

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO: DM/18/03002/FPA

FULL APPLICATION DESCRIPTION: Redevelopment of former college site to provide a mixed use scheme with three retail units (use class A1) and a restaurant with drive-through (use class A3/A5) and coffee house with drive-through (use class A3) and associated infrastructure

NAME OF APPLICANT: Quora (Peterlee) Ltd

ADDRESS: Former East Durham and Houghall Community College, Burnhope Way, Peterlee, SR8 1NU

ELECTORAL DIVISION: Peterlee West

CASE OFFICER: Colin Harding, Senior Planning Officer
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DESCRIPTION OF THE SITE AND PROPOSALS

The Site

1. The application relates to the former Houghall College site situated at the junction of Essington Way and Burnhope Way on the edge of Peterlee town centre. The site extends to 2.56 Hectares in area. The site previously hosted East Durham and Houghall College and Library, but has since been cleared. However surrounding landscaping and a number of trees remain on the periphery of the site. An existing office building is located at the south-east corner of the application site but does not form part of the application site and will remain in situ.
2. The application site is situated to the north-west of Peterlee town centre, with the shopping area of Yoden Way situated directly to the south-east across Burnhope Way. To the east of the application site, across the existing Essington Way/Burnhope Way/Surtees Road roundabout lies the existing Asda food store. Residential properties are situated across Essington Way to the north-east. To the north-west of the application site are two medium sized retail units which accommodate Lidl and Pound Stretcher. To the west the site is bounded by mature trees situated in Blunts Beck which runs from the south to the north, and is identified within the Easington District Local Plan (EDLP) as a wildlife corridor.

3. Vehicular access is currently provided from Essington Way on the north eastern boundary of the site. An existing underpass links the application site with Yoden Way and the main shopping area of Peterlee, which passes under Burnhope Way in the south eastern corner of the site. Pedestrian access to the town centre is also provided by a pedestrian crossing situated at the south-western corner of the site across Burnhope Way.
4. The site is not subject to any known constraints, being located around 400m from Castle Eden Dene SSSI and Special Area of Conservation, over 700m from the nearest Public Right of Way, approximately 1.2km from the closest Listed Building (Apollo Pavilion – Grade II* listed), and over 2km from the northern extent of Castle Eden Conservation Area.

The Proposal

5. The application seeks full planning permission for a retail development comprising the following:
 - Unit A – a retail unit of 2,788m² A1 floorspace, which would be intended to be occupied by Home Bargains;
 - Unit B – a retail unit of 464m² A1 floorspace, for which as of yet there is no named occupier;
 - Unit C - a retail unit of 2,125m² A1 floorspace, which would be intended to be occupied by Lidl;
 - Unit D – a drive-thru unit of 168m² A3 floorspace, which would be intended to be occupied by Starbucks;
 - Unit E – a drive-thru unit of 240m² A3/A5 floorspace, which would be intended to be occupied by KFC;
 - Associated parking facilities amounting to 237no. spaces, including spaces for disabled, parents and children, electric vehicles, motorcycles and cycles.
6. Overall, the development would amount to 2,016m² comparison retail and 2,189m² convenience retail floorspace.
7. Vehicular access to the site would be from Essington Way in the location of the existing access of the site. There would be a delivery service yard on the western part of the site servicing the three retail units. Pedestrian accesses would be provide adjacent to the northern vehicular access, close to the existing subways on the eastern part of the site, and to the south east close to the existing pedestrian crossing on Burnhope Way. The proposed development would also include improvement works to the two existing subways which cross underneath Essington Way and Burnhope Way.
8. In terms of layout the retail units would be located towards the western part of the site, with main glazed elevations facing onto Burnhope Way, Essington Way and the proposed car park. The two smaller scale drive-thru units would be located towards the front of the site.
9. With regards to scale and design, all of the units would be of relatively standard modern retail unit design, featuring areas of brickwork, cladding and glazing. The Lidl store in particular would be reflective of the chain's standardised approach to store design, whilst the proposed KFC and Starbucks are contemporary options from the

standard solutions with large areas of glazing and sloping roof lines. In terms of building heights, Unit A would measure approx. 6.5m, Unit B 5.3m, Unit C 7.1m, Unit D 4.2m and Unit E 5m.

10. This application is being reported to the County Planning Committee as it relates to a retail development.

PLANNING HISTORY

11. 5/PL/2009/0547 - Retail store and replacement library with associated car parking, access, landscaping and servicing – Approved 07.10.2011
12. DM/14/02092/VOC - Variation of Condition 25 pursuant to planning permission PL/5/2009/0547 to allow construction to commence prior to Traffic Regulation Order being in place – Approved 14.01.2016
13. DM/17/02716/PND - Application for prior notification for proposed demolition of buildings – Prior Approval Not Required 18.09.2017
14. DM/18/03043/AD - Erection & display of internally illuminated totem sign – Pending Consideration
15. DM/18/03046/AD - Erection and display of 6no. non-illuminated signs and 3no. internally illuminated signs – Pending Consideration
16. DM/18/03324/AD - Erection and display of 7no. illuminated and 3 non-illuminated advertisements – Pending Consideration
17. DM/18/03325/AD - Erection and display of 1no. internally illuminated totem sign – Pending Consideration

PLANNING POLICY

NATIONAL POLICY

18. A revised National Planning Policy Framework (NPPF) was published in July 2018. The overriding message continues to be that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three overarching objectives – economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways.
19. In accordance with Paragraph 213 of the National Planning Policy Framework, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given). The relevance of this issue is discussed, where appropriate, in the assessment section of the report. The following elements of the NPPF are considered relevant to this proposal.
20. *NPPF Part 2 Achieving Sustainable Development* - The purpose of the planning system is to contribute to the achievement of sustainable development and therefore at the heart of the NPPF is a presumption in favour of sustainable development. It defines the role of planning in achieving sustainable development under three

overarching objectives - economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways. The application of the presumption in favour of sustainable development for plan-making and decision-taking is outlined.

21. *NPPF Part 4 Decision-Making* - Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.
22. *NPPF Part 6 Building a Strong, Competitive Economy* - The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and a low carbon future.
23. *NPPF Part 7 Ensuring the Vitality of Town Centres* - Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation
24. *NPPF Part 8 Promoting Healthy and Safe Communities* - The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.
25. *NPPF Part 9 Promoting Sustainable Transport* - Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes maximised.
26. *NPPF Part 11 Making Effective Use of Land* - Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land.
27. *NPPF Part 12 Achieving Well-Designed Places* – The Government attaches great importance to the design of the built environment, with good design a key aspect of sustainable development, indivisible from good planning.
28. *NPPF Part 14 Meeting the Challenge of Climate Change, Flooding and Coastal Change* - The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.

29. *NPPF Part 15 Conserving and Enhancing the Natural Environment* - Conserving and enhancing the natural environment. The Planning System should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests, recognising the wider benefits of ecosystems, minimising the impacts on biodiversity, preventing both new and existing development from contributing to or being put at unacceptable risk from pollution and land stability and remediating contaminated or other degraded land where appropriate.
30. *NPPF Part 16 Conserving and Enhancing the Historic Environment* - Heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value. These assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.

<https://www.gov.uk/guidance/national-planning-policy-framework>

31. The Government has consolidated a number of planning practice guidance notes, circulars and other guidance documents into a single Planning Practice Guidance Suite. This document provides planning guidance on a wide range of matters. Of particular relevance to this application is the practice guidance with regards to; air quality; design; flood risk; land stability; light pollution; natural environment; noise; planning obligations; travel plans, town centres, transport assessments and statements; use of planning conditions and; water supply, wastewater and water quality.

<https://www.gov.uk/government/collections/planning-practice-guidance>

LOCAL PLAN POLICY:

The Easington District Local Plan (2001) (EDLP)

32. *Policy 1 – General Principles of Development.* Due regard will be had to the development plan when determining planning applications. Account will be taken as to whether the proposed development accords with sustainable development principles while benefiting the community and local economy.
33. *Policy 14 – Protection of Special Areas of Conservation.* States that development which is likely to adversely affect a designated or candidate Special Area of Conservation and is not directly connected with, or necessary for, managing the scientific interest of the site will only be approved where there is no alternative solution, there are imperative reasons for over-riding national interests, is necessary for reasons of human health or public safety, or beneficial consequences of primary nature conservation importance arise.
34. *Policy 16 – Protection of Sites of Nature Conservation Importance, Local Nature Reserves and Ancient Woodlands.* Advises that development which is likely to adversely affect such a site will only be approved where there is no alternative solution and the development is of national interest.
35. *Policy 17 - Identification And Protection Of Wildlife Corridors.* Development which adversely affects a wildlife corridor/link will only be approved where compensatory features are provided.

36. *Policy 18 – Species and Habitat Protection.* Development which adversely affects a protected species or its habitat will only be approved where the reasons for development outweigh the value of the species or its habitat.
37. *Policy 35 – Design and Layout of Development.* The design and layout of development should consider energy conservation and efficient use of energy, reflect the scale and character of adjacent buildings, provide adequate open space and have no serious adverse effect on the amenity of neighbouring residents or occupiers.
38. *Policy 36 – Design for Access and the Means of Travel.* The design and layout of development should ensure good access and encourage alternative means of travel to the private car.
39. *Policy 37 – Design for Parking.* The design and layout of parking should seek to minimise the level of parking provision.
40. *Policy 38 – Designing out Crime.* The design and layout of development will be required to have due regard to personal safety and the security of property, particularly in the hours of darkness.
41. *Policy 101 – Main Town Centres - Peterlee and Seaham town centres* will be protected and promoted as the main retailing centres. Permission will be granted for further town centre uses and the improvement of the town centre through redevelopment and environmental and transport infrastructure improvements.
42. *Policy 104 – Town Centres - Major new retail development* should be located within the defined town centres of Peterlee and Seaham followed by edges of those centres, locations at local centres within those towns, sites elsewhere within those built up areas and finally local centres of larger villages. Detailed justification will be required for development outside the town centres of Peterlee and Seaham.
43. *Policy P15 – Peterlee Town Centre.* The main shopping centre in Peterlee will be bounded by Surtees Road, Bede Way and St Cuthbert's Way but including the Peterlee Lodge Hotel and adjacent car park.

RELEVANT EMERGING POLICY:

The County Durham Plan

44. Paragraph 48 of the NPPF states that decision-takers may give weight to relevant policies in emerging plans according to: the stage of the emerging plan; the extent to which there are unresolved objections to relevant policies; and, the degree of consistency of the policies in the emerging plan to the policies in the NPPF. An 'Issues & Options' consultation was completed in 2016 on the emerging the County Durham Plan (CDP) and the 'Preferred Options' stage CDP was subject to consultation in summer 2018. On the 16th January 2019, Cabinet approved the 'Pre Submission Draft' CDP for consultation. However, the CDP is not sufficiently advanced to be afforded any weight in the decision-making process at the present time.

The above represents a summary of those policies considered most relevant. The full text, criteria, and justifications of each may be accessed at: <http://www.durham.gov.uk/article/3266/Whats-in-place-to-support-planning-and-development-decision-making-at-the-moment> (Easington District Local Plan)

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

45. *Peterlee Town Council* – No objections are raised. However comments are made in relation to the provision of motorcycle parking, that adequate measures are secured to minimise HGV noise from Units B & C, and that the vehicular access is a concern in terms of potential congestion.
46. *Highway Authority* – Raise no objection, although concerns are raised with regards to the omission of a footway from the western side of the main access road. A number of further points were raised during the application process. 4 planning conditions relating to the provision of pedestrian signalised crossing on Essington Way, the securing of subway improvement works, the securing of electric car charging points and securing the proposed parking provision are suggested. The submitted Transport Assessment has been considered, and although some initial concerns were raised with regards to methodology, the conclusions in terms of junction performance in the design year are considered to be acceptable.
47. *Northumbrian Water* – Raises no objections, subject to the imposition of a condition to agree securing the implementation of the proposed drainage strategy.
48. *Drainage and Coastal Protection* – Although originally raising objections on the basis of the submitted drainage strategy, these concerns have been addressed, and no objections are now raised.

INTERNAL CONSULTEE RESPONSES:

49. *Landscape* – Raises no objection to the development, however some concerns were originally raised in relation to retention of trees, and the lack of soft landscaping within the development. Following the receipt of amended plans, the tree retention issue has been addressed, however although some soft landscaping proposed, some concerns remain over the longevity of the proposed trees.
50. *Landscape (Arboriculture)* – No objection is raised. Concerns were originally raised with regards to the proposed level of tree removals. The application has since been amended to address these concerns.
51. *Ecology* – No objections are raised. Initial comments raised concerns that the proposed onsite mitigation would not adequately offset the loss of biodiversity of the development. Subsequent ecological work in the form of a Biodiversity Impact Assessment Calculation has identified that biodiversity offsetting sum of £6,663 is required, and no objections are raised on the proviso that this is secured.
52. *Environment, Health and Consumer Protection (Noise)* – Raise no objections, subject to noise mitigation measures in either the form of an acoustic fence or restricted delivery times.
53. *Environment, Health and Consumer Protection (Air Quality)* – Raise no objections. Submitted air quality risk assessment and screening outlines limited risk of pollutants arising from the proposed development at both construction and operational phases.
54. *Sustainable Travel* – No objections are raised, subject to a planning condition being attached which secures a Final Travel Plan
55. *County Archaeologist* – No objections. Previous development on this site mean it is unlikely that below-ground deposits survive.

56. *Design and Conservation* – No objections are raised. It is noted that the proposed retail development creates pedestrian links to the wider area and has considered pedestrian movement across a vehicle dominated site. It was originally considered that the proposed car park could be softened through the introduction of landscaping, improving the environment for pedestrians.

EXTERNAL CONSULTEE RESPONSES:

57. *Police Architectural Liaison Officer* – No objections are raised in principle, however objections are raised to the proposed layout in terms of highway safety. It is considered that the proposed vehicular access is inadequate, and in particular, with regards to a potential conflict between those drivers accessing the drive thru facilities, and those parking for a longer stay, potentially leading to queues out onto Essington Way. Concerns are also raised with regards to the lack of a service access from Burnhope Way, the potential for the site to be used for anti-social driving, pedestrian routes around the development, and also that the site could be vulnerable to crime and anti-social behaviour from the vicinity of Blunts Beck.

PUBLIC RESPONSES:

58. The application was advertised within the press, on site and letters were sent to neighbouring properties. 6 letters of objection have been received from local residents, along with 5 letters of support, as well as further letter raising concerns but not explicitly objecting to the application.
59. Furthermore, objections have been received from 4 commercial operators, namely Praxis (owners of Castle Dene Shopping Centre), ASDA Stores Ltd, Wilko Retail Ltd and Simtrava (franchisee of Costa Coffee).
60. Representations from local residents are summarised as follows:

Objections/Concerns

- Essington Way is already congested and this development will exacerbate this.
- There are existing longstanding noise pollution issues from early morning/late evening deliveries from the Lidl/Poundstretcher stores, which will be exacerbated.
- The proposed service areas are located closest to residential properties would lead to disturbance in terms of noise and headlights.
- The proposed retail park will attract anti-social driving.
- Additional traffic will lead to additional accidents, noise and pollution
- The development will provide only low-paid jobs
- The site at North Blunts School would be appropriate for this development
- Long opening hours could result in an increase in anti-social behaviour and litter
- The development would be detrimental to the town centre and would lead to more empty shops.
- It appears that insufficient consideration has been given to the access needs of pedestrians and wheelchair users, particularly with regards to access to the site from the existing Lidl retail store

Support

- Peterlee is in need of investment, jobs and shops.
- The development would be exciting and modern

- Investment in the town in the form of a progressive and positive development will bring a feel-good factor
- The dene to the rear of the site has been an anti-social behaviour trouble spot and the presence of busy retail outlet will help to resolve the issue as youths are less likely to congregate in areas used en-masse by the public.
- There is strong local support for this development, as evidence by support for the new supermarket in Horden which has proved to be popular with local residents.
- Larger retail outlets and the much needed development of this site will help cater to the growing population of Peterlee.
- The jobs created are much needed in the town at the present time
- The town centre has driven business away through high rents, and the number of empty units demonstrates its poor operation;
- The arguments of Praxis should be discounted as they appear to have no genuine interest in Peterlee, and any minor cosmetic improvements to Castle Dene are token gestures.
- Praxis delayed the original plan for Tesco on the basis that they would be redeveloping the town centre, which has never happened. Praxis have had a number of years to make the town centre so good that this retail proposal wouldn't be needed, furthermore they could have purchased the application site, but didn't.
- If the site was developed for affordable homes, these would not be affordable to local people, and the bigger picture needs to be considered where more jobs will lead to a better area and less anti-social behaviour.
- There are already numerous housing developments across the town and with many residents travelling out of the town to shop, and this appears to be an opportunity to cater for these customers.

61. *Praxis* – Objections are raised on the basis that the proposed development will have a significant adverse impact on the future vitality and viability of Peterlee Town Centre, and that these concerns are shared by the majority of the tenants in the Town Centre and the Protect Peterlee Town Centre Campaign Group. These objections have been expressed in separate documents.

The main points of objection are that:

- Town centres such as Peterlee already face significant challenges - this includes, but is not limited to, the contraction of demand for new retail floorspace nationally and a nationwide programme of store closures / portfolio rationalisation as a result of retailers either going into administration or entering into Company Voluntary Arrangements (CVAs) – the list of retailers closing stores across the UK is extensive but includes New Look, Marks & Spencer, Select, Poundworld and Argos (as a result of its tie-in with Sainsbury's) – all of which were previously regarded as stalwarts of the UK high street;
- In November 2018, it was reported by the BBC that the high street is facing the toughest trading climate in five years, with approximately 14 shops closing every day and 1,123 stores disappearing from Britain's top 500 high streets in the first six months of 2018 (according to accounting firm PwC);
- The introduction of new retail floorspace such as that proposed will simply exacerbate these challenges and as a result of highly subdued demand for new retail floorspace, will serve to displace existing retail occupiers rather than adding to and complementing existing provision;

- The proposed development will operate in isolation of the Town Centre – notwithstanding the Applicant’s claims, the proposal is located a significant distance from the heart of Peterlee Town Centre and will require shoppers to cross Burnhope Way via a subway in order to visit – moreover, the proposed Home Bargains and Lidl will offer a ‘one stop shop’ for retailing and will remove the need for shoppers to visit Peterlee Town Centre;
- With the exception of the proposed KFC and Starbucks units, the proposed retail park is not proposing to introduce new entrants to Peterlee – it is simply seeking to relocate existing retailers from Peterlee Town Centre onto an adjacent site;
- Whilst the proposal will bring about the regeneration of the application site, this will be at the expense of the vitality and viability of Peterlee Town Centre and smaller independent stores and facilities which rely on anchor stores such as Home Bargains (a named occupier for the retail park) to drive footfall and generate custom / patronage of their stores;
- The relocation of Home Bargains will have knock on effects for Peterlee Town Centre in terms of being able to fill existing vacant units and retain existing tenants – this includes, for example, B&M Bargains who have already indicated that they are not prepared to consider renewing their lease until the subject application is determined – beyond this, they have indicated that they will willingly vacate their store if the application is approved and leads to significant trade diversion from their existing store;
- Potential new entrants to the Town Centre (including both retailers and food and beverage operators) are also unwilling to consider units in the Centre until such time the application is determined as they are concerned about the impacts it will have;
- The estimated creation of 120 FTE jobs is incorrect, and a figure of 61 FTE is more accurate as the remaining jobs will only be created through relocation;
- Only Starbucks and KFC will create new jobs, although these will be offset by job losses in the town centre where existing food and beverage outlets will be unable to compete;
- The trade draw of the proposal is so high that the a number of retailers will close as a result, and that this could include B&M and Wilko, and that the loss of these stores could result in the loss of around between 68 and 160 FTE jobs;
- The proposed development would undermine any attempts to redevelop the former Aldi store on Bede Way;
- The predicted job losses are likely to be a conservative estimate as many smaller and independent retailers rely heavily on footfall driven by the anchor stores, and the proposed development would lead to a circle of decline;
- The applicant places undue weight upon the extant permission for a Tesco store as a fallback position as there is no realistic prospect of the fallback position being carried out;

- The applicant places undue weight upon a reference in the County Durham Plan Preferred Options with regards to the regeneration benefits associated with the redevelopment of the application site;
- The proposal does not represent town centre uses in a town centre location;
- The applicant's approach to the sequential assessment is flawed as there is no physical or trading reason why the units proposed need to be located on the same site, and that in practice the proposed development could be accommodated within Peterlee Town Centre on sequentially preferable, suitable and available sites; and,
- The applicant's quantitative retail impact assessment is deficient and cannot be relied upon to determine the planning application as it incorrectly assumes the Aldi store on Bede Way will remain trading, overstates the comparison turnover of existing stores and centres at 2023 due to out-of-date expenditure growth and SFT figures, does not include Unit B in comparison turnover figures for trade diversion, incorrectly assumes in the Home Bargains impact figures that some trade would be retained in the town centre were the store to be relocated, understates the convenience trade draw to the Aldi at Horden, and underestimates the amount of the development's trade that will come from existing outlets in the town centre. The failure of the applicant to provide a robust impact assessment could in itself be a reason for refusal.

62. Following further information submitted by the applicant, a further letter of objection was received on behalf of *Praxis* raising the following concerns, and developing previously communicated concerns further:

- Whether there is a "real prospect" of the previously Tesco permission coming forward is questioned, as no Certificate of Existing Lawful Use or Development has been applied for in relation to the Tesco permission, therefore any conclusion that the previous permission has been implemented is Officer opinion only, and it is not clear on what basis this conclusion has been reached. Notwithstanding this, there is no appetite on the part of retailers to deliver a scheme such as that approved either now, or well in the future due to changes in consumer shopping habits rendering the scale of the store both unviable and inefficient. If there was such a prospect, then Tesco would be retaining an interest in the site. Additionally, the Tesco permission would have operated differently to the proposed development, being a main food destination as opposed to a retail park destination. It is suggested that only very limited weight can be afforded to the fallback position.
- It is noted that since the application was submitted that the Aldi store at Bede Way has ceased trading. It is noted that the CBRE Study upon which the submitted retail impact assessment is based was already out of date, and that the closure of Aldi further diminishes the reliability of this study as a robust basis for determining the "no development" trading scenario. Additionally, the closure of Aldi means that there is a sequentially preferable and suitable unit available within the town centre that could accommodate part of the development, and that the impact of the proposed development on the re-letting of this unit is a major consideration when assessing the impact of the proposed development upon the town centre. As it stands, the withdrawal of Aldi has had a significantly adverse impact upon the town centre, and the approval of additional retail floorspace outside of the town centre will inevitably worsen the situation.

- It remains the case that the site should be considered as being out of centre, contrary to the applicant's assertions. The development would not improve convenience turnover in the town centre, but would increase trade loss. Furthermore it would do nothing to improve the comparison offer in the town centre, nor would it improve the offer in the town for those sectors where market share is currently low, namely clothing, personal goods, furniture and large household and electrical appliances. As a result the proposed development would compete with, rather than complement the town centre.
- It is considered that the applicant's assertion that the proposal would reduce trade leakage is incorrect. In the event that both the existing Lidl and Home Bargains were to close without replacement, the market share of Peterlee Town Centre may decline due to the loss of Home Bargains. However, the existing Lidl is out of centre and its closure would be expected to result in some uplift in town centre turnover as some trade diversion to Asda would be expected. It does not follow that increasing the size of the current Lidl and Home Bargains offer would lead to trade claw-back. It seems unlikely that a larger Lidl would be able to claw-back trade not already attracted to the existing store, or the new Aldi, and there is no evidence to suggest that people in Peterlee are travelling further afield to shop at a larger Home Bargains. Meaningful claw-back is only achieved where there is a step-change in the proposed retail offer – the proposed development simply provides new premises for two existing retailers, and one other, all of which would compete with the town centre.
- The approach to the sequential test is disputed, however even if the applicant's approach is accepted it would still be appropriate to undertake a sequential assessment that includes sites capable of accommodating Unit B on its own, demonstrating a level of flexibility, and that more information is needed to support the claim that neither Starbucks or KFC could be viably accommodate in the town centre unless they are located on the same site as Lidl and Home Bargains. If these units are reliant on linked trips, then these could be generated by town centre retail businesses, and furthermore there is no requirement for the two drive-thru units to be located on the same site, given that it would not be expected that linked trips between the two would occur. In addition, there is no evidence to support the claim that the development of the two main proposed stores would be unviable for the retailers if they are not located at the same site, particularly as the specific combination of retailers is not a common occurrence. However, if this case is accepted, it would support concerns that the proposed development would compete with the town centre by seeking to meet the needs of shoppers solely on the application site. If linked trips to the town centre were to occur as frequently as claimed, then whether the site accommodates one or both of the named retailers should not be a concern as town centre businesses could provide complementary offer.
- With regards to the availability of the site of the former Aldi site on Bede Way, this is now beyond doubt and it is suitable for a large retail unit. Although both of the named retailers on the proposed development have demonstrated that the site is not suitable for their operation, this is not the policy test. The application is not for personal consents for these two operators, and there is no indication that another retailer with a similar offer would not consider the site suitable. Additionally, the proposed Unit B could be accommodated at the Bede Way site, and with there being no named operator, there is no reason why it could be disaggregated from the application scheme.
- It is acknowledged that the updated quantitative impact assessment has addressed the previously identified error in not accounting for the turnover of

Unit B, however the previously highlighted concerns remain. Additional errors are also identified in the updated impact tables, and it is concluded overall that the retail impact assessment remains unreliable. It continues to considerably understate the impact on Peterlee Town Centre and is not a sound basis for determining the impact of the proposed development on its vitality and viability.

- It is considered that the proposed development could lead to both the new Unit B and the existing Lidl unit being occupied by existing town centre occupiers or new entrants which could lead to the closure of other town centre anchors through competition or improved offer.
- The proposed development would have an impact upon future investment in Castle Dene Shopping Centre. No landlord can undertake investment unless there is a realistic prospect of letting the resulting retail space, which in turn relies upon retailer confidence. The list of retailers seeking new space submitted by the applicant is a national list, and there is no evidence that any of the retailers would take space in Peterlee. Even if retailers could be attracted, the creation of three new retail units outside of the town centre with an associated diversion of trade and footfall would make it even more difficult for the town centre to attract these retailers. If the town centre is able to accommodate an existing occupiers revised floorspace requirements, in for example, the former Aldi unit this would result in a vacant unit elsewhere in the town centre. Praxis are progressing options for the former Aldi unit as matter of priority for either reoccupation or redevelopment, and a pre-application enquiry has been submitted to this effect. The impact of the proposed development upon this planned private sector investment in the town centre should be given full weight in the decision making process.
- Paragraph 90 of NPPF states that where an application fails to satisfy the sequential test, or is likely to have a significant adverse impact on one or more of the considerations in Paragraph 89 (as is the case here), it should be refused – it does not refer to material considerations.
- It is noted the Government remains committed to ensuring the vitality of the UK's town centres to the extent that it has recently created the £675m UK High Street Fund in recognition that town centres are under significant pressure. The Future High Street Fund is designed to tackle these challenges through support, investment and guidance. In addition, Government's Out Plan for the High Street commits to cutting business rates by a third for up to 90% of retail properties for two years, consulting on planning reform, setting up a High Streets Task Force, and strengthening community assets in town centres. It is therefore the case that there is funding and support for town centres such as Peterlee as an alternative to unsustainable development such as that proposed. In other words, Durham County Council should be working with Praxis and other town centre investors now to define a regeneration strategy and secure funding through the Future High Street Fund rather than potentially approving a significantly damaging proposal and then leaving Peterlee to fail.
- The only circumstance in which Praxis would find the application proposal acceptable would be where the Council places restrictions on the operation of the Park such that it would complement the existing function of the Town Centre as opposed to competing directly with it. This would be through only permitting the sale of goods where there is a deficit (namely bulky goods) and placing a restriction on retailers relocating to the site from the Town Centre (through an appropriately worded no-poaching clause / condition). This would ensure a

different form of retail and town centre uses on the site which would complement the existing town centre offer.

In a further additional representation in response to additional submitted information, the following concerns are made and/or reiterated:

- The comments made by the applicant with regards to linked trips remain unsubstantiated by any evidence as it is based on research that relates to standalone food superstores, is over 20 years old and thus based on different shopping patterns. It should not therefore be applied to a development offering a mix of retail units. The research referred to was published in 1998 and does not take account of Lidl or Aldi who were relative newcomers at that time. Furthermore, the study did not look at foodstores on retail parks, and those foodstores that were considered would now be considered small – medium sized with limited non-food offer, and failed to take account changes in retail patterns, such as increased online shopping; and
- The use of this data by the applicant in relation to linked trips is fundamentally flawed, and the applicant has overlooked certain findings such as identifying that linked trips depend on a range of factors and that an edge-of-centre location does not automatically increase linked shopping trips.
- It is noted that the applicant considers that the application site is too far from the existing Home Bargains store for all of its shoppers to transfer to the new, improved and enlarged store, and on this basis it seems unlikely that shoppers visiting the application site would be so willing to undertake a linked trip to the town centre, particularly when many of the items sold in the town centre will be available on the application site. It is also unclear why relocating Lidl around 250m will have a substantial effect on the behaviour of shoppers.
- It is therefore concluded that the level of linked trips will be minimal and are thus irrelevant in respect of the consideration of the current application.
- With regards to cumulative impact, Praxis remain of the opinion that their own quantitative impact assessment represents the most realistic assessment.
- There is disagreement with a number of the assumptions and forecasts made by the applicant, and key issues relating to the use of out of date household survey data, and whether the impact policy test relates to the effect of any impacts on the town centre remain unaddressed.
- Whatever the different parties suggest in terms of quantitative trade draw, the overall effect of the Aldi closure cannot be overstated. Peterlee Town Centre has been substantially weakened as a result and unless new investment can be secured in the town centre, then the impact on the town centre will be significantly adverse.
- Altering assumptions relating to the relocation of Home Bargains does not address the key issue, which is that if the application is approved, that Peterlee will lose yet another anchor store in a time when the town centre is struggling to fill vacant units and when its retailers are falling into administration. The effect will be to significantly undermine the vitality and viability of the centre and trigger a spiral of decline that will be impossible to reverse. The proposal will also have a significant adverse impact on investment in the town centre.

- It is advised that both Select and Store Twenty One will both be vacantly the town centre imminently.
- Issue previously raised with relation to the applicant's impact assessment with regards to the use of outdated expenditure forecasts which overstate comparison expenditure and town centre turnover, the assumption that the existing Lidl would remain in convenience use despite concluding that this would be unlikely, the lack of information with regards to the potential occupier of Unit B and the lack of any conditions proposed to control its use, are considered to remain unresolved, and as a result the impact assessment remains unreliable.
- The indication that the applicant is willing to accept a number of planning conditions is welcome, but the conditions suggested would be wholly inadequate. The only circumstance in which the application proposal would be acceptable would be where the Council places restrictions on the operation of the development such that it would complement the existing function of the town centre as opposed to competing with it. This would be through only permitting goods where there is a deficit (namely bulky goods) and placing a restriction on retailers relocating to the site from the town centre.
- If the Council is minded to approve the current application, the following conditions should be imposed:
 - a limitation on the net sales area of each unit;
 - a restriction on the convenience and comparison floorspace split in all units;
 - include a "no poaching" condition preventing all retailers in the town centre (including Home Bargains) from locating to the scheme. The wording currently suggested by the applicant is insufficient;
 - Preventing the sale of food and convenience goods from Unit B, as well as preventing the sale of health and beauty products, all clothes, fashion and footwear; a limitation on the net sales area of each unit Restricting the use of the drive-thru units to the sale of food and beverage items only;
- It is concluded that any retail proposal on the application site will have a significant impact on investor confidence in Peterlee Town Centre to the extent that retailers are unlikely to commit to taking new stores/renewing leases where there is the potential for trade to be drawn away from the town centre and limited opportunities for linked trips. The impacts on the town centre will be devastating and irreversible. It is also concluded that the job creation benefits of the proposal have been grossly exaggerated by the applicants.
- Reference is made to a development in Gateshead where permission was refused for the relocation of a B&M store to an edge-of-centre site, and where as a result B&M are now investigating a new and improved store within the relevant district centre, despite B&M advising that they would close its store if the edge-of-centre site was resisted.

63. *ASDA Stores Ltd* – Objections are raised. It is accepted that the application site benefits from a extant permission for retail floorspace through the previous Tesco permission; however, the current proposal will be in such a format that it will compete directly with the town centre – the Tesco approval was on the basis that the store would compete with other food stores, and the current proposal with smaller units (including non-food) will impact in a different way. The site is edge of centre and the Council need to assess the proposal fully against the NPPF retail tests. Whilst Lidl and Home Bargains are named as operators, there is no guarantee that Lidl will occupy

the units, or stay long-term, and the future use of the existing Lidl store should also be considered. Furthermore, the applicants have not undertaken a sensitivity test with higher turnover rates or scenarios. The Council needs to be satisfied with the use of the land as retail space overall, as opposed to focussing on specific retailers, and should be aware that they would be approving a certain level of non-food retail floorspace in units which are attractive to traditional high street retailers, but outside of the town centre. Additionally the scheme will also draw shoppers away from the town centre which will impact on the level of associated linked trips to other services and facilities in the town.

64. Concerns are raised with regards to the soundness of the Transport Assessment. These include the need to subject the proposed site access to a Road Safety Audit, a lack of detail with regards to servicing (included tracking details), the need to revisit car park accumulation calculations following agreement being reached on trip rates, that trip generation should be revisited on the basis of concerns being raised with TRICS outputs, and that the impact of the trips associated with the development proposals upon the operation of the highway network should be revisited.
65. In addition, concerns are raised with regards to noise impact, it being noted that excesses above 10dB at night are demonstrated, which would be significantly adverse.
66. *Wilko Retail Ltd* – Objections are raised. It is considered that the proposal has the potential to lead to store closures in the town centre, leading to job cuts and fewer opportunities for local people. It is also noted that town centre high streets and shopping centres is current facing enormous pressure, and that the creation of what would effectively be a second shopping centre, footfall will be diluted and this will place increased pressure in an already difficult economic climate. This could ultimately lead to store closures and if this were to include an anchor store that the situation could become unrecoverable, resulting in a poorer, less diverse shopping proposition.
67. *Simtrava Ltd* – Objections are raised. It is considered that the proposal threaten to leave a large empty unit in the heart of the town centre, move jobs out of the town centre, draw trade away from the town centre, reduce footfall to other shops, bring about the closure of more shops in the town centre, and create a long walk for shoppers between the Home Bargains store at the retail park and the main square of the town centre which many will be unwilling to take. The proposal has the potential to lead to store closures in the town centre leading to jobs cuts and less opportunity for local people. Whilst the applicant has claimed the proposals will bring new jobs to the town, most will just be existing jobs that will be moved out of the centre onto an edge of centre site.
68. It is also highlighted that Simtrava have shown faith in Castle Dene Shopping Centre and spent over £400,000 on developing and operating a Costa store in the town for 5 years nw. Sales have dropped over the last 2 years due to the reducing footfall and this may be the final straw, and may result in the store closing, with Costa leaving Peterlee. The store currently employs 8FTE local people and if Castle Dene loses an anchor store due to the proposed development, it will lead to staff losing their jobs at the Costa store.

APPLICANTS STATEMENT:

69. This exciting proposal by Quora will deliver the long-awaited redevelopment of the vacant former college site and a major investment in Peterlee. The scheme will deliver three retail units and two restaurant/café units with drive-thrus.

70. The scheme offers free on-site car parking for all Peterlee shoppers at the site and for visitors to the town centre.
71. The proposals include major upgrades of the existing subways under Burnhope Way and Essington Way and a new pedestrian crossing.
72. The development will bring:
 - Immediate investment and regeneration of a long derelict vacant unit: Commencement Spring 2019, complete Spring 2020.
 - Retaining and enhancement of the Lidl and Home Bargains offers. Current leases are soon to expire. This development will commit them to Peterlee for the long term in modern new facilities that Peterlee deserves.
 - The retention and creation of 120 full time equivalent jobs for Peterlee people.
 - Major upgrade of subways, creation of a new pedestrian crossing and an increase in parking for all of Peterlee.
 - A chance to claw back expenditure lost from Peterlee. Despite the closure of Aldi, revenue generated by the town centre, aided by this development will increase by £10.69 million per year by 2023. Investment in Peterlee will help bring this expenditure back to the town.
 - Creation of linked trips—the site’s location, free car parking, enhanced subways and pedestrian crossing, all encourage people to move fluidly between the town centre and the proposal.
 - Investment encourages investment. Investment in towns prevents decline. The presence of long term major retail operators investing in Peterlee will encourage other retailers.
 - Visual amenity—the development will see a huge visual enhancement and improvement to the town.
73. The development represents a major regeneration of a long-term vacant site. The former Peterlee college which has now been demolished following the successful planning application by Tesco to build a large format food store on the site has been subject to incidents of arson, anti-social behavior and visual blight.
74. This scheme will to provide an attractive, high quality development. Care has been taken to ensure the scheme is visually pleasing with all buildings providing active frontages and works seamlessly with the existing Town Centre through new and upgraded pedestrian links and free parking for all. Every detail has been reviewed to ensure an enjoyable customer experience including structured landscaping, pedestrian priority over vehicle and free car parking.
75. This scheme will provide the retailers will the new generation stores they require to meet the specific needs of their respective business models. The importance of delivering this proposal to ensure that the retailers continue to operate in the town cannot be understated. This proposal will ensure the retention and creation of jobs as well as continued and greater consumer choice and the long-term presence of these two operators in Peterlee.
76. The proposed development would be a short walking distance to the key focal points of the town such as the bus centre and well connected to all other areas. The site lies the same distance (within 200-metre) of the bus station as the Asda store.

77. Based on average retail wages, the creation of approximately 120 full time equivalent jobs would equate to earnings of approximately £1,872,000 per year.
78. The proposed store will function as part of the town centre, and will bring associated economic benefits to the town and wider community of East Durham. Through Claw-back it is calculated that with the closure of Aldi, the town centre will lose a further £21.47 million per year. By 2023, this proposal will increase revenue in the town centre, and draw trade being lost to other shopping destinations, to the value of £10.69 million per year, a growth of 8.6%. Without this development and with the closure of Aldi, the town centre stands to contract significantly.
79. Linked trips – linked trips to other retailers in the town centre are estimated to be to the value of £3,550,000.
80. Jobs – based on average retail wages, the creation of approximately 120 full time equivalent jobs would equate to earnings of approximately £1,872,000 per year.
81. Catalyst – investment encourages investment. Peterlee needs investment like all other towns. It needs the main retailers long-term and it needs modern formats. This development achieves this.
82. The delivery of the scheme in both qualitative and quantitative terms is vital to the future vitality and viability of the town centre. It will encourage shoppers to stay in Peterlee by enhancing the retail and leisure offer available. It will keep major operators in Peterlee that otherwise will not stay long term. Home Bargains and Lidl are operating from unsustainable and unviable stores which will close at the end of their lease and their presence will be lost without this development.
83. In summary, this development invests in Peterlee and encourages future investment in Peterlee. It secures major retailers that must otherwise leave the town and their outdated premises replacing them with the latest store formats. It secures existing jobs and creates new jobs and training opportunities for local people. It will bring trade back to Peterlee currently being lost to other towns. It will enhance the aesthetics of the town and improve pedestrian links and car parking facilities.

The above represents a summary of the comments received on this application. The full written text is available for inspection on the application file which can be viewed at:
<http://publicaccess.durham.gov.uk/online-applications/search.do?action=simple&searchType=Application>

PLANNING CONSIDERATIONS AND ASSESSMENT

84. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out that if regard is to be had to the development plan, decisions should be made in accordance with the development plan unless material considerations indicate otherwise. In accordance with Paragraph 212 of the National Planning Policy Framework (NPPF), the policies contained therein are material considerations that should be taken into account in decision-making. Other material considerations include representations received insofar as they raise planning matters. In this context, it is considered that the main planning issues in this instance relate to: the principle of the development, landscape impact, layout and design, residential amenity, highway safety and access, ecology, flood risk and drainage, and other issues.

The Principle of the Development

85. The submitted supporting information accompanying this application contains a considerable level of detailed technical retail policy assessment, sequential assessment of sites, and a town centre impact appraisal. In addition, there have been detailed technical objections by interested parties to both the methodology employed, and the findings of this submitted information (these concerns are summarised at paragraphs 59-67 of this report).
86. Given the volume and technical detail of the submissions, and in order to arrive at a robust recommendation, Officers instructed an independent retail planning consultant to consider all of the material submitted, from both applicant and objectors, in order to provide the Local Planning Authority with an impartial specialist view. These findings are incorporated within the following discussion on the issue of the principle of the development.

The Development Plan

87. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material planning consideration. The Easington District Local Plan (EDLP) forms the statutory development plan and remains the starting point for determining applications as set out in the Planning Act and reinforced at Paragraph 12 of the NPPF. The EDLP was adopted in 2001. NPPF Paragraph 213 advises that Local Plan policies should not be considered out-of-date simply because they were adopted prior to the publication of the NPPF. However due weight should be given to them, according to their degree of consistency with the NPPF. Notwithstanding this, it is considered that a policy can be out-of-date if it is based upon evidence which is not up-to-date/is time expired depending on the circumstances.
88. Policy 101 of the EDLP identifies the role of Peterlee and Seaham town centres as the main retailing centres within the former district of Easington. These are identified as the main locations for major retail and town centre developments. The policy states that where sites within the defined town centre are unavailable such developments on the edge of town centre may be approved.
89. Whilst not explicit, EDLP Policy 101 defines Peterlee and Seaham at the top of the retail hierarchy in the former Easington district by identifying them as the main retailing centres in the district. Defining a retail hierarchy is consistent with the guidance within the NPPF, however since the adoption of the EDLP, the Council's Retail and Town Centre Study (RTCS) and subsequent updates provides recommendations for an updated countywide hierarchy. Both Seaham and Peterlee are identified as large town centres within only Durham City and Bishop Auckland above them. Their role in East Durham is therefore largely unchanged.
90. EDLP Policy P15 defines the town centre boundary and should be read in conjunction with EDLP Policy 101. It states that the main shopping centre in Peterlee will be bounded by Surtees Road, Bede Way and St Cuthbert's Way but including the Peterlee Lodge Hotel and adjacent car park. The application site is located north west of the boundary. The Plan does not define a primary frontage or primary shopping area.
91. The County's Retail and Town Centre Study 2009 provided a review of defined town centre boundaries across the County as well as frontage policies. With regards to the Peterlee town centre boundary, the boundaries remained largely unchanged, the study also provided recommendations for frontages within the centre. The Retail and Town Centre Study in 2013 confirmed that there were no further changes to the boundaries or frontages recommended in the 2009 study.

92. The Council continue to monitor town centre boundaries and frontages through annual town centre surveys and the boundaries as defined in 2009 and reaffirmed in 2013 remain unchanged. Change to the frontages or shopping areas have been informed by more up to date guidance in the NPPF (Paragraph 85) and also changes on the ground. These have informed emerging policies in the County Durham Plan.
93. Given that the ELP has no frontage policies within it, it is considered that both EDLP Policies P15 and 101 are now out of date in terms of understanding the sequential status of the site and this can be determined using the more up to date evidence described above.
94. EDLP Policy 104 states that where there is an identified need for a major new retail development, proposals should be located within the defined town centres of Peterlee or Seaham. The policy goes on to state that if it can be demonstrated that suitable sites are unlikely to be made available within a reasonable period, then proposals should be located on the edge of those centres, followed by locations at local shopping centres within those towns and finally by sites elsewhere. This is provided that, inter alia, the proposal would not, either by itself or cumulatively undermine the vitality or viability of the existing centre. The policy is considered only partially consistent with the NPPF, as whilst referencing the sequential approach and the need to consider impacts on the vitality and viability of existing centres, the NPPF provides more up to date guidance in applying the sequential and impact tests, and there is no requirement for an identified need to be established within the NPPF. Consequently, it is considered that this policy is out-of-date and that only limited weight should be afforded to it.
95. NPPF Paragraph 86 states that LPAs 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.
96. NPPF Paragraph 87 confirms that 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 LPAs are required to 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.
97. NPPF Paragraph 89 recognises that when assessing applications for retail and leisure development outside town centres, which are not in accordance with an up to date local plan, LPAs should require an impact assessment if the development is over a proportionate, locally set threshold (if there is not locally set threshold, the default threshold is 2,500sqm of gross floorspace). This should include an assessment of:
 - a) The impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and
 - b) The impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment (as applicable to the scale and nature of the scheme).
98. NPPF Paragraph 90 confirms that 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.

99. In effect, EDLP Policies 101 and 104 provide for the development of edge of centre sites where proposals accord with a sequential approach to development and would not, when impacts are considered on a cumulative basis, undermine the vitality and viability of a town centre. However, the detail of the tests contained within these policies differs from that set out in NPPF, particularly in respect of the sequential test, where 'edge of town centre' sites are elevated above local shopping centre sites in a manner that is not consistent with NPPF. As a result, it is considered that EDLP Policies 101, 104 and P15 are out-of-date, and in the case of EDLP Policies 101 and 104, only partially consistent with the NPPF and that as a result, only limited weight should be afforded to them.

The Sequential Test

100. Paragraph 86 of the NPPF sets out the order of preference in applying the sequential approach. The first preference is for main town centre use developments to locate in town centres, followed then by edge of centre locations, and only if no other suitable sites are available should out of centre sites be considered. Paragraph 87 indicates 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. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale.
101. Additional guidance on the application of the sequential approach is provided by the Ensuring the Vitality of Town Centres Planning Practice Guidance ('the Town Centres PPG').
102. Paragraph 010 of the Town Centres PPG provides a 'checklist' for the application of the sequential test in decision taking. It indicates the following considerations:
- With due regard to the requirement to demonstrate flexibility, has the suitability of more central sites to accommodate the proposal been considered? Where the proposal would be located in an edge of centre or out of centre location, preference should be given to accessible sites that are well connected to the town centre. Any associated reasoning should be set out clearly.
 - Is there scope for flexibility in the format and/or scale of the proposal? It is not necessary to demonstrate that a potential town centre or edge of centre site can accommodate precisely the scale and form of development being proposed, but rather to consider what contribution more central sites are able to make individually to accommodate the proposal.
 - If there are no suitable sequentially preferable locations, the sequential test is passed.
103. The applicant has indicated within the submitted documents that the application site should be considered part of the defined town centre on the basis that the supporting text of the Emerging County Durham Local Plan (CDP) identifies it as a site which may be able to accommodate retail development.
104. With regards to this point, Officers note that not only is no weight currently being afforded to the CDP, but in any event it fails to identify the site within the town centre boundary. Furthermore, it is considered that the site does not currently form part of the town centre in practice, and as consequence, that the site should be considered to be 'edge of centre', and as a result the sequential test should be undertaken.

105. Notwithstanding their stated position, the applicant has provided a sequential assessment which is focused on the area around Peterlee Town Centre, on the basis of identified operator and consumer demand, and the scale of the proposed development. The scope of the sequential assessment is considered to be acceptable.

Sequential Test - Disaggregation

106. It is noted that the applicant themselves do not consider it necessary to apply the sequential test to the proposed Starbucks coffee shop or KFC restaurant on the basis that these units would serve different markets to high street food outlets. Effectively, the applicants are disaggregating their own development. In addition, within their objection, Praxis consider that the development should be further disaggregated as there is no physical or trading reason why any of the units proposed need to be located on the same site.
107. With regards to the issue of disaggregation, it is useful to consider relevant appeal decisions. In recommending that the Secretary of State grant planning permission for a retail development at Rushden Lakes, Northants in 2014, a Planning Inspector found that with regards to disaggregation that:

'There is no longer any such requirement stated in the NPPF... Had the Government intended to retain disaggregation as a requirement it would and should have explicitly stated this in the NPPF. If it had been intended to carry on with the requirement then all that would have been required is the addition of the word "disaggregation" at the end of NPPF [24].'

108. Further clarification on this matter can be found in a subsequent appeal decision in 2015 at site in Braintree, Essex where, in considering whether the findings of the Secretary of State at Rushden Lakes could be applied more widely, the Inspector found that the view in that decision:

'...was not qualified in any way other than by reference to the two report paragraphs from which it derived. While one of these paragraphs dealt with specific aspects of the proposal, the other dealt with the intention of national policy in paragraph 24 of the Framework following the demise of PPS4. And that paragraph was not specific to the site or to the proposal in any way.'

and that:

'If the Secretary of State had wanted to qualify his statement on disaggregation in any way that could have been achieved very simply by the addition of words such as 'in this case'.

109. The overall generality of this principle was then later confirmed by the Secretary of State in endorsing the Braintree decision, where it is stated that:

'...he agrees with the Inspector's assessment regarding the sequential test at paragraph 24 of the Framework.'

110. Whilst this appeal decision references a version of NPPF that has since been revised, the revised NPPF does not provide any additional policy clarification which impacts on the relevance of the above interpretations. Paragraph 24 has now become Paragraphs 86 and 87, and although the wording is slightly different, the general thrust of the paragraph remains unchanged, and crucially, continues to make no specific reference to disaggregation.

111. This issue was also further considered in an appeal at Tollgate Village, Colchester in 2017, where it was found that the NPPF requirement is for the sequential test to “demonstrate flexibility”, and that although in some cases – particularly where proposed developments are large, phased, open-ended and have no identified operators, that this may amount to disaggregation. However it was also found that it does not follow that disaggregation is always required in order to demonstrate flexibility, and that alternative sites, in order to be considered as suitable, should be capable of accommodating development which is recognisably closely similar to what is proposed.
112. As a result, it is considered that there is not any general requirement for the applicant to disaggregate elements of the proposal in order that it can fit on alternative sites. It is considered that there is not any persuasive argument which justifies a different approach being taken in respect of the food and drink units, such that they would be excluded from the sequential test, or indeed the disaggregation of any part of the scheme.

Consideration of Sequential Alternative Sites

113. The applicant has identified four potential alternative sites for the development, comprising:
- redevelopment site at Castle Dene Shopping Centre;
 - vacant units at Castle Dene Shopping Centre;
 - former North Blunts Primary School; and
 - former Aldi Store on Bede Way.
114. The redevelopment site at Castle Dene Shopping Centre is contiguous with the site which was subject to outline planning permission in 2010 for retail development as a result of application 5/PL/2009/0444. This permission was not implemented and has since expired. The applicants find that the site currently hosts a number of occupiers, and that none of the units within the site are presently available. The site is dismissed due to its lack of availability, the complications being in the relocation of present occupiers, the size of the site being significantly smaller than required, and issues of topography.
115. Officers agree with the conclusions of the applicant with regards the suitability of the site due to its size, and also in terms of its availability, and that the site should be dismissed as a result.
116. With regards to vacant units at Castle Dene Shopping Centre, the applicant identifies that the site as a whole is not available for redevelopment, and that the total available vacant floorspace would only provide a fraction of that required by the proposed development, and that none of the available units would individually be suitable for redevelopment. Accordingly, this site is dismissed.
117. Officers agree with these conclusions, as there does not appear to be any units which are currently vacant and would be sufficiently large to offer any genuine potential to accommodate the proposal.
118. The applicant finds that the former North Blunts School site to be out-of-centre and not sequentially preferable to the application site, and that the application site, by virtue of its pedestrian links is better connected to the town centre, and that NPPF paragraph 87 would actually suggest that the application site is sequentially preferable to the North Blunts site and it is dismissed for this reason. Officers agree with this assessment.

119. Finally, the site of the former Aldi Store on Bede Way amounts to only approximately 0.4 hectares, which is significantly smaller than the 2.6ha of the application site. With it being considered that there is no requirement to disaggregate the proposed development, and even in applying reasonable flexibility, the former Aldi site would remain incapable of accommodating a development of similar nature to that proposed and the site is dismissed by the applicant, a conclusion with which Officers agree.
120. Additionally, the Council's own retail consultant has undertaken a search for potential sites within the appropriate area, and has not managed identify any other suitable alternatives beyond those identified by the applicant.
121. Overall therefore, the proposed application is considered to conform to the requirements of the sequential test as articulated by Paragraphs 86 and 87 of the NPPF.

The Retail Impact Test

122. Paragraphs 89 and 90 of the NPPF indicate that application proposals for retail and leisure development should be refused planning permission where a significant adverse impact is likely to arise from development.
123. It should be recognised that impacts will arise with all retail developments, but that these will not always be unacceptable, not least because development often enhances choice, competition and innovation. It is therefore necessary to differentiate between those developments that will have an impact, and those that will undermine the future vitality and viability of established centres, i.e. have a 'significant adverse' impact.
124. It is also relevant to note that the purpose of the impact test is to consider the impacts arising across the entirety of a town centre. This principle has been affirmed by a number of Secretary of State decisions, including at Tollgate West, Colchester in 2016 where the Inspector stated that:

"The assessment of impact must be made against the town centre as a whole."

125. In this context, the two key impact tests identified by NPPF Paragraph 89 relate to:
- the impact of the proposal on existing, committed and planned public and private sector investment in a centre or centres in the catchment area of the proposal; and
 - the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider retail catchment area (as applicable to the scale and nature of the scheme).

Impact of the proposed development on existing, committed and planned private and public sector investment

126. In considering the potential for the application proposal to prejudice in-centre investment, it is of some relevance to consider the conclusions of the Inspector in commending the grant of planning permission to the Secretary of State for development at Rushden Lakes, where it is stated that:

"NPPF [27] requires an assessment of the impact (if any) of the proposal on "existing, committed and planned public and private investment" in a centre. That requirement is quite straightforward, only investment that has been made, has been committed or is planned warrants consideration."

127. The Inspector then goes on to consider whether planned investment needs to relate to a specific scheme or a general intention to invest:
- “NPPF [27] does not protect mere in principle intentions, but rather safeguard actual plans to invest... In the absence of a scheme, there cannot be a viable scheme and consequently there cannot be “planned” or “committed” investment. At most there can be an intention to invest if, as and when there ever is a viable scheme but, that is not what the NPPF [26] is aimed at.”*
128. These findings were then validated by the Secretary of State in deciding to grant planning permission for the development.
129. Although relating specifically to the original version of NPPF, which has now been superseded, the content of paragraphs 26 and 27 as referred to by the Inspector have now been encapsulated within paragraph 89 of the most recent version of NPPF, and the wording remains largely the same. With no material difference, it is considered appropriate to apply this interpretation to the latest version of the NPPF.
130. On the issue of planned investment, there is a difference of opinion between the applicant and objectors. The applicant states that there is no significant existing, planned or committed public or private investment that needs to be considered, whereas Praxis states that Castle Dene Shopping Centre is the subject of on-going and future investment plans, in order to maintain its position as a destination of choice within the catchment area, and that whilst such investment may not mean high profile, major redevelopment schemes, investment in unit refurbishment and public realm is ongoing, and that furthermore, they are in the process of bringing forward new investment plans for the redevelopment of the former Aldi Store.
131. With regards to the concerns of Praxis, there appears to be two types of investment being referred to. Firstly, there is general investment to ensure that the commercial stock and shopping environment remains attractive and competitive. However, no specific investment of this type is identified which could be prejudiced by the approval of the application. Furthermore, the objection of Praxis appears to indicate that such investment is necessary if Castle Dene is to successfully compete as a destination of choice. It would appear that this would be required regardless of the outcome of this application, and consequently it is unclear why this general investment in the fabric of the centre would be jeopardised if the application were to be approved.
132. Secondly, Praxis indicate that they are in the process of bringing forward plans for the former Aldi Store on Bede Way, and Officers can confirm that a pre-application enquiry to this effect has been lodged with the local planning authority. The proposal comprises the erection of a two storey split-level retail unit and four single storey retail pods, and it is indicated that the proposal contains a food store. However, no operators for any of the units are identified, and given the nature of the site, and its limitations in terms of parking and servicing it is considered unlikely that such a development would be attractive to Lidl. Indeed, the applicant has provided evidence from Lidl themselves that indicates that they consider that it would not be possible to accommodate a Lidl store on the Bede Way site.
133. Whilst it is accepted that Praxis have an investment proposal, it is considered that this is at a very early stage, and having regards to the findings of the Inspector in the Rushden Lakes decision, it considered that it has not been demonstrated that a *viable* redevelopment scheme for the Aldi Store is actively progressing. Therefore it is considered that only very limited weight should be afforded to the impact of the

application proposal upon investment in the town centre, and that such impacts could not be considered to be significantly adverse.

Impact of the Proposal on Town Centre Vitality and Viability

134. The supporting information for the application as originally submitted included a Retail Impact Assessment. This has since been superseded during the consideration of the application by a revised document, and a further briefing note. Throughout the process concerns have been raised by objectors with regards to both the findings and methodology of the retail impact assessment, partly (but not wholly) influenced by the closure of the Aldi Store on Bede Way subsequent to the submission of the application.

Impact of the Drive-thru Units (A3/A5 uses)

135. Within the submitted documentation, the applicant concludes that the proposed Starbucks and KFC units would not directly compete with town centre outlets, noting that McDonalds already operate a drive-thru on the edge of the town centre which does not appear to have adversely affected the range of food and drink uses in the town centre. The applicant goes on to state that the proposed units would complement existing provision, and in themselves would be expected to account for less than 5% of the restaurant/café expenditure in the Peterlee catchment (based on 2016 figures). It is further stated that restaurant/café expenditure would be expected to be made in a variety of outlets and the only comparable drive-thru facility is McDonalds which itself is located on an edge-of-centre site. It is considered by the applicant that there would not be any material impact on the town centre itself. Objections to the contrary have been received from Simtrava Ltd who operate the existing Costa Coffee unit within the town centre, and are concerned about the impact that the proposed drive-thru units would have.
136. It is considered by officers that whilst the concerns of Simtrava are noted, that the conclusions of the applicant on this particular point are generally sound. The proposed drive-thru units would likely divert trade from a number of locations, many of which are not within the core of Peterlee town centre, and that some of the turnover of the drive-thru units would be derived from spontaneous trips made by customers visiting the wider site or passing by car. It is also considered that the existing food and drink offer within Peterlee is very limited, with the Council's own Town Centre Survey in 2018 identifying that the town has the lowest level of cafés and restaurants, drinking establishments and hot food takeaways in County Durham. On this basis, it is considered that the proposed drive-thru uses could be accommodated without issue, and that this part of the proposed development would not, by itself, lead to any significant adverse impact with regards to Peterlee town centre's vitality and viability. It is however recommended that should the application be approved, that a condition be attached removing the relevant permitted development rights, in order to prevent these units from moving from A3/A5 to A1 without further consideration of the potential impacts of them doing so.
137. With the food and drink element of the scheme found to not have a significant adverse impact upon the town centre in itself, the main issue of principle relevance is considered to be the potential impact of the A1 retail floorspace which forms the majority of the proposed development. The consideration of these impacts is a technical exercise requiring appropriate inputs, assumptions and methodology in order to be robust. Therefore, an assessment of the methodology follows, before the conclusions of the retail impact assessment in terms of trade diversion, the destination of any diversion, and the possibility for linked trips are considered.

Impact Test Methodology

Assessment Period and Baseline Position

138. The applicant has undertaken the impact assessment at the test year of 2023. Planning Policy Guidance specifically states that the design year for impact testing should be the year in which the proposal would be expected to achieve a “mature” trading pattern, and that conventionally this should be taken to be the second full calendar year of trading after the opening of a new retail development. Officers consider that a development of this nature, if granted full planning permission in early 2019 could well commence trading by 2021, with 2023 being the second full year of trading. As a result, the test year is considered to be appropriate.
139. In terms of the baseline position, the applicant is reliant upon the Council’s Retail and Town Centre Study (RTCS) which was produced in January 2017, although not published until June 2018. Praxis, in their objection consider the use of this baseline data as inappropriate as it was already out-of-date at its point of publication, and since the closure of the Aldi Store on Bede Way has become further inaccurate.
140. Planning Practice Guidance advises that retail impact tests should be undertaken in a proportionate and locally appropriate way, drawing on existing information where possible. With regards to this, officers acknowledge that the RTCS represents the position as of two years ago, and that further iterations of population and housing projections/growth rates have been published since it was compiled. Additionally, it is considered likely that the RTCS underplays the turnover of the existing Asda store/overplays the performance of Aldi and Lidl as it assumes a consistent spend for all food shoppers regardless of whether they are shopping at Aldi, Lidl or Asda. With discount foodstores generally selling goods cheaper and with a more limited range, in actuality the level of spending of those shoppers visiting Asda will generally be higher, and as result, the turnover of the store will be higher than identified. Such weaknesses are common in town centre surveys, and whilst this should be taken into account when basing assumptions upon the RTCS, they do not in themselves render the RTCS unreliable or unusable.
141. As a result, the RTCS remains the most up-to-date available evidence with respect to the performance of existing retailers in the area, and having regards to the advice contained within PPG, its use for a baseline position is considered to remain appropriate.

Turnover of the Application Proposal

142. Within its updated retail assessment the applicant provided an assessment of the likely turnover of the application proposal in terms of both comparison and convenience goods. With regards to the methodology used, officers are generally satisfied with the approach taken, but it is considered that greater allowance for sales efficiency should be made for Unit A (Home Bargains), and that the reading of Lidl’s current performance is too low in terms of convenience goods, and that as a result (and allowing for improvements to sales efficiency) that the turnover of Unit C (Lidl) is likely to be higher than stated. This can be summarised thus:

Table 1a – Convenience Goods Turnover Assumptions

Unit	Net Assumed Convenience Goods Floorspace (sq.m)	Applicant assumed turnover 2023 (£m)	DCC assumed turnover 2023 (£m)
A – Home Bargains	1,129	5.03	5.09
B – No named operator	0	-	0
C – Lidl	1,060	8.22	10.50
Total	2,189	13.25	15.58

Table 1b – Comparison Goods Turnover Assumptions

Unit	Net Assumed Comparison Goods Floorspace (sq.m)	Applicant assumed turnover 2023 (£m)	DCC assumed turnover 2023 (£m)
A – Home Bargains	1,380	6.14	6.22
B – No named operator	464	1.97	1.97
C – Lidl	265	2.06	1.74
Total	2,109	10.17	9.93

143. As can be seen, the DCC assessment increases the convenience goods turnover of the proposal from £13.25m to £15.58m, and the comparison goods turnover decreases slightly from £10.17m to £9.93m. Overall, there is an increase in overall turnover from £23.42m to £25.51m. These differences in assumption have been communicated to the applicant during the application process, with updated work being undertaken to assess the potential impact of the development upon the town centre on the basis of the higher turnover figures, which is considered to represent a more accurate position.

Existing Commitments

144. In considering the impact of trade diversion, relevant existing commitments should be taken into account. In this instance two such commitments have been identified.

145. The Aldi store on Bede Way closed in December 2018 following the opening of a new, larger store on Yoden Way, Horden approximately 1 mile to the east. The applicant considers that this new store will secure an uplift in convenience goods turnover, but bases this assumption on a goods sales density below the standard level. Officers consider that this approach is acceptable in this instance as it is acknowledged that the RTCS likely overstates the turnover of the former Aldi store on Bede Way, and further that the closure of the Bede Way store will allow some of Aldi's turnover to be retained within the town centre in practice.
146. Planning permission was granted in 2013 for a mixed-use development including Morrisons food store at Dalton Park. This planning permission has been implemented but the food store remains unoccupied and it is understood that Morrisons have no intention of occupying the unit at the present time, and there is some doubt as to whether Morrisons would ever occupy the unit. Notwithstanding this, in considering trade diversion, and following discussions with the Council's own consultant the applicant has assumed that the store would be occupied by 2023, and would have a turnover of around £45.45m, with £4.5m being diverted from Asda at Peterlee, and with no diversion from other stores in Peterlee. Officers consider that the approach taken with regards to this unit is sound.
147. Officers consider that the impact arising with regards to these commitments in terms of comparison goods would be limited, and not material in terms of town centre impact.

Trade Diversion and Magnitude of Impact

148. Having regards to the above, the baseline position as established by the applicant is considered to be an appropriate basis on which to determine the impacts arising from the application proposal. Indeed, the baseline position is considered to be a 'worst-case scenario' in terms of town centre impact, as it assumes that the new Aldi Store on Yoden Way will have a greater convenience goods turnover than the former Bede Way store achieved, that the Morrisons at Dalton Park will come forward, that the former Aldi site on Bede Way remains vacant, and that the existing Lidl unit at Howletch Lane will be re-occupied by a grocery retailer following Lidl's relocation onto the proposed development.
149. During the application process, the applicant has liaised with the Council's own consultant with regards to agreeing a methodology for modelling trade diversion and assessing the magnitude of any impact. With regards to the original retail impact assessment and further addendum, there were some differences in terms of assumptions.

Convenience Goods

150. A comparison of the modelling of the applicant against that carried out on behalf of the local planning authority is illustrated below:

Table 2 – Comparison of calculated impact (convenience goods)

Peterlee Town Centre	Turnover at 2023 after commitment £m	Trade draw to Home Bargains £m (applicant)	Trade draw to Home Bargains £m (DCC)	Trade draw to Lidl £m (applicant)	Trade draw to Lidl £m (DCC)	Impact % (applicant)	Impact % (DCC)
Asda	37.07	0.15	0.5	1.05	1.5	2.9	5.4
Iceland	2.25	0.08	0.08	0.11	0.11	8.46	8.4

Farmfoods	0.98	0.04	0.04	0.11	0.11	15.48	15.3
Other Town Centre shops	6.16	1.45*	1.45	0.00	0.00	23.5	23.5

151. As can be seen, the overall impacts as modelled by the both the applicant and on behalf of the local planning authority can be seen to be largely similar, the exception being that officers consider that the impact upon Asda would be 5.4% as opposed to the 2.9% modelled by the applicant. However, it should be noted that even with a 5.4% impact on turnover, it is estimated that Asda would still be turning over around £35m in 2023, and furthermore having regards to the identified tendency of the RTCS to underestimate spending at Asda, (as referred to at paragraph 140 of this report), that this figure is likely to be a little lower than would be expected in reality. Regardless, it is considered that with a turnover of at least £35m in 2023, that the ongoing viability of the Asda would not be prejudiced by the proposed development.

152. It is also considered by officers that it is likely that the impact upon Iceland and Farmfoods is potentially overestimated as these store would likely benefit to a certain extent from the closure of the Aldi store on Bede Way.

Comparison Goods

153. A comparison of the modelling of the applicant against that carried out on behalf of the local planning authority is illustrated below:

Table 3 - Comparison of calculated impact (comparison goods)

Peterlee Town Centre	Turnover at 2023 after commitment £m	Trade draw to Home Bargains & Unit B £m (applicant)	Trade draw to Home Bargains & Unit B £m (DCC)	Trade draw to Lidl £m (applicant)	Trade to Lidl £m (DCC)	Impact % (applicant)	Impact % (DCC)
Asda	3.68	0.27	0.27	0.18	0.18	12.2	12.2
Other Town Centre shops	51.22	1.7†	2.1	0.26	0.26	3.8	4.6

154. Again, there is a difference between the applicant and the local planning authority, in that officers consider that the impact upon other town centre shops would be higher than modelled by the applicant.

Overall (solus) Impacts

155. On basis of the above calculations, it is possible to estimate the overall impact upon the town centre as a whole, as a result of the proposed development:

*includes a reduction in turnover of £0.9m as a result of Home Bargains relocating. Actual trade diversion to new Home Bargains is modelled as £0.55m

†includes a reduction in turnover of £1.1m as a result of Home Bargains relocating. Actual trade diversion to new Home Bargains is modelled as £0.6m

Table 4 – Total impacts upon Town Centre

	Applicant	DCC
Convenience Goods	5.8%	8.2%
Comparison Goods	4.4%	5.1%
Cumulative	5.3%	6.5%

156. Again, it can be seen that it could be considered that the applicant has underestimated the potential impact, however such differences are considered to be the result of variation in assumptions at various stages of the process, as has been outlined in the preceding discussion. It is considered that what is important is that the methodology employed by the applicant is considered to be largely sound, and that ultimately, the impact figures arrived at are not substantially different from those that the LPA's own consultant was able to arrive at.

The Acceptability of the Identified Impacts

157. In forming a judgement on the acceptability of the estimated impact, it is relevant to consider the current health of the town centre, the location of the application site (and its ability to support the town centre), and the cumulative position in respect of impact.

158. Peterlee town centre, and the immediate adjacent area is considered to accommodate a relatively good range of commercial and community facilities, with the majority of retail and service units being located within Castle Dene Shopping Centre. Site visits undertaken suggest that it benefits from a reasonable amount of activity, with the Asda superstore being a particular focus.

159. Notwithstanding this, the Council's Peterlee Town Centre Survey identified a vacancy rate equating to 17.1% of the total stock of units in September 2018. Whilst it is important to note that the Aldi site has also subsequently become vacant, the majority of these vacant units are very small and a number are at first floor level (which impacts less on most users' perceptions of the town centre). The Town Centre Survey identified that 9.1% of town centre floorspace was vacant at September 2018, which is considered to be a relatively encouraging result.

160. Whilst the position has subsequently worsened as a consequence of Aldi's departure, the former Aldi unit is located at the periphery of the centre and is considered to be poorly integrated with the remainder of the town centre offer. Officers consider that the loss of Aldi would be of greater concern if the unit was located such that it functioned more obviously as part of the core of the town centre.

161. It is considered that it would be of clear benefit to attract further investment into Peterlee town centre to improve its appearance and reduce the vacancy rate, however the centre remains a viable retail destination which is able to support a range of national multiple retailers, and officers consider that the position taken by Praxis in their objections may not accurately reflect the current reality.

162. In this context, the key impacts that would arise at the town centre as a result of the proposed development would be as follows:

- the existing Home Bargains unit on Yoden Way would be vacated;
- Asda would be the subject of the largest monetary trade diversion (but would remain viable);
- the potential impact arising from cumulative impacts as a result of other commitments would also be largely impact upon Asda (which would remain viable);

- other retailers within the town centre would be the subject of a proportionally lesser impact, but an impact nonetheless; and,
 - the total impact in monetary terms on the town centre as a whole would amount to a loss in turnover of around £6.6m.
163. In considering the above, it is noted that the second part of the NPPF paragraph 89 impact test not only relates to town centre vitality and viability, but also to local consumer choice and trade in the town centre and the wider retail catchment.
164. In this regard, whilst the departure of Home Bargains is a loss to the town centre, its existing offer would be replicated elsewhere, and the proposed development would generally improve customer choice in the vicinity of the centre. Shoppers would therefore not be greatly inconvenienced through the loss of Home Bargains from Yoden Way.
165. Importantly, the proposed development would provide improved choice at a location which is immediately adjacent to Peterlee town centre and which can support linked trips to the centre. Whilst the monetary benefits associated with such linked trips are difficult to accurately quantify, and the concerns of Praxis with regards to the methodology used by the applicants to quantify linked trips is noted, it is accepted that the car park which would serve the application proposal is also appropriately located to support town centre linked trips. This is a positive impact to be given consideration in assessing the application.
166. Officers consider that Asda will continue to trade viably subsequent to the implementation of the proposed development (even after account is taken of existing commitments). Trade diversion losses across the wider town centre would be at least partly mitigated through the redistribution of expenditure which was previously claimed by Aldi and through the ability of the application proposal to support linked trips. As such, it is considered that the wider town centre offer should not appreciably diminish further as a consequence of the proposal.
167. NPPF paragraph 90 states that 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 NPPF paragraph 89, it should be refused. The considerations contained with paragraph 89 amount to:
- a) the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and
 - b) the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment (as applicable to the scale and nature of the scheme).
168. The test in NPPF paragraph 90 states that a development should be refused if it has a “significant adverse impact”. A proposed development simply having any adverse impact at all upon the town centre would not, in itself, warrant the refusal of the application. Such adverse impacts would have to be of a significant level to justify the refusal on this basis, and “significantly adverse” is considered to be a relatively high test to meet.
169. Having regards to all of the above, it is concluded that although there would be an adverse impact upon the town centre in the terms of NPPF paragraphs 89 and 90, this adverse impact would not be significant, and as a result there are no grounds to resist the application on the basis of NPPF paragraph 90.

170. As the EDLP policies most important for determining the application are considered out of date, the assessment of the application would be required under Paragraph 11(d) of the NPPF to ascertain if the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits, or whether the application of policies in the NPPF that protect areas or assets of particular importance provide a clear reason for refusal.
171. In this context the adverse impact upon the town centre, such that it is, should be weighed in the overall planning balance exercise.

Layout and Design

172. EDLP Policy 1 sets out that development should achieve a high standard of landscaping which relates well to the natural and built environments, while Policy 35 requires development to reflect the scale and character of the surrounding area. Further to this EDLP Policy 104 states that retail developments should not have a serious adverse visual intrusion into the surrounding area. Although EDLP Policy 104 is considered to be out-of-date, it nevertheless largely reflects advice within NPPF with respect to design and layout, which also requires that development contributes to and enhance the natural and local environment under Part 11, while Part 7 states that good design is a key aspect of sustainable development and is indivisible from good planning. Significant weight can therefore be afforded to EDLP Policy 1 in this respect, and although out-of-date EDLP Policy 104 can still be afforded some weight insofar as it relates to matters of design.
173. At the present the application site is previously developed but has been cleared. As such it represents somewhat of a blank canvas. The proposed development has a character very much as would be expected in a retail development of this nature. Much of the site comprises car parking with the retail units themselves sitting on the periphery of the site, with the two drive-thru units sitting closest to Burnhope Way.
174. The units themselves are a relatively utilitarian appearance, but again are commensurate with the common design of retail units of the scale proposed.
175. Through the application process, the applicant has worked with officers to improve the design of the scheme which has resulted in the retention of more existing trees than originally proposed and an increase in the level of landscaping provided within the development. There have also been some minor design changes to some of the retail units themselves.
176. Overall, no objections have been received from Landscape Officers or the Design and Conservation Team, although the slight concern with regards to the longevity of some of the landscaping is noted, and a planning condition could be attached to any permission ensuring that any failing species are replaced.
177. Overall, the proposed development is considered to accord with EDLP Policies 1, 35 and 104 with regards to layout and design.

Residential Amenity

178. EDLP Policies 1 and 35 require the design and layout of development to have no serious adverse effect on the amenity of those living or working in the vicinity of the development site. This is replicated in EDLP Policy 104 which sets out that new retail development should have no serious effect on the amenity of people nearby in terms of privacy, noise, pollution and car parking. Policy 37 of the EDLP requires that design and layout of development are required to have regard to personal safety and the

security of property. These Policies are considered NPPF compliant with a core planning principle at Paragraph 127 of the NPPF stating that planning should always seek to secure a good standard of amenity for existing and future occupants of land and buildings. Part 8 of the NPPF amongst other guidance advises on the need to create safe and accessible environments where crime and disorder and the fear of such are considered. Part 15 of the NPPF seeks to avoid noise from giving rise to significant new impacts. Objections have been raised in relation to the potential impact of the development on the residential amenity of nearby properties, specifically due to deliveries to the retail units.

179. It is noted that the operation of the existing Lidl store located immediately to the west of the application site has historically led to complaints relating to noise from local residents, particularly from those residing on Spire Hollin. It is understood that these complaints have been directed to both the County Council's Environmental Health and Consumer Protection Team (and its predecessor at Easington District Council) as well as Lidl themselves. With there being no restrictions on the operation of the existing store in planning terms, it is understood that there has been voluntary amendments to the operation of the store to reduce excessive noise instances. However, it is stated by residents that incidents do still occur, particularly at times of particularly early/late deliveries.
180. The proposed development would introduce additional retail units into the area, and it is likely that residents on Spire Hollin to the south west, and Clifton Square to the north east who potentially be most affected. The new stores would be located further to the south east than the existing Lidl store, so would be likely to have a lesser impact upon those properties on Spire Hollin that currently suffer the most from the existing Lidl store, but would introduce potentially noise generating uses closer to properties at the southern end of Spire Hollin, who may not be affected at present. The closest residential properties are located within approximately 50m of the site on Spire Hollin, and 70m away on Clifton Square.
181. In order to address this issue, the application is accompanied by a noise report, and an additional addendum. The report models the levels of noise likely to be associated with the development in the form of plant and machinery, as well as deliveries. The original report found that typically the development would lead to an increase in daytime noise of 3dB over existing background noise at Clifton Square, and 5dB at Spire Hollin. At night, these levels would increase to 11dB over background noise at Clifton Square, and 10dB at Spire Hollin. The submitted report initially suggests that the impact would be significantly adverse due to the level of increase. However, it goes on to conclude that as the absolute noise level would remain within the recommended noise range, it would be unlikely to result in sleep disturbance, and that the impact would be less than modelled when context is taken into account. However, it would nevertheless be appropriate to introduce mitigation measures such as the management of service operations, or the switching off of reversing beepers at night.
182. The report also concludes there would not be likely to be a significant impact from the operation of the car park.
183. With regards to this, Environmental Health and Consumer Protection officers have considered the submitted information, including the addendum report which further examines the impact of reversing beepers. It is advised that reversing beepers being used at night is the element of most concern, and that this should be addressed by restricting delivery hours, eliminating the use of such beepers or provided acoustic fencing.

184. In response to this the applicant has indicated that Lidl, (who would be the likely occupier of Unit C which as a foodstore the most likely to be receiving the most deliveries), would accept a planning condition restricting the hours of delivery. On this basis, it is considered that the concerns of Environmental Health and Consumer Protection officers would be addressed, and that the development would be unlikely to cause a statutory nuisance if such a condition were imposed.
185. This particular issue has resulted in public objection to the development, and whilst it is acknowledged that the development would have an adverse impact upon the residential amenity of those residents closest to the development, with the proposed mitigation measures, this loss of amenity would not be of such a level that it would be unacceptable, and that a good level of amenity would be retained.
186. During the construction phase of the development, it is acknowledged that levels of noise may be noticeable by existing residents, and some level of disturbance is almost inevitable with a development of this duration and scale. However, the submitted Construction Management Plan is considered to set out measures that would mitigate any impacts to an acceptable level.
187. Whilst it is considered that the development would be in accordance with EDLP Policies 1, 35, 37 and 104, as well as Part 14 of the NPPF in this regard, it is also considered that the minor adverse impact of the proposed development upon residential amenity in terms of noise should be weighed in the overall planning balance.
188. With regard to air quality, the application is accompanied by an air quality risk assessment which finds that the impact of the development upon air quality during the construction phase and once occupied, would be negligible, with risk of air quality pollutants remaining low. Measures to suppress nuisance dust during the construction phase of the development can be included within a Construction Management Strategy. The application is therefore considered to be in accordance with EDLP Policy 35 and Part 14 of the NPPF in this regard.
189. An initial site investigation report has concluded that contaminants are present on the site and it is proposed that a condition to agree the necessary remediation strategy is imposed with any recommendation for approval. Subject to the imposition of the condition, the proposed development would therefore be considered to be in accordance with Part 11 of the NPPF.

Highway Safety and Access

190. Key documentation submitted within the application in respects to highways issues includes an ES Transport Chapter and associated technical appendices in the form of a Transport Assessment (TA) and Travel Plan (TP). Collectively the submitted documentation considers the potential impacts of the development and the adequacy of the site for the development with respect to a range of highways and transport related issues.
191. These issues include the potential effects on local roads and the users of these roads, including public transport users, pedestrians and cyclists and potential effects on land uses, relevant occupiers and users. Within such evaluation, consideration and assessment is given to matters such as, existing and future predicted traffic flows and trip distribution, assessment of accident data, accessibility of the site, and potential impacts of traffic associated with the construction phases of the development.

192. The content of the TA has been subject to objection by Asda Stores Ltd, who have questioned the methodology, as well as a number of findings.
193. EDLP Policies 35, 36 and 37 all require that development proposals to achieve a satisfactory means of access onto the wider highway network and encourage access to sustainable modes of transport and sufficient parking on site. These Policies are considered compliant with the NPPF which also seeks to promote accessibility by a range of methods, while ensuring that a safe and suitable access can be achieved and therefore can be given full weight in considering the application.
194. Key national advice in respects to transport and highways related matters is included within Part 9 of the NPPF. Key relevant extracts include paragraph 103 which advises that significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes.
195. Paragraph 108 advises that development should ensure that; appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location; safe and suitable access to the site can be achieved for all users; and any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.
196. NPPF Paragraph 109 then advises that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
197. There is no specific policy within the EDLP that relates to the impacts of development upon the highway network. Policies 35 36 and 37 address access in design terms, whilst Policies 74, 75 and 77 relate to the provision of pedestrian, cycle and public transport infrastructure. These policies are considered to be generally consistent with the NPPF and thereby can be attributed its full weight.
198. The TA establishes the likely impact of the development upon the highway network, and finds that there would be sufficient capacity on the local highway network to accommodate traffic generated by the proposed development, taking into account impacts at those local junctions most likely to be affected by the development.
199. Further information has been submitted following the initial comments of the Highways Authority, and with regards to the modelling work within the TA, although a minor concern remains with regards to the carriageway widths used for modelling Burnhope Way, the output data of the TA is considered to be generally reliable, and that there would not be a severe impact upon the operation of the identified junctions as a result of the development.
200. The concerns raised on behalf of Asda with regards to the methodology are noted, and the applicant has sought to respond to them by means of additional clarification. Whilst it is accepted that there is always the possibility for a degree of variance in the approach of different highways consultants, the submitted TA, the additional TA Addendum, and clarifications in response to both the comments of Asda and the Highways Authority are considered, as a whole, to be a reliable assessment of the potential impact of the proposed development upon the highway network, to which the Highway Authority raise no objection.
201. In terms of the physical vehicular access arrangements, the Highways Authority originally requested that a signalised or roundabout means of access be considered

by the applicant, as opposed to the proposed protected right turn. In response to this the applicant has provided additional evidence to justify the proposed access arrangement which has been considered by the Highway Authority, who now accept the proposed protected right turn arrangement as being most appropriate.

202. The internal design and parking provision, following the amendment of the proposed development now largely meets the standards expected by the Highway Authority. The only outstanding concern relates to the provision of a pedestrian footway on the north-western side of the main vehicular access to aid pedestrians accessing the site from the west, negating the need for them to cross the vehicular access. This point, which was also raised by Durham Constabulary has been raised with the applicant who has been unable to accommodate this request, on the basis that the topography of the site would render such a footway impractical to some users. It is considered that this unresolved issue, whilst not rendering the scheme as whole contrary to EDLP Policies 1, 35, 36 and 37, should nevertheless be factored into any planning balance as an adverse impact.
203. Durham Constabulary, in their consultation response, raise a number of additional highways and access related issues. These concerns have been considered, and with the exception of the issue in relation to the additional footway (addressed above), are considered to differ from the findings of the Highway Authority, who have indicated that they are satisfied with the proposed layout and operation of the development. The comments of Durham Constabulary in this regard do not raise specific issues of crime, but do suggest that the layout may cause confusion and obstructions that could lead to traffic queuing on to Essington Way. No evidence has been provided by Durham Constabulary to substantiate these concerns, and with the advice of the Highway Authority being that they consider the development to accord with the Council's Parking and Accessibility Standards and would operate acceptably, it is considered that only limited weight should be afforded to the concerns of Durham Constabulary in relation to this issue.
204. The Council acknowledges that in exercising its functions it has a legal duty under the Equality Act 2010 to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations. This duty applies to all people defined as having protected characteristics under that legislation. The particular consideration of the accessibility of the site is considered most relevant to the protected characteristics related to age, disability, and pregnancy/maternity. More generally local and national planning advice also seeks to ensure that developments are accessible with the EDLP advising that the access needs of users should be taken into account under both Policies 1 and 36, which are both considered consistent with the NPPF.
205. In terms of pedestrian access, the proposal includes a number of measures to improve access to the site and encourage linked trips to the town centre. This includes proposals to upgrade the existing pedestrian subways under Essington Way and Burnhope Way. Such work would include replacing missing and damaged coping stones, applying anti-slip surfaces to approach ramps and steps to achieve DDA compliance, repairs to steps, replacement of render, repair of brickwork, repainting including use of anti-graffiti paint, repainting of handrails, replacement of fencing and improving drainage.
206. At the request of the Highway Authority, the applicant has also indicated that they will provide an additional surface pedestrian crossing on Essington Way to improve access for pedestrian access for residents in the area of Yoden Road.

207. Other than the aforementioned issue with regards to an omitted footway at the entrance to the site, the proposed development is considered to perform acceptably with regards to pedestrian movements within the site.
208. The concerns of the local resident with regards to a pedestrian linkage being provided directly into the adjacent existing Lidl site are noted. Whilst such a link would negate a need for pedestrian movement along Essington Way and would provide a more convenient route, the provision of such a route would require the agreement of the adjacent landowner, and the applicant has also advised that the such a route is not proposed as it would potentially fail to comply with DDA requirements due to topography. Notwithstanding any issue of DDA compliance, the fact that the route would require the agreement of a third party landowner means that it is considered that it would be unreasonable to insist on such a link being provided as part of this proposal.
209. Overall it is considered that the proposed mitigation measures in the form of the new pedestrian crossing and improvement of the existing subways to achieve full DDA compliance, would reduce the impact on disabled and other users. It is considered by officers that the implications of the development are not such that those potentially affected groups with protected characteristics are likely to be disadvantaged by the development to the extent that would warrant the withholding of planning permission.
210. With regards to sustainable modes of travel, the proposed layout contains provision for 16 cycle parking spaces split between locations close to Lidl and the proposed drive-thru units. This is considered to be an acceptable level of provision. The application is accompanied by a Framework Travel Plan. The Council's Sustainable Travel Team raise no objections to the application subject to a condition being attached that secures the submission of a Final Travel Plan.
211. In summary, the impacts from the proposed development would not lead to a severe residual cumulative impact in the context of Paragraph 32 of the NPPF. The proposals would also comply with EDLP Policies 1, 35, 36 and 37 in regard to reducing private transport use through improved access to links and safe access to the highway network.

Ecology

212. Part 15 of the NPPF seeks to ensure that developments protect and mitigate harm to biodiversity interests. EDLP Policy 16 seeks to protect Sites of Nature Conservation Importance, Local Nature Reserves and Ancient Woodland, EDLP Policy 17 states that development that adversely affects wildlife corridors will only be approved where there is adequate mitigation, and EDLP Policy 18 states that development that would significantly adversely affect any protected species will only be approved where the reasons for the development outweigh the value of the species or habitat. EDLP policies 16 and 17 are considered to be up-to-date, consistent with NPPF and can be afforded full weight, whereas Policy 18 is less stringent than NPPF and should be afforded lesser weight as a result.
213. In this respect an ecology survey has been submitted with the application. The submitted report identifies that the site lies within 400m of Castle Eden Dene National Nature Reserve (NNR)/Special Area of Conservation (SAC)/Site of Special Scientific Interest (SSSI), 1.1km of Yoden Village Quarry SSSI, 1.8km of Horden Grasslands Local Nature Reserve (LNR), 1.9km of Limekiln Gill LNR, 2.1km of Hawthorn Dene SSSI, 2.5km of Durham Coast SSSI, 2.7km of Northumbria Coast RAMSAR Site, 3.5km of Hulam Fen SSSI, 3.7km of Blackhall Grasslands LNR and 3.9km of Tuthill SSSI.

214. Furthermore, it identifies that Great Crested Newts have been recorded at a pond within 520m of the site, that Badgers are present in the local area with a sett identified approximately 1km away. It further notes that there have been sightings of Red Squirrel in the area, the most recent being in 2005 approximately 360m from the site.
215. Both common pipistrelle and noctule bats have been identified locally, the closest record being in 2014 approx. 600m from the site. With regards to birds several species have been recorded within 1km of the site including a species afforded protection under the Natural Environment and Rural Communities Act (NERC), several species present on the International Union for Conservation of Nature Red and Amber lists, and species identified within the Local Biodiversity Action Plan. Of these species, the closest record to the site related to a swift approximately 100m from the site in 2001.
216. The report also acknowledges that both Roe Deer and West European Hedgehogs are common in the local area, and that insects identified for protection under the Wildlife and Countryside Act and NERC have been identified on designated sites in the local area.
217. With regards to the site itself, the submitted information concludes that the site does not provide suitable habitat for roosting bats, little opportunity for commuting bats, but does have some habitat suitable for foraging bats. Overall the site is considered to low suitability for bats.
218. Turning to Badgers the submitted report identifies that site itself would not be suitable for setts, and that no setts were found within 30m of the site. The woodland to the south of the site is considered to not represent suitable sett-making habitat. Whilst there is a possibility that badgers may occasionally forage across the site, the likelihood of the site being used for sett making is negligible.
219. Trees within the site would have the potential to accommodate nesting birds, although no bird nests were found. The only bird species identified on the site at the time of survey were seagulls and chiffchaffs.
220. The risk of Great Crested Newt, reptiles, Otter, Water Vole and Red Squirrel occurring on, or within 30m of the site is considered to be negligible due to the unsuitability of the habitat. The submitted report does, however, identify that hedgehog may seek shelter within shrubs at the site margins.
221. With regards to the impact of the development upon designated ecological sites, no designated ecological sites are likely to be affected by the development as these lie a significant distance from site (at a minimum 400m), and there is no ecological or hydrological connectivity between these and the site. In addition, the development site is relatively small and fragmented, and so any temporary disturbance caused by works would be relatively isolated and confined to a small geographical area. In addition, the site already lies within an urban and built up conurbation, with high levels of foot and vehicular traffic disturbance.
222. Habitats on site are not similar to the habitats found within these local wildlife sites, and hence do not support the same levels of fauna associated with these areas. In addition, most protected species sightings within the local area are associated with the designated sites within the search area, and are less likely to be found on site.
223. The site itself does not contain any NERC or Local Biodiversity Action Plan identified habitats, with the site largely comprising locally common disturbed ground and early colonising species. However, the proposed development would lead to the loss of

hardstanding, bare ground, spoil heaps and modified neutral grassland, as well some shrub and tree removal. Overall these habitats are considered to be of relatively low value.

224. With regards to species that are afforded legal protection under the Conservation of Habitats and Species Regulations 2010, the Wildlife and Countryside Act 1981 (as amended) or any other legislation, it is considered by the applicant that although the site itself is of low value to bats as a habitat, they are present in the local area and construction work could disturb commuting and foraging. Furthermore the removal of trees and shrubs could harm nesting birds and hedgehog if undertaken at the wrong time of year or in an inappropriate manner.
225. The NPPF states that planning should contribute to and enhance the natural and local environment by minimising impacts on biodiversity and providing net gains for biodiversity where possible. In order to address this matter, the applicant proposes an offsite contribution of £6,000 to enhance biodiversity on an existing areas of Council owned open space. Given the application site constraints it is considered the most viable solution to address the policy criteria and enable the development be acceptable in planning terms and this contribution would need to be secured by a section 106 agreement. The submitted ecology report also proposes mitigation with respect to protected species during construction. A condition to this effect is recommended.
226. A number of European Protected Sites are within a 15km radius of the application site. These sites are the Castle Eden Dene Special Area of Conservation (SAC), Durham Coast SAC, Northumbria Coast Special Protection Area (SPA), European Marine Site and Ramsar Site and Teesmouth and Cleveland Coast SPA and Ramsar site. These sites vary in distance from the site from between 500m to 9Km. EDLP Policy 14 seeks to protect the SAC and prevent development that would be harmful to it.
227. Durham County Council is the competent authority for establishing whether an appropriate assessment is required under The Habitat Regulations. With regards to this duty, the Council has produced "Habitat Regulations Assessment: Developer Guidance and Requirements in County Durham". This document sets out the requirements of the HRA regime, the nature of the habitats concerned, an indication of areas within which HRA is a consideration, and information with regards to the screening of developments.
228. As the application lies with 6km of several sites which are subject protection under the Habitat Regulations, it is considered that it is necessary to consider whether the development requires Appropriate Assessment. With regards to this, within the Council's Guidance Note it is identified that the greatest risk to the protected sites is from proposed residential and visitor accommodation, due to the increased pressure upon the coast that arises from increased visitors and residents. Consequently, in effect, the document screens out other types of development at a high level as by their nature they are unlike to generate significant pressures through visitor numbers.
229. Therefore, the judgement of Durham County Council as competent authority is that the effects of the development would not be significant upon the potentially affected sites and as a result an appropriate assessment under The Habitats Regulations is not required. Furthermore, there are no works proposed that would require a licence from Natural England.
230. Overall, as a result of the mitigation secured the development is considered to not have an adverse impact on ecological interests and the development is considered compliant with EDLP Policies 1, 14, 16, 17, 18 and Part 15 of the NPPF in this respect.

Flooding and Drainage

231. EDLP Policy 1 sets out national advice within the NPPF and PPG with regard to flood risk advising that a sequential approach to the location of development should be taken with the objective of steering new development to flood zone 1 (areas with the lowest probability of river or sea flooding). When determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere and only consider development appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment.
232. The application is accompanied by a Flood Risk Assessment (FRA) and this has been amended during the course of the application. The application site is located within flood zone 1 and is therefore located on land least likely to suffer from tidal or fluvial flooding. It is also identified that the site is at low risk of flooding from fluvial, tidal, groundwater, overland flow, land drainage and sewer sources. As a result, no flood defence measures are proposed as part of the scheme within the FRA.
233. With regards to the proposed method of drainage, the development proposes discharge into an adjacent sewer at a discharge rate of 11.3 litres per second, which would be achieved through the implementation of an attenuation tank of 900 cubic metres. Foul water disposal would be to existing sewers.
234. The Council's Drainage and Coastal Protection officers offer no objection to the proposed methods of surface water attenuation set out in the FRA following the receipt of additional information through the application process.
235. With regards to the disposal of foul waters, no connection to the foul sewer network has been confirmed with Northumbrian Water, and so a condition is requested that full details of the foul water network be included with any recommendation for approval. Northumbrian Water raise no objections to the methodology with regards to the disposal of surface water subject to a condition with any recommendation for approval to that works are undertaken in accordance with the FRA.
236. Overall therefore, the development is therefore considered to comply with Policy 1 of the EDLP and Part 14 of the NPPF in this respect.

Other Issues

Fallback Position

237. The site benefits from a historic planning permission (5/2009/0547) for a Tesco superstore, which was granted on 7 October 2011. This permission provided for a store with a gross floorspace of 10,246 sq.m and a net sales area of 5,600 sq.m (comprising 3,400 sq.m of convenience goods floorspace and 2,200 sq.m of comparison goods floorspace). It is the view of Officers' that the Tesco scheme has been implemented such that it remains extant in perpetuity. As a consequence, the applicant's case is that material weight can be afforded to the 'fall-back position' in determining the current proposal. This is contested by Praxis in their objection, who consider that there is no reasonable prospect of this permission being implemented in its approved form, and that as a result, it should not be afforded significant weight.
238. The materiality of a fallback position has been considered on numerous occasions by the courts. In particular, the findings of Hickinbottom J in *R (Zurich Assurance Ltd t/a Threadneedle Property Investments Ltd) v North Lincolnshire Council* [2012] EWHC 3798 (*Admin*) where he found that:

'The prospect of the fall back position does not have to be probable or even have a high chance of occurring; it has to be only more than a theoretical prospect. Where the possibility of the fall back position happening is "very slight indeed", or merely "an outside chance" that is sufficient to make the position a material consideration (see Samuel Smith Old Brewery (Tadcaster) v Secretary of State for Communities and Local Government [2009] EWCA Civ 333 at [20]-[21] per Sullivan LJ). Weight is, then, a matter for the planning committee.'

239. In this case, Tesco is disposing of the site and does not appear to have any wish to trade from such a large superstore in Peterlee at the present time. This is unsurprising, as few food superstores of the scale proposed are currently being pursued by the 'big four' grocers. As such, it is considered to be highly unlikely that the fallback scheme would be implemented in practice as it would require an unforeseen shift in food retail shopping habits (with the current trend of consumers increasingly moving towards discount operators being reversed) in order for there to be any prospect of the previous scheme being built out.
240. However, whilst it is currently somewhat improbable, the chance of the existing permission being built out is more than just 'theoretical', and some weight should be afforded to the fallback position in the overall planning balance. However, given the limited possibility of the existing permission being fully implemented, it is appropriate to comprehensively review the merits of the current proposal, even though it proposes a lesser quantum of retail floorspace, as has been carried out above.

Job Creation

241. Within the submission, the applicant has claimed that the proposed development could generate up to 120 FTE jobs, however within their objection Praxis estimate that this figure could range from 61 FTE jobs generated to up to 160FTE jobs being lost.
242. Clearly, there is a substantial difference between the parties with regards to this. Whilst officers are unable to provide definitive figures, it is noted that the large scale losses predicted by Praxis are predicated on the closure of the existing B&M Bargains and Wilko Stores within the town centre. The Council's retail consultant has indicated that the impact of proposed development on the town centre would not be significantly adverse, therefore it is considered that a scenario where both B&M and Wilko pull out of the town altogether is probably unlikely. It is however, acknowledged that both the proposed Lidl and Home Bargains stores would likely draw staff from their existing operations, so would not represent truly "new" opportunities. However, the new stores would be larger than as existing, and it is reasonable to assume that some new job opportunities would arise as a result, in addition to any relocated existing staff.
243. Officers have accepted that the proposed drive-thru restaurants would be unlikely to have a significant adverse impact upon existing food and drink offer, and current operations would be expected to continue trading. As new entrants to the Peterlee area it is considered reasonable to expect that these units would represent wholly additional job opportunities.
244. As modelling the impacts of a proposed retail development is not an exact science, it is difficult to fully predict the exact overall impact that the development would have upon the local jobs market. It is acknowledged that the proposed development would have an adverse impact upon the town centre, albeit the impact would not be significant. Therefore potential job losses within existing businesses in the town centre cannot be ruled out. On balance, it is considered that overall impact upon employment opportunities would be positive, albeit perhaps not to the level claimed by the applicant, that this would be a benefit of the application that should be weighed in the planning

balance. It is also noted that the creation of new jobs is an element of the proposed development that has attracted support from a number of local residents in their representations.

Heritage and Archaeology

245. The application site is considered to be well separated from heritage assets, the closest designated asset being located around 1.2km from the site, and with no inter-visibility between it and the application site. With regards to archaeology, the County Archaeologist has commented that previous development means that the likelihood of the site containing previously unidentified remains is low. Consequently it is considered that there would be no impact upon the historic environment, and the proposal would be in accordance Part 16 of the NPPF in this regards.

CONCLUSION

246. Section 38(6) of the Town and Country Planning Act states that planning applications should be determined in accordance with the Development Plan unless material considerations indicate otherwise.
247. In this instance, it is considered that the proposed development would be contrary to EDLP Policy 104, in that it would represent a major new retail development outside of a defined town centre where there is no identified need.
248. The NPPF forms a material consideration and states at paragraph 11 that plans and decisions should apply a presumption in favour of sustainable development, and that for decision making this means:
- approving development proposals that accord with an up-to-date development plan without delay; or
 - where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
249. In this instance, it is considered that the most important policies within the EDLP, namely Policies P15, 101 and 104 are out-of-date, and that as a result, the NPPF indicates that the development should be approved unless there are specific policies within the NPPF that provide a clear reason for refusal, or where any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits of doing so.
250. With regards to specific policies within the NPPF, paragraph 90 indicates that where an application fails to satisfy the sequential test or would have a significant adverse impact upon existing, committed or planned investment upon a town centre with the catchment area, or would have a significant adverse impact on town centre vitality and viability. However, NPPF paragraph 90 is not identified within the NPPF as one of

those policies identified within the closed list of footnote 6 to which this proviso applies, regardless of whether the proposal passes or fails the relevant paragraph 90 tests.

251. It therefore falls for the application to be considered in the context of whether the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits of doing so.
252. The identified benefits of the proposed development are considered to be the physical regeneration benefits of the redevelopment of a brownfield site, an increase in choice in retail offer within the Peterlee catchment area, the provision of additional unrestricted free car parking in close proximity to the town centre, improvements to the fabric of existing pedestrian subways, the provision of an additional surface pedestrian crossing on Essington Way, potential job creation, and a net gain in terms of biodiversity.
253. The adverse impacts of the proposed development are identified as including a less than significant adverse impact upon the viability and vitality of Peterlee town centre, a minor impact upon levels of residential amenity available to the closest residents due to an increase in noise, and a minor adverse impact in terms of site access due to the omission of a footway on the western side of the main access.
254. The proposal has attracted significant objection from Praxis who own and operate Castle Dene Shopping Centre, as well as from Asda, Wilko and Simtrava Ltd (Costa Coffee) all raising concerns over the impact that the proposed development would have upon Peterlee town centre. The application has also attracted both support and objection from local residents, and other concerns expressed regarding the proposal have been taken into account, and carefully balanced against the scheme's wider social, economic and community benefits in reaching the recommendation.
255. Having regards to the identified adverse impacts and benefits, although finely balanced, it is considered that neither individually nor collectively would the adverse impacts significantly and demonstrably outweigh the benefits. Therefore, with the presumption in favour of sustainable development being engaged, the NPPF advises that planning permission should be granted, and this is considered to be a material consideration that would outweigh the conflict with the development plan.
256. Paragraph 204 of the NPPF and Paragraph 122 of The Community Infrastructure Levy Regulations 2010 set out three planning tests which must be met in order for weight to be given to a planning obligation. These being that matters specified are necessary to make the development acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind to the development. In this respect the contribution towards offsite ecology is considered necessary for the development to be considered acceptable and therefore meet the relevant tests.

RECOMMENDATION

That the application is **APPROVED** subject to the completion of a Section 106 Legal Agreement to secure the following:

- £6,000 towards biodiversity improvement projects

and subject to the following conditions:

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 2) The development hereby approved shall be carried out in strict accordance with the approved plans listed in Part 3 - Approved Plans.

Reason: To define the consent and ensure that a satisfactory form of development is obtained in accordance with Policies 1, 35, 36, 37, 101 and 104 of the Easington District Local Plan and the NPPF.

- 3) (a) The development hereby permitted shall only be carried out in accordance with the gas protection works outlined in the report: "Ground Gas Verification Plan for Quora (Peterlee) Ltd, Essington Way, Peterlee" by GeoDyne Geotechnical and Environmental Consultants.

(b) During the implementation of the development if any contamination is identified that has not been identified pre-commencement, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment shall be carried out in accordance with part b of the condition and where necessary a Phase 3 Remediation Strategy shall be prepared in accordance with part c of the condition. The development shall be completed in accordance with any amended specification of works.

(c) Upon completion of the remedial works, a Phase 4 Verification Report (Validation Report) confirming the objectives, methods, results and effectiveness of all remediation works detailed in the Phase 3 Remediation Strategy shall be submitted to and agreed in writing with the Local Planning Authority within 2 months of completion of the development. If integrity testing of the membrane(s) was required a verification pro forma should be included.

Reason: The site may be contaminated as a result of past or current uses and/or is within 250m of a site which has been landfilled and the Local Planning Authority wishes to ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems in accordance with NPPF Part 11.

- 4) No construction work shall take place, other works to the main vehicular access shall take place until all trees and hedges, indicated on the approved tree protection plan as to be retained, are protected by the erection of fencing, placed as indicated on the plan and comprising a vertical and horizontal framework of scaffolding, well braced to resist impacts, and supporting temporary welded mesh fencing panels or similar approved in accordance with BS.5837:2010. These measures shall remain in place for the duration of construction works.

No operations whatsoever, no alterations of ground levels, and no storage of any materials are to take place inside the fences, and no work is to be done such as to affect any tree.

No removal of limbs of trees or other tree work shall be carried out.

No underground services trenches or service runs shall be laid out in root protection areas, as defined on the Tree Constraints Plan.

Reason: In the interests of the visual amenity of the area and to comply with Policies 1 and 104 of the Easington District Local Plan.

- 5) Prior to the beneficial occupation of any part of the development hereby approved the surface water management scheme for the proposed development shall be completed in accordance with the following document:-

Drainage Strategy - Ref : PETE-BSP-ZZ-ZZ-DR-S-SK240 rev P3

Reason: To ensure effective drainage measures and sustainable principles are adhered to, and to safeguard the proposed development from flood risk, whilst not increasing flood risk elsewhere in accordance with Part 14 of the NPPF.

- 6) Prior to the first occupation of any retail unit hereby approved, a detailed scheme for the disposal of foul water from the development hereby approved has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall take place in accordance with the approved details.

Reason: In the interests of the adequate disposal of foul and surface water in accordance with Parts 10 and 11 of the NPPF.

- 7) No deliveries to Units A, B and C shall take place outside of the hours of 0700 - 2300.

Reason: In the interests of residential amenity in accordance with Policy 104 of the Easington District Local Plan and Part 15 of the NPPF.

- 8) The development hereby approved shall only be carried out in accordance with the recommendations contained within Chapter 5 of the Urban Green "Ecology Assessment - Burnhope Way, Peterlee, July 2018".

Reason: In the interests of biodiversity protection and enhancement in accordance with Part 15 of the NPPF.

- 9) No beneficial occupation of any unit of the site shall take place until a scheme for the provision of a pedestrian crossing on Essington Way, including timescales for implementation, has been submitted to, and approved by, the Local Planning Authority. Thereafter, the pedestrian crossing will be installed in accordance with the agreed timescales.

Reasons: In the interest of highway safety in accordance with Policies 35, 36 and 37 of the Easington District Local Plan and Part 9 of the NPPF.

- 10) Within a period of six months of the first occupation of any part of the development of the relevant phase, a final Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented thereafter in accordance with the approved timescales and adhered to thereafter.

Reason: To reduce reliance on the private motor car and to promote sustainable transport methods in accordance with Policies 1 and 36 of the Easington District Local Plan and Parts 4 and 10 of the National Planning Policy Framework.

- 11) No part of the development hereby approved shall be occupied until the subway improvement works set out at Paragraph 2.16 of the document "Exigo Project Solutions, Transport Assessment Rev D, Proposed Retail Development, Essington Way, Peterlee, September 2018" have been completed and the subways are available for public use.

Reason: In order to improve pedestrian access to the site in accordance with Policies 35, 36 and 37 of the Easington District Plan and Part 9 of the NPPF.

- 12) Before any unit hereby approved is brought into operation the approved on-site cycle parking facilities and car parking spaces shall be made available for use.

Reason: In order to ensure the provision of safe access for users of the highways in accordance with Policy 36 of the District of Easington Local Plan and Part 9 on the NPPF.

- 13) Prior to any unit hereby approved being brought into operation development two electric car charging points shall be provided within the customer car, details of which will have been submitted to and agreed in writing by the Local Planning Authority prior to their installation. The charging points shall be retained for use in perpetuity thereafter.

Reason: In order to encourage sustainable means of travel in accordance with the aims of Part 9 of the NPPF.

- 14) None of the approved retail floor space within Unit B hereby approved should be occupied by any retailer who at the date of such occupation, or within a period of 12 months immediately prior to occupation, occupies retail floor space in the town centre of Peterlee, as defined within Easington District Plan Policy P15; unless a scheme which commits the retailer to retaining their presence as a retailer within that town centre, for a minimum period of 5 years following the date of their occupation of retail floor space within the development, or until such time as they cease to occupy retail floor space within the development, whichever is sooner, has been submitted to and approved in writing by the local planning authority.

Reason: In the interests of maintaining the viability and vitality of Peterlee Town Centre in accordance with Policies 101 and 104 of the Easington District Local Plan and Part 7 of the NPPF.

- 15) The relevant net floor retail areas of the units hereby approved shall not exceed the following levels:

Convenience Retail Area:

Unit A – 1,129m²

Unit B – 0m²

Unit C – 1,060m²

Comparison Goods Retail Area:

Unit A – 1,380m²

Unit B – 371m²

Unit C – 265m²

Total Net Retail Area:

Unit A – 2,509m²

Unit B – 371m²

Unit C – 1,325m²

Reason: In the interests of maintaining the viability and vitality of Peterlee Town Centre in accordance with Policies 101 and 104 of the Easington District Local Plan and Part 7 of the NPPF.

16) All work during the construction period shall be carried out in accordance with the “Jessops Construction Ltd – Construction & Environmental Management Plan”.

Reason: To protect the residential amenity of existing and future residents from the development to comply with Policies 1 and 35 of the Easington Local Plan and Part 8 of the National Planning Policy Framework.

17) All landscape works and mitigation shall be carried out in strict accordance with the submitted ‘Urban Green - Arboricultural Impact Assessment, Quora (Peterlee) Limited, Burnhope Way, Peterlee, July 2018’.

All planting, seeding or turfing and habitat creation in the approved details of the landscaping scheme shall be carried out in the first available planting season following the practical completion of each phase of the development.

No tree shall be felled or hedge removed until the removal/felling is shown to comply with legislation protecting nesting birds and roosting bats.

Any approved replacement tree or hedge planting shall be carried out within 12 months of felling and removals of existing trees and hedges. Any trees or plants which die, fail to flourish or are removed within a period of 5 years from the substantial completion of the development shall be replaced in the next planting season with others of similar size and species. Replacements will be subject to the same conditions

Reason: In the interests of the visual amenity of the area and to comply with Policy 1 and 35 of the Easington Local Plan and Parts 8 and 15 of the National Planning Policy Framework.

18) Notwithstanding the details submitted with the application, the proposed customer parking shall not be restricted.

Reason: To encourage customers to visit other shops and services within the town centre in the interests of maintaining the viability and vitality of Peterlee Town Centre in accordance with Policies 101 and 104 of the Easington District Local Plan and Part 7 of the NPPF.

19) Notwithstanding the provisions of the Town and Country Planning (Uses Classes) Order 1987, (or any Order revoking or re-enacting that Order with or without modifications), Units D and E hereby approved shall be used only for uses falling within Use Classes A3 and A5 only, and for no other purpose.

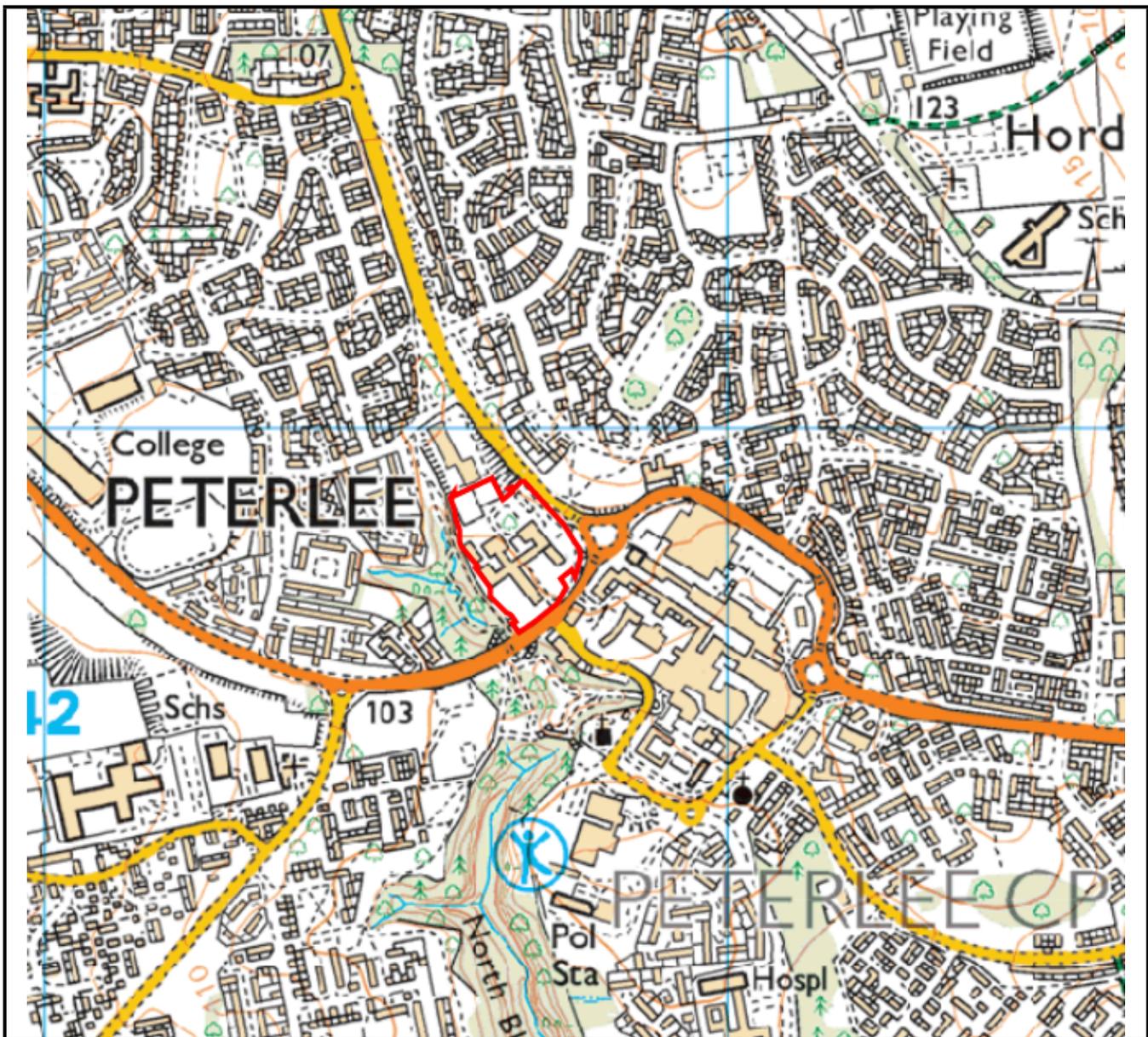
Reason: In the interests of maintaining the viability and vitality of Peterlee Town Centre in accordance with Policies 101 and 104 of the Easington District Local Plan and Part 7 of the NPPF.

STATEMENT OF PROACTIVE ENGAGEMENT

The Local Planning Authority in arriving at its decision to support this application has, without prejudice to a fair and objective assessment of the proposals, issues raised, and representations received, sought to work with the applicant in a positive and proactive manner with the objective of delivering high quality sustainable development to improve the economic, social and environmental conditions of the area in accordance with the NPPF. (Statement in accordance with Article 35(2) (CC) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.)

BACKGROUND PAPERS

- Submitted application form, plans, supporting documents and subsequent information provided by the applicant
- The National Planning Policy Framework (2018)
- County Durham Town Centre Retail Study (2018)
- Conservation of Habitats and Species Regulations 2010 (as amended)
- National Planning Practice Guidance
- Easington District Local Plan
- Nexus Planning – Appraisal of Retail and Town Centre Issues at Former East Durham and Houghall Community College, Burnhope Way, Peterlee
- Habitat Regulations Assessment: Developer Guidance and Requirements in County Durham



Planning Services

DM/18/03002/FPA

Redevelopment of former college site to provide a mixed use scheme with three retail units (use class A1) and a restaurant with drive-through (use class A3/A5) and coffee house with drive-through (use class A3) and associated infrastructure

Former East Durham and Houghall Community College, Burnhope Way, Peterlee

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Comments

Date February 2019

Scale Not to scale

