

APPLICATION NO: 15/00321/OUT		OFFICER: Mr Martin Chandler	
DATE REGISTERED: 12th March 2015		DATE OF EXPIRY : 11th June 2015	
WARD: Swindon Village		PARISH: SWIND	
APPLICANT:	Hinton Properties (Cheltenham) Ltd		
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.		

REPRESENTATIONS

Number of contributors	3
Number of objections	3
Number of representations	0
Number of supporting	0

One Chapel Place
London
W1G 0BG

Comments: 2nd April 2015

Further to our conversation earlier this week, I am writing to confirm that in our role as planning consultant acting for NFU Mutual and Canada Life (owners of The Brewery and Regents Arcade) we will be submitting an objection to the recent application for new retail and commercial leisure floorspace on the Cotswold BMW site on Tewkesbury Road, in an out-of-centre location.

As we discussed, we intend to submit our objection letter on behalf of our clients by close of play on 17th April.

I would appreciate it if you could formally confirm that this is acceptable. Could I also please ask you to keep us updated on the likely Planning Committee date and when you intend to prepare your report to Committee?

Comments: 22nd April 2015

Letter attached.

Comments: 23rd July 2015

Letter attached.

Broughtons
Rutherford Way
Cheltenham
Gloucestershire
GL51 9TU

Comments: 2nd April 2015

Rutherford Way is currently a service road to both BMW and HR Owen and generally is used for staff parking by employees of Jaguar, BMW & HR Owen Staff. In addition, there are other small businesses along Rutherford Way including Barclays Bank, QA and Weird Fish. Along with the other named businesses, staff parking along both sides of the road creates single file traffic and

congestion for anyone trying to enter/exit BMW as well as access our own site. An increase in traffic will only add to what is an already difficult situation and will be cause of further congestion. Traffic coming out of Cheltenham wishing to visit the new development will use the Rutherford Way entrance/exit as there is no direct access from the main Tewkesbury Road. Public access to the proposed site suggests turning around at the mini roundabout outside Jaguar, queuing back up at the lights before turning left on to Tewkesbury Road to use the main entrance. With an enter/exit point on Rutherford Way it will be used to avoid turning around increasing traffic and creating further congestion.

There is also the question of the 160 new employees for the proposed site? Whilst I appreciate they all won't all be working at the same time, with only 160 parking spaces being created, will the new employees be using the newly created car park?

9 Colmore Row
Birmingham
B3 2BJ

Comments: 28th July 2015
Letter attached.

One Chapel Place
London
W1G 0BG

T: 020 7518 3200
F: 020 7408 9238

Your ref: 15/00321/OUT/let
Our ref: CBC/CJ/150417

Mr Edward Baker
Planning Department
Cheltenham Borough Council,
Municipal Offices
Promenade
Cheltenham GL50 9SA

SENT BY EMAIL ONLY

21st April 2015

Dear Mr Baker

**OBJECTION ON BEHALF OF NFU MUTUAL INSURANCE SOCIETY & CANADA LIFE LIMITED
TO PLANNING APPLICATION FOR MIXED USE RETAIL & LEISURE SCHEME AT
COTSWOLD BMW, TEWKESBURY ROAD, CHELTENHAM:
(LOCAL AUTHORITY REFERENCE: 15/00321/OUT)**

We write on behalf of our clients NFU Mutual Insurance Society Limited ('NFUM') - owners of The Brewery retail and leisure scheme in Cheltenham Town Centre - and Canada Life Limited ('CFL') - owners of Regent Arcade - to object to the planning application submitted by Hinton Properties (Cheltenham) Limited ('HPL') in February 2015 (reference: 15/00321/OUT) for a major new mixed use retail and leisure scheme on the BMW Car Dealership site on the northern side of Tewkesbury Road, located some 1.7km from Cheltenham Town Centre.

The application before the Council is seeking permission for a substantial 5,890m² (63,399.5 sq ft) gross of new retail and leisure floorspace in an out-of-centre location, to be served by 163 dedicated parking spaces. The proposed floorspace comprises:

- 3 Class A1 non-food retail units, with a total gross floorspace of 3,892m²;
- A Class A4 (public house/ restaurant) use of 603m² gross;
- A Class D2 (gym) use with a total gross floorspace of 1,395m², located above the public house/restaurant and one of the Class A1 units

We have reviewed the application on behalf of our clients in compliance with Section 38(6) of the *Planning and Compulsory Purchase Act 2004*, which requires that planning applications be determined in accordance with the development plan, unless material considerations indicate otherwise.

In this case the most up-to-date development plan comprises the Cheltenham Borough Local Plan ('Local Plan'), adopted in December 1997 and revised in June 2006¹. The key material considerations include the *National Planning Policy Framework* (NPPF, March 2012) and *National Planning Practice Guidance* (NPPG, March 2014).

¹ We do not describe the adopted Local Plan policies in any detail in this letter as these are covered elsewhere. However, the main policies relevant to the consideration of the retail and leisure uses proposed for the application site include Policies CP1, RT1 and RT7. The Local Plan will be superseded by the Gloucester/Tewkesbury/Cheltenham Joint Core Strategy (JCS) and the new Cheltenham Plan will sit under the JCS, although it is at the early stages of its preparation.

Both the adopted Local Plan and the NPPF policies promote a **Town Centre First** policy approach to new retail development and investment. The NPPF clearly states that local planning authorities should “recognise town centres as the heart of their communities and pursue policies to support their viability and vitality...”, and “...promote competitive town centres that provide customer choice and a diverse retail offer which reflect the individuality of town centres...” (paragraph 23). Ensuring the vitality and viability of town centres is therefore a key objective for local planning authorities to help deliver sustainable economic growth and development in accordance with policy. Furthermore, the Government has recently re-emphasised to local authorities the importance of the Town Centre First policy in the January 2015 edition of the *Planning Directorate Newsletter* issued by Steve Quartermain CBE.

When assessing and determining applications for main town centre uses that are not in an existing centre and not in accordance with an up-to-date Local Plan, the Framework requires that LPAs should require applicants to apply the:

- **Sequential test**, which requires applications for main town centre uses to be located in town centres first, then in edge-of-centre locations and only consider out-of-centre locations if suitable sequentially more preferable sites are not available. When considering edge and out of centre proposals, “...preference should be given to accessible sites that are well connected to the town centre” (paragraph 24). Applicants and LPAs should demonstrate flexibility on issues such as format and scale.
- **Impact assessment**, which should include assessments of the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and 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.

The NPPF clear states that “**...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 27).

Based on our review and appraisal of the supporting ‘Retail and Planning Statement’ (RPS) prepared on behalf of the applicant by DPP Planning (‘DPP’), we advise the local planning authority that the proposed scheme clearly fails the sequential test. By itself, NFUM’s multi-million pound Phase II extension to The Brewery will provide additional modern units in the heart of the town centre by Winter 2016 that will be capable of accommodating the scale and quality of retail and leisure floorspace proposed for the Tewkesbury Road site in full, assuming some flexibility on issues such as format and scale.

As the major stakeholders in the town centre, our clients also have no doubts that the application proposal will result in a significant adverse impact on investment and business confidence, and on operator demand in Cheltenham Town Centre.

Furthermore, the impact of the application proposal will occur at a critical stage in the redevelopment and revitalisation of the town centre as it slowly recovers from the impact of the recent recession – the longest and deepest recession in living memory – on turnover, rents, vacancy levels, investment and market demand. It is a fact that the town centre is not only competing for new investment and operators with existing and new out-of-centre retail and leisure schemes (both within and outside the local authority area), but also with the dynamic growth in internet/multi-channel shopping, which accounts for an increasing market share of all retail (non-food and food) expenditure. At the same time there has been a significant structural shift in retailers’ business models over the last few years, which has resulted in store closures as operators adapt to the impact of the recession and online shopping. In summary, retailers are generally closing more stores than they are opening; there is limited market demand from operators for new ‘physical’ space in town centres; and retailers are generally seeking to reduce their store portfolios in locations where they have two or more stores. This is the background against which the impact of the application has to be considered.

There can be no doubt therefore that the application is contrary to both local and national planning policy, and that planning permission should be refused on this basis without hesitation or delay.

The remainder of this letter sets out our more detailed planning and commercial justification for the refusal of planning permission on behalf of our clients. Notwithstanding this, we reserve the right to respond to any material issues raised by the applicant and/or the local planning authority in advance of the final determination of the application proposal.

1 IMPACT ON TOWN CENTRE VITALITY, VIABILITY & PLANNED INVESTMENT

Key to the impact 'test' is the consideration of the likely effects of edge and out of centre developments on any existing, committed and planned public/private investment in centres (NPPF, para 26). The NPPG (para 016) provides further clarification on this and states that key considerations include the policy status of the investment (i.e. whether it is outlined in the Development Plan); the progress made towards securing the investment (e.g., if contracts are established); and the extent to which an application is likely to undermine planned developments or investments based on the effects on current/forecast turnovers, operator demand and investor confidence.

In terms of planned investment, the local planning authority has granted planning permission for the NFUM's £30 million pound investment in The Brewery Phase II development in the heart of the town centre. The scheme will provide some 10,219m² (110,000 sq ft) of flexible new retail and leisure floorspace, a 104-bed hotel and 34 town centre apartments. It is scheduled to open in Winter 2016 and will help to strengthen the attraction of the town centre as a whole and specifically Phase I of The Brewery. In policy and commercial terms The Brewery Phase II represents an important commitment to, and investment in the town centre by our client. This new investment is also critical to the revitalisation of the town centre as it recovers from the impact of the economic recession on market demand and investment confidence, and faces up to increased competition from out-of-centre retailing (including the Gallagher and Kingsditch Retail Parks adjacent to the application site) and from online shopping purchases. This was a key consideration for the local planning authority when it granted permission for The Brewery Phase II. Once complete, the Brewery Phases I and II will represent an investment worth in excess of £80 million for NFUM in Cheltenham Town Centre.

At the same time, Canada Life Limited is currently investing millions in the Regent Arcade shopping centre. This includes improvements to the front entrance to the scheme and the construction of a new unit of circa 1,255m² (13,500 sq ft). This follows on from their substantial investment in the comprehensive redevelopment of the main High Street entrance in 2013 and the creation of two large format units of 2,137m² (23,000 sq ft) and 1,208m² (13,000 sq ft) that have been occupied by H&M and River Island respectively. Although we note that that TK Maxx has been identified by the applicant as a potential tenant for the out-of-centre scheme, they are also an important anchor store in the Regent Arcade scheme, attracting customers to the centre and driving footfall, spend and turnover across the shopping centre and town as a whole. The TK Maxx unit has also recently been extended by our client to provide a larger modern format unit of 3,112m² (33,500 sq ft) selling a wide range and variety of goods. Other major anchor stores in Regent Arcade include BHS which trades from a large unit of c.4,924m² (53,000 sq ft); although, as the Council will be aware, Sir Philip Green sold the loss-making 171-store portfolio to Retail Acquisitions Limited in March 2015, and the future for some of its stores is uncertain.

There can be no doubt that the proposed out-of-centre floorspace will compete '*like against like*' with their shopping centre investments and tenants, and with the town centre as a whole. But this competition will not be on a '*level playing field*' in commercial terms, as the out-of-centre scheme will benefit from a number of significant competitive advantages over the new town centre floorspace including, for example, free parking, easy access by car and lower overhead costs for operators. As a result, the likely scenario is that retailers and leisure operators seeking space in Cheltenham will choose to locate in the out-of-centre scheme first, ahead of the new floorspace planned for the town centre. In turn, this will result in a significant adverse impact on operator demand and investment confidence in The Brewery Phase II extension and the town centre as a whole.

The applicant has indicated that they have received 'letters of support' and expressions of interest in their proposal from a number of operators, including TK Maxx, Peacocks, Sofa Works and Brantano. But there are no planning or commercial reasons why these retailers and others could not trade successfully from the town centre. They are, to varying degrees, currently represented in town centres across the UK and they all sell 'non-bulky goods' that are as easily accessed and purchased from towns and shopping centres. As stated previously, TK Maxx also operates from a large modern store in Regent Arcade.

Our clients are clear that the grant of permission for more substantial new retail and leisure floorspace on Tewkesbury Road at this point in time will seriously damage the attraction, marketing and letting of existing vacant and new retail floorspace in their respective shopping centres. DPP state in their RPS that there is significant market demand from retailers and leisure operators to support both existing and new retail floorspace in the town centre and their application proposal. In response, our clients can clearly demonstrate that this is not the case 'on the ground'. For example, a number of units in The Brewery have been vacant for a considerable period of time, despite extensive marketing:

- **Unit 5** – was formerly occupied by Dwell, and has been vacant since June 2013. The unit has a total Gross Internal Area (GIA) of 1,407m² (15,145 sq ft).
- **Unit 6** – was formerly occupied by Habitat, and has been vacant since August 2011. The unit has a total GIA of 2,516.6m² (27,188 sq ft).

Another unit in the scheme (Unit 7) has also been vacant since The Brewery opened in 2006 and has a total GIA of 753m² (8,105 sq ft). This represents over 4,676m² (50,339 sq ft) of long term vacant floorspace that is currently available for occupation, but is proving difficult to let as retailers seek to consolidate and reduce their representation in town centres. Furthermore, vacancy levels across the town centre as a whole, as reported by DPP in their RPS, are above the national average figure.

The completion of the Brewery Phase II extension by Winter 2016 will provide an additional 10,219m² of new retail floorspace, with 7,430m² being available for new occupiers. In total this represents over 12,077m² (130,000 sq ft) of existing and new retail accommodation available in The Brewery in flexible units that can range in size from c.279m² (3,000 sq ft), up to 5,574m² (60,000 sq ft).

Against this background we advise the local planning authority that the scale and type of retail and leisure floorspace proposed by the applicants for the Tewkesbury Road site will significantly strengthen and increase the attraction, turnover, market share and cumulative impact of out-of-centre retailing in this location (including the Gallagher and Kingsditch Retail Parks) relative to the town centre. In turn this will significantly increase the risks associated with our clients' commitment to, and investment in the town centre at a critical stage in the development, marketing and letting of the new planned floorspace.

Although Cheltenham Town Centre appears to be performing well against a number of the key (health check) performance indicators (KPIs), the reality is that it is trying to retain and attract shoppers, expenditure and businesses in the face of increasing competition from existing, new and proposed out-of-centre shopping facilities located both within and outside the local authority area. At the same time Cheltenham, and other town centres in the UK, are facing up to the real threat from internet shopping, which is increasing its market share of retail sales at an exponential rate. For example, recent research by Experian indicates that non-store retailing (including internet shopping) will account for some 21% of comparison goods retail sales by 2020. We believe this market share could be even higher, at 25%-30%, as retailers reduce their physical floorspace in favour of internet sales, and shopping via the internet becomes easier and faster due to better broadband connections, improved technology and better delivery ('to the home') services.

This increased competition from out-of-centre shopping and leisure attractions, and the growth of internet shopping, is occurring at a critical time for the future of Cheltenham Town Centre as it emerges from the impacts of the most severe economic downturn in living memory. As the Council will be aware, many high profile retailers have disappeared from the high streets over recent years. Beginning with the closure of Woolworths in 2009, other 'casualties' in the last five years that have either gone out of business or reduced their representation in centres across the UK including Comet, JJB Sports, Phones 4U, Clinton Cards, Game, Borders, Barratts, HMV, Alexon, T J Hughes, Habitat, Focus DIY, Floors-2-Go,

the Officers Club, Oddbins, Ethel Austin, Faith Shoes, Adams Childrenswear, Stylo, Mosaic, Principles, Sofa Workshop, Allied Carpets, Viyella, Dewhursts, MFI and Zavvi/Virgin Megastore. Research shows that over 300 retail businesses have been affected by the economic downturn, with the loss of some 26,000 stores and some 250,000 jobs across the UK.

Although the number of retail 'fatalities' has slowed during 2015, recent casualties include the closure of 26 Country Casuals stores and 9 Austin Reed stores. Furthermore Bank, which has 84 clothing stores and employs 1,555 staff was put into administration after Christmas; and USC, the young fashion chain originally bought out of administration in 2011 by Sports Direct, also went into administration after Christmas, leaving some 30 stores are under threat of closure with the loss of over 700 jobs. This is in addition to the announcements by Tesco, Sainsbury's and Morrisons that they are to close some of their existing stores, and will not be developing significant larger format stores in the future.

As highlighted earlier, other major retailers are reviewing the business strategies and property portfolios and are closing stores in town centres where they have been trading for many years. For example, Marks & Spencer has recently closed its general merchandise store in Harlow Town Centre after more than 50 years of trading, and it is closing stores in Great Yarmouth, Rugby and other Town Centres to take space in out-of-centre shopping parks. But Marks & Spencer is not the only major high profile retailer that is choosing to open in out-of-centre shopping schemes in preference to town centre locations. For example, Debenhams has recently taken space in out-of-centre shopping parks, including in Leamington and Rugby. In the case of Rugby, high profile retailers including Dorothy Perkins, Wallis, Miss Selfridge and Burton are all leaving the town centre to take space in a planned new out-of-centre shopping park.

It is against this background of falling market demand from retailers for space in town centres, and the clear and present threat from out-of-centre and internet shopping, that the impact of the application proposal needs to be considered by the Council. The scale and quality of the proposed out-of-centre floorspace would irreversibly '*tip the shopping balance*' away from the town centre. It would have the effect of making the other commercial uses in close proximity to the application site more attractive as an alternative shopping destination to the town centre, including Kingsditch and Gallagher Retail Parks, and cumulatively this would further harm the town centre. This would occur at a critical time when the Town Centre is emerging (after some eight years) from the impact of the economic recession. Its retail and town centre economy is fragile, and permission for a major out-of-centre scheme at this stage in its recovery will seriously harm existing and planned investment in Cheltenham Town Centre, including operator demand, and the town's overall vitality and viability.

2 SEQUENTIAL TOWN CENTRE SITES

We have carefully reviewed the sequential approach carried out by DPP, as set out in Section 7 of their Retail & Planning Statement (RPS), in accordance with account national and local plan policy, and other material considerations; principally the NPPF (paragraph 26) and the *National Planning Practice Guidance* (NPPG).

Our review has also taken account of other recent Supreme Court, High Court, appeal and called-in decisions, including the Dundee² and Rushden Lakes³ decisions referred to by DPP in their RPS. These decisions, amongst others, have established that for the sequential test 'suitable' means whether the alternative site is suitable for the proposed development, not whether the proposal could be altered significantly to suit that site; but also that the test should take account of context and 'flexibility' on issues such as format and scale.

As discussed previously, the recent *Planning Update Newsletter* issued by the Department for Communities and Local Government (DCLG, January 2015) reinforced the Government's Town Centre

² Judgement of the Supreme Court in the case of Tesco Stores Limited (Appellants) v Dundee City Council (Respondents) (Scotland) 21 March 2012.

³ Secretary of State Decision Reference APP/G2815/V/12/2190175, dated 11 June 2014, Rushden Lakes.

First policy approach and is material to the assessment and determination of the application proposal. Ministers refer to the NPPG (*Ensuring the Vitality of Town Centres*) in this direction and how the sequential test should be used in decision-taking (NPPG, para 010); specifically the requirement to assess: *"whether the suitability of more central sites to accommodate the proposal has been considered and the scope for flexibility in the format and or scale of the proposal"*. The NPPG states that it is: *"...not necessary to demonstrate that a potential town centre or edge of centre site can accommodate precisely the scale and form of development being proposed, but rather to consider what contribution more central **sites** are able to make individually to accommodate the **proposal**"* (para 008, our emphasis in bold)

As stated previously the application is for three units with a gross retail floorspace of 3,892m², a 640m² (gross) Class A4 pub/restaurant and a 1,395m² (gross) Class D2 gym. DPP state in Section 3 of their RPS that, following initial marketing, they have received *"letters of support"* from TK Maxx for the largest unit (Unit A) of 1,860m² gross (equally split between a ground floor and mezzanine level) and from Brantano for Unit C of 640m² gross. However, as DPP accept in their RPS (paragraph 3.19) these are only *"letters of support"* and do not represent contractual commitments to the scheme. They also indicate that the third unit (Unit B) of 1,392m² gross (also equally split between a ground floor and mezzanine level) has attracted interest from Peacocks and Sofa Works. All of these are town centre uses that, as we will demonstrate below, could and should be located in Cheltenham Town Centre first.

In this case we do not consider that the applicant has demonstrated sufficient flexibility in their sequential approach. For example, they have only considered sites/units in the town centre with a total area of 1.02 hectares (2.53 acres), but this does not allow for any flexibility in terms of reducing the significant area of the application site that is set aside for car parking, for example. They have also not demonstrated any flexibility in terms of reducing the scale of the proposed retail floorspace. Furthermore, the scope for flexibility in this case should be greater as no operators have been signed up for the scheme at this stage and there is no apparent reason why the units should be connected. This is confirmed by the Inspector's conclusions with regard to the recent appeal for the extension, subdivision and change of use of a retail warehouse in Leamington Spa in February 2015 (reference: APP/T3725/A/14/2218334).

The Council will be aware that each case should be treated on its own merits. It is therefore vitally important that the local planning authority understands that the Rushden Lakes decision relates to a planning application that is very different in its scale, location and mix of uses to the scheme proposed by the applicant. For clarification purposes the Rushden Lakes application was for a home and garden centre, retail units, drive thru restaurant, gatehouse, lakeside visitor centre, restaurants, boathouse, hotel, crèche and leisure club all within a lake setting. In this case the Inspector placed significant weight on the fact that the Rushden Lakes proposal would bring very substantial environmental and ecological benefits to the regeneration and reuse of the site, as well as delivering significant employment, tourism and leisure benefits to the local economy and Rushden Town Centre. It also received significant support from the local community and key stakeholders. This is simply not the case with the current application proposal.

It is against this background that we have reviewed the sequential approach carried out by DPP.

In terms of vacant units, our client has confirmed that there is currently over 4,676m² (50,339 sq ft) of vacant floorspace in The Brewery that is immediately available for occupation. This could easily accommodate the 3,925m² gross of Class A1 retail floorspace proposed for the out-of-centre Tewkesbury Road site in three units with a total GIA of 753m² (8,105 sq ft), 1,407m² (15,145 sq ft) and 2,517m² (27,188 sq ft).

Furthermore, The Brewery Phase II development is clearly **available**. It has planning permission and is scheduled to open by Winter 2016. It is also **suitable** for the proposed development, as it will provide 10,219m² (110,000 sq ft) of new retail and leisure floorspace, with the flexibility to suit a variety of retailer requirements, sizes and business models. The units in Phase II will also benefit from a highly prominent retail frontage, a 4.6 metre floor to ceiling height, with the floorspace arranged over ground and first floor level. There can be no doubt therefore that in planning and commercial terms The Brewery

can accommodate the scale, format and type of retail and leisure operators identified for the application proposal.

In summary, we conclude that DPP's sequential approach is fundamentally flawed; in as much as they have not demonstrated sufficient flexibility on issues such as format and scale when considering the potential suitability and viability of alternative sites in and/or on the edge of Cheltenham Town Centre. We consider that The Brewery (Phase I and II) by itself is capable of accommodating the scale and type of floorspace proposed for the application site. The proposed floorspace will also be capable of accommodating the same national multiple retailers that are being targeted for the application proposal.

The application therefore clearly fails to satisfy the sequential test and is contrary to local and national planning policy objectives, and should be refused by the local planning authority on this basis.

3 CONCLUSIONS

As the major stakeholders in Cheltenham Town Centre, both Canada Life Limited and NFUM are committed to ensuring that new investment and development occurs in the right place, at the right time, to help strengthen the town as an attractive, sustainable and commercially viable place to live, work, shop and visit for a range of uses and activities. In this context the multi-million pound investment planned for The Brewery Phase II and Regent Arcade will provide the flexible accommodation required by modern retail and leisure operators in the heart of the town centre. It has been demonstrated that these planned town centre investments will provide the necessary scale, format and type of units identified for the application proposal in a sequentially preferable location.

Furthermore, the application proposal is seeking a substantial quantum of retail floorspace in an out-of-centre location. It is a considerable distance and drive from the Town Centre, and will bring no material benefits to the town's vitality and viability in terms of linked trips, increased footfall and expenditure. It is also apparent that the proposed out-of-centre scheme will not complement the Town Centre as the applicant states, but will compete '*like against like*' for operators, customers and retail expenditure. We have clearly demonstrated that it will result in a significant adverse impact on our clients' planned investment in the town centre, contrary to national and local plan policy objectives.

The application therefore fails to satisfy the sequential test and will result in a '*significant adverse impact*' on the town centre's overall vitality and viability, contrary to the NPPF (paragraph 27) and the Council's local plan policies. It should therefore be refused without hesitation and delay.

I trust that this carefully considered response to the application proposal is helpful to the local planning authority and will be used to inform its decision taking. However, if you do require further clarification please contact me directly. In the meantime, as previously stated, we reserve the right on behalf of our clients to review and respond to the findings of the appraisal currently being carried out by DPPS on the Council's behalf. Further to this, we may also want to respond to any further supplementary evidence prepared by DPP in support of the application, where required.

Yours sincerely



Dr Steven Norris BA MPhil PhD MRTPI

Partner & Head of National Retail and Town Centre Consultancy
For and on behalf of Carter Jonas

One Chapel Place
London
W1G 0BG

T: 020 7518 3200
F: 020 7408 9238

Your ref: 15/00321/OUT/let
Our ref: CBC/CJ/150417

Mr Edward Baker
Planning Department
Cheltenham Borough Council,
Municipal Offices
Promenade
Cheltenham GL50 9SA

SENT BY EMAIL ONLY

21st July 2015

Dear Mr Baker

FURTHER OBJECTIONS SUBMITTED ON BEHALF OF NFU MUTUAL INSURANCE SOCIETY & CANADA LIFE LIMITED WITH REGARD TO THE PLANNING APPLICATION FOR MIXED USE RETAIL & LEISURE SCHEME AT COTSWOLD BMW, TEWKESBURY ROAD, CHELTENHAM: (LOCAL AUTHORITY REFERENCE: 15/00321/OUT)

Further to our letter to the Council dated 21st April 2015, we are writing again on behalf of our clients NFU Mutual Insurance Society Limited (owners of The Brewery retail and leisure scheme in Cheltenham Town Centre) and Canada Life Limited (owners of Regent Arcade) to register their strong objections to the above planning application for a major new mixed use retail and leisure scheme on the existing BMW Car Dealership site, located some 1.7km from Cheltenham Town Centre.

The application before the Council is seeking permission for a substantial quantum of new retail and leisure floorspace (5,890m² gross) in an out-of-centre location, to be served by 163 dedicated parking spaces. The proposal is for three Class A1 non-food retail units (3,892m² gross), a Class A4 (public house/ restaurant) use of 603m² gross and a Class D2 (gym) use (1,395m² gross).

For the reasons set out in our original April letter both NFU Mutual and Canada Life, as two of the major stakeholders in the town centre, are unequivocal in their view that the application proposal will result in a significant adverse impact on investor/business confidence and market/operator demand in Cheltenham Town Centre and, specifically, on their respective shopping centre assets and investments. We concluded in our April letter on their behalf that the application was clearly contrary to paragraph 27 of the NPPF and local plan policy, and should be refused by Cheltenham Borough Council on this basis.

Our clients' objections to the application proposal were subsequently underlined by the independent retail planning report prepared for Cheltenham Borough Council by DPDS Consulting in May 2015.

We are writing to the Council again following the issue of the rebuttal letter and suggested conditions prepared by DPP Planning on behalf of the applicant (dated 23rd June 2015). Having reviewed this letter in some detail, we can confirm that our clients' remain of the view that the application will have a significant adverse impact on the town centre and specifically their substantial existing and planned investments in the town's two key shopping centres.

By way of summary it is important for Cheltenham Borough Council to understand that there is a greater underlying fragility to rental levels, occupier demand and business confidence in the town centre than identified by the applicants. The town centre's retail property and investment market is vulnerable to impact from the growth in out-of-centre retailing, such as is being proposed by the applicant, and by the rise in internet shopping on food and non-food purchases. This is occurring at a time when our town

centres and high streets, including Cheltenham Town Centre, are trying to recover from the longstanding detrimental effects of the economic recession on consumer, business, occupier and investor confidence. The key issues and challenges facing Cheltenham Town Centre and other town centres across the UK include:

- limited and falling market demand from retailers for representation on the High Street (i.e. the 'pool' of retailers seeking space in town centres is shrinking dramatically);
- the closure and/or relocation of retailers to out of town locations. For example, it was announced within the last month that Marks & Spencer is to close nine stores as part of a drive to optimise space across its estate, including in Wood Green, Stevenage and Hounslow. This follows on from the closure of its full variety stores in Harlow, Great Yarmouth, Rugby and other centres, where in most cases they have been the High Street's main anchor store for over 50 years;
- the rise in vacancies, and the presence of many long term vacant units in centres;
- static and/or falling Zone A rents on prime shopping streets; and
- the '*ticking time bomb*' of leases coming up for renewal in town centres, that will result in more retailers abandoning town centres and high streets.

In the case of Cheltenham, for example, DPP refer in their most recent letter to the fact that prime retail rents have increased to £180 per sqft, from a low of £170 per sqft in 2012. However the Council should be aware that this only provides a partial picture of the town centre's rental performance, as DPP's rental figures are for The Promenade only (i.e. the town's prime shopping pitch). Elsewhere in the town centre our clients' retail agents have confirmed that prime rents have fallen back by more than one-third on the High Street to £150 per sq ft, and are notably below this level on lower High Street and in Regent Arcade. This downward movement in rental levels over recent years also needs to be considered alongside the rise in the number of vacant units across the town centre, including long term vacancies in The Brewery (units 5, 6 and 7), and the fact that many retailers in the town centre benefit from flexible and short term leases which means they can vacate their premises at relatively short notice. This clearly points to the underlying fragility of the town centre's overall retail market.

It is also a matter of fact that the application proposal will significantly strengthen the out-of-centre retail and commercial leisure offer on the busy Tewkesbury Road, and at the same time weaken the town centre's attraction, market share, vitality and viability.

The application site is located in close proximity to the Gallagher and Kingsditch Retail Parks, as well as other major national retail brands such as M&S Home, which is located immediately adjacent to the application site. There can be no doubt that allowing a substantial quantum of new retail and commercial leisure floorspace in this established out-of-centre location will compete directly with the town centre for trade, and for existing and new occupiers. For example, recent lettings at Gallagher Retail Park have included the national retailers Sports Direct (1,858m²) and Outfit, which comprises a wide range of high street brands (including Top Shop, Top Man, Warehouse, Dorothy Perkins, BHS, Evans and Wallis), as well as click-and-collect. The Council should be aware that a number of these retailers and brands had previously been identified as potential occupiers for The Brewery Phase 2 development. Their opening outside the town centre has therefore had a direct impact on our client's letting and marketing strategy for this important and critical new investment in the town centre.

At the same time other national food and beverage operators have recently opened at Gallagher Retail Park; including Costa Coffee, Subway, Greggs and Patisserie Valerie. The wide range and choice of food and non-food retailers along Tewkesbury Road, along with the extensive food and beverage offer, now means that shoppers do not necessarily have to visit the town centre to meet their shopping and leisure needs. The addition of new retail floorspace, a gym and public house/restaurant to the mix of uses in this location will further reduce the need for shoppers to travel to the town centre.

As a result, and for the reasons set out in our April letter to the Council, the application proposal will bring absolutely no benefits to the town centre in terms of linked trips, expenditure and new jobs. Any

benefits that may arise from the proposed retail and commercial leisure floorspace will flow to the existing out-of-centre facilities in close proximity to the application site; further strengthening the attraction of Tewkesbury Road to shoppers and other car-borne visitors, and increasing the cumulative impacts on the town centre. Furthermore, any jobs created by the new application proposal could be easily outweighed by the loss of jobs in the town centre through the downsizing of existing units and/or store closures,

Furthermore, the impact of the application proposal will be acutely felt by the smaller regional and independent businesses trading in the town centre that depend on the footfall and linked trip expenditure generated by the larger shopping centres and national occupiers to help underpin their turnover, profitability and overall viability.

In this context allowing the application proposal will send out entirely the wrong message to existing stakeholders, businesses and retailers in the town centre. As we explained in our April letter to the Council, there can be no doubt that the proposed out-of-centre floorspace *will* compete 'like against like' with our clients' shopping centre investments and tenants, and with the town centre as a whole. But this competition will not be on a 'level playing field' in commercial terms, as the out-of-centre scheme will benefit from a number of significant competitive advantages over the new town centre floorspace including, for example, free parking, easy access by car and lower overhead costs for operators. As a result, the likely scenario is that retailers and leisure operators seeking space in Cheltenham will choose to locate in the out-of-centre scheme first, ahead of the new floorspace planned for the town centre. In turn, this will result in a significant adverse impact on operator demand and investment confidence in The Brewery Phase II extension and the town centre as a whole.

The delivery of the Brewery Phase II extension by Winter 2016 is critically needed to ensure the future attraction and performance of the town centre, and is fully in accordance with the local planning authority's and Government's objectives to promote new development and investment in town centres first. As set out in our April letter to the Council, this extension will provide an additional 10,219m² of new retail floorspace, with 7,430m² being available for new occupiers. In total this represents over 12,077m² (130,000 sq ft) of existing and new retail accommodation in flexible units that can range in size from c.279m² (3,000 sq ft), up to 5,574m² (60,000 sq ft); these units are of a size that could accommodate the proposed retail floorspace on the application site.

Whilst the applicant has drafted conditions as part of their recent correspondence with Cheltenham Borough Council which they state seek to address the significant concerns raised by DPDS, our clients and other key town centre stakeholders with regard to the impact of the application proposal on the town centre, the fact remains that allowing the substantial additional retail and commercial leisure floorspace on Tewkesbury Road will significantly undermine our clients' investment in, and the marketing of their shopping centre assets at this crucial stage in the recovery of the town's retail market.

At the same time, Canada Life Limited is investing millions in the Regent Arcade shopping centre. This includes improvements to the front entrance to the scheme and the construction of a new unit of circa 1,255m² (13,500 sq ft). TK Maxx is also an important anchor store, attracting customers to the centre and driving footfall, spend and turnover across the shopping centre and town as a whole. The unit has recently been extended by our client to provide a larger modern format unit of 3,112m² (33,500 sq ft) selling a wide range and variety of goods. Although we note the planning obligation offered up by the applicant in their recent correspondence with the Council, the local planning authority should be aware that there is absolutely no guarantee in the current uncertain retail market that TK Maxx will maintain their presence in the town centre once the five year time limit expires as proposed by the applicant. Furthermore, evidence from elsewhere suggests that TK Maxx will be unlikely to invest further in their town centre store if they are able to trade from the out-of-centre application site. The Council will also be aware that BHS is another key anchor store in Regent Arcade, occupying a unit of c.4,924m² (53,000 sq ft), but the 171-store portfolio has recently been sold and there is absolutely no guarantee that BHS will maintain their presence in the town centre in the foreseeable future.

In summary we advise the Council that the application proposal will result in a significant adverse impact on the overall vitality and viability of the town centre and the application should therefore be refused in accordance with the NPPF (paragraph 27).

Turning to the applicant's recent comments on the sequential approach in their letter of 23rd June 2015, they have made only a cursory reference to the merits of The Brewery Phase II scheme and other sites in the town centre for new retail and commercial leisure floorspace of a similar format and scale to that proposed for the application site.

We can only repeat the facts presented in our April letter that The Brewery Phase II development is clearly **available** and **suitable** for the proposed development. It will provide 10,219m² (110,000 sq ft) of new retail and leisure floorspace, with the flexibility to suit a variety of retailer requirements, sizes and business models. The units in Phase II will also benefit from a highly prominent retail frontage, a 4.6 metre floor to ceiling height, with the floorspace arranged over ground and first floor level. There can be no doubt therefore that in planning and commercial terms The Brewery can accommodate the scale, format and type of retail and leisure operators identified for the application proposal.

Furthermore, the applicant appears to dismiss the mixed use development opportunity at North Place out of hand, even though it clearly has an extant permission for a large quantum of Class A1 retail floorspace and Morrisons is no longer seeking to deliver a larger superstore on this site. We will leave it to the Council's independent retail planning consultant – DPDS – to review the merits of this town centre site in more detail, but in our view it represents a suitable site that is available to accommodate the application proposal.

We therefore maintain that DPP's sequential approach is fundamentally flawed; in as much as they have not demonstrated sufficient flexibility on issues such as format and scale when considering the potential suitability and viability of alternative sites in and/or on the edge of Cheltenham Town Centre. We consider that The Brewery (Phase I and II) by itself is capable of accommodating the scale and type of floorspace proposed for the application site, as well as other potential town centre development sites. The Brewery and other sites in the town centre will also be capable of accommodating the same national multiple retailers that are being targeted for the application proposal.

The application therefore clearly fails to satisfy the sequential test and is contrary to local and national planning policy objectives, and should be refused by the local planning authority on this basis.

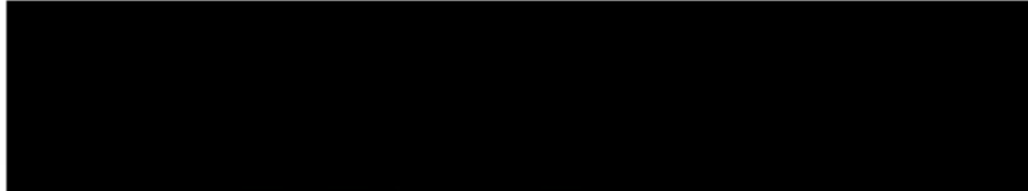
In summary, as two of the major stakeholders in Cheltenham Town Centre, both Canada Life Limited and NFUM are committed to ensuring that new investment and development occurs in the right place, at the right time, to help strengthen the town as an attractive, sustainable and commercially viable place to live, work, shop and visit for a range of uses and activities. In this context the multi-million pound investment planned for The Brewery Phase II and Regent Arcade will provide the flexible accommodation required by modern retail and leisure operators in the heart of the town centre. It has been demonstrated that these planned town centre investments will provide the necessary scale, format and type of units identified for the application proposal in a sequentially preferable location. The application is therefore clearly contrary to the NPPF (paragraph 27) and local plan policy, which seeks to promote new development and investment in town centres first.

Furthermore, the application proposal is seeking a substantial quantum of retail floorspace in an out-of-centre location. It is a considerable distance and drive from the Town Centre, and will bring no material benefits to the town's vitality and viability in terms of linked trips, increased footfall and expenditure. It is also apparent that the proposed out-of-centre scheme will not complement the Town Centre as the applicant states, but will compete '*like against like*' for operators, customers and retail expenditure. We have clearly demonstrated that it will result in a significant adverse impact on our clients' planned investment in the town centre, contrary to national and local plan policy objectives.

The application therefore fails to satisfy the sequential test and will result in a '*significant adverse impact*' on the town centre's overall vitality and viability, contrary to the NPPF (paragraph 27) and the Council's local plan policies. It should therefore be refused without hesitation and delay.


I trust that this supplementary response is helpful to the local planning authority and will be used to inform its decision taking. However, if you do require further clarification please contact me directly.

Yours sincerely



Dr Steven Norris BA MPhil PhD MRTPI

Partner & Head of National Retail and Town Centre Consultancy
for and on behalf of Carter Jonas



28 July 2015

Delivered by email and post

Mr Edward Baker
Planning Department
Cheltenham Borough Council
Municipal Offices
Promenade
Cheltenham
GL50 9SA

Dear Mr Baker

COTSWOLD BMW SITE, TEWKESBURY ROAD – MIXED USE RETAIL AND LEISURE SCHEME

We write on behalf of our Client, Trustees of the BlackRock UK Property Fund (namely BNP Paribas Securities Services Trust Company (Jersey) Ltd and BNP Paribas Securities Services Trust Company Ltd) who own the Beechwood Shopping Centre in Cheltenham Town Centre, to object to planning application 15/00321/OUT for the following development:

“Up to 3,892 sqm of Class A1 (shops) floorspace, up to 603 sqm of A4 (drinking establishment) floorspace and up to 395 sqm of D2 (gym) floorspace with associated parking”.

The application is made in outline and all matters are reserved. A single building made of up five separate units is proposed, comprising three retail units with mezzanine floors, a public house and a gym at first floor level.

We are aware of the representations made by Carter Jonas on behalf of NFU Mutual Insurance Society Limited – the owners of The Brewery retail and leisure scheme; and Canada Life Limited – owners of Regent Arcade, as well as the report prepared by DPDS Consulting on behalf of the Council. We support these objections.

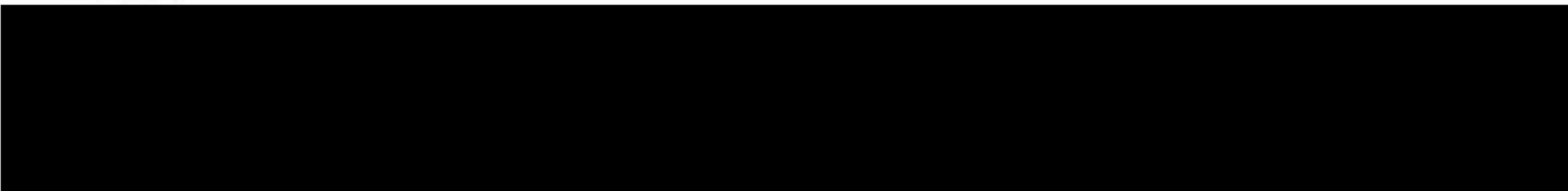
In summary our objection relates to:


- (i) The proposed development's failure of the sequential test
- (ii) The impact of the proposals on Town Centre investment

Planning Policy Context

The National Planning Policy Framework (“NPPF”) adopts a Town Centre first approach to retail, leisure and office uses, which is echoed by the adopted Cheltenham Borough Local Plan Second Review (“LPSR”) (July 2006) and the emerging Joint Core Strategy (“JCS”) prepared by Gloucester City,

9 Colmore Row
Birmingham
B3 2BJ





Cheltenham Borough and Tewkesbury Borough Councils (submitted for Examination in November 2014). Indeed Paragraph 23 of the NPPF states that local planning Authorities should recognise town centres as the heart of their communities and pursue policies to support their viability and vitality.

Policy CP2 (Sequential Approach to the Location of Development) of the LPSR establishes that key town centre uses, such as commercial, entertainment and leisure uses, will only be permitted in out of centre locations if there are no suitable sites or buildings for conversion available, or could be readily made available, in either the Core Commercial Area, or district or neighbourhood centres. Similarly Policy RT1 (Location of Retail Development) states that retail development should only be permitted in out of centre locations if there are no suitable sites or buildings suitable for conversion available in the following locations:

- The Central Shopping Area;
- The Montpellier Shopping Area or the High Street West End Shopping Area;
- Elsewhere within the Core Commercial Area; or
- District or neighbourhood shopping centres.

This approach is reinforced by JCS emerging Policy SD3 which states that the area's centres, made up of the Key Urban Areas (of which Cheltenham is one), Market Towns and Rural Service Centres serving the Rural Hinterland, will be 'supported and strengthened' to ensure that they continue to be the focus of communities.

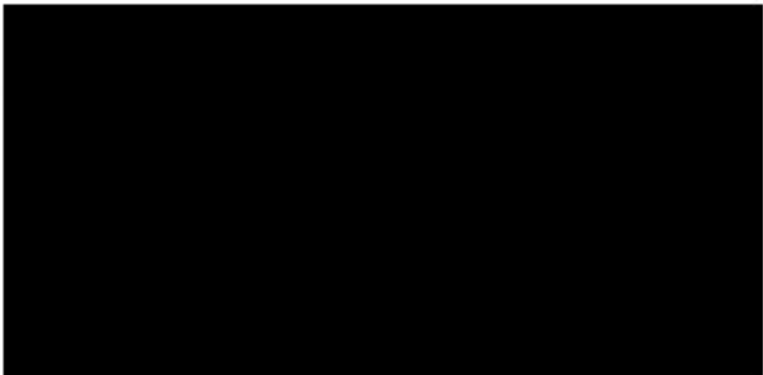
The site is 1.8km to the north west of the 'Core Commercial Area' and the 'Lower High Street Shopping Area', and 2.1km to the north west of the 'Central Shopping Area', as shown on the LPSR proposals Map. It is not located within or near to a district or neighbourhood shopping centre. On this basis it is clear that the site is located in an out of centre location and is not in accordance with the 'Town Centre first' principle. In this respect Paragraph 24 of the NPPF establishes that:

"Local planning authorities should apply a sequential test to planning applications for main Town Centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. They should require applications for main Town Centre uses to be located in Town Centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered" (Underlining our emphasis).

Sequential Test

The Retail and Planning Statement submitted with the application confirms that there are no committed occupiers and therefore the proposals comprise open A1 use, although 'interest' has been expressed by four national retailers, one of whom is already present in Cheltenham Town Centre, culminating in letters of support being submitted in support of the application from two of the 'interested' retailers (namely TK Maxx and Brantano).

We agree with both the Carter Jonas representations and DPDS Consulting report that the sequential test has not adequately considered suitable sites within the Town Centre. We are mindful of the Tesco Stores Ltd v Dundee City Council Supreme Court decision and the Rushden Lakes appeal decision; however the Retail and Planning Statement confirms that there are no occupiers committed to the proposed development. It is therefore clear that the location of the proposed development, and the need for the units to be provided together on a single site, is not driven by a specific operator demand. In this context we are of the view that the applicant's sequential assessment has not demonstrated sufficient flexibility in only considering sites / units in the Town Centre with a total area of 1.02 hectares or greater, rather than smaller sites which could accommodate the uses separately.



Furthermore insufficient evidence is provided as to why the Beechwood Shopping Centre, located in the heart of Cheltenham Town Centre, has not been considered as part of the applicant's sequential assessment. The shopping centre has 38 retail units, mainly in A1 use, of which a substantial proportion is either vacant or let to short term 'pop up' shops.

We are also aware that there is currently over 4,676m² of vacant floorspace at the Brewery Shopping Centre that is available for occupation immediately, as well as the Brewery Phase II development which will deliver a further 10,219m² of new retail and leisure floorspace which will front the Central Shopping Area. It is considered that this is just one location in the Town Centre where there is sufficient existing vacant and new floorspace which could accommodate the proposed development.

The sequential test is also based on a number of assumptions that are not justified by evidence. No evidence is provided to demonstrate why the units assessed in the Town Centre are in an '*unviable*' retail location. This is an assertion rather than an accurate reflection of the market based on evidence.

Accordingly, the sequential is failed and where this is the case, the NPPF dictates that permission should be refused.

Effect on Town Centre Investment

We are concerned that the proposal will adversely affect the ability to attract investment into the Town Centre. In the context of the existing retail provision in the area along Tewkesbury Road (listed below) the proposed development, with its leisure and entertainment provision, could create a new competing retail destination.


- Gallagher Retail Park 100m to the west (including Boots, Hobbycraft, HomeSense, Next and Outfit)
- Kingsditch Retail Park immediately adjacent to the east (including Marks and Spencer, Argos and McDonalds)
- Currys Store immediately opposite
- Homebase and Dunelm Mill stores 200m to the east

It is our view that this combined critical mass of retail development in an out of centre location, including the addition of the proposed development, would create a new retail destination which provides a retail offer of comparison goods that directly competes with the offer of Cheltenham Town Centre. The result of this would be to adversely impact on the attractiveness, marketing and letting of existing vacant and new Town Centre retail floorspace, and ultimately investor confidence, contrary to paragraph 26 of the NPPF and local planning policy.

Whilst it is appreciated that the letter from TJX Europe indicates that there is an identified requirement for a second TK Maxx store in Cheltenham to complement its existing Town Centre store; the application seeks open A1 use which would not be specific to the retailer. No evidence is provided to demonstrate that Cheltenham would be able to sustain two separate TK Maxx stores. Without appropriate safeguards, this could see the closure of the Town Centre store in favour of the unit at the proposed site, undermining the 'Town Centre first' approach of local and national planning policy.

Conclusions

It is our view that the sequential test is failed. Insufficient evidence has been provided to demonstrate that the proposed development could not be accommodated on suitable, available and viable sites within Cheltenham Town Centre in accordance with 'Town Centre first' approach adopted by both local and national planning policy. The applicant's sequential assessment fails to consider the Beechwood



Shopping Centre, located in the heart of the Town Centre, of which a substantial proportion is either vacant or let to short term 'pop up' shops.

There is also concern that the proposed development will enhance the existing out of centre retail offer in the area surrounding Tewkesbury Road, creating a critical mass which will directly compete with Cheltenham Town Centre's retail and leisure offer, adversely impacting on investor confidence in the centre and ultimately undermining the Town Centre's viability and vitality, and its role as the 'heart' of the community, contrary to local and national planning policy.

Substantial weight should be afforded to the objections made by investors in Cheltenham Town Centre; these objections make clear their concerns regarding the impact of the proposed development on the viability and vitality of the Town Centre and the harm it could inflict on the overall 'Town Centre first' strategy, and investor confidence.

We trust that our comments will be taken into consideration when determining this planning application. Please do not hesitate to contact me should you have any queries.

Yours sincerely



Senior Planner

