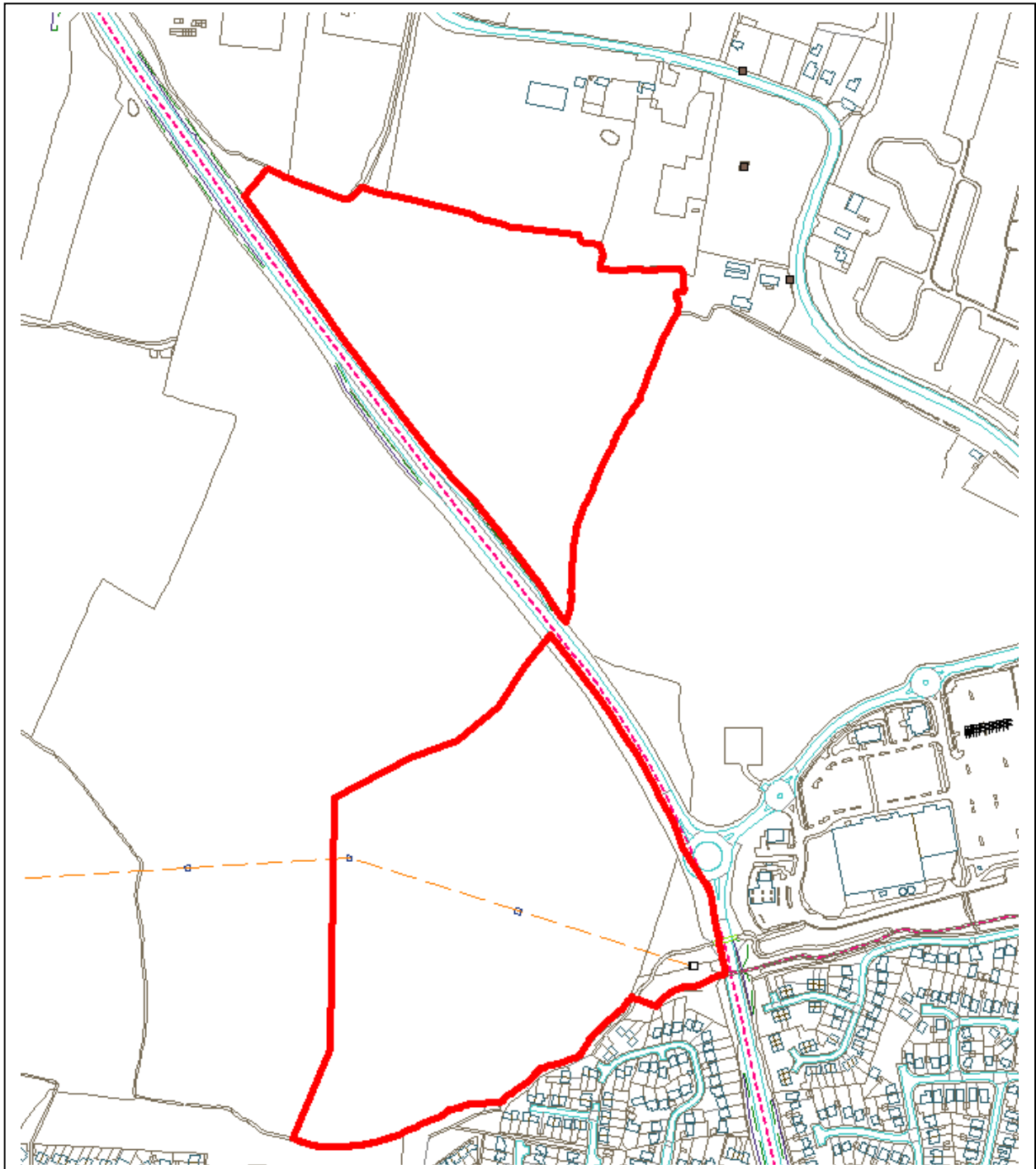


PLANNING COMMITTEE

24 JUNE 2014

REPORT OF THE HEAD OF PLANNING

A.7 PLANNING APPLICATION - 14/00107/FUL - CLACTON GATEWAY LAND SOUTH WEST OF ROUNDABOUT AT BROOK RETAIL PARK AND NORTH OF BROOK COUNTRY PARK, CLACTON ON SEA, CO16 8YN



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Application:	14/00107/FUL	Town / Parish: Clacton Non Parished
Applicant:	Mr Kevin Britton	
Address:	Clacton Gateway Land South West of Roundabout at Brook Retail Park and North of Brook Country Park Clacton On Sea CO16 8YN	
Development:	Full planning permission for a cinema complex (including restaurants), superstore, petrol filling station, extension to Picker's Ditch walkway and associated parkland together with an extension to the existing Brook Country Park.	

1. Executive Summary

- 1.1 The application was submitted on 24 January 2014 and was due for determination on 25 April 2014. The Council wrote to the applicant's agent on 14 April 2014 requesting an agreed extension of time for determination to allow outstanding issues to be addressed before a fully informed decision could be taken (the two main outstanding issues related to highway considerations and to retail impact considerations). The applicant made an appeal to the Planning Inspectorate on 12 May 2014 against non-determination.
- 1.2 The Council can no longer determine the application. The decision will be taken by the Planning Inspectorate. The appellant has requested that the proposal is considered at a Public Inquiry (the date for which has not been agreed yet). The purpose of this report is to inform members of the appeal against non-determination regarding the above planning application; set out the policy background and other material considerations and to establish what determination the Planning Committee would have made in respect of the application, in order to allow the Council's case to be made at appeal.
- 1.3 The application is accompanied by an extensive amount of documents; drawings and supporting material. Having had regard to all the issues it is considered that had the application been determined by the Council then Officers would have recommended to Members of the Planning Committee that the application should be refused. It is acknowledged that some of the policies in the adopted local plan are out of date and that limited weight can be afforded to some of the policies of the emerging local plan. In these circumstances the NPPF advises that there is an expectation for Councils to approve planning applications, without delay, **unless** the adverse impacts would significantly and demonstrably outweigh the benefits. There is insufficient information presented within the current application to demonstrate that the retail and leisure impacts on Clacton town centre would not have significant adverse effects on the viability and vitality of Clacton town centre. In addition, insufficient information has been provided to demonstrate compliance with the sequential approach to site selection.
- 1.4 Members should also note that the applicant has submitted a second duplicate application which will run in parallel with the appeal.

Recommendation:

(A) That the Planning Committee endorses the view that the application would have been REFUSED for the following reason and instructs Officers to defend the Council's case at appeal on this basis:

The proposal is contrary to the National Planning Policy Framework (NPPF); National Planning Policy Guidance - Ensuring the Vitality of Town Centres and Tendring District Adopted Local Plan (2007) policies ER31; ER32 and Tendring District Local Plan Proposed Submission Draft (November 2012), as amended by the Tendring District Local Plan Pre-Submission Focused Changes (January 2014) policies SD5 and PRO6. The proposal fails to satisfy the criteria of sustainable development as set out in the NPPF and it fails to satisfy the sequential test and the impact test for town centre uses. The application and its supporting material has failed to demonstrate that the proposed development would not result in a significant adverse impact on the vitality and viability of Clacton town centre and this significant adverse impact would not be outweighed by the benefits.

2. Planning Policy

National Planning Policy Framework (NPPF)

- 2.1 The NPPF was published in March 2012. It sets out the Government's planning policies and how these are expected to be applied.
- 2.2 Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF doesn't change this statutory status of the development plan as the starting point for decision taking. Where proposed development accords with an up to date Local Plan it should be approved and where it does not it should be refused – unless other material considerations indicate otherwise.
- 2.3 The NPPF has a strong presumption in favour of sustainable development and seeks to build a strong competitive economy. Sustainable development is defined as having three elements: economic; social; and environmental. All elements have to be considered together and not in isolation. The NPPF requires Local Planning Authorities to **positively** seek opportunities to meet the development needs of their area whilst allowing sufficient flexibility to adapt to change. **Where relevant policies in Local Plans are either absent or out of date, there is an expectation for Councils to approve planning applications, without delay, unless the adverse impacts would significantly and demonstrably outweigh the benefits.**
- 2.4 Equally as important, however, the NPPF also seeks to ensure the vitality of town centres. To this end Section 2 of the NPPF is particularly relevant to the proposal. The NPPF requires applicants to demonstrate that development proposals will not have a significant adverse impact on existing, committed and planned public/private investment in the town centre or centres of the catchment area of the proposal and that the sequential test has been fully addressed.
- 2.5 Paragraphs 24 to 27 of the NPPF are particularly relevant to the proposal and are reproduced in full as follows:

“24. Local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. They should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. 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.”

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

26. *When assessing applications for retail, leisure and office development outside of town centres, which are not in accordance with an up-to-date Local Plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floor space threshold (if there is no locally set threshold, the default threshold is 2,500 sq m). This should include assessment of:*

- *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*
- *the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made. For major schemes where the full impact will not be realised in five years, the impact should also be assessed up to ten years from the time the application is made.*

27. *Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the above factors, it should be refused.”*

- 2.6 Section 4 deals with sustainable transport and requires all developments that will generate significant amounts of movement to be supported by a Transport Assessment. Opportunities for sustainable transport modes must be taken up; safe and suitable access for all people must be achieved; and improvements to the highway network that address the impacts of the development must be undertaken. A key tool to facilitate sustainable transport modes will be in the form of a Travel Plan. Development should only be prevented or refused on transport grounds where the residual cumulative impacts are severe.
- 2.7 Section 7 relates to good design. Whilst the NPPF says that planning decisions should not impose architectural styles or particular tastes that would serve to stifle originality, it is proper to seek to promote local distinctiveness. Design also needs to address the connections between people and places and the integration of new development into the natural, built and historic environment.
- 2.8 Section 8 relates to the promotion of healthy communities – it talks about safe and accessible environments containing clear and legible pedestrian routes and high quality public space. It recognises that access to high quality open spaces and opportunities for sports and recreation make an important contribution to the health and well-being of communities.
- 2.9 Section 10 considers the challenge of climate change. New developments should take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption. Developments should take account of flood risk and where appropriate be accompanied by Flood Risk Assessments.
- 2.10 Section 11 deals with conserving and enhancing the natural environment. New development should take account of air, water, and noise pollution. The best and most versatile agricultural land should be protected. Opportunities to incorporate biodiversity in and around developments should be encouraged.
- 2.11 Section 12 relates to the conservation and enhancement of the historic environment (including archaeology).

National Planning Policy Guidance (March 2014)

Ensuring the Vitality of Town Centres

- 2.12 This guidance supports the NPPF. The NPPF sets out two key tests that should be applied when planning for town centre uses which are not in existing centres and do not accord with an up to date local plan. These are the sequential test and the impact test. The guidance makes it clear that it is for the applicant to demonstrate compliance with the sequential test. Failure to undertake a sequential assessment could in itself constitute a reason for refusing planning permission.
- 2.13 The guidance states that the following considerations should be taken into account in determining whether a proposal complies with the sequential test:
- *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 edge of centre or out of centre location, preference should also 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.*

In line with paragraph 27 of the NPPF where a proposal fails to meet the sequential test, it should be refused.”

- 2.14 The guidance states that the following considerations should be taken into account in determining whether a proposal complies with the impact test:

Tendring District Local Plan (Adopted November 2007) – as ‘saved’ through a Direction from the Secretary of State.

QL1: Spatial Strategy

Directs most new development toward the larger urban areas of Clacton and Harwich and seeks to concentrate development within settlement development boundaries.

QL2: Promoting Transport Choice

Requires developments to be located and designed to avoid reliance on the use of the private car.

QL3: Minimising and Managing Flood Risk

Requires a Flood Risk Assessment for developments in Flood Zone 1 on sites of 1 hectare or more.

QL6: Urban Regeneration Areas

Identifies Clacton Town Centre and Seafront as an Urban Regeneration Area and resists developments that would have an adverse impact on the revitalisation of such areas.

QL8: Mixed Uses

Applies a sequential test to mixed-use developments directing them toward town centres and regeneration areas.

QL9: Design of New Development

Provides general criteria against which the design of new development will be judged.

QL10: Designing New Development to Meet Functional Needs

Requires development to meet functional requirements relating to access, community safety and infrastructure provision.

QL11: Environmental Impacts

Requires new development to be compatible with its surroundings land uses and to minimise adverse environmental impacts.

QL12: Planning Obligations

States that the Council will use planning obligations to secure transport infrastructure, amongst other things.

ER16: Tourism and Leisure Uses

Requires tourism and leisure uses to be accessible to all potential visitors and users, be close to the main road network, minimise and mitigate environmental impacts and avoid the permanent loss of high quality agricultural land.

ER31: Town Centre Hierarchy and Uses

Requires all options for 'town centre uses' to be located within defined town, district or local centres to be thoroughly assessed before out of centre sites are considered.

ER32: Town Centre Uses Outside Existing Town Centres

Requires proposals for town centre uses outside of defined centres to be of an appropriate scale, not materially harm the vitality and viability of existing defined centres, be accessible by a range of transport modes and not prejudice the provision of employment land, housing, recreation or tourism facilities.

COM1: Access for All

Requires publically accessible buildings and spaces to be accessible to people of all abilities.

COM2: Community Safety

Requires developments to contribute toward a safe and secure environment and minimise the opportunities for crime and anti-social behaviour.

COM4: New Community Facilities (including Built Sports and Recreation Facilities)

Requires new built recreation facilities outside of settlement development boundaries to be justified by a proven local need and evidence that no suitable sites within the settlement boundary are available.

COM13: Country Parks

Sets out criteria for the provision of new country parks.

COM21: Light Pollution

Requires external lighting for new development to avoid unacceptable impacts on the landscape, wildlife or highway and pedestrian safety.

COM23: General Pollution

States that permission will be refused for developments that have a significant adverse effects through the release of pollutants.

COM29: Utilities

Seeks to ensure that new development on large sites is or can be supported by the necessary infrastructure.

COM31a: Sewerage and Sewage Disposal

Seeks to ensure that new development is able to deal with waste water and effluent.

EN1: Landscape Character

Requires new developments to conserve key features of the landscape that contribute toward local distinctiveness.

EN2: Local Green Gaps

Seeks to keep key countryside gaps between settlements free from development, including the area of land where the appeal site is situated.

EN4: Protection of the Best and Most Versatile Agricultural Land

Seeks to avoid the loss of the best and most versatile agricultural land (grades 1, 2 and 3a) where development on agricultural land is unavoidable.

EN6: Biodiversity

Requires existing biodiversity and geodiversity to be protected and enhanced with compensation measures put in place where development will cause harm.

EN6b: Habitat Creation

Encourages the creation of new wildlife habitats in new developments, subject to suitable management arrangements and public access.

EN12: Design and Access Statements

Requires Design and Access Statements with most planning applications.

EN13: Sustainable Drainage Systems

Requires developments to incorporate sustainable drainage systems to manage surface water run-off.

TR1a: Development Affecting Highways

Requires developments affecting highways to aim to reduce and prevent hazards and inconvenience to traffic.

TR1: Transport Assessment

Requires transport assessments for all major developments.

TR2: Travel Plans

Requires travel plans for developments likely to have significant transport implications including major developments.

TR3a: Provision for Walking

Seeks to maximise opportunities to link development with existing footpaths and rights of way and provide convenient, safe attractive and direct routes for walking.

TR5: Provision for Cycling

Requires all major developments to provide appropriate facilities for cyclists.

TR6: Provision for Public Transport Use

Requires developments to make provision for bus and/or rail where transport assessment identifies a need.

TR7: Vehicle Parking at New Development

Refers to the adopted Essex County Council parking standards which will be applied to all non-residential development.

CL7: New Town Centre Retail and Mixed-Use Development

Allocates four sites for mixed-use development in Clacton Town Centre.

CL10: Extension to the Waterglade Centre

Allocates land to the north of the Waterglade Retail Park in Clacton for mixed-use development including retail and leisure uses – a site that still remains available for development.

Tendring District Local Plan Proposed Submission Draft (November 2012), as amended by the Tendring District Local Plan Pre-Submission Focussed Changes (January 2014).

SD1: Presumption in Favour of Sustainable Development

Follows the Planning Inspectorate's standard wording to ensure compliance with the NPPF.

SD2: Urban Settlements

Identifies Clacton as an 'Urban Settlement' where the majority of the district's economic growth will be achieved through the identification of new employment sites, investment in town centres, tourist attractions and key infrastructure and regeneration of deprived neighbourhoods.

SD5: Managing Growth

Seeks to direct development toward sites within settlement development boundaries but allows developments outside development boundaries where they are necessary, have a genuine prospect of delivery, cannot be located within settlement boundaries, would not conflict with the definition of sustainable development and would not cause adverse impacts that would outweigh the benefits.

SD7: Securing Facilities and Infrastructure

Requires developments to address their individual or cumulative infrastructure impacts and states that the Council will use planning obligations and/or CIL (when it is in place), where necessary, to ensure this happens.

SD8: Transport and Accessibility

Requires the transport implications of development to be considered and appropriately addressed.

SD9: Design of New Development

Sets out the criteria against which the design of new development will be judged.

SD10: Sustainable Construction

Requires non-residential development to maximise measures to reduce energy consumption and reduce carbon emissions and other forms of pollution both during construction and during use.

PRO2: Improving the Telecommunications Network

Requires new development to be served by a super fast broadband (fibre optic) connection installed on an open access basis and that can be directly accessed from the nearest British Telecom exchange and threaded through resistant tubing to enable easy access for future repair, replacement or upgrading.

PRO3: Improving Education and Skills

Requires applicants to enter into an Employment and Skills Carter or Local Labour Agreement to ensure local contractors are employed to implement the development and that any temporary or permanent employment vacancies (including apprenticeships) are advertised through agreed channels.

PRO5: Town, District, Village and Neighbourhood Centres

Identifies defined centres that will be the focus for town centre uses including retail and leisure.

PRO6: Retail, Leisure and Office Development

Sets out the criteria against which proposals for retail, leisure and office developments outside of defined centres will be judged – incorporating the requirements of the NPPF sequential test and need for ‘impact statements’ for developments with an internal floor area of 2,500 square metres or more.

PLA1: Development and Flood Risk

Requires a Flood Risk Assessment for developments in Flood Zone 1 on sites of 1 hectare or more.

PLA3: Water Conservation, Drainage and Sewerage

Requires developments to incorporate sustainable drainage systems to manage surface water run-off and ensure that new development is able to deal with waste water and effluent.

PLA4: Nature Conservation and Geo-Diversity

Requires existing biodiversity and geodiversity to be protected and enhanced with compensation measures put in place where development will cause harm.

PLA5: The Countryside Landscape

Requires new developments to conserve key features of the landscape that contribute toward local distinctiveness.

COS4: Expansion of Waterglade Retail Park

Allocates land to the north of the Waterglade Retail Park in Clacton for mixed-use development including retail and leisure uses – a site that still remains available for development.

Other Relevant Documents

Economic Development Strategy 2013

- 2.15 The overarching objectives of the Economic Development Strategy are to:
- Target growth locations, especially Harwich, Clacton and the West of Tendring;
 - Target growth sectors, especially Offshore Energy and Care and Assisted Living;
 - Ensure residents have the skills and information to participate;
 - Support modernisation, diversification and growth within the business base; and
 - Facilitate population growth where this supports economic objectives.
- 2.16 For Clacton specifically, the vision in the Economic Strategy emphasises the need to grow the population to support service sector industries and the town centre economy, maximise the potential leisure and tourism offer, particularly along the seafront, and support growth in educational facilities, potentially linked to the Care and Assisted Living sector.

Retail Study 2010

- 2.17 This document advises that there isn't any significant qualitative need for additional food store provision in Clacton. The study also states that the level of capacity for additional convenience goods provision is predominantly arising as a result of the strong performance of the out of centre stores at Brook Park and Centenary Way. These stores draw trade from a reasonably wide catchment area which adds to the unsustainable shopping patterns in the District. The study advises that the Council should resist any further extension to out of town retail floor space and that additional capacity should be met within existing District or Neighbourhood centres.

Clacton Town Centre Vision 2009

- 2.18 This study identifies the expansion of the Waterglade Retail Park utilising the former gas works site to deliver improved retail and leisure facilities as a key development opportunity that could support regeneration in Clacton Town Centre.

Employment Land Review 2013

- 2.19 The Employment Land Review assessed the potential of a number of sites for business and industrial use, including the application site. It concluded that whilst the site would be well located for such uses, there would most likely be sufficient supply of employment land in established industrial areas like Gorse Lane to meet the anticipated need for business and industrial premises in Clacton over the next 15 years.

Essex County Council parking Standards – Design and Good Practice September 2009

3. Relevant Planning History

- 3.1 There is no planning history on the application site itself. However, there are applications relating to nearby sites and out of centre sites that are relevant to the consideration of this scheme.

Brook Retail Park:

99/00523/OUT and Planning Inspectorate Reference: APP/P1560/A/00/1055165; Outline planning permission for a comprehensive mixed used development comprising retail, warehousing, two A3 units, car parking, access roads, junctions, footpaths and cycleway, a country park, the formation of part of Picker's Ditch walkway, a park and ride car park and bus waiting area, and a tourist information facility. Allowed on Appeal 9 October 2001.

03/01312/FUL Full planning permission for the erection of a class A1 foodstore with associated car parking, landscaping and servicing. Approved on 18 June 2004.

Clacton Factory Outlet Shopping Centre:

10/00200/FUL Full planning permission for the erection of a cinema (Class D2) and A3 and/or A4 and /or A5 units and associated works. Approved on 8 September 2011.

14/00184/DISCON Discharge of conditions 06 (landscaping scheme), 08 (materials), 11 (scheme of covered cycle parking), 12 (scheme of motorcycle parking), 13 (refuse and recycling area details), 14 (solar panel details) and 15 (scheme of rainwater harvesting and re use). Approved on 4th April 2014.

4. Consultations

Principal Tree & Landscape Officer The Tree Survey and Report submitted in support of the application has been carried out in accordance with BS5837: Trees in relation to design, demolition and construction and adequately demonstrates that the development proposal can be implemented without causing harm to existing trees.

The report identifies the removal of three sections of countryside hedgerow: two are required to allow access from the existing country park to the proposed extension. This work will not have a significant detrimental impact on the character or appearance of the area and the new planting associated with the enlarged country park will bring real benefits to the community and to wildlife.

The removal of the third section of countryside hedgerow, adjacent to the A133 and as described in the Tree Report and in The Landscape and Visual Impact Assessment (LVIA), to allow increased views of the cinema complex is not considered desirable.

It is accepted that a case has been put forward, in the LVIA, to justify the removal of the hedge however the principle of removing landscape features to increase views of a building or group of buildings is contrary to the objective of screening and softening the appearance of the built form. This is particularly relevant where buildings are situated at the edge of a settlement.

The hedgerow it is not very old and provides no special wildlife benefit over and above that provided by any such hedgerow. It is however typical of the character of Tendring and much of Essex where field side hedgerows abut the highway. For this reason and for its screening value, as described above, the hedgerow should be retained.

In other respects the information relating to the soft landscaping of the application provided by the applicant adequately demonstrates that the development proposal can be satisfactorily assimilated into the landscape and that the layout of the proposed extension to the Country Park will result in an improved recreational facility for the district.

Response following amended plans – received 10 April 2014:

No further comments on amended plans.

Leisure Services These comments relate only to the land north of Brook Country Park and should not be seen as a comment on any other element of the application.

The proposal to provide land to the north of the existing country park within this application would increase the size of Brook Country Park. It would provide an opportunity to enhance the existing parks natural habitat and increase the opportunities for nature conservation and wildlife management as well as provide increased opportunities for residents and visitors alike.

The provision of a commuted sum for the layout of the site together with its future maintenance is both welcomed and essential to its development.

(The commuted sum is calculated to be £500 000)

Environmental
Health

Pollution and Environmental Control ask that the following are conditioned:

Lighting

Any car park or external lighting shall not trespass beyond the property boundary and into neighbouring residential property. The applicant shall demonstrate compliance with the Institute of Lighting Engineers code of practise

No development shall take place until a scheme for the control of light pollution has been submitted to and approved in writing by the local planning authority. The scheme shall be devised by a competent person and fully comply with the Code of Practice for the Reduction of Light Pollution issued by the Institution of Lighting Engineers, the DETR document 'Lighting in the Countryside: Towards Good Practice' and all current official guidance. Such light pollution control measures as shall have been approved shall be installed prior to the use hereby permitted coming into beneficial use and thereafter be retained and maintained to the agreed specification and working order

Air Quality

A detailed assessment is required to be undertaken by a competent person of the impact the proposed development will have on local air quality. Such layout and building design/appearance details as shall be submitted to the local planning authority shall have regard to the air quality assessment and any mitigation measures it suggests as appropriate. Such measures as shall have been agreed shall be implemented prior to the use hereby permitted commencing and thereafter these shall be retained to the agreed specification.

Advisory Note: This assessment should take full account of the Local Air Quality Management Process including, where relevant, the presence of any Air Quality Management Areas.

Informative: A competent person shall have demonstrable experience in complex air quality modelling, using current DEFRA approved software applications, with specific emphasis on urban and traffic-related situations

Building Control
and Access
Officer

No comments at this stage. An Approved Inspector is undertaking the BC function.

Asset
Management
Team

The proposals indicate landscaping work and pedestrian and cycle links on land owned by the Council. No decision has yet been made regarding the availability of these sections of land. (Comments made in respect of duplicate application).

Anglian Water
Services Ltd

Assets Affected

There are assets owned by Anglian Water or those subject to an adoption agreement within or close to the development boundary that may affect the layout of the site. Anglian Water would ask that the following test be included within your Notice should permission be granted.

“Anglian Water has assets close to or crossing this site or there are assets

subject to an adoption agreement. Therefore the site layout should take this into account and accommodate those assets within either prospectively adoptable highways or public open space. If this is not practicable then the sewers will need to be diverted at the developers cost under Section 185 of the Water Industry Act 1991 or, in the case of apparatus under an adoption agreement, liaise with the owners of the apparatus. It should be noted that the diversion works should normally be completed before development can commence.”

Wastewater Treatment

The foul drainage from the development is in the catchment of Clacton STW that at present has available capacity for these flows.

Foul Sewerage Network

The sewerage system at present has available capacity for these flows. If the developer wishes to connect to our sewerage network they should serve notice under Section 106 of the Water Industry Act 1991. We will then advise them of the most suitable point of connection.

Surface Water Disposal

The surface water strategy/flood risk assessment submitted with the planning application is not relevant to Anglian Water and therefore this is outside our jurisdiction for comment and the Planning Authority will need to seek the views of the Environment Agency.

We will request that the agreed strategy is reflected in the planning approval.

Trade Effluent

The planning application includes employment/commercial use. To discharge trade effluent from trade premises to a public sewer vested in Anglian Water requires our consent. It is an offence under section 118 of the Water Industry Act 1991 to discharge trade effluent to sewer without consent. Anglian Water would ask that the following text be included within your Notice should permission be granted.

“An application to discharge trade effluent must be made to Anglian Water and must have been obtained before any discharge of trade effluent can be made to the public sewer.

Anglian Water recommends that petrol/oil interceptors be fitted in all car parking/washing/repair facilities. Failure to enforce the effective use of such facilities could result in pollution of the local watercourse and may constitute an offence.

Anglian Water also recommends the installation of properly maintained fat traps on all catering establishments. Failure to do so may result in this and other properties suffering block drains, sewage flooding and consequential environmental and amenity impact and may also constitute an offence under section 111 of the Water Industry Act 1991.”

Essex
Bridleways
Association

The Bridleway could be routed as a figure of eight pattern around and through the existing and extension of Brook Country Park connecting to Pickers Ditch route; this could become part of the Tendring Way.

The status of the walkway could be changed to a bridleway running along

Pickers Ditch and along the extension; this would then connect the two Parks and would provide better value in relation to the increased users able to use the route. It would also support TDC policy in creating new green infrastructure. A S106 agreement for the development could fund the bridleway.

Further comments received – 24 February 2014:

General Comments:

Aim is to create new bridleways to remove horses, walkers and other vulnerable users from dangerous roads.

National Planning Policy Framework (NPPF), Essex Public Rights of Way Improvement Plan (PROWIP) and Rights of Way Circular 1/09 are the documents that should be considered.

NPPF – supports the protection and enhancement of the public rights of way network, and places obligation of planning authority to be proactive in enhancing and improving public rights of way, seeking opportunities and meeting local rights of way needs. Horses are a form of sustainable transport and their needs should be assessed in Transport Plans. Bridleways need to be constructed whenever possible in connection with new development.

PROWIP – evidences specific needs and priorities of people of Essex in relation rights of way. One of main problems is cost. The PROWIP identified that one method of obtaining suitable funds was via planning route, in particular funding under terms of S106 agreement. TDC should actively seek S106 funding from the development to promote the improvement of the public rights of way network, especially bridleways.

Circular – Gives advice to local authorities on recording, managing and maintaining, protecting and changing public rights of way. Horses are sustainable transport, but are largely ignored in transport plans.

Specific Comments on Application:

Travel Plan - The application makes no reference to the creation of any bridleways/multi user tracks – only to footpaths and cycleways. It should be a term of any consent that:

1. Bridleways are created within the development and leading from the development.
2. Any rights of way adjoining the development are upgraded to bridleways with a view to developing a bridleway network in the district and, in particular, the Pickers Ditch footpath is upgraded to a bridleway to assist in the creation of a bridleway network to ultimately link to the new bridleway to be created along the route of footpath.

We would also query if a vulnerable user assessment should be undertaken to assess the needs of walkers, cyclists and horse riders.

We would also ask that consideration is given as to how a safe crossing

can be provided over the A133.

Development Proposal – Agree with comments that the Council is working towards a new local plan and only limited weight can be given to relevant policies due to the stage of preparation, the extent of unresolved objections and degree of consistency with the Framework, and that the application should be assessed against the Framework.

Delivering New Recreational Opportunities – The application makes no specific reference to the creation of any bridleways/multi user tracks – only footpaths and cycleways. We are that:

1. Bridleways are created within the development and leading from the development as opposed to footpaths and cycleways.
2. Bridleways are created in any open green space.
3. Any rights of way adjoining the development are upgraded to bridleways with a view to developing a bridleway network in the district and, in particular, the Pickers Ditch footpath is upgraded to a bridleway to assist in the creation of a bridleway network to ultimately link to the new bridleway to be created between Holland Gap and Holland Haven along the route of the Pickers Ditch.

Improving Accessibility – Repeat above comments in relation to Sustainable Transport. There needs to be specific reference to the creation of bridleways and any new bridge should be a bridleway bridge.

We therefore submit that this planning application needs to be considered in the light of the above and appropriate changes made to accommodate the needs of horse riders, cyclists and other vulnerable road users.

Essex County
Council
Archaeology

Application identified as having archaeological implications.

Recommendation: A programme of Trial Trenching followed by Open Area Excavation.

1. No development or preliminary ground-works can commence until a programme of archaeological trial trenching and test pitting has been secured and undertaken in accordance with a Written Scheme of Investigation, which has been submitted by the applicant, and approved by the planning authority. Following the completion of this initial phase of archaeological work, a summary report will be prepared and a mitigation strategy detailing the approach to further archaeological excavation and/or preservation in situ through re-design of the development, shall be submitted to the local planning authority.
2. No development or preliminary ground work can commence on those areas of the development site containing archaeological deposits, until the satisfactory completion of archaeological fieldwork, as detailed in the mitigation strategy, which has been signed off by the local planning authority.
3. Following completion of the archaeological fieldwork, the applicant will submit to the local planning authority a post excavation assessment (within six months of the completion date, unless

otherwise agreed in advance with the local planning authority), which will result in the completion of post-excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.

Reason for Recommendation:

The Tendring Historic Environmental Characterisation project and applicants Heritage Assessment shows that the proposed development lies within a wider area with high potential for below ground archaeological deposits. No previous archaeological work has been undertaken within the proposed development site, but archaeological investigations on adjacent areas have highlighted the potential for multi-period remains to be present. In addition, the Tendring Geodiversity report identifies the probability that Holland Gravels are present within the development; these have potential for artefacts/faunal remains of Palaeolithic age.

Further Recommendations:

A professional team of archaeologists should undertake the archaeological work. The archaeological work will comprise initial trial trenching evaluation of 4% of the total area (with 1% contingency). In addition a series of test pits should be excavated in order to create a deposit model that identifies the depth of the Holland Gravels across the development area. The evaluation will be undertaken and completed and then followed by open area excavation under a new archaeological programme where archaeological deposits are identified that will be affected by the proposed development. A brief outlining the level of archaeological investigation will be issued from this office on request. Tendring District Council should inform the applicant of the recommendation and its financial implications.

ECC Schools Service

Data available to Essex County Council's Early Years and Childcare Team show that there is a shortage of early years and childcare places in the Clacton town area. In view of this I request on behalf of Essex County Council that any permission for this development is granted subject to a section 106 agreement to mitigate its impact on early years and childcare provision. The formula for calculating early years and childcare contributions in relation to commercial development is outlined in our Developers' Guide to Infrastructure Contributions, 2010 Edition. For information purposes only, should the final development result in 500 full time employees the contribution would be £237,300 index linked to April 2013 costs using the PUBSEC index.

If your council were minded to turn down the application, I would be grateful if the lack of early years and childcare provision in the area can be noted as an additional reason for refusal and that we are automatically consulted on any appeal or further application relating to the site.

ECC Highways Dept

The Highway Authority would not wish to raise an objection to the above application subject to the following requirements:

1. Prior to commencement of the development details of a wheel cleaning facility within the site and adjacent to the egress onto the highway shall be submitted to and approved in writing by the Local Planning Authority. The wheel cleaning facility shall be provided prior to commencement and during construction of the development

Reason: To protect highway efficiency of movement and safety in

accordance with policy DM1 of the Highway Authority's Development Management Policies as adopted as County Council Supplementary Guidance in February 2011

2. No commencement of the development shall take place until details of the following have been submitted to and approved in writing by the Local Planning Authority:

- a) Signalisation of a minimum of two arms of St. John's Roundabout, controlled crossing facilities where considered necessary by the Local Planning Authority. Traffic signals shall be part time, triggered by queue loops, remotely controlled and supported by CCTV all via Essex County Council's Traffic Control Centre
- b) An improved existing and/or a new bus service or services into the proposal site
- c) On site bus stop locations and specification, to include but shall not be limited to real time passenger information
- d) New and/or improved off-site bus stops
- e) On site bus turn round and/or layover facilities (temporary and/or permanent)

Reason: To protect highway efficiency of movement and safety and to ensure the proposal site is accessible by more sustainable modes of transport such as public transport, cycling and walking, in accordance with policy DM1 and DM9 of the Highway Authority's Development Management Policies as adopted as County Council Supplementary Guidance in February 2011

3. No occupation of the development shall take place until the following have been provided or completed:

- a) A fourth arm off the A133/Britton Way Roundabout to provide access to the proposal site
- b) The details agreed with the Local Planning Authority for requirement number 2 above
- c) The upgrading of the pelican crossing in St. John's Road (in the vicinity of the link to Pathfields Road) to a toucan crossing and upgrading of the pedestrian link located immediately west of the pelican crossing to enable its use by cyclists between St. John's Road and Crome Close
- d) A travel plan to include but shall not be limited to a £3,000 contribution to cover the Highway Authority's cost of approving, reviewing and monitoring the Travel Plan
- e) A minimum 2no. electric car charging points/parking spaces and infrastructure to enable additional points/spaces to be provided at some stage in the future

Reason: To protect highway efficiency of movement and safety and to ensure the proposal site is accessible by more sustainable modes of transport such as public transport, cycling and walking, in accordance with policy DM1, DM9 and DM10 of the Highway Authority's Development Management Policies as adopted as County Council Supplementary Guidance in February 2011

4. All pedestrian routes shall be pedestrian and cycle routes within the proposal site

Reason: To ensure the proposal site is accessible by more sustainable modes of transport such as public transport, cycling and walking, in accordance with policy DM9 of the Highway Authority's Development Management Policies as adopted as County Council Supplementary Guidance in February 2011

Notes:

- The A133 underpass is a highway structure and therefore any works at or in the vicinity of the underpass should be agreed with the Highway Authority prior to commencement of the works
- In making this recommendation the Highway Authority has assumed the proposal site internal layout would not be laid out and constructed to adoptable standards and that the applicant would not offer it to the Highway Authority for adoption
- The above requirements should be imposed by way of negative planning conditions or planning obligation agreements as appropriate
- Prior to any works taking place in the highway the developer should enter into an agreement with the Highway Authority under the Highways Act 1980 to regulate the construction of the highway works
- All or some of the above requirements may attract the need for a commuted sum towards their future maintenance (details should be agreed with the Highway Authority as soon as possible)
- All highway related details should be agreed with the Highway Authority
- The proposal should be in accordance with the Parking Standards Design and Good Practice Supplementary Planning Document dated September 2009
- Under Section 23 of the Land Drainage Act 1991, prior written consent from the Lead Local Flood Authority (Essex County Council) is required to construct any culvert (pipe) or structure (such as a dam or weir) to control or alter the flow of water within an ordinary watercourse. Ordinary watercourses include ditches, drains and any other networks of water which are not classed as Main River

If the applicant believes they need to apply for consent, further information and the required application forms can be found at www.essex.gov.uk/flooding. Alternatively they can email any queries to Essex County Council via watercourse.regulation@essex.gov.uk

Planning permission does not negate the requirement for consent and full details of the proposed works will be required at least two months before the intended start date.

Essex County
Fire Officer

No comments received.

Network Planner
- UK Power
Networks

As has been noted in the Utilities Planning Report there are extra high voltage overhead lines running across this site.

Safety advice regarding construction work near the overhead lines will need to be provided by UK Power Networks (UKPN) in order for the

construction work to proceed with the lines in place. Please contact UKPN on 08456 014 516 to arrange a site visit.

There have been discussions between the developer and UKPN regarding the replacement of the overhead lines with underground cables, UKPN would not wish to comment further at this stage.

Environment
Agency

Initial Comments received 17/03/2014

Submitted information reviewed and submits a holding objection regarding flood risk from surface water. Also offer observations on protection of the water environment, pollution prevention and control, ecology and sustainability and climate change.

Flood Risk

The northern site lies partially in Flood Zone 2 and Flood Zone 3. The proposed country park use is considered to be 'water compatible' as it falls under the classification of 'amenity open space, nature conservation and biodiversity' in the Flood Zone and Flood Risk Tables of the Planning Practice Guidance. No flood risk objections to the northern country park development.

The southern site lies partially in Flood Zone 2 and Flood Zone 3 on the very southern boundary. The Flood Risk Assessment compares the flood levels to the site levels to determine the precise boundaries of the flood zones to the locations of the development layout. This shows that the proposed commercial development has been located entirely in FZ1. The Sequential Approach has been correctly applied to locate the development in the lowest-risk parts of the site.

Footpaths are proposed to be located in FZ3. Footpaths are considered to be water compatible and we have no objections to this.

Environment Agency position

Object in absence of an acceptable Flood Risk Assessment (FRA):

The FRA submitted with this application does not comply with the requirements set out in paragraph 30 of the Flood and Coastal Change section of the Planning Practice Guide. The submitted FRA does not, therefore, provide a suitable basis for assessment to be made of the flood risks arising from the proposed development.

In particular, the submitted FRA fails to demonstrate that sufficient surface water storage is going to be provided as part of the development. The modelling shows that 4400m³ of storage is required in the peak rainfall event, ignoring any freeboard requirements. However the indicative drainage strategy shows two basins, one with 1000m³ and the other has 3000m³. Therefore the drainage plan does not show adequate storage on the site as there is a deficit of 400m³. The drainage strategy plan should be revised to provide an adequate volume of storage on site.

Overcoming our objection

You can overcome our objection by submitting an FRA which covers the deficiencies highlighted above and demonstrates that the development will not increase risk elsewhere and where possible reduces flood risk overall. If this cannot be achieved we are likely to maintain our objection to the

application. Production of an FRA will not in itself result in the removal of an objection.

We ask to be re-consulted with the results of the FRA. Our objection will be maintained until an adequate FRA has been submitted.

A technical assessment of the FRA is attached as Appendix 1.

Flood Defence Consent

Under the terms of the Water Resources Act 1991 and Anglian Region Land Drainage Byelaws, our prior written approval for a Flood Defence Consent is required for any proposed works or structures in, under, over or within 9 metres of the top of the bank of the nearby main rivers Pickers Ditch and Hartley Wood Brook. Consent would therefore be required for the outfalls and footpaths. We have up to two months to process consent so please take this into account when planning the works.

Sustainability and climate change.

Climate change is one of the biggest threats to the economy, environment and society. New development should therefore be designed with a view to improving resilience and adapting to the effects of climate change, particularly with regards to already stretched environmental resources and infrastructure such as water supply and treatment, water quality and waste disposal facilities. We also need to limit the contribution of new development to climate change and minimise the consumption of natural resources.

Opportunities should therefore be taken in the planning system, no matter the scale of the development, to contribute to tackling these problems. In particular we recommend the following issues are considered at the determination stage and incorporated into suitable planning conditions:

- Overall sustainability: a pre-assessment under the appropriate Code/BREEAM standard should be submitted with the application. We recommend that design Stage and Post-Construction certificates (issued by the Building Research Establishment or equivalent authorising body) are sought through planning conditions.
- Resource efficiency: a reduction in the use of resources (including water, energy, waste and materials) should be encouraged to a level which is sustainable in the long term. As well as helping the environment, Defra have advised that making simple changes resulting in the more efficient use of resources could save UK businesses around £23bn per year.
- Net gains for nature: opportunities should be taken to ensure the development is conserving and enhancing habitats to improve the biodiversity value of the immediate and surrounding area.
- Sustainable energy use: the development should be designed to minimise energy demand and have decentralised and renewable energy technologies (as appropriate) incorporated, while ensuring that adverse impacts are satisfactorily addressed.

These measures are in line with the objectives of the National Planning Policy Framework as set out in paragraphs 7 and 93-108.

Additional guidance on considering climate change for this proposal is provided in Appendix 2.

Pollution prevention and control

Environmental Permits may be required for certain activities under the Environmental Permitting Regulations 2010. Based on the information provided we are not able to say whether these would be granted, and the granting of planning permission does not guarantee the granting of a permit. A permit will be granted where it can be demonstrated that the risk to the environment is acceptable.

Construction phase

A waste exemption or environmental permit may be required for the spreading of any excavated or imported material. Excavated material arising from site remediation or land development works can sometimes be classified as waste. Businesses and other organisations need to know if the materials they produce, or intend to use, are waste. This is important as they may need to hold environmental permits and follow other waste controls if they are dealing with waste. The producer of the excavated material (spoil) is responsible for determining whether it is classified as waste.

If the excavated spoil is deemed to be waste then the following will apply:

If any controlled waste is to be used onsite or elsewhere, the developer will be required to ensure that the appropriate waste exemption or environmental permit is obtained from us. We are unable to specify exactly what may be required at this stage, due to the limited amount of information provided.

The applicant/developer must apply the waste hierarchy in a priority order of prevention, re-use, recycling before considering other recovery or disposal options.

If any controlled waste is to be removed off site, then the site operator must ensure a registered waste carrier is used to convey the waste material off site to a suitably permitted facility.

The Environmental Protection (Duty of Care) Regulations 1991 for dealing with waste materials are applicable for any off-site movements of wastes. The producer of the waste has a duty of care to ensure all materials removed go to an appropriate permitted facility and all relevant documentation is completed and kept in line with regulations.

The developer may be able to benefit from our waste position statements which state our regulatory position when dealing with certain wastes. In particular the applicant should refer to our waste position statement regarding the Definition of Waste: Development Industry Code of Practice (V2). We will take account of the Code of Practice in deciding whether to regulate excavated materials to be used in development projects as waste. If materials are dealt with in accordance with the Code of Practice we consider that those materials are unlikely to be waste at the point when they are to be used for the purpose of land development.

The developer may be able to demonstrate that the excavated / imported material is not classified as waste. If the material is not waste it may be easier for them to use it in their own business. This can also help them to use resources more efficiently reducing costs and the demand for raw

materials. It is possible for a material made from waste to reach a stage where it is no longer waste. This is known as end of waste status.

The applicant should also refer to PPG6: Working at construction and demolition sites.

Surface water and groundwater have legal protection. It is an offence to pollute them. Silt and oil are the most common construction site pollutants to water.

It is recommended that all run-off from the vehicle parking areas should be directed through an oil separator (interceptor) to prevent contamination of surface water. Oil separators are recommended at car parking sites larger than 800m² or 50 or more parking spaces.

If the water is clean surface run-off, for example, from a roof, road, pathway or clean hardstanding area, an environmental permit is not required. The applicant/developer needs to make sure any proposed discharge of surface water from the development stays clean and uncontaminated. If surface water does become contaminated we will only issue a permit if stopping the contamination is unsustainable and the contamination would not pollute the receiving water.

Permission may be required from the sewerage undertaker before connecting or discharging to the foul sewer system. Careful planning of foul drainage is required to prevent misconnections of toilets and sinks into surface water sewers.

The water environment

The location of the proposed petrol filling station appears to be directly underlain by the solid geology of London Clay designated as Unproductive Strata, and is not located in a Groundwater Source Protection Zone. In addition, the results of the limited intrusive investigation including infiltration testing, reported within the FRA appear to confirm this. It is also reported that no groundwater has been encountered during the intrusive works.

No details of the proposed PFS have been submitted with the application. As advised in the pre-application consultation, reference should be made to our Groundwater Protection: Principles and Practice (GP3 v1.1, 2013) position statements, particularly Section D: Storage of pollutants.

As such, subject to any additional works confirming the ground conditions as above, and the installation being undertaken to the most appropriate engineering standards, the PFS development would appear to satisfy our requirements with respect to groundwater protection as set out in GP3.

If the intrusive investigation encounters ground conditions significantly different from those described above, or if any discernible groundwater is encountered in the location of the proposed underground tank farm, we would wish to be re-consulted on any measures that may be required in the interest of groundwater protection.

Ecology

Our comments will follow.

Appendix 1

Flood risk technical assessment

Flood Risk

The northern site lies partially in Flood Zone 2 and Flood Zone 3. The proposed country park use can be considered to be 'water compatible' as it falls under the classification of 'amenity open space, nature conservation and biodiversity' in the Flood Zone and Flood Risk Tables of the Planning Practice Guidance. The use can be considered appropriate so we have no flood risk objections to the northern country park development.

Surface Water

The FRA details that boreholes and infiltration testing were undertaken. The water level did not fall over 12 hours, so the soils are not suitable for infiltration. Therefore the development is proposed to drain to the watercourse to the south. This is in accordance with the drainage hierarchy in Part H of the Building Regulations.

The FRA states that the surface water outfall rate will be restricted to the existing Greenfield 1 in 1 year runoff rate, which the FRA states is 1.196 l/s/ha. This equates to a rate of 6.09 l/s for the entire 5.1 hectare proposed impermeable area. However the Greenfield runoff rate IH124 calculations in the appendix show that the 1 in 1 year runoff rate for 50 hectares is 144 l/s, which equates to a rate of 2.88 l/s per hectare, or 14.7 l/s for the 5.1 hectare development. Therefore the proposed outfall rate could be increased from 6.09 l/s to 14.7 l/s.

It may be beneficial for the outfall rate to be increased, as we have calculated that the attenuation basins would take 4.3 days to half drain, which is in excess of the 24 hour half drain time recommended in The SUDS Manual. The basins are proposed to be 1m deep, would be full to a maximum depth of 0.998m of water in the 1 in 100 year rainfall event. There is therefore no freeboard provided for subsequent rainfall events. A 300mm freeboard is usually provided as a minimum, and would definitely be required if the half drain time is to be more than 24 hours. Therefore it may be beneficial for the outfall rate to be increased to up to 14.7 l/s, and for freeboard to be provided above the maximum storage level. 4400m³ of storage is required in the peak rainfall event, ignoring any freeboard requirements, however the indicative drainage strategy shows two basins, one with 1000m³ and the other has 3000m³. Therefore the drainage plan does not show adequate storage on the site as there is a deficit of 400m³. The plan should be revised to show adequate storage on site, including at least 300mm of freeboard in the basins.

The FRA details that treatment trains encompassing SUDS measures such as permeable paving and filter strips will be provided.

The southern site lies partially in Flood Zone 2 and Flood Zone 3 on the very southern boundary of the site. The FRA has compared the flood levels to the site levels to determine the precise boundaries of the flood zones in comparison to the locations of the development layout. This shows that the proposed commercial development has been located entirely in Flood Zone 1, so the Sequential Approach has been correctly applied to locate the development in the lowest-risk parts of the site. Footpaths are proposed to be located within Flood Zone 3. As footpaths

are considered to be water compatible they are an appropriate development type so we have no objections to this.

Appendix 2

Sustainability and climate change

We suggest the following points are addressed by the applicant to limit the developments impact on the environment and ensure it is resilient to future climate change.

Water Efficiency

Over the next 20 years demand for water is set to increase substantially yet there is likely to be less water available due to a drier climate and tighter controls on abstraction. To address this new development should be designed to be as water efficient as possible. This will not only reduce water consumption but also reduce energy bills.

The payback following investment in water saving devices is often higher in commercial units than residential due to the higher frequency of use. Simple measures such as urinal controls or waterless urinals, efficient flush toilets and automatic or sensor taps are therefore very effective. Likewise investment in water recycling schemes is also more viable in business settings.

We also recommend that developers consider using equipment on the Water Technology List, a directory of products which have met an approved water efficiency eligibility criteria. Businesses which invest in these products may also be eligible for tax savings through Enhanced Capital Allowance (ECA).

Any submitted scheme should include detailed information (capacities, consumption rates, etc) on proposed water saving measures. Where rainwater recycling or greywater recycling is proposed, this should be indicated on site plans.

Waste and Resource Management

Waste should no longer be regarded as a problem to be disposed of, but a resource in its own right. The management of waste should be considered early in the design phase and all developments encouraged to follow the Construction Waste Hierarchy of prevention > re-use > recycling > recovery > disposal.

Measures to be included to reduce construction waste include procedures to prevent the over-ordering of materials, reducing damage to materials before use by careful handling and segregating waste on site into separate skips. The developer should also consider how they will incorporate recycled/recovered materials into the building programme, including the use of secondary and recycled aggregates, and re-use of any on-site demolition waste.

Development design can also facilitate household waste recycling and we would suggest that designs incorporate facilities to aid this in line with local recycling provision, especially in multiple-occupancy buildings. We would also suggest that consideration is given to the provision for recycling within public areas.

Net Gains for Nature

Landscaping proposals should demonstrate that thought has been given to maximising potential ecological enhancement. Paragraph 9 of the NPPF sets out that planning should seek positive improvements and includes an aim to move from a net loss of biodiversity to achieving net gains for nature in line with the Natural Environment White Paper (2011). In determining planning applications Local Authorities are asked to conserve and enhance biodiversity and encourage opportunities to incorporate biodiversity in and around developments (para.118). This presents an opportunity to provide multi-functional benefits - providing open space for visitors and staff, sustainable transport links, wildlife/ecological value, climate change resilience, improved water quality and flood risk management.

Incorporating green and/or brown roofs and walls are particularly effective. They provide valuable urban habitats, increased energy efficiency of buildings and attenuation of rain water. Research from the journal '*Environmental Science and Technology*' claims that green walls deliver cleaner air at street level where most people are exposed to the highest pollution. They can also add to an attractive street scene if designed well – a good example of this is the Transport for London Green Wall near Blackfriars station.

Additional Useful Resources

In April 2012 we took on full responsibility for the governments Climate Ready support service which provides advice and support to businesses, the public sector and other organisations on adapting to climate change. The aim is to ensure businesses and services assess how they will be impacted by a changing climate so that they are both resilient and can thrive in the future.

The UK Green Building Council has also published a series of documents to help Local Authorities and developers to understand sustainability issues.

28/03/2014 - Revised comments following revised plan

We previously objected as the surface water drainage plan showed an inadequate volume of storage on the site. A revised Schematic Drainage Plan numbered 202918-300-P3 has been received which shows that the proposed storage basins have been sized to contain the required 4400m³ of surface water storage, with an additional 300mm of freeboard depth. Consequently we can remove our objection to the proposed development, and recommend that the following condition is appended to any planning permission to meet the requirements of the Planning Policy Guidance.

Condition

The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) by Canham Consulting dated 17/01/2014 and revised Schematic Drainage Plan numbered 202918-300-P3, and the following mitigation measures detailed within the FRA:

Limiting the surface water runoff generated by the 1 in 100 year critical

storm including climate change so that it will not exceed the runoff from the undeveloped site and not increase the risk of flooding off-site.

Provision of sufficient surface water storage paving in attenuation basins for the volume of surface water generated in the peak duration 1 in 100 year rainfall event including climate change, with an additional 300mm freeboard.

Provision of the required treatment trains for the surface water including permeable paving and filter drains.

Submission of modelling of the contributing network to show that it will not flood in the 1 in 30 year rainfall event and what volumes of flooding will occur in the 1 in 100 year rainfall event including climate change and where the water will flow and be stored to prevent buildings flooding or offsite flows.

Details of who will adopt and maintain the surface water drainage scheme for the lifetime of the development, and submission of the surface water drainage maintenance plan that follows the recommendations in The SUDS Manual (CIRIA C697, 2007).

The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

Reason

To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site for the lifetime of the development.

Technical Comments

Please see our previous response for comments on flood risk and surface water drainage.

Essex Wildlife
Trust

Comments received via agent

Thank you for contacting me regarding the above application. Due to the time constraints imposed by our limited resources, the Trust is currently focussing on strategic planning matters only and I am therefore unable to provide comments on individual planning applications.

I can confirm, therefore, that EWT will not be providing any comments on planning application no: 14/00107/FUL.

Arch. Liaison
Off, Essex
Police

Do not object as it offers benefits to the local community for leisure and work opportunities. Would however seek conditions relating to:

1. The CCTV system must be accepted by Essex Police as being such a system that meets Home Office CCTV standards and CCTV Codes of Practice for Public Surveillance.
2. The parking area standard achieves the Safer Parking Award and maintains it for at least 5 years.
3. All retail and commercial premises achieve Secure by Design

certification.

These conditions would support the Council's obligations under Section 17 Crime & Disorder Act. They would also reduce opportunities for crime and crimes own carbon footprint. The underpass is a potential problem in itself and we would expect this to be covered by the CCTV system within camera covering both entrances and the underpass. Walls and ceilings should be of bright light colours and surfaces treated with anti graffiti materials.

Essex Police Architectural Liaison Service have had some contact with the applicant and would be willing to work with the applicant, Tendring Council and other partners and interested parties in future to help the development achieve the conditions.

The Ramblers Association

No comments received.

ECC SuDS Consultee

The comments provided at pre application stage appear to have been addressed; therefore we have no further comments to make.

Standing advice note which could be enclosed as an informative:

Essex County Council will become a SuDs Approval Body (SAB) by the enhancement of Schedule 3 of the Flood and Water Management Act 2010, which is likely to be from Autumn 2014. This means that all new development which has surface water drainage implications will potentially require SAB approval and need to conform to National and Local Standards. Defra have carried out an initial consultation on the process for gaining SuDs approval and application should be made aware that:

1. The National Standards should be followed wherever possible when designing SuDs to increase the likelihood that the SAB can adopt them in the future.
2. Essex County Council is developing Local Standards through its SuDs Design and Adoption Guide which should be followed wherever possible when designing SuDs to increase the likelihood that the SAB can adopt them in the future.
3. Developments with existing planning permission, with one or more reserved matters where a valid planning application exists before enactment of Schedule 3 (likely July 2014) will not require SuDs approval during the first 12 months (up to July 2015) but following this date must obtain SuDs approval prior to commencement of development.

Natural England

Statutory Nature Conservation Sites – No Objection.

Natural England advises the Council that the proposal is unlikely to affect any statutorily protected sites or landscapes.

Protected Species

Natural England has published Standing Advice on protected species. Standing advice should be applied to this application as it is a material consideration.

Local Sites

If the proposal site is on or adjacent to a local site the authority should

ensure it has sufficient information to fully understand the impact of the proposal on the local site before it determines the application.

Biodiversity Enhancements

The application may provide opportunities to incorporate features into the design which are beneficial to wildlife, such as roosting opportunities for bats or installation of bird nest boxes. The authority should consider measures to enhance the biodiversity of the site from the applicant, if it is minded to grant permission.

Landscape Enhancements

The application may provide opportunities to enhance the character and local distinctiveness of the surrounding natural and built environment; use natural resources more sustainably; and bring benefits for the local community. Landscape characterisation and townscape assessments and associated sensitivity and capacity assessments provide tools for planners/developers to consider new development and ensure that it makes a positive contribution in terms of design, form and location, to the character and functions of the landscape and avoids any unacceptable impacts.

Comments following Amended Description:

The advice provided in our previous response applies equally to this amendment although we made no objection to the original proposal.

5. Representations

5.1 A total of 27 representations have been received in relation to the application.

5.2 4 representations have been received in support of the development, which are summarised below:

- Housing numbers have grown whilst losing local employers.
- People/money currently goes to Colchester – good to keep it in Clacton.
- Doubling size of country park a good idea, but should be more imaginative (i.e. a lake, cycle track, educational component).
- Clacton must be bold and keep growing to avoid decline like other seaside towns.
- All proposed business at development will pay business rates – upping local taxes to spend on amenities.
- Would be a bright light for Clacton.
- Fuel price competition.
- Cinema will attract locals and holiday makers.
- Employment opportunities.
- Country Park will enhance existing park and wildlife.
- Gateway to Clacton would be an eye catching landmark entrance to town.
- Will draw wealth and prosperity to Clacton.
- Developers should be encouraged to invest in Clacton.
- Will put Clacton on the map.
- Technology, i.e. faster broadband, would also improve area.
- Clacton has population of older people - should encourage younger population to seek employment and entertainment in Clacton.
- Regeneration of Clacton.
- More choice equals better competition for consumer, i.e. competitive prices.
- Clacton lacks good quality family restaurants.

5.3 19 representations from members of the public were received objecting to the development. The issues raised are summarised below:

- Large developments should be located in Clacton Town Centre.
- Detrimental effect on the town.
- Retail Study Update 2010 promotes development in town centres.
- Waterglade Retail Park potential site for extension/redevelopment.
- Clacton Factory Outlet is under-utilised.
- Permission for cinema already at Clacton Factory Outlet.
- Another supermarket to saturate Clacton on Sea.
- ASDA now at Bull Hill Road site in Clacton.
- Cinema already in town, and cheaper.
- Would not contribute to economic regeneration of Clacton.
- Information Technology/High Tech companies and a Science Park should be explored to bring well paid jobs to area.
- Negative impact on residential amenity.
- Overdevelopment.
- Empty shops and unused developed spaces in Clacton, i.e. Ford Site, Somerfields.
- Will ruin countryside.
- Multiplex cinema exists in Colchester.
- Noise, light and general air pollution.
- Facilities already exist at Brook Retail Park.
- Job losses when in town businesses close due to lack of customers.
- Attract negative press.
- Green farmland.
- House prices will depreciate.
- Affect resident views/outlook.
- No need for further petrol filling station.
- Brook Park development poorly managed and maintained – assume Gateway will be the same.
- Walk through/underpass is in poor condition.
- No consideration of keeping site litter/graffiti/anti social behaviour free.
- Pickers Ditch – what should be a haven for wildlife is becoming a rubbish tip.
- New jobs created will be offset by jobs lost by the closure of businesses.
- Impact on town centre will discourage tourism.
- Will have a detrimental impact on successful revival and operation of Clacton Factory Outlet.
- Will prejudice the operation of prospective cinema currently being implemented – over saturation of provision.
- Contrary to national and local policy and guidance.
- Future viability of local business operation and Clacton Factory Outlet at risk.
- Cinema will be forced to close, resulting in a large vacant site, detracting from the town centres vitality and viability.
- Century Cinema already closed once due to Colchester Multiplex Cinema.
- Town centre cinema is in a sustainable location, and encourages linked trips to other town centre facilities.
- Applicant's evidence does not satisfy impact test on town centre.
- Cumulative impact of proposed leisure uses not addressed.
- Failure to address sequential test for the proposed development.
- Failings with Retail Impact Assessment exist.
- Impact on open space.
- Will turn existing footpaths into main 'cut through' to development.
- Development would further urban sprawl.

- Lack of specified operator of superstore raises doubt over deliverability.
- Outside settlement development boundaries.
- Detrimental effect on amount of traffic using the roundabout at site entrance, causing congestion and delays.

5.4 4 representations have been received neither objecting to nor supporting the planning application, the points raised are summarised below:

- Retail Assessment document holds inconsistencies.
- Independent cinema survival low where multiplexes open nearby.
- Light pollution.
- Noise pollution.
- Greater need for housing and country park than proposed development.
- Opportunities for enhancing biodiversity and nature amenity is exciting.
- Picker Ditch walkway and alterations are important, and should also be developed further upstream.
- Development of Pickers Ditch too narrow.
- In full support of swales.
- Concern over funding/management of green spaces.
- Natural regeneration of woodland, not just tree planting.
- All green areas should be open to public.
- Combine parts of green areas with Burcart Meadows to enhance biodiversity and countryside.
- Underpass will need upgrading to prevent crime, flooding and encourage wildlife.
- All opportunities should be taken to enhance nature and wildlife, i.e. bird boxes, hedgerows.
- Revised plans have taken account of concerns raised about public access.

5.5 The above representations also include a summary of letters received from the agent acting on behalf of Clacton Factory Outlet and the Management and Tenants; the agent acting on behalf of the East of England Co-op; and the agent acting on behalf of Century Cinema.

6. **Assessment**

The Site

- 6.1 The site lies outside of but adjacent to the settlement boundary identified for Clacton on Sea.
- 6.2 The site comprises two distinct areas of land. The first area lies immediately west of the A133 and amounts to 11.46 hectares. This is the area of land proposed for the retail and cinema use. The second area lies to the east of the A133 and to the north of the existing Brook Country Park. This amounts to 7.37 hectares.
- 6.3 The first area of land also includes a parcel of land owned by the Council. This parcel includes an area around the subway and along the length of Picker's Ditch. The proposals indicate landscaping work and pedestrian and cycle links on the land owned by the Council. It should be noted that no decision has yet been made regarding the availability of these sections of land. The Council's Constitution includes a clear Land Acquisition and Disposal Process that would have to be followed in order for these works to take place.
- 6.4 The site comprises agricultural land of mostly classified as Grade 4 (poor quality) with some Grade 3 (moderate quality) land.

- 6.5 There are 33kv overhead power cables crossing part of the development site. In the adopted and emerging local plans the area immediately around Picker's Ditch is within a Flood Risk Area (part 2 and part 3) and is protected as Public Open Space. In the adopted local plan the Picker's Ditch area is also protected as a 'green gap'. The northern part of the site also lies within a Flood Risk Area (part 2 and part 3).

The Proposal

- 6.6 The application is made for full planning permission and includes:
- 6 screen cinema, with capacity for circa 1,000 persons (2,211 sq m)
 - Foodstore (7,530 sq m)
 - 2 x Class A3 units (315 sq m each)
 - Class A3 'drive-thru' unit (198 sq m)
 - 720 parking spaces
 - 6 pump petrol filling station and kiosk (84 sq m)
 - Extension to the Brook Country Park (7.37 ha)
 - Extension to Picker's Ditch walkway and creation of pedestrian and cycle routes
- 6.7 The applicant refers to the development as Clacton Gateway. In addition to the above, alterations are proposed to the A133 roundabout and enhancements and improvements to the highway network (including at St John's Road roundabout and the A133 pedestrian underpass).
- 6.8 The application is accompanied by the following documentation and drawings:
- Application form and certificates – 24 January 2014
 - Arboricultural Implications Report, Simon Jones Associates - January 2014
 - Design and Access Statement, Accord Architecture - January 2014
 - Draft Planning Conditions and Obligations, MRPP - 23 January 2014
 - Ecological Assessment, Aspect Ecology – October 2013
 - Flood Risk Assessment, Canham Consulting - January 2014, with 202918-300-P3 Schematic Drainage Design drawing and Drainage information (submitted on 19 March 2014)
 - Heritage Assessment, Prospect Archaeology - October 2013
 - Noise Assessment, Sharps Redmore - 21 January 2014
 - Retail Assessment, MRPP - January 2014 (updated and revised after submission of appeal against non determination in May 2014)
 - Statement of Community Involvement, MRPP - January 2014
 - Statement of Development Benefits, MRPP - January 2014
 - Transport Assessment, Intermodal Transportation - January 2014
 - TA Supplementary Note, Intermodal Transportation - 28 January 2014
 - Travel Plan Framework, Intermodal Transportation - January 2014
 - Utilities Planning Report, Canham Consulting - January 2014
 - Landscape and Visual Impact Assessment, Catherine Shelton Associates - 14 January 2014 with 838/L13E Figure 7 LSP Land East of A133
 - Bus Service and Bus Stop Location Information - 11 March 2014
 - Tracking Plan, submitted 11 March 2014

Architectural Drawings

- 1338-PL1100 Site Location Plan
- 1338-PL1101 Existing Site Plan – Survey Land West of A133
- 1338-PL1102 Existing Site Plan – Survey Land East of A133

- 1338-PL1110 Rev A- Proposed Overall Site Plan
- 1338-PL1111 Proposed Site Plan Land West of A133
- 1338-PL1112 Proposed Annotated Site Plan Land West of A133
- 1338-PL1113 Rev B - Proposed Site Plan - Land East of A133
- 1338-PL1114 Rev B - Proposed Annotated Site Plan - Land East of A133
- 1338-PL1200 Proposed Ground Floor Plan Foodstore
- 1338-PL1201 Proposed Ground Floor Plan Cinema, A3 Units 1 & 2, Service Yard
- 1338-PL1202 Rev A - PFS Proposed Ground Floor & Roof Plans, Elevations
- 1338-PL1203 Rev A - Drive Through Proposed Ground Floor & Roof Plans, Elevations
- 1338-PL1210 Proposed Roof Plan Foodstore
- 1338-PL1211 Proposed Roof Plan Cinema, A3 Units 1 & 2, Service Yard
- 1338-PL1300 Existing & Proposed Site Perimeter Sections West to A133
- 1338-PL1301 Existing & Proposed Site Perimeter Sections West to A133
- 1338-PL1302 Existing Site Perimeter Sections East to A133
- 1338-PL1305 Proposed Elevations Sheet 1
- 1338-PL1306 Proposed Elevations Sheet 2
- 1338-PL1320 Site Elements Bus & Brook Country Park Extension Shelters
- 1338-PL1405 Proposed Site Sections - Sections 1 & 2
- 1338-PL1406 Proposed Site Sections - Sections 3-5
- 1338-PL1410 Building Sections

6.9 The application proposal was screened in accordance with the Town and Country (Environmental Impact Assessment) Regulations 2011. The Council determined that the proposal did not require the submission of an Environmental Statement. The scheme falls within Schedule 2 (10b) of the Regulations and having considered the development against the criteria contained within Schedule 3 based on factors such as nature; scale; size and location it was concluded that the development would not have significant effects on the environment.

6.10 The application meets the criteria within the Town and Country Planning Consultation Direction 2009 and as such the application would have to have been referred to the Secretary of State had the Council been minded to approve the application before the appeal was submitted against non determination.

6.11 The main planning considerations are:

- The Appellant's Grounds of Appeal and Statement of Case
- Principle of development and Retail/Leisure Impact
- Design
- Landscape Impact & Visual Impact
- Access, Movement and Connectivity
- Impact upon neighbours
- Highway Safety
- Flood Risk
- Biodiversity and Green Infrastructure
- Heritage Assets

The Appellant's Grounds of Appeal and Statement of Case

6.12 The appellant intends to present evidence to demonstrate the following:

- Opportunities for enhancing alternative modes of access and how these can be delivered through the imposition of conditions
- That improvements to the highway network will mitigate against the impact of the scheme
- That the provision of a bus service can be secured by way of a legal agreement
- That the contribution towards education does not meet the tests of the NPPF
- That the site comprises low quality agricultural land
- The site has no special landscape features
- The existing overhead lines detract from the site's environmental value
- The site lacks any heritage assets – including archaeology
- The site lacks any ecological value
- There are no flood risk; surface water; foul water drainage issues
- The development will reduce unsustainable trips to other retail and leisure destinations outside of the District
- That there will be no adverse impact on the town centre and that trade will be mostly diverted from other out of town centre stores
- The cinema proposal at Clacton Factory Outlet site will not be delivered and the appeal site represents the only realistic opportunity for a multiplex cinema in Clacton
- The existing Century Cinema in the town is a wholly different operation that will not be adversely effected by the proposal
- The sequential and impact tests have been met and it is not appropriate to disaggregate the uses and that no alternative smaller sites exist in any event
- The scheme will bring
- That there is a “superstore retailer with a longstanding requirement to be represented in Clacton on sea and who maintains a current interest in securing such representation in the area and that to provide a quality multiplex cinema and leisure destination requires an effective overall development. The grant of planning permission will serve to secure the effective and efficient functioning of the operator market.”

Principle of development and Retail/Leisure Impact

Application of planning policy

- 6.13 In line with Section 38(6) of the Planning and Compulsory Purchase Act 2004, planning decisions must be taken in accordance with the 'development plan' unless material considerations indicate otherwise. The requirements of the National Planning Policy Framework (NPPF) are such a material consideration.
- 6.14 The 'development plan' for Tendring is the 2007 'adopted' Local Plan, despite some of its policies being out of date. Paragraph 215 of the NPPF allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 216 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. The 2012 Local Plan: Proposed Submission Draft, as amended by the 2014 Local Plan: Pre-Submission Focussed Changes, remains as the 'emerging' Local Plan.
- 6.15 On 25th March 2014, the Council decided that further substantial revisions to the emerging plan will be required before it is submitted to the Secretary of State to be examined by a Planning Inspector. These revisions will aim to ensure conformity with both the NPPF and the legal 'duty to cooperate' relating mainly to issues around housing supply. The new Local Plan Committee is overseeing this work with a view to a new version of the plan being published for consultation in early 2015.

- 6.16 At the heart of the NPPF is the 'presumption in favour of sustainable development' which, for decision making, means "approving development proposals that accord with the development plan without delay" and "where the development plan is absent silent or relevant policies are out of date, granting permission unless: a) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or b) specific policies in the NPPF indicate development should be restricted".
- 6.17 The main planning policy issues key to this planning application are:
- The site's location outside of defined 'settlement development boundaries' in both the adopted and emerging Local Plans;
 - The extent to which development outside of settlement development boundaries is justified by the NPPF's presumption in favour of sustainable development and the flexibility provided by policies in the emerging Local Plan;
 - Whether there is sufficient evidence to demonstrate that the development is needed and there is a genuine prospect of it being delivered;
 - Whether the applicant has demonstrated compliance with the sequential approach, including whether there are other sequentially preferable sites within settlement development boundaries that are able to accommodate all or part of the proposed development (taking into account the need for flexibility in relation to format and scale);
 - The scale of impact on the health of Clacton town centre (including the impact on investment and town centre vitality and viability) and whether this impact should be considered significantly adverse;
 - The degree to which development would contribute toward the Council's aims for sustainable development; and
 - Whether the benefits of the development would outweigh any adverse impacts.

Settlement Development Boundaries

- 6.18 The application site lies outside the 'settlement development boundaries' defined on the Policies Maps for the both the Council's Adopted Plan and the 2012 Draft Local Plan (as amended by the 2014 Focussed Changes). The corresponding policies in both adopted and emerging Local Plans (QL1 and SD5 respectively) seek to direct new development to land within these boundaries and restrict development elsewhere with an aim to achieving sustainable patterns of development whilst protecting and enhancing the character and openness of the countryside.
- 6.19 The adopted Local Plan is very strict in its approach, only permitting development outside of settlement development boundaries where consistent with countryside policies mainly aimed at supporting the rural economy. The emerging Local Plan is more flexible and more in line with the thrust of the National Planning Policy Framework, exceptionally permitting development on land outside of these boundaries where it complies with all of the four criteria a)-d). The criteria require applicants to demonstrate:
- a) that the development is necessary, with a genuine prospect of being delivered;
 - b) the development cannot, for practical or economic reasons, be located on land within defined settlement development boundaries;

- c) the development would not conflict with the Council's definition of sustainable development' (which is set out in Chapter 2 of the Draft Local Plan); and
 - d) the development would not cause any adverse impacts that would outweigh the benefits of the development, when assessed against other relevant policies in the Draft Local Plan.
- 6.20 Because the application proposes major development on land outside of the settlement development boundary it is clearly contrary to the stricter adopted policy QL1. However because the adopted Local Plan is out of date and does not identify sufficient land to meet objectively assessed needs for development post 2011, the weight that can be applied to policy QL1 requires careful consideration alongside the 'presumption in favour of sustainable development' in the National Planning Policy Framework. Likewise, the judgement as to the weight that can be attributed to the more flexible emerging policy SD5 must consider the stage of preparation that the emerging Local Plan has reached, the extent to which there have been unresolved objections and the level of alignment with the thrust of national policy.
- 6.21 Having considered these factors, Officers consider that refusing planning permission for this development simply for being located outside of the settlement development boundary would not have been justified, particularly given the presumption in favour of sustainable development in the National Planning Policy Framework which requires Councils to consider the economic, social and environmental role of planning proposals, heightened by the fact that the Adopted Local Plan does not make any provision for development to meet future needs post 2011. Whilst the emerging Draft Local Plan is still at an early stage of preparation and is subject of further substantial changes to ensure conformity with national policy, Policy SD5 has previously attracted a relatively small amount of objection and provides a sensible framework for considering proposals outside of settlement development boundaries, consistent with the positive thrust of the National Planning Policy Framework and the need to consider economic, social and environmental factors. For this reason Officers have attached weight to the four criteria within Policy SD5 in the consideration of this application and these criteria form the basis for the following sections of the report.

Impact

- 6.22 The National Planning Policy Framework requires Councils to request an impact assessment for retail and office developments of 2,500 square metres or more outside of town centres and criterion a) of Draft Policy SD5 requires applicants to demonstrate that development being proposed outside of settlement boundaries is necessary, with a genuine prospect of being delivered. Key to this argument is the applicant's May 2014 Retail Assessment which has been independently scrutinised on behalf of the Council by retail consultants GVA.
- 6.23 The applicant's Retail Assessment argues that a new foodstore of the size proposed (7,530 square metres) will provide competition for existing foodstores in Clacton that are considered to be 'over-trading' when compared with benchmark levels of turnover per square metre of floor space, and to help further reduce the amount of trade that is still lost to the large foodstores in Colchester and other locations outside of the catchment area. The assessment argues that a multiplex cinema for Clacton will bring the town's leisure offer more into line with other comparably large towns, enabling competition with Colchester's eight-screen Odeon and helping to reduce the amount of leisure trade that is currently leaked to Colchester and elsewhere. The applicant also suggests that a minimum of five screens is required to ensure sufficient choice of film releases, a level consistent with the UK's average cinema size.

- 6.24 GVA's independent appraisal of this Retail Assessment has raised questions about some of the applicant's calculations relating to the amount of 'over-trading' being experienced by existing foodstores and the degree to which the new store might divert trade away from Clacton Town Centre, explained in more detail below. It also questions the applicant's view that the new foodstore will need to be of a certain size to enable it to compete with existing large stores, despite the fact that smaller stores in Clacton such as the Morrisons stores are trading well and do not appear to be struggling to compete due to their size.
- 6.25 GVA has also highlighted that with no named occupier for the foodstore and a commitment from ASDA to take on the Co-op Fiveways site in Bull Hill, the only mainstream food retailer that does not currently have a presence in Clacton would be Waitrose. With no evidence that Waitrose is seeking to locate to Clacton, the likelihood would be for the new store to be occupied by one of the town's existing operators, raising questions about the future of an existing store in the town, possibly even within the town centre.
- 6.26 From the evidence provided and GVA's independent assessment of this evidence, Officers consider that the applicant has not demonstrated that the foodstore element of the proposal is necessary or that there is a genuine prospect of being delivered. The proposal therefore contravenes criterion a) of Policy SD5. The need for a multiplex cinema in the town however is not disputed by Officers, as planning permission for a six-screen multiplex cinema was granted planning permission in 2011 at Clacton Factory Outlet.

The sequential approach to site selection

- 6.27 However, because this is a proposal for a major retail and leisure complex, defined as a 'town centre use' it also needs to be considered against the 'sequential test' set out in paragraphs 24 of the National Planning Policy Framework (NPPF) which seeks to direct proposals for 'town centre uses' including retail and leisure specifically toward sites within defined town centres, then failing that 'edge of centre' locations and finally, only if suitable sites are not available in town centre or edge of centre locations, 'out of centre' sites like the application site. Criterion b) of Policy SD5 requires applicants to demonstrate that development proposed outside of settlement development boundaries cannot, for practical or economic reasons, be located on land within the defined boundaries.
- 6.28 The NPPF requires both applicants and local planning authorities to demonstrate flexibility on issues such as format and scale and, to achieve this, Policy PRO6 in the emerging Local Plan requires applicants for out of centre retail, leisure or office developments to demonstrate that the floor area of the development could not be reduced in size to enable the use of one or more town centre sites, if suitable sites are available.
- 6.29 The applicant has argued that there are no town centre or edge of centre sites in Clacton suitable or available for the type of development proposed however GVA has suggested that the applicant's approach to the sequential test has been flawed because they have not considered the possibility of reducing the development's size or disaggregating the its different components. The applicant has argued that the sequential test should apply to the development as is being proposed and not a variation on the proposal aimed at fitting it only a sequentially preferable site, a view based on a 2012 judgement by the Supreme Court in Tesco Stores Ltd v Dundee City Council. The judge in that case took the view that the scale of commercial developments of this kind are generated by the developer's assessment of the market they are seeking to serve. However, the criticisms raised by GVA over the evidence on market demand and over-trading and the lack of a named retailer bring into question the applicant's assessment of the market, the relevance of the Dundee case and therefore the commercial need for a development of this size.

- 6.30 Officers consider that the applicant, in relying on the Dundee case, has not undertaken a sufficiently thorough sequential test of other potential sites, including the former gas works site adjoining Waterglade Retail Park which is allocated for town centre uses in both the adopted and emerging Local Plans and which is now understood to be available for development. For this reason, the proposal contravenes criterion b) of Policy SD5 and the NPPF sequential test.

Meeting the definition of sustainable development

- 6.31 Criterion c) of Policy SD5 requires applicants to demonstrate that the development proposed would not conflict with the Council's definition of sustainable development, as set out in Chapter 2 of the Draft Local Plan. In relation to economic factors in particular, it states that sustainable development means development that *"contributes positively toward achieving prosperity in our district by helping to address current and future economic and social challenges, particularly in our most deprived areas, and helping to bring vitality to our town centres, employment areas, tourist attractions and rural communities"*.
- 6.32 To extent to which this proposal would help achieve prosperity in our district has to be weighed up with the degree to which it would support, or otherwise detract, from the vitality of, in particular, Clacton Town Centre. GVA's independent assessment of the applicant's Retail Assessment suggests that the development, in the form proposed, could have a significant detrimental impact on the health of Clacton Town Centre and an adverse impact upon existing investment. For these reason, on balance, Officers consider that the development would conflict with the Council's definition of sustainable development and criterion c) of Policy SD5.

Consideration of adverse impacts

- 6.33 Criterion d) of Policy SD5 requires applicants to demonstrate that the development proposed would not cause any adverse impacts that would outweigh the benefits of the development, when assessed against other relevant policies in the Local Plan. GVA's independent assessment of the applicant's Retail Assessment suggests there could be a significant detrimental impact on the health of the town centre. For this reason, Officers consider that the development would contravene criterion d) of the policy.

Design

- 6.34 The NPPF places a great deal of emphasis on the importance of good design. It says that planning decisions should not seek to impose architectural styles or particular tastes but that it is proper to seek to promote local distinctiveness and that where design is poor applications should be refused. The importance of good design is also reflected in policies QL9 and QL11 of the adopted local plan and policy SD9 of the emerging local plan.
- 6.35 The application is accompanied by a comprehensive design and access statement that explains how the design and layout of the scheme has evolved through the design and consultation process. The statement explains how the proposal has been designed and how the use of external materials has been chosen to reflect the regional and coastal characteristics of the area. In addition, it explains how the landscaping scheme has been developed to reflect its semi-rural meadowland setting.
- 6.36 The design of the scheme is to a certain extent subjective. The proposed buildings are of a significant scale and so it would not be appropriate or feasible to replicate traditional Essex rural buildings successfully. The design, instead, reflects the seaside architecture of the area and uses a range of materials typical of coastal features and buildings in the area.

- 6.37 The development is considered to be acceptable in terms of design and layout including connectivity with surrounding built development.

Landscape Impact & Visual Impact

- 6.38 The NPPF places emphasis on the need to protect the most important landscape designations (including Areas of Outstanding Natural Beauty and Green Belts). There are no designations of this nature in the locality. Policy COM13 of the adopted local plan considers the creation of country parks. Policies EN1 and EN4 of the adopted local plan refer to the need to conserve the landscape character and protect the best and most versatile agricultural land. Similarly, policies PLA5 of the emerging local plan seeks to conserve features of the landscape that contribute towards local distinctiveness.
- 6.39 The application site comprises Grade 4 (poor) and 3 (moderate) agricultural land. Therefore, it is not considered that the development of the site would be contrary to those policies of the development plan that seek to protect the best and most versatile agricultural land.
- 6.40 To inform the preparation of the emerging local plan the Council commissioned a Landscape Character Assessment. The applicant has paid regard to this document in their submission which is accompanied by a Landscape and Visual Impact Assessment.
- 6.41 The site is located within the area defined as the Clacton and The Sokens Clay Plateau. This area is largely defined by gently undulating, arable, against an urban fringe landscape. The overall landscape character is defined as weak/poor in some urban fringe locations. This particular site is also marked by an overhead electricity line. The site was classified as 'medium landscape quality and value' by the Council's Landscape Character Assessment. The site was considered to have a high-medium capacity for change to the south (against the urban fringe) and low to medium to the north where it was more attractive and open. Having taken account of its physical and visual sensitivity it was considered that the development of the site would have moderate adverse landscape effects but these could be mitigated against by the creation of landscaping buffers.
- 6.42 The scheme is accompanied by a landscaping scheme that seeks to retain the existing boundary trees and hedgerows as far as is possible and introduces substantial additional planting in the form of trees; hedgerow and meadowland areas. Consideration has been given to balancing the desire to provide views of the development site to announce the presence of the proposed buildings and how the buildings are framed within the meadowland setting as well as replacement hedgerow planting as a result of the loss of hedgerow along the A133. Internal landscaping within the car parking areas has also been proposed that will soften the impact of not only the buildings but of the large hard surfaced servicing and parking areas. Landscaping closest to residential property to the south of the site has also been increased in density.
- 6.43 The adopted Local Plan also defines this area as a 'Local Green Gap' where Policy EN2 seeks to keep land open and free from development to prevent the coalescence of settlements and to protect their rural settings 'during the plan period'. Because the plan period for the Adopted Local Plan was only up to 2011 and the increased pressure for development has required the boundaries of Local Green Gaps to be reviewed, including the equivalent green gap designation being removed in the 2012 Draft Local Plan, Officers recommend that this policy be given no weight in determining this application.
- 6.44 It is not considered that the development of the site would have such an adverse impact on the landscape and visual qualities of the area that this could be substantiated as a reason for refusal. The impact of the development would be limited to a relatively local level. The site is seen in its context against an urban fringe with large scale buildings on the Brook

Retail Park. Landscaping measures are proposed to mitigate against the impact of the development as is the creation of an extension to Brook Country Park.

Access, Movement and Connectivity

- 6.45 The NPPF requires that new development should maximise the potential to create safe and accessible environments containing clear and legible pedestrian routes and high quality public space. Development needs to address the connections between people and places. These requirements are reflected in policies QL2; QL10, COM1, COM2 TR3a; TR5 and TR6 of the adopted local plan and policies SD8 and SD9 of the emerging local plan.
- 6.46 The application layout has considered the need to improve existing pedestrian and cycleway connections in the locality of the site and within the site and to create several new links. The importance of connecting the site with the existing retail park and the nearby residential developments has been addressed.
- 6.47 The proposals include for improvements to the existing pedestrian underpass below the bypass including its realignment and to make it safer by introducing lighting and CCTV cameras.
- 6.48 The applications therefore addresses the requirements of the NPPF and relevant local plan policies relating to the access, movement and connectivity and these issues could either be controlled by way of condition or planning obligation.

Impact upon neighbours

- 6.49 The NPPF seeks to ensure that high standards of design and layout and promoting sustainable development result in safe and accessible environments. This aim is reflected in policies QL10; COM21; and COM23 of the adopted local plan and policies SD8 and SD9 of the emerging local plan.
- 6.50 The main impacts on neighbours will be by virtue of potential visual impact; noise; light pollution and increased traffic. All these issues have been taken into account within the application submission.
- 6.51 The visual impact of the development will be greatest to those residential properties to the south of the site. The building at its closest point to these properties would be over 100 metres away. The development of the site would no doubt result in a change of outlook for these properties, however, due to the separation distances involved and the provision of landscaping it is not considered that the visual impact of the development by way of its scale or dominance on nearby domestic scale properties would be so adverse to substantiate a refusal of planning permission.
- 6.52 The application is accompanied by a Noise Assessment and the Design and Access Statement explains in some detail how the layout has been revised to take account of distances from the nearest residential properties to the south. The nearest residential properties are to the south of the site on Sillett Close and Dunthorpe Road. The NPPF states that planning policies and decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life; mitigate and reduce to a minimum other adverse impacts on health and quality of life from new development including through the use of conditions whilst recognising that many developments will create noise; and identify and protect areas of tranquillity.
- 6.53 The Noise Assessment explains the outcome of a noise survey that was undertaken at the site in October 2013. It establishes the existing base line noise level and then uses modelling to predict the levels of a retail and leisure development on the nearest residential

properties. The predicted worse case ambient noise levels from the proposed development at the nearest existing residential property would be 55 LAeq(1hour) and 60dB LAMAX. These levels comply with the WHO guideline values and would not have a significant effect on the existing noise climate at any time.

- 6.54 Methods of internal and external lighting are also considered within the Design and Access Statement. Both this and air quality monitoring can be controlled satisfactorily by condition.
- 6.55 The Council's Environmental Health Officers raise no objection to the proposal subject to conditions and it is considered that the development accords with development policy.

Highway Safety

- 6.56 The NPPF promotes sustainable transport and requires all developments that will generate significant amounts of traffic to be supported by a Transport Assessment. Opportunities for sustainable transport modes must be taken up; safe and suitable access for all people must be achieved; and improvements to the highway network that address the impacts of the development must be undertaken. A key tool to facilitate sustainable transport will be in the form of a travel plan. Development should only be refused where traffic residual cumulative impacts are severe. These issues are reflected in policies QL2; QL10; TR1a; TR1; TR2; and TR6 of the adopted local plan and policies SD8 and SD9 of the emerging local plan.
- 6.57 The application is accompanied by a Transport Assessment and Travel Plan Framework as well as Bus Service and Bus Stop Location Information.
- 6.58 The comments of Essex County Council Highway Authority are reproduced in full earlier in this report. The Highway Authority does not object to the development subject to a number of improvements that can either be controlled by way of condition or legal obligation.
- 6.59 These improvements include: signalisation of two arms of the St John's Road roundabout; controlled crossing facilities; improved existing/or new bus service(s) into the site; on site and off site bus stop locations/improvements; bus turn around and layover facilities; upgrading of the pelican crossing on St John's Road to a toucan crossing and upgrade of the pedestrian/cycle link between St John's Road and Crome Close; the submission of a travel plan.
- 6.60 It is considered, therefore, that subject to these improvements that the scheme meets the NPPF test and those of the relevant local plan policies in terms of highway safety.

Flood Risk

- 6.61 The NPPF advises that developments should take account of flood risk and where appropriate be accompanied by a Flood Risk Assessment. This is echoed by policy PLA1 of the emerging local plan.
- 6.62 Due to the size of the site and the existence of flood risk areas around Pickers Ditch and to the north of the proposed extension to the country park (Zones 2 and 3), the application is accompanied by a Flood Risk Assessment. The areas at risk of flooding are walkways; landscaping and park land – all of which are water compatible. The built development is confined to low risk flood area (Zone 1).
- 6.63 The suitability of the Suds Drainage Scheme and the Flood Risk Assessment have been commented on by the Essex County Council SuDs Officer and the Environment Agency. These statutory bodies raise no objection to the proposal subject to conditions.

- 6.64 The development is therefore considered to comply with development plan policy on this point.

Biodiversity and Green Infrastructure

- 6.65 The NPPF refers to the importance of conserving and enhancing the natural environment. These aims are reflected in a number of policies in the adopted and emerging local plans but most notably in policies EN6; EN6b; and PLA4.
- 6.66 The application is accompanied by an Ecological Assessment. The site was surveyed in 2013 based on an extended Phase 1 methodology as recommended by Natural England. The Assessment takes into account ecological designations (the nearest non statutory designation is 0.2km from the site at Burcart's Meadow; the nearest designated site 0.8km away at Bursville Park). The site is considered to be of limited species diversity because of its intensive management as it is in arable use. The existing mature trees; hedgerows and ditches are (for the most part) being retained and protected during construction. The loss of the arable land and some hedgerow will be more than compensated by the proposed planting scheme and the meadowland.
- 6.67 The habitats at the site provide limited opportunities for protected species but suitable measures to safeguard such species can be controlled by way of condition.
- 6.68 Natural England and the Environment Agency do not object to the proposals on biodiversity grounds and therefore the development is considered to comply with development plan policy and will not result in a significant adverse impact on any ecological designations; habitats of nature conservation interest or any protected species.

Heritage Assets

- 6.69 The NPPF seeks to protect heritage assets (including archaeology) from inappropriate development.
- 6.70 The application is accompanied by a Heritage Assessment. The Assessment is informed by a map regression exercise and documentary search. There are no nearby listed buildings; conservation areas; or scheduled ancient monuments. The nearest listed building is at Cann Hall but there is no intervisibility between it and the site. There has been no site investigation on the land and so it is concluded that whilst the impact of the development on built heritage assets is negligible there is potential for undiscovered buried heritage assets. The development proposal therefore includes a staged process of evaluation as recommended by the Essex County Council Archaeological Officer.
- 6.71 The development accords with the development plan in relation to heritage assets.

Other Material Considerations – the benefits of the scheme.

- 6.72 As explained elsewhere in this report, Paragraph 14 of the Framework sets out the presumption in favour of sustainable development and states that where development plans are absent, silent or relevant policies are out of date, planning permission should be granted without delay. Where the proposed development gives rise to significant and demonstrable adverse impacts these must be weighed against the benefits of the development. The applicant argues that the scheme provides a number of benefits and that these should be given significant weight by the decision maker (this will now be the Planning Inspectorate/secretary of State).
- 6.73 The applicant has submitted a document with the application entitled Statement of Development Benefits (as required by paragraph 14 of the NPPF).

- 6.74 The document explains that the objective of the proposal is to bring new leisure and retail facilities to Clacton to complement existing provision. The scheme will bring qualitative benefits arising from choice and competition, reduce travel costs, increase access to local facilities, reduce social exclusion; enhance local employment and enhance Clacton's role as an all year round tourist destination. It is considered by the applicant to act as a "welcome" to Clacton building confidence in the town through quality design.
- 6.75 The applicant argues in this document that the material considerations that should outweigh the need to consider the proposal in light of the development plan are as follows:
- The development has been the subject of extensive consultation with the Council; statutory consultees and members of the public;
 - The application is accompanied by a range of technical documents and reports all of which comply in accordance with relevant guidance and best practice;
 - The application was screened for Environmental Impact Assessment (EIA) by the Council in advance of the formal application being made and EIA was not required;
 - the delivery of new recreational/tourist opportunities (cinema; restaurants; extension to Brook Park; new parkland to the west of the store; footpaths and cycleways; enhancement of Picker's Ditch);
 - Retail choice and competition will help to address the shopping offer which is currently dominated by existing out of centre stores. Overtrading results in qualitative deficiencies. The town centre Sainsbury's only provides a limited 'main food shopping function. The proposal will help to retain local trade to the benefit of local businesses.
 - There will be no adverse impact on the town centre and the impact will be limited to a redistribution of trade effects;
 - There are no other suitable town centre or edge of centre sites;
 - Improving accessibility via a travel plan and the delivery of safe and suitable access to the scheme and the opportunities for sustainable transport modes;
 - Enhancements to the A133 underpass;
 - New bus services;
 - New bus stops
 - Upgrading of signalised crossing on St John's Road;
 - New cycleway and footways;
 - A high proportion of disabled parking bays;
 - Creating confidence through quality design which will transform the arrival into Clacton. The scheme delivers a gateway development and is complemented by an attractive native species landscaping strategy;
 - Securing environmental objectives by way of sustainable drainage; removal of overhead electricity lines; and suitable methods of construction;
 - Socio economic benefits will provide a range of local employment opportunities with a mix of full time and part time posts all of which are suited to the local labour force; the work force will benefit from structured training and apprenticeships and senior management roles;
 - The development will recruit locally both during the construction and operational phases;
 - In summary for all the reasons above the applicant argues that the scheme will bring beneficial change.
- 6.76 In response, the NPPF states that where the proposed development gives rise to significant and demonstrable adverse impacts then consideration should be given to whether the benefits of the scheme outweigh those impacts.
- 6.77 The NPPF gives great importance to the need to protect the viability and vitality of town centres for town centre uses. It sets out a very clear approach as to how this should be

achieved through the policy and decision making process. The proposed development represents town centre uses and yet fails to demonstrate that the sequential and impact tests have been met in accordance with development plan policy and guidance. The development thus fails to meet the criteria of sustainable development and the perceived benefits do not outweigh the adverse impacts on Clacton Town Centre.

Background Papers

None.