

## **PLANNING COMMITTEE – 2 OCTOBER 2018**

<b>Application No:</b>	<b>18/01137/OUTM</b>
<b>Proposal:</b>	<b>Variation of condition 25 attached to planning permission 13/00997/OUTM for Proposed Erection of Retail Development Bulky Goods/Open A1/Open A1 Convenience uses and provision of car parking to serve same. Proposal submitted to allow the use of Unit B as A1 (non-food).</b>
<b>Location:</b>	<b>Land Off North Gate, Newark On Trent</b>
<b>Applicant:</b>	<b>Newark Property Development Ltd – Mr Phillip Rowe</b>
<b>Registered:</b>	<b>29 June 2018</b> <b>Target Date: 28 September 2018</b>

**This application is being presented to the Planning Committee in line with the Council’s Scheme of Delegation as Newark Town Council has objected to the application which differs to the professional officer recommendation.**

### The Site

The application site forms an area of vacant land approximately 1.65 hectares in extent accessed via North Gate. The site abuts the river edge and forms part of the wider North Gate development site which as discussed below has been subject to an extensive planning history.

The proposal site is situated within Newark Conservation Area and is adjacent to the former malting of Northgate Brewery (which is Grade II listed) and the substantial former officers and brew house which front North Gate (also Grade II listed). The proposal site was formerly part of the Wellington Foundry, being part of an extensive industrial landscape along the river. The Millennium Bridge is located to the south-west of the site and Kings Marina is located to the north-west on the opposite side of the riverbank. To the south-west are offices and car parking belonging to No. 67 North Gate, together with a BP petrol filling station which fronts North Gate.

The surrounding area has a mixed commercial and residential character, taking in modern edge of centre retail stores, a petrol station and office development intermixed with Edwardian and Victorian terraced dwellings.

The majority of the site is within Flood Zone 2 and a small proportion immediately adjacent to the River Trent is within Flood Zone 3 according to the Environment Agency maps.

The site, including the Warwick and Richardson’s Brewery site is identified in the Allocations and Development Management DPD Map 1 - Newark North Proposals map as R/Ho PP ‘retail housing site with planning permission.’

## Relevant Planning History

The site has been subject to an extensive planning history which has been detailed below. The applications highlighted in bold text are considered most relevant to the determination of the current application.

**18/01160/NMA** - Application for a non-material amendment to planning application 13/00997/OUTM to allow amendment to Condition No. 7. Pending consideration.

**18/01154/NMA** - Application for a non-material amendment to planning permission 13/00997/OUTM to request minor amendments to the footprint of proposed Unit C. Pending consideration.

**17/00904/NMA** - Application for a non-material amendment to planning application 13/00997/OUTM - Proposed Erection of Retail Development. Approved 7 June 2017.

**16/01958/RMAM** - Reserved Matters Application for the erection of retail development Bulky Goods/Open A1/Open A1 Convenience uses and provision of associated parking (and discharge of conditions attached to Outline Approval Reference No: 13/00997/OUTM relating to Phasing (2), Landscaping (3 & 17), Archaeology (5), Land Contamination (6), Drainage (8 & 9), Highway Requirements (10, 13, 14, 27 & 28) Pedestrian link (11), Appearance of buildings (16), Waste (19), Service Management Plan (22), Security Measures (24) ) – Pending Consideration.

**15/01858/OUTM** - Application to vary condition 25 of planning permission 13/00997/OUTM for Proposed Erection of Retail Development Bulky Goods/ Open A1/ Open A1 Convenience uses and provision of car parking to serve same. Proposal submitted to allow the use of Unit B as A1 (non-food). Application refused by committee in February 2016 for the following reason:

*“The proposal to vary Condition 25 in order to allow for the sale of non-food goods would result in a broadening and change in character of goods sold, resulting in an intensification of the retail use of Unit B, with the effect that there would be a greater level of trade draw from the Town Centre when compared with the consented scheme. It is considered that this increased level of trade draw would result in an unacceptable level of harm to the vitality and viability of the Town Centre and so be contrary to the provisions of Core Policy 8 of the Core Strategy DPD, Policy DM11 of the Allocations & Development Management DPD and the National Planning Policy Framework which forms a material consideration. Accordingly the applicant has failed to adequately demonstrate that the Condition deemed necessary to control the range of goods sold from the development in order to protect the vitality and viability of the Town Centre is no longer necessary.”*

Appeal allowed 9 September 2016. However, the time period for applying for reserved matters approval pursuant to this outline planning permission has now expired, and this outline permission has therefore now lapsed.

**14/01864/OUTM** - Proposal consists of 28 semidetached townhouses/mews houses with 56 integral car parking spaces, these intended to occupy a site currently consented for 99 apartments and two retail units. Application withdrawn.

**13/00997/OUTM** - Proposed Erection of Retail Development Bulky Goods/ Open A1/ Open A1 Convenience uses and provision of car parking to serve same. Application approved by Committee in December 2013.

**11/01607/OUTM** (Appeal Reference APP/B3030/A/12/2174284) – Proposed erection of retail

development comprising bulky good/open A1/open A1 convenience uses and provision of car parking to serve same. Appeal allowed 8 February 2013.

*10/01489/OUTM* - Application for replacement outline planning permission for residential development in order to extend the time limit for implementation. The application was withdrawn.

*07/01608/RMAM* - Erection of 90 dwellings and 116 car parking spaces. Approved 16<sup>th</sup> April 2008 under delegated powers. This related to the south-eastern part of the wider site (adjacent to the Almshouses and brewery). According to the applicants this approval was commenced on site within the lifetime of the application and is therefore extant.

*05/02004/OUTM* - Residential development was approved on 6<sup>th</sup> December 2005 by Committee as recommended. This related to the south-eastern part of the site (adjacent to the Almshouses and brewery).

*05/01984/FULM* - Erection of 99 apartments with integral parking and creation of 2 retail units and public piazza space. Approved under delegated powers on 6<sup>th</sup> December 2005. This application is considered an extant application due to a lawful commencement in December 2008. Crucially the application was subject to a legal agreement which connected to the outline scheme considered on the wider site at the same time (*05/02004/OUTM*). The S106 required the works in application *04/01241/FULM* for the Brewery and Maltings Building to be completed. These have been done and as such the terms of the S106 have been met.

*04/03092/OUTM* - Residential Development relating to the south-eastern part of the site adjacent to North Gate was refused on 16<sup>th</sup> June 2005 by Committee due to lack of affordable housing and inadequate play facilities.

*04/01241/FULM* – The refurbishment and extension of adjacent Warwick & Richardson Brewery & Maltings to form 49 residential units and 3 retail units and the refurbishment and extension of Maltings to form bar/café/ restaurant plus associated parking was approved 23<sup>rd</sup> December 2004. This permission has been implemented.

*03/02997/FULM* - Erection of 99 apartments with integral parking and creation of 2 retail units and public piazza space. This application was refused on 16<sup>th</sup> June 2005 by Committee on the grounds of a lack of affordable housing and play facilities and detrimental impact on the Conservation Area and Listed Brewery building.

### The Proposal

In December 2013 outline planning consent (*13/00997/OUTM*) was granted for the erection of a retail development comprising 4 units. The units comprised a total gross floor space of 6753m<sup>2</sup> and were broken down as follows:

Unit No.	Use	Proposed Floor Space (gross)
A	Open A1/Open A1 Convenience	1,520 sq m
B	Bulky Goods	1,325 sq m
C	Bulky Goods	1,850 sq m
D	Open A1	264 sq m
Mezzanine	Bulky Goods/Open A1/Open	1,794 sq m details of the units to

Space	A1 Convenience	be provided with mezzanines is not specified
		<b>Total of 6,753 sq m</b>

The application relied on the submission documents of the 11/01067/OUTM application which was allowed at appeal.

The development was laid out with the access and spine road located in the position previously approved under 11/01067/OUTM. The remainder of the site was reconfigured with the units, other than Unit D being towards the rear of the site (riverside boundary). Units A and B were positioned in the western quarter of the site whilst Unit C was located in the northern quarter abutting The Malting's building. Units A and B were separated from Unit C by the access road which serves the customer parking to the front. A shared servicing area was shown to the rear of Units A, B and C extending across the rear of the site. Unit D was proposed located adjacent to the Almshouses and is significantly smaller than the approved building in the same position under 11/01067/OUTM. Unit D was not provided with a service area and would be serviced from the customer parking area.

The application was permitted subject to numerous conditions and condition 25 stated:

*Notwithstanding the provisions of the Town and Country Planning (General Permitted Development Order) 1995 as amended and the provisions of the Town and Country Planning (Use Classes) Order 1987 as amended:*

*Unit A on Drawing PL08 Rev K shall not exceed 1,520 square metres gross floorspace;*

*Units B and C on Drawing PL08 Rev K shall not in aggregate exceed 4,705 square metres gross floorspace and shall not be used for the sale of any goods other than those within the following categories:*

*(a) Electrical goods and other domestic appliances*

*(b) Bathroom suites - furniture and accessories; kitchen units - furniture and accessories, floor and wall tiles*

*(c) DIY products, materials, tools and machinery for repair maintenance and improvement of the home, the garden and of motor vehicles*

*(d) Motor and cycle goods*

*(e) Furniture, bedding, floor coverings, soft furnishings and textiles;*

*Unit D on Drawing PL08 Rev K shall not exceed 528 square metres gross floorspace and shall not be used for the sale of convenience goods, but may be used for the bulk sale of wine and spirits.*

*Reason: In order to protect the vitality and viability of the town centre from significant harm, to ensure that the range of goods sold is appropriate for the sites location and layout and to control the character of the development.*

An application was submitted in 2015 (15/01858/OUTM) to revise the wording of the above condition to essentially remove the restriction points a) to e) from Unit B thus allowing a restrictive A1 use within Unit B. This application was refused by Committee in February 2016 but approved on appeal in September of the same year. The revised wording of the condition stated:

“Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended and the provisions of the Town and Country Planning (Use Classes) Order 1987 as amended:

Unit A on Drawing PL08 Rev K shall not exceed 1,520 sq m gross floorspace;

Unit B on Drawing PL08 Rev K shall not exceed 2,225 sq m gross floorspace and shall not be used for the sale of convenience goods;

Unit C on Drawing PL08 Rev K shall not exceed 2,480 sq m gross floorspace and shall not be used for the sale of any goods other than those within the following categories:

- (a) Electrical goods and other domestic appliances
- (b) Bathroom suites – furniture and accessories; kitchen units – furniture and accessories, floor and wall tiles
- (c) DIY products, materials, tools and machinery for repair maintenance and improvement of the home, the garden and of motor vehicles
- (d) Motor and cycle goods
- (e) Furniture, bedding, floor coverings, soft furnishings and textiles;

Unit D on Drawing PL08 Rev K shall not exceed 528 sq m gross floorspace and shall not be used for the sale of convenience goods, but may be used for the bulk sale of wine and spirits.”

However, the time period for applying for reserved matters approval pursuant to this outline planning permission has now expired and this outline permission has therefore now lapsed.

The purpose of the current application is to seek approval for the identical revision to Condition 25 attached to 13/00997/OUTM again, as previously approved under reference 15/01858/OUTM. The covering letter with the application states:

*The District Council will be aware that the previous amendments to condition no 25 were sought to meet the requirements of Next which had been seeking to relocate from its existing store within Newark. The Council will also be aware that on the basis of changing market conditions, retailers such as Next have been re-considering their store investment and opening programmes. However, this should have no bearing on the acceptability of amendments now sought as the appeal decision in respect of planning permission 15/01858/OUTM made very clear that these amendments would be acceptable in policy terms regardless of whether Unit B was occupied by Next or another retailer.*

Paragraph 16 of the appeal decision in respect of planning permission 15/01858/OUTM stated that:

*“whether Unit B would or would not be taken up by Next is irrelevant; the key issue whether the change to the condition relating to Unit B would have a significant adverse impact on the town centre, irrespective of the end occupier. Both retail experts for the appellants and the Council consider that it would not. Whilst I note that this relates to the specific use of the unit by Next, given the range of sales/density and net floorspace figures tested by PBA and AN, including a higher net floorspace ratio by AN, a reasonably robust range of potential occupiers and demonstration of their impacts would be encompassed by the retrospective reports.”*

Critically, paragraph 17 of the appeal decision goes on to state that:

*“based on the evidence presented to me and the respective reports the difference between the effect of the scheme with or without the proposed condition would not, in my view, result in a significant adverse effect on the vitality and viability of the town centre, even if Next are not the eventual occupiers of the unit.”*

*Given the range of scenarios that were tested as part of the previous application (including a worst case scenario which the Council’s retail expert concluded would not give rise to significant adverse impacts), and the conclusions of the previous appeal decision, we do not consider it necessary for this application to be supported by a new retail impact assessment.*

However, following receipt of an objection from Newark Town Council on the grounds that an up-dated Retail Impact Assessment has not been provided, additional information has been submitted to seek to demonstrate that there will be no material change in the retail impacts arising from this proposal since the matter was previously considered at appeal in 2016.

*“Since the time of the previous appeal, the Council has published a new Town Centre and Retail Study prepared by Carter Jonas. As noted in our previous submissions, this study found that the overall health of Newark Town Centre had improved in recent years. The Town Centre and Retail Study also provided updated estimates of the existing and future comparison retail turnover of Newark Town Centre. Taking a proportionate approach, we have applied these updated figures to the turnover and trade diversion assumptions applied by Alyn Nicholls Associates in its advice to the District Council in respect of planning application 15/01858/OUTM.*

	2016	2021
Turnover of Newark Town Centre	£131.0 million	£150.8 million
<i>Approved Development</i>		
<i>Trade Diversion</i>		£7.98 million
<i>Trade Impact</i>		-5.3%
<i>Proposed Development</i>		
<i>Trade Diversion</i>		£9.26 million
<i>Trade Impact</i>		-6.1%

*This revised assessment shows that, notwithstanding the updated comparison retail turnover figures for Newark Town Centre presented within the Council's Town Centre and Retail Study, trade impacts would be identical to those considered previously by the appeal Inspector. It is clear on the basis of these figures that, as with planning permission 15/01858/OUTM (to which Newark Town Council did not object), the proposed variation of condition no 25 would have no significant adverse impacts on Newark Town Centre. The application proposals would therefore accord with Core Policy 8, Policy DM11 and para 89 of the NPPF."*

#### Departure/Public Advertisement Procedure

Occupiers of fifty-five properties have been individually notified by letter. A site notice has also been displayed near to the site and an advert has been placed in the local press.

#### Planning Policy Framework

##### The Development Plan

##### **Newark and Sherwood Core Strategy DPD (adopted March 2011)**

Spatial Policy 1: Settlement Hierarchy

Spatial Policy 2: Spatial Distribution of Growth

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 10: Climate Change

Core Policy 14: Historic Environment

NAP1: Newark Urban Area

### **Allocations & Development Management DPD**

Policy DM1 – Development within Settlements Central to Delivering the Spatial Strategy

Policy DM3 – Developer Contributions and Planning Obligations

Policy DM5 – Design

Policy DM7 – Biodiversity and Green Infrastructure

Policy DM9 – Protecting and Enhancing the Historic Environment

Policy DM10 – Pollution and Hazardous Materials

Policy DM11 – Retail and Town Centre Uses

Policy DM12 – Presumption in Favour of Sustainable Development

### **Other Material Planning Considerations**

- National Planning Policy Framework 2012
- Planning Practice Guidance 2014

### **Consultations**

**Newark Town Council** – “Objection was raised to this application as Members felt they were unable to assess the application properly without an updated Retail Capacity Study for the Town.”

**NCC Highways Authority** – “This proposal will have negligible impact on the public highway. Therefore, no objections.”

**Environment Agency** – No formal comment to make as the EA did not request the planning condition that the applicant is seeking to vary.

**Canals and Rivers Trust** – No comment to make.

**Trent Valley Internal Drainage Board** – “The site is outside of the Trent Valley Internal Drainage Board district but within the Board’s catchment. There are no Board maintained watercourses in close proximity to the site. Surface water run-off rates to receiving water courses must not be increased as a result of the development. The Design, operation and future maintenance of site drainage systems must be agreed with the Lead Local Flood Authority and Local planning Authority.”

**NCC, Lead Local Flood Authority** – Having considered the application the LLFA will not be making comments on it in relation to flood risk as it falls outside of the guidance set out by the Government for those applications that do require a response from the LLFA.

**NSDC Archaeology Consultant** – “No archaeological input is required for the variation of condition 25 on this site.”



**NSDC, Planning Policy** – “The Development Plan context is provided by Core Policy 8 (as adopted) and Policy DM11, both of which set a 2,500 sq m threshold for application of the impact test. Nevertheless CP8 as proposed for amendment through the Amended Core Strategy is a material consideration and, applying the tests at Para 216 of the NPPF, can in my view be afforded significant weight. Within Newark Urban Area this would require impact from retail development located outside of a defined centre and which has a gross floorspace equaling or exceeding 400 sq m to be considered through the undertaking of a proportionate assessment. The proposal clearly exceeds this threshold.

I am mindful of the need for any assessment to be proportionate, and that the no longer extant consent which previously varied Condition 25 was supported by an impact assessment. This was assessed on our behalf by Alyn Nicholl Associates, who tested a worst case scenario and recommended that the level of impact on Newark Town Centre fell below significant adverse. Following refusal by Planning Committee the Inspector which dealt with the appeal considered that on the basis of the range of sales/density and net floorspace figures tested a reasonably robust range of potential occupiers and demonstration of their impacts had been provided for, and neither suggested an significant adverse impact. Significantly there is also a fallback position provided by the consent which remains extant, and on which the Inspector concluded that the difference between the scheme with and without the propose condition would also not result in a significant adverse impact on the vitality and viability of Newark Town Centre.

From my perspective the key issue is therefore whether anything has materially changed, or whether there are other reasons why the previous assessment and conclusions reached by the appeal Inspector should be considered no longer relevant. I am unaware of any change in conditions, including the health of Newark Town Centre, which would indicate a revisit of the assessment as being necessary from that point of view. Moving on, the applicant’s assessment was undertaken in December 2015, over 2 ½ years ago, and through the appeal process we highlighted concerns that the applicants assessment took trade draw figures from 2011 as their starting point, now potentially approaching 7 years ago. Nevertheless the Inspector was satisfied that the assessment provided a suitable basis for contributing towards a decision issues in September 2016, almost 13/4 years ago now. On balance whilst I still hold some reservations about the use of a trade draw dating back to 2011, I am therefore inclined to advise that in my opinion, the assessment (and conclusions reached through its appraisal) would continue to indicate a level of likely impact below that of significant adverse.

I would therefore offer no objection to the proposal on that basis.”

**NSDC, Environmental Health (Contaminated Land)** - “The original application (13/00997/OUTM) is subject to a contaminated land planning condition for which matters are still outstanding. This latest application appears to be for variation of conditions which are not related to contamination, we would therefore have no comments to make, providing that the requirements of the contamination condition on 13/00997/OUTM are still in place.”

**NSDC, Access and Equalities Officer** – No observations.

**Representations have been received from one local resident/interested party objecting to the application on the following grounds:**

- Object to the use of this site for retail, despite this use having been previously allowed on appeal;

- Prior to that previous application, the site has been proposed and permitted for housing – a more appropriate use for the location and one for which need has only increased in the mean time;
- The existing consent should be allowed to lapse and use for housing should be resurrected by the owner.

### Comments of the Business Manager

The application has been submitted as a Section 73 variation of condition application. In determination of such an application the decision maker must have regard to the entire proposal albeit it is acknowledged that there exists an extant permission on the site which must be afforded appropriate weight. Essentially the principal assessment will be the impacts that would arise from the variation of condition proposed, notably on the retail impact on Newark Town Centre. Exactly the same proposal was approved on appeal in September 2016, when the Inspector concluded:

*“A key factor in this case is clearly the effect of the extant consent. This represents a significant fallback position. Given the reasonably small difference in the AN report worst case figures of an effect of -6.1% as opposed to -5.3% of the scheme on the turnover of Newark Town Centre (comparison goods) in 2020, as based on the evidence presented to me and the respective reports the difference between the effect of the scheme with and without the proposed condition would not, in my view, result in a significant adverse effect on the vitality and viability of the town centre, even if Next are no the eventual occupiers of the unit.”*

The crucial material planning consideration will be whether there has been any material change to the retail impact on the town centre since September 2016. Much of the discussion from the 2013 approval (13/00997/OUTM) is still relevant and for clarity the text from this committee report has been included in italics.

### Principle of Retail Development

*In policy terms the application site is classed as ‘out of centre’. It lies outside the defined boundaries of the Newark Town Centre, identified on the Allocations and Development Management DPD Map 1 – Newark North Proposals but has the benefit of a very recent extant planning permission, allowed on appeal in February 2013 after the Inspector’s Examination had closed and proposed modifications had been published.*

*The Inspector’s appeal decision letter made clear that the Council and the appellant, both of whom had undertaken a detailed assessment of the retail capacity of Newark for bulky goods provision and a town centre Retail Impact Assessment.*

*The Inspector advised in paragraph 17 and 18 of his letter under the Statement of Common Ground that:*

*“The parties agree that the appeal proposal would have no significant adverse impact on the vitality and viability of Newark town centre, subject to the imposition of appropriately worded conditions that have been agreed.”*

*In assessing the proposal the Inspector commented:*

*Paragraph 54 “Finally, I turn to consider the factors that weigh in favour of the appeal site as a sequentially preferable out of centre location for a retail warehouse development. The Framework at paragraph 24 states that “When considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre.”*

*Paragraph 55. “The principle factor in favour of the appeal site is its location on a main road between the town centre and Northgate Retail Park. It enjoys good accessibility and good visibility to the passing public.”*

*Paragraph 56. “It is adjacent to Northgate Retail Park, a well-established retail warehouse location that serves the Newark catchment area. While the profile of this retail park has strengthened in recent years, the profile of some solus retail warehouses elsewhere has declined. The appeal site would benefit from the profile of the retail park and the clustering effect that comes from close proximity to it, as have the solus retail units of Aldi and Halfords. It would therefore be well placed to take advantage of the customer base that the retail park attracts.”*

*Paragraph 57. “I consider that the appellant company has applied the appropriate degree of flexibility to the appeal proposals. I conclude on the first main issue that there are no suitable or available sequentially preferable locations for this type of retail development in Newark.”*

*The Inspector went on to conclude in paragraph 62 of his letter that “There is no evidence to show that it would have a materially adverse impact on nearby centres, including the town centre, or that there is a better location in Newark for retail warehouse development of the type proposed. It would therefore assist, not undermine, the objectives of Core Strategy Policies CS8 and NAP1.”*

*Paragraph 64. “Moreover, it would assist the regeneration of under-used land that is close to Newark town centre and on an important arterial route to it. It would also assist in securing the retention and the effective use of ‘The Maltings’, a listed building which is in urgent need of restoration.”*

*Paragraph 70 summarizes the Inspector’s assessment as “I believe that significant benefits would arise from the appeal proposal and they should be realized sooner rather than later. Having regard to the presumption in favour of sustainable development, which is at the heart of the Framework, and the exhortation that decision making “means approving development proposals that accord with the development plan without delay” (paragraph 14), it is clear to me that planning permission should be granted.”*

Since the Inspector’s decision in 2011, the site has been subject to an extant permission for retail development noting the scheme has evolved through the approval reference 13/00997/OUTM. It is a material consideration that the site has an extant permission for retail development at this quantum of development and therefore the principal of development is already established.

Notwithstanding this, the variation in condition sought would have potential implications to the occupiers of the units proposed and thus could potentially impact upon the retail offer of the

Town Centre. The original application submission included no justification or retail impact assessment (RIA) in connection with the current proposal. However a RIA was requested to assess the previous application to alter Condition 25 in 2015 (15/01858/OUTM) and this was produced by Peter Brett Associates LLP and dated December 2015.

That RIA confirmed that the purpose of the application was to meet the requirements of NEXT, who are currently located adjacent to the site at the Northgate Retail Park. It was intended that if condition 25 was to be varied, it would allow the unrestricted non-food retail sale of goods including clothing, footwear, fashion accessories and homewares. The RIA went on to detail the turnover and trade draw of the proposed development before moving on to outline the Town Centre impacts. The RIA concluded that the proposed development would not lead to any significant adverse impacts on the vitality and viability of the Town Centre. This same information has been submitted an assessment in summary form to support this current application.

The RIA was based on the RIA submitted with the 2011 application (the appeal application). At the time of the appeal, various criticisms and reservations were raised in regard to the RIA. An independent review was undertaken by Carter Jonas on behalf of the LPA during the assessment of the 2015 application, which estimated that the potential turnover of the proposed development at 2020 is about £21.5 million. The potential uplift in turnover arising from the occupation of Unit B by NEXT is a little under £3.5 million. This separate impact assessment undertaken on behalf of the LPA was completed adopting the same set of information and analysis as utilised in the assessment of the 2011 appeal proposal. It was concluded that the existing scheme (without the change to Condition 25) diverts about -£7.8 million of expenditure from the town centre which amounts to an impact of -5.3%. The proposed scheme (with the proposed change to Condition 25) may divert -£9.26 million which represents an impact of -6.1%.

For the purposes of the planning appeal in 2016, it was accepted that the appeal proposal would not have a significant adverse impact on the vitality and viability of the town centre so long as a condition was imposed to ensure that the character of retail uses on the site did not change from that proposed at that time. The Inspector also concluded that this was the case whether Unit B was to be occupied by NEXT or some other comparison retailer.

Whilst it is currently the view of Newark Town Council that a Retail Impact Assessment needs to be submitted with this current application in order for the proposal to be assessed properly, I am also conscious that any request for additional information needs to be proportionate. In response to this objection, the agent has submitted some additional information (but no new assessment) and the Town Council has been re-consulted on this basis. The additional information has taken the existing and future comparison turnover of Newark Town Centre from the 2016 Carter Jonas Study and applied Alyn Nicholl's turnover and trade diversion assumptions from the 2016 appeal to those figures. The agent also takes the view that the health of Newark Town Centre was shown to have improved in the 2016 Carter Jonas Study and so this would cancel out any increased impact from an increased turnover and trade diversion and therefore the level of impact on Newark Town Centre of the 2016 appeal and the existing proposed application to vary Condition 25 is effectively the same.

## Conclusion on Retail Impact

There is no guidance or rule of thumb as to the level of impact on a town centre that would be unacceptable. Each case has to be assessed on the particular circumstances arising at that time. The key issue is therefore whether anything has materially changed, or whether there are other reasons why the previous assessment and conclusions reached by the appeal Inspector should be considered no longer relevant. This appears to have been confirmed that NEXT will not be moving to this site by a recent Certificate of Lawfulness (Proposed use) for the expansion of the existing NEXT store at Northgate Retail Park via a mezzanine. The other additional change of which Officers are aware (and has been reported in the press and by the occupier themselves via a pending planning application) is the intended move of Marks and Spencer out of the town centre. It is noted that this proposal essentially seeks an increase in comparison retail use rather than convenience (which is what is required by Marks and Spencer via the pending application). That only leaves a question regarding whether the risk of M&S moving from the town (there is no absolute commitment in writing to vacate, albeit representatives have confirmed that closure is likely irrespective of securing permission via the pending application) is a matter which goes to the heart of the Town Centre Health Check and consequently whether this also needs to be assessed in an overall assessment. The Council is awaiting advice on this specific element and will provide an update report for Committee if available. If not Members will be advised of a possible need to defer.

### Layout and Scale

The current proposal does not alter the layout and scale of the extant permission and thus much of the discussion from the previous committee report remains of relevance:

*Whilst the application is made in outline, access, layout and scale are matters which form part of this application with only detailed design and landscaping being reserved. The proposed layout of the site has been significantly reconfigured to extend the units across the rear of the site, other than the smaller Unit D and to locate the car parking to the front. The access remains in the position originally approved and the car parking area extends to the front boundary and abuts the adjoining petrol filling station. This is a similar layout arrangement to the nearby Northgate Retail Park and the Aldi supermarket off Cow Lane where the front boundary is delineated by a feature brick wall and railings. It is considered that provided careful consideration is given to the treatment of the front boundary to Northgate in order to provide screening to the car park and to respect the relationship of the development to the adjacent Brewery building the arrangement of parking to the front of the buildings is acceptable.*

*The proposal retains a dual use of the access by customers and service vehicles. However, the applicant previously provided opening and delivery hours which remain unchanged and were conditioned by the inspector in the allowed planning appeal. Opening hours would be from 0800 until 2000 with deliveries taking place between the hours of 0900-1030 and 1900-2100 for Units A-C and between the hours of 1900-2100 for Unit D. I am satisfied that these restrictions limit the opportunities for conflict between customers and delivery vehicles. No separate serving area is proposed to serve Unit D, which was the case with the larger Unit F which previously was approved*

*on this part of the site. This unit, as previously would be serviced from the customer car park which the Inspector considered acceptable.*

*Pedestrian linkages and crossings from the car parking to the shops are direct and disabled bays are provided outside the units.*

*I turn now to the scale of the units. In accordance with the conditional planning permission the scale of the building adjacent to the Almshouses (Unit D) is up to 7 m in height whilst the remaining units Units A, B and C are shown up to 14m (including any chimneys). The scale and footprint of Unit D, which is smaller than the approved scheme is considered to respect the setting of the imposing Brewery building and will be read in relation to the Almshouses rather than as an integral part of the larger Units to the rear. It should be noted that the detailed design is reserved for subsequent approval. However the submitted Drawing Number PL10\_12 Rev C in my view demonstrates that buildings of the scale parameters set out could fit into the site context without significantly affecting the surrounding character of the area or the adjacent heritage assets. In coming to this view I am also mindful of the scale and massing of the extant residential scheme which allows for a three storey block to be located immediately adjacent to the Alms houses.*

Given that the current proposal relates to the change of use restricted by condition, I see no reason to deviate from the above conclusions that the scheme is acceptable in terms of its layout and scale. There have been no material alterations to the site surroundings which would affect this conclusion and once again the detailed designed of the units would be deferred to a reserved matters application.

#### Impacts on Heritage Assets

*The impact of the scheme upon the character and appearance of the Newark Conservation Area and upon adjacent listed buildings has been assessed in relation to the layout and scale.*

*Having regard to the similarities between the scale and configuration of the current layout and the allowed scheme on appeal it is our view, the proposal would preserve the character and appearance of the surrounding area. We are also satisfied that a detailed design could come forward that would safeguard the character and appearance of the area in line with Policy DM9 and the NPPF.*

*The comments and recommendations of the County Archaeologist are noted, however, the proposal is, effectively a reconfiguration of the approved scheme under 11/01067/OUTM and the Inspector in granting consent for the development did not consider it necessary to require a detailed programme of archaeological investigation and mitigation to be agreed prior to determination. A pre commencement condition was, however, attached requiring a written scheme of investigation to be submitted and implemented setting out a programme of archaeological work for the site. Having regard to this it is considered that to require this to be agreed prior to determination of the application would be unduly onerous and unjustified taking into account the approach taken by the Inspector. It is therefore considered that it is sufficient to replicate the archaeology condition attached to the planning permission granted on appeal.*

*It is noted that usually outline applications in Conservation Areas and adjoin Listed Buildings will be required to be accompanied by substantial design detail. However such details were not provided with the appeal proposal and it is therefore considered that the submitted details, layout, cross sections and perspective drawings is sufficient in this case. In this case I consider that we have sufficient information, given that layout particularly is not reserved, to come to a considered view on the acceptability of the proposal. I therefore do not consider that the proposal conflicts with the intentions of this policy.*

### Highway Matters

Despite lengthy debate throughout the previous applications on the site, the retail development has been deemed acceptable in highways safety terms demonstrated by the existence of an extant permission on the site. Members will note from the consultation section above that the Highway Authority do not consider that the current proposal will materially affect the highways network in comparison to the extant permission. On this basis no objections have been raised.

### Flood Risk

*The site is within Flood Zones 2 and 3. The NPPF therefore requires LPA's to apply the Sequential Test with the aim of steering new development to land at lowest risk (zone 1) of flooding. Where there are no reasonable available sites in Flood Zone 1, regard should be had to flood risk vulnerability and decision makers should consider sites within Zones 2 and 3 applying the Exception Test if necessary. The previous application for development of this site sequentially tested the site in relation to flooding and it was concluded, and accepted by the Inspector at appeal that retail development of the site would not be inappropriate subject to recommended conditions by the Environment Agency.*

### Amenity Issues

*The main servicing yard would lie behind the proposed units and, subject to the same limitations to servicing hours imposed by the Inspector previously I consider that there would be no loss of residential amenities for occupiers in the Almshouses or Brewery or the properties opposite the site through noise and general disturbance from comings and goings at unsocial hours from heavy goods vehicles. In respect of customers and the proximity of the car park to adjacent residential occupiers again limitations to the opening hours which replicate those imposed by the Inspector previously are considered appropriate and proportionate. In addition the current proposal introduces tree planting along the boundary with the rear of the Almshouses and the common boundary with the Brewery, an element not previously proposed. This is considered to provide added benefits by way of assisting in screening out light overspill from car headlights in the car park and will be dealt with through the detailed landscaping scheme at reserved matters stage.*

### Conclusion

It is my view that the proposal requires assessment as to the impact of the variation of Condition 25 on the vitality and viability of Newark Town Centre. In September 2016 an application for the

identical variation was considered to be acceptable and concluded to not result any significant adverse effect on the town centre.

In the context of the 2016 appeal decision and taking a proportionate approach, I consider that the level of information submitted with this application is likely sufficient to enable the conclusion to be reached that the alteration of the wording to Condition 25 would not have a significant adverse impact such as to justify refusing planning permission (despite an estimated potential increase in adverse impacts on Town Centre retail of -6.1% rather than -5.3%), subject to comments on the existing town centre with respect to Marks and Spencer in informing a baseline position from which to assess impact.

### **RECOMMENDATION**

**That outline planning permission is approved subject to the conditions and reasons to follow.**

### **BACKGROUND PAPERS**

Application case file.

For further information, please contact Julia Lockwood on ext 5902.

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 - 18/01137/OUTM

