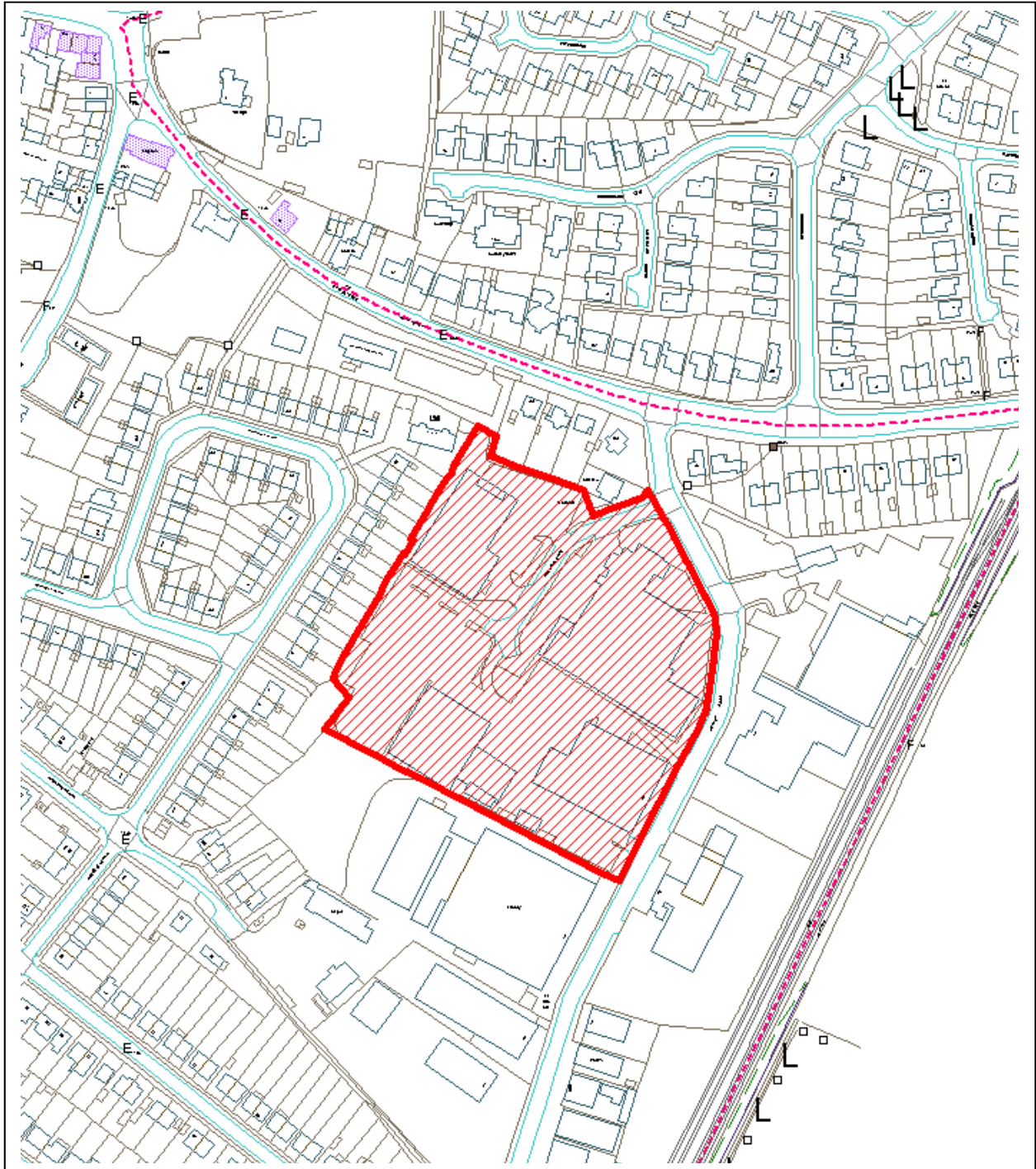


PLANNING COMMITTEE

11 NOVEMBER 2014

REPORT OF THE HEAD OF PLANNING

A.2 PLANNING APPLICATION - 14/00537/FUL - COLCHESTER & EAST ESSEX CO-OPERATIVE & ADJOINING LAND BULL HILL ROAD, CLACTON-ON-SEA CO15 3TH



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Application:	14/00537/FUL	Town / Parish: Clacton Non Parished
Applicant:	ASDA Stores Ltd - Ms Christine Tetlow	
Address:	Colchester & East Essex Co-Operative & adjoining land Bull Hill Road, Clacton-on-Sea, Essex CO15 3TH	
Development:	Redevelopment and regeneration of site through demolition of existing buildings and construction of replacement foodstore, petrol filling station, together with associated car parking and landscaping.	

1. Executive Summary

- 1.1 The application was submitted on 5 May 2014 and was due for determination on 14 August 2014. The Council has written to the applicant's agent on two occasions requesting an agreed extension of time for determination to allow officers the opportunity to fully assess all the representations received before a fully informed decision could be taken by Members of the Planning Committee. The issues that remained to be addressed were primarily the content of objections received from Martin Robeson Planning Practice on behalf of his client who is the applicant for the Clacton Gateway scheme. The objections related to the submitted Transport Assessment; Flood Risk Assessment; Retail Statement; and to Planning Policy issues and the Council's negative screening opinion for Environmental Impact Assessment. The applicant's agent has agreed in writing to extend the time for a decision to be taken by the Council until 28 November 2014.
- 1.2 The application is accompanied by an extensive amount of documents; drawings and supporting material. The application proposals have been assessed in relation to the principle of development; retail impact; design; access, movement and connectivity; impact on neighbours; highway safety; flood risk; contamination; landscape impact; and heritage assets. Having had regard to all these issues it is considered that the application proposals comply with the National Planning Policy Framework (NPPF); the National Planning Policy Guidance (NPPG) and with the relevant policies of the adopted local plan and the emerging local plan. 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.
- 1.3 The 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.
- 1.4 The application is recommended for conditional approval subject to the satisfactory completion of a Section 106 planning obligation to secure the control of land uses to make the development acceptable.

Recommendation:

That the Head of Planning be authorised to grant planning permission for the development subject to:-

- a) Within 3 (three) months of the date of the Committee's resolution to approve, the

completion of a legal agreement under the provisions of section 106 of the Town and Country Planning Act 1990 dealing with the following matters

CCTV contribution

Travel Plan Monitoring Fee

b) Planning conditions in accordance with those set out in (i) below (but with such amendments and additions, if any, to the detailed wording thereof as the Head of Planning in her discretion considers appropriate).

(i) Conditions:

1. Standard 3 year time limit for commencement.
2. Development in accordance with submitted plans.
3. Details of a topographical survey and approval of site levels eaves and ridge heights.
4. Details and samples of facing and roofing materials.
5. Details of click and collect; trolley and cycle shelters.
6. Details of water, energy and resource efficiency measures.
7. Remediation scheme.
8. Archaeological trial trenching and fieldwork.
9. Control floor space and restriction to Class A1 retail use.
10. Control of amount of convenience goods and non convenience good sales – no subdivision and no mezzanine floors.
11. No extensions or enlargements without express consent.
12. Local recruitment strategy.
13. Hard and soft landscaping.
14. Landscape management plan.
15. Protection of trees during construction.
16. Management and maintenance scheme for car park areas.
17. CCTV and external/security lighting.
18. Measures to minimise light pollution in accordance with submitted lighting scheme.
19. Surface water management strategy; measures to prevent water pollution; and in accordance with the flood risk assessment.
20. Acoustic screens.
21. Details of all external plant and machinery.
22. Details of all boundary treatments including retaining walls.
23. Details of recycling collection point.
24. Proposed vehicular accesses and mini roundabout in accordance with submitted drawings and existing accesses stopped up.
25. Provision and implementation of travel plan.
26. Construction method statement including details of cut and fill and the exportation and importation of materials.
27. Additional bus stops on Oxford Road.
28. Car parking area (hard surfaced, sealed and marked out in parking bays).
29. Provision of service yard
30. Powered two wheeler and bicycle parking facilities.
31. Highway improvements to Valley Road.
32. Closure and stopping up of existing access and traffic orders.
33. Hours of delivery in accordance with a Service Delivery Management Plan

c) That the Head of Planning be authorised to refuse planning permission in the event that such legal agreement has not been completed within the period of 3 (three) months, as the requirements necessary to make the development acceptable in planning terms had not been secured through S106 planning obligation, contrary to the NPPF; NPPG and saved policies ER31 and ER32 of the Tendring District Local Plan (2007) and draft Policy PRO6 of the Tendring District Local Plan Proposed Submission Draft (2012) as amended by the Tendring

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 the 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.
- 2.4 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.
- 2.5 One of the 12 core land use planning principles promoted by the NPPF is to encourage the effective use of land by reusing land that has been previously developed (brownfield land) provided that it is not of high environmental value.
- 2.6 The NPPF also seeks to ensure the vitality of town centres. To this end Section 2 of the NPPF is of relevance to the proposal. The NPPF requires applicants to demonstrate that development proposals that are over 2,500 square metres in gross floor area 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.
- 2.7 Paragraphs 24 to 27 of the NPPF are of relevance 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.”*

- 2.8 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.
- 2.9 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.
- 2.10 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.
- 2.11 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.
- 2.12 Section 11 deals with conserving and enhancing the natural environment. New development should take account of air, water, and noise pollution. Opportunities to incorporate biodiversity in and around developments should be encouraged.
- 2.13 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

- 2.14 This guidance supports the NPPF. It provides advice on how Local Planning Authorities should make policies and determine applications for planning permission that relate to town centre uses.
- 2.15 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. These tests are only required to be applied where the gross floor area of the proposal exceeds 2,500 square metres. The guidance makes it clear that it is for the applicant to demonstrate compliance with the sequential test and that failure to undertake a sequential assessment could in itself constitute a reason for refusing planning permission.
- 2.16 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.”

- 2.17 Section 38(6) of the Planning Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.
- 2.18 In the case of Tendring the development plan consist of the following

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.

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 surrounding land uses and to minimise adverse environmental impacts.

QL12: Planning Obligations

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

ER2 : Principal Business and Industrial Areas :

Proposals for employment development will be directed towards these identified sites

ER3 : Protection of Employment Land :

Land allocated for this purpose in the plan will be retained for that purpose unless it can be demonstrated that it is no longer a viable use

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.

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.

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 vacant 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.

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 superfast 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 Charter 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.

Policy PRO5 – Town, District, Village and Neighbourhood Centres.

This policy identifies Clacton as a major town centre. It also identifies a number of District and Neighbourhood centres. (Great Clacton District Centre is within close proximity to this application site).

As well as the defined centres listed in Policy PRO5, the district also contains a number of large modern retail parks or stand-alone supermarkets/retail outlets that are located in out-of-town centre (or edge-of-town centre) locations that often fulfil a need for bulky-goods retail that cannot be accommodated in town centres. The thrust of national planning policy is to avoid developments of this nature in the future unless it can be demonstrated that they will bring positive economic growth and not impact negatively on the vitality or viability of nearby centres. These existing retail sites, are shown as 'employment land' on the Policies Map insets and protected, through Policy PRO14, against redevelopment for non-

employment uses (particularly housing) in recognition of the important local employment they provide.

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 a floor area of 2,500 square metres or more. The policy states that proposals outside of the defined town centre will only be permitted in certain circumstances. One of these circumstances is where the site is allocated for that purpose.

PRO14: Employment Sites

This policy protects identified employment sites from alternative non employment uses.

(The majority of the Oxford Road area is covered by this employment allocation including the site of the Co-Op store on Bull Hill).

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.

COS1 – 7 : Regeneration at Clacton Town Centre and Seafront; Clacton Town Centre; Creation of a Civic Quarter; Expansion of Waterglade Retail Park; Warwick Castle Site; Jackson Road; Station gateway Expansion of Waterglade Retail Park

Identify ‘opportunity’ sites within the town centre for a mixture of uses including and leisure uses.

Other Relevant Documents

Economic Development Strategy 2013

2.19 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.

2.20 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

- 2.21 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

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

Employment Land Review 2013

- 2.23 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 Oxford Road and 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 The application site has a lengthy planning history. The applications that are of relevance are as listed below, however, a brief site history establishes that the site was used as farmland until the 1950's when a factory was developed on the site in the south east corner. A second factory was constructed in the 1960's and in the 1970's two warehouses were constructed to the north of the site. All of these buildings remain to the present day, however, the two warehouses are currently occupied by retail units (the Co-Op and Booker Cash and Carry) the two former factories are now vacant but were last occupied by an electrical store and a furniture store. There has been a petrol filling station on the site (but not in the current location) since the early 1980's. The present petrol filling station was relocated to the southern boundary in the 1990's.

App No.	Description	Decision	Date
CLA/33/48	Private garage.	Approved	02.09.1948
CLA/232/50	Extension of road.	Approved	05.01.1951
CLA/140/51	Factory	Approved	04.01.1952
CLA/180/52	Addition to factory	Approved	05.12.1952
CLA/353/54	Addition to factory	Approved	07.01.1955
CLA/83/58	Extension to factory	Approved	09.05.1958
CLA/340/63	Factory	Approved	06.12.1963

CLA/4/64	Industrial estate road	Approved	24.01.1964
CLA/324/70	4,000 gallon water storage tank	Approved	16.09.1970
CLA/332/70	4 no. warehouses of 4,000 sq ft floor area	Approved	18.11.1970
CLA/70/71	Warehouse of approx. 10,500 sq ft	Approved	28.04.1971
CLA/239/71	Warehouse	Approved	04.08.1971
CLA/500/71	15,000 sq ft warehouse with retail outlets	Approved	12.01.1972
CLA/81/72	Extension to warehouse with retail outlet	Approved	28.03.1972
CLA/352/72	Factory, warehouse and offices	Approved	05.09.1972
CLA/390/72	Semi mobile refrigerated van and enclosure	Approved	05.09.1972
CLA/15/73	Extension to warehouse	Approved	20.02.1973
CLA/50/73	Alterations and additions to form extension to factory	Approved	06.06.1973
CLA/630/73	Alterations and additions to form extension to factory	Approved	14.12.1973
CLA/651/73	Cantilever canopy to north elevation of warehouse	Approved	28.12.1973
CLA/62/79	Alterations to existing building, provision of new parking, loading and off loading area.	Approved	07.03.1979
TEN/1549/79	Partial enclosure of existing canopies and new cantilevered canopy.	Approved	06.12.1979
TEN/270/83	Demolition of warehouse, extension of existing foodhall to provide storage facilities, formation of car parking area, erection of petrol filling station and change of use from industrial to retailing.	Approved	21.06.1983
TEN/200/88	Extension of existing grocery supermarket, new fascia/parapet to existing buildings, part demolition and alterations to existing workshop and storage buildings to increase car parking area and alterations to existing vehicular access from Oxford Road.	Approved	01.03.1988

TEN/818/88	Raise height of retaining brick wall to car park, raise level of car park to less steep gradient.	Approved	14.06.1988
TEN/1197/89	Part demolition of existing warehouse and conversion to a motor car showroom and service workshop and demolition of an existing building to create additional car parking.	Approved	15.08.1989
TEN/1927/89	Part demolition of existing buildings and conversion to motor vehicle showrooms, workshops and covered display areas (scheme revision of permission TEN/1197/89)	Approved	19.12.1989
TEN/1412/90	New petrol filling station shop and car wash building (existing petrol filling station to be demolished)	Approved	30.04.1991
TEN/92/0531	Variation of Condition 5 of TEN/1412/90 to allow restricted access for delivery vehicles serving the retail units	Approved	30.06.1992
TEN/94/0810	Proposed extension and internal alterations forming new entrance	Approved	18.08.1994
TEN/95/0029	Claim for Certificate of Lawful Use: Use as a Cash and Carry warehouse for the purpose of bulk purchase of goods by independent retailers.	Approved	15.05.1995
TEN/95/0506	Extension to form new entrance	Approved	05.06.1995
TEN/95/0815	Part change of use of former motor vehicle showrooms etc to form Co-op Electronix store	Approved	05.09.1995
96/00029/FUL	New plant room enclosure and enclosed reception beneath existing canopy	Approved	20.02.1996
99/01157/FUL	New entrance lobby	Approved	24.09.1999
10/01367/FUL	Removal of Condition 2 of Planning Permission TEN/270/83 (permission for sale of furniture and ancillary items only) to provide flexibility and re-occupation of site.	Approved	20.01.2011
11/00046/FUL	Side extension to form additional	Approved	21.02.2011

frozen food store.

14/00537/FUL Redevelopment and regeneration Current
of site through demolition of
existing buildings and construction
of replacement foodstore, petrol
filling station, together with
associated car parking and
landscaping.

4. Consultations

Environmental None Received.
Health

Regeneration This application is supported by Regeneration as it is a wholly compatible use on an existing retail site for a new and improved retail offer. The project will create up to 300 new jobs in addition to safeguarding 70 jobs. The latter being transferred under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) from the existing East of England Co-Operative store. In addition Regeneration considers it is important to protect the Oxford Road employment corridor, which is a significant job generator, and the future of this large site is consistent with that ambition. This comprehensive redevelopment will provide a good mix of convenience and comparison goods which were lost when Vergo (previously Co-Op Home Store) and the Co-Op electrical store closed. It is acknowledged that the store will have some impact on the town centre but it does in part replace existing and previous facilities and as there are significant new job opportunities, Regeneration considers this outweighs any adverse impacts. In line with Policy PRO3 of the emerging Local Plan, we would request that a condition be attached to any permission regarding the development of a local employment strategy for this site.

Principal Tree & In terms of the impact of the development proposal on existing trees
Landscape situated on the application site the applicant has submitted a Tree Survey
Officer and Report that has been carried out in accordance with the
recommendations contained in BS5837: 2012 Trees in relation to design,
demolition and construction.

The applicant has also provided a Soft Landscaping Master Plan drawing. The drawing shows soft landscaping proposals to both partially screen and enhance the appearance the development and new tree planting to mitigate the harm caused by the removal of existing trees.

With regard to the Tree Survey and Report, in the main, the information contained in the report accurately describes the condition of the trees on the land and makes adequate provision for the retention of the most suitable specimens. The report also describes the measures that will need to be put in place to protect them for the duration of the construction phase of any development.

The tree with the greatest visual amenity value is the mature Oak, referred to as T8, in the tree report. The tree is afforded formal legal protection by Tree Preservation Order TPO/97/15. This tree has been assessed under the Cascade Chart for Tree Quality contained in British Standard 5837. Although the tree has been categorized as B2 it more accurately meets the

criteria under which it would be categorized as A1 or possibly A2. In effect the A category describes trees of high quality with a safe useful life expectancy of at least 40 years. In order to fall under the A1 category a tree should be a particularly good example of its species and for A2 be a tree of particular visual importance as an arboricultural and/or landscape feature. There is no apparent reason why this Oak tree should have been classified as B2.

The Oak is a mature, healthy specimen that has no obvious defects. It is situated in a prominent location in an area that is not well populated with established trees. It has high visual amenity value and can be seen along virtually the whole length of Oxford Road. It is questionable whether it would be possible to replicate the significant contribution that it makes to the appearance of the area by new planting.

Trees T1 (Maple) T2 (Poplar) and T3 (Maple) are of no real significance in terms of making a contribution to the amenity of the locality and are just off-site; therefore not under the control of the applicant.

The report identifies the removal of T5 (Oak) situated in the main body of the land - its amenity value can be relatively easily replicated by new planting.

The Oak (T6) adjacent to the rear garden of Windmill Park is in poor condition, although it is marked for retention. This tree is afforded formal legal protection by Tree Preservation Order TPO/97/25. The Oak (T4) is a good specimen situated in the north-western corner of the site that is also marked for retention.

The landscaping proposals shown on the Proposed Landscape Master Plan show new planting intended to screen and enhance the appearance of the development as well as mitigating the harm caused by the removal of T8 (Oak).

In simple terms the proposal to fell T8 and to replace it with 2 trees will increase the number of trees in the locality however it is my view that this would not in the foreseeable future replicate the contribution to the amenity of the locality made by the tree. Combined with the 2 replacement trees for T5 (Oak) the 4 trees will help to enhance the appearance of the development when approaching from Valley Road. It would appear that these trees are intended to be planted in a hard surfaced area: the screening and softening of the new store would be significantly improved if the trees were to be incorporated in a large planting bed comprising of a range of shrubs that would create a small planting belt to screen the northern elevation of the proposed store.

At present the layout of the car park is devoid of any soft landscaping. Whilst not important in terms of the amenity of the locality the overall appearance of the car park and the 'customer experience' of those using the store would be considerably improved if low level planting and trees were to be incorporated into the layout of the car park.

In other respects the landscaping proposed for the site boundaries is acceptable.

ECC Highways The Highway Authority raises no objection subject to the following

Dept

conditions:-

1. Prior to occupation of the proposed development, the proposed vehicular access and mini roundabout serving Bull Hill Road and to the service yard on Oxford Road shall be provided in precise and complete accord with Drawing Numbered 13.162.A (00) _04 including any accommodation works, kerbing, drainage, surfacing and reconstruction which shall be approved in writing by the local planning authority and to the specifications of the Highway Authority.

Reason: To ensure that vehicles using the site access do so in a controlled manner, in the interests of highway safety and in accordance with Policy DM 1 of the Highway Authority's Development Management Policies February 2011.

2. Prior to occupation of the proposed development, the Developer shall be responsible for the provision and implementation of a Travel Plan including the initial commitments and amended and supplemented under the provisions of a yearly report to include the results and analysis of the Staff Travel Survey approved by Essex County Council. They will be required to pay £3,000 monitoring fee to ECC.

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport in accordance with policies DM9 and DM10 of the Highway Authority's Development Management Policies February 2011.

3. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i. the parking of vehicles of site operatives and visitors
 - ii. loading and unloading of plant and materials
 - iii. storage of plant and materials used in constructing the development
 - iv. wheel washing facilities
 - v. HGV Routing plan

Reason: To ensure that on-street parking of these vehicles in the adjoining streets does not occur, in the interests of highway safety and Policy DM 1 of the Highway Authority's Development Management Policies February 2011.

4. Prior to the occupation of any of the proposed development the developer shall provide two additional bus stops on Oxford Road, as shown detailed on Drawing numbered 1017/24D including the provision of level entry kerbing, new post and flag, timetables, any adjustments in levels, surfacing and any accommodation works to the footway and carriageway channel being provided entirely at the applicant/Developer's expense.

Reason: To make adequate provision for the additional bus passenger

traffic generated as a result of the proposed development in accord with Policy DM 9 of the Highway Authority's Development Management Policies February 2011.

5. The development shall not be occupied until such time as the car parking area indicated on the approved plans, including any spaces for the mobility impaired has been hard surfaced, sealed and marked out in parking bays. The car parking area shall be retained in this form at all times and shall not be used for any purpose other than the parking of vehicles related to the use of the development.

Reason: To ensure that on-street parking of vehicles in the adjoining streets does not occur, in the interests of highway safety and in accordance with Policy DM 1 and 8 of the Highway Authority's Development Management Policies February 2011.

6. The development shall not be occupied until such time as the powered two wheeler and bicycle parking facilities indicated on the approved plan have been provided. These facilities shall be retained in this form at all times and shall not be used for any purpose other than the parking of vehicles related to the use of the development.

Reason: To ensure that on-street parking of vehicles in the adjoining streets does not occur, in the interests of highway safety and in accordance with Policy DM 1 and 8 of the Highway Authority's Development Management Policies February 2011.

7. The development shall not be occupied until such time as the highway improvements on Valley Road have been provided in precise and complete accord with the details shown in Drawings numbered 1017/28 & 1017/28A.

Reason: To make adequate provision for additional motor traffic generated within the highway, to assist in the reduction of congestion and for the improvement of highway safety on Valley Road as a result of the proposed development, in the interests of highway safety and in accordance with Policy DM 1 and 15 of the Highway Authority's Development Management Policies February 2011.

Informative1: All work within or affecting the highway is to be laid out and constructed by prior arrangement with, and to the requirements and specifications of, the Highway Authority, details to be agreed before the commencement of works.

The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org or by post to: SMO1 ' Essex Highways, Colchester Highways Depot, 910 The Crescent, Colchester, CO4 9QQ.

Informative2: The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act

1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

Informative3: The Applicant should be advised to contact the Essex County Council travel plan team at travelplanteam@essex.gov.uk to confirm arrangements for the planning and implementation of the travel plan.

Comment following consideration of objections and technical notes submitted by applicant.

I set out below further advice since submitting our recommendation dated 18 June 2014.

Since our recommendation, we have received a number of representations from Vectos and Martin Robeson on behalf of the promoters of the Clacton Gateway proposal.

We have discussed the issues raised in detail with Cottee Transport Planning and they have submitted amongst other email correspondence two technical notes dated August and October 2014.

Turning to each of the issues raised by Vectos and Martin Robeson:

Existing Uses

For any brownfield site, we always expect to compare the level of traffic which is or could be generated by the lawful planning use(s) of the site against that which could be generated by the proposed development.

In Cottee's August technical note they have set out a comparison of what the existing and proposed uses could generate in the Saturday peak (1100-1200); one of the peaks used in the Transport Assessment (TA). The existing use could generate 621 vehicle movements whilst the figure used in the TA for the proposed use is 625. We have no reason to doubt these figures, which are clearly comparable and suggest the existing use could generate traffic to a similar level to the proposed use, even with a petrol filling station not included with the latter.

Trip Rates

We are content with Cottee's rebuttals to this issue as set out in their two technical notes. In their August technical note they refer to an ASDA in Hastings, which although is larger than this proposal, it has no petrol filling station and it would not seem unreasonable to compare Hastings and Clacton as similar seaside towns. At the Hastings store, the peak traffic flow on a Saturday is 701 vehicles which equates to a trip rate of 10.1 vehicles per 100 square metres. The figure used in the Cottee TA is 11.49. Cottee's state that from their experience and we have no reason to doubt this, a petrol filling station adds between 5 and 10% to traffic flows. If this is taken into account it would mean the trip rate used in the TA is reasonable.

We agree with Cottee that it would not be appropriate to compare this proposal with the two ASDA stores quoted by Vectos in their 1st October

2014 submission.

Seasonal Variations

This is not something that needs or should be considered as part of the assessment of a proposal. We require a TA to use traffic flow data collected during a neutral month. The counts used in Cottee's TA were from February, which is not a neutral month. However on this occasion and given our knowledge of the highway network in the vicinity of the site, we are comfortable that if the February data was to be factored up to a neutral month, this would not cause the capacity analysis outcomes to become unacceptable. August is not a neutral month.

Site Access

We remain comfortable with the proposed roundabout in principle, which has also been subjected to a Stage 1 Safety Audit. In terms of forward visibility for vehicles approaching the roundabout from the south, Cottee have assured us that without moving or redesigning the proposed store building, the retaining wall and surrounding area could be redesigned to provide a level of forward visibility which we would be comfortable with. They have also mentioned it is possible to move the roundabout as far east as possible to assist with this issue. We are comfortable this issue can be addressed at the detailed design stage.

St. John's Road/North Road

We remain comfortable that the possible impact of the proposal on this junction is of a level whereby there is no need for its capacity to be assessed. Please also see my comments below regarding on site observations.

It is also worth mentioning that as with all TAs, the modelling is "only" what might happen as a result of a development and what we have found from our experience is that this does not always reflect what ends up happening on the ground. It is not unusual for the traffic situation to be better than predicted, predictions are often based on a worst case scenario.

We have also taken the time to observe the network in the vicinity of the proposal site and St. John's Road/North Road junction during the pm peak. Although it was busy there was no congestion with only a limited amount of delay for vehicles waiting to exit North Road into St. John's Road as well as when the pedestrian crossing was activated. This has helped us to come to the view that the highway network could take any additional traffic generated by the proposal.

The proposal site is in an accessible location, being surrounded by the built up area of Clacton with good access by public transport, cycle and on foot.

I hope this helps you to complete your committee report which in turn gives the members of your planning committee the assurances they may need, that from a highway and transport perspective, there is not a reason which would be defensible at Appeal on which to refuse planning permission.

Given that we feel there are no new issues which could change our mind, from our perspective we feel we have taken all matters and therefore our involvement as far as possible. If Vectos wish to make further representations then of course they can, but given our position we would not be prepared to spend any further resources reviewing and discussing with Cottee any further representations.

Network Planner
- UK Power
Networks

Environment
Agency

Comment in relation to original submission. We have inspected the application, as submitted, and are raising a holding objection to the application as there is insufficient information to determine the risks posed to water quality. Our detailed comments this objection are provided below, together with advice on the proposed petrol station, contaminated land and waste, should this objection be overcome:

Surface Water Drainage

The National Planning Policy Framework paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of water pollution.

We are raising a holding objection to the application as submitted because the applicant has not supplied adequate information to demonstrate that the risks of pollution posed to surface water quality can be safely managed.

Reason: No detailed site drainage plan has been submitted with the application. Without a plan, we cannot identify the sewer lines on the site, where the interceptors will be positioned and where vehicle washing may be undertaken. Furthermore, it is unclear what SuDS techniques will be incorporated into the development. In this case we consider that the proposed development may pose an unacceptable risk of causing a detrimental impact to surface water quality because the application has:

1. failed to indicate the means of disposal of foul/surface water in a detailed site drainage plan, areas include petrol station, delivery forecourt and car park.
2. failed to provide a confirmation from the sewerage undertaker that they can connect to the sewer network
3. failed to indicate what SuDS techniques will be incorporated into the development.

Overcoming our Objection:

The applicant should submit:

1. a fully detailed site drainage plan, identifying foul and surface water lines, where the interceptor(s) will be located and where vehicle washing will be undertaken and where the washings will be disposed of.
2. confirmation from the sewerage undertaker that you are authorised to connect to their sewer network with any necessary trade effluent consent as appropriate.

3. full details of the SuDS techniques that are to be incorporated into the development.

The information submitted indicates the impermeable area would only increase by 0.01 hectare as a result of the proposals and we will therefore not be providing bespoke advice on surface water with regards to flood risk.

If the above holding objection is able to be overcome, the following advice will also be relevant to this application:

Proposed Petrol Filling Station

No details of the proposed Petrol Filling Station (PFS) have been submitted with the application. Reference should be made to our Groundwater Protection: Principles and Practice (GP3 v1.1, 2013) position statements, particularly Section D: Storage of pollutants.

The location of the proposed PFS 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.

As such, subject to intrusive 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 that significantly differ 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.

Contaminated Land

The application form indicates that contamination is suspected for all or part of the site. Given the environmental sensitivity of the site and the information provided to date, we do not consider this site a priority and will not be providing detailed site-specific advice or comments with regards to land contamination issues for this site.

However, it is preferable for underground fuel storage tanks and associated fuel lines to be removed, together with any significantly contaminated soils in the immediate vicinity that are identified.

The developer should address risks to controlled waters from any potential contamination at the site, following the requirements of the National Planning Policy Framework and our Guiding Principles for Land Contamination.

If, during development, contamination not previously identified is found to be present at the site then the development should cease and the local planning authority should be informed in writing. In such case, a remediation strategy should be developed and submitted to the local planning authority detailing how this unsuspected contamination shall be dealt with. The remediation strategy shall be implemented as detailed.

Waste

Advice to applicant - Registered waste carrier

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 applicant is advised to contact the Environment Management team at Rivers House, Inworth Road, Kelvedon, CO5 9SE on 01473 706307 or refer to guidance on our website [http:// www.environment-agency.gov.uk/subjects/waste](http://www.environment-agency.gov.uk/subjects/waste). Advice to applicant - Duty of care

The Environmental Protection (Duty of Care) Regulations 1991 for dealing with waste materials are applicable for any off-site movements of wastes. The developer as waste producer therefore 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. Waste must be described in writing and a transfer note is filled in and signed by both persons involved in the transfer. The transfer notes must include specific information and both parties involved in the transfer should keep a copy for two years.

Comments on updated Flood Risk Assessment – 25 July 2014: Now able to remove previous holding objection to the proposed development, and provide further advice and guidance:

Surface Water Quality:

Surface water and groundwater have legal protection. It is an offence to pollute them. Oil is one of the most common pollutants to water. If the water is clean surface run-off, for example, from a roof, road, pathway or clean hard standing area, an environmental permit is not required. The applicant must ensure that 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 receiving water.

We note from the application form that the car parking surface water is to be disposed of to the Sustainable Drainage System. This is best practice and no environmental permit is required for this. However, if the development plans were to change, we would recommend that all run-off from 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 with 50 or more parking spaces. More information in PPG3.

Foul and surface water manhole covers should be marked to enable easy recognition. The convention is red for foul and blue for surface water. This is to enable water pollution incidents to be more readily traced. More information in PPG1.

Car wash liquid waste is classed as trade effluent. Before discharging to a sewer you must always get a trade effluent consent or enter into a trade effluent agreement with your water and sewerage company or authority. If you are not able to discharge effluent to the foul sewer it will be classed as waste and you must then comply with your duty of care responsibilities.

Any car wash liquid waste must be kept separate from surface water drains and associated surface water interceptors. This is because the car

wash liquid can render the separators useless, as it emulsifies the oil into the water. See PPG13.

Foul sewerage for the development is to be disposed of via the main sewer. The appropriate water company must be consulted to ensure that the existing system has sufficient capacity to accommodate this development.

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 or 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. Refer to PPG6 for advice and guidance for construction and demolition sites.

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

- If any controlled waste is to be used on site or elsewhere, the applicant/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.
- 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 suitable 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 developer as waste producer therefore 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.

Pollution Prevention:

The following PPGs are also applicable to this development: PPG7 and PPG22.

Comments following objections.

Thank you for your re-consultation on this application. We have inspected the additional information submitted and although this does not change our position, we have the following comments to make with regard to Flood Risk:

Currently the site's surface water system is draining to Anglian Water sewer. The increase in impermeable area as a result of the proposals is approximately 0.01ha. the submitted Flood Risk Assessment (FRA) states that below ground attenuation storage will be provided as per point 2c of Table 3 'Summary of Flood Risk Assessment' on page 20. we can advise that the attenuation storage should be sized to accommodate a range of events up to and including the 1 in 100 year event plus a 30% allowance for climate change.

We also recommend consultation with Anglian Water to ensure that they are willing to allow the site to continue to discharge to their surface water sewer. Section 7.6 of the FRA states that 'Discharge rates will be reduced by 30% ...' Therefore betterment is being provided in accordance with Section 8.3.1 of TDC's Strategic Flood Risk Assessment (SFRA).

The site is brownfield covering approx. 2.2 ha. The proposal is to demolish the existing buildings, revise site levels to a level that can accommodate a new Asda, petrol filling station and car parking. Therefore, any revision to site levels should also ensure that any changes in the topography of the site does not increase flood risk elsewhere.

Borehole and window samples have been submitted in Appendix C which shows the site to be predominantly clay. In addition, our mapping shows the bedrock geology to be London Clay Formation. Therefore, management of surface water through infiltration is unlikely to be possible.

Arch. Liaison Essex Police do not object to this application but do raise concern regarding the link path from Windmill Park. We would recommend that this access route passing a bungalow is covered by the stores CCTV system and illuminated during night time hours. We would also recommend the store achieve a secured by design certification and the car park achieve the safer parking award "Park Mark". These awards will enhance the stores intentions to make the site safe and secure. Willing to work with the applicant and their agent to attain these standards.

ECC SuDS (Sustainable Urban Drainage) None Received.

Anglian Water Services Ltd **Assets - 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 text 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 Services – Section 2 – Wastewater Treatment

The foul drainage from this development is in the catchment of Clacton Holland Haven Recycling Centre (Formerly Sewage Treatment Works) that will have available capacity for these flows.

Section 3 – 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.

Section 4 – Surface Water Disposal

The preferred method of surface water disposal would be to a sustainable drainage system (SUDS) with connection to sewer seen as the last option.

Building Regulations (Part H) on Drainage and Waste Disposal for England includes a surface water drainage hierarchy, with infiltration on site as the preferred disposal option, followed by discharge to watercourse and then connection to a sewer.

The surface water strategy/flood risk assessment submitted with the planning application relevant to Anglian Water is unacceptable. We would therefore recommend that the applicant needs to consult with Anglian Water and the Environment Agency.

We request a condition requiring a drainage strategy covering the issue(s) to be agreed.

Suggested Planning Condition:

Condition: No drainage works shall commence until a surface water management strategy has been submitted to an approved in writing by the Local Planning Authority. No hard standing areas to be constructed until the works have been carried out in accordance with the surface water strategy so approved unless otherwise agreed in writing by the Local Planning Authority.

Reason: To prevent environmental and amenity problems arising from flooding.

Section 5 – 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 to the local watercourse and may constitute an offence.

Anglian Water also recommends the installation of a 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.”

Comments following re-consultation in accordance with Environment Agency Advice 9th September 2014.

We have assessed the additional information you have provided based on your pre planning report issued and our response is detailed below:

Disposal at a maximum of 75 l/s to the public surface water sewer at manhole 9254 situated at Bull Hill Road via a gravity regime is acceptable.

Please note that the Anglian Water baseline method of calculating permitted surface water discharge rates is as follows:

Where a brownfield site is being demolished, the site should be treated as if it was Greenfield, no historic right of connection will exist and any sewer connections will be treated afresh. Where this is not practical, Anglian Water would assess the roof areas of the former development site and subject to capacity, permit the 1 in 1 year calculated rate to discharge to the public surface water system.

Flows in excess of any agreed rate would need to be stored on site to Environment Agency's requirements for all events up to and including the 1 in 100 year plus climate change rate unless a greater event has been stipulated.

Ideally the agreed flow rate should be restricted via a vortex style chamber with all up stream pipe work offered for adoption by Anglian Water to be designed not to flood in the 1 in 30 year event as per the current edition of Sewers for Adoption.

Comments received dated 21 October 2014 after seeking clarification of Anglian Water's comments of 9th September 2014

Anglian Water does not object to Planning Application 14/00537/FUL. However, we would ask that a condition is included on the planning permission, if granted, stating that the surface water strategy should be submitted and approved before work commences, in accordance with the planning application report.

Essex County
Council
Archaeology

Thank you for consulting the historic environment specialists of the Place Services team at Essex County Council on the above planning application.

The Archaeological Desk-Based Assessment submitted with the application highlights the potential for below ground archaeological remains on the site of the proposed development, although fails to adequately assess the potential for such surviving remains, or the likely impact of the development on their significance e.g. the potential for the post medieval Bull Farm to have had a medieval predecessor, which could contribute to our understanding of medieval settlement in the county, and the loss of any such evidence that is likely to result from the development.

Given the potential for the proposed development to impact on any surviving below ground archaeology on the site, the following condition is recommended in line with the Department for Communities and Local Government National Planning Policy Framework:

RECOMMENDATION: Trial Trenching followed by Open Area Excavation and/or Monitoring

1. No development or preliminary ground-works can commence until a programme of archaeological trial trenching 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, monitoring and/or preservation in situ through re-design of the development, shall be submitted to the local planning authority.
2. No development or preliminary groundwork can commence on those areas of the development site that will affect 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 ensure 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 where appropriate.

A professional team of archaeologists should undertake the archaeological work, which will comprise an initial stage of trial trenching evaluation. The evaluation will be undertaken and completed and then followed by open area excavation or detailed monitoring 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.

5. **Representations**

- 5.1 A total of 143 representations have been received.
- 5.2 128 representations have been received in support of the development, which are summarised below:
 - In accordance with NPPF – all three aspects (economic, environmental and social) are achieved.
 - Directly accessible by non-car modes of transport.
 - Safeguard existing jobs and create new jobs.
 - Redevelopment/modernisation of a site which already holds a supermarket.
 - Site well connected with town centre.
 - Will provide variety and choice of supermarkets.
 - Clothing range and pharmacy facilities will be well used.
 - People will not need to travel to Colchester store.
 - ASDA more appropriate than a housing development.
 - Will provide light and extra security for Oxford Road.
 - Good location.
 - ASDA is good value for money and good products.
 - Good competition for other supermarkets.

- Will encourage people living further afield and tourists to come to Clacton.
- Attractive design and layout.
- Will improve/regenerate the area, and the visual appearance of the site.
- Existing site currently underutilised and falling into disrepair.
- Generate revenue for Tendring Council.
- Will stimulate business for other shops in area.
- Development may stop other businesses leaving and encourage companies to follow.
- Home delivery service will be convenient.
- Good supermarket needed in area since close of Somerfields.
- Too many supermarkets can be counterproductive but generally supportive.
- Public transport links to the store should be considered.
- Good car parking improvements and numbers of spaces.
- ASDA matches the town's demographic make up.
- Positive effect on prosperity of town.
- Cheap petrol prices.
- Clean stores.
- All other supermarkets operators exist in area but no ASDA.
- Friendly, helpful staff with all round positive experience in ASDA stores.
- No extra traffic problems than there are at present, traffic will flow better.
- Town centre shops will not suffer.
- Will not alter entrance/exit of vehicular access.
- Design of road layout will stop parking outside the Royal Mail office.
- Environmentally friendly in the stores design and the building process.
- Great customer service.

5.3 13 representations were received objecting to the development. The issues raised are summarised below:

- A review of the Transport Assessment found deficiencies and flaws in relation to traffic survey data, trip attraction rates, use of junctions, vehicular access, capacity assessments, safety audit, stopping up of highway, traffic regulation orders. (Representations from Vectos Transport Planning Specialists on behalf of Martin Robeson Planning Practice in a letter dated 4th July 2014).
- Application has deficiencies in relation to: the policy basis for decision taking, retail planning, highways and transport and flawed Environmental Assessment/Screening Opinion. (Representation from Martin Robeson Planning Practice in a letter dated 4th July 2014)
- Concern over no proper/adequate Retail Impact Assessment being carried out. (Representation from Martin Robeson Planning Practice – 29th July 2014)
- Reports submitted by Vectos and K Welham Limited to demonstrate unsatisfactory nature of Transport and Flood Risk Assessment. (Representation from Martin Robeson Planning Practice – 5th August 2014)
- One of the key concerns is that no detailed capacity assessment had been carried out at the North Road/St Johns Road priority junction bearing in mind existing observed capacity reducing effects that block back from that junction causing problems at the St Johns Road/Valley Road/Old Road mini roundabout. As no progress has been made by Asda's consultants the objectors consultant has commissioned a survey the results of which show clear evidence that a thorough assessment of the interaction between these junctions needs to be undertaken with the correct trip rates for Asda applied. (Representation from Martin Robeson Planning Practice – 11th September 2014).
- The letters of Asda Stores Ltd and Planning Potential dated 29th August 2014 and the technical note of Asda's highway consultant (including visibility splay drawings) were not revealed in a timely manner. These letters present two options for foodstore development on the site to try to assert that some kind of fall back position exists and

also provide commentary on retail preferences and the turnover of the existing Co-Op. No reliance can be placed on the fall back scenarios to circumvent proper scrutiny of the application both from a retail and highways perspective. There is no evidence to confirm that these options are anything more than a theoretical prospect. Asda does not have a legal position on any of these other options. Asda do not commit to pursuing either option. A robust Transport Assessment and Retail Impact Assessment are required. The letters suggest that the fall back options are more preferable to Asda than the unit proposed at Clacton Gateway. This is expected only because of the likely terms of their contract with the Co-Op. The turnover of the Co-Op has not been released and the application scheme's turnover is likely to be significantly higher than the £16m suggested by Asda or £0.8m for the existing Co-Op. The objector considers the proposed turnover for Asda will be c.£33m. The difference in trading is significant and highlights the importance of a proper Retail Impact Assessment and Transport Assessment being undertaken. (Representation from Martin Robeson Planning Practice – 19th September 2014).

- Further work is attached that demonstrates the wholly unsatisfactory nature of the additional highway evidence presented by the applicant and the shortcomings of the drainage scheme in the context of Anglian Water's comments dated 9th September 2014. the evidence in the applicant's technical note and forward visibility splay drawings fail to address the fundamental deficiencies previously identified in the applicant's Transport Assessment. The asserted fall back position has no weight in terms of the traffic impact considerations. Further evidence from existing Asda stores demonstrates that the applicant's survey data categorically underestimates trip rates for the proposal. An updated Transport Assessment is required to be undertaken to base the assessment on flows reflective of more average traffic conditions (not the unrepresentative February counts used). The forward visibility splay runs through a retaining structure and does not appear achievable. The applicant's highway evidence gives the Council a false picture of the proposal's effects. The safety audit has not been made available and there is no proper consideration of the requirement for traffic orders. The scheme fails to provide sufficient surface water storage to meet Anglian Water's maximum discharge allowance. The scheme requires updating to demonstrate how and where the required level of storage will be provided. The overdevelopment of the site results in an unsustainable scheme with no SuDs solution. The Council cannot be satisfied that the scheme will meet the requirements of the statutory consultees. Attached evidence will help the Council in this regard. (Representation from Martin Robeson Planning Practice – 3rd October 2014).
- Will cause more congestion to narrow roads.
- A 24 hour store would have significant impact on nearby residents.
- Alternative sites on outskirts of town would be more suitable.
- Petrol filling station too close to properties - concern over health and safety.
- Increase in traffic.
- Tree planting to screen noise and lighting will block sunlight.
- Site should be made available for housing.
- Store should close 8pm latest and have security barriers.
- Traffic counts not taken at peak times.
- Traffic noise.
- Support for the store is not representative of population.
- Will acquire customers from existing supermarkets.
- Impact on the quality of life for residents.
- Cars and lorries parked on Oxford Road frequently obscure views for drivers.
- Fewer parking spaces than at Brook retail Park Tesco store.

5.4 2 representations have been received neither objecting to nor supporting the planning application, the points raised are summarised below:

- Live close to another petrol station and never had issues.
- Points/concerns raised over Transport Assessment, regarding traffic movements, on street parking, entry/egress to proposed service yard.
- Traffic flow needs to be carefully considered.

5.5 The above representations include a summary of 6 objection letters dated 4th July 2014; 29th July 2014; 5th August 2014; 11th September 2014; 19th September 2014; and 3rd October 2014 received from the agent acting on behalf of the Clacton Gateway scheme. This scheme proposes a cinema complex (including restaurants); superstore; petrol filling station; an extension to the Picker's Ditch walkway and associated parkland together with an extension to the existing Brook Country Park at land south west of the roundabout at Brook Retail Park, Little Clacton Bypass. The content and issues raised by these objections will be covered in detail within the assessment of the application proposal below.

5.6 The applicant and the applicant's agent have also provided written letters and statements in support of the proposal (9th July 2014) and rebutting the objections to the technical information provided with the application. The latest letters are dated 29 August 2014 and these are summarised as follows:

- Asda is committed to the Bull Hill site and other options they would be willing to consider if the current application is unsuccessful. The preference would be for planning permission to be granted for the application proposals but if not then Option 2 would be a reduced redevelopment proposal (a replacement store with a comparable sales area); Option 3 would be refurbishment of the existing store. The fall back position is therefore a realistic scenario for either Asda, or any other retailer.
- Asda are not connected to the Gateway scheme in any way and it is frustrating that third parties that have no authority to act on Asda's behalf continue to make claims to the contrary
- Asda has had a longstanding requirement to be represented in the town and consider that a new store would bring considerable benefits including enhanced shopping choice and, new local job opportunities, including retaining existing Co-Op employees
- The Bull Hill site matches Asda's site appraisal in terms of market potential; location; financial terms; and planning terms. The site is brownfield and an established retail destination in a more sustainable location than the greenfield Gateway site. A large proportion of the existing floor space is not subject to any trading restrictions. A legal contract was entered into by Asda with the Co-Op in November 2013.
- The benefits of the scheme are numerous including comprehensive regeneration of the brownfield site in the urban area; enhance retail choice; its access to the local population; linkage improvements are proposed; redevelopment would secure considerable social, environmental and economic benefits.

5.7 The East of England Co-Op has also commented on the application as follows:

"The East of England Co-Op agree with Asda that their application to redevelop the Bull Hill Road site secures considerable benefits and should be granted planning permission. Without prejudice to this position, in the event that planning permission is refused, then consideration would be given to alternative proposals, including Options 2 and 3 as set out in Asda's letter dated 29th August 2014."

In addition, Asda undertook their own public consultation exercise in advance of submitting the formal application. This included a public exhibition that took place in Clacton on 14th and 15th February 2014. The exhibition was advertised by way of 25 000 fliers; by

neighbour notification letter to 21 homes immediately around the site; and by two press adverts in the preceding week. 491 feedback forms were returned and of these 94% were in favour; 3.5% against; and 2.5% were unclear/undecided.

6. Assessment

The Site

- 6.1 The site lies within the settlement boundary identified for Clacton on Sea but outside of the defined town centre. It is located on the northern edge of an existing industrial/commercial area approximately 1 mile from the town centre. The site is currently occupied by a trading Co-Op supermarket and petrol filling station (Texaco) along with a Bookers Cash and Carry. There are a further two vacant retail units previously occupied by an electrical goods store and a furniture store. The existing floor areas are summarised as follows:

Building	Gross	Net	Convenience	Comparison	Parking
Co-Op Foodstore	3,249	2,016	2,016	na	
Homemaker	1,723	1,206	n/a	1,206	
Electrical	1,230	861	n/a	861	
Booker	1,406	n/a	n/a	n/a	
TOTAL	7,608	4,083	2,016	2,067	190
ASDA	5,313	3,252	1,951	1,301	309
Difference	-2,295	-831	-65	-766	119

- 6.2 The Co-Op store remains trading. It is located in the north eastern section of the site. It is constructed of brick and sheet metal cladding and is in reasonable repair although visible cracks are apparent within the brick pillars and in the render.
- 6.3 The Booker Cash and Carry remains trading and is located in the north western section of the site. It is a single storey structure of brick construction with an asbestos cement sheet roof. It is in reasonable condition. An electricity sub station exists adjacent to the building.
- 6.4 The Texaco petrol filling station is located centrally to the southern boundary of the site and remains trading. It comprises three pump islands with an associated canopy; a small kiosk/shop and a drive through car wash. The fuel tanks are located underground.
- 6.5 The former furniture store is located within the south eastern section of the site. It is constructed of brick and sheet metal cladding and is in poor condition.
- 6.6 The former electrical store is located centrally to the southern boundary (adjacent to the petrol filling station). It is also constructed of brick and sheet metal cladding.
- 6.7 The site is adjacent to residential properties to the west and north and industrial and commercial properties to the south and east. Further to the east is the main Clacton to London rail line. Oxford Road is the main highway providing a route from the town centre and ending at Valley Road – a B classified road (B1027).
- 6.8 The site is approximately 2.2 hectares and is predominantly developed or hard surfaced as a car park. The car park area is mostly devoid of soft landscaping and areas are underused and have attracted fly tipping to occur. A small amount of soft landscaping exists to the west, north and east boundaries. There are two trees within the site boundary that are protected by Tree Preservation Orders.

- 6.9 The levels of the site vary with those surrounding it. It rises approximately 4 metres from north to south. It is level with the highway at Oxford Road but rises above the residential properties to the north and the west by approximately 1 – 2 metres. The site is retained by a combination of brick and pre cast concrete retaining walls.
- 6.10 Pedestrian and vehicular access and egress is currently achieved from the northern extremity of the site via Oxford Road and a further vehicular egress is positioned to the southern extremity of the site adjacent to the petrol filling station and a industrial/commercial property occupied by the manufacturing business known as Nico. A further pedestrian link to the residential development known as Windmill Park exists to the south western corner.
- 6.11 The site is within Flood Zone 1 and it is not within a Conservation Area. There are no listed buildings within the immediate vicinity of the site. The site is in brownfield, retail use and is allocated in the adopted and emerging local plans for employment use by virtue of Policies ER2 and PRO14. There are no other constraints relative to the site.

The Proposal

- 6.12 The application is made for full planning permission and includes:
- Demolition of existing buildings (totally 7,608sqm, of which 6,202sqm is retail) and construction of Asda foodstore of 5,313sqm (gross) and 3,252 sqm (net)
 - 313 parking spaces including 17 disabled parking spaces; 17 parent and child spaces and 4 electric car charging points
 - Motor cycle and cycle parking
 - Petrol Filling Station
 - Co-Op Travel 'pod'
 - 'Click & Collect' shopping facility
- 6.13 The application includes alterations to Oxford Road including a new roundabout junction to access the site (that will necessitate the stopping up of Bull Hill Road); enhancements and improvements to the mini roundabout at the junction with Valley Road; a service access to the south of the site from Oxford Road. Two new bus stops are proposed on Oxford Road.
- 6.14 The application is accompanied by the following documentation and drawings:

Architectural Drawings and Design and Access Statement

- A(00)_01 Rev 0 Location Plan
- A(00)_02 Rev 0 Existing Site Plan
- A(00)_03 Rev 0 Existing Site Sections
- A(00)_04 Rev 0 Proposed Site Plan
- A(00)_05 Rev 0 Proposed Ground Floor Plan (Rev A)
- A(00)_06 Rev 0 Proposed First Floor Plan (Rev A)
- A(00)_07 Rev 0 Proposed Roof Plan
- A(00)_08 Rev 0 Proposed Elevations (Rev A)
- A(00)_09 Rev 0 Proposed Part Elevations (Rev A)
- A(00)_10 Rev 0 Proposed Site Sections
- (PA) 01 Proposed Petrol Station Plan (Rev C)
- (PA) 02 Proposed Forecourt Elevations
- (PA) 03 Proposed Forecourt Sections
- (PA) 04 Control Room Details (Rev A)
- Supplement to DAS – PFS Details
- Computer Generated Images

Reports and Technical Information

- Archaeological DBA
- Environmental Noise Survey Report and Noise Impact Assessment for Fixed Plant
- Energy Conservation Design Statement
- External Lighting Design Statement
- Flood Risk Assessment (and revision)
- Planning and Retail Statement
- Preliminary Risk Assessment
- Statement of Community Involvement
- Transport Assessment and Travel Plan
- Tree Survey Report and Landscape Masterplan

6.15 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. The Screening Opinion was also assessed against the existing use and characteristics of the site and it was concluded that the physical change to the site would be marginal as the site is predominantly hard surfaced and occupied by a number of existing retail units.

6.16 The main planning considerations are:

- Principle of development and retail impact;
- Design;
- Access, Movement and Connectivity;
- Impact upon neighbours;
- Highway Safety;
- Flood Risk;
- Contamination;
- Landscape Impact (including impact on trees protected by Tree Preservation Order); and,
- Heritage Assets.

Principle of development and retail impact

6.17 In line with Section 38(6) of the Planning and Compulsory Purchase Act 2014, 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.

6.18 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.

- 6.19 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.
- 6.20 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". Regard has also been had to the NPPG.
- 6.21 The site is within the settlement boundary identified for Clacton both in the adopted and emerging local plan. It is allocated for business and employment use by virtue of Policy ER2 of the adopted local plan and it is proposed to be allocated for employment purposes in the emerging local plan (Policy PRO14 refers and states in the preamble that existing retail sites, are shown as 'employment land' on the Policies Map insets and are protected, through Policy PRO14, against redevelopment for non-employment uses (particularly housing) in recognition of the important local employment they provide). The site is a brownfield, existing retail use and in a sustainable location, accessible by a range of means of transport – including public transport, walking and cycling as well as by car.
- 6.22 Objections to the development on behalf of the applicant of the Clacton Gateway scheme have been received on the basis that the site is protected by policies of the adopted local plan that allocate employment land and that seek to protect existing employment land. In particular, the objection states that reliance on the emerging local plan policies is misguided and a clear legal misdirection in any decision making process. In particular reference is made to the over reliance of the Council in its pre application advice and the applicant on proposed Policy PRO14.
- 6.23 The basis for any decision on a planning application is required to consider the land use planning policy in the first instance and then alongside any other material considerations. The site is in existing retail use and the Council recognises this service sector employment in the District as being an important employment generator. This is verified within the Council's Economic Development Strategy that has helped to inform the local plan. The Council's assessment of the application takes into account the NPPF presumption in favour of sustainable development and the status of the adopted local plan and the emerging local plan and also has regard to other material considerations – in particular the existing retail operation at the site. It is not considered that undue weight has been given to any one policy but that regard has been had to all three arms of the sustainability criteria of the NPPF which cannot be judged in isolation and to the strong material consideration that exists in that the retail operation at the site has existed since the 1970's.
- 6.24 Objections to the application proposals have also been received on retail impact grounds. One in particular has been received on behalf of the applicant for the Clacton Gateway proposal for a superstore and cinema. The objector asserts that the fact that the site is occupied by an existing retail use does not negate the need for a full Retail Impact Assessment and quotes from the NPPF and NPPG. The objection is accompanied by a Retail Impact Assessment based on the data used by the Council to defend its position in relation to the Clacton Gateway proposal. The objector's Assessment challenges the existence of a fall back position – in other words whether the existing retail use of the site can be considered as a material consideration in determining the current application proposal. The challenge to the fall back position is based on the size; quality; configuration

and layout of the site and alleges that it is not realistic to expect Asda to occupy the site as it currently exists and that the contractual obligation between Asda and the Co-Op does not require this scenario in any event. The objector asserts that therefore the Council should not refer to a fall back position as in the objector's view it does not exist. Using the Council's data for the Gateway scheme the objector concludes that the impact of the proposed application on town centre trade would be between 5.8% and 6.4% - the Clacton Gateway scheme resulted in a 6% draw and was not supported by the Council.

- 6.25 The objector suggests that without a proper assessment of retail impact on the town centre any decision would be flawed and open to challenge.
- 6.26 A report has been prepared by GVA in response to an instruction by the Council in order to carry out an independent review of the retail planning policy aspects of the application proposal for the retail redevelopment at the site. Before explaining the content of that report it is worth mentioning that the Gateway scheme also includes a cinema proposal and of course the current application does not and so this element of the impact on the town centre is not covered in this report.
- 6.27 The Council requested that GVA carried out a review of the relevant supporting documentation which has been submitted in support of the proposal. In particular, the Council sought an expert retail consultant's review of the contents of the Planning and Retail Statement prepared by Planning Potential, along with additional correspondence from Planning Potential and Asda during August 2014.
- 6.28 In particular, given the location of the proposed supermarket outside of Clacton town centre, GVA considered the proposal in the context of the sequential approach to site selection and its likely impact on Clacton town centre.
- 6.29 The application was not accompanied by a Retail Impact Assessment as it was felt that the existing level of retail floor space currently on the application site negated the need for a full Impact Assessment as the NPPF and NPPG only applies to proposals of over 2,500 sq. metres. GVA have advised the Council that whilst the NPPF requires a Retail Impact Assessment for proposals over 2,500sq m gross retail floor space it (or the NPPG) does not clarify whether this related to gross or net additional retail floor space. Without any clarification from the Secretary of State and recent appeal decisions, GVA consider this to be a grey area and have advised the Council that an Impact Assessment should be undertaken to ensure a robust decision is taken by the Council.

Sequential Test –

- 6.30 Proposals for retail development should be considered in line with a sequential approach which looks to locate proposals:
- within defined town centres firstly and;
 - if no such sites are available then edge of centre sites secondly and;
 - if no edge of centre sites are available then out of centre sites lastly.
- 6.31 Annex 2 of The NPPF defines town centres, edge of centre and out of centre locations as:

Town centre: Area defined on the local authority's proposal map, including the primary shopping area and areas predominantly occupied by main town centre uses within or adjacent to the primary shopping area. References to town centres or centres apply to city centres, town centres, district centres and local centres but exclude small parades of shops of purely neighbourhood significance. Unless they are identified as centres in Local Plans, existing out-of-centre developments, comprising or including main town centre uses, do not constitute town centres.

Edge of centre: For retail purposes, a location that is well connected and up to 300 metres of the primary shopping area. For all other main town centre uses, a location within 300 metres of a town centre boundary. For office development, this includes locations outside the town centre but within 500 metres of a public transport interchange. In determining whether a site falls within the definition of edge of centre, account should be taken of local circumstances.

Out of centre: A location which is not in or on the edge of a centre but not necessarily outside the urban area. [Annex 2 NPPF]

- 6.32 In relation to the application of the sequential test, the applicant has not provided an assessment for the same reason i.e. that the site is an existing brownfield, retail use. GVA advise that there is no floor space threshold in the NPPF and NPPG where the sequential test is concerned and therefore consider that this test should be applied, although the existing floor space on the application site will be a strong material consideration.
- 6.33 There is no formal guidance to suggest that the existence of existing retail floorspace on an application site should negate the need to consider the sequential approach to site selection. Therefore, whilst the existence of existing retail floorspace is a material planning consideration in favour of grant, GVA have considered whether there are any in-centre, edge-of-centre, or more accessible and better connected out-of-centre sites which can meet the tests of suitability, availability and viability.
- 6.34 The review considered a number of sites referred to in both the adopted and emerging local plans. These sites included the following: Waterglade retail park (proposed extension); Pavilion garage site (Pallister/Colne Road); High Street/Rosemary Road; Jackson Road (car park); High Street/Carnarvon Road/Station Road; Warwick Castle; Station Gateway and Jackson Road.
- 6.35 The review concluded that the alternative potential development sites in Clacton are either too small to accommodate the proposed development (taking into account flexibility) or are proposed to be allocated for alternative land uses. Your officers agree with this conclusion of the review. Therefore, the proposed development accords with the sequential approach to site selection and complies with the relevant parts of policies ER31 and ER32 of the adopted local plan; Policy PRO6 of the emerging local plan and paragraph 24 of the NPPF.
- 6.36 Retail Impact - In order to assess the impact of the proposed development, GVA advised that there is a need to take into account the existing land uses on the application site and consider whether any provide a genuine 'fall-back' position. The focus for the assessment has been the existing Co-op store and it has been concluded, contrary to the representation from Clacton Gateway and others, that whilst it is not a certainty that it will be re-occupied by Asda, then there is a genuine likelihood of this occurring. It is well established as a matter of law that a 'fall-back' position is capable of being a material consideration and that in order for a prospect to be a real prospect "*it does not have to be probable or likely: possibility will suffice*"¹ This creates a situation where the expenditure attracted to the Co-op unit is likely to increase in the future without the need for a planning permission which requires the consideration of the national planning policy tests of impact and the sequential approach to site selection. Therefore, part of the impact of the proposed new-build store is likely to occur in any event. This is a consideration that needs to be borne in mind throughout when assessing the issue of impact.
- 6.37 Based on the impact on convenience good stores in the primary shopping area boundary, the solus impact of a new-build ASDA store would be between 10% and 12% on the convenience goods sector and 3-4% on the whole retail sector. This can be compared with
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a 6%-8% impact of the fall-back position on the convenience goods sector and a 2% total retail impact. If all stores in the town centre boundary are included, then the impact of a new-build store rises to 13%-16% on the convenience goods sector, with a total retail impact of 6%-7%. This can be compared with the fall-back impact of 7%-10% on the convenience goods sector and a total retail impact of 3%-4%.

- 6.38 When assessed cumulatively with other recent developments and commitments, the impact of a new-build ASDA store would be between 14% and 16% on the convenience goods sector and 4% on the whole retail sector. This can be compared with a 10%-12% impact of the fall-back on the convenience goods sector and a 3% total retail impact. If all stores in the town centre boundary are included, then the impact of a new-build store rises to 15%-18% on the convenience goods sector, with a total retail impact of 6%-7%. This can be compared with the fall-back impact of 9%-12% on the convenience goods sector and a total retail impact of 4%-5%.
- 6.39 GVA advises that overall, this solus impact is a relatively large financial impact upon the trading performance of the town centre, concentrated primarily on the convenience good sector. The general picture will be one of poorer trading conditions within the primary shopping area food stores and the town centre is likely to suffer from both a direct loss of food shopping trips and also through the loss of some linked trips associated with food shopping visits. This is unlikely to lead to the widespread closure of food stores in the town centre boundary, although the Sainsburys store is likely to be vulnerable given its poor trading performance and the upcoming expiry of its lease. Indeed, instead of closures, it's considered that the more likely adverse impact upon the town centre is one of a continued reduction in the role of Clacton town centre in convenience goods shopping sector and the loss of vitality in the town centre through the loss of shopping trips. It's considered that the scale of this impact is close to the tipping point between an adverse impact and a significant adverse impact for the town centre, although there is not sufficient evidence for us to conclude that a significant impact is likely to occur. However members should bear in mind while evaluating this conclusion that account should be taken of the fall back position, as the law requires in order to accord with the reality of the situation. When this is done the impact falls to 4% on the convenience goods sector and 1% on the whole retail sector. If it is considered on an 'all stores in town centre' basis then the equivalent impacts are 6% and 1% respectively. This is a clear indication of the overall acceptability of the retail impact of the proposals.
- 6.40 The report concludes by stating the following:
- "As a consequence of the above (that is the solus impact), we consider that the current application proposal will have an adverse impact upon the health of Clacton town centre but do not consider that the impact of this scheme is sufficient to be classified as a significant adverse impact. Therefore, under guidance contained within the NPPG, there is a need to balance the positive and negative impacts associated with this proposal and this has included the adverse impacts associated with the fall-back position on the application site and the opportunities that this application presents in terms of the appearance of the site and the removal of other retail units. Taking into account and balancing these factors leads us to the conclusion that whilst the impact of the proposal will be adverse it should not be resisted by the Council under the planning policy test of 'impact'."
- 6.41 Your officers have concluded that this advice to be clearly correct, especially when regard is had to the impact that would result from the fall back position in any event. The development thus accords with the NPPF (Section 2); the NPPG (Ensuring the Vitality of Town Centres); policies ER31 and ER32 of the adopted local plan; and policy PR06 of the emerging local plan.

Design

- 6.42 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.
- 6.43 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, consultation and pre-application process. This includes how the store was re-orientated in order to create a separate service yard area to the south of the building (previously this was proposed at the north east beside the store entrance). This results in the service yard being further screened from the public realm
- 6.44 It also explains how account has been had of the need to address the differing site levels and protect the residential amenity of those properties adjacent to the application site. Cross sections of the site have also been provided that demonstrate the relationship between the main store and the petrol filling station with residential properties.
- 6.45 The design of the scheme is to a certain extent subjective. The proposed buildings are large in scale but are representative of the existing buildings on the site which are of similar dimensions; mass and scale and to those business and commercial properties that are in close proximity to the site. The materials to be used reflect Asda's branding and incorporate materials that provide a contemporary take on the surrounding industrial area. These include cladding and engineered brick and horizontal timber cladding. The entrance feature is proposed to be constructed of metallic cladding to define and mark the active frontage. The design also incorporates extensive areas of curtain walling to help achieve an active frontage externally but to enliven the internal environment too.
- 6.46 The development is considered to be acceptable in terms of design and layout including connectivity with surrounding built development. The proposal thus accords with the NPPF (Section14) and policies QL9 and QL10 of the adopted local plan and policy SD9 of the emerging local plan.

Access, Movement and Connectivity

- 6.47 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.
- 6.48 The application layout has considered the need to improve existing pedestrian connections in the locality of the site and within the site and to improve the existing pedestrian link to Windmill Park. A Section 106 obligation will provide a contribution to secure a CCTV camera in this location that will help to prevent anti-social behaviour and make the car park able to comply with secure by design standards,. It is difficult to create new links because of the site levels and the constraints of surrounding development but good connections already exist and the existing local highway network is conducive to cycling. The site is already in a sustainable location and has pedestrian routes to the nearby residential properties that make up the area known as Great Clacton. It is in close proximity to the defined District centre of Great Clacton and to the wider residential developments on Valley Road; Burrs Road and beyond.

- 6.49 The application therefore addresses the requirements of the NPPF (Section 8) and policies QL2; QL10, COM1, COM2 TR3a; TR5 and TR6 of the adopted local plan and policies SD8 and SD9 of the emerging local plan. The proposed improvements can be controlled by way of conditions and planning obligations.

Impact upon neighbours

- 6.50 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.
- 6.51 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.
- 6.52 The visual impact of the development will be greatest to those residential properties to the west and north of the site. The building at its closest point to these properties would be over 78 metres from properties to the east and 90 metres from properties to the north and the site layout has evolved following extensive public consultation by the applicant with residents to position the main building furthest away within the site. Similarly the service yard is contained to the south boundary of the site at its furthest point from residential properties and will be screened by boundary enclosures. 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 and acoustic fences 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.
- 6.53 The application proposes a petrol filling station to the south of the site closest to the residential property facing Bull Hill and those facing Valley Road. One objection has been received that refers to concerns over the potential for adverse impacts on health. The site has incorporated a petrol filling station since the early 1980's but these have either been central within the site or, as now, on the southern boundary adjacent to industrial and commercial uses. The operation of a petrol filling station will require consents under the Environmental Permitting Regulations. The licensing authority is Essex County Council. The petrol filling station will be required to install vapour recovery equipment so that any vapours dispelled from the installed tanks are recovered back to the road tanker and similar system is used to recover vapours released at the filling nozzle from the fuel pumps. The Environment Agency do not object in principle to the petrol filling station having had regard to issues including existing ground conditions. Subject to intrusive works confirming the ground conditions are as indicated by the existing reports and the installation being undertaken to the most appropriate engineering standards, the Environment Agency advise that the petrol filling station would appear to satisfy their requirements with respect to groundwater protection as set out in GP3. If the intrusive investigation encounters ground conditions that significantly differ from those described already, or if any discernible groundwater is encountered in the location of the proposed underground tank farm, then the Environment Agency will be re-consulted on any measures that may be required in the interest of groundwater protection.
- 6.54 It is not considered therefore that the development will result in the adverse release of vapours or fumes and will not have an adverse impact on the health of nearby occupants or on the residential amenity currently enjoyed by nearby residents.
- 6.55 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 west and to the north of the site. The nearest residential properties are at Windmill Park and Valley Road and are at a lower level than the application site. Cross sections have been provided to demonstrate the relationship between the residential properties and the proposed development and the relationships are considered acceptable subject to conditions that will control the details of cut and fill operations and the proposed site levels in relation to proposed eaves and ridge height levels.

- 6.56 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.
- 6.57 The Noise Assessment has been carried out in accordance with relevant British Standards and assesses existing ambient background noise levels over a 24hr period against those likely to be generated by the proposed store as a result of all activity on the site e.g. servicing and deliveries (24hrs), compactor (07:00 – 23:00), opening hours (24hrs), car park use (24hr), fixed plant (24hr) and petrol filling station (24hr use, deliveries 06:00 – 23:00). The Report concludes these hours would not result in adverse impact subject to mitigation including use of acoustic fencing and these aspects can be conditioned.
- 6.58 The application is accompanied by an external lighting report. The report outlines the design requirements that the applicant wishes to meet and which include the following principles: common design and materials; company branding; energy efficient/reduced carbon emissions; use of sustainable materials; use of natural light; repeatable design (simpler and cheaper to construct and run); customer friendly; colleague friendly and disabled friendly. The report demonstrates that the external lighting design will provide a safe and secure car park whilst minimising the impact on neighbouring properties. The lighting scheme has been prepared in accordance with the current Design Standard for exterior lighting in conjunction with BS5489-1 (2013) and CIBSE LG6, The outdoor Environment and the Institution of Lighting Professionals: Guidance Notes for the Reduction of Obtrusive Light, 2011. It has complies with ILE guidance notes for Environmental Zone 3 (suburban locations – medium district brightness) and Building Regulation Part L, taking account of local residential properties and complies with Dark Skies criteria limiting upward lighting. This can satisfactorily be controlled by condition requiring the lighting scheme to be implemented in accordance with the external lighting report.
- 6.59 The Council's Environmental Health Officers and the Environment Agency raise no objection to the proposal subject to conditions.
- 6.60 The proposal thus accords with the NPPF (Sections 7 and 8) that seeks to ensure that high standards of design and layout and promoting sustainable development result in safe and accessible environments and with policies QL10; COM21; and COM23 of the adopted local plan and polices SD8 and SD9 of the emerging local plan.

Highway Safety

- 6.61 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.

6.62 The application is accompanied by a Travel Plan prepared by COTTEE Transport Planning (CTP). The objectives of the travel plan are to reduce single occupancy car use by colleagues; increase the number of colleagues taking the bus; walking or cycling to work; to reduce the need for unnecessary business travel; to improve the choice of transport available to colleagues and visitors; to reduce the demand for car parking; and to help reduce road congestion. The proposal also includes two new bus stops incorporating low floor access and timetable information on Oxford Road (adjacent to the new site access roundabout). The nearest existing bus stops to the site are located to the north on Burrs Road. The bus services that run along Oxford Road and Valley Road provide access to 3 buses per hour during the week and Saturdays and approximately 2 buses per hour on Sunday. These routes connect to the town centre and local residential areas. Pedestrian routes exist all around the site and whilst there are no dedicated cycle lanes in close proximity, the local highway network is conducive to cycling. The final version of the travel plan will need to be approved by Essex County Council Highway Authority and can be suitably controlled by condition. The planning obligation will secure the necessary travel plan monitoring fee for Essex County Council to monitor and review the success of the plan.

6.63 The application is accompanied by a Transport Assessment that concludes:

- In planning terms this is an appropriate location for the development proposed as the site benefits from an existing A1 retail consent, is considered a central urban site that is accessible by walking, cycling and by public transport with bus facilities and services located adjacent to the store on Valley Road.
- The accessibility of the site to non – car modes of travel is the principal consideration in achieving a sustainable scheme in transport terms and is emphasised in national and local policy. Hence the proposals to introduce new public transport infrastructure and services on Oxford Road and to improving pedestrian infrastructure meets these policy requirements.
- The new bus stops and laybys on Oxford Road will be used by three bus services, one of which is a circular route around Clacton operating on a half-hourly frequency.
- In addition the bus operator will consider further improvements to services when the store opens making use of the new bus infrastructure.
- Pedestrian / cycle facilities will be provided to a high standard throughout the development to encourage people to walk and cycle to the development.
- Access by car, whilst of lower importance in the hierarchy of travel modes, has been examined in detail. It is proposed that access to the site will be via a new roundabout junction with Oxford Road. It is proposed to 'Stop Up' the existing site access of Bull Road and this will be subject to a Stopping Up Order application as part of Section 247 / 253 of the Town and County Planning Act.
- The new access provides highway benefits in being located further away from the Valley Road junction than the existing access at Bull Hill Road.
- Comprehensive traffic surveys have been undertaken (February 2014) at the site and at key junctions on the local highway network.
- Junction capacity analysis undertaken demonstrates that the proposed Asda access will operate with sufficient capacity in the design years.
- In regard to the Valley Road junctions, ECC are considering some safety improvements. These have been incorporated into some changes to the junction

and capacity assessments of the revised layout indicates the junctions will operate satisfactorily.

- Developer funding of proposed ECC safety improvements is a significant benefit of this proposal.
- The capacity testing of the network has been a robust exercise because of the following factors:
 - The testing has been based on a larger store than is proposed within the planning submission;
 - New foodstores do not add new traffic to the wider road network but simply cause a transfer of trade from other stores. The analysis has taken account of pass-by and diverted traffic but does not take into account the full implications of transferred trade from other stores.
- Car parking has been examined in the light of ECC maximum car parking standards outlined in ECC's 'Parking Standards: Design and Good Practice – September 2009' document. The proposed parking provision of 313 including 17 disabled spaces is within the maximum standard.
- Disabled car parking provision accords with the Council's requirements.
- ASDA are also providing four electric charging points to serve four electric vehicles within the site.
- A total of 28 cycle parking spaces are proposed, which accords with ECC's requirements.
- Five powered two wheeler spaces are proposed and these will be monitored through the Travel Plan.
- Special needs access is a key aspect of the development proposals and will include providing preferential car parking and other arrangements involving level access to all parts of the store. The entrance doors will be designed to provide easy access for those customers using wheelchairs as well as parents with young children in pushchairs. Extra wide parking spaces will be located near the entrance for disabled customers and families with young children.
- Service vehicles will enter the site via the proposed priority junction arrangement with the Oxford Road. Vehicles will enter the service yard and manoeuvre into position to deliver goods.
- A draft Travel Plan has been prepared for the proposed store, to encourage ASDA colleagues to travel by non – car modes. Customers will also be encouraged to travel by non – car modes through the high quality pedestrian, cycle and public transport improvements to be introduced as part of the development.
- National and Local Policy has been examined. From the analysis undertaken in this report it is considered that the proposed development is consistent with transport policy. The site has very good access to non – car modes of travel, is adjacent to surrounding residential areas and therefore is considered to be a suitable site for the redevelopment proposals in transport terms.
- As a result of the detailed examination of the proposed development it is considered that the scheme can be accommodated in transport terms.

- 6.64 The applicant has provided Essex County Council with additional information in response to objections as follows:
- An assessment of the potential of the existing use demonstrates the site could generate traffic to the level of the proposed ASDA store.
 - It is CTP experience over many years that ASDA stores generally do not display the intensity of activity of other major foodstores and so where there is an agreement that ASDA will take over a site, as in this case, it is appropriate to use ASDA trip rates.
 - The assessment of trip rates by Vectos includes all other major foodstore operators and therefore will produce an unrealistic impact of the store proposal.
 - A survey this year of a comparable ASDA store in Hastings, a seaside town, on the TRICS database confirms the trip rates used in the CTP TA are reasonable.
 - A sensitivity analysis based on an increase in base traffic in the summer months confirms modest increases in the RFCs and queues at the Valley Road mini-roundabouts.
 - There are various factors such as the proximity of other foodstores, the availability of other modes of travel and the influence on driver behaviour in congested conditions which can mitigate the impact of a foodstore on a congested network.
 - These factors are recognised by Vectos in their own TA of a store in Colchester but they fail to apply them to the proposed ASDA confirming their criticisms of the ASDA scheme are inconsistent.
 - In regard to an issue related to forward visibility to the proposed access roundabout it has been demonstrated that the application of Manual for Street standards is appropriate in that location and it is not necessary to undertake speed surveys.
- 6.65 The Transport Assessment has been the subject of a number of objections made on behalf of the applicant of the Clacton Gateway site that proposes a superstore and cinema on the outskirts of Clacton. The main content of the objections is that the Transport Assessment relies on traffic survey data in February 2014 that would substantially underestimate traffic conditions for most other times of the year. The objection states that by using data from February it is not representative either of average traffic conditions or extended traffic conditions such as during the tourist season. It is stated that flows for March to June would see an increase in traffic flow of between 9% and 13% higher than those referred to in the submitted Transport Assessment and higher again in July (when compared to traffic flow data in Blackpool which is considered to be a comparable situation. The peak hour referred to in the applicant's submission is also considered to be unrepresentative (Friday peak hour 3pm to 4pm). The peak hour considered to be more applicable by the objector for foodstores is considered to be later in the day. The objector provides details of trip attraction rates and suggests that these would be much higher than the applicant's submission. Furthermore, the objection states that the Transport Assessment relies on trip rate data from larger stores where evidence suggests that trip rates decrease. The trip rates within the submitted Assessment also do not include stores that incorporate a petrol filling station. On this basis the objector states that the analysis is fundamentally flawed and substantially underestimates potential traffic impacts.
- 6.66 The objector then refers to the impacts that this greater traffic flow will have on the local highway network. It criticises the lack of any capacity analysis on the St John's Road/ North Road priority junction as without this information the objector alleges that the Council cannot make an informed decision on the application proposals and asks that the scoping for the Assessment; Safety Audit and the designer's response; and the capacity

assessments are made available in the public domain. The objector states that the Manual for Streets has not been followed correctly and that forward visibility requirements (Stopping Sight Distances) have not been assessed correctly and that the speed of traffic coming down the incline of Oxford Road has not been addressed properly and incorporated into the design specifications of the new roundabout access) and as a result the proposed access roundabout does not conform to either the specifications of the Manual for Streets or the Design Manual for Roads and Bridges. On this basis the scheme is considered to be unacceptable from a highway safety aspect and should be refused. This will also impact on the Valley Road junction and the improvements to that junction are also considered to be insufficient because it is based on what is considered to be unreliable data. The objector considers that because of the unreliable data unacceptable congestion will occur on the local highway network particularly at the Valley Road junction and the St John's Road roundabout. Furthermore, the objector considers that the stopping up of Bull Hill and the new roundabout will conflict with an existing bus stop and that the proposed traffic orders (to prevent on street parking) on Oxford Road will not result in less on street parking but will merely locate it elsewhere and that this has not been adequately covered within the Assessment. There is also no guarantee that these Orders will be achieved. The pedestrian access from Burrs Road to Oxford Road is also considered by the objector to be substandard. For all these reasons it is stated that the development should be refused on highway safety grounds.

- 6.67 The latest comments of Essex County Council Highway Authority, following consideration of all the objections, are reproduced in full earlier in this report along with comments on the revised data. The Highway Authority does not support this objection and does not itself object to the development subject to a number of improvements that can either be controlled by way of condition or legal obligation.
- 6.68 These improvements include a new roundabout access; new service yard access; improvements to Valley Road mini roundabout junctions (works on the mini-roundabouts on Valley Road include the ECC highway safety improvements for the junctions which were valued at £12,000); two new bus stops on Oxford Road; stopping up of Bull Hill; Traffic Orders to prevent on street parking in the vicinity of the Post Office depot and the submission, monitoring and review of a Travel Plan.
- 6.69 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. The proposal thus accords with the NPPF (Sections 4 and 8) as the scheme promotes sustainable transport; is accompanied by a satisfactory Transport Assessment; incorporates sustainable transport modes; creates safe and suitable access for all people; and includes improvements to the highway network that address the impacts of the development. The proposal also accords with policies QL2; QL10; TR1a; TR1; TR2; and TR6 of the adopted local plan and policies SD8 and SD9 of the emerging local plan.

Flood Risk

- 6.70 The NPPF advises that developments should take account of flood risk and where appropriate be accompanied by a Flood Risk Assessment. Paragraph 109, in particular, advises that new and existing development should be prevented from contributing to unacceptable levels of water pollution. This is echoed by policy QL3 of the adopted local plan and policy PLA1 of the emerging local plan.
- 6.71 The application was accompanied by a Flood Risk Assessment (FRA) because the site, albeit it in Flood Zone 1 (at least risk of flooding), exceeds the threshold of 1 hectare.
- 6.72 The Environment Agency issued a holding objection to this initial FRA on the basis that the application did not include adequate information to demonstrate that the potential risks of

pollution to surface water quality could be safely managed. The Environment Agency advised that the objection could be overcome by presenting additional information but as the impermeable area would only increase by 0.01 hectare as a result of the proposals the Environment Agency would not be providing bespoke advice on surface water with regards to flood risk.

- 6.73 A revised Flood Risk Assessment was received in July 2014 and the Environment Agency was reconsulted.
- 6.74 The Environment Agency then withdrew the holding objection.
- 6.75 The applicant's Flood Risk Assessments have been the subject of objections on behalf of the applicant for the Clacton Gateway proposal. The main point of the objection is that the scheme fails to deliver a SUDs solution and instead relies on proposing a discharge rate into the existing sewer system of up to 341 L/S (19 times greater than the greenfield runoff rate required by the Council's Strategic Flood Risk assessment). Objection is raised therefore on the basis that it is considered that the proposal could result in an unacceptable increase in surface water discharge to public sewers.
- 6.76 The Environment Agency were provided with the objector's comments and own Flood Risk Assessment report and the Agency responded by saying that this did not alter their position. The Agency did, however, recommend that the Council should consult with Anglian Water to ensure that they are willing to allow the site to continue to discharge to their surface water sewer. Following clarification of Anglian Water's comments made on 9th September 2014, it has been confirmed that Anglian Water have no objection to the proposal subject to a condition requiring agreement of the surface water drainage strategy.
- 6.77 Section 7.6 of the applicant's FRA confirms that 'Discharge rates will be reduced by 30% ...' Therefore betterment is being provided in accordance with Section 8.3.1 of TDC's Strategic Flood Risk Assessment (SFRA).
- 6.78 The suitability of the Suds Drainage Scheme and the Flood Risk Assessment have been commented on by the Environment Agency on three occasions. The statutory body has removed its original holding objection and now has no objection to the proposal subject to conditions. The same is true of Anglian Water.
- 6.79 The development thus accords with the NPPF (Sections 10 and 11) and policies QL3 and EN13 of the adopted local plan and policies PLA1 and PLA3 of the emerging local plan. All drainage measures can be suitably controlled by condition.

Contamination

- 6.80 The National Planning Policy Framework (NPPF) states that responsibility for securing a safe development rests with the developer and/or landowner. Policy COM19 of the adopted local plan requires appropriate remedial measures to be secured where there is known land contamination.
- 6.81 Most development takes place on land which has already had one use. NPPF sets out the government's policy on dealing with land contamination through the planning process. The document states that planning policies and decisions should ensure the site is suitable for its new use taking account of ground conditions and proposals for mitigation; and that adequate site investigation information prepared by a competent person is presented
- 6.82 NPPF Paragraph 120 states as follows:

To prevent unacceptable risks from pollution and land instability, planning policies and decisions should ensure that new development is appropriate for its location. The effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area or proposed development to adverse effects from pollution, should be taken into account. Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner

6.83 NPPF Paragraph 121 reads:

Planning policies and decisions should also ensure that:

- the site is suitable for its new use taking account of ground conditions and land instability, including from natural hazards or former activities such as mining, pollution arising from previous uses and any proposals for mitigation including land remediation or impacts on the natural environment arising from that remediation;
- after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990; and
- adequate site investigation information, prepared by a competent person, is presented.

6.84 And NPPF paragraph 122 concludes:

In doing so, local planning authorities should focus on whether the development itself is an acceptable use of the land, and the impact of the use, rather than the control of processes or emissions themselves where these are subject to approval under pollution control regimes. Local planning authorities should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities.

6.85 The application is accompanied by a preliminary risk assessment of the site. This document considers the site and surrounding area; the geo-environmental setting; the site history; mineral extraction; and environmental database information. It then provides an initial conceptual model and a preliminary risk assessment. The approach of the assessment is consistent with the methodologies in the Contaminated Land Report 11 (CLR11) "Model Procedures for the Management of Land Contamination" (DEFRA and Environment Agency, 2004) and Part IIA of the Environmental Protection Act 1990. It has also been designed to fulfil the objectives defined by British Standard BS10175:2011 "Investigation of Potentially Contaminated Sites – Code of Practice."

6.86 The assessment did not identify the presence of Japanese Knotweed or other invasive weeds. The ground conditions have been initially based on two boreholes that were drilled in the late 1980's. The report considers hydrology; hydrogeology; ecological receptors and flood risks issues and concludes that the site is sensitive with respect to controlled waters.

6.87 The report concludes that potential contaminants on site are low to moderate and that risk to the end development is low across the majority of the site although may be moderate in landscape areas. In light of the age of the buildings, the report concludes that asbestos may be present. Any further investigation can be controlled through an appropriate planning condition.

6.88 The application is accompanied by a contamination report that takes into account the existing and previous uses of the site (including the former factory uses and the existing petrol filling station). The remediation of the site can be suitably controlled by condition.

6.89 The proposal thus accords with the NPPF (Section 11) and policy COM19 of the adopted local plan.

Landscape Impact (including impact on trees protected by Tree Preservation Order)

- 6.90 The NPPF refers to the importance of conserving and enhancing the natural environment. This is echoed in policy QL11 and EN1 of the adopted local plan and policies SD9 of the emerging local plan. The Town and Country Planning Act places an obligation on the Council to protect trees in its area. These national aims are reflected in a number of policies in the adopted and emerging local plans.
- 6.91 The application is accompanied by a Tree Survey Report that has been carried out in accordance with British Standard 5837: 2012 "Trees in Relation to Design, Demolition and Construction." The Report considers the impact of the development on 8 trees, only 4 of which are within the application site and two of which are protected by a Tree Preservation Order. These protected trees are sited on the western boundary and the eastern boundary (records show a further two protected trees but these have since been removed). The development proposes to remove two trees : the single oak in the centre of the site and the TPO'd oak tree to the eastern boundary with Oxford Road. The value given to these trees by the report is B2.
- 6.92 The applicant has also provided a Soft Landscaping Master Plan drawing. The drawing shows soft landscaping proposals to both partially screen and enhance the appearance the development and new tree planting to mitigate the harm caused by the removal of existing trees.
- 6.93 The Council's Landscape and Tree Officer has considered these documents and advises that: "in the main, the information contained in the report accurately describes the condition of the trees on the land and makes adequate provision for the retention of the most suitable specimens. The report also describes the measures that will need to be put in place to protect them for the duration of the construction phase of any development.
- 6.94 The tree with the greatest visual amenity value is the mature Oak, referred to as T8, in the tree report. The tree is afforded formal legal protection by Tree Preservation Order TPO/97/15. This tree has been assessed under the Cascade Chart for Tree Quality contained in British Standard 5837. Although the tree has been categorized as B2 it more accurately meets the criteria under which it would be categorized as A1 or possibly A2. In effect the A category describes trees of high quality with a safe useful life expectancy of at least 40 years. In order to fall under the A1 category a tree should be a particularly good example of its species and for A2 be a tree of particular visual importance as an arboricultural and/or landscape feature. There is no apparent reason why this Oak tree should have been classified as B2.
- 6.95 The Oak is a mature, healthy specimen that has no obvious defects. It is situated in a prominent location in an area that is not well populated with established trees. It has high visual amenity value and can be seen along virtually the whole length of Oxford Road. It is questionable whether it would be possible to replicate the significant contribution that it makes to the appearance of the area by new planting.
- 6.96 Trees T1 (Maple) T2 (Poplar) and T3 (Maple) are of no real significance in terms of making a contribution to the amenity of the locality and are just off-site; therefore not under the control of the applicant.
- 6.97 The report identifies the removal of T5 (Oak) situated in the main body of the land - its amenity value can be relatively easily replicated by new planting.
- 6.98 The Oak (T6) adjacent to the rear garden of Windmill Park is in poor condition, although it is marked for retention. This tree is afforded formal legal protection by Tree Preservation

Order TPO/97/25. The Oak (T4) is a good specimen situated in the north-western corner of the site that is also marked for retention.

- 6.99 The landscaping proposals shown on the Proposed Landscape Master Plan show new planting intended to screen and enhance the appearance of the development as well as mitigating the harm caused by the removal of T8 (Oak).
- 6.100 In simple terms the proposal to fell T8 and to replace it with 2 trees will increase the number of trees in the locality however it is my view that this would not in the foreseeable future replicate the contribution to the amenity of the locality made by the tree. Combined with the 2 replacement trees for T5 (Oak) the 4 trees will help to enhance the appearance of the development when approaching from Valley Road. It would appear that these trees are intended to be planted in a hard surfaced area: the screening and softening of the new store would be significantly improved if the trees were to be incorporated in a large planting bed comprising of a range of shrubs that would create a small planting belt to screen the northern elevation of the proposed store.
- 6.101 At present the layout of the car park is devoid of any soft landscaping. Whilst not important in terms of the amenity of the locality the overall appearance of the car park and the 'customer experience' of those using the store would be considerably improved if low level planting and trees were to be incorporated into the layout of the car park.
- 6.102 In other respects the landscaping proposed for the site boundaries is acceptable.
- 6.103 The applicant has since provided a further landscaping plan to incorporate additional low level planting and tree planting to the north elevation of the store that will be visible beyond the site boundaries to address these concerns. In addition, consideration was given during the evolution of the design to alternative site layouts that would have retained the protected oak on the west boundary. However, this would have resulted in the bulk of the store being closer to residential properties and would result in far greater impacts on those properties than the scheme currently under consideration. It is considered that the loss of the two trees would be outweighed by the benefits of the current site layout and that the replacement planting that is proposed will, albeit it to a lesser extent, mitigate against the loss of the trees.
- 6.104 The Environment Agency do not object to the proposals on biodiversity grounds and replacement and additional planting is proposed to mitigate against the loss of two existing trees therefore the development is considered to comply with the NPPF (Section 10) and policies QL10 and EN1 of the adopted local plan and policy SD9 of the emerging local plan as it will not result in a significant adverse impact on any ecological destinations; or habitats of nature conservation interest and mitigates adequately the impact of the development.

Heritage Assets

- 6.105 The NPPF seeks to protect heritage assets (including archaeology) from inappropriate development (Section 11). Adopted local plan policy EN29 and emerging local plan policy PLA6 reflect this aim.
- 6.106 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 the church in Great Clacton there is no intervisibility between it and the site.
- 6.107 The assessment concludes that there are a range of potential archaeological features and artefacts from low (Roman agricultural activities) to moderate (prehistoric occupation) to high (Bronze Age and Iron Age). It is recommended that an archaeological investigation is

carried out on site following demolition of the existing buildings. The Essex Archaeological Officer has made recommendations to this effect and controlling conditions are recommended to cover trial trenching followed by an open area excavation and/or monitoring as identified in a watching brief.

- 6.108 The development thus accords with the NPPF (Section 11) and adopted local plan policy EN29 and emerging local plan policy PLA6 in relation to heritage assets.

Environmental Impact Assessment

- 6.109 The application proposal was screened in accordance with the Town and Country (Environmental Impact Assessment) Regulations 2011 before the formal application for planning permission was received by the Council. The screening opinion concluded that whilst the proposed scheme falls outside those developments listed in Schedule 1 of the Regulations where an EIA would automatically be required, nevertheless, the proposal required screening under Schedule 2 of the Regulations because the area of this proposed infrastructure project exceeds 0.5ha. Annex A para. 19 of Circular 02/99 relates to Urban Development Projects and advises that an EIA is more likely to be required if: (i) the site area exceeds more than 5ha; (ii) more than 10,000sq. metres of new commercial floor space or (iii) the development would have significant urbanising effects in a previously non urbanised area.

- 6.110 The screening opinion took account of the following issues:

1. Land drainage;
2. Contamination;
3. Noise; light and potential emissions from the site;
4. Visual impact;
5. Possibility of retail impact on the town centre; and
6. Increased traffic movements and associated air quality implications (during and post construction phases).

- 6.111 Having considered all the above potential impacts and having had regard to the characteristics of the development; the location of the development; and the characteristics of the potential impacts it was concluded that an Environmental Impact Assessment was not required to accompany the application.

- 6.112 An objection to the development has been received on behalf of the applicant for the Clacton Gateway proposal that states that the Council's judgement that the physical changes to the site will be marginal are flawed. The objector points out that significant site levelling works are required to facilitate the proposal. This will result in major disturbance to residential amenity which will be compounded by increased traffic flows. Furthermore, the screening opinion incorrectly states that the site is not within a flood zone.

- 6.113 It should be noted that the screening process should ensure that an environmental impact assessment is only required for projects likely to have significant effects on the environment.

- 6.114 The site is currently occupied by a number of retail units. It is proposed to demolish all the existing buildings on the site and to develop the site for a replacement foodstore and a petrol filling station. The associated works will include the provision of car parking; trolley shelters and other ancillary furniture and the improvement of the pedestrian path to Windmill Park. Vehicular access will be via a new roundabout junction to Oxford Road with a separate access to the service yard, again from Oxford Road. The site is a brownfield site within the main urban area of Clacton on Sea. It lies within an area characterised both by residential and commercial properties. It is predominantly hard surfaced although it does

contain some protected trees. It is not within a Conservation Area or a nature conservation area.

- 6.115 The proposed physical change to the site and the resultant impacts, as listed above, are not considered to be significant to require an environmental impact assessment.
- 6.116 The Council's approach to the screening opinion has been in full recognition of the Environmental Impact Regulations 2011 and Circular 02/99 and the latest European Directive 2014/52/EU of earlier this year. The impacts of the development have been assessed with particular consideration of the significance of their impact and their longevity. The Council is satisfied that the screening opinion complies with the legislative requirements and that the impacts of the development will not be significant for the reasons explained above.

Other Material Considerations – the benefits of the scheme.

- 6.117 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.
- 6.118 It is not considered that the scheme will give rise to significant adverse impacts, however the benefits resulting from the scheme can be summarised 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 proposal will result in the comprehensive regeneration of the site and would enhance the visual appearance of the area
 - The proposal will secure 300 jobs, including retaining existing Co-Op colleagues
 - The proposal includes enhancements to the local highway network and separate customer and service vehicle accesses
 - There will be no significant adverse impact on the town centre. Any negative impacts in this respect are more than off-set by the economic investment and regeneration secured by the proposals;
 - The proposals will rationalise existing retail floorspace on site. The existing, dated, buildings will be demolished and replaced with high quality contemporary designed store, which will be complemented by on-site landscaping and boundary treatment
 - Improving accessibility via a travel plan and the delivery of safe and suitable access to the scheme and the opportunities for sustainable transport modes;
 - New bus stops
 - A high proportion of disabled parking bays;
 - Quality design
 - Securing environmental objectives by way of sustainable drainage; suitable methods of sustainable 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 development will recruit locally both during the construction and operational phases.

6.119 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. In this case, the Council does not consider the impacts of the proposal to be significant, however, the scheme does have a range of impacts and benefits that members will need to give careful consideration too and come to a judgement on.

Section 106 Planning Obligations

6.120 The application has been considered against the statutory tests set out at Regulation 122 of the Community Infrastructure Levy Regulations 2010 (As Amended).

6.121 The scheme will provides for a CCTV contribution and a Travel Plan monitoring fee.

Conclusion

6.122 The application has been assessed in relation to the policies of the NPPF; NPPGs; and relevant adopted local plan and emerging local plan in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2014. The application has been assessed in relation to the following issues and potential impacts:

- Principle of development and retail impact
- Design
- Access, Movement and Connectivity
- Impact upon neighbours
- Highway Safety
- Flood Risk
- Contamination
- Landscape Impact (including impact on trees protected by Tree Preservation Order)
- Heritage Assets

6.123 The application proposals have been screened in accordance with the Town and Country Planning Environmental Impact Regulations 2011. The screening opinion was negative.

6.124 In summary the main considerations are:

- The application has been assessed in accordance with Section 38 (6) of Act and taking account of all other material considerations
- The site lies within the settlement boundary
- The site is outside the defined Clacton town centre and outside of but near to Great Clacton District Centre.
- The application has been demonstrated to comply with the sequential test requirements of the adopted local plan policies ER31 and ER32, policy PRO6 of the emerging local plan and paragraph 24 of the NPPF.
- The site is a brownfield site
- It is currently in retail use and has been since the 1970's
- A petrol filling station has been on the site since the early 1980's
- The site is allocated and/or protected for employment uses in the adopted and emerging local plan documents
- The importance of the service sector is recognised by the Council's Economic Development Strategy 2013 and the emerging local plan recognises the importance, amongst other things, of stand alone supermarket/retail sites in the District for employment generation (Policy PRO14). Accordingly, reduced weight should be given to the conflict with the employment policies of the adopted and emerging local plans in the particular circumstances of this case.

- The Economic Development Strategy seeks to direct growth to the main urban areas of the District and seeks to support the growth of the service sector and protect the town centre economy
- The proposal would result in an overall decrease in A1 retail floorspace at the application site and the grant of planning permission would allow control over the site uses by way of planning conditions
- The existence of a large amount of retail floorspace creates uncertainty over the need to require the applicant to submit a full Retail Impact Assessment in accordance with the NPPF and the NPPG. However, for robustness, the Council has commissioned a report in any event. The report concludes that there are no sequentially preferable sites in the town centre or on the edge of the centre. The impact of the proposal cannot be concluded to be significantly adverse and the impacts are unlikely to result in town centre store closures. The greatest proportionate impact is likely to be on sales of convenience goods in the town centre. This impact has to be assessed and balanced against the material consideration of the fall back position as required by case law. On this basis the retail impact of the proposal is substantially reduced and is at acceptable levels.
- The proposal protect existing jobs and create additional jobs
- There have been a large number of representations received that are in support of the proposal and few that object to the redevelopment of the site
- The proposal has been considered in relation to highway safety and highway capacity issues and the Local Highway Authority have not objected to the application subject to controlling conditions. The Local Highway Authority have concluded that traffic impacts would not be 'severe' which is the test applied by the NPPF
- The development will result in the loss of a protected tree but alternative site layout solutions would have a greater impact on residential amenity and on balance the benefits of the proposed layout outweigh the disbenefits of the loss of this tree which will be mitigated by the introduction of additional tree planting and landscaping
- The development has been assessed in relation to all relevant issues including the principle of development and retail impact; design; access, movement and connectivity; impact on neighbours; highway safety; flood risk; contamination; landscape impact and heritage assets and is considered by officers to be acceptable as where there is any conflict with the development plan or the guidance of the NPPF it is clearly outweighed by the material considerations in favour of the development as identified above..

6.125 There are a number of considerations relevant to the application proposal which require a balanced judgement to be made. On the basis of the details and assessment in this report officer's recommend that the application is approved subject to the completion of a Section 106 planning obligation and a number of controlling conditions as outlined within the recommendation at the head of the report.

Background Papers

None.