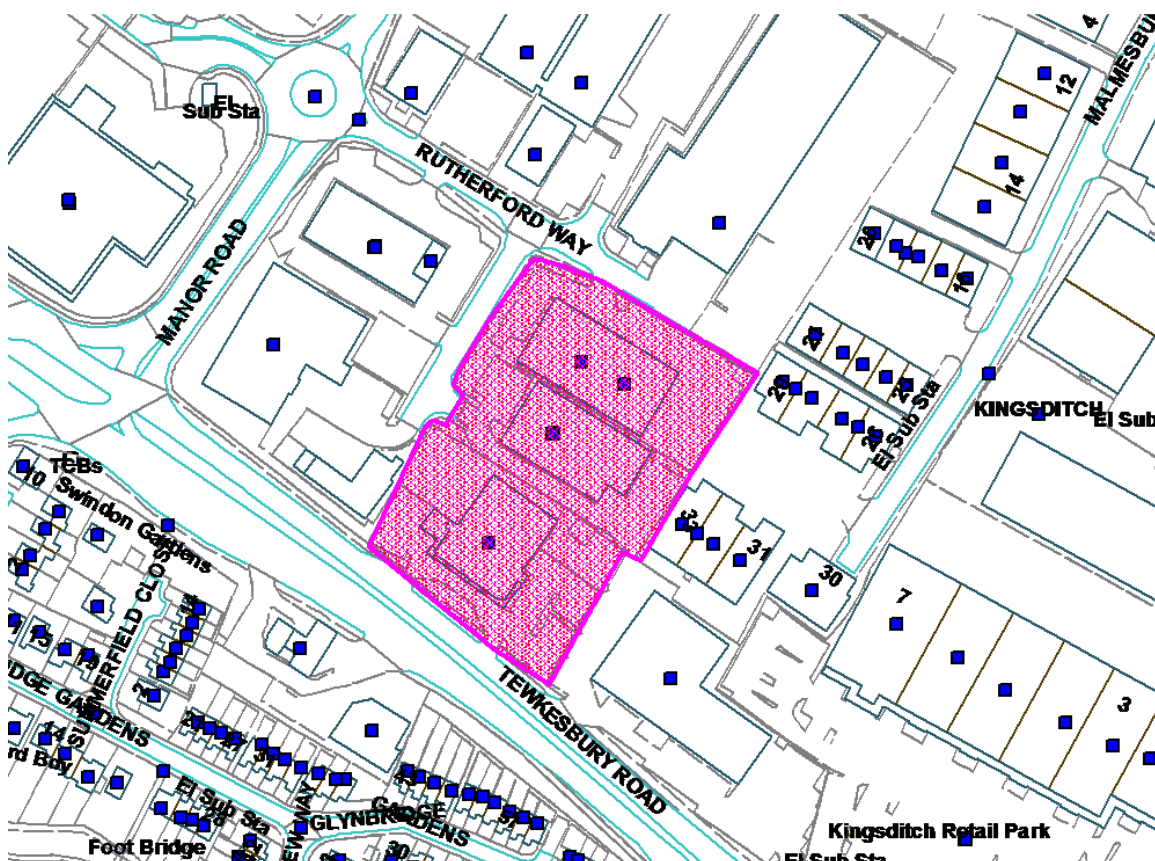


APPLICATION NO: 15/00321/OUT		OFFICER: Mr Martin Chandler	
DATE REGISTERED: 12th March 2015		DATE OF EXPIRY: 11th June 2015	
WARD: Swindon Village		PARISH: Swindon	
APPLICANT:	Hinton Properties (Cheltenham) Ltd		
AGENT:	Hunter Page Planning		
LOCATION:	Cotswold BMW, Tewkesbury Road, Cheltenham		
PROPOSAL:	Outline Planning Application for up to 3, 892 sq.m of Class A1 (shops) floorspace, up to 603 sq.m of A4 (drinking establishment) floorspace and up to 1, 395 sq.m of D2 (gym) floorspace with associated parking.		

RECOMMENDATION: Permit subject to S106



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1. DESCRIPTION OF SITE AND PROPOSAL

- 1.1 This application seeks outline planning permission for the creation of up to 3,892 sq.m of class A1 (shops) floorspace, up to 603 sq.m of A4 (drinking establishment) floorspace and up to 1,395 sq.m of D2 (gym) floorspace. The proposal also provides for necessary car parking.
- 1.2 The application site is currently in use as a car showroom (sui generis) and is occupied by Cotswold BMW. The occupant will soon relocate to the BMW dealership currently under construction adjacent to the A40 leaving the application site vacant. The site bounds the Kingsditch Retail Park to the south east, and to the north west of the site is the Gallagher Retail Park. Access to the site is provided from both Tewkesbury Road and Rutherford Way to the rear. The site area is 1.05ha.
- 1.3 The application seeks to have the principle of development determined at this stage, and also access to the site. Reserved for future consideration are appearance, landscaping, layout, and scale although the proposal is supported with an indicative site layout, site sections and street scenes. The indicative site layout shows a large two storey building presented at the rear of the site (indicatively subdivided into three retail units and the public house and gym) with car parking to the front.
- 1.4 The application is also supported by the following documents:
- Planning supporting statement
 - Retail and planning statement
 - Design and Access statement
 - Transport statement
 - Flood risk assessment
 - Ecological appraisal
 - Desk study land contamination report
- 1.5 The application is presented to the planning committee to enable a full discussion on the retail analysis that has accompanied the application, particularly with regard to the sequential test. This matter will be expanded upon below.
- 1.6 Members will visit the site on planning view.

2. CONSTRAINTS AND RELEVANT PLANNING HISTORY

Relevant Planning History:

00/01040/FUL 12th September 2000 PER

Extensions to existing car showrooms and link canopy and extension to existing parts department/ancillary accommodation

96/00008/PF 22nd February 1996 PER

Extension to Existing Garage To Form New Carwash Area

96/00679/PC 17th October 1996 PER

Provision of New Vehicle Storage Area, Staff/Customer Parking and Display Area Following Demolition of Dwelling Adjacent To Existing Garage Site (In Accordance With Revised Plans Received 11

10/01252/ADV 23rd September 2010 GRANT
Freestanding fascia type internally illuminated signs

3. POLICIES AND GUIDANCE

Adopted Local Plan Policies

CP 1 Sustainable development
CP 2 Sequential approach to location of development
CP 4 Safe and sustainable living
CP 5 Sustainable transport
CP 7 Design
CP 8 Provision of necessary infrastructure and facilities
NE 4 Contaminated land
RT 1 Location of retail development
RT 7 Retail development in out of centre locations
UI 3 Sustainable Drainage Systems
TP 1 Development and highway safety
TP 2 Highway Standards
TP 3 Servicing of shopping facilities
TP 6 Parking provision in development

National Guidance

National Planning Policy Framework
National Planning Policy Guidance

4. CONSULTATIONS

Environment Agency

13th March 2015

Thank you for referring the above numbered application, however the proposals do not feature in our checklist for consultation purposes.

The site is shown to be located in Flood Zone 1 with no other constraints. As such I would refer you to the attached FRA Guidance Note and Surface Water Advise Note.

GCC Local Flood Authority (LLFA)

31st March 2015

The Lead Local Flood Authority will not be commenting on planning applications that have been received by the LPA prior to the 6th of April.

Environmental Health

31st March 2015

With regard to this outline application I have no objection in principle to the proposal. However the applicant's attention should be brought to the following: -

1. In conjunction with a full planning application the applicant will need to provide a construction environmental management plan (CEMP) that details how the following will be controlled in order to reduce nuisance to neighbours:
 - Demolition and construction noise and vibration including plant noise, use of generators and deliveries to site.
 - Details of any piling proposed
 - Dust from construction activities and vehicle movements (the applicant should have regard to BRE guide 'Control of Dust from Construction and Demolition Activities') Floodlighting and lighting on site
2. It is likely that we would ask for a condition requiring that construction works on the development will not take place other than during the following times:
 - Monday to Friday 0730 to 1800 hours
 - Saturday 0800 to 1300 hours

Nor at any time on Sundays, Bank or Public holidays, unless otherwise agreed in writing by the Local Planning Authority.

3. Due to the close proximity of residential dwellings to the south of the application it is likely that we will ask for a condition that any windows serving the proposed gym are unopenable to the front or side elevations.

With regard to the proposed public house we are also likely to ask for the same restrictions. Further, should the proposed public house intend to serve hot food then details of the extraction system will also be required.

Cheltenham Civic Society

13th April 2015

We think it important that the buildings should be at the front, lining the road, with the car parking behind, less visible from the main road. This avoids having a mass of cars as the main view on an important gateway into Cheltenham. But, if this is done it would be important to have a much higher quality of building than what is proposed. They could usefully aspire to emulate the award-winning car salesroom next door to the site. High quality architecture is important on gateway sites.

Parish Council

2nd April 2015

I confirm on behalf of Swindon Parish Council that we have reviewed the above application and wish the following concerns to be taken into consideration:

We recognise that this is an Outline Application but have noted that it is highly detailed and contains references to the proposal having already been through an extensive consultation process with the planning office and also note the inclusion of details such as the information on traffic and parking, and that it identifies in name the proposed occupiers for the units together with supporting letters from the intended occupants. We are disappointed that the applicant has not contacted the Parish Council to discuss the proposal in order that we could discuss our concerns directly with them.

We understand that this is a change of use that will create stronger links with the retail parks.

Our concerns regarding this proposal are :

1. Securing the site to prevent unauthorised use including use by boy raisers.
2. Through Route between Tewkesbury Road and Rutherford Way.
3. Traffic Statement and Traffic Management
4. Long Term Traffic Management
5. The introduction of the Green King family pub and restaurant
6. Materials, opening hours, lighting and signage
7. Pressure on Princess Elizabeth Way

1. Securing the Site

We are concerned that access is to be provided from both the Tewkesbury Road and from Rutherford Way without any means proposed for preventing this becoming a through route. This creates two distinct problems. This outlines our first concern.

The attraction of the forecourts in this area of Cheltenham for the boy racer nuisance is well known and has attracted an undesirable noisy and dangerous presence to local residents and to road users. Access to the parking courts of the retail parks to the South East and the North West sides of this site has been restricted by the use of gates that are closed when trading ceases.

The proposed through route could not only make this an ideal base for their activities but the presence of the public house is likely to provide an added bonus.

We recognize that both the gym and the pub and restaurant will wish to operate extended hours. However we believe that measures should be incorporated into this proposal that will discourage the use of this site by the boy racers or for any other undesirable uses.

We believe that customer access to parking for the gym and the pub outside normal retail hours should be from Rutherford Way only which would enable the Tewkesbury Road access points to be secured with hinged barriers/gates.

We acknowledge that there are a number of options that could be considered which could include controlling egress from the parking area back into Rutherford Way via a controlled barrier system.

The use of rising bollards which were installed in the Homebase site are not a success and therefore hinged barriers appear to provide a more visual and secure option.

2. Through Route

As previously stated we are concerned that access is to be provided from both the Tewkesbury Road and from Rutherford Way without any means proposed for preventing this becoming a through route which may become known as a means of avoiding the traffic lights at the junction of Manor Road and Tewkesbury Road.

3. Traffic Statement and Traffic Management

There appear to be errors in the Transport Statement. As an example on page 17 table 7.7 for PM PEAK it is noted that there will be 109 vehicles arriving but only 77 leaving and in SAT PEAK it shows 183 arriving but only 156 leaving. This would require the provision of more parking spaces than are indicated.

The site is located within an area of the trade park that has been developed for the car sales showrooms that currently exist and as such the integration of the car showroom sites with the retail parks to either side of them has not needed to be a consideration. The traffic flow to and from these sites is fairly manufacturer specific and as such the flow of vehicles in and out of the forecourts is considerably more limited than the flow of vehicles in and out of the retail parks.

The Cotswold BMW site is the only car showroom that has direct access to the Tewkesbury Road. This does not appear to create problems with the merging of traffic from the existing BMW showroom with the traffic in the Tewkesbury Road because the numbers of vehicles is controlled by the nature of the site.

The units of the proposed scheme will create an increase in the existing traffic volume which, due to the proximity of the Tewkesbury Road entry to and exit from the application site being so close to the entrance of the M& S store and to the entry and exit of the Kingsditch Retail Park may create an unwelcome series of interruptions in the traffic flow on the Tewkesbury Road.

4. Long Term Traffic Management

We believe that developing the application site would provide an opportunity to create a vehicular link between this site and the Kingsditch Retail Park which runs parallel to the Tewkesbury Road and limits the number of vehicular access and egress points. This will increase safety and could prevent a reduction in the flow of traffic on the Tewkesbury Road.

5. The introduction of the Green King family pub and restaurant

We understand from the description provided that this is to be a family pub and restaurant but note that there is no intention to include any external garden area which is unusual for this type of establishment and note that there is no means by which this could be achieved at a later date without isolating an area of the service yard at the rear of the building which would not be acceptable.

We do not agree that the indicative elevations of the proposed structure in particular the North West side elevation do provide an appealing appearance for such a venue and look forward to seeing something much more appropriate in the full submission.

6. Plans, Appearance, Landscaping, Materials, Opening Hours, Lighting and Signage

We note that despite the amount of detail provided with this application that the drawn information is labelled 'indicative' and should the application be consented then detailed applications will be submitted to obtain approval for all of the above.

7. Pressure on Princess Elizabeth Way

This proposal introduces new establishments that are likely to connect to the M5 to journey to and from the south for deliveries and for customers. The delivery vehicles are going to be additional to those that serve the retail and trade parks in the Tewkesbury Road and Kingsditch area. As a result this will increase the number of vehicles travelling on the route between junction 11 on the M5 and the application site.

GCC Highways Planning Liaison Officer

13th August 2015

The planning application is for the redevelopment of land formerly used as a car showroom with a Gross Floor Area (GFA) of 4,133sqm. The redevelopment proposals comprise 3,892 sqm GFA A1 non-food retail, a 603sqm GFA A4 pub/restaurant and a 1,395 sqm D2 gym. This site is located in North West Cheltenham, immediately north of the A4019 Tewkesbury Road.

This Highways Response has been updated following the submission of the Transport Statement Addendum which was produced to address comments in the initial Highways Response.

Existing access

The site is currently accessed via a left-in, left-out access and egress arrangement onto Tewkesbury Road and two priority junctions with Rutherford Way. On-street parking is limited in the vicinity of the site although approximately 65m of uncontrolled parking is available on Rutherford Way, on both sides.

Footway is available along both sides of all roads in the vicinity of the site. Signalised crossings are available to the west of the site at the Tewkesbury Road/Manor Road junction, albeit these crossings are relatively convoluted due to the layout of the junction. Toucan crossings are available on all arms of the Kingsditch roundabout to the east. A segregated footway/cycleway is available on the north side of Tewkesbury Road to the east of the site. It is reasonable to conclude that pedestrian/cycle facilities are adequate in the vicinity of the site.

Both westbound and eastbound bus stops on Tewkesbury Road are well within the CIHT recommended maximum distance of 400m from the site. No shelter is provided at the westbound bus stop, and Real Time Passenger Information (RTPI) is not available at either stop. GCC considers that the developer should provide these facilities in order to cost effectively ensure that opportunities for sustainable transport are taken up. Bus routes serving the site operate at a reasonable frequency with a good range of origins and destinations served.

GCC agrees with the conclusion that the development site provides the opportunity for shoppers and employees to travel sustainably to the development site, subject to the provision of improved bus stop facilities.

The accident analysis does not identify any inherent road safety issues which could be exacerbated by the proposed development.

Access proposals

The three existing site access points will be retained, with general vehicular access available via the left-in, left-out junction on Tewkesbury Road, and one of the Rutherford Way accesses. The second Rutherford Way access will be used solely by servicing vehicles.

Swept Path Analysis (SPA) has been presented demonstrating that cars can enter, exit and traverse the parking area safely. The SPA also shows a 16.5m articulated vehicle entering and exiting the service area. SPA also demonstrates that two 16.5m articulated delivery vehicles can enter the site, manoeuvre into a delivery bay, and exit the site, providing confidence that service vehicles would not need to wait on the public highway for others to finish their delivery.

Footway within the site is adequate, as is connection to the surrounding footway network.

Parking

163 parking spaces will be provided for the site, including 12 disabled spaces. The level of disabled parking equates to 7% of total provision and is acceptable.

It has been agreed with GCC that the level of parking should be identified based on operational need. A parking accumulation exercise has been undertaken based on the TRICS assessment used to determine trip generation. The maximum parking accumulation for the site will be 137 spaces on a Saturday based on the TRICS assessment.

CIHT guidelines suggest that car parks should be designed to a practical occupancy of 85% to account for circulation and peaks in demand. Demand for 137 spaces would equate to 84% of the car park capacity of 163 spaces. Therefore the proposed parking level of 163 spaces is acceptable.

Cycle parking should be provided to an acceptable level to accommodate both staff and visitor demand.

An appropriate level of cycle parking should be proposed. Staff parking should be covered and secure and separate to visitor parking. Visitor parking should be secure and situated in prominent locations close to building entrances.

Trip Generation

The Transport Statement (TS) identifies the trip generation which could occur as a result of the site operating as a car showroom and deducts these trips from the trips which would occur as a result of the proposed development. This is acceptable from a planning perspective.

Existing Trip Generation

The existing trip generation was determined by the use of a TRICS assessment. A direct survey of the existing showroom was requested and undertaken in order to provide a more accurate representation of the existing traffic generation of the site. The existing showroom currently generates approximately 35-50 two-way trips in the AM, PM and Saturday peak periods.

Proposed Trip Generation

The proposed trip generation has been determined using the TRICS database. The assessment for the A1 non-food retail land use is accepted. This element of the proposed development will generate relatively few trips in the weekday AM peak. This land use will generate approximately 90 two-way trips in the PM peak, and approximately 270 two-way trips in the Saturday peak period.

The TRICS assessment for the pub/restaurant is accepted. This land use will not generate trips in the weekday AM peak, and will generate approximately 30 two way trips in both the weekday PM and Saturday peak periods.

A weekday TRICS assessment has been undertaken for the gym land use. This assessment is accepted and demonstrates that the gym land use would generate approximately 30 two-way trips in the AM peak, and 65 two-way trips in the PM peak.

It has not been possible to undertake a Saturday TRICS assessment for the gym land use due to a lack of available sites. Therefore the TS utilises the weekday trip rate for the Saturday peak period. This is an acceptable methodology.

Linked trips

The TS applies a 30% reduction for “linked trips”. Linked trips occur where people visit multiple destinations on a mixed use development. It is accepted that this can occur, but also that multiple land use developments can create trip generation higher than the sum of their parts due to the “cluster” effect making the development site more attractive.

In considering this assumption in detail GCC has reviewed the findings of the TRICS Research Report 05-1 “Trip attraction rates of developments with multiple retail and leisure uses.” The report concludes that **“multi-use sites with 4 or more developments reduce on average the total number of external trips by about 20% through trip linking... however for comparable sites with a generous supply of parking the trip reduction benefits of multi-use development were, on average, lost completely.”**

GCC does not consider the parking provision to be overly generous, although it is unlikely to result in trip restraint. As previously stated, the approach to determining parking levels used in the TS is acceptable as it is unlikely to result in an overspill impact on the public highway. The effect of the parking level on trip generation is considered to be neutral.

However, the TS overstates the potential benefit of linked trips as the TRICS report suggests that about 20% could be achievable for multi-use sites with four or more developments. Whilst it is accepted that the more units, the greater the number of linked trips, increasing the linked trips reduction to 30% for five units is not robust. A 20% reduction factor for linked trips has therefore been agreed with the applicant.

Pass-by and Diverted Trips

The TS states that 30% of trips are likely to be pass-by trips, although a reduction of 10% has been applied. This is accepted.

Site Access

The TS discusses the usage of the two site accesses and the proportion of trips which will use each access. GCC considers that it is likely that the usage of each access will depend on the direction of travel and congestion on the local network. Inbound trips from the west are likely to use the Tewkesbury Road access, whilst inbound trips from the east are likely to turn right into Manor Road and use the Rutherford Way access. Outbound trips to the east will use the Tewkesbury Road access, whilst outbound trips to the west will have a choice of using the Tewkesbury Road access and making a U-turn at the Kingsditch Roundabout, or using Rutherford Way.

Notwithstanding this, GCC does not have major concerns about the capacity of the Tewkesbury Road access point as the left-in movement is free-flow and any queue from the left-out will be contained on the site. The total trip generation for the site cannot be reduced to account for multiple access points, although it is recognised that the impact on local junctions may be spread through the potential to use different access routes.

Total Trips

As stated above, all traffic generation assumptions have been agreed with GCC. The proposed development will result in a slight reduction in trips in the weekday AM peak. There will be approximately 50 additional arrivals and 44 additional departures in the weekday PM peak. The highest peak level of traffic generation will be 105 arrivals and 85 departures in the Saturday peak hour.

Traffic Impact

Development traffic has been distributed and assigned to the local road network based on existing traffic turning proportions. This is considered to be the most appropriate and reasonable method as distribution profiles are likely to be similar to traffic already on the network considering the level of existing retail land uses in the area.

A percentage impact assessment of development traffic has shown that the development will have a maximum traffic impact of 2% on any one arm of the Tewkesbury Road/Old Gloucester Road junction.

On this basis it is agreed that detailed capacity analysis is not required.

Traffic capacity assessment has been undertaken at the following locations:

- Tewkesbury Road/Manor Road; and
- Kingsditch Roundabout.

LINSIG v3 has been used to undertake the capacity assessment of each junction. This is the most appropriate traffic modelling programme for these signalised junctions. Baseline models have been created using operational traffic signal data and existing junction geometries. The base models are considered to be sufficiently representative of “typical” traffic conditions for the purpose of considering the impact of the proposed development.

Manor Road/Tewkesbury Road

The capacity analysis shows that the junction will operate with all arms at approximately 90% of capacity in the 2019 Base plus development scenario in the PM peak. This is only a slight increase in congestion over the 2019 Base without development scenario. The level of impact in the Saturday peak is of a similar level, although all degrees of saturation will remain below 90%. Based on the traffic capacity results, it cannot be considered that the proposed development would have a “severe” impact on congestion in this location.

The change in traffic flows resulting from the proposed development has also been considered. In the PM peak, the development will result in a 2.27% increase in traffic across the whole junction. The greatest impact on any one arm will be 4.91% on the Hayden Road arm, although this only equates to 19 vehicles. Similarly in the Saturday peak, there will be a percentage impact of 4.7% across the whole junction. The greatest percentage impact on any one arm will be 8.00% on Hayden Road, equating to 26 vehicles. The greatest actual impact will be 64 vehicles on the Tewkesbury Road (E) arm, which will be a 6.11% increase. This level of traffic increase resulting from the proposed development is not considered to result in a severe impact and therefore no specific mitigation is required in this location.

Kingsditch Roundabout

Similar to the Manor Road/Tewkesbury Road junction, whilst the Kingsditch Roundabout will experience capacity issues in 2019 with the development in place, the level of impact will be relatively low. In the 2019 PM peak, Tewkesbury Road (E) and Princess Elizabeth Way will operate over capacity, and Kingsditch Lane will operate over 90% capacity, both with and without the proposed development. In the 2019 Saturday peak, both Tewkesbury Road arms and Princess Elizabeth Way will operate at approximately 100% capacity both with and without the proposed development. In both PM and Saturday peaks, the impact of the proposed development is relatively low and could not be considered “severe”.

The percentage increase in traffic flows on any one arm of the junction resulting from the proposed development will be less than 5% in both PM and Saturday scenarios, with the total impact on traffic flows on the junction as a whole being less than 3%. This level of traffic increase resulting from the proposed development is not considered to result in a severe impact and therefore no specific mitigation is required in this location.

Conclusion

The impact of the proposed development on the local road network has been assessed in terms of traffic capacity of junctions and percentage changes in traffic flows. Whilst some arms of the Manor Road/Tewkesbury Road and Kingsditch roundabout junctions will operate at capacity in the future year assessment scenario, the development will have a relatively limited impact on congestion in these locations. This is further evidenced by the traffic flow increases resulting from the proposed development being relatively low. It is therefore concluded that the development will not have a severe impact on congestion on the local road network and site-specific mitigation is not required.

Travel Plan

A Travel Plan will be provided, secured by an appropriately worded condition. A monitoring fee of £5,000 will also be secured in order to monitor the travel plan and ensure the provisions contained therein are implemented.

Recommendation

I recommend that no highway objection be raised to this application subject to the following conditions being attached to any permission granted:

Condition 1

No development shall take place, including any works of demolition, until a Construction Method

Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall:

- i. specify the type and number of vehicles;*
- ii. provide for the parking of vehicles of site operatives and visitors;*
- iii. provide for the loading and unloading of plant and materials;*
- iv. provide for the storage of plant and materials used in constructing the development;*
- v. provide for wheel washing facilities;*
- vi. specify the intended hours of construction operations;*
- vii. measures to control the emission of dust and dirt during construction*

Reason: To reduce the potential impact on the public highway and accommodate the efficient delivery of goods and supplies in accordance paragraph 32 and 35 of the National Planning Policy Framework.

Reason for Grampian: To ensure there is a safe and suitable access during the construction period, in accordance paragraph 32 and 35 of the National Planning Policy Framework.

Condition 2

Prior to beneficial occupation a Travel Plan shall be submitted to and agreed in writing by the Local Planning Authority, setting out:

- i. objectives and targets for promoting sustainable travel,*
- ii. appointment and funding of a travel plan coordinator,*
- iii. details of an annual monitoring and review process,*
- iv. means of funding of the travel plan, and;*
- v. an implementation timetable including the responsible body for each action.*

The approved Travel Plan shall be implemented in accordance with the details and timetable therein, and shall be continued thereafter, unless otherwise agreed in writing by the Local Planning Authority.

Reason:- To ensure that the opportunities for sustainable transport modes are taken up in accordance with paragraphs 32 and 36 of the National Planning Policy Framework.

Condition 3

Prior to beneficial occupation of the proposed development details of secure and covered cycle storage facilities shall be submitted to and approved in writing by the local planning authority, the approved works shall be completed prior to beneficial occupation and shall be maintained as such thereafter.

Reason:- To ensure that adequate cycle parking is provided, to promote cycle use and to ensure that the opportunities for sustainable transport modes have been taken up in accordance with paragraph 32 and 35 of the National Planning Policy Framework.

Condition 4

Prior to beneficial occupation of the proposed development the car parking facilities shall be provided in accordance with the approved plan and shall be maintained available for that purpose thereafter.

Reason: - To reduce potential highway impact by ensuring that vehicles do not have to park on the highway resulting in a severe impact contrary to paragraph 32 of the National Planning Policy Framework.

Condition 5

Prior to beneficial occupation of the proposed development details of enhanced westbound bus stop facilities including Real Time Passenger Information facilities shall be submitted to

and agreed in writing by the local planning authority, no part of the development shall be occupied until the approved works have been completed, the works shall be maintained as such thereafter unless and until adopted as highway maintainable at public expense.

Reason:- To reduce potential highway impact, in accordance with paragraph 32 and 35 of The Framework.

Obligations

Planning permission should not be granted until a unilateral undertaking has been completed for a £5,000 travel plan monitoring fee.

5. PUBLICITY AND REPRESENTATIONS

Number of letters sent	21
Total comments received	3
Number of objections	3
Number of supporting	0
General comment	0

- 5.1** To publicise the application, letters were sent to 21 neighbouring properties as well as a site notice being placed adjacent to the site and an advertisement within the Gloucestershire Echo. In response to this publication, three letters of representation have been received.
- 5.2** The objections come from consultants acting on behalf of the owners of the Beechwood Shopping Centre, owners of the Brewery and owners of the Regent Arcade as well as from the neighbouring car dealership.
- 5.3** The concerns from the shopping centres relate to the sequential assessment of alternative sites and the impact that the development will have on town centre vitality, viability and planned investment. The neighbouring car dealership raise concerns in relation to highway considerations.
- 5.4** Both of these points are relevant material considerations and will therefore be considered in the following section of this report.

6. OFFICER COMMENTS

6.1 Determining Issues

- 6.1.1** The key considerations relating to this application are the principle of retail development on this site, the highway considerations, and the suitability of the indicative layout proposed.

6.2 Environmental Impact Assessment - Screening

- 6.2.1** The application site has a site area of 1.05ha and therefore the development falls within category 10 (Infrastructure projects) of Schedule 2 of The Town and Country Planning (Environmental Impact Assessment) Regulations 2011. It is therefore necessary that the Local Planning Authority offers a screening opinion in relation to whether or not the development proposed will have significant effects on the environment. This opinion informs whether or not the proposed development requires an Environmental Impact Assessment.

- 6.2.2** The merits of the development will be discussed in the following section of the report, but, given the nature of the site (already extensively developed and within a heavily developed area of the borough) the LPA is satisfied that whilst the proposal is schedule 2 development, the development is not of such a scale that an EIA is necessary. The application is supported by a number of appraisals and statements and these provide sufficient information for the LPA to make an informed decision.

6.3 Principle of development

- 6.3.1** When considering applications for town centre development, planning policy provides a well-established means of assessing such proposals. The NPPF, at paragraph 24 states that:
- 6.3.2** *[Local planning authorities] should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered.*
- 6.3.3** This approach to the consideration of applications is known as the sequential test and is routinely used for developments of this nature. Members are advised that Local Plan policy RT1 (Location of retail development) provides the same advice.
- 6.3.4** The NPPF goes on to advise that “*When considering edge of centre and out of centre proposals, preference should be given to accessible sites that are connected to the town centre. Applicants and LPAs should demonstrate flexibility on issues such as format and scale.*”
- 6.3.5** As well as the sequential test, the NPPF, at paragraph 26, goes on to provide the following advice:
- 6.3.6** *When assessing applications for retail, leisure and office development outside of town centres, which are not in accordance with an up-to-date Local Plan, LPAs should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500 sq.m). This should include assessment of:*
- 6.3.7** *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*
- 6.3.8** *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.*
- 6.3.9** The NPPF then provides this concluding remark at paragraph 27:
- 6.3.10** *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.*

6.4 The sequential test

- 6.4.1** The applicant has conducted a thorough assessment of alternative sites within the borough to justify why they consider the application site to be the most suitable for the development proposed.
- 6.4.2** Members are advised that the term ‘suitable’ has been found to mean “*suitable for the development proposed by the applicant*” and in relation to availability, members are advised

that this means whether a site is currently available, not one that may become available at some point in the future.

- 6.4.3** For ease of reference, given the importance of the term 'suitable', members are reminded that application proposes the following:
- 6.4.4** *Erection of up to 3,892 sq.m of class A1 (shops) floorspace, up to 603 sq.m of A4 (drinking establishment) floorspace and up to 1,395 sq.m of D2 (gym) floorspace with associated parking.*
- 6.4.5** Furthermore, and important to the consideration of the suitability of alternative sites, the application is accompanied by letters of intent from TK Maxx (clothes and homewear), who seek an out of centre site to complement their existing town centre offer, and also Brantanos (shoe sales). The application therefore has to be assessed on the basis that it is these stores that will 'anchor' the wider development.
- 6.4.6** The applicant has assessed the following sites as part of their sequential test: Vacant units at the Brewery; Brewery Phase II; North Place; Municipal Offices; St. Georges Place/St. James Square; Coronation Square.
- 6.4.7** All of these sites have been dismissed by the applicant as either unsuitable for the development proposed, or in the case of North Place, unavailable (this report will return to this point further on in the analysis).
- 6.4.8** To scrutinise the applicant's retail analysis, the Council have appointed DPDS Consulting to provide specialist and independent advice on the matter. Regarding the sequential assessment, DPDS advise that in practical terms, there are three possible, sequentially preferable alternatives for the development proposed: vacant units at the Brewery, Brewery phase II and North Place. On the face of it, and in line with NPPF advice, planning permission could therefore be refused on this basis. Notwithstanding this position, there are a number of relevant and important decisions and cases that have to hold significant weight in the assessment of this planning application.
- 6.4.9** Both elements of the Brewery are only realistic propositions if the applicant reconsiders the degree of flexibility they are prepared to show. The existing vacant units would require the format of the proposed development to change significantly and it is argued that Phase II is not suitable for those retailers who are seeking dual representation within the town (such as TK Maxx).
- 6.4.10** Regardless of the above, both aspects of the Brewery would require the disaggregation of the proposed development meaning that the applicant would have to divide up the proposed development so that it can occupy alternative sites. Disaggregation is a way in which developers can demonstrate 'flexibility' as required by the NPPF but a decision from Rushden Lakes has determined that it is not required; going back to the point that development proposed is what needs to be determined, not a hypothetical alternative. Notwithstanding this point, the applicant has made it quite clear that TK Maxx will not commit to an additional store so close to its existing store for the fear of 'cannibalising' existing trade and it is essentially for this reason that the applicant dismisses both aspects of the Brewery Centre as being unsuitable for the development proposed.
- 6.4.11** Members will be well aware that the LPA is required to consider the application that is before them and, as advised above, a judgement from Dundee also establishes the fact that the suitability of a site means suitable for the development proposed. On this point, the advice from DPDS is that *"This includes TK Maxx, and indicates that weight should be given to the argument that vacant units in the town centre are not suitable within the Dundee's judgement's terms."*

6.4.12 For the LPA to conclude that either element of the Brewery provides a suitable and sequentially preferable site it would have to dismiss TK Maxx as the intended anchor tenant and require the applicant to demonstrate a disproportionate level of flexibility. The advice from our retail consultant is that such an approach would find little support at appeal; it would represent an overly negative approach to decision-making.

6.4.13 North Place

6.4.14 In their initial submission, the applicant discounted North Place as a suitable site due to its lack of availability; members will be aware that Morrisons will no longer be implementing the consent that the site benefits from and, at the time this application was submitted (March 2015), the contractual dispute between Morrisons and the land owner was some way from being resolved.

6.4.15 During the assessment of this application, the resolution of that dispute has been getting closer with the land owner recently confirming that, in their view, the site was available in sequential terms and is therefore preferable for the proposed development. In light of this, the applicant was asked to conduct some further analysis in relation to the suitability of North Place as a sequentially preferable site.

6.4.16 In response, the applicant has provided a detailed rebuttal as to the suitability of the site and this has again been scrutinised. The submission makes a number of claims that officers cannot agree with; it is suggested that the North Place site is an inappropriate site for a development of this nature given its location within the central conservation area, that it lacks “significant road-side prominence” and is remote from the town centres retail core. This analysis is deemed to be “weak” by the Council’s retail consultant who advises that these claims do not demonstrate that the site is unsuitable.

6.4.17 Notwithstanding the above, the applicant does however also revert back to the argument that TK Maxx as anchor tenant will not occupy a hypothetical unit at North Place due to the impact on its existing store; put simply, the North Place site does not represent a viable business proposition for TK Maxx.

6.4.18 It is this issue therefore, that needs most consideration. As advised by our retail consultant, the application only passes the sequential test if it is accepted that TK Maxx is required as the anchor tenant. On this point, the Council is also advised that there is nothing within the application to establish that the development would only be viable with TK Maxx, and it is relevant that the permission (if granted) would not, as submitted, be restricted to TK Maxx – they are not the applicant.

6.4.19 Essentially, the issue distils down to the flexibility that is being shown by the applicant and DPDS have stated that the Council is entitled to conclude that insufficient flexibility is being shown by the applicant. Notwithstanding this conclusion, the Council is also being advised by our independent consultant that given that retail planning policy is focussed on the short term, and in light of recent appeal decisions and court rulings, it is unlikely that an appeal would be successfully defended.

6.4.20 Summary of sequential test

6.4.21 When assessed simply against the advice set out within the NPPF then planning permission should be refused because there are sequentially preferable sites available for town centre development. Nevertheless, as members are acutely aware, planning decisions are rarely simple and appeal decisions and court rulings will always influence how government advice should be interpreted. The key matters in relation to sequential test are the suitability and availability of alternative sites, and the level of flexibility that is being shown by an applicant (and an LPA).

6.4.22 The Brewery Centre and North Place both offer sequentially preferable locations for hypothetical retail developments but the LPA are not being asked to determine a hypothetical scheme. Instead, the judgement needs to be made on this outline submission with named anchor tenants who have particular requirements, requirements that are not met by the alternative sites. When assessed on these terms, the advice to members is that the application could not be realistically refused on the failure to comply with the requirements of the sequential test because the available sites are not suitable for the development proposed, and it is on this basis that the application has to be determined.

6.5 Impact assessment

6.5.1 As well as the sequential test, a development of this nature also has to be assessed in relation to its likely impact on investment and the vitality and viability of the town centre.

6.5.2 In relation to the impact on vitality and viability of the town centre, it is accepted that Cheltenham Town Centre is generally regarded as a successful and healthy centre. The applicant's retail analysis considers likely trade diversion from the town centre and concludes that, on the basis of the retailers that make up this application, this will not be significant. This conclusion is endorsed by the Council's consultant but with the caveat that, as submitted, there are no restrictions as to who the potential occupants could be. Members are advised that if an open A1 use was granted for this site this would have a greater impact on the town centre in terms of trade draw, but also in terms of how it may affect Cheltenham's existing stock of out of centre retailers and the risk of future applications to relax the planning permissions that these developments benefit from in terms of the range of goods that could be sold.

6.5.3 With this in mind, the Council is advised that if permission is granted, that thought be given to appropriate conditions and potentially a S106 agreement to ensure that the trade draw and impact on the town centre is appropriately mitigated. The applicant is in agreement to this and work is ongoing in that regard. This approach also goes some way to allaying fears that TK Maxx would leave their existing store, a point that the owners of the Regent Arcade are concerned about.

6.5.4 When considering existing, committed and planned investment, again the key areas to assess relate to the Brewery and Regent Arcade. When initially submitted (March 2015), the impact on any potential investment into the Beechwood Arcade was also a material consideration of great weight but members will now be well aware of the John Lewis redevelopment that is now committed; officers are satisfied that the impact on the Beechwood Arcade is no longer a significant consideration.

6.5.5 Regarding the other sites, our retail consultant has offered the following thoughts:

6.5.6 *In relation to the impact on investment, the development of Phase II of the Brewery has started and could not be cancelled at this stage. The position with the North Place site is less clear cut. It is clear that the development will not proceed as planned and started, and its future needs to be addressed in terms of investment.*

6.5.7 Given that the investment at the Brewery is committed, the impact on this centre is more appropriately considered as part of the sequential test and the conclusions in this regard are provided above. The future of North Place remains unclear and no representations have been received by the land owner to advise on what they perceive the potential impact to be. In the absence of such representations, it is very difficult to conclude that the impact will be severe and would warrant withholding consent; the LPA would be speculating.

- 6.5.8** Finally, whilst consultants acting on behalf of the Regent Arcade suggest that the proposed development will impact on further investment into the arcade, it does not give specific details and without this no weight can be given to this point.

6.6 Conclusion on retail analysis

- 6.6.1** Retail impact represents a particularly complex material consideration in the assessment of planning applications, particularly when the potential impact is on such important sites for the town. In light of this, the application has been thoroughly scrutinised in the manner expected by the NPPF and the advice to members is that this application should be supported, despite the identified short-comings of the sequential assessment.
- 6.6.2** Whilst the NPPF makes a clear statement of how applications should be determined if they fail the sequential test, the interpretation of this guidance is critical in the determination of this application, and this should be informed by recent appeal decisions and court rulings. It is for this reason that the Council appointed an independent consultant to assess the retail analysis being submitted by the applicant, and the following concluding remarks should weigh heavily in the determination of this application (members are advised that the full concluding statement from DPDS as attached to this report as an appendix):
- 6.6.3** *I conclude that the application only passes the sequential test if it is accepted that TK Maxx is required as the anchor tenant. This is a matter of the flexibility shown by the developer and the Council is entitled to conclude that insufficient flexibility has been demonstrated. The Council should show considerable caution in accepting, as a matter of principle, that the requirements of specific, named retailers should attract great weight in the sequential test.*
- 6.6.4** *However, with retail planning policy focussed on the short term and being implemented as it is, with suitable conditions and the legal agreement now proposed, I consider that the applicant would have a good chance of a successful appeal. The Rushden Lakes decision indicates how the previous Secretary of State was likely to approach the NPPF planning policy, and there is little indication that a different approach would be adopted now. As noted the flexibility expected by the Council is a matter of planning judgement, and at appeal, that judgement would fall to the Inspector. In the context of what would be seen as successful and thriving centre, the limited impact and lack of any clear harm to the centre arising from the proposal itself, (rather than as a precedent) there is, in my view, a significant risk that an appeal would be allowed. That is not to say that a refusal could not be defended on appeal or that the outcome of any appeal would be a forgone conclusion.*
- 6.6.5** Officers see no compelling reason why TK Maxx should not be accepted as being required as the anchor tenant and through the use of appropriately worded conditions, even if it were not TK Maxx anchoring the scheme, it would be 'TK Maxx-type' unit, thereby limiting the impact on the town centre (i.e it would not be an open A1 use). Furthermore, through a suitably worded legal agreement, the Council is able to ensure dual-presence within the town centre at least in the short to medium term (five years); the suggested legal agreement would require occupants of this development to retain a presence in the town centre for a period of five years if they are already in situ.
- 6.6.6** In light of the above, officers are satisfied that, on balance, the proposal passes the sequential test; whilst there are sequentially preferable sites available (Brewery and North Place) these sites are not suitable as they cannot deliver the specific development that is being proposed, but only hypothetical retail developments. This, in combination with the limited impact on what is a healthy town centre, leads officers to the conclusion that the development should be supported; in light of the guidance provided in paragraphs 186 and 187 of the NPPF relating to positive decision making, there is an insufficiently strong case to justify a refusal.

6.7 Matters relating to design and layout, and highway considerations, as well as a full suite of recommended conditions will follow as update to this report.