

COMMITTEE REPORT

Date: 17th May 2012 **Ward:** Huntington/New Earswick
Team: Major and Commercial Team **Parish:** Huntington Parish Council

Reference: 11/02208/FULM

Application at: Monks Cross Shopping Park Monks Cross Drive Huntington York
For: Variation of condition no. 3 of approved application 3/66/650K-3/61/207G (original outline permission for Monks Cross Shopping Park) to reduce the minimum unit size, to increase the net sales area for two units and to restrict the amount of food sales

By: The Monks Cross Shopping Park Trust

Application Type: Major Full Application (13 weeks)

Target Date: 20 December 2011

Recommendation: Refuse

1.0 PROPOSAL

1.1 This is a section 73 application for the variation of condition no.3 of planning approval 3/66/650AK- 3/61/207G which is the original outline planning permission granted for the erection of the Monks Cross Shopping Park (MCSP). Condition 3 of the planning permission says as follows:-

'No retail unit shall be less than 10,000 square feet and units greater than 15,000 square feet net retail sales area shall not be used for the retailing of any of the following goods, save where ancillary to the main range of goods sold, without the prior consent in writing of the Local Planning Authority.

- (a) mens, womens and children's clothing and footwear
- (b) fashion accessories
- (c) watches and jewellery
- (d) music and video recordings and video or CD-ROM games
- (e) cameras (including cam-corders) and other photographic equipment
- (f) domestic TV, video and hifi equipment
- (g) toys

1.2 Section 73 of the Town and Country Planning Act 1990 allows applications to be made for permission to develop without complying with a condition(s) previously imposed on a planning permission.

1.3 The site currently consists of 26 separate retail units (as identified by Appendix – 1 planning report supplementary), car parking and ancillary facilities as well as Asda supermarket and car park. This site area is the same as that submitted as part of the original outline planning permission in 1994. The site is bounded by Monks Cross

Drive to the north and west, Monks Cross Link to the east and Jockey Lane to the south. Access to the site is via an access point from the roundabout on Jockey Lane and via an access point from the roundabout to the north from Monks Cross Link. The majority of the trees to the periphery of the site are covered by a Tree Preservation Order (TPO no.CYC 274)

1.4 The proposal seeks to amend the planning controls in condition 3 of the planning permission (set out above) and proposes a number of planning controls on the use of the retail space to allow greater flexibility within the individual units of the retail park. These are:-

- maximum of 31 units
- maximum food sales of 6,968 sq.m.
- Minimum unit size of 455 sq.m.
- A maximum of 8 units less than 455 sq.m.
- Permit up to two large units (upto 4,645 sq.m. net sales area), permitted to sell a broader range of goods than simply bulky goods.

1.5 The application is supported by suggested conditions which would allow the above planning controls to replace those that exist. The conditions are worded so that the proposed controls do not apply to the Asda supermarket.

1.6 The application has been submitted in conjunction with an outline planning permission for the erection of additional floor space within the park. The outline application to be considered is on this agenda (planning reference 11/2199/OUTM).

1.7 The same planning documentation has been submitted for both this and the outline proposals. These documents are:

- Planning report and supplementary documents and appendices
- Transport statement
- Travel plan
- Design and Access statement
- Evidence base by Cushman and Wakefield
- Flood Risk and Drainage Appraisal dated April 2010
- Tree Survey dated April 2010

1.8 Two further applications for the variation of conditions within the MCSP were originally submitted. These applications have now been withdrawn.

Relevant Planning History

1.9 The application site area consists of an area which covers the main MCSP. The following site history can be attributed to and can be considered relevant to the application site:

Application Reference Number: 11/02208/FULM

Item No: 4b

- In September 1994 outline planning permission was granted for 'shopping centre comprising 360,000square feet A1 retail floorspace (gross leaseable area) plus management space, fast food provision, circulation space and ancillary facilities' planning reference 3/66/650AK/OA 3/61/207G/OA. The application was subject to 13 conditions; condition 3 of the permission is as set out in paragraph above. The remaining conditions on this permission relate to the way in which the physical details of the scheme are to be implemented.

NOTE: the above permission and the subsequent reserved matters application also related to the Asda supermarket. The Asda Supermarket building and car park form part of the application boundary but the proposed amendments to the conditions do not include the Asda site.

- In August 1997 reserved matters approval was granted for the erection of retail units with associated parking/servicing/ management facilities and restaurant (Planning reference 7/066/9080). The approval was subject to a section 106 unilateral undertaking which included financial contributions towards art work and bus routes and highway requirements outside the application site.

- In February 1998 planning permission was granted for a first floor mezzanine to unit 12 to be used for A3 food and drink use. The planning permission restricted the use of the mezzanine to A3 use only and ancillary to the main retail use

- In July 1998 Approval of reserved matters in relation to landscaping and boundary treatment of the retail development was approved (planning reference 98/00187/REM)

- Prior to the introduction of legislation relating to the insertion of mezzanine floors within retail units in 2006 a number of certificates of lawful development applications were submitted in 2005 for the insertion of mezzanine floors (units 7, 13 and 18).

- In September 2007 planning permission was granted for external alterations to and construction of first floor within units 18 and 19 (Planning reference 07/01498/FULM)

- Certificate of Lawful proposed use was issued in relation to former BB's cafe to allow the unit to be used for class A1 retail. The certificate confirmed that the change would constitute permitted development and thus could take place without the need for planning permission.

- In November 2008 planning permission was granted for a variation of condition 3 (referred to above) of the original outline planning permission in relation to unit 18 (planning reference 08/01515/FUL) allowing the upper limit of 15000square foot to be increased to 15,210 square foot.

- Permission was submitted in March 2009 for external alterations and construction of first floor within unit 16, the Clarke's unit. No decision has been issued on this application. (planning reference 09/00580/FUL)

- In July 2010 planning permission was refused for the erection of 3 no retail buildings (total floor space 1440 sq m) for Class A1 (retail), and/or Class A3 (restaurants and cafes) and/or Class A5 (hot food takeaway) with modifications to existing car park, introduction of new servicing, landscaping and highway works (this was the resubmission of an earlier withdrawn application). The application was refused by planning committee because of loss of car parking and the loss of trees covered by a Tree Preservation Order.

- In September 2010 permission was granted for the erection of 2 storey infill unit to create sandwich shop (use class A1), cafe (A3) Drinking Establishment (A4) or Hot Food Take-Away (A5) (Planning reference 10/2058/FUL). This permission was subject to a restriction to the specified uses and no other use within class A1.

2.0 CONSULTATIONS

INTERNAL

2.1 Highway Network Management - No objections are raised to the application. The application seeks to amend conditions which limit the way the existing floor area is divided and restricted in terms of the range/type of goods sold. No changes to the car parking levels are proposed and the total floor area will remain unchanged. The level of trips generated by retail destinations are based upon a trip rate per GFA or car space based upon the nationally recognised TRICS database. As neither the total GFA or number of car spaces proposed are proposed to be changed from that currently available, from a highways perspective, the application could not be clearly demonstrated to lead to any material change in the total number of trips generated.

Integrated Strategy - Much of the Integrated Strategy response has been incorporated into the report. Integrated Strategy overall consider that the proposals fail the sequential and impact tests and that the proposals when considered in conjunction with the stadium proposals could create a substantial risk to the soundness of the core strategy which could risk its withdrawal.

2.2 Economic Development – No comments received to this specific proposal

EXTERNAL

2.3 Ryedale District Council – States that taken cumulatively the applications represent relatively significant additions and changes to the current MCSP which exerts a significant influence in attracting customers from Ryedale. Malton is identified in the Ryedale Core strategy as the principal town centre where most

opportunities exist to accommodate new retail development. A key need identified within the centre is for new purpose built comparison units. Principally concerned about the provision of smaller units at MCSP. The lowering of the minimum unit size has the potential to partially change this format which could have direct competition with town centres which are also seeking to attract this format. This has the potential to undermine the key principles of the retail sequential test - the promotion of town centres first- and divert investment away from nearby town centres. There are currently two planning applications being considered in Malton which make provision for purpose built comparison units as part of a larger scheme. The Council have concerns that the supporting retail information does not consider the issue of diverting investment from neighbouring centres such as Malton.

2.4 Harrogate Borough Council - No objections

2.5 Selby District Council – No objections

2.6 At the time of writing this report there are 878 letters of objection. The Letters cover the following points. The total number objections will be updated at planning committee :-

- The economic benefit of the development has been hugely overstated. In sufficient consideration has been given to the effect on existing businesses, peripheral and city centre.
- Job losses associated with reduced trade in existing city centre businesses could eclipse the corporate retail and construction jobs created
- Commercial areas- city centre, off centre and neighbourhoods- are crucial to local communities providing anchor points for business and social activity. Accessible by foot, cycle and public transport and not dependant on access by car.
- Support for out of town development will create an alternative economic centre, stronger businesses will feel pressure to move out-of-town
- Even in an apparently vibrant neighbourhood like Bishopthorpe Road businesses already struggle to survive and the commercial balance is difficult to maintain the development will exacerbate this
- Despite the bland assertions by the developer it is impossible to conceive that such a massive corporate expansion will not reverberate throughout every commercial street in York
- UK retailing is undergoing massive structural change generated by the rise in the internet, the future is likely to see a falling demand for physical retail space and raises the long term sustainability of retail space across the entire city and whether available central sites can ever be utilised if out of town development is given the green light. Future retail should be concentrated in the city centre which is the principle enshrined within the Local Development Framework (LDF)
- The LDF is based on wide consultation and well established and thoughtfully considered planning policies, developed over many years to encourage healthy, long term and sustainable economic growth. Policy aims to foster economic

development within the city that supports sustainable, environmental, social and cultural goals rather than short term economic gain. Developments at Monks Cross pay very little attention to policy aims

- The development represents a large step away from the aims of established planning policy and a very large step towards remaking York along the lines of flawed models of town planning that have been thoroughly discredited elsewhere in the UK.
- This development would make a mockery of York's LDF and create a highly undesirable precedent.
- City centre businesses have found creative ways to adapt to high overheads and lack of space if large corporate retailers want a presence in York they should have to play by the same rules. There is ample room for expansion within the city centre.
- Local Businesses in Local centres play a vital role in nurturing the community. This would be undermined by the approval of this project
- Monks Cross is large enough now, adequate for most out-of town shoppers needs adding more space will be detrimental to city centre and small retailers and the footfall of the city centre
- Parking at Monks Cross is inadequate to take extra development
- Road system around Monks Cross is often grid locked as is the northern part of the ring road meaning that people living in Heworth find it quicker to go through the city.
- Prime aim should be to look after the city centre, it's stores and smaller retailers
- Monks Cross is big enough and the proposed extension is out of all proportion
- There would eventually be a net loss of jobs caused by this development.
- Monks Cross was originally built with constraints to mitigate the effect of the development on the city centre traders and to reduce the impact on smaller retailers. The approval of this scheme will undermine city centre vitality
- Increase pollution through additional traffic.
- Development would lead to empty shops, decay to the atmosphere of the city centre
- Out of town shopping is environmentally unsound – encourages car usage
- Already too many unoccupied shops in the city
- Expansion of Monks Cross will mean chain stores will move out of the centre.
- The Council is urged to think long term not just money Monks Cross will generate
- Non-car users would be disadvantaged by out-of-town shopping development
- The city centre is already battling against Clifton Moor
- City centre traders rely heavily on Tourist trade which is declining local trade must be kept in the centre
- Enough shops in Monks Cross to serve York already
- People come to York to visit the independent shops they can go anywhere for main stream shops
- What about the quality of the city rather than the quantity of shops.
- The scheme will disadvantage poor and elderly
- Contrary to all local and national planning policies
- Proposals would undermine York's draft LDF which is going to public examination this year

- Sequentially there are plentiful of sites in the city centre and edge of centre
- Undermine future prosperity of York, trade draw from the city centre would mean that only tourist shops and cafes would be left in the centre
- Undermine existing and potential strategies for developing a sustainable city including traffic reduction and improving air quality
- Contrary to the City's aspirations to promote fairness and greater equality as its out-of-town location on one side of the city it will be hard to reach for young, those on low incomes and those who do not wish to use a car.
- Decline in the city centre will discourage inward investors, could cause far more loss of jobs than it creates
- The Council should refer these applications to the Secretary of State for public inquiry given the size of the combined applications and the potential impact on the future of York.
- Particular concern about any proposal that reduces the size of the units at Monks Cross.
- Cost of buses is high and their availability is low; therefore bus use is not an option in many cases for accessing out-of-town shopping
- Out-of-town parking should not be free
- If land at Piccadilly or to the rear of the railway station can not be developed because it is too expensive there should be no development until these sites become economically viable
- Lack of inward investment will be a major concern for the maintenance of historic buildings in the city
- Scheme has more disbenefits than benefits
- York will lose its unique qualities
- There is no shortage of retail space for car borne shoppers with Clifton moor Monks Cross, Designer outlet, Tesco, B&Q
- Trade to centre diverted will mean fewer tourists
- Empty shops in York could be used for the development
- Increased congestion will contribute to climate change
- There are areas in York that have been left to be run down such as Piccadilly. New development should go to these areas
- The Council should do the hard job of regenerating areas such as Micklegate and Piccadilly instead of taking business away
- The schemes are unnecessary
- A huge carbon footprint will result
- Planners should be focusing on attracting good quality development in the centre
- As a business employing 80 people have found that the vibrant city centre is key to attracting and retaining top quality people, the scheme will reduce the attractiveness with a likely impact on the businesses future expansion and employment options.
- Only beneficiaries are the developers and the businesses concerned in the development
- The city does not need more shops it needs more affordable homes.
- Environmentally regressive step

- York is wonderful for walking and cycling we should not be pushing people out of town to shop
- Out of town retail outlets create a dehumanisation of shopping
- There will only be tourist attractions left, nothing for residents
- Out of Town shopping is bland and soulless has no sense of community to locals
- The whole idea of park and ride has been to free up the city for tourist and residents to encourage those on the periphery to shop in the city
- Monks Cross is a boring place to shop and Marks and Spencers already has enough stores
- Independent retailers says shop would close as a direct result of the development
- Present road system around Monks Cross can not cope with the extra traffic
- Panders to national and multi-national interests to the detriment of local people
- Empty shops in the city centre will be off-putting to tourists and will lose repeat visitors
- The approval of the schemes will be regretted in years to come
- Will set a precedent for yet more out-of -town retail development
- York's status as a cycling city is surely not compatible with the proposed development
- Jobs created would be off-set by job losses within the city centre
- Leeds is competing against other centres by building new shopping within the city centre
- Reports by GVA Grimley should be taken into account The Council have relied on their judgement before it would seem perverse to start and ignore them now.
- Speed of traffic on the northern ring road gets slower every year additional traffic to shops will cause even greater congestion
- Far too many empty buildings in the city centre to justify further development out of town
- The city centre can not survive on gift shops and cafes
- It is important that York has real people going about their business tourists enjoy atmosphere as much as attractions
- A large number of jobs will simply transfer to Monks Cross creating further traffic problems and pollution
- With the current economic conditions it is the worst time to be putting pressure on the city.

2.7 At the time of writing there are 11 letters of support. The Letters cover the following points. The total number of support letters will be updated at planning committee:-

- More shops at Monks cross would be fantastic
- The doom and gloom predicted for the city centre contradicted by UK economists
- Development would give York residents more choice
- York centre does not have space for large stores want to be able to access large shops without having to travel away

2.8 A number of letters of objection have been received from or on behalf of other interested parties and these are referred to separately below:-

2.9 GVA Grimley on behalf of the York Chamber of Trade - The proposal is contrary to PPS1 as although the proposal is considered to be in the interests of sustainability by preventing the need to identify additional locations for retail this is not presented against the significant detrimental impact of investment and employment opportunities within existing communities and centres.

- The proposals are contrary to the local plan as the anchor stores and configuration of smaller units will significantly alter the character of the centre
- In emerging Council policy Monks Cross is not indicated as a site for further retail development. Sequential preference after the city centre post 2020 is for development at York Central
- Even if the Council conclude that there is clear evidence to demonstrate that permitted space could be brought forward without the need for planning permission, there is concern about the cumulative impact of the of the proposals now been promoted which would lead to a more significant uplift in the overall attractiveness of the centre and its turnover, and hence its impact on the city centre
- It is considered that the applicants have not demonstrated compliance with the sequential approach as required by EC15 of PPS4
- The proposal would create precedent and pressure for the continued unplanned growth of retailing in the Monks Cross area. The combined proposal of Monks Cross North and the Oakgate scheme would elevate the role of Monks Cross to sub-regional or even regional significance. The proposal would therefore prejudice and prejudice the emerging LDF. There should therefore be proper independent scrutiny through a public inquiry.
- The applicant's case is predicated on the fallback position relating to the unfettered nature of the current planning control on the site. Chapter 12 of the submitted planning statement refers to attracting retailers based on 'out-of-town as opposed to 'high street' format of retail space however the flexibility introduced by the range of units, particularly in respect of the smaller units will blur these distinctions to the detriment of the city centre
- Paragraph 9.34 of the planning statement identifies that the biggest draw of trade will be from York City Centre this impact is muted to negligible due to the compensatory impacts of new retail development at Castle Piccadilly and York Central however this contradicts evidence also presented confirming anticipated delays to these projects
- The additional travel generated by the proposals is likely to have a significant impact on the highway network arising principally from private motorised transport. The transport assessment does not accurately reflect pressure for parking arising from the increased attractiveness of the centre.
- The chamber of trades' view is that the proposals would alter the offer at Monks Cross in such a way that the impact on the City centre would be significantly adverse and the application should therefore be refused.

2.10 Jones Lang La Salle - selected as the preferred developer for the Castle Piccadilly site - object to the proposals on the following grounds:-

- The Castle Piccadilly site is a key city centre development site within the Council's emerging Local Development framework for a mixed use development with a significant amount of retail. The site is identified as being of strategic importance to the future of the city centre.
- LaSalle UK Venture Funds is actively preparing a scheme designed to accommodate a large department store and a range of modern shop units.
- The scheme would strengthen the retail function of the city centre significantly in line with national, regional and local planning objectives.
- The significant amount of retail proposed at the existing Monks Cross shopping park is contrary to planning policy at all levels and contrary to independent advice given to the Council from retail experts.
- If permitted, the proposals would harm the existing shops in the city centre and would have such a detrimental effect on future investment that the comprehensive redevelopment of Castle Piccadilly would not happen. In the event of approval LaSalle UK venture fund would look to dispose of their assets in York in order to liquidate the fund. The most likely disposal would be of the individual parts to maximise the asset value.
- The permission being sought to remove the minimum unit size and permitted range of goods conditions will in effect create town centre shop units. If granted this would create another city centre in an out of centre location.
- Retail studies commissioned by the Council acknowledge that the substantial range of out of town shopping around York has resulted in consistent decline in its comparison goods market share for the city centre to levels that are considered to be unacceptably low. The massive increase in the amount of out of town retail floorspace will accelerate the decline of the city centre yet further.
- In York there are sequentially preferable existing retail stores and also major retail development sites (sites identified - expiring leases within Coppergate, M&S moving from Coppergate together with existing vacant shops and Castle Piccadilly development site). It is a matter of fact that the proposal fails the sequential approach.
- The proposals to reduce the size of unit from 929 sq.m. to 455 sq.m. is in direct conflict with policy S2 of the local plan. The reason for the limits on minimum floor space is to limit the impact of out of town retailing on the vitality and viability of existing centres. Further more the emerging policy CS17 says that the amount of comparison floorspace in out-of town retail destinations will not be expanded.
- Castle Piccadilly is key to reversing the declining market share of the City Centre. The scale and nature of the proposals to further increase retail floorspace at Monks Cross would cause lasting damage. The application would result in a step change in the attractiveness of Monks Cross as a whole, drawing a significant number of new shoppers out of town.

2.11 York Conservation Trust - has undertaken a survey to every retailer in the city centre (approximately 700) excluding national chain stores, public houses and restaurants. 140 replies were received. The questionnaire asked what the effect on the business would be of a loss of sales of 5, 10 and 15%. Of those replies received it was calculated that with 5% loss of business job loss would be 190 jobs, with 10% loss the job loss would be 377 and with a 15% loss the job loss would be 724.

- This figure is extrapolated over the total number of retailers surveyed and concludes that at 15% loss of business there could be 565 shop closures and 3,620 jobs lost. The conservation trust accept that statistics can not be completely accurate but considers that the survey shows that the Monks Cross development could have a catastrophic effect on retailers in the city centre
- The proposal will seriously jeopardise the lives of many small businesses and reduce the appeal of York as a joint historic/retail tourist venue.
- The results of the survey support the recent report by Mary Portas for the Government.
- The trust owns over 80 properties within the Centre of York most of these are listed buildings. If these properties lay empty the Trust will not be able to purchase any further old properties which are in need of care and attention.

2.12 York Civic Trust -Principle concerns are the additions and the sub-division of units.

- The proposals go against national and local policies
- The scheme will have a detrimental effect on York's historic core.
- the sustainability assessment for the Core Strategy states 'The (team) welcomes the new policy's strengthening approach to the sequential development of retail in York, prioritising the city centre primarily over other development'. This local view was written in the context of national planning policy
- Sustainability is an absolute commitment in the new draft framework and does not remove the sequential test. York planning policies follow current and emerging national policies
- Concerned that the City Council might not adhere to these policies in the face of these major challenges.
- At what point do these applications become unsustainable. The grant of these permissions will threaten the sustainability of the historic environment. York has around 1,600 listed buildings of which 1,000 of them have a retail use. We must preserve the incentive for owners and operators to look after and invest in these buildings which are, in effect, York's unique selling point
- The incentive for re-development of Castle/Piccadilly site must not be put at risk by further out-of-town expansion.

3.0 APPRAISAL

3.1 Key Issues:-

- Policy background
- Principle of the development considering:-

Application Reference Number: 11/02208/FULM

Item No: 4b

- Sequential assessment and retail impact
- Fall back position
- Transport
- Economic Development -Employment
- Conclusions -Principle of the development and sustainable development
- Conditions

3.2 This section 73 application is to consider the variation of existing planning conditions attached to the original outline planning permission for MCSP to allow the reduction of unit size to 455 sq.m (from 929 sq.m) except for up to eight smaller units, which will have no unit size restriction, up to 2 units with up to 4,645 sq.m of floor space, each to have the ability to sell an unrestricted range of goods, and a cap on convenience goods sales area to 6,968 sq.m net. It is proposed that the number of units be capped at 31.

Policy background - Retail

3.3 The recently published National Planning Policy Framework sets out the Government's planning policies for England and how these are expected to be applied and confirms that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. Where a development plan is not up to date Local Planning Authorities should grant permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. The Ministerial Forward highlights that sustainable development is about positive growth, making economic, environmental and social progress for this and future generations. The policy framework sets a clear presumption in favour of sustainable development within every decision.

3.4 The NPPF retains and defines the 'presumption in favour of sustainable development'. It is defined in the NPPF by five principles as set out in the UK Sustainable Development Strategy:

- *"living within the planet's environmental limits;*
- *ensuring a strong, healthy and just society;*
- *achieving a sustainable economy;*
- *promoting good governance; and*
- *using sound science responsibly."*

3.5 The NPPF says the Government believes that sustainable development can play three critical roles in England:

- an economic role, contributing to a strong, responsive, competitive economy;
- a social role, supporting vibrant and healthy communities; and
- an environmental role, protecting and enhancing our natural, built and historic environment

3.6 The NPPF states Local planning authorities should approach decision-taking in a positive way to foster the delivery of sustainable development. The relationship between decision-taking and plan-making should be seamless, translating plans into high quality development on the ground. It also states that Local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local Planning Authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area.

3.7 The document states that Planning should promote the vitality of main urban areas and encourage the effective use of previously developed land providing that it is not of high environmental value. It should promote mixed use developments, support the transition to a low carbon future, actively manage patterns of growth and focus significant development in locations which are or can be made sustainable (para. 17).

3.8 Specifically, Para 23 states that it is important that the needs for retail uses are met in full and not compromised by limited site availability. Well connected appropriate edge of centre sites for main town centre uses (which include retailing) should be allocated where suitable and viable town centre sites are not available. If these cannot be identified, policies for meeting the identified needs in other accessible locations that are well connected to the town centre should be set as well as policies for the consideration of proposals which cannot be accommodated in or adjacent to town centres. The quantitative and qualitative need for land / floorspace for retail development should be assessed through the evidence base for making Local Plans, as should the role and function of town centres, the relationship between them and the capacity of existing centres to accommodate new town centre development (para. 161)

3.9 In promoting healthy communities, para. 70 seeks to ensure that planning policies and decisions should ensure that established shops are able to develop and modernise in a way that is sustainable, and retained for the benefit of the community

3.10 Paragraph 26 requires an Impact assessment for retail (and leisure and office) development outside of town centres which are not in accordance with an up-to-date Local Plan. An impact assessment is required if the development is over a proportionate, locally set floorspace threshold (if no such threshold, then 2,500 sqm is the default).

3.11 The assessment should cover 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.

- 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.

3.12 Paragraph 27 says 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. Paragraph 203 relates to the use of planning conditions and says Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

Yorkshire and Humber Plan (2008)

3.13 The Yorkshire and Humber Plan is the relevant Regional Spatial Strategy. The Localism Act 2011 makes provision for the revocation of the Strategies though this provision has yet to be brought into force. The Plan still forms part of the Development Plan although the Government's intention to revoke it is capable of being a material consideration.

3.14 York is defined as a sub-regional city and sub regional cities are one of the locations to be the prime focus for shopping in the region, under Policy YH4.

3.15 Retail services to diversify and grow York are encouraged through Policy Y1 and investment is to be delivered in locations, through Policy E1, where it will have maximum benefit and secure competitive advantage. Policy E2 seeks to strengthen the role and performance of existing city and town centres, with the centres of sub-regional cities being a focus for retail development, amongst other uses, and for district centres to be the focus for local services and facilities. No further development of new, or large scale expansion of existing, regional or sub-regional shopping centres should be permitted and proposals for small scale expansion should be assessed in line with PPS6. Policy E3 seeks to make use of appropriate located previously developed land and current allocations.

3.16 The Plan does not set out the need for additional retail space, which is left for a further plan review, although Table 11.2 sets out the potential for growth as being 450 full time equivalent jobs per annum from 2006 for York for retail and leisure uses.

'Planning for Growth' Ministerial Statement (2011)

3.17 On 23 March 2011, the Minister for Decentralisation and Cities issued a statement which sets out the steps the Government expects local planning authorities to take with immediate effect.

3.18 The Government's top priority in reforming the planning system is to promote sustainable economic growth and jobs; the Government's clear expectation is that the answer to development and growth should wherever possible be 'yes', except where this would compromise the key sustainable development principles set out in national planning policy.

3.19 When deciding whether to grant planning permission, local planning authorities should support enterprise and facilitate *inter alia* economic development. Where relevant they should consider the range of likely economic, environmental and social benefits of proposals; including long term or indirect benefits such as increased consumer choice, more viable communities and more robust local economies. In determining planning applications, local planning authorities are obliged to have regard to all relevant considerations and they should ensure that they give appropriate weight to the need to support economic recovery, that applications that secure sustainable growth are treated favourably (consistent with policy in PPS4), and that they can give clear reasons for their decisions.

3.20 The Statement confirms that the Secretary of State will take the principles in the Statement into account when determining applications that come before him for decision, and in particular, that he will attach significant weight to the need to secure economic growth and employment

Current and Emerging Local Level Policies

3.22 The City of York is preparing a Local Development Framework, which will comprise of a folder of documents for delivering the spatial planning strategy for the area.

In terms of a Core Strategy, a Publication Submission Document was produced and consulted upon between September and November 2011. This Document has now been submitted to the Secretary of State.

3.23 The sites put forward at the Issues and Options Stage for the Allocations and Designations Development Plan Document are being assessed and a Preferred Options Document is currently being drafted.

3.24 A Preferred Options Document is also being prepared for the City Centre Area Action Plan, which follows the analysis of representations submitted at the Issues and Options Stage.

All three documents are predicted by the Council to be adopted by the end of 2013.

3.25 There is no formally adopted local development plan. A Draft Local Plan document was approved by the Council for development control purposes in April 2005. The Draft Local Plan does not have formal development plan status but is considered by the Council to be an important material consideration in the assessment of planning applications. as policies have been found to generally conform to national policy when tested on appeal .

Draft York Local Plan (2005)

3.26 Through policy SP7A, the Plan seeks to ensure that development outside York City Centre is highly accessible by non-car modes of transport, taking a sequential approach for new retail development; the hierarchy for retailing starting with the defined Central Shopping Area, then edge-of-city centre sites or Acomb or Haxby District Centres, than in other out-of-centre locations that are genuinely accessible. The policy does not permit individual retail units in out-of-centre locations of less than 1,000 sq.m net sales area. For major shopping developments outside the Central Shopping Area, evidence of retail impact will be required to show that the proposal would not, together with other recent and proposed developments, undermine the vitality and viability of York City Centre's predominant use as a sub regional shopping centre, the defined Central Shopping Area, or the Acomb or Haxby District Centres.

3.27 Policy SP7B states that York City Centre will remain the main focus for retail development and that the Central Shopping Area, as shown on the proposals map, will be the City Centre for retail purposes in terms of the sequential test and will be the focus for retailing activity. A number of sites are identified for mixed use developments that include retail use, including at Hungate, Heworth Green and Castle Piccadilly (Policy SP9).

3.28 Strategic windfall sites, where consistent with other policies, will be appropriate for retailing where located in the most sustainable areas, defined as within 400m of a transport mode or park-and-ride, under Policy SP10.

3.29 Policy S1 allocates Castle Piccadilly for comparison goods retailing to meet the need for new retail development to 2011 and sites are allocated at George Hudson Street for comparison / convenience goods retail and at Foss Island for convenience / bulky goods retail.

3.30 Under Policy S2, planning permission will be granted for out-of-centre retail warehouses or retail warehouse parks provided that no development has a net sales floorspace of less than 1,000 sq.m and shall be not subsequently subdivided, with restrictions on the primary retail use.

3.31 Policy YC1 designates York Central as an Action Area to provide a modern central business district and new residential community. The accompanying text relates to local retail uses being of appropriate scale to meet the new resident and workforce population and any locally deficient surrounding communities.

City of York Core Strategy Submission (Publication Version, 2011)

3.32 The Core Strategy is at an advanced stage, though the policies remain to be examined for soundness and the weight to be attached to the policies needs to be considered in that context. The Publication version was issued in September 2011 and submitted to the Secretary of State on 14 February 2012. The Inspector held an

Exploratory Meeting on 23 April 2012, and has decided to suspend the examination of the emerging Core Strategy for six months pending further technical work. The technical work is broadly intended to add detailed justification to the strategic work already carried out and presently appears unlikely to affect the broad thrust of the Core Strategy; this would include additional evidence to clarify and explain, and not to dramatically change, the Core Strategy's implementation intentions.

3.33 Reference to the sub-regional role of out-of-centre retail destinations is made (para. 1.34) and to the conclusions of the York 2008 Retail Study that the greatest challenge to the success of the City Centre is growing competition from other shopping destinations and a lack of space for higher quality, more varied department store operators (para. 1.35).

3.34 The vision of the Local Development Framework includes strengthening the City Centre as a sub-regional shopping and entertainment centre by 2031, involving the increase in the supply of modern retail units and enhancing department store representation.

3.35 Spatial Principle 1 identifies York City Centre as the main focus for retail with Acomb and Haxby District Centres also delivering retail services. Principle 3 seeks to fully realise the potential offered by the York Northwest Strategic Allocation, including York Central, in meeting the city's retail needs.

3.36 Policy CS2 for York City Centre seeks to provide around 28,000 sq.m of comparison retail by 2020, in the Castle Piccadilly and the Stonebow area, with between 20,000 and 25,000 sq.m net of comparison retail on York Central post-2020 (the latter following the development of Castle Piccadilly and the Stonebow area, subject to retail impact testing). Part 3 of the Policy refers to the retail space of Hungate as being ancillary.

3.37 Policy CS3 relates to the York Central Strategic Allocation and reiterates the quantum of floorspace and criteria set out in Policy CS2.

3.38 Policy CS4 includes for a new local centre including between 200 and 600 sq.m gross of local convenience retail at the British Sugar / Manor School site, subject to a retail impact assessment.

3.39 Policy CS15 seeks to protect and enhance the retail role of the City Centre and Policy CS17 deals with the distribution of retail growth. The emerging policy seeks to support the vitality and viability of the City Centre, with the Central Shopping Area continuing to be the primary focus for new comparison goods retail development. The phasing approach is set out namely to give priority to Castle Piccadilly pre-2020 and to prioritise York Central thereafter. Other out-of-centre retail developments will be considered in the light of the sequential approach and the impact on existing centres and retail allocations. Convenience retail development will be directed to the

City and District Centres and the smaller centres at an appropriate scale including a new local centre at British Sugar / Manor School referred to above.

3.40 Para.14.6 states that the amount of comparison floorspace in out-of-centre retail destinations will not be expanded but district centre type uses will be supported in these locations.

City Centre Action Plan – Issues and Options Report (2008)

3.41 The City Centre Area Action Plan Issues and Options report in July 2008 predates the publication version of the Core Strategy. It is the Council's intention to progress the Plan following further progress on the Core Strategy. The Plan, in particular, poses the question as to whether the Castle Piccadilly area should be promoted as a key retail site (question 4).

Other Local Level Documents:-

3.42 An overview of certain documents (not exhaustive) that provide background evidence on retail and may help in the consideration of retail impact and sequential approach are set out in the DJD report:

- City of York Council Annual Monitoring Report (2011)
- City of York Core Strategy Supporting Paper – Retail (2011)
- City of York Council Topic Paper – Population, by Arups (2011)
- Visit York: York Big Attractions Group Visitor Model 2010 (2011)
- Lynn Jones Research : Visitrac City Surveys – York's Scores for Quarter 3 2011, published by Visit York (2011)
- City of York Council Retail Topic Paper (2010)
- York New City Beautiful – Towards an Economic Vision (2010)
- City of York Council Retail Study, by GVA Grimley (2008)
- City of York Retail Study 2004 – Report to Executive (2004)

Other National Level Documents

3.43 An overview of national level documents is set out in the DJD report. These documents provide a background to the Governments approach to new retail development:-

- The Portas Review: an independent review into the future of our high streets, by Mary Portas (2011).
- Understanding High Street Performance - A Report by Genecon LLP and their Partners for the Department for Business, Innovations and Skills (2011).
- The Deloitte Consumer Review, by Deloitte (2011)
- Retail Trends, by GVA (Spring 2011)
- UK Shopping Centre Development Pipeline, by Colliers International (Autumn 2010)

Weight to be attached to Existing and Emerging Local Policy

3.44 The Local Planning Authority commissioned a report from Drivers Jonas Deloitte (DJD) to inform the policy response to this retail application and the application being considered on Monks Cross south relating to new retail development and community stadium. The DJD report is also supplemented by an addendum which addresses the impacts of the publication of the NPPF and the amendments made to the proposal subsequent to the writing of the original report.

3.45 The view of the DJD report, which Officers concur with, is that the introduction of the NPPF still allows weight to be attached to the draft local plan and the emerging core strategy where these are consistent with the framework policies. In particular the DJD report says:-

3.46 The NPPF makes clear that proposed development that accords with an up-to-date Local Plan should be approved, and that proposed development that conflicts should be refused unless material considerations indicate otherwise (para. 12).

3.47 Furthermore the NPPF says where the Development Plan is absent, silent or relevant policies are out-of-date, applications should be granted unless material considerations indicate otherwise and unless:

- Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole; or
- Specific policies in the Framework indicate development should be restricted (examples quoted relate to environmental designations and areas of environmental constraint as well as heritage assets) (para. 14).

3.48 The policies apply from 27 March 2012 (para. 208). For 12 months, decision-takers may continue to give full weight to relevant policies adopted since 2004 even if there is a limited degree of conflict with this Framework; in other cases and following this 12-month period, due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework (the closer the policies in the plan to the Framework policies, the greater the weight that may be given) (para.215).

3.49 Weight may also be given to relevant policies in emerging plans according to the stage of preparation (the more advanced, the greater the weight that may be given), the extent to which there are unresolved objections (the less significant, the greater the weight) and the degree of consistency of the relevant emerging plan policies to the Framework policies (the closer they are, the greater the weight) (para. 216).

3.50 In essence, in this case:

- The Yorkshire and Humber Plan is the adopted Development Plan in the York area and as such, decisions should be taken in accordance with the Plan unless material considerations indicate otherwise
- The City of York Local Plan is not an adopted plan; some weight may be given to relevant policies in existing plans although the fact that the Local Plan is not a formally adopted plan irrespective of whether or not it pre-dates the 2004 cut-off date is relevant; and
- Some weight could be given to emerging Core Strategy policies which are at an advanced stage; the weight to be attached will depend upon their relationship to the NPPF and also whether they are subject to unresolved objections

3.51 Principle of the development considering:-

- **Sequential test and impact assessment**
- **The fall back position**
- **Transport**
- **Economic Development**

Sequential Test and Impact Assessment

3.52 This is a section 73 application for the variation of condition 3 of the existing outline planning permission for the site granted in 1994. The original permission restricted the minimum unit size to 929 sq.m.(10,000sq.ft) and for units above 1393 sq.m. (15,000 sq.ft.) restricted the unit to the sale of certain types of goods (see full condition in section 1). The proposed variation to the condition proposes to limit on the number of units at the site to 31 and to allow the reduction of unit size to 455 sq.m. (from 929 sq.m.) except for up to eight smaller units, which will have no size restriction, up to 2 units with up to 4,645 sq.m (net sales area). each to have the ability to sell an unrestricted range of goods and a cap on convenience goods sales area to 6,968 sq.m. net (there is currently no cap on the level of convenience goods).

3.53 There is significant retail evidence supporting the planning application. This is set out in a planning report, which includes a retail assessment, and two supplementary documents prepared by Indigo planning and within an evidence base document produced by Cushman and Wakefield. There is no clear distinction between the information submitted to support this section 73 application and the outline planning application also on this agenda. Officers have therefore set out all the arguments within there planning statements some of the statements may not be directly relevant to this proposal which does not include additional floor space.

3.54 Supplementary 2 which was produced following the latest amendments to the scheme can be summarised as follows:

Application Reference Number: 11/02208/FULM

Item No: 4b

- MCSP (and MCSP II and Julia Avenue) are largely unfettered (in planning terms) and over time mezzanine floors will continue to be developed; there is a genuine fallback position which has a material bearing;
- There are limited opportunities for new retail development within the City Centre, a matter not contested by the Council, and there are no more sequentially preferable sites;
- The retail floorspace proposed represents a substantially lesser scale of retail floorspace than could be accommodated over time and the proposals provide new planning controls over that which is already consented;
- A recent Secretary of State's planning decision indicates that failure to comply with the sequential test should not in itself be a reason for refusal;
- The original retail impact analysis did not take account of the fall back and as a consequence the impact levels were over stated and worst case;
- The scale of predicted impact is immaterial on the City Centre, both in terms of solus impact and cumulative impact with other proposals, and of no significance in policy terms ; and
- The revised solus impact on York City Centre is less than 1%. The turnover of the City Centre will grow by £270.2m (2011 to 2016) due to the Castle Piccadilly proposal; if that scheme does not come forward, the City Centre turnover will still be higher in 2016 than in 2011.

3.55 As set out in the NPPF there are two key policy tests relevant to the consideration of the retail impacts of the development. These are the sequential test and the impact assessment.

Sequential Test

3.56 A sequential test is a planning principle that seeks to identify, allocate or develop certain types or locations of land before others.

3.57 The sequential approach remains a fundamental aspect of national planning policy in the new NPPF. Under the NPPF, the test continues to be applied for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan.

3.58 The NPPF says that main town centre uses should 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.

3.59 No specific floorspace threshold is cited for the use of the sequential test. The twin facets of the new test in the NPPF are suitability and availability. The previous consideration of viability referred to in former Government advice (planning policy statement 4) is no longer referenced in dealing with planning applications (it does remain relevant for plan-making).

3.60 The NPPF says that when undertaking the sequential assessment flexibility should be demonstrated on issues such as format and scale, both by applicants and by local authorities. There is no reference to car parking provision or the scope for disaggregation nor is there any direct reference that local planning authorities should take into account any genuine difficulties which the applicant can demonstrate are likely to occur in operating their proposed business model. However, it is considered that such issues can be considered through the requirement for applicants to undertake an assessment of format and scale.

3.61 Essentially this means that a proposal for an out-of-centre development that is not in accordance with an up-to-date development plan will fail this test if there are suitable and available alternative sites for retail development either in an 'edge-of-centre' location or within existing centres.

3.62 The applicant has submitted a sequential test argument as part of their planning report and appendices and supported by an evidence base produced by Cushman and Wakefield. Their sequential approach argument can be summarised as follows:-

- There is substantial expenditure capacity for additional comparison goods floorspace with limited opportunities to accommodate this need in the City Centre or its edge (Indigo Planning report. There is sufficient expenditure capacity on any site that may be deemed sequentially preferable.
- Retailers require different formats including both high street and out-of-centre formats and a large proportion of the existing retailers at Monks Cross Shopping Park (85%) have dual representation, i.e. in centre and at the Park.
- The Council's Integrated Strategy section, in considering planning application ref: 10/01012/FUL, indicated that Castle Piccadilly would have a long timescale, retail at Hungate would be small scale and unsuitable, York North West would not be available in the short term, Foss Islands is out-of-centre and Stonebow and the Telephone Exchange are not appropriate to the present time.

- The sequential test is largely hypothetical and the proposals seek to reduce the amount of retail floorspace permissible and impose controls.
- The Practice Guidance recognises that there will be some situations where it is difficult to accommodate large developments due to conservation and heritage issues and York City Centre has significant heritage issues.
- It is highly unlikely that Castle Piccadilly will be developed in the next five years given the sensitive nature of the site and its constraints in terms of heritage, land assembly issues and the need for a CPO (compulsory purchase order), and present market conditions.
- There is no evidence that the owners of Stonebow House are bringing the site forward for development, office space has recently been refurbished and the site is not available.

3.63 Part of the assessment by DJD on behalf of the Council is an independent review of the alternative sites for retail development. The assessment considers sequentially preferable sites including Stonebow House, Telephone Exchange, Hungate, York Central and Castle Piccadilly. DJD conclude that there is only one sequentially preferable site – Castle Piccadilly- that is considered to be suitable and available for major retail development.

3.64 DJD conclude in terms of suitability that the Castle Piccadilly site is capable of contributing directly to the vitality of the Central Shopping Area and that there are no specific policy restrictions that would render the site unsuitable particularly given the support in Planning Briefs and draft policies for retail-led development at Castle Piccadilly. DJD consider that there is the potential to create a high quality development that would contribute significantly to the vibrancy of the city centre. There is Developer interest with emerging proposals for a major retail-led development to include two large anchor stores and large space users and the Council are working with the adjacent land owners through the principal of a Conditional Concession / Development Agreement.

3.65 The DJD Addendum report states that since the Main DJD Report was produced, a report to the Council's Cabinet (3rd April 2012) has been approved to allow for negotiations on a Conditional Concession Agreement to be concluded. The Cabinet Report in particular identifies that " Retail Studies conclude that the site provides the best location for extending the current primary shopping area and the best site in the City Centre for meeting the City's longer term retail needs" (para.7). This reference to 'longer term' needs to be set in the context of when the retail studies were produced (2004 and 2008).

3.66 In terms of the availability of the Castle Piccadilly site the DJD states that “the majority of the site is in the ownership of two parties; the preferred developer and the Council and that subject to planning the site could be made available for a start on site in 2013/14 with completion in 2016/17. Based on the information available to the Council there is confidence that there are no insurmountable legal or ownership problems that are not capable of resolution”. DJD also state within the Addendum report that “there is evidence that the Castle Piccadilly scheme could be delivered within the short to medium term and on a timeframe not materially different from that for the Stadium Development (a potential ‘lag’ of say two years given the planning status and the more complex build requirements).

3.67 DJD consider that there is evidence that there is a reasonable prospect of a sequentially preferable opportunity coming forward, likely to be capable of meeting the same requirements as this application is intending to meet. The timescales for progression of the Castle Piccadilly opportunity are still uncertain but there is recent Cabinet approval to forming a partnership with the LaSalle UK Venture Fund which provides tangible evidence of progress. DJD state in their addendum report in respect of the deliverability of the Castle Piccadilly site that “we do recognise that the long history associated with that site creates uncertainty as to its deliverability and the progress of the Castle Piccadilly project should be monitored carefully. If for instance, no substantive progress has been made on the Concession Agreement nor masterplan / planning application in 2012 that could create further uncertainty and concern over the deliverability of the proposal. There is currently no evidence however that progress is not likely to be made, particularly as the Cabinet approval to progress has only recently been granted”.

3.68 The needs identified within this application are for greater flexibility over the use of the Shopping Park; the flexibility to sub-divide space to allow for smaller stores and the provision of larger anchor stores. The needs are not specifically defined in terms of operators but generalised in terms of a need to accommodate specific requirements. It is evident that the MCSP proposals are speculative, yet the existing array of permissions, which are generally quite flexible for out of centre retailing, provide a complex dimension to the assessment of the this application and the outline application.

3.69 A case is put forward in the supporting evidence from the applicant that the sequential test is hypothetical and that in effect the requirements are ‘location specific’. In many respects the identified need at MCSP is specific to the requirements of the developer, in that they own the land and are seeking greater flexibility to accommodate improvements but the core test is whether there is a need for the retail space that they are proposing and whether there are sequentially preferable sites that could accommodate this; not that their need is specific to the MCSP.

3.70 For the two large space units proposed DJD consider that the Castle Piccadilly scheme could accommodate the large stores proposed for MCSP. They consider that there is no specific operator evidence provided in support of the application to support the need for additional large space units at MCSP. Debenhams are cited by the applicants as a possible occupier for one of the two new proposed large stores but no direct company evidence has been provided. Marks and Spencer have made a commitment to the Stadium Development with a store which is much larger than that proposed for MCSP.

3.71 In respect of the proposed smaller units (vary the lower limit of unit sizes to 455 sq m with up to 8 units below that level) DJD consider that there are potential vacant units and space available within the City Centre, as well as within the Castle Piccadilly development to accommodate smaller floorplate stores. The focus of the sequential test work provided by the applicant has been on larger sites and this in some respects disregards the potential availability of existing buildings, including redevelopment opportunities to accommodate the need for smaller stores. There has been a history within the City Centre of proposals coming forward for the redevelopment of space, particularly post-war style buildings which are approaching the end of their useful life. DJD consider that the level of detail provided by the applicant on the sequential assessment is not sufficient to demonstrate why these smaller units could not be appropriately accommodated in sequentially preferable locations and that notwithstanding this the Castle Piccadilly site also has the potential to accommodate smaller units.

3.72 DJD consider that the applicant's case that there is a 'business model', namely an out-of-centre format that should be accommodated on out of centre sites and a separate in-town format, does not have any particular recognition in national planning policy. Whereas in practice this has often been the case, typically out of centre units, especially where they are unconnected to existing centres, have been subject to floor area controls as the existing draft Local Plan Policy which places a restriction against units being provided, or sub-divided to, less than 929 sq m. This restriction does continue to maintain a key distinction between the two offers – City Centre and 'Out-of-Centre'- within the City.

3.73 It is recognised that in the case of MCSP there is a potential fall back situation in that a number of smaller units already exist or could be sub-divided, four adjacent to the existing Debenhams store and a further 3 within the Phase 3 scheme (Julia Avenue). The Phase 3 scheme is now omitted from the MCSP proposals, although this sub-division could still occur within the existing consents. This situation is the making of the previous planning permissions for those units and the absence of certain planning controls. Although the implementation of this fallback position may not be desirable there are no controls upon it and thus the implications of this would have to be accepted. However, DJD consider that the flexible introduction of small units throughout the scheme as proposed by this application could have a more significant impact which could undermine the ability to secure investment in vacant

space and buildings within the city centre. They also conclude that the flexible introduction of smaller units within the main shopping park could also set an undesirable precedent that would make it extremely difficult to defend against the sub-division of retail premises throughout out-of-centre locations, not just at Monks Cross.

3.74 Paragraph 27 of the NPPF says that where a proposal fails the sequential test this will, of itself, be sufficient reason to refuse planning permission. The emerging core strategy and the draft local plan take a similar stance.

Impact Assessment

Health Check Assessment

3.75 A Health Check assessment is as a tool used for assessing and monitoring vitality and viability of town and city centres.

3.76 The role and importance of health checks were referenced in PPS4 (now cancelled). The NPPF is silent on their role, although DJD consider that 'they remain important in considering and judging the extent and significance of impacts'

3.77 The DJD report reviews the health check information used by the applicants within their submission documentation together with other evidence.

3.78 The report says that 'healthy town centres need to have a 'critical mass' and diversity of retail development to attract consumers on a regular basis throughout the year. To remain competitive, they need a good mix of different types of multiple and independent retailers, which can include specialist shops, and the core retail offer may be reinforced by a range of tourism, leisure and cultural activities'. The dynamic role of retailing is noted in that a range of factors, including economic and social trends and new technology can have a significant impact on the current and future role of existing centres and the scope for new ones and that these factors need to be taken into account when considering future needs and assessing the impacts of new development'

3.79 Consideration of impact requires the health of York City Centre, and other centres within the catchment area, to be carefully considered. DJD conclude that based on their assessment of the City Centre as a whole it is a 'vital and viable City Centre but with some particular issues of concern. The performance of the centre over recent years can be expected to have declined due to the general economic conditions, albeit that the evidence of decline is less pronounced than arguably is the case for other main centres. Larger units which have been brought to the market have tended to be reoccupied and vacancy levels overall are significantly better than in many other centres. However there is concern about the vacancies arising

particularly in peripheral 'secondary' streets. There is also concern that the levels of footfall are not growing and ongoing concerns regarding the cost of car parking which is a distinct competitive disadvantage when compared to the out of centre model with free and plentiful parking provision'.

3.80 There is an extensive array of out of centre facilities within York and the City Centre has been able to maintain a competitive advantage in the face of that competition, in certain sectors. DJD state that some of the developments that have occurred at Clifton Moor, York Designer Outlet and Monks Cross Shopping Park are some of the larger, more significant shopping centre and factory outlet centres that have been built in the region. York City Centre has around 138,600sq.m. (1.49m sq ft) of city centre retail floorspace compared to around 148,600 sq.m. (1.6m sq ft) in out of centre locations. Yet despite this, DJD conclude that the City Centre has been able to withstand competition in certain sectors and provide a different, distinctive and unique offer. However they conclude that maintaining that offer remains a significant challenge and the lack of available large floor plates has arguably held the City Centre back from increasing its market share.

3.81 The comparison goods assessment of the 2008 York Retail Study demonstrates a market share of 21% for York City Centre of the total available expenditure for the whole survey area (zones 1-20), and 28% from zones 1 to 16, which represents a fall from 31% in 2004. York City Centre's comparison goods share has remained static at around 21% between the two household surveys (2008 and 2010) although it has fallen from previous levels in 2004 (31%) and 2001 (37%). Whilst the information submitted claims that the static market share of the City Centre shows that the City Centre has remained attractive as a retail destination despite the difficult economic conditions over the past 3-4 years in the same period of time both Monks Cross and Clifton Moor have both increased their market shares.

3.82 At the time of the 2008 GVA York Retail Study Monks Cross and Clifton Moor had a combined market share of 14% compared to the City Centre at 21%. In the recent 2010 household survey undertaken by the applicant this combined market share has increased to 20% (8% for Monks Cross and 12% for Clifton Moor). DJD estimate that if this application were to proceed along with the proposals for retail on Monks Cross south the market share of York City Centre would reduce to around 19% whilst the combined market share of Monks Cross and Clifton Moor would increase to circa 25% (Monks Cross 14% and Clifton Moor 11%), well above that of the city centre. When combined with other out of centre facilities this increases to 27.5%.

3.83 DJD estimate that If the Castle Piccadilly development is factored in the anticipated market share of the City Centre would increase to 24%, the Monks Cross market share would still be 11.5% and the combined out of centre market share would be 24% which would be equal to the market share of the City Centre (with Castle Piccadilly).

Impact

3.84 The purpose of the impact assessment is to consider 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.

3.85 The NPPF says proposals that are likely to have significant adverse impact on one or more of the above factors should be refused.

3.86 The impact assessment arguments put forward by the applicant can be summarised as follows:-

- There are no restriction on first floor trading and full first floor coverage could be achieved over time without the need for planning.
- There is sufficient non-food retail floorspace to accommodate proposals at Castle Piccadilly and York central as well as that proposed. The changes will complement the Castle Piccadilly as that scheme will provide floorspace for retailers with a high street format whereas the shopping park provides out-of-centre format.
- Neither the Castle Piccadilly nor the York Central scheme will improve market shares significantly and the Proposal will help assist to claw back trade leaking to more distant centres. The market share of the City Centre will be affected further by schemes in Leeds, Wakefield and Sheffield and trade leakage will increase. York City Centre is a vital and viable centre.
- Retail expenditure is projected to increase significantly, there is already a substantial surplus due to outflow of trade from York, and the surplus is expected to grow and diminish any trade impact. The Proposal will 'soak up' only 2.5% of the rising expenditure between 2011 and 2016 and 2.1% between 2011 and 2021.
- In terms of impact on investment (Policy EC16.1a test), Castle Piccadilly is in its infancy but nevertheless, there is more than sufficient expenditure surplus to meet the retail demands of the scheme and the Monks Cross Shopping Park applications. There is no planned investment in the District Centres.

- The proposals at Monks Cross will come forward over the course of 10 years and impact has been tested at 2016 and 2021 (50% by 2016 and the remainder by 2021). The turnover of the Stonebow House, Castle Piccadilly and Telephone Exchange proposals, for the purposes of the impact assessment, have been added to the turnover of the City Centre. The levels of projected impact are *de minimis* and negligible in terms of the overall turnover of the City Centre's comparison goods retail offer, and will be more than compensated through the positive trading effects of the new retail developments at Stonebow House, Castle Piccadilly and the Telephone Exchange.
- In 2021, York City Centre's turnover will be £896.6m, compared to £449.1m in 2011, following the development of the former Terry's site, the remainder of Monks Cross and York Central.
- The impact assessment does not take account of the 'fallback' that presently exists nor the added controls that are proposed.

Impact on existing, committed and planned investment

3.87 The first impact test as set out in NPPF (paragraph 26) is the impact on existing, committed and planned investment in a centre or centres in the catchment area of the proposal.

3.88 DJD conclude that Castle Piccadilly is a planned investment that would directly contribute to the City Centre, given the site's relationship with the Central Shopping Area. They conclude that the Stadium and MSCP proposals will have an effect on city-wide trade, operator demand and investor confidence as well as reducing the city centres market share, without additional counter-acting development, making it more difficult to attract demand and support development in expenditure terms.

3.89 In respect of this application DJD consider that the large space anchor stores could have a significantly adverse impact upon planned investment as the Castle Piccadilly scheme is capable of accommodating large stores/department stores and thus operator demand and investor confidence could be unduly affected. They consider that the additional mezzanine floors proposed would have an adverse impact though this is not considered to be significant. They conclude that the smaller units would also have an adverse impact on planned investment but also not necessarily significant, given that the delivery of the planned investment is unlikely to be dependent upon this element and having regard to evidence of general commercial demand.

3.90 The preferred developer for the Castle Piccadilly scheme has claimed that the level of impact on their scheme will be significant. Jones Lang La Salle (JLL) acting

on behalf of LaSalle UK Ventures Fund (The Fund) submitted an objection to the MCSP proposals in February 2012. (summarised in the section 3 above)

3.91 DJD conclude that 'the scale of out of centre retail development in York is significant and it is evident that the proposals (the Stadium and Monks Cross Shopping Park) will expand the market share of these facilities, potentially at the expense of the City Centre's market share, without an appropriate counter-balance. This will constrain the Council's ability to deliver planned investment at the Castle Piccadilly site'. It also states that 'the emerging Core Strategy seeks to bring forward the York Central site as an appropriate location to cater for comparison goods needs post 2020. On the information available on capacity and impact, we remain concerned whether this could be delivered within that timeframe without significant impact upon the City Centre's ability to withstand that level of competition, assuming the proposals are granted'.

3.92 DJD say that 'the Castle Piccadilly project, on the face of the evidence available, has a reasonable prospect of being brought forward in the short term. In theory, there is more than sufficient demand for Castle Piccadilly and additional schemes, although the timing and delivery of this is important. However, approval of the proposals as they stand could undermine the emerging Castle Piccadilly proposal and the preferred developer has indicated that the scheme would not progress in the face of such approvals'.

Impact on town centre vitality and viability

3.93 The second impact test outlined in paragraph 26 of NPPF is the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area.

3.94 DJD conclude that the impact on York City Centre as a result of the MCSP proposals is estimated to be a trade diversion away from the Centre in the region of £10.26m in 2016 which represents a circa 2% negative impact on the turnover of York City Centre. This does not take account of any uplift which is likely to result from Monks Cross becoming a more attractive shopping destination in relation to the City Centre. These figures take into account the proposed new floor space which does not form part of this application.

3.95 DJD consider that the reduced scale of the MCSP proposals renders the solus impact to a level which is not considered to be significant in itself however the impacts arising from the provision of the proposed large units are considered to be adverse on an individual basis without restrictions on their scale and use. The impacts arising from the smaller units within MCSP are considered to be significantly adverse.

3.96 There is expected to be growth in the local retail market, both in terms of population and expenditure growth, particularly in the comparison goods sector and there is a need for additional floorspace within York as evidenced in the York Retail Study (GVA, 2008). DJD also consider that there is the prospect that 'leakage' from York's retail catchment area to other centres outside the catchment such as Leeds and Hull will increase over time, although they consider that the particular characteristics of the City Centre provides some resilience to that effect. It remains an important objective of the emerging Core Strategy to retain additional spend in the City Centre and thus improve its market share and this is dependent to some extent upon additional floorspace being created.

3.97 The assessment of spending and consumer shopping patterns is complex and subject to different assumptions and judgements. The Council's and DJD's approach has been to seek to agree the baseline assumptions wherever possible. There are no meaningful benchmarks of trade diversion (i.e. what level or percentage of impact should be seen as adverse or significantly adverse) as the specific circumstances are critical to the assessment process. DJD consider that this proposal, together with the outline application for this site and the proposals at Monks Cross South, cumulatively, could have a significant impact on other retailers within the City Centre and undermine the 'town centre first' approach as well as the Castle Piccadilly development.

3.98 Overall DJD consider the City Centre to be vital and viable and able to withstand a higher level of trade diversion than may be deemed unacceptable in more vulnerable sectors. However the health check evidence and market share analysis indicates that a core role of the City Centre is in the clothing, footwear and personal goods sectors. The predicted decline in market share in those sectors would leave the City Centre vulnerable to further decline as a retail destination although DJD consider that it is likely to remain strong as a leisure and food and drink destination.

3.99 DJD conclude that 'the particular concern at a trading level is the impact on the sectors for which the City Centre retains a strong competitive advantage; namely clothing, footwear and personal goods. A significant decline in those sectors could place at risk the retail strategy for maintaining the City Centre as a strong regional centre. The particular risk is that Monks Cross, Clifton Moor and the Designer Outlet collectively, all of which are unrelated to an existing centre, would become the dominant locations for those sectors, which would over time, would make it more difficult to secure new investment into the City Centre. A linked risk is that the success of York as a heritage destination is dependent upon vibrant and commercially successful uses being maintained in the existing heritage asset base; given the scale of heritage assets, the decline, particularly in secondary streets, is arguably more significant in York given the financial obligations which are generally associated with the up-keep of such assets'.

3.100 DJD also conclude that ‘the larger national multiple retailers may be able to withstand the additional competition to a greater degree, to adjust their own business models and to stock a different selection of merchandise. In addition, store failures may not lead to a dramatic increase in the vacancy levels per se because the strength of the City Centre draw for visitors could mean that those units are re-occupied by food and drink operations but the concern is that over time this could dramatically change the dynamic of the city centre as a retail destination which would be harmful’.

Conclusion of sequential test and Impact Assessment

3.101 Taking the DJD report as a basis for the consideration of the sequential and impact tests, officers conclude the following in relation to the sequential and impact tests on this application.

In terms of the sequential test the large units are unacceptable without further evidence and justification for their scale, format and use. The flexible introduction of smaller units within the main shopping park as proposed is unacceptable both in terms of the impact it may have on the ability to secure investment in vacant space and buildings in the City Centre and also the undesirable precedent it could set for further sub-division of existing retail premises throughout out-of-centre locations.

3.102 The impacts arising from the proposed large units are considered to be adverse on an individual basis on investment, vitality and viability and in-centre trade. The main area of concern is the clothing, footwear, luxury and personal goods sectors of the City Centre. The Castle Piccadilly scheme is capable of accommodating larger stores/department stores and thus operator demand and investor confidence could be unduly affected. The introduction of the smaller units across the main shopping park is considered to be significantly adverse. On the evidence available there is no justification to reduce the minimum size of units.

Fallback

3.103 As part of the planning submission the applicants assert that they have a fallback position (i.e.what the applicant could do without the need for planning permission) in relation to two areas of the existing use of the site. Their main argument for the fall back position is explained in the planning report and supplementary planning reports. Based on the application as originally submitted (which related to MCSP, MCSP II and Julia Avenue) it is asserted that without the need for further planning permission, mezzanine floors could be placed within the existing buildings which would allow 5,200 sq metres of floor space to be created immediately and that there is nothing preventing further mezzanines at a scale of 200sq metres per unit from coming forward, giving the potential for the Monks Cross shopping park to have total cover mezzanine. The applicant says that this could amount to a total additional floor space of 27,072 sq metres. The amended submission again refers to the largely unfettered nature of existing permissions at

Monks Cross including reference to Julia Avenue and Monks cross II. Officers consider that on the basis of the amended site which includes MCSP only, the figures would be reduced to around 3,600 sq.m. immediately with a maximum total amount of approximately 13,300 sq.m. This calculation is based on appendix 1 of planning report supplementary 1. The applicant's planning reports also say, based on the amended scheme, that there are 4 units within the site area that are less than 455 sq.m. these existing units could be subdivided without planning permission and therefore an additional 8 units could be provided that would have a lesser floor area than 450 sq.m. Both these arguments are considered, by the applicant's agent to be a strong fall back position for allowing the introduction of the 8,693 sq.m of new floor space, and for changing the controls on MCSP so that there are a maximum of 31 units, maximum food sales of 6,968 sq.m., minimum unit size of 455 sq.m., a maximum of 8 units less than 455 sq.m. permit up to two large units (up to 4,645 sq.m. net sales area), permitted to sell a broader range of goods than simply bulky goods.

3.104 The supplementary planning report no.2 submitted in conjunction with the amended scheme, says in relation to the fall back position that the practice guide (PG) to PPS4 recognises that a 'fallback' scenario, such as the opportunity for development to come forward through permitted development rights, can be a relevant planning consideration in retail planning terms. It notes in paragraph D.10 of the PG (to PPS4) that '... an application might provide the opportunity to impose planning restrictions which could mitigate impact...'. The report says that it is outlined in the planning report (supplementary) that mezzanine installation has taken place historically, and it is explained in the planning submission that there is further opportunity for significant increase and further mezzanine will be introduced in the event that planning permission is not forthcoming. Finally the report says 'It is noted in the PG that where there is a prospect that the fallback position is brought forward then it would be appropriate to attach significant weight to it in judging the impact of the proposal in question'

3.105 Within this section 73 application there is no new floor space and therefore the argument made in respect of the mezzanine floor space is not directly relevant to this application. The issues in relation to the sub-division of units is however relevant and this is considered below.

Provision of smaller units

3.106 Development Control Practice advises that a fall back position is a material consideration in the decision making process, of which Permitted Development (PD) rights given by the General Permitted Development Order (GDPO) comprise an element. Thus when making a decision on a planning application it may be argued with some effect that a development carried out to slightly reduced dimensions or at a marginally lesser level, or perhaps on a revised location nearby, could be implemented using permitted development rights. The weight to be given to such a

material consideration varies according to whether what could be built using the GPDO would have a broadly similar or worse impact to what is proposed; and the reasonable likelihood or possibility that, if permission were refused, permitted development rights would in fact be resorted to. The practice guide indicates through the Burge case (House of Lords judgement *Burge v S.O.S.* 14/7/1987) that the weight to be attached to the fall back position should be on the balance of probabilities rather than the balance of possibilities.

3.107 Furthermore Annex D to the practice guide to PPS4, which is not superseded by the publication of the NPPF, sets out a useful test for the fall back position which is similar in its effect to the Burge case. It says 'in judging the relevance of a 'fall back' position, the following factors should be taken into account:

- First, the relevance of a fall back position should be judged having regard to the likelihood of it being implemented. There is a difference between a purely 'hypothetical' fall back position, and a position which actually could be implemented. If there is a realistic prospect that the fall back position would be brought forward, then it would be appropriate to attach significant weight to it in judging the impact of the proposal in question.
- Second, when comparing the impact of a proposal with a fall back position, it will be relevant to consider the impact of the proposal as a whole rather than just the 'incremental' impact of the difference between the two. This applies to all impact assessments, where the relevant test is the cumulative impact of the proposal in question.

3.108 The applicant says in relation to MCSP that four units are capable of further sub-division without the need for planning permission; thus a further 8 units sought in the planning application is a reasonable fall back scenario. Consequently it is the applicant's opinion that there is no material change in what is currently permitted, to what is sought in terms of the allowance for small-scale units. It is also argued that the cap on the total number of units will restrain the number of small units in any event.

3.109 The four units referred to as being less than 450 sq. m. are Starbucks coffee, Game, Pizza Hut and McDonalds. The unit occupied by Game was granted a Certificate of Proposed Use in 2008 which confirmed that the change of the unit from Class A3 to A1 would constitute permitted development under the Town and Country Planning use classes (Amendment) Order 2005 and therefore could take place without the need for planning permission. Thus it is reasonable to assume that as the legislation stands the remaining three A3 uses could be changed to A1 retail use without further planning permission. Furthermore there is established case law that says the subdivision of a planning unit into two or more units within the same use class will not result in an intensification of development requiring planning permission. It is Officers opinion that it is case law and permitted development rights that lead to Indigo planning's view that the provision of 8 retail units with no minimum floor space requirement is a reasonable fall back scenario.

3.110 Currently the small units in MCSP are provided in a specific location of the park. Except for the unit occupied by Game, the small units provide much of the 'amenity' or 'leisure' facilities that allow the park to provide a balanced shopping facility. These facilities, it is considered, are an essential element of the offer of many retail parks and therefore it is anticipated that replacements would need to be provided before it would be reasonably likely for them to be changed to A1 uses or sub-divided. This view is supported by the application submission which shows new coffee areas within the scheme and by the fact that despite the suggested demand for smaller units within MCSP the lead set by the change of the Games unit to A1 retail has not resulted in other such changes. Furthermore the 4 existing smaller units are set together at one side of the development; the introduction of 8 units potentially anywhere within the site would change the nature of the park by allowing much greater diversity to its shape and character. The park would be much more able to replicate the characteristics of the city shopping street rather than the larger modular development that distinguishes MCSP from the city at the moment.

3.111 In Officers opinion the potential to sub divide existing A3 consented units and change these to class A1 without the need for further planning permission are no more than a possibility and does not amount, on the balance of probabilities to represent a realistic fallback position because of the need to provide balanced shopping facilities and because despite perceived demand no change to the existing facilities has taken place. Furthermore the effect of permitted development scenario is significantly different to the effect of the proposed development, such that little weight can be attached to the fall back position.

Cumulative impact

3.112 This application is being considered at the same Planning Committee as the application for a new retail offer and stadium at land known as Monks Cross south (Planning reference 11/2581/FULM).

3.113 The DJD report and the integrated strategy response consider the cumulative impacts of this development with those proposed at Monks Cross south. Whilst each application is to be considered on its own merits, it is considered that there are cumulative impacts which would result from approving both applications to be taken into consideration.

3.114 The retail offer of Monks Cross south proposal includes 3 large retail units supported by a range of restaurant and kiosk units. The proposed large floorplate units at both MCSP and Monks Cross South are considered to have a significantly adverse impact on both planned investment and the vitality and viability of in-centre trade. The larger stores would create anchor units which are needed at Castle Piccadilly in order to make it viable. The introduction of the smaller units across MCSP is considered to be significantly adverse on a cumulative basis on planned

investment and vitality and viability.

Transport

3.115 Highways Network Management does not raise objections to the application. The application seeks to amend conditions which limit the way the existing floor area is divided and restricted in terms of the range/type of goods sold. No changes to the car parking levels are proposed and the total floor area will remain unchanged. The level of trips generated by retail destinations are based upon a trip rate per Gross floor area (GFA) or car space based upon the nationally recognised TRICS database. As neither the total GFA or number of car spaces proposed are proposed to be changed from that currently available, from a highways perspective, the application could not be clearly demonstrated to lead to any material change in the total number of trips generated.

3.116 Whilst Officers accept Highway Network Management's view about the difficulties of assessing changing levels of traffic within the area; what can be drawn from the proposals and their interpretation within the DJD report is that MCSP is currently fully occupied, and evidence in the report shows that the market share of MCSP has risen despite any perceived short comings of its current format. The introduction of smaller units and two large format stores that may sell the full range of goods available within the city centre is that as a destination MCSP is likely to benefit from the uplift in the available offer at the site. So that, in officers view, MCSP will become a more attractive option providing a range of unit sizes more aligned to that available in the city centre. Which will, it is considered, generate additional customer numbers.

Economic Development

3.117 Paragraph 18, 19 and 20 of the NPPF headed 'building a strong, competitive economy' says 'the Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future.

3.118 The Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system.

3.119 To help achieve economic growth, local planning authorities should plan proactively to meet the development needs of business and support an economy fit for the 21st century.

3.120 Furthermore as discussed in paragraph above the Governments letter of the 23rd March 2011 remains a material planning consideration. This letter says that the top priority in reforming the planning system is to promote sustainable economic growth and jobs. The answer to development growth wherever possible should be yes except where this would compromise the key sustainable development principles set out in national planning policy.

3.121 The applicant in a letter of the 18th April says that the strong presumption in favour of economic development lend weight to the support for the application proposals.

3.122 In terms of the employment generation the figures submitted relate how employment will be generated as a result of floor space increase. No figures or discussion has been taken on jobs that may come forward as a result of this application.

3.123 The Economic Development section have not commented on this application directly but as can be seen from the outline application the effects on the economy as a result of the proposals are broken down into two areas direct impacts and indirect impacts. The direct impacts being the impact on jobs and employment and the indirect being the fundamental questions about the role of the city centre in the overall York economy, as well as challenges as to the way that role is managed and supported in future.

3.124 The direct jobs have not been quantified by the applicant however it is anticipated that there would be some level of additional jobs through the increased attractiveness of the site.

3.125 The Economic Development Unit say that indirect impacts of the proposal refer to the question about the role of the city centre in the overall York economy. These impacts overlap with the general concerns about the retail impacts of the development particularly in terms of the sequential and impact tests. The DJD report identifies through its health check assessment, the city centre is resilient in the current economic climate, and this resilience is particularly significant in relation to the national average:

- Whereas 14% vacancy rates in centres across the UK is the national average, York city centre stands at about 10%.
- The centre has demonstrated relatively resilient high street footfall, with an increase of 13.5% between 2010 to 2011.
- Although York's vacancy rate is rising – it is currently around 10% and the council's data indicated a rise of 2% in 2010, from 7.1% in 2009 for shop units in the A classes, vacancy rates are far better than the average 14% across the rest of the UK

3.126 However, what is also clear is that the city centre is not a typical high street. With a strong role in the leisure and tourism industries which bring in a significant £443m and 7 million visitors a year, the city centre is seeing increases in these sectors, as well as increasing demand from business and start-ups in a wider range of sectors looking to operate in a central location. Nonetheless, the diversity and mix, which includes a strong core retail offer, has supported the overall resilience of the city centre to date.

3.127 A shift in the city centre economy to non-retail uses, although subtle, is most likely driven in part by pressures on the retail industry more generally as a result of recession and tightening of consumer spending, but also the changing behaviours and preferences of consumers. As the Department for Business Innovation and Skills has set out in its review of high streets, the combination of reductions in consumer spending overall, a rise in expectations for a convenient shopping experience, and the rise of online retailing all have contributed to a decline in the role of retail in centres across the UK.

3.128 Although retail employment is decreasing, it remains the most significant class use of commercial premises in the city centre. The change over time is seeing a shift in decreasing retail use to increasing leisure uses. It is considered that additional retail development at MCSP will accelerate these pressures on the city centre to change and the space within the centre to not only accommodate new uses but indeed, to proactively attract investment in these further uses to ensure the continued vibrancy and maximisation of city centre space. In order to begin to mitigate the potential negative impacts that the trade diversion may create, the city will need to identify and promote a clear and confident strategy for the economic future of the city centre, which will need to recognise and clearly support the likely change in the overall make-up of the city centre economy.

3.129 Economic development conclude on the outline application that approving that application will accelerate current trends of change in the city centre economy – away from retail, toward other uses and this will require support and intervention from economic development and planning teams to enable and support this evolution. In terms the section 73 application the proposed smaller and larger units within the scheme are considered to contribute to the change anticipated through the outline proposals and in a similar way would need support and intervention from economic development.

Conclusions - Principle of the Development and Consideration of Sustainability

3.130 The following conclusions can be drawn from the above sections

3.131 It is Government's current policy position that new retail development should be provided within and adjacent to town centres and to pursue sustainable development. The recent comments by Government Ministers following the issue of the NPPF, are pertinent. Government ministers in defining "sustainable" said: "It's not sustainable to have a shopping centre outside the town centre...".

3.132 The Government, within the NPPF, have retained both the sequential test and the impact assessment in relation to retail development together with clear advice that retail development should be located in towns/cities first. At a local level policies in the draft local plan and the emerging Core Strategy both direct new development to the city centre first and in fact the Core Strategy, in its effect, aims to curtail further out of town development. The GVA retail report 2008 says that the Council should seek to resist any further out of town shopping. Therefore, in principle, the location of new or extended unrestricted retail development in an out of town location is considered to be unacceptable in planning terms. In a planning context this needs to be balanced against other relevant material planning considerations.

3.133 Specifically in relation to the sequential test and impact assessment, the proposals at MCSP are considered to fail the sequential test and are considered to have either adverse or significantly adverse impacts on the city centre. For the reasons set out above and in the context of NPPF advice this in itself is sufficient reasons to refuse planning permission.

3.134 Furthermore it is concluded that the fallback position suggested by the applicant in relation to sub-division of units is no more than a possibility. In any case it is considered that fundamental changes in the size and distribution of the units proposed in the scheme is a completely different proposition to the subdivision of units in one area of the park.

3.135 Highways Network Management does not object to the principle of the development given that there is no additional floor area proposed within the scheme. Nevertheless Officers do consider that the proposals within this application do have the potential to create a change in the character of the shopping centre so that it becomes a more diverse, more attractive proposition as a shopping destination. Whilst this may be difficult to quantify, the qualitative changes proposed could also lead to a significant uplift in the attractiveness of the centre which would impact on overall traffic levels at the site.

3.136 There is no clear indication that the change in controls proposed within this scheme will affect the overall number of jobs within MCSP. No separate information has been provided by the applicant in relation to employment as a result of the application.

3.137 As identified in the Core Strategy, the city centre is the “economic, social and cultural heart of York.” Its value is not only in its draw for visitors and residents, but is a key part of the international brand of the city as it is recognised. York’s high street has bucked this trend in recent years, demonstrating relatively resilient high street footfall, with an increase of 13.5% between 2010 to 2011. Vacancy rates in York centre are better than the average the rest of the UK, but the rate is rising.

3.138 The developers of Castle Piccadilly site have stated that the approval of schemes at Monks Cross will prevent the Castle Piccadilly scheme from coming forward and the land will be sold in parcels to maximise resale. The development of the Castle Piccadilly site has been a long standing planning aim of the Council and this scheme would potentially limit the opportunity to increase the market share of the city as a whole and the likely spin off of reinvigorating the city as a shopping destination.

3.139 The NPPF sets out three dimensions to sustainable development; economic, social and environmental. These dimensions, it says, give rise to the need for the planning system to perform a number of roles. In an economic sense it should build a strong, responsive and competitive economy. Monks Cross has a part to play; it forms part of a diverse area which through the current policy objectives will provide a good mix of employment, retail and leisure opportunities that will complement each other without any one sector becoming dominant or competitive with adjoining areas or to any greater degree with the city centre. The economy of the city centre, if it is to support growth and innovation, needs to safeguard it’s historic characteristics, heritage and attractiveness whilst making space for new development that will stem the signs of decline by bringing forward modern retail development. The Council’s planning policies expect the Castle Piccadilly site to achieve this if out of town development does not prevent it from coming forward.

3.140 In a social sense the role of planning is to support strong, vibrant and healthy communities. York through its Core Strategy and the Council’s Corporate Quality Commitment Statement aims to promote fairness and inclusion. As expressed through many of the letters of objection the city centre is a centre for the community of York with good accessibility for all members of the community, young, old, infirm, low income etc. Whereas the Monks Cross site with its free car parks, relatively low level of access via other modes of transport, location on the north side of the city with none of the other diverse facilities associated with the city centre such a libraries, post offices and social space. The application details do not appear to raise the prospect of significant improvement in accessibility and facilities to enhance social inclusion. A shift further towards out of town shopping development will, in Officers’ view, be a significant step back towards unsustainable travel choices which through the recently approved Local Transport Plan and recently launched Air Quality Management Plan the Council is clearly seeking to avoid

3.141 In an environmental context the role of planning is contributing to protecting and enhancing our natural, built and historic environment. Concerns have been expressed in the letters of objection particularly by the Conservation Trust and the Civic Trust that the reduction of investment in the city centre will mean a significant reduction in the investment in historic buildings within the city. Furthermore the emphasis, in an environmental context, is on minimising carbon emissions and pollution. As described above, the current proposals are unlikely to meet the objectives of reducing car trips because the modal split targets can not be achieved without further investment in public transport therefore the development will be accessed primarily by the private car.

3.142 The NPPF says that the planning system should play an active role in guiding development to sustainable solutions. Pursuing sustainable solutions involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people's quality of life including making it easier for jobs to be created in cities, towns and villages; replacing poor design with better design and improving the conditions in which people live, work, travel and take leisure. It is Officers opinion that for the reasons set out above the development proposed is not sustainable form of development in the context of NPPF advice and should, in principle, be resisted.

Conditions

3.143 Paragraph 206 of the NPPF says that Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

3.144 The same tests and further advice on the imposition of conditions, together with model conditions is set out within circular 11/95.

3.145 The applicant has suggested conditions to replace condition 3 of the original outline permission. Circular 11/95 says that the objectives of planning are best served when that power is exercised in such a way that conditions are clearly seen to be fair, reasonable and practicable. In officers' opinion the suggested conditions do not meet the objectives and tests set out within the circular. Therefore if Members were minded to grant permission for this development this would need to be subject to discussion about how conditions could be framed so that the application could meet the tests set out in circular 11/95 and within the NPPF.

4.0 CONCLUSION

4.1 For the reasons set out in paragraphs 3.130 to 3.142 above the principle of providing larger units with unrestricted sale of goods and smaller units within the MCSP is considered to be unacceptable.

COMMITTEE TO VISIT

5.0 RECOMMENDATION: Refuse

1. The introduction of additional smaller units and creation of 2 large units selling an unrestricted range of goods is unacceptable because the proposed development will impact on the ability to secure investment in vacant buildings and spaces in the city centre, and particularly the Castle Piccadilly site which in the opinion of the Local Planning Authority is suitable and available for development. It is also considered that the development will have significant adverse impacts on planned investment in, and the vitality and viability of, the city centre. . The proposed development is therefore contrary to advice within the National Planning Policy framework published on the 27th March 2012; the objectives set out in of the City of York Core Strategy Submission (publication version 2011) in particular policies SP1, SP3, CS2, CS3, CS4, CS15 and CS17 and policies SP7b, SP9, SP10, S1, S2 and YC1 of the Development Control Local Plan approved for development control purposes April 2005.

2. It is considered that the adverse effect on investment and employment in the City Centre that would result from the development would not be outweighed by employment generated on site by the development. In addition the development represents a sequentially unjustified expansion of out of town shopping, contrary to national and local planning policy; maintains unsustainable travel choices; and hinders the promotion of fairness and inclusion through the enhancement of out of town facilities to the detriment of investment in the city centre. Overall the development does not achieve sustainable solutions in an economic, social or environmental context and is therefore contrary to the advice within the National Planning Policy Framework, which requires such dimensions to be taken into account in assessing the sustainability of development, and the aims and objectives set out in of the City of York Core Strategy Submission (publication version 2011).

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