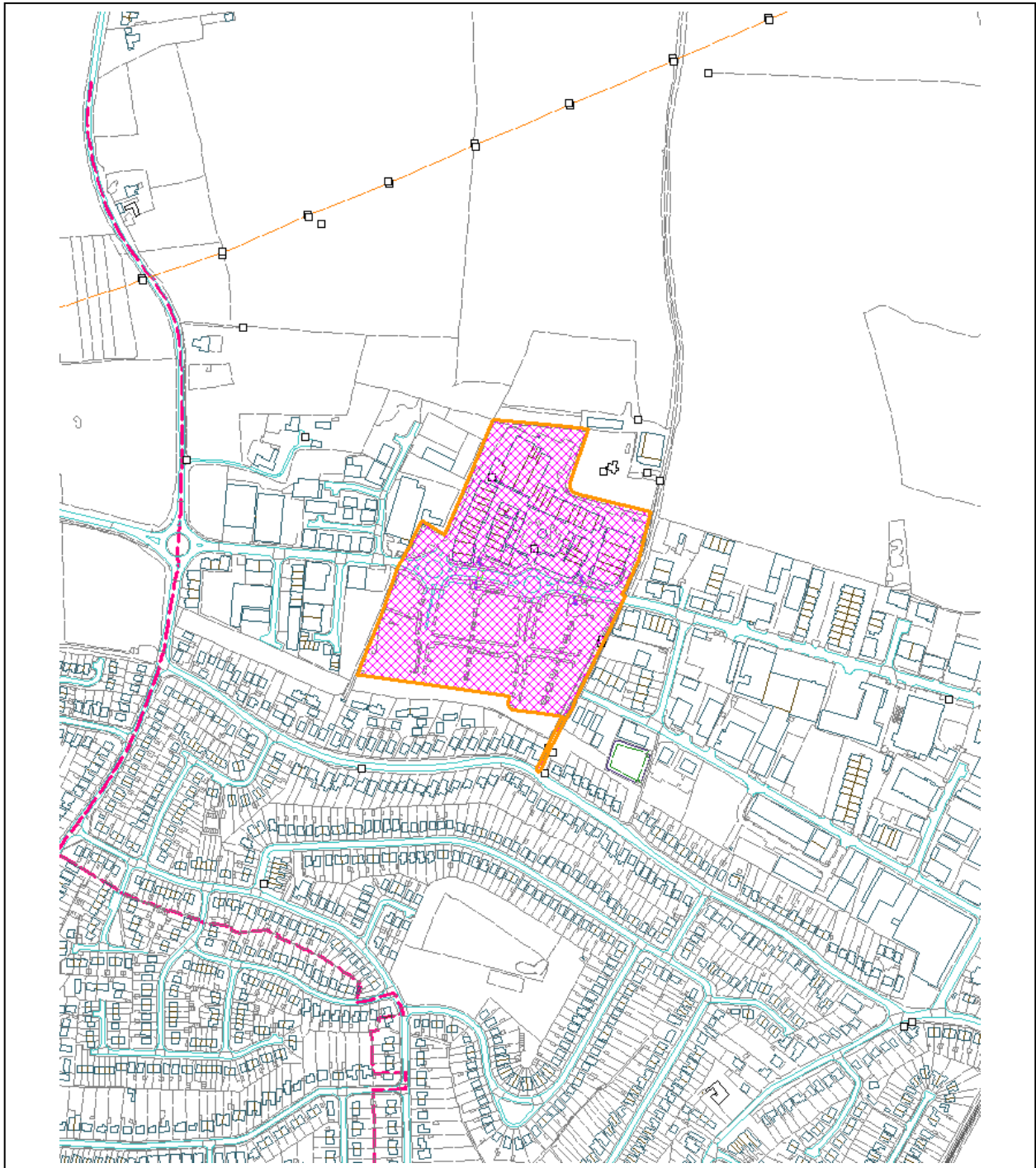


PLANNING COMMITTEE

31 MARCH 2015

REPORT OF THE HEAD OF PLANNING

**A.3 PLANNING APPLICATION - 14/01445/OUT – CLACTON FACTORY SHOPPING VILLAGE STEPHENSON ROAD WEST, CLACTON-ON-SEA, CO15 4TL**



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<b>Application:</b>	14/01445/OUT	<b>Town / Parish:</b> Clacton Non Parished
<b>Applicant:</b>	Kames Capital acting for AEGON UK Property Fund Ltd	
<b>Address:</b>	Clacton Factory Shopping Village, Stephenson Road West, Clacton-on-Sea, CO15 4TL	
<b>Development:</b>	<p>Hybrid Planning Application for the development of the site to provide:</p> <p>Full Application Element : Reconfigured North Site Floor Space Total at 8404 sq.m., Net Reduction of 2818 sq.m, Including 1719 sq.m Retail Space at Units 23-26. Reconfigured Leisure (A3/D2) Site Floor Space Total 2532 sq.m Net Reduction of 851 sq.m.</p> <p>Outline Application Element: Development of 5156 sq.m New Floor Space at South Site with All Matters Reserved apart from Access. Net Increase Across Total Site of 1729 sq.m (12951-11222). Plus Associated Access, Landscaping, Parking Amendments.</p> <p>Variation to Existing Section 106 Agreement.</p>	

## 1. Executive Summary

- 1.1 The application was submitted on 10 October 2014 and was due for determination on 9 January 2015. The Council has written to the applicant's agent requesting an agreed extension of time for determination to allow officers the opportunity to fully assess all the planning issues and representations received before an informed decision could be taken by Members of the Planning Committee. The issues include the content of objections received on behalf of the owners of the Waterglade Retail Park; the owners of the former gas works site adjacent to Waterglade Retail Park; the operators of Century Cinema; and the content of a Retail Impact Assessment commissioned by the Council. The objections principally relate to the potential retail and leisure impact of the proposal on Clacton Town Centre and planned investment. The applicant's agent has agreed in writing to extend the time for a decision to be taken by the Council until 31 March 2015.
- 1.2 The Clacton Factory Outlet currently provides various retail outlet units on the periphery of the town. Part of the retail offer at the site is restricted to discounted, non-food retail (as a result of an existing Section 106 Agreement). The Clacton Factory Outlet has been established since 1996. The applicant asserts that the site is failing to maximise its potential as a retail destination for a number of reasons and has consequently submitted a hybrid application for planning permission with a combined aim of rejuvenating the site and providing retail units and additional facilities (a full description of the application proposal is contained in the sub section entitled 'The Proposal' later in the report). In addition to the demolition and creation of retail and leisure floor space, the application also seeks amendments to the existing Section 106 agreements that control the use of the land and the extent and type of retail sales.
- 1.3 The application is accompanied by an extensive amount of documents; drawings and supporting material. 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 proposals have been assessed in relation to the principle of development; retail/leisure impact; design; access, movement and connectivity; impact on neighbours;

highway safety, transport, parking, servicing and deliveries; and flood risk. Consideration has also been given to the fall back position provided by the flexibility of the existing Section 106 controls and the lawful implementation of the cinema planning permission granted in 2011. 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 subject to satisfactory controls over the use of the land and the extent and types of retail sales. 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. The application has been amended since its original submission and now contains sufficient information to demonstrate that any adverse impacts of amending the existing Section 106 restrictions are outweighed by the benefits of the scheme. Subsequently the officer's recommendation seeks the Committee's resolution to grant delegated authority to the Head of Planning to complete a Section 106 agreement and grant planning permission (subject to conditions) that would allow the reconfiguration and regeneration of the Clacton Factory Outlet Centre whilst protecting the vitality and viability of the town centre and planned investment. If the successful completion of the Section 106 cannot be achieved and suitable restrictions cannot be imposed to protect the viability and vitality of Clacton town centre, then the recommendation also seeks the Committee's resolution to refuse planning permission.

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

a) Within 6 (six) 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 (but with such amendments and additions, if any, to the detailed wording thereof as the Head of Planning in her discretion considers appropriate).

- Apart from the new retail unit in the north site, restrict all of the remaining factory outlet floor space to the existing discount sales restrictions, a maximum net/gross area and the existing range of goods restrictions
- Restrict the new retail unit in the north site to a single unit with maximum net sales area and limit the amount of food sales from that unit
- No further subdivisions or amalgamation of units on the north site
- Restrict the new retail floor space on the south site to units of a minimum 2000 sq. m. gross and restrict the range of goods that can be sold
- Retention of bus service to both the retail and leisure uses (subject to agreed review mechanism)
- Retention of visitor centre
- Provision of Cycleway/Footway if necessary to make the development acceptable
- 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 of the full element and standard time limit for the submission of reserved matters and commencement of development for the

outline element.

2. Development in accordance with submitted plans
3. Details and samples of facing and roofing materials
4. Details of cycle shelters
5. Details of water, energy and resource efficiency measures
6. No extensions or enlargements (including mezzanine floors) without express consent
7. Local recruitment strategy
8. Hard and soft landscaping
9. Landscape management plan
10. Management and maintenance scheme for car park areas
11. CCTV and external/security lighting
12. Measures to minimise light pollution in accordance with submitted lighting scheme.
13. Surface water management strategy; measures to prevent water pollution
14. Details of all external plant and machinery
15. Details of all boundary treatments
16. Highway conditions as recommended by the Highway Authority as detailed elsewhere in the report (including a Travel Plan)
17. Demolition and construction method statement
18. Car parking area (hard surfaced, sealed and marked out in parking bays)
19. Provision of service yard
20. Powered two wheeler and bicycle parking facilities
21. Closure and stopping up of existing pedestrian underpasses
22. Hours of delivery in accordance with a Service Delivery Management Plan

#### **Otherwise**

- 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 6 (six) 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; ER32 and CL12 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 District Local Plan: Pre-Submission Focussed Changes (2014).

## **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. It also expects the planning system to act as a creative exercise in finding ways to enhance and improve the places in which we live our lives rather than simply being about the scrutiny of proposals. Local planning authorities are required to look for solutions rather than problems and to work proactively with the applicant to secure development that improves the economic, social and environmental conditions of the area.

2.4 Sustainable development is defined as having three elements:

- economic;
- social; and
- environmental.

2.5 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.

2.6 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.

2.7 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.

2.8 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.”*

- 2.9 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.
- 2.10 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.
- 2.11 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.
- 2.12 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.
- 2.13 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.
- 2.14 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

- 2.15 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.
- 2.16 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.
- 2.17 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.”*

- 2.18 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.
- 2.19 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.
- 2.20 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.
- 2.21 QL2: Promoting Transport Choice  
Requires developments to be located and designed to avoid reliance on the use of the private car.
- 2.22 QL3: Minimising and Managing Flood Risk  
Requires a Flood Risk Assessment for developments in Flood Zone 1 on sites of 1 hectare or more.
- 2.23 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.
- 2.24 QL9: Design of New Development  
Provides general criteria against which the design of new development will be judged.
- 2.25 QL10: Designing New Development to Meet Functional Needs  
Requires development to meet functional requirements relating to access, community safety and infrastructure provision.
- 2.26 QL11: Environmental Impacts  
Requires new development to be compatible with its surrounding land uses and to minimise adverse environmental impacts.
- 2.27 QL12: Planning Obligations  
States that the Council will use planning obligations to secure infrastructure to make developments acceptable, amongst other things.
- 2.28 ER2 : Principal Business and Industrial Areas :  
Proposals for employment development will be directed towards these identified sites
- 2.29 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

- 2.30 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.
- 2.31 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.
- 2.32 COM1: Access for All  
Requires publically accessible buildings and spaces to be accessible to people of all abilities.
- 2.33 COM2: Community Safety  
Requires developments to contribute toward a safe and secure environment and minimise the opportunities for crime and anti-social behaviour.
- 2.34 COM21: Light Pollution  
Requires external lighting for new development to avoid unacceptable impacts on the landscape, wildlife or highway and pedestrian safety.
- 2.35 COM23: General Pollution  
States that permission will be refused for developments that have a significant adverse effects through the release of pollutants.
- 2.36 COM29: Utilities  
Seeks to ensure that new development on large sites is or can be supported by the necessary infrastructure.
- 2.37 COM31a: Sewerage and Sewage Disposal  
Seeks to ensure that new development is able to deal with waste water and effluent.
- 2.38 EN12: Design and Access Statements  
Requires Design and Access Statements with most planning applications.
- 2.39 EN13: Sustainable Drainage Systems  
Requires developments to incorporate sustainable drainage systems to manage surface water run-off.
- 2.40 TR1a: Development Affecting Highways  
Requires developments affecting highways to aim to reduce and prevent hazards and inconvenience to traffic.
- 2.41 TR1: Transport Assessment  
Requires transport assessments for all major developments.
- 2.42 TR2: Travel Plans  
Requires travel plans for developments likely to have significant transport implications including major developments.
- 2.43 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.

2.44 TR5: Provision for Cycling

Requires all major developments to provide appropriate facilities for cyclists.

2.45 TR6: Provision for Public Transport Use

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

2.46 TR7: Vehicle Parking at New Development

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

2.47 CL7: New Town Centre Retail and Mixed-Use Development

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

2.48 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.

2.49 CL12: Clacton Factory Outlet Shopping Village

States that 'permission will not be granted for proposals that include the introduction of unrestricted retail use on the Clacton Factory Shopping Village. Any application for expansion of the Factory Shopping Village will also need to comply with the sequential test required by Government Planning Guidance and not adversely affect the vitality or viability of Clacton Town Centre.'

2.50 The supporting text explains that because of the special circumstances concerning the development of the CFO in an out of centre location the range of goods sold from the CFO is restricted.

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

2.51 The 2012 Local Plan: Proposed Submission Draft, as amended by the 2014 Local Plan: Pre-Submission Focussed Changes, remains as the 'emerging' Local Plan. It forms a material consideration in the decision making process.

2.52 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. On 15 July 2014, the Local Planning Committee considered a report regarding the Vision and Spatial Strategy that would inform the delivery of housing and economic development need. The report identified potential 'Garden Suburbs' and referred to a significant housing allocation to the north of Gorse Lane Industrial Estate. Members will recollect that an outline application for around 250 residential properties was granted planning permission in principle at the 3 February 2015 meeting of this Committee on land known as Oakwood Park, to the north of the industrial estate. In total the land area has the potential to provide up to 1700 homes along with associated jobs and infrastructure. The report suggested the designation of the CFO as a neighbourhood centre to meet the needs of additional local and District residents. It must of course be emphasised that this is not adopted policy but it provides members with

background information and a context for the potential future growth of the surrounding area.

- 2.53 SD1: Presumption in Favour of Sustainable Development  
Follows the Planning Inspectorate's standard wording to ensure compliance with the NPPF.
- 2.54 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.
- 2.55 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.
- 2.56 SD8: Transport and Accessibility  
Requires the transport implications of development to be considered and appropriately addressed.
- 2.57 SD9: Design of New Development  
Sets out the criteria against which the design of new development will be judged.
- 2.58 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.
- 2.59 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.
- 2.60 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).
- 2.61 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.
- 2.62 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.

2.63 PRO14: Employment Sites

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

2.64 (The majority of the Gorse Lane Estate is covered by this employment allocation including the application site).

2.65 The supporting text to this policy says that the Council will consider alternative forms of employment related developments where they do not conflict with other policies of the local plan. In such cases, development must demonstrate how the proposed use will either create new job opportunities or support existing ones.

2.66 PLA1: Development and Flood Risk

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

2.67 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.

2.68 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; and the Expansion of Waterglade Retail Park

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

2.69 **NB** – Policies COS 2 and COS 5 (Clacton Town Centre and Warwick Castle have been deleted from the 2014 version of the emerging local plan).

Other Relevant Documents

Economic Development Strategy 2013

2.70 The overarching objectives of the Economic Development Strategy are to:

- Target growth locations, especially Harwich, Clacton and the West of Tendring;
- Target growth sectors, especially Offshore Energy and Care and Assisted Living;
- Ensure residents have the skills and information to participate;
- Support modernisation, diversification and growth within the business base; and
- Facilitate population growth where this supports economic objectives.

2.16 For Clacton specifically, the vision in the Economic Strategy emphasises the need to grow the population to support service sector industries and the town centre economy, maximise the potential leisure and tourism offer, particularly along the seafront, and support growth in educational facilities, potentially linked to the Care and Assisted Living sector.

Retail Study 2010

2.17 This document advises that there isn't any significant qualitative need for additional food store provision in Clacton. The study also states that the level of capacity for additional convenience goods provision is predominantly arising as a result of the strong performance of the out of centre stores at Brook Park and Centenary Way. These stores draw trade from

a reasonably wide catchment area which adds to the unsustainable shopping patterns in the District. The study advises that the Council should resist any further extension to out of town retail floor space and that additional capacity should be met within existing District or Neighbourhood centres.

#### Clacton Town Centre Vision 2009

- 2.71 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

- 2.72 The Employment Land Review assessed the potential of a number of sites for business and industrial use in the District. It concluded that 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 and recognised that retail and leisure uses comprised one element of future employment generation across the District.

#### Essex County Council Parking Standards – Design and Good Practice September 2009

##### Ministerial Statement ‘Planning Growth’

- 2.73 This statement was made by Greg Clark in March 2011 and was fundamentally in response to the need to support economic recovery by not placing unnecessary burdens on development. It is a material consideration in the determination of the application. Like the NPPF, the statement establishes a presumption in favour of sustainable economic development. It requires Councils, amongst other things, to be sensitive to the fact that local economies are subject to change and to take a positive approach to development where new economic data suggests that prior assessments are no longer up to date. Councils should consider the range of likely economic, social and environmental benefits, including long term and indirect benefits like consumer choice and more viable communities and more robust local economies.

##### Ministerial Statement ‘Positive Planning’

- 2.74 This statement was the forerunner of the NPPF. The statement said that the NPPF would aim to help with the country’s economic recovery by ensuring proposals in line with local plans would get approved without delay subject to certain safeguards.

### **3. Relevant Planning History**

- 3.1 The application site has a lengthy and complex planning history. The history is as listed below, however, a brief site history establishes that the site was originally granted outline planning permission in 1990 for the change of use of agricultural land to industrial uses B1, B2, B8 and A1 (non food) retail. The planning permission was granted in association with a Section 106 legal agreement (dated 9 March 1990) that required a spine road to be constructed prior to occupation of any building; a screening scheme to be implemented and for the site to be developed for industrial purposes only.
- 3.2 Reserved Matters were approved in 1996 and were subject to a number of conditions. Those conditions of particular relevance to the current considerations include:
- Condition 10 – retail sales to be restricted to the ground floor areas of the units
  - Condition 11 – restricts further subdivisions or amalgamation of the units

3.3 This consent was also associated with a Legal Agreement (dated 4 October 1996) that detailed specific operation principles for the CFO. This Agreement was then superseded by a further Agreement (dated 3 December 2008). The 2008 Agreement remains in force to date along with a Supplemental Agreement (dated 30 April 2012). The agreements contain the following requirements:

- The total net floor space shall not exceed 13096 sq.m.
- There shall be no A3; A4 or A5 uses and there shall be no sale of furniture; DIY items; carpets; garden requisites; meat or meat products; pharmaceutical goods; builders goods; white goods; motor vehicles; funeral directors; post office; hairdressers
- The sale of newspaper; magazines and cigarettes shall only be permitted from not more than 200 sq ft of the net internal floor area of one retail unit
- All sales from not less than 70% of the net internal floor area of the majority of the retail units shall be at a discounted price or reduced by not less than 30% of the recommended retail price
- A bus service to be provided between CFO and Clacton town centre
- The visitor centre erected in 2008 to remain but can be relocated within the site

3.4 The Supplemental Agreement in 2012 removed the restriction on the sale of furniture.

3.5 In 2011 planning permission was granted for the erection of a cinema (Class D2); and A3; A4 and A5 units. The planning permission was subject to a number of conditions but those of most note are as follows:

- Condition 3 requires the permission to be operated in place of the car showroom; A3; A4; A5 and garden centre planning permissions granted in 2008
- Condition 4 states that the cinema can only be used for that purpose
- Condition 5 states that the A3; A4 and A5 uses can only be used for that purpose

3.6 The cinema permission was also subject to a legal agreement (dated 7 September 2011). This Agreement will be referred to in the report as the Cinema Agreement. It requires the following controls over the land:

- A cinema bus service is to be provided prior to the cinema opening and the service could be reviewed after three years of operation
- The owner must enter into a Highways Agreement to provide a 3m wide cycleway along the southern side of Stephenson Road West
- A Travel Plan must be submitted

**The cinema planning permission was implemented in June 2014 and is now extant in perpetuity.**

89/01223/OUT	Change of use from agricultural to industrial in relation to categories B1, B2, B8 and A1 (non food)	Approved	18.04.1990
93/00430/FUL	Variation of condition 2[a] of consent TEN/1223/89 to allow reserved matters to be submitted within a period of 5 years from the date of the consent notice of 18 April 1990	Approved	07.04.1994
95/00448/DET AIL	Submission of Reserved Matters under Planning Permissions TEN/1223/89 and TEN/93/0430 - (Change of Use from Agricultural to Industrial for consideration in	Approved	09.10.1996

relation to Categories B1, B2, B8 and A1 (Non Food

96/00202/ADV	(Stephenson Road West, Oakwood Industrial Estate, Clacton on Sea) Two display hoardings	Approved	21.03.1996
96/01393/FUL	(Willow Farm, Gorse Lane, Clacton on Sea) Change of use from A1 (Non-Food Retail) to A3 (Catering) in relation to Clacton Common Factory Outlet Village: Planning Consent TEN/95/0448 (Units 31 and 37)	Approved	11.12.1996
96/01394/FUL	(Willow Farm, Gorse Lane, Clacton on Sea) Construction of underpasses in relation to Clacton Common Factory Outlet Village: Planning Consent TEN/95/0448	Approved	11.12.1996
96/01395/FUL	Factory Outlet Centre: Willow Farm, Gorse Lane, Clacton on Sea (Variations to Design of Scheme as Approved under Planning Consent TEN/95/0448) incorporating the erection of a visitor information centre	Approved	11.12.1996
97/00530/FUL	Variations to design as approved under consent TEN/95/0448 and consequential amendments to scheme as approved under consents TEN/96/1393, TEN/96/1394 and TEN/96/1395	Approved	03.06.1997
97/01247/FUL	Factory Outlet Centre - Variations to design as approved under consent TEN/95/0448 and consequential amendments to scheme as approved under consents TEN/96/1393, TEN/96/1394 and TEN/96/1395	Approved	18.11.1997
98/01228/ADV	(Clacton Common Factory Shopping Village, Willow Farm, Gorse Lane, Clacton on Sea) 2 No. hoardings (freestanding), 1 No. 20 metre mast (illuminated)	Approved	14.10.1998
98/01420/ADV	(Clacton Common Factory Shopping Village, Willow Farm, Gorse Lane, Clacton on Sea) Banner/pendant signs to lighting columns	Approved	15.12.1998
98/01439/ADV	(Clacton Common Factory Outlet, Clacton on Sea) Halifax Plc ATM - card cash fascia sign	Approved	07.12.1998
00/01333/ADV	Illuminated free standing 6 sheet light box and installation of advertising panels to bus shelter.	Approved	22.08.2000
00/01334/FUL	Installation of secure cycle parking units. Modification of bus shelter.	Approved	23.08.2000
02/01069/FUL	Redevelop existing 17m advert pole to 18m	Approved	25.07.2002

telcom monopole.

03/01992/ADV	1 Non-illuminated sign advertising commercial shopping outlets	Approved	28.11.2003
06/00670/FUL	Change of use of units 1 & 2 from A1 (shops) to A3 (Restaurant).	Approved	15.06.2006
06/01351/FUL	Removal of some road frontage railings and piers. Alterations to gateways. Installation of bollards to southern road frontages.	Refused	29.09.2006
08/00523/OUT	Outline application for car show room, A3/A4/A5 units and a garden centre. Appearance and materials reserved.	Withdrawn	30.06.2008
08/00524/OUT	Outline application for car show room, A3/A4/A5 units and 6 'B1/B2/B8' units. Appearance and materials reserved.	Withdrawn	30.06.2008
08/00526/OUT	Outline application for car show room and A3/A4/A5 units with appearance and materials reserved.	Withdrawn	30.06.2008
08/00885/FUL	Material change of elevation. Front elevations to be overtilted with cedar type cladding and brickwork to be rendered to form a more presentable outlet centre.	Approved	08.08.2008
08/00979/OUT	Outline application for car show room, A3/A4/A5 units and 6 'B1/B2/B8' units. Appearance and materials reserved.	Approved	18.09.2008
08/00980/OUT	Outline application for car show room, A3/A4/A5 units and a garden centre. Appearance and materials reserved.	Approved	18.09.2008
08/00981/OUT	Outline application for car show room and A3/A4/A5 units with appearance and materials reserved.	Approved	18.09.2008
08/01133/FUL	Proposed part enclosure of east and west malls with stretched fabric canopys including amendments to lighting, bins, seating and planters.	Approved	15.09.2008
09/00111/FUL	Proposed part enclosure of east and west malls with stretched fabric canopy's including amendments to lighting, bins, seating and planters.	Approved	01.04.2009
09/00902/ADV	1 No. non illuminated post sign.	Approved	30.10.2009
09/00908/FUL	Variation of Condition 11 of planning permission TEN/95/0448, to allow the	Approved	29.09.2009

amalgamation of units 27-29 and a further amalgamation or sub-division of units at the outlet. (THIS PERMISSION ALLOWED MARKS AND SPENCERS TO OPERATE FROM THE SITE)

10/00200/FUL	Erection of a cinema (Class D2) and A3 and/or A4 and /or A5 units and associated works.	Approved	08.09.2011
10/01427/FUL	New canopies to outdoor areas of the east and west malls and 2 emergency accesses.	Approved	16.02.2011
14/00184/DIS CON	Discharge of condition 06 (landscaping scheme), 08 (materials), 11 (scheme of covered cycle parking), 12 (scheme of motorcycle parking), 13 (Refuse and recycling area details), 14 (solar panel details) and 15 (scheme of rainwater harvesting and re use) of planning permission 10/00200/FUL	Approved	04.04.2014
14/30167/PRE APP	Reconfiguration of existing site to provide a maximum of 2000sqm net additional retail (A1) floorspace together with the implementation of planning permission 10/00200/FUL with associated access and landscaping through an outline planning application.		
14/00594/TEL LIC	Replacement of telecommunications antennas and installations of two equipment cabinets.	Determined	23.05.2014

#### **4. Consultations**

- 4.1 Environmental Health - No comments on the change of floorspace proposed. This does not affect comments made under 10/00200/FUL.
- 4.2 For the sake of clarity the comments of the Environmental Health Officer in relation to the previous cinema consent (10/00200/FUL) are reproduced in full below:

Comment Date: Fri 19 Mar 2010

- 4.3 There is mention of the system in general in the application but can you add the following condition to ensure that TDC are satisfied the extraction system is sufficient for the task.

##### Extraction Systems

- 4.4 Prior to the building coming into beneficial use full details of the following items shall have been submitted to the Local Planning Authority in writing and approved:
- an extraction system, suitably attenuated and isolated to prevent noise nuisance and equipped with filters to reduce cooking fumes, odours and droplet nuisance to an acceptable level;
  - sound insulation measures to provide reasonable resistance to the spread of airborne and impact sound to neighbouring properties.

These measures shall be implemented in accordance with the approved details before the



system is used and shall be retained thereafter.

Reason - To avoid noise, odour and droplet nuisance in the interest of the amenity enjoyed by dwellings in the locale and since the application does not include the necessary details for consideration.

Comment Date: Tue 10 Aug 2010

- 4.5 Following a re-appraisal of the scheme, it would seem that the application as it stands will be self controlling in the type of units being used for ventilation of the cinema and other proposed units.
- 4.6 Given the distances involved to the nearest residential properties, and the current acoustic performance of plant etc, I do not envisage any cause for complaint from nearby residents, from noise from ventilation systems etc..
- 4.7 Given this, I would have no comments to make on this application in terms of conditions.
- 4.8 Regeneration - Regeneration continues to support the on-going development of the Clacton Factory Shopping Village. It is recognised that the offer needs to be refreshed and enhanced to meet the changing retail environment and this application looks to underpin the longer term sustainability of the operation. This support with the proviso that it can be demonstrated that the long term viability and vitality of the Town Centre will not be unduly compromised.
- 4.9 Principal Tree & Landscape Officer There are no trees on the application site or on adjacent land that are afforded protection by means of a Tree Preservation Order.
- 4.10 There is a group of mature Oaks at a mid-point on the western boundary of the application site to the south of the western most roundabout that is a positive feature in the street scene. These trees are not threatened by the development proposal. This is also the case for the Oak on the eastern boundary that is situated at a point where the Public Right of Way heads south from Stephenson Road West.
- 4.11 It is not considered expedient to make a new Tree Preservation Order in respect of any trees on the application site or on adjacent land.
- 4.12 Whilst the established landscaping in the existing car park will be removed if the development proposal is implemented none of the existing, and relatively young, trees merit protection by means of a Tree Preservation Order.
- 4.13 The layout does not show soft landscaping of the new car parks. If new planting is not carried out then the areas will be dominated by the metalled surface and will not be pleasant, user friendly places. The layout of the car parks should be amended to show soft landscaping, including new tree planting, to both soften and enhance the appearance of the areas.
- 4.14 Should consent be likely to be granted then the applicant should be required to provide details of soft landscaping shown on the site layout plan and additional planting in and around hard surfaced areas to improve the 'feel' of the car parks and associated areas .
- 4.15 ECC Highways Dept From a highway and transportation perspective the impact of the proposal is acceptable to the Highway Authority subject to the following requirements:-
1. Prior to commencement of the development details of a wheel cleaning facility within the site and adjacent to the egress onto the highway shall be submitted to and

approved in writing by the Local Planning Authority. The wheel cleaning facility shall be provided prior to commencement and during construction of the development.

Reason : To protect highway efficiency of movement and safety.

2. No occupation of the development shall take place until the following have been provided or completed.
  - a) Removal of the southern arm and provision of a footway/cycleway at the western roundabout in Stephenson Road West.
  - b) A fourth (northern) arm at the eastern roundabout in Stephenson Road West.
  - c) Two zebra crossings in Stephenson Road West.
  - d) A continuation of the footway/cycleway along the southern side of Stephenson Road West to the footway/cycleway on the south side of Centenary Way, west of the Thorpe Road roundabout.
  - e) Improvements to Bridleway 24, Clacton between Stephenson Road West and Gorse Lane. Improvements to include but shall not be limited to a minimum 1 no. direct link into the proposal site (details to be agreed with the Local Planning Authority prior to commencement of development)
  - f) A travel plan to include but shall not be limited to provision of a Travel Plan Co-Ordinator and a £3000 contribution to cover the Highway Authority's costs to approve, review and monitor the Travel Plan.

Reason : To protect highway efficiency of movement and safety and to ensure that the proposal site is accessible by more sustainable methods of transport, cycling and walking.

Notes :

- The above requirements should be imposed by way of negative planning conditions or planning obligation agreements as appropriate
- In making this recommendation the Highway Authority has treated all planning application drawings relating to the internal layout for the outline elements of the proposal site as illustrative only
- Prior to any works taking place in the highway the developer should enter into an agreement with the Highway Authority under the Highways Act 1980 to regulate the construction of the highway works
- All or some of the above requirements may attract the need for a commuted sum towards their future maintenance (details should be agreed with the Highway Authority as soon as possible)
- All highway related details should be agreed with the Highway Authority
- The proposal should be in accordance with the Parking Standards Design and Good Practice Supplementary Planning Document dated September 2009
- Under Section 23 of the Land Drainage Act 1991, prior written consent from the Lead Local Flood Authority (ECC) is required to construct any culvert (pipe) or structure to control or alter the flow of water within any ordinary watercourse.

4.16 ECC Infrastructure Planning Officer On the basis of the submitted information we will not be requiring additional education contributions for the above, as it appears to be for a reduction in gross retail floorspace, however, should the staff numbers increase over 25 employees there will be an education requirement, equivalent to number of employees x 0.04 (places generated) X £12352 (cost per Early Years and Childcare place) index linked to April 2014 costs.

4.17 Environment Agency

- 4.18 **Comment dated 13 November 2014** Thank you for your consultation received on 13 October 2014. We have inspected the application, as submitted, and are raising a holding objection pending the submission of further information on site drainage. Our detailed advice on this objection is provided below, together with advice on pollution prevention; waste; surface water management and contamination.

#### Site Drainage

- 4.19 A more detailed drainage plan must be provided for us to be able to consider the application in full. The current Systematic drainage Layout Drawing PH-200
- Has no legend
  - Has limited detail about the suitability of the interceptor following redevelopment
  - States 'details of highways gully connections are indicated on specific car parking and access road layouts' and these are not found in the application
  - States 'for details refer to drawing no 8534-PH-02 and this document is not found in the application'
- 4.20 These issues must be addressed before we are able to remove our objection.

#### Surface Water Quality

- 4.21 Surface water and ground water 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/developer needs to make sure any proposed discharge of surface water from the development stays clean and uncontaminated. If surface water does become contaminated we will issue a permit if stopping the contamination is unsustainable and the contamination would not pollute the receiving water.
- 4.22 It is recommended that all run-off from vehicle parking areas should be directed through a suitable oil separator (interceptor) to prevent contamination of surface water.
- 4.23 We refer the applicant to our pollution prevention guidance 3 – choosing and using oil separators.
- 4.24 Prior to being discharged into the surface water sewer, all surface water drainage from the parking area and hard standings susceptible to oil contamination must pass through an oil separator designed and constructed to have capacity and details compatible with the site being drained. Furthermore, roof water should not pass through the interceptor, as this can compromise the effectiveness of the separator during rainfall events.
- 4.25 Foul and surface water manhole cover should be marked to enable easy recognition. Convention is red for foul and blue for surface water. This is to enable water pollution incidents to be more readily traced.

#### Foul Sewer Connection

- 4.26 The appropriate water company must be consulted to ensure that the existing system has sufficient capacity to accommodate this development. It is important that all connections are to the correct mains sewerage. Uncontaminated surface water should only be connected to surface water drains. Whilst any foul and/or trade effluent must be connected to the mains foul sewer.

#### Construction Phase

- 4.27 We refer the applicant to our Pollution Prevention Guidance 6 Construction and Demolition sites that provides information about complying with environmental laws and preventing pollution at construction and demolition sites. It is for site managers, foremen and supervisors.
- 4.28 Material arising from development works can sometimes be classified as waste. Businesses and other organisations need to know if the materials they produce, or intend to use, are waste. This is important as they may need to hold environmental permits and to follow waste controls if they are dealing with waste. The producer of the material is responsible for determining whether it is classified as waste. For further guidance on how waste is classified and best practice for its handling, transport, treatment and disposal the guidance should be referred to.
- 4.29 If the material produced is deemed to be waste then the following will apply:
- 4.30 If any controlled waste is to be removed off site, then the operator must ensure a registered waste carrier is used to convey the waste material off site to a suitable permitted facility.
- 4.31 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 i.e. waste transfer notes, are completed and kept in line with Regulations.
- 4.32 The developer must apply the waste hierarchy in a priority order of prevention, re-use, recycling before considering other recovery or disposal options.
- 4.33 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.

#### Surface Water Management

- 4.34 The application form states that the site is a total of 6.93ha in size and our map shows the site to be located in Flood Zone 1, the low risk zone. Whilst the site is outside the flood plain, development of this scale can generate significant volumes of surface water. However, much of the hardstanding in this case appears to be there already, with a net increase in floorspace of less than 1ha and we therefore have no objection and refer the applicant to our advisory comments. You may consider the site is large enough in scale to require a new surface water drainage scheme. If this is the case we will support you in your request for a Flood Risk Assessment to address this.

#### Contaminated Land

- 4.35 A Phase 1 Desk Study Environmental Assessment by Delta-Simons has been submitted in support of the application. Controlled waters receptors associated with this site have been identified within this report. These include the Secondary A Acquifer underlying the northern part of the site, as well as domestic, agricultural groundwater abstractions associated with Willow Farm bordering the site to the north-east.
- 4.36 Potentially contaminative historical uses of the site have been identified, including electricity sub stations, miscellaneous commercial uses and made ground. However, based on the information provided, we do not consider this site a priority and will not be providing detailed site-specific advice or comments with regard to land contamination at the site.

#### Letter dated 12 December 2014

- 4.37 We refer to email from CgMs, dated 27 November 2014. Having considered the additional information, we confirm that we are able to remove our previous objection to the application. Our advice and guidance given in our earlier correspondence on 13 November 2014 is still valid.
- 4.38 A more detailed drainage plan with a legend has now been provided to allow us to consider the application in full, including additional details about the rainwater harvesting tanks.
- 4.39 We note that any overflow from the surface water attenuation chamber now connects downstream of the separator. This is an important improvement that will significantly reduce the chances of the oil separator being overwhelmed during very high rainfall on the roof of the new development.
- 4.40 Combined with the smaller parking surface, we are satisfied that the separator will be suitable after development.
- 4.41 National Grid - National Grid has identified that it has apparatus in the vicinity of your enquiry which may be affected by the activities specified. Can you please inform National Grid as soon as possible the decision your authority is likely to make regarding this application.
- 4.42 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.
- 4.43 *“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

- 4.44 The foul drainage from this development is in the catchment of Clacton Water Recycling Centre that will have available capacity for these flows.

#### Section 3 – Foul Sewerage Network

- 4.45 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

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

- 4.47 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.
- 4.48 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.
- 4.49 We will request that the agreed strategy is reflected in the planning approval.

#### **Section 5 – Trade Effluent**

- 4.50 Not applicable.

#### **Section 6 - Suggested Planning Conditions (Surface Water Disposal Section 4):**

- 4.51 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.

### **5 Representations**

- 5.1 3 representations have been received objecting to the development. The issues raised are summarised below:
- Severe reservations regarding the treatment of the retail sequential and impact tests and the approach to varying the Section 106 agreements which would permit previous restrictions on the use of the retail floor space to be removed
  - The objector asserts that the Waterglade Shopping Centre is a well-established retail allocation serving central Clacton and anchors the western part of the town centre as well as providing a useful adjunct to the main shopping area in terms of additional retail offer and car parking provision
  - The adopted local plan recognises the role of the Waterglade Centre and includes it within the defined town centre. It also acknowledges that the park should be recognised as a complimentary part of the town centre in shopping policy terms
  - Policy CL10 (Extension to the Waterglade Centre) allocates the park for mixed use, comprising non-food, bulky comparison goods and leisure activities
  - Policy COS1 of the emerging local plan recognises the strong evidence of linked trips between the town centre and the park. It identifies the area as a key opportunity to remodel and improve the physical appearance of the site, whilst expanding the retail offer of the town
  - Policy COS4 of the emerging local plan identifies the area as an opportunity for comprehensive or phased development which could comprise A1 shops (including retail warehousing); A3; B1; C1 and D2 leisure
  - The adopted local plan notes that the CFO functions as a separate centre from the town centre and any future proposals for further restricted factory outlet retail development in this location should be subject of a sequential test assessment. It also notes that whilst the CFO is a useful addition to the variety of shopping facilities in Clacton, it is not considered to be an appropriate location of unrestricted class A1 retail development and that the Council will not permit such proposals here

- Policy CL12 that specifically relates to CFO states that permission will not be granted for proposals that include the introduction of unrestricted retail use and that any application for expansion will need to comply with the sequential test required by government planning guidance
- The emerging local plan identifies the CFO as an employment area that is to be safeguarded for employment use (Policy PRO14)
- The proposed amendment to the existing Section 106 agreement is clearly at odds with adopted planning policy
- The application refers to a net increase of 2015 sq.m. of A1 floor space but this masks the fact that a significant retail space will come forward as unrestricted if the amendments to the Section 106 are permitted. This would impact on the town centre and planned investment in the District
- The application fails to address the sequential assessment by not considering all sequential opportunities but concentrating on the immediate area
- The application fails to adequately assess impact. The submitted assessment is simplistic and makes no allowance for the potential increase in turnover resulting from the proposed relaxation to the Section 106 agreement
- The submitted sequential test does not consider a wider catchment area and does not include sites at Waterglade Retail Park; Warwick Castle; Frinton District Centre; Station Gateway; and Jackson Road. Areas in Station Road; Carnarvon Road and the High Street have also been identified for comprehensive or phased mixed use development which may include A1 retail but it is not made clear in the application submission why these have not been considered in the sequential test
- The Waterglade site is dismissed as being 'unavailable' but no consideration is given to the extension of the site proposed by Policy CL10. The sites at the former Somerfield; Station Gateway and Jackson Road are considered and would physically accommodate the proposed net increase in floor space but suggests that practical considerations are relevant. These considerations are not expanded on
- The objector is not aware of any pressing need for new floor space in the District and therefore the test of availability should be taken over a longer time period
- The objector does not consider that the sequential test has been satisfied
- The floor space falls below the national threshold but the Council requested an Economic Impact Assessment. The information provided is limited as to what these potential impacts might be on the vitality and viability of the town centre or planned investment
- Consideration should be given to the turnover of the proposal as it is impossible to assess the impact of the development on the town centre or where trade may be diverted from
- The proposal would be harmful to the vitality and viability of the town centre and would undermine the policy aspirations for the Waterglade Retail Park
- The application is not supported by a retail impact assessment and so does not satisfy the requirements of the NPPF
- No information on the number of jobs that would be created is provided despite the claim that the proposal would assist in delivering a key economic objective of the Council. If the proposal is only creating 2015 sq.m. additional floor space it is difficult to see how this would contribute to job creation
- The application does not include a justification of how the existing Section 106 agreement no longer serves a useful purpose or would continue to serve a useful purpose in a modified way
- If the Council is minded to approve the application then careful consideration should be given to the effective use of conditions to identify the types and range of uses; the maximum unit sizes and the future addition of mezzanine floors
- The floor space figures provided by the applicant in the Planning Statement and accompanying plans are at odds. The existing floor space is 11217.86 sq.m. and not 11222 sq.m.; the amount to be demolished is 1089.34 sq.m. less than the 3447.66

sq.m. quoted; the remaining floor space is therefore 7770.2 sq.m. (1089.34 sq.m. more than is quoted; the amount proposed on the northern site is 9488 sq.m.(1088.94 sq.m. higher than quoted); the loss of floor space is 1229.66 sq.m. and not 2818 sq.m. as quoted; the amount of retail floor space on the southern site is 5156.07 sq.m. according to the plans which is 323 sq. m higher than the Planning Statement figure; the amount of leisure/A3; A4 and A5 uses is 3595 sq.m. on the plans as opposed to 3838 sq. m. in the Statement; overall the net increase is 2363.41 sq.m. compared to the 2015 sq.m. quoted

- These inconsistencies are of concern and the applicant should provide a final schedule to confirm the exact amount of floor space being created across the site albeit that the objectors figures still fall below the threshold limit of 2500 sq.m.
- The proposed amendments to the existing Section 106 restrictions would significantly change the function and character of the CFO in an out of town centre location
- The Council's Retail Study 2010 comments on the proposals for the CFO and consented cinema as being a retail and leisure destination that will result in an increased number of linked trips between the CFO and the consented cinema that will inevitably draw trade from Clacton town centre. Thus the current restrictions are consistent with national policy that recognise town centres to be at the heart of their communities
- The extension to the Waterglade Retail Park (on the former gas works site – Policy CL10) is an edge of town centre site but this has been excluded from the applicant's sequential test despite it being sequentially more preferable
- The applicant has not provided information to address the Retail Study's conclusion that further extension to out of town retail floor space should be resisted
- Notwithstanding whether a retail impact assessment is required it is good practice for the impact of the scheme to be assessed in a proportionate and locally appropriate way
- Negotiations are underway to sell the former gas works site to be developed for retail use. An application is anticipated in early 2015. The scheme is anticipated to be approved in autumn 2015 and open and operating by 2017. This will deliver planned investment on a sequentially more preferable site
- The applicant asserts that the proposal would result in regenerative benefits however the objector believes that the proposals and the amendments to the Section 106 would result in detrimental impacts on the town centre and planned investment
- The objector recognises the Council's commitment to the regeneration of Clacton and the wider District and suggests that the proposed changes to the Section 106 should not include the sale of convenience (food) goods; that discount sales should be restricted to 50% of the net retail floor space and confined to the sale of discounted goods and the remaining 50% should not be completely unrestricted; that the existing units should be restricted to a maximum of 2000 sq.m. ; and mezzanines should not be permitted
- These suggested alterations to the proposed restrictions would ensure that retailers that could be located in town centre or edge of centre sites would be drawn to the CFO in an out of centre location
- The right to submit further comments on any revised information is reserved
- The proposal will have a significant adverse impact on the operation of an established town centre cinema owing to the diversion of trade to this out of centre location
- The Century Cinema has been invested in significantly since its reopening in June 2013 and is a key component in the town's leisure centre offer
- Town centre cinemas are proven to generate and retain expenditure in town as they generate significant footfall. This will be lost if the town cinema closes



- The loss of the cinema would result in a large vacant town centre site that will impact on the vitality and viability of the town centre and its planned regeneration
- Century Cinema has two screens and shows a selection of films every week. The market in Clacton is mainly for family films. After significant investment it offers a modern cinema experience to compete with major cinemas on a like for like basis
- It has nearby parking and is accessible by a range of transportation methods and importantly by those that do not have access to private transport
- The cinema is affordable and attracts a wide market that caters for Clacton's cinema needs
- A further programme of updates and improvements is planned for the cinema in the coming years. This investment will be lost if the cinema closes as a result of the cumulative effect of the proposed reduction in retail restrictions and opening a six screen cinema at the CFO
- The figures and resulting conclusions in the applicant's Cinema Impact Assessment are considered to be misleading. The aim of the Assessment was to assess the scope for Clacton to support a six screen cinema as well as a two screen cinema. However, it is considered that the evidence used to draw the conclusions on the impact of the proposals is incorrect
- The Assessment uplifts the anticipated cinema going catchment by 20000 people above the Council's own assessment of 98000 people stating that this takes account of seasonal trade but does not explain how this figure has been calculated. The figure is unfounded and cannot be relied on
- The report 'Survey of Cinema Usage – Clacton' prepared in February 2010 found that 70% of visitors to the town centre cinema arrived by car. The majority of customers are therefore not walk in trade as the latest Assessment asserts
- The Assessment uses the UK annual average trip rate of 2.8 visits to the cinema each year to increase the total cinema population to 329 280 people. The previous survey found that in Clacton the annual average was only 2.2 visits per person and so the catchment has been over estimated and should only be 202400 people - this is a difference of 38% between the current Assessment and the previous report in 2010
- On the basis of the overestimated figures the assessment concludes that if Clacton had eight cinema screens then the average screen attendance would be 41160 per screen per annum. If the 2010 figures are used this reduces to 25300 per screen per annum. The average UK admission per screen is 45736 per annum – this leaves Clacton's admissions per annum 45% below the UK average
- The applicant's Assessment concludes that six screens would bring Clacton to its maximum cinema capacity (it could support absolutely no more than eight screens) but it is based on overestimated figures with no evidence to support this. When the correct figures are used it is clear that the town cannot support eight screens in total
- The increase in floor space and the revisions to the restrictions being sought would be in direct conflict with national and local policy
- The proposals for the cinema approved in 2011 have been implemented however the additional proposals to reduce the retail restrictions indicate a gradual move towards creating an 'unrestricted' out of centre retail destination that would have serious impacts on Clacton town centre that will ultimately lead to the closure of the town centre cinema and shops
- There are no material considerations that indicate that an alternative conclusion can be drawn
- The removal of goods restrictions and reduction in floor space given over to discount retailers should be treated with extreme caution and the application should be refused.

5.2 The above representations include a summary of 3 objection letters dated 2 December 2014 from Montagu Evans acting on behalf of National Grid (the owners of the former gas

works site adjacent to the Waterglade Retail Park); 22 December 2014 from GL Hearn acting on behalf of Aberdeen Asset Management (that owns and manages the Waterglade Retail Park); and 23 February 2015 from Quod acting on behalf of the Picturedrome Electric Theatre Company (lease owners of Century Cinema in Clacton town centre).

5.3 2 representations have been received neither objecting to nor supporting the planning application, the points raised are summarised below:

- comments are made as a local resident and Sustrans Cycle Ranger. We make no comment on the suitability of this development but if it is to be approved then access to the site from the surrounding residential areas by cycle will encourage cycle access and reduce dependency upon motorised vehicles
- The proposal includes upgrading the existing PROW between Stephenson Road and Gorse Lane. The proposal states a shared use route will be provided. This should be mandated through application of a planning condition. This proposal by the developer is encouraging
- Cycle storage for visitors should be covered to protect cycles from adverse weather while visiting the centre. The developer has indicated that cycle storage could be covered but this should be mandated via a planning condition
- Cycle storage for employees should be provided through provision of a secure cycle storage area accessible only to employees. Again this should be mandated through a planning condition which also ensures the area is maintained and solely used for cycle storage
- To encourage cycling from residents of Holland on Sea a contribution towards improving the existing PROW between Stratford Road and Sladburys Lane (an existing popular route for pedestrians and cyclists) would encourage further cyclists and create a 1.3mile 9 minute route from Holland-on-Sea to the proposed development. By improving the PROW between Stratford Road/Sladburys Lane would also link the development to the existing cycleway along the Esplanade. Frinton-on-Sea by cycle would then be 4.7 miles and 30 minutes by cycle. During summer months the coastal cycle route is very popular with cyclists between Jaywick and Walton-on-the-Naze - signage from the existing coastal route would encourage cycling to the development
- The application does not provide the opportunity for the CFO to be covered and proposes the removal of the children's play area.

5.4 The applicant's agent has also provided an e-mail (3 December 2014) and a letter in response to the two objection letters and in support of the proposal (9<sup>th</sup> February 2015). The contents are summarised as follows and refer to a 'fall back' scenario (in other words, how the CFO could operate under the current Section 106 restrictions without the need for the Council's further consent and that the 2011 planning permission for a multiplex cinema has been lawfully implemented and remains extant in perpetuity) :

- The site currently comprises 44 units – the total gross internal area (GIA) is 120750 sq. ft.
- The existing Section 106 restriction requires the majority of retail units occupied under an outlet consent (i.e. a minimum of 30% discount from RRP)
- This means that 23 out of 44 units are unfettered
- That leaves 21 units for open A1 non-food consent
- The largest 21 units total 89464 sq. ft. the other 23 units total 31286 sq. ft.
- Therefore, the fall back dictates that 89464 sq. ft. (i.e. the largest 21 units) can currently be used for A1 non-food that is not discounted below RRP
- The planning application comprises a singular site that is currently fettered by the inefficient layout where the car parking and retail units are dissected by Stephenson Road West and is thus remote from the retail floor space that it serves

- This layout contributes to the under performance of the retail destination and is restricting economic development of the site
- The 2011 planning permission for the cinema and retail floor space is extant and should be given material weight in determining the current application
- The application seeks a maximum 50% of the total A1 floor space to be built at the site to be unfettered by the existing S106. This is less than 50% of the originally consented floor space and 1535.5 sq. m. less than the fall back scenario that already exists
- Footfall has continued to reduce
- The 2007 adopted local plan is considered to be out of date (including CL12 that specifically relates to the CFO) and the NPPF presumes in favour of sustainable development unless any adverse impacts in doing so would significantly and demonstrably outweigh the benefits
- Notwithstanding the out of date policy CL12, the proposal complies with this as the proposal does not seek unrestricted retail sales from the whole of the site
- The proposed amendments to the Section 106 requirements are materially similar to the existing fall back position
- The revised Section 106 restrictions will remedy the site's underperformance; secure greater clarity of the floor space trading restrictions and remove ambiguity regarding the various existing agreements
- The sequential test has been satisfied. The test considered the Waterglade Retail Park and the proposed extension to the Retail Park. The site was considered to be unavailable having been presented to the market and then either sold or withdrawn in 2013
- The owners of CFO are currently finalising terms with a multiplex cinema operator
- The sequential test has demonstrated that suitable, sequentially more preferable sites are not available; furthermore the locational requirements of the proposal must be given regard to. The proposal is to regenerate and rejuvenate the CFO and thus it follows that the proposal has to be located in the existing CFO site area
- The development is sustainable as it will address the significant leakage of retail and leisure trips and expenditure that currently leave the town
- This approach to the sequential test was accepted by the Planning Inspector and the SoS in granting planning permission in the case at Rushden Lakes where it was concluded that the scheme in its entirety could not realistically be moved to another location; that there is no requirement to disaggregate floor space; and a significant element of the proposal was inappropriate to be located within the existing town centre
- The Council has previously accepted that the 'out of hours' bus link between the CFO and the town centre represented an appropriate manner in which to maintain and enhance links between the two complementary destinations when determining the 2011 cinema application
- The 2010 Retail Study acknowledges the identified capacity to support approximately 1496 sq.m. additional comparison goods floor space by 2015; increasing to 7449 sq.m. by 2020; and 14410 sq.m. by 2025. The proposed floor space increase at the CFO of 1276 sq.m. makes a positive contribution towards meeting this identified demand but on a scale that by definition does not cause harm to the existing town centre as it falls below the NPPF threshold of 2500 sq.m. the proposal does not breach the threshold and therefore is acceptable in principle
- The Council have commissioned a Retail Impact Assessment
- The proposal will ensure that existing jobs are maintained at the site and additional tenants will be attracted who may not otherwise commit to Clacton. This will support employment creation and represents a material consideration

5.5 Reel Cinemas Limited has also written in support of the application (and to clarify the fall back position in relation to the consented cinema) in a letter dated 17 March 2015. Reel Cinemas advise that it is due to exchange an agreement to lease the proposed cinema with the applicant in the near future. The contents of the letter are as summarised below:

- The Council granted planning permission for a multiplex cinema in this location in 2011
- REEL have been interested in securing a new cinema location in Clacton for some time now and are imminently due to exchange an agreement to lease the cinema proposal under the current planning application
- The delivery of a new multiplex cinema at this location will have substantial regeneration benefits and will materially improve the leisure offer within the district
- REEL are committed to offering a bespoke cinema offer for the local area and are seeking to occupy the cinema as proposed by the current application. This configuration better reflects their operational need
- The fall back position of the consented cinema that has been implemented is a second option and REEL would be able to occupy the cinema should the current application ultimately be unsuccessful

## **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.
- 6.2 Clacton Factory Outlet (CFO) is located on Stephenson Road West, which dissects CFO from its principal area of car parking. Pedestrians currently access the site via two underpasses beneath Stephenson Road west. The site is located within the Gorse Lane Industrial Estate. The site benefits from an extant planning permission for cinema and restaurant uses that are located within part of the car park area within the southern section of the overall site.
- 6.3 Surrounding the site to the west and the east are various industrial, employment and commercial uses. To the south of the site, beyond the car park is an established area of residential use.
- 6.4 To the east of the site (directly abutting the site boundary) and running in a south/north direction is Bridleway 24, Clacton.
- 6.5 The CFO operates as a discounted retail outlet. The current Section 106 Agreement dictates that the goods sold from the majority of retail units must be at a discount price of 30% below recommended retail price.
- 6.6 The existing principal operators include Marks and Spencers; JD Sports and Choice Discount Stores along with other national and independent operators. There are also a number of empty units and the site is currently underperforming.
- 6.7 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. National Grid apparatus runs in parallel to Stephenson Road West to the northern boundary of the existing CFO car park. 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. Policy CL12 of the adopted local plan specifically refers to the CFO. There are no other constraints relative to the site.

### The Proposal

- 6.8 The application is a hybrid application that seeks both full planning permission for some elements of the proposal and outline planning permission for other elements. It also seeks a

variation to the existing Section 106 planning obligations that control the use of the land and the extent and type of retail sales.

1. Full Application Element :

- Reconfigured north site floor space total at 8404 sq.m. net reduction of 2818 sq.m, including 1719 sq.m retail space at units 23-26;
- Reconfigured leisure (A3/D2) site floor space total 2532 sq.m net reduction of 851 sq.m.

2. Outline Application Element:

- Development of 4833 sq.m new floor space at south site with all matters reserved apart from access. Net increase across total site of 1729 sq.m (12951-11222);
- Associated access, landscaping, and parking amendments.

6.9 The application includes a proposal for the removal of the existing underground pedestrian passes and for surface level crossings to be introduced across Stephenson Road West and the demolition of units 1, 23-26, and 34-50. It also proposes completion of the implemented cinema scheme to a revised design and scale that was granted planning permission in 2011. (The extant cinema consent was commenced in 2014 by virtue of a material building operation as defined by Section 56 of the Town and Country Planning Act 1990).

6.10 In terms of individual land use, the planning application seeks a net increase of A1 Retail floor space of 2015 sq m and a reduction of the approved/implemented Cinema and restaurant uses to 2532 sq m. The full and outline proposals would equate to a net increase of 1729 sq m retail/leisure floor space above that already existing; approved and implemented.

6.11 The existing and proposed floor areas are summarised as follows (as updated by the agent's letter dated 9 February 2015):

	North site (sq. m)	South site (sq. m)	Leisure site (sq. m)	Total
GIA existing	11218		3595.34 (1281 A3) (2103 D2)	
Demolish Units 1, 23-26 and 34-50	4535.5			
Remaining floor space	6682.5			
New build	1718.69	5156		
<b>Total developed retail floor space</b>	<b>8401.19</b>	5156	2532.34 (1003 A3) (1529 D2)	
Net increase	- 2816.81	5156	- 1063	

6.12 The application also proposes revisions to the existing Section 106 planning obligations. The existing restrictions are as follows :

6.13 Original Agreement dated 3 December 2008 and a Supplemental Agreement (dated 30 April 2012). The agreements contain the following requirements:

- The total net floor space shall not exceed 13096 sq.m.

- There shall be no A3; A4 or A5 uses and there shall be no sale of furniture; DIY items; carpets; garden requisites; meat or meat products; pharmaceutical goods; builders goods; white goods; motor vehicles; funeral directors; post office; hairdressers
- The sale of newspaper; magazines and cigarettes shall only be permitted from not more than 200 sq ft of the net internal floor area of one retail unit
- All sales from not less than 70% of the net internal floor area of the majority of the retail units shall be at a discounted price or reduced by not less than 30% of the recommended retail price
- A bus service to be provided between CFO and Clacton town centre
- The visitor centre erected in 2008 to remain but can be relocated within the site

6.14 The Supplemental Agreement in 2012 removed the restriction on the sale of furniture.

6.15 The cinema permission in 2011 was also subject to a legal agreement (dated 7 September 2011). It requires the following controls over the land:

- A cinema bus service is to be provided prior to the cinema opening and the service could be reviewed after three years of operation
- The owner must enter into a Highways Agreement to provide a 3m wide cycleway along the southern side of Stephenson Road West
- A Travel Plan must be submitted

6.16 The current application was originally submitted with the following revisions to the existing legal agreements:

- Total net retail floor space not to exceed 13096 sq.m.
- A3; A4 and A5 uses up to a total of 500 sq.m.
- Remove sale of goods restriction
- 50% of total net retail floor space subject to sales restriction comprising minimum discount of 30% of RRP. 50% of floor space to be open unrestricted A1 retail sales
- Removal of the restriction on the further subdivision and amalgamation of retail units

6.17 It was on the basis of the proposed, varied restrictions as outlined above that the objections from Waterglade; National Grid; and Century Cinema were received.

6.18 During the course of processing the application various retail scenarios have been tested against the NPPF and NPPG requirements to meet the sequential and impacts tests. The scenarios proved to be too broad to give comfort that the impact of the proposal would protect the vitality and viability of the town centre and whilst these may have achieved the regeneration and rejuvenate of the CFO these benefits did not demonstrate that they would outweigh the potential impact on the town centre and planned investment.

6.19 The following amendments now form the consideration of the proposal. The amendments are referred to by the applicant as being the minimum required to facilitate the regeneration and rejuvenation of the CFO and are summarised as follows:

- North site – 8401 sq.m. total floorspace. New unit total floorspace 1716 sq. m. (1201 sq. m. A1 non-food and 515sq.m. ancillary food sales. Remaining north site area restricted to existing discount and range of goods restrictions
- South site – 5156 sq.m. total floor space. 324 sq. m A3 use (as previously approved drive thru unit) remaining 4832 sq.m. restricted to existing CFO discount and range of goods restrictions

- 6.20 The latter revisions have formed the basis of the expert retail advice commissioned by the Council. The conclusions and recommendations of the advice will be considered later in this report.
- 6.21 The application is accompanied by the following documentation and drawings:

#### Architectural Drawings

##### Existing Drawings

- 9472-P-01-D Existing site plan
- 9472-P-02-C Existing site plan (North Site)
- 9472-P-03-F Existing site plan (North Site Demolitions)
- 9472-P-04-B Block D Existing plan and elevations
- 9472-P-05-A Block B & C Existing plan and elevations
- 9472-P-06-B Block A Existing plan and elevations
- 9472-P-32 Existing site plan south site
- 2506-PL03-B Extant cinema and restaurants site plan
- 2506-PL10 Extant restaurant elevations
- 2506-PL12 Extant A3 unit D & E elevations
- 2506-PL12-1A Extant cinema elevations 1
- 2506-PI16-2 Extant cinema elevations 2

##### Proposed Drawings

- 9472-P-07-H Proposed site plan (North)
- 9472-P-08-B Block D – Proposed plan and elevations
- 9472-P-09-A Block B & C – Proposed plan and elevations
- 9472-P-10-F Block A – Proposed elevations
- 9472-P-15-E Proposed retail/leisure development
- 9472-P-20-A Proposed restaurant 1, 2 and 3 floor plan
- 9472-P-21-A Proposed cinema plan
- 9472-P-22-A Proposed restaurants 1, 2 and 3 elevations
- 9472-P-23-A Proposed cinema elevations
- 9472-P-24 Proposed restaurants 1, 2 and 3 roof plan
- 9472-P-25 Proposed cinema mezzanine plan
- 9472-P-26 Proposed cinema and restaurant unit levels
- 9472-P-27-D Block A – Proposed plan
- 9472-P-28-D Proposed retail/leisure development site plan
- 9472-P-30 Proposed cinema roof plan and sections
- 9472-P-31 Proposed site plan (Leisure south area)

##### Reports and Technical Information

- Design and Access Statement
- Drainage Strategy
- Demolition and Construction Management Plan
- Landscaping Details
- Noise Assessment
- Lighting Assessment
- Air Quality Assessment
- Contamination Report
- Transport Assessment and Travel Plan
- Planning Statement and Sec 106 Heads of Terms

- Multiplex Cinema Impact Assessment

6.22 The application proposal was screened in accordance with the Town and Country (Environmental Impact Assessment) Regulations 2011. 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 minimal as the site is predominantly hard surfaced and occupied by a number of existing retail units. It was determined that the proposal did not require the submission of an Environmental Statement.

### **Assessment**

6.23 The main planning considerations are:

the principle of development and retail/leisure impact;  
 design;  
 access, movement and connectivity;  
 impact on neighbours;  
 highway safety, transport, parking, servicing and deliveries; and  
 flood risk.

### **Principle of development and retail impact**

6.24 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.

6.25 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.

6.26 On 25<sup>th</sup> 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. One of the options being considered is a 'Garden Suburb' to the north of Gorse Lane Industrial Estate that would deliver up to 1700 dwellings with associated infrastructure.

6.27 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.



- 6.28 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). Policy CL12 of the adopted local plan specifically refers to the CFO and states that:
- 6.29 **'permission will not be granted for proposals that include the introduction of unrestricted retail use on the Clacton Factory Shopping Village. Any application for expansion of the Factory Shopping Village will also need to comply with the sequential test required by Government Planning Guidance and not adversely affect the vitality or viability of Clacton Town Centre.'**
- 6.30 **The supporting text explains that because of the special circumstances concerning the development of the CFO in an out of centre location the range of goods sold from the CFO is restricted.**
- 6.31 Objections to the development on behalf of the Waterglade Retail Park, National Grid; and Century Cinema have been received on the basis of the potential retail and leisure impact on the town centre and planned investment and that the site is controlled by policies of the adopted local plan, particularly CL12.
- 6.32 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 a brownfield, existing retail use and in a relatively sustainable location (albeit out of town centre) and is accessible by a range of means of transport – including public transport, walking and cycling as well as by car 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 along with the existing controls of the use of the land and the extent and types of retail sales. Undue weight has not been given to any one policy but 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 mid 1990's and that an existing fall back position exists for both the cinema development (the 2011 planning permission having been lawfully commenced) and the retail proposals (given the flexibility of the existing Section 106 restrictions that would allow up to 49% of the existing CFO units to operate without applying the discounted sales rate).
- 6.33 Objections to the application proposals have also been received on retail and leisure impact grounds. The overall net increase in proposed retail floor space falls below the 2500sq.m. national threshold that would normally trigger the need for a Retail Impact Assessment. 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 previously advised the Council on a scheme for an Asda supermarket 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. In addition, the proposed alterations to the existing Section 106 restrictions would result in additional floor space being released from the Factory Outlet

discount and type of goods restrictions (required by Policy CL12), Without any clarification from the Secretary of State and recent appeal decisions, GVA have previously advised this to be a grey area and advised the Council that an Impact Assessment should be undertaken to ensure a robust decision is taken by the Council.

- 6.34 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 and leisure redevelopment at the site.
- 6.35 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 applicant's Retail Statement prepared along with additional correspondence from CgMs during the course of processing the application.
- 6.36 In particular, given the location of the CFO 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.

#### Sequential Test –

- 6.37 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.
- 6.38 Annex 2 of The NPPF defines town centres, edge of centre and out of centre locations as:
- 6.39 **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.
- 6.40 **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.
- 6.41 **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]
- 6.42 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 has 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 whilst adopting a degree of flexibility in the scale and format of the proposal.

- 6.43 The review concluded that, on the basis of the originally submitted information and the originally proposed alterations to the existing Section 106 restrictions, the applicant had not demonstrated sufficiently that the sequential (taking into account flexibility) and impact tests on the town centre and planned investment had been met. This was primarily because the proposed alterations to the existing Section 106 restrictions meant that there were multiple scenarios that could possibly occur and that needed to be tested. The proposed alterations meant that it could lead to a significant change in the style of retail provision. In particular the site would potentially be able to sell a significantly wider range of products (including food) from a more flexible and diverse set of retail units that moved away from the Factory Outlet (discount retail sales) envisaged by Policy CL12 and thus might compete directly with the town centre. The Council could not be confident that the development would accord with the sequential approach to site selection or the impact test in order to comply with the relevant parts of policies CL12; ER31 and ER32 of the adopted local plan; Policy PRO6 of the emerging local plan and paragraph 24 of the NPPF.
- 6.44 As a result of GVA's initial assessment, the applicant has revised the proposed amendments to the existing Section 106 controls on the use of the land and the extent and types of goods to be sold. The latest proposal includes:
- North site – 8401 sq.m. total floorspace. New unit total floorspace 1716 sq. m. (1201 sq. m. A1 non-food and 515sq.m. ancillary food sales. Remaining north site area restricted to existing discount and range of goods restrictions
  - South site – 5156 sq.m. total floor space. 324 sq. m A3 use (as previously approved drive thru unit) remaining 4832 sq.m. restricted to existing CFO discount and range of goods restrictions
- 6.45 GVA has considered the latest position and advises that in order to reduce the impact of the health and investment in Clacton town centre then clear restrictions need to be introduced on the range of goods and the size of units in the south part of the site. This will provide, as far as practicable, a complementary relationship with the town centre and minimise any impact as well as satisfying the sequential test. The restrictions proposed are as follows:
- Apart from the new retail unit in the north site, restrict all of the remaining factory outlet floor space to the existing discount sales restrictions, a maximum net/gross area and the existing range of goods restrictions
  - Restrict the new retail unit in the north site to a single unit with maximum net sales area and limit the amount of food sales from that unit
  - No further subdivisions or amalgamation of units on the north site
  - Restrict the new retail floor space on the south site to units of a minimum 2000 sq. m. gross and restrict the range of goods that can be sold
- 6.46 In order to assess the impact of the proposed development, there is also 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 retail use and the flexibility of the existing Section 106 restrictions. The existing restrictions would allow for at least 49% of the existing retail units to operate as non-discount retailers albeit that the existing goods restrictions would apply. The Council is mindful that whilst it is not a certainty that the existing flexibility has, or would be, used, 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" This creates a situation where the expenditure attracted to the CFO could increase in the future without the need for a planning permission or changes to the Section 106 restrictions which would require the consideration of the national planning policy tests of impact and the sequential approach to site selection. Therefore, part of the impact of the proposal could possibly occur in any

event. This is a consideration that needs to be borne in mind (as the law requires) throughout when assessing the issue of impact.

- 6.47 Your officers have concluded that this advice is 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 CL12; ER31 and ER32 of the adopted local plan; and policy PR06 of the emerging local plan.
- 6.48 In 2011 the Council granted planning permission for a 6 screen multiplex cinema (seating 1010 people and with a 2336 sq.m. floorarea) with A3 (restaurant); A4 (pub/bar) and A5 (takeaway) retail units totalling 1423 sq.m. The application was considered by the Council's Planning Committee and was recommended for approval by Officers despite it being a departure from planning policy in that it proposed town centre uses in an out of centre location. The Council considered that the harm that may be caused to the vitality and viability of the town centre and the departure from planning policy was outweighed by the following considerations:
- a new cinema in the town centre was not viable and not therefore an alternative option
  - the existing town centre cinema was small, not modern and unlikely to remain in the long run
  - the alternative to the proposal was for residents to have to travel to Colchester or Ipswich which was unsustainable
  - a package of transport measures was proposed to make the location more accessible
- 6.49 The grant of the 2011 planning permission was informed by the contents of an 'Economic Statement' that asserted that the proposal represented the only opportunity for Clacton to have a multiplex cinema and that no realistic, alternative town centre location existed. The Officer's report stated that:
- 6.50 "The existing Flicks cinema operation would need considerable investment in order for it to meet the modern cinema goers' expectations. It cannot expand due to the constrained nature of the site. The operators have not objected to the proposal and indeed they have stated that they will not be objecting. This is significant; suggesting that either they do not think that a new cinema would affect them or that the cinema (as opposed to the bingo) part of their business is not seen as important to them going forward. As would seem to be the case with many small town centre cinema operations, it would seem likely that Clacton's cinema has a limited life expectancy regardless of whether or not a new cinema opens."
- 6.51 Furthermore, the survey information submitted with the previous application showed that 43% of cinema journeys made by Clacton residents were to cinemas outside of the district. Even in an out of town centre location, it was considered that the CFO represented a sustainably more appropriate location to prevent the leakage of cinema goers' trips outside of the area.
- 6.52 Following on from the grant of planning permission, Flicks cinema closed in November 2012. However, in 2013 it reopened under new ownership. The new owner, Picturedrome Electric Theatre Company trading as Century Cinema, has invested in the cinema and objects to the reconfigured scheme currently under consideration.
- 6.53 Members will recollect from earlier in this report that the 2011 planning permission was implemented in the summer of 2014 following the discharge of all the pre commencement planning conditions. This permission is now valid in perpetuity. It represents a fall back position (as defined earlier in this report), in that the applicant can complete the

construction of the originally consented scheme at any time. This is a strong material consideration in the determination of the current application and REEL Cinemas has confirmed its commitment to the proposal albeit that the current application proposals are the preferred format. A further material consideration is that the current scheme has a smaller footprint than the previously approved proposal (albeit that it retains six screens).

- 6.54 The current application has been supplemented since its original submission by a Cinema Impact Assessment. The Assessment concludes that:
- there is sufficient capacity for a multiplex cinema at the CFO and the town centre Century Cinema
  - the Council has accepted the need in Clacton for a multiplex cinema since it granted planning permission in 2011. No other cinemas have opened in Clacton during this time
  - the implemented planning permission was in respect of a larger 6 screen cinema (seating 1010 people and measuring 2336 sq.m.). The current application still refers to 6 screens but seats 689 people and measures 1529 sq.m. in floor area
  - the proposal will assist in reducing cinema journey times and would offer a local facility to those unable to travel significant distances
  - it would undoubtedly add to the tourist attraction of the town
  - the multiplex cinema will help to support the regenerate the CFO as a retail and leisure destination
  - the Century Cinema is a 2 screen cinema/bingo hall occupying a 1936 built cinema. It has been invested in by the current owners since it reopened in 2013. The current owners were aware of the existing multiplex cinema planning permission at the CFO when it committed to a 15 year lease in 2013
  - the Century Cinema operators objected to the proposal for a multiplex cinema at the Clacton gateway site. The objection stated that a second multiplex cinema would have a significant adverse impact on the town centre and would inevitably lead to closure. With one multiplex cinema consented at the CFO there was a possibility of closure
  - the two cinemas (the multiplex and Century Cinema) clearly serve different roles
  - the cinema capacity assessment concludes that the town can accommodate 8 screens but no more than this
- 6.55 The fall back position that relates to the consented cinema and that has been lawfully implemented is a strong material consideration in the determination of this element of the scheme. Since the previous grant of consent two changes have occurred. The first, is that the town cinema has reopened; and the second is that the CFO cinema has been commenced. The applicant has provided information to demonstrate that the two cinemas can co-exist and it is recognised by Century Cinema that this is the case. One of the main concerns of Century Cinema was that the lifting of the retail restrictions would act as a direct attractor for visitors away from the town centre. Given the proposed changes to the restrictions during the course of determining this application officers are now satisfied that this will not be the case.
- 6.56 Having had regard to all the above issues, it is considered that the development would accord with the sequential approach to site selection or the impact test in order to comply with the relevant parts of policies CL12; ER31 and ER32 of the adopted local plan; Policy PRO6 of the emerging local plan and paragraph 24 of the NPPF.

### **Design**

- 6.57 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.

- 6.58 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, professional and pre-application process.
- 6.59 The proposal seeks to address the deficiencies currently experienced by the existing CFO. The current layout presents a blank elevation to Stephenson Road West and prevents a direct visual relationship with the main body of retail units. These are arranged in a U shape and the removal of this central range will allow for good visibility and ease of access. In addition, the closing of the pedestrian underpasses and the creation of level surface crossings will provide a more user friendly route for shoppers. Unit 1 is also proposed to be demolished and this will serve to provide greater visibility of the retail units as you approach from along Stephenson Road west.
- 6.60 The appearance of the new units will follow the form, scale, external materials and design of the existing units.
- 6.61 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 those that occur within the site at present.
- 6.62 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 (Section 14) and policies QL9 and QL10 of the adopted local plan and policy SD9 of the emerging local plan.

### **Access, Movement and Connectivity**

- 6.63 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.
- 6.64 The application layout has considered the need to improve existing pedestrian and cycle connections in the locality of the site and within the site and to improve the existing pedestrian link from the existing car park and the adjacent Bridleway 24. A Section 106 obligation will provide a dedicated cycleway to link Stephenson Road West with Centenary Way. Good connections already exist, along with a regular bus service to and from the town centre, and the existing local highway network is conducive to cycling. The site is already in a relatively 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 Gorse Lane, Thorpe Road and Burrs Road.
- 6.65 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**

- 6.66 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.
- 6.67 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.
- 6.68 The visual impact of the development will be greatest to those residential properties to the south of the site on Gorse Lane. 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 existence of landscaping it is not considered that the visual impact of the development by way of its scale or dominance on nearby domestic scale properties would be so adverse to substantiate a refusal of planning permission.
- 6.69 The application is accompanied by a Noise Assessment and the Design and Access Statement explains in some detail how the layout has been informed to take account of distances from the nearest residential properties to the south of the site.
- 6.70 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.
- 6.71 The Noise Assessment has been carried out in accordance with relevant British Standards and assesses the likely impact of the external plant and buildings services; car park activities; and the proposed service yard to the south site. It relies on background noise surveys taken in December 2009 when the previous cinema application was submitted.
- 6.72 The report concludes that these activities/operations will result in noise levels significantly lower than the Significant Adverse Effects Level (as defined in the NPPG) and will not lead to harm to the quality of life for residents at the nearest residential properties to the site.
- 6.73 The application is accompanied by an external lighting report. The report outlines the design requirements that the applicant wishes to meet and the report demonstrates that the external lighting design will provide a safe and secure car park and shopping/cinema environment whilst minimising the impact on neighbouring properties. This can satisfactorily be controlled by condition requiring the lighting scheme to be implemented in accordance with the external lighting report.
- 6.74 The application is also accompanied by an Air Quality Assessment. This considers the likely impact of the development in terms of dust during the construction phase; emissions from construction plant; and emissions from new trips on the local road network when operational. During the construction phase the impacts are considered to be negligible to minor and in the operational phase (less than 10% increase above current traffic flows are expected) the impact on air quality is unlikely to be affected.
- 6.75 The Council's Environmental Health Officers and the Environment Agency raise no objection to the proposal subject to conditions.
- 6.76 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 policies SD8 and SD9 of the emerging local plan.

### **Highway Safety**

- 6.77 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.
- 6.78 The application is accompanied by a Travel Plan and Transport Assessment (the scope of which was agreed with ECC).
- 6.79 The alterations to the highway include: removal of southern arm of the western roundabout; creation of a fourth arm to the eastern roundabout; and closure of the pedestrian underpasses having been replaced by surface level crossing.
- 6.80 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.
- 6.81 The application is accompanied by a Transport Assessment that considers the existing highway layout and the existing situation and compares this to the proposed development (including the proposed highway alterations). The report concludes that :
- the existing highway network has sufficient capacity to accommodate the relatively small increase in trips likely to be generated by the development proposal
  - the proposed car parking areas will be sufficient to serve the development and will not result in parking problems or adverse impact on the highway network.
  - Improvements to the pedestrian realm will make walking more attractive
  - There will be no adverse effect on highways and transportation as a result of the development proposals
- 6.82 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 (including improvements and access to the adjacent Bridleway 24); 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**

- 6.83 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.



- 6.84 The application was accompanied by a Drainage Strategy.
- 6.85 The Environment Agency issued a holding objection to this initial Drainage Strategy pending the receipt of additional information to demonstrate that the potential risks of pollution to surface water quality could be safely managed.
- 6.86 A revised Drainage Strategy was received in November 2014 and the Environment Agency was reconsulted. The Environment Agency then withdrew the holding objection.
- 6.87 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.

### **Environmental Impact Assessment**

- 6.88 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.
- 6.89 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).
- 6.90 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.
- 6.91 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.
- 6.92 The site is currently occupied by a number of retail units and a large surface level car park. It is proposed to demolish some of the existing buildings on the site and to develop the site for a mixed retail and leisure use. The associated works will include the provision of car parking; cycle shelters and other ancillary furniture and the improvement of the pedestrian access. Vehicular access will remain unchanged with a separate access to the service yard from Stephenson Road West. 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 or contains built development. It is not within a Conservation Area or a nature conservation area.

- 6.93 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.
- 6.94 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 2014. 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.**

- 6.95 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.
- 6.96 It is not considered that the scheme will give rise to significant adverse impacts provided that controls continue to exist in relation to the land use and the extent and types of retail sales, however the benefits resulting from the scheme can be summarised as follows:
- The development has been the subject of pre application consultation with the Council and statutory consultees
  - 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 and rejuvenation of the site and would enhance the visual appearance of the area
  - It will facilitate the delivery of a six screen multiplex cinema and address the current unsustainable leakage of cinema goers to Colchester and Ipswich
  - The public realm will be enhanced by the 'opening' up of the site so that the retail units address the street and pedestrian access is at surface level rather than via underpasses
  - The proposal will secure additional jobs and retain existing colleagues at the CFO
  - 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 (subject to the controls referred to throughout this report). 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. Some of the existing, buildings will be demolished and replaced with a more customer friendly layout
  - Improving accessibility via a travel plan and the delivery of safe and suitable access to the scheme and the opportunities for sustainable transport modes;
  - 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.

- 6.97 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**

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

- 6.99 The proposed control of land uses and the extent and type of goods to be sold are as summarised:

- Apart from the new retail unit in the north site, restrict all of the remaining factory outlet floor space to the existing discount sales restrictions, a maximum net/gross area and the existing range of goods restrictions
- Restrict the new retail unit in the north site to a single unit with maximum net sales area and limit the amount of food sales from that unit
- No further subdivisions or amalgamation of units on the north site
- Restrict the new retail floor space on the south site to units of a minimum 2000 sq. m. gross and restrict the range of goods that can be sold
- Retention of bus service to both the retail and leisure uses (subject to agreed review mechanism)
- Retention of visitor centre
- Provision of Cycleway/Footway if necessary to make the development acceptable
- Travel Plan monitoring fee

### **Conclusion**

- 6.100 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

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

- 6.102 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, subject to the proposed controls, complies 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 and the CFO restrictions of Policy CL12.

- The site is a brownfield site
- It is currently in retail use and has been since the mid 1990'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. However, regard must be had (and has been had) to the national and local policies that seek to protect the vitality and viability of the town centre and to Policy CL12 that specifically refers to the CFO
- 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 obligations and/or 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, and because of the changes to the retail operations that would have resulted due to changes in the existing sales restrictions, the Council has commissioned a report in any event. The report concludes that, subject to certain controls being imposed, the proposal will provide, as far as practicable, a complementary relationship with the town centre and minimise any impact as well as satisfying the sequential test. This impact has to be assessed and balanced against the material consideration of the fall back positions as required by case law. On this basis the retail and leisure impact of the proposal on the town centre and planned investment is substantially reduced and is at acceptable levels.
- The proposal will protect existing jobs and create additional jobs
- 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 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; and flood risk and it 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 (including the identified fall back positions; the existing brownfield status of the retail site; the economic and social benefits of the scheme; and the physical regeneration of the site).

6.103 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.