goods only. This would be to prevent unrestricted warehouse club consent that could accommodate convenience or bulky comparison goods at some point in the future with a potentially different impact.

The PPG advises that it is when the impacts are unlikely to be significant adverse that the positive and negative effects should be considered alongside all other material considerations. In this case, the impacts of the proposal are considered unlikely to be significant adverse and the effects of the proposal are weighed in the planning balance set out below.

### **Impact on Flood Risk**

Core Policy 10 requires development to be adequately drained and Policy DM5 relates to flood risk and water management. Para.103 of the NPPF states when determining planning applications the Local Planning Authority should ensure flood risk is not increased elsewhere. It is stated that decision makers should only consider development appropriate in areas at risk of flooding where, informed by a site specific flood risk assessment following the sequential test, and if required the Exception Test, it can be demonstrated that development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location and development is appropriately flood resilient and resistant. This includes safe access and escape routes where required and that any residual risk can be safely managed and it gives priority to sustainable drainage systems.

The Environment Agency Flood Map identifies the majority of the site to be located within Flood Zone 3 with part of the access within Flood Zone 2. A Flood Risk Assessment (FRA) and Sequential Test has been submitted with the application.

As a standalone use unconnected to wider business park uses, I consider the application of the sequential test to be necessary in this instance as it does represent an expansion/extension of an existing business. PPG states *"the area to apply the Sequential Test across will be defined by local circumstances relating to the catchment area for the type of development proposed. For some developments this may be clear, for example, the catchment area for a school. In other cases it may be identified from other Local Plan policies, such as the need for affordable housing within a town centre, or a specific area identified for regeneration. For example, where there are large areas in Flood Zones 2 and 3 (medium to high probability of flooding) and development is needed*

*in those areas to sustain the existing community, sites outside them are unlikely to provide reasonable alternatives.*

*When applying the Sequential Test, a pragmatic approach on the availability of alternatives should be taken. For example, in considering planning applications for extensions to existing business premises it might be impractical to suggest that there are more suitable alternative locations for that development elsewhere. For nationally or regionally important infrastructure the area of search to which the Sequential Test could be applied will be wider than the local planning authority boundary."*

A search for alternative sites has also been considered under the 'Town Centre Use Sequential Test' section above. The submitted Sequential Test concludes that 'there are no sequentially preferable sites to that proposed available within the Newark Urban Area'. However, I would consider the area of search in relation to a flood risk sequential test in normal circumstances tends to differ to that of a town centre sequential test as this can also include other open countryside locations at lesser risk of flooding. However, the NPPF at paragraph 158 and 159 states that alternative sites should be 'reasonably available' and 'appropriate for the proposed development' as well as 'taking into account wider sustainable development objectives'. As such, whilst I do not consider the submitted flood risk sequential test to be robust in terms of considering all available options, I would concede that there are unlikely to be any sequentially preferable sites when taking into account wider sustainable development objectives i.e. alternative sites are also likely to be in open countryside locations with potentially greater visual harm (when also accepting that an appropriate catchment for the flood risk sequential test matches that of the retail sequential assessment).

The position of the building and the majority of its access is located in Flood Zone 3a. A small part of the access is located within Flood Zone 3a. Whilst it is not considered reasonable to suggest that the established access to the site should be located in a sequentially preferable location, it may be possible for the building to be relocated within an area of the site located in an area at less risk of flooding i.e. Flood Zone 2. I do however note that the building does replace a menage on this position and helps to maximize the use of previously developed land in accordance with Chapter 11 of the NPPF. In addition, the submitted sequential text explores available locations across the Business Park and concludes that *'the available space to accommodate a building of this size is only available in Flood Zone 3'*. I have no evidence to the contrary.

Given my reservations regarding the submitted sequential test, I consider it is worth rehearsing acceptability of the scheme against the Exception Test (even though this is not ordinarily required for a development of this type). Paragraph 34 of the PPG states that *'ultimately the local planning authority needs to be satisfied in all cases that the proposed development would be safe and not lead to increased flood risk elsewhere'*.

The proposed uses with the buildings are classed as a less vulnerable according to the Flood Risk Vulnerability Classification table set out in Planning Practice Guidance. This type of development is appropriate in Flood Zone 2 and 3a. Paragraph 160 of the NPPF states that for the Exception Test to be passed, the development must provide wider sustainability benefits to the community that outweigh flood risk and a site specific flood risk assessment must demonstrate that the development will be safe for its lifetime taking into account the vulnerability of its users, without increasing flood risk elsewhere and where possible, reduce flood risk overall. In addition paragraph 163 of the NPPF states that it must be demonstrated that within the site the most vulnerable development is located in areas of lowest flood risk and development is appropriately

flood resilient and resistant, including safe access and escape routes where required and any residual risk safely managed and it gives priority to the use of sustainable drainage systems.

The submitted FRA recommends that the finished floor level is set 300mm above the predicted flood level of 12.65mAOD, i.e. 12.95mAOD. The Agent has confirmed that the building FFL is set at 13.0AOD which is above what was suggested in the FRA so the Environment Agency raises no objection to this. The Environment Agency also recommends a condition requiring flood resistance and resilience measures are incorporated in the development and that the development ensures safe access and egress from the site during a flood risk event (see section 9.5 of the FRA).

To conclude, the submitted Sequential Test does not demonstrate categorically that there are no other sites within the District reasonably capable of new employment development that is within Flood Zone 1. However, taking a pragmatic view, I would concede that there are unlikely to be any sequentially preferable sites when taking into account wider sustainable development objectives. The proposal would result in limited wider benefits to the community that would outweigh flood risk and this is weighed in the overall planning balance. However, the critical issue here is that submitted site specific Flood Risk Assessment demonstrates that the site can be operated safely in flood risk terms, without increasing flood risk elsewhere, subject to conditions (including an evacuation plan) in accordance with Core Policy 10 and Policy DM5.

### **Impact on Visual Amenity**

Core Policy 9 states that new development should achieve a high standard of sustainable design and layout that is of an appropriate form and scale to its context complementing the existing built and landscape environments. Core Policy 13 requires the landscape character of the surrounding area to be conserved. Policy DM5 states that the rich local distinctiveness of the District's landscape and character of built form should be reflected in proposals for new development.

Core Policy 13 of the Core Strategy addresses issues of landscape character. It states that development proposals should positively address the implications of the Landscape Policy Zones in which the proposals lie and demonstrate that such development would contribute towards meeting the Landscape Conservation and Enhancement Aims for the area.

The District Council has undertaken a Landscape Character Assessment to assist decision makers in understanding the potential impact of the proposed development on the character of the landscape. The LCA provides an objective methodology for assessing the varied landscape within the District and contains information about the character, condition and sensitivity of the landscape. The LCA has recognised a series of Policy Zones across the 5 Landscape Character types represented across the District. Within the Newark and Sherwood Landscape Character Assessment, the application site falls within the Trent Washlands Policy Zone (TW PZ 12). This area has a predominantly flat arable landscape with suburban influences of housing on the edge of Newark and Farndon. The landscape condition is described as poor with the landscape sensitivity described as low. The Policy Action for this area is to 'Create' which the LCA defines as recreating, restoring and reinforcing planting.

The application building is located close to the existing group of buildings on the wider site which inhibits views from the south west, south and south east. Views from all other sides are set against the backdrop of existing buildings and are also highly screened by a high strip of trees to the north west of the site and a less dense strip of landscaping also located along Fosse Road. The proposal does not encroach into the undeveloped open countryside beyond the existing built



envelope of the wider business park site and given the previous use of the land is not considered to result in a harmful effect on the countryside or the surrounding rural landscape.

The building itself is also considered to be in agricultural appearance (steel portal framed building with green sheet cladding to the walls and roof) and its size and setting ensures a development with the rural character of its open countryside setting in this instance in accordance with the aims of Core Policies 9 and 13 of the Core Strategy and DM5 of the DPD.

### **Impact on Highways Network**

Policy DM5 is explicit in stating that provision should be made for safe and inclusive access to new development whilst Spatial Policy 7 encourages proposals which place an emphasis on non-car modes as a means of access to services and facilities.

The Highways Officer raises no objection to the proposal and considers the level of parking (within the blue line boundary) to be adequate when taking into account likely peak times for use of the gym in addition to the location of Hawton Lane which is a cul-de-sac and capable of accommodating overspill parking on the highway and unlikely to present a road safety issue or be considered an obstruction to the freeflow of vehicles. As such, the proposal is not considered to result in any highway safety issues and complies with the above policies.

### **Impact on Residential Amenity**

Policy DM5 of the Council's DPD requires new development to have regard to their impact on the amenity of surrounding land uses and where necessary mitigate for any detrimental impact. The site is located away from residential properties with the nearest dwelling being located approximately 100 metres away. As such, it is not considered that an adverse impact upon the amenity of nearby neighbours would result.

### **Conclusion and Overall Planning Balance**

Notwithstanding the views set out in 'Description of Development' section above, the proposal relates to the retention of a building for a proposed sui generis retail warehouse club in an open countryside location. The need for this particular rural location has not been demonstrated and it is not therefore considered to fully comply with the exceptions listed in Policy DM8 of the DPD.

The proposed use is a main town centre use and should ideally be located within an existing centre. A town centre sequential test has been submitted with the application and concludes that there are no sequentially preferable town centre sites for the development which meet the particular market and locational requirements of the Applicant. It is therefore considered that the proposal passes the town centre use sequential test. The impact of the proposal is considered unlikely to be significant adverse and the nature of the proposal is therefore considered unlikely to result in any adverse impact upon the vitality and viability of nearby centres.

The site is located in Flood Zones 2 and 3. A Flood Risk Sequential Test has been submitted with the application which concludes that there are no sequentially preferable sites which meet the catchment area for the development type proposed. Whilst I have some concerns in relation to the robustness of this assessment, when taking a pragmatic view I would concede that there are unlikely to be any sequentially preferable sites when taking into account wider sustainable development objectives as any other potential sites appropriate for the proposed development

are also likely to be located with open countryside locations. No adverse flood risk impacts would arise from the proposed development subject to conditions.

Consequently, the lack of sequentially preferable sites identified through either the flood risk or sequential testing identified reduces the weight I attach to my principle concern which related to the demonstration of the need for a particular rural location in this instance. I am also aware of the NPPF which requires policies to make as much use as possible of previously-developed land except where this would conflict with other policies in this Framework and I note that this land was previously occupied by a menage which whilst never formally regularised appears on aerial photographs for a period in excess of 10 years. Despite the open countryside location, the nature of the proposed use is somewhat compatible with the nature of the uses on the wider business park and does provide some benefit to the rural economy in terms of employment (albeit limited given that the level of employment generated is low) and the re-use of brownfield land in this case.

The proposal would result in limited wider benefits to the community given the nature of the business which would cater for a niche market from a catchment area which is likely to be larger than the immediate rural community. Minimal benefits to the fishing community and the proximity to the River Trent (on the other side of the settlement of Farndon) are noted.

No other harm has been identified and the proposal is considered to be acceptable from a residential, visual amenity and highway safety perspective. The lack of adverse visual impact is particularly pertinent in relation to the principle open countryside issue in this instance as the proposal is not considered to conflict with the overall reason for Policy DM8 which is to ensure that inappropriate development does not have an irrevocably harmful effect on the countryside and the landscapes, traditional forms of development and biodiversity which it contains. The proposal does not encroach into the undeveloped open countryside beyond the existing built envelope of the wider business park site - if it had, the recommendation would clearly have been a refusal.

Full and proper consideration has been given to all material planning considerations and the appropriate weight afforded to each matter. There are both positive and negative impacts identified. However, in my opinion I consider that the applicant has done enough in each area to persuade me that the recommendation should be an approval. Subject to conditions, I consider that the scheme is acceptable in accordance with the Development Plan and all other material considerations.

## **RECOMMENDATION**

**That full planning permission is approved subject to the following conditions:**

1.

Within three months of the date of this decision, a scheme of mitigation to protect against flood risk as set out in the approved Flood Risk Assessment (FRA) compiled by WtFR Ltd (ref: WTFR-FRA-2018/04/Q24 Unit 17) on 30th May 2018, shall be submitted to and approved by the Local Planning Authority. For the avoidance of doubt, this scheme shall include:

- Identification and provision of safe routes into and out of the site to an appropriate safe haven.

- Details flood resilient design measures incorporated into the final design as stipulated within section 9.3 of the FRA (including any undertaken retrospectively).
- timing / implementation arrangements of all mitigation measures identified.

The mitigation measures set out in the approved scheme shall be fully implemented in accordance with the timing / implementation arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

Reason: To ensure safe access and egress from and to the site and to reduce the risk of flooding to the proposed development and future occupants.

2.

Within three months of the date of this decision, a Flood Warning and Evacuation Plan shall be submitted to and agreed in writing with the Local Planning Authority, and implemented with immediate effect. The development shall be carried out in accordance with this approved plan. The plan should include provisions for signing up to the Environment Agency's Flood Warning Service for early warning of potential flood events, details of how information would be disseminated and how occupants would be evacuated.

Reason: To ensure safe access and egress from and to the site and to safeguard against the risk of flooding.

3.

Notwithstanding The Town and Country Planning (Use Classes) Order 1987 (as amended), and The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), or any succeeding orders, the building hereby permitted shall be used for Sui Generis Retail Warehouse Club for the retailing of angling related goods with ancillary B1 (Business) and B8 (Storage and Distribution) uses only.

Reason: To define the permission and to ensure no adverse impact on the vitality and viability of nearby centres.

4.

The premises shall not be open to members of the public outside the following:-

09:00 to 18:00 Monday- Saturday  
10:00 to 16:00 Sundays, Public or Bank Holidays

Reason: For the avoidance of doubt and in the interests of residential amenity.

### **Informatives**

1.

The applicant is advised that all planning permissions granted on or after the 1st December 2011 may be subject to the Community Infrastructure Levy (CIL). Full details of CIL are available on the Council's website at [www.newark-sherwooddc.gov.uk/cil/](http://www.newark-sherwooddc.gov.uk/cil/)

The proposed development has been assessed and it is the Council's view that CIL is not payable on the sui generis use of the development hereby approved as the development type proposed is zero rated in this location.

2.

The application as submitted is acceptable. In granting permission without unnecessary delay the District Planning Authority is implicitly working positively and proactively with the applicant. This is fully in accordance with Town and Country Planning (Development Management Procedure) Order 2010 (as amended).

3.

While the Environment Agency do not object to the FFL being set at 12.95mAOD it may be prudent to incorporate an additional 300mm of flood resilient construction above the 1 in 1000 year level of 12.9mAOD (i.e. 13.2mAOD) in to the final design. This will give an added level of flood resilience to the building and in the event of extreme flooding will reduce the impact on the business.

Flood proofing measures include barriers on ground floor doors, windows and access points and bringing in electrical services into the building at a high level so that plugs are located above possible flood levels.

Consultation with your building control department is recommending when determining if flood proofing measures are effective.

Additional guidance can be found on the [www.gov.uk](http://www.gov.uk) website pages under the heading 'Prepare for a flood and get help during and after'. These pages can be found by clicking on the following link – [Prepare for a flood and get help during and after - GOV.UK](#)

#### **BACKGROUND PAPERS**

Application case file.

For further information, please contact Helen Marriott on ext. 5793.

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).

**Matt Lamb**  
**Business Manager Growth and Regeneration**

Committee Plan - 18/01118/FUL

