



NEXUS
PLANNING

Proposed Foodstore and Retail Development at Land off Bankwood Way

Appraisal of Retail Policy Issues

On behalf of Kirklees Council

September 2021

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1 Introduction

Instruction and Background

- 1.1 Kirklees Council (hereafter referred to as 'the Council') has instructed Nexus Planning to provide advice in respect of planning application reference 2021/62/92528/E.
- 1.2 The application relates to a site located adjacent to Birstall Shopping Park, accessed from Bankwood Way in Birstall, and seeks full permission for the erection of a foodstore and retail unit with associated access, car parking, servicing and hard and soft landscaping. The site comprises an area of brownfield land previously occupied by a number of office buildings, which were demolished following a period of vacancy and the site has been cleared.
- 1.3 The application has been submitted by Lichfields on behalf of Lidl GB Limited ('Lidl'), and was validated on 21 June 2021. It is accompanied by a number of supporting documents, including a Planning and Retail Statement (dated May 2021), prepared by Lichfields.
- 1.4 The Planning and Retail Statement has been prepared following a pre-application review of Lichfields' Proposed Retail Methodology note in February 2021, which provided a summary of the proposed approach to addressing both the sequential and impact tests. As part of the pre-application review, Nexus provided a Scoping Response dated 5 February 2021, which provided comments on Lichfields' intended methodology to be adopted in respect of the key retail policy tests. We comment further on these matters as part of this appraisal where relevant.
- 1.5 As such, the purpose of this appraisal report is to consider the merits of the current application in terms of its compliance with retail and town centre planning policy, as set out by the statutory development plan and by the National Planning Policy Framework ('NPPF').
- 1.6 At the outset, it is important to note that outline planning permission was granted on 9th January 2020 for four retail units, with associated works (reference 2018/92563). Condition 5 attached to the outline permission restricts the gross floorspace of the development to a maximum of 7,896 sq.m. Condition 6 states that this gross floorspace should be provided in four separate units (with one unit of up to 2,322 sq.m, and three separate units of up to 1,858 sq.m each). Condition 7 adds that the sale of convenience goods shall not exceed 30% of the gross floorspace (i.e. 2,368 sq.m).
- 1.7 The Council instructed WYG in 2019 to appraise the extant planning permission in respect of its compliance with the relevant retail policy tests (the sequential and impact assessments). At the time

of this appraisal, another scheme for a new retail park was also being considered by the Council at Centre 27, which was subsequently refused. As such, the key conclusions in respect of the impact of the extant scheme only are of relevance here, and we summarise WYG's conclusions below:

- WYG concluded that there were no available and suitable sites to accommodate the proposed development, even when applying a sufficient degree of flexibility;
- WYG also concluded that the scheme would not have a significant adverse impact on planned or committed town centre investment; and
- That they did not believe that the magnitude of the trade diversion impact arising from the proposal at any of the centres assessed would be at a level which could be deemed significant adverse, even when considered in the context of the other extant retail schemes in the catchment.

1.8 In light of the above, a key consideration (which we will cover later in this appraisal) is this 'fallback' position and whether there have been any material changes which could alter the previous conclusions reached, particularly having regard to any potential implications on the health of defined centres as a result of the COVID-19 pandemic.

Proposal and Application Site

1.9 The application site comprises approximately 1.53 hectares, and includes a brownfield site, which was previously occupied by office buildings but have been demolished and the site subsequently cleared.

1.10 The application site is located on Bankwood Way, which in turn is accessed from the A62 Gelderd Road, which is the primary road linking Birstall town centre with Junction 27 of the M62. It is bounded by: Bankwood Way, with fast food restaurants and a cinema beyond, to the north; an area of open grassland to the south and east; and, office buildings and Woodhead Road, with restaurants beyond, to the west.

1.11 The entrance of the proposed store and retail unit would be situated approximately 1,900 metres to the north of Birstall town centre¹. As such, we consider it to be 'out of centre' for the purpose of retail and main town centre planning policy (albeit it the site is well-connected to a number of large format retail and leisure units at Birstall Shopping Park).

¹ Based on the quickest and most direct route 'on foot'.

1.12 Key details of the application proposal are provided by paragraphs 3.1 and 3.3 to 3.5 of the Planning and Retail Statement, which indicate that:

'The proposed development includes the following:

- **A new 2,231 sqm gross internal area (1,414 sqm net sales area) Lidl store built to the latest specifications;**
- **A separate Home Bargains store of circa 2,280 sqm gross internal area (2,014 sqm net sales area) with associated garden centre;**
- **A joint servicing area to the rear of the stores;**
- **175 car parking spaces including 10 accessible spaces, 2 electric vehicle charging spaces, and 9 parent and child spaces;**
- **A co-ordinated scheme of landscaping around the site including a ramped footpath link from Woodhead Road; and**
- **Vehicular access from Bankwood Way and Woodhead Road**

The new Home Bargains store would be accommodated within the western part of the site, adjacent to Woodhead Road. The Home Bargains store's entrance is located on the northern elevation of the building, facing onto the proposed car parking area. The associated garden centre would be to the rear (west) of the store. A shared service yard will be located to the rear of the stores, in the south western corner of the site.

Vehicular access into the site will be taken via an upgraded access from Bankwood Way adjacent to Paradigm House which would also provide access for service vehicles. In addition, a new vehicular access would be provided from Woodhead Road.'

1.13 Paragraph 3.2 of the Planning and Retail Statement indicates that:

- In terms of the proposed Lidl store, 80% of the identified net retail sales area will be dedicated to convenience goods (equating to 1,131 sq.m) and 20% to comparison goods (equating to 283 sq.m); and
- In terms of the proposed Home Bargains store, 45% of the identified net sales area of the store will be dedicated to convenience goods (equating to 906 sq.m) and 55% to comparison goods (equating to 1,108 sq.m).

1.14 Our appraisal proceeds on this basis.

Structure of Our Report

1.15 In the above context, our appraisal focuses on the proposal's compliance with retail and town centre planning policy as set out by the statutory development plan and by the NPPF. All other planning policy matters and other material considerations fall outside the scope of our instruction and it will be necessary for the Council to take appropriate account of such matters in its determination of the application.

1.16 Our report is therefore structured as follows:

- Section 2 sets out the retail and town centre planning policy of relevance to the application proposal;
- Section 3 considers the compliance of the proposal in respect of the sequential approach to development;
- Section 4 considers the acceptability of the impacts arising from the proposal; and
- Section 5 provides our conclusions in respect of the compliance of the application proposal with retail and town centre policy.

2 Planning Policy Context

2.1 We identify below the principal planning policies of relevance to retail and town centre matters.

National Planning Policy Framework

2.2 The most recent iteration of the National Planning Policy Framework ('the revised NPPF') was published in July 2021. It emphasises the Government's commitment to securing economic growth and building a strong, responsive and competitive economy. With regard to the assessment of proposals for main town centre development, the revised NPPF provides two principal national policy tests relating to the sequential approach to development and to impact.

2.3 In respect of the first of the two tests, paragraph 87 of the revised NPPF states that local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in accordance with an up-to-date plan.

2.4 Paragraph 87 goes on to state that:

'Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.'

2.5 Paragraph 88 then identifies that:

'When considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.'

2.6 Paragraph 90 of the NPPF sets out a twin impact test, stating that:

'When assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date plan, local planning authorities 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 of gross floorspace). This should include assessment of:

- **the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and**

- **the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider retail catchment (as applicable to the scale and nature of the scheme).**

2.7 Paragraph 91 indicates that, where an application fails to satisfy the sequential test or is likely to have a significant adverse impact on one or more of the above factors, it should be refused. However, this direction cannot extinguish the requirement set out in statute to first consider development plan policy and then all material considerations in assessing the ‘planning balance’ when making a decision.

Adopted Development Plan

2.8 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that:

‘...if regard is to be had to the Development Plan for the purpose of any determination to be made under the planning acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.’

2.9 The statutory development plan in this instance is the Kirklees Local Plan, which was adopted in February 2019.

2.10 The Local Plan Policies Map identifies that the application site is allocated as a Priority Employment Area through Policy LP8 (ref. PEA46). Policy LP8 states that proposals for development for employment generating uses will be supported where there is no conflict with established employment uses, and indicates that Policy LP13 will be applied to proposals which seek to use such sites for main town centre uses. The site is also located within a Mineral Safeguarding Area.

2.11 Policy LP13 relates to town centre uses, and sets out the tests which should be applied to such development. The policy sets out a hierarchy for development (with Huddersfield and Dewsbury town centres at the top), and provides a sequential test which indicates that:

‘Proposals which come forward for main town centre uses, which are located outside of the defined centre boundaries, will require the submission of a Sequential Test. For retail proposals the boundary shall form the Primary Shopping Area; for all other main town centre uses this shall be the extent of the centre boundary. Main town centre uses shall be first located in the defined centres, then edge of centre locations, and only if there are no suitable sites shall out of centre locations be considered.’

The scope and content of any Sequential Test shall be agreed with the council and shall be reflective of the scale, role and function of the proposal.

Proposals which fail to pass the sequential test will not be supported.'

- 2.12 In respect of the matter of impact, Policy LP13 indicates that an impact assessment will be required for all retail proposals across the authority area that provide more than 500 sq.m gross floorspace. Where a proposal is within 800 metres of the boundary of a town or district centre, the local impact threshold is 300 sq.m gross floorspace. Where a proposal is within 800 metres of a defined local centre, the local impact threshold is 200 sq.m gross floorspace. As such, there is clearly a requirement to consider the impacts arising from the application proposal in this instance.
- 2.13 In terms of impact, Policy LP13 indicates that proposals which have a significant adverse impact on the vitality and viability of a centre, or compromise the role and function of a centre will not be supported.

Overview in Respect of Relevant Retail and Town Centre Planning Policy

- 2.14 Policy LP13 is broadly consistent with national retail planning policy as set out in the NPPF. However, the NPPF provides additional detail in identifying two particular strands in respect of the impact test.
- 2.15 As such, we first consider the application proposal's compliance with the key retail tests as articulated by national planning policy, before then returning to the matter of the proposal's compliance with the relevant retail policies of the development plan in the concluding Section 5 of our report.

3 The Sequential Test

Requirements of the NPPF and Planning Practice Guidance

- 3.1 Paragraph 87 of the NPPF sets out the order of preference in applying the sequential approach. The first preference is for main town centre use development to locate in town centres, followed then by edge of centre locations, and only if no other suitable sites are available should out of centre sites be considered.
- 3.2 Paragraph 88 indicates that, when considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale.
- 3.3 Additional guidance on the application of the sequential test is provided by the Town Centres and Retail Planning Practice Guidance ('the Town Centres PPG'), which was last updated on 18 September 2020.
- 3.4 Paragraph 011 of the Town Centres PPG provides a 'checklist' for the application of the sequential test in decision taking. It indicates the following considerations:
- With due regard to the requirement to demonstrate flexibility, has the suitability of more central sites to accommodate the proposal been considered? Where the proposal would be located in an edge of centre or out of centre location, preference should be given to accessible sites that are well connected to the town centre. Any associated reasoning should be set out clearly.
 - Is there scope for flexibility in the format and/or scale of the proposal? It is not necessary to demonstrate that a potential town centre or edge of centre site can accommodate precisely the scale and form of development being proposed, but rather to consider what contribution more central sites are able to make individually to accommodate the proposal.
 - If there are no suitable sequentially preferable locations, the sequential test is passed.
- 3.5 In this instance, the application site is out of centre. As such, there is a need to consider in and edge of centre sites, and whether there might be any better connected out of centre sites, as part of the NPPF test.

3.6 In reviewing sequential alternative sites, it is necessary to review the parameters of relevance to the application of the test in order to determine which sites have realistic potential. In this context, it is first helpful to consider how the Courts and the Secretary of State have considered the matter of flexibility in applying the test before then considering the appropriateness of the site search parameters identified by the applicant.

Suitability and Flexibility

3.7 Case law has emphasised that the 'suitability' of sequential alternatives must be considered with reference to the subject application proposal and whether the proposal (or a variant thereof, allowing for some flexibility in respect of its format) could be accommodated at a sequentially preferable location.

3.8 In particular, it is appropriate to take into account the *Tesco Stores Limited v Dundee City Council* [2012] UKSC 13 Supreme Court judgment which gave specific consideration to the meaning of 'suitable' in respect of the application of the test.

3.9 Paragraph 38 of the Dundee judgment states that:

'The issue of suitability is directed to the developer's proposals, not some alternative scheme which might be suggested by the planning authority. I do not think that this is in the least surprising, as developments of this kind are generated by the developer's assessment of the market that he seeks to serve. If they do not meet the sequential approach criteria, bearing in mind the need for flexibility and realism...they will be rejected. But these criteria are designed for use in the real world in which developers wish to operate, not some artificial world in which they have no interest in doing so.' (Our emphasis.)

3.10 The Supreme Court has jurisdiction over England and, whilst there is a clearly need to consider its findings in the appropriate local policy context, both the Courts and the SoS have found the direction to apply the test 'in the real world' to be of some relevance to the English planning system. This is demonstrated by the 'call in' decision in respect of an application by LXB RP (Rushden) Limited to provide for large-scale retail-led development at land adjacent to Skew Bridge Ski Slope at Rushden Lakes (Planning Inspectorate reference APP/G2815/V/12/2190175).

3.11 Paragraph 8.46 of the Rushden Lakes Inspector's Report states that:

'It is important to bear in mind that the sequential test as set out in NPPF require applications for main town centre uses to be located in town centres and it then runs through the sequence, edge and then out-of-centre. This makes good the very simple point that what the sequential test seeks is to see whether the application i.e. what is proposed, can be accommodated on a town centre site. There is no suggestion

here that the sequential test means to refer to anything other than the application proposal. So Dundee clearly applies to the NPPF.' (Inspector's emphasis.)

3.12 Given the above, it is evident that sequential alternatives must be viewed in the context of whether they meet the broad 'real world' requirements of a development of this nature.

Parameters

3.13 Appendix 1 of the submitted Planning and Retail Statement sets out Lichfields' Retail Assessment Methodology adopted in respect of the application of the retail policy tests. In this regard, the Appendix also identifies the criteria adopted in considering the potential of sequential sites to accommodate the proposal (the site search parameters).

3.14 The criteria adopted by the applicant can be summarised as the following:

- the need for potential alternative sites to be able to accommodate new retail development of a similar scale and nature. Lichfields refer to the application site measuring a total of 1.53ha but acknowledges that the sequential assessment needs to take account of the requirement to apply flexibility in terms of format and layout;
- whether the site lies within, or on the edge of, existing centres;
- whether the site can be satisfactorily serviced and accessed by vehicles;
- whether there are any land assembly issues which could constrain future development;
- what the current land use are at alternative sites and whether there is a requirement for these to be relocated;
- whether the site is commercially attractive to operators; and
- other potential constraints, such as conservation area and listed building designations, tree preservation orders, topography, and so on.

3.15 We can confirm that we consider the above to be relevant matters to be afforded appropriate consideration when reviewing the potential of alternative sites.

3.16 We note that Appendix 1 of the Planning and Retail Statement confirms that the applicant has adopted a Study Area which includes Zone 9 from the Kirklees Retail Study as the Primary Catchment Area, and also includes Zones 4, 8 and 10 to form the wider Study Area. This is considered to be a

reasonable approach, particularly in light of the nature of the proposal and the areas from which the proposed units are likely to draw their trade.

On the basis of this Study Area, the applicant's sequential search is focused around Batley town centre and Birstall district centre in Kirklees, and Morley town centre in Leeds. At Paragraph 6.4 of the Planning and Retail Statement, Lichfields confirms that their assessment has discounted local centres in the Study Area, such as Cross Bank-Carlinghow and Mount Pleasant, as these **'...perform a localised role and function and, as such, new retail development there would not be able to serve the same catchment as the proposed Lidl and Home Bargains stores on the application site.'**

- 3.17 We note that Local Plan Policy LP13 identifies a retail hierarchy, with the expectation being that local centres will provide for top-up shopping and local service needs, particularly food and drink. However, whilst we recognise that the development plan generally seeks to direct larger retail proposals towards higher order centres, there is no national policy test which provides a direct 'scale' test. In any event, neither Nexus nor the Council are aware of any sites within or in proximity to the local centres within the catchment which offer genuine potential to accommodate the application proposal in practice.
- 3.18 Having reviewed the location of existing foodstores and the geography of the surrounding area, we are satisfied that the applicant's approach is appropriate and that no other centres offer genuine potential to serve a similar catchment area in a similar manner. Accordingly, we accept that the three centres identified in the applicant's Planning and Retail Statement appropriately comprise the area of search in respect of sequential alternative sites.
- 3.19 Lichfields identify five sites within or on the edge of Batley, Birstall and Morley defined centres.

Assessment of Potential Alternative Sites

- 3.20 We review the sequential alternative sites identified by the applicant below.

Sites in Proximity to Batley Town Centre

Former Batley Working Men's Club, Wellington Street

- 3.21 The site of the former Batley Working Men's Club comprises cleared brownfield land, which is unallocated in the Local Plan and remains vacant at 2021. As such, it is considered that the site is available to accommodate the application proposal.

3.22 Notwithstanding this, the site extends to approximately 0.2 hectares, which is considerably less than the application site. Even allowing for a sufficient degree of flexibility, it is clear that this site is not suitable to accommodate the application proposal.

3.23 Given the above, whilst the site could be considered available, we agree that it is not suitable to accommodate the application proposal.

Blakeridge Mill, Mayman Lane

3.24 This site has been built out by B&M, pursuant to planning approval ref. 2017/62/93925/E. The application granted permission for the erection of three retail units in total.

3.25 The largest of these, Unit A, extends to 2,323 sq.m and is occupied by B&M, with other occupiers including Mullaco, a specialist food store. As such, it is not believed that there is a unit or units available to accommodate the application proposal.

3.26 We agree that the site is not available or suitable to accommodate the development proposed.

Victoria Works, 444-446 Bradford Road, Batley

3.27 The site comprises a number of vacant former industrial buildings known as Victoria Works and previously benefitted from an outline planning approval (ref. 2016/60/93147/E) for residential development which has now expired and no longer remains extant. No further planning applications have been submitted pursuant to the outline approval. On this basis, it is considered that the site could be considered to be available.

3.28 However, we note that the site extends to approximately 0.4 hectares which is not sufficient to accommodate the application proposals, even when allowing for a sufficient degree of flexibility.

3.29 As such, whilst it is considered that the site is available to accommodate the application proposal, we do not believe that the site is suitable to accommodate the application proposal.

Sites in Proximity to Birstall District Centre

3.30 The applicant's Planning and Retail Statement sets out that there are no potential alternative sites identified in proximity to Birstall district centre. Nexus Planning are also not aware of any potential available sites in proximity to Birstall district centre.

Site in Proximity to Morley Town Centre

Land at Rod Mills Lane

- 3.31 The site is located immediately adjacent to Morley town centre and is edge of centre in policy terms. The site extends to approximately 1.84 hectares, however it is located within a defined Conservation Area and within the site itself is a Listed Building. Whilst the site size could be suitable to accommodate the application proposal, the nature of the site itself is considered to be a challenging site. As such, the site is not considered to be suitable. Furthermore, the site itself is allocated within the Leeds Site Allocation Plan for residential development.
- 3.32 Notwithstanding the site's housing allocation, the majority of the site is set back from Fountain Street and is unlikely to provide a sufficiently visible location for a foodstore.
- 3.33 Accordingly, in the 'real world' in which the sequential test should be applied, we do not believe that the site is suitable to accommodate the application proposal.

Scatcherd Works, Scatcherd Lane

- 3.34 The site benefits from an extant planning approval (ref. 19/07611/FU) for the demolition of the existing industrial building and construction of nine dwellings. This approval indicates that the site is likely to come forward for residential development, and as such is not considered to be available for the development proposals. Notwithstanding this, the site itself is considered to be too small to accommodate the application proposals even allowing for a degree of flexibility.
- 3.35 As a consequence of the above, we find that the site is not available and not suitable to accommodate a foodstore use.

Conclusion in Respect of the NPPF Sequential Test

- 3.36 We have reviewed all of the sites and locations considered by the applicant in its submission and do not believe that any one is both available and suitable to accommodate the application proposal. Whilst we note that other sites are being marketed in the area², we are unaware of any which are in a sequentially preferable location relative to the application site and are available and suitable for the proposed development (even when allowing for appropriate flexibility in terms of format and scale).

² Including an Industrial Warehouse Unit at Grange Road, Batley (² <https://propertylink.estatesgazette.com/property-details/6516651?INTCMP=target-property-card-experience-a>), Unit 3, Bridge Street, Morley (<https://propertylink.estatesgazette.com/property-details/6726099?INTCMP=target-property-card-experience-a>) and Land off Wakefield Road (<https://propertylink.estatesgazette.com/property-details/6676983?INTCMP=target-property-card-experience-a>)

3.37 Given the above, we find that the application proposal conforms to the requirements of the sequential test as articulated by Policy LP13 of the Local Plan and paragraphs 87 and 88 of the NPPF.

4 The Impact Test

Requirements of the NPPF and the Ensuring the Vitality of Town Centres PPG

4.1 Paragraphs 90 and 91 of the NPPF indicate that application proposals for retail and leisure development should be refused planning permission where a significant adverse impact is likely to arise from development. In assessing the significance of impacts arising from development, it is necessary to reflect upon the advice set out in the Town Centres PPG. In this regard, paragraph 017 states that:

‘A judgement as to whether the likely adverse impacts are significant can only be reached in light of local circumstances. For example in areas where there are high levels of vacancy and limited retailer demand, even very modest trade diversion from a new development may lead to a significant adverse impact.’

(Our emphasis.)

4.2 It should also be recognised that impacts will arise with all retail developments, but that these will not always be unacceptable, not least because development often enhances choice and competition. It is therefore necessary to differentiate between those developments that will have an impact and those that will undermine the future vitality and viability of established centres, i.e. have a ‘significant adverse’ impact.

4.3 Paragraph 016 of the Town Centres PPG is also of some relevance in considering how the impact test should be applied. It states that:

‘As a guiding principle impact should be assessed on a like-for-like basis in respect of that particular sector (e.g. it may not be appropriate to compare the impact of an out of centre DIY store with small scale town-centre stores as they would normally not compete directly). Retail uses tend to compete with their most comparable competitive facilities.’

4.4 In this case, we anticipate that the foodstore will trade most directly against other convenience goods retailers capable of supporting some main food shopping trips within and close to Kirklees Retail Study Zone 9.

4.5 The two key impact tests identified by paragraph 90 of the revised NPPF are considered below. The tests relate to:

- the impact of the proposal on existing, committed and planned public and private sector investment in a centre or centres in the catchment area of the proposal; and

- the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider retail catchment (as applicable to the scale and nature of the scheme).

4.6 The compliance of the proposal with each of the two strands of the test is set out below.

The Impact of the Proposal on Existing, Committed and Planned Public and Private Sector Investment in a Centre or Centres in the Catchment Area of the Proposal

- 4.7 Paragraph 7.7 of the submitted Planning and Retail Statement indicates that it is not considered that the proposal would impact upon any planned investment in any relevant centres. In this regard, we can confirm that we are unaware of any such development within Batley town centre, Birstall district centre nor any of the local centres (such as Cross Bank-Carlinghow and Mount Pleasant) within the defined primary catchment area for the proposal.
- 4.8 We are unaware of any other investment of relevance to the first part of the NPPF paragraph 90 impact test. Accordingly, we conclude that proposal conforms to the requirements of the first strand of the national impact test.

The Impact of the Proposal on Town Centre Vitality and Viability, Including Local Consumer Choice and Trade in the Town Centre and Wider Area

- 4.9 The applicant sets out its approach to trade diversion impact at Sections 6 and 8 of its Planning and Retail Statement, and the detailed methodology applied at Appendix 1.
- 4.10 Whilst Lichfields do not make significant reference to the extant scheme (except for referring to it in the planning history section) we are of the view that the extant scheme comprises a material consideration in determining the current planning application. The extant scheme provides for four retail units, with associated access, parking and landscaping. Condition 5 attached to the permission restricts the gross floorspace of the development to a maximum of 7,895 sq.m. Furthermore, Condition 6 provided that the gross floorspace should be provided across four separate units, one extending to 2,322 sq.m and the other three to 1,858 sq.m. Condition 7 limits the sale of convenience goods to no more than 30% of the gross floorspace (2,368 sq.m)
- 4.11 In this case, it is relevant to consider whether the 'fallback' position is genuine and which qualifies as a material consideration. In this regard, the case of Zurich Assurance v North Lincolnshire Council

involved a challenge by Zurich, the owners of much of the retail centre of Scunthorpe, to a decision by North Lincolnshire to grant planning permission for an out-of-town retail development on an existing garden centre site. One of the grounds of Zurich's challenge was that the Council had wrongly taken into account the potential for a fallback open retail scheme. This fallback was claimed to arise because the garden centre had, for many years, sold a wider range of goods than was permitted by the conditions imposed on its planning permission.

- 4.12 While Zurich sought to argue that the committee should have been advised that they could only take a fallback into account if it were a realistic possibility, the Court rejected this; finding that the fallback does not have to be probable or even have a high chance of occurring. Instead the Court held that, in order to be a material consideration, a fallback only has to have "more than a merely theoretical prospect". While the likelihood of the fallback occurring may affect the weight to be attached to it, the Court did not feel it affected its status as a material planning consideration.
- 4.13 It is our view that in light of the nature of the extant consent, the approved sizes of units and the associated conditions controlling the floorspace, then weight can be applied to the fallback position and it is on this basis that we have undertaken the remainder of the appraisal below. However, it is for the Council to determine the degree of weight to be applied in assessing the overarching appropriateness of the application against the relevant policies.
- 4.14 We set out below our appraisal of the principal inputs and assumptions relied upon by the applicant in assessing the impact of the floorspace, referring where relevant to the extant consent and conclusions reached by WYG in 2019, as accepted by the Council in granting consent.

Proposed Catchment Area

- 4.15 Lichfields provides details of the catchment area at Appendix 1 of the Planning and Retail Statement. The justification states that given the location of the application site, the proposed development would draw the most significant proportion of its trade from the north-eastern part of the Borough which broadly reflects Zone 9. As such, they have adopted Zone 9 as the Primary Catchment Area.
- 4.16 They then go on to acknowledge that as the site lies in proximity to a wide range of commercial facilities at Birstall Shopping Park, and its location in the context of the M62, the scheme may also draw trade from a wider area as people combine their trips to the proposed development with the wider commercial area. We consider this likely to be the case.

4.17 In light of the above, we welcome Lichfields' inclusion of Zones 4, 8 and 10 as part of the wider catchment area and consider these, alongside zone 9, represent a suitable catchment area from which the majority of the trade to the proposed units will be drawn.

Health of Defined Centres

4.18 In order to assess the potential impact a proposal may have on a town centre, the applicant should firstly assess the existing performance and overall health of the defined centres within the settlement.

4.19 A 'health check' of the vitality and viability of the defined centres within the identified catchment is a good basis upon which to assess the potential retail impact of a development. It can be the case that if a centre is in a poor state, (i.e. vacancy levels are above average, numbers of national multiple retailers are below average, footfall is low, and the overall environment within the town centre is poor), then impacts can be accentuated.

4.20 Any impacts, even on a seemingly 'healthy' centre, need to be carefully assessed on a case by case basis. The impact on a centre is not measured solely by the level of quantitative trade diversion of a proposal in monetary terms. Whilst a quantitatively based trade diversion assessment is important to understand the likely impact of a proposal on a town centre, it is also important to look beyond this and to consider the potential impact of a proposal in respect of its ability to adversely affect trade, to diminish footfall across a town centre, or to attract current or potential future tenants away from the town centre.

4.21 A key consideration in the case of this application is also whether there have been any material changes in the overarching health of the defined centres subsequent to the Council granting consent for the extant scheme in 2020.

4.22 Nexus requested that Lichfields provided an update to their healthchecks contained within the Planning and Retail Statement, as we considered it would be useful to understand in particular whether there had been any implications on the centres as a result of the COVID-19 pandemic. Lichfields responded to this request by stating that:

'As you'll be aware, there is already an existing planning permission granted by Kirklees Council for retail development on the Bankwood Way site (application ref. planning ref: 2018/92563) and this permission allowed for a much larger quantum of floorspace than is currently proposed. Furthermore, the position on the ground in these centres is unlikely to have changed to an extent that it would affect our previous conclusions on impact - not least given that the forecast trade diversion impacts upon shops in these centres (excluding Aldi and Tesco in Batley, which are the main competing stores), are relatively low. On

this basis, we do not consider that the additional work is necessary to assist in the determination of the applications (or indeed proportionate to the nature of the proposals under consideration, particularly given the Council's position on the previous approved scheme on the site).'

- 4.23 We do not necessarily agree with Lichfields that the position on the ground will have unlikely to have changed and it would have been useful to understand the latest position in respect of vacancy rates in particular. This uncertainty is of particular prominence in light of the opening of Batley Shopping Centre (Batley Plaza) subsequent to Lichfields' diversity of use figures presented in the report. In any event, having looked at local press articles online, we note that it is stated that 22 out of the 24 units within the refurbished shopping centre have now been let and the food court has already opened³.
- 4.24 However, having considered this matter further, and taking account of the detailed analysis of the trade diversion assumptions applied (which we cover in more detail below) we are satisfied that there is sufficient evidence submitted from which a conclusion of the acceptability of the proposal can be reached.
- 4.25 Lichfields provide a review of both Batley town centre and Birstall district centre at Section 5 of the Planning and Retail Statement, which we consider to be sufficient upon which to determine the planning application.

Assessment Period

- 4.26 The applicant undertakes its impact assessment based on a test year of 2026. In this regard, we note that paragraph 017 of the Town Centres PPG directs that the design year for impact testing should be the year that the proposal has achieved a 'mature' trading pattern. It states that this is conventionally taken to be the second full calendar year of trading after the opening of a new retail development.
- 4.27 We consider that a development of this nature could commence trading in 2023 and, on this basis, 2025 could equate to the second full calendar year of trading. In any event, the use of 2026 instead of 2025 is unlikely to have any material implications in respect of the wider impact assessment and as such, the adopted test year is considered appropriate.

³ <https://www.dewsburyreporter.co.uk/news/people/new-batley-plaza-shopping-centre-set-to-open-after-year-long-delay-3348614>

Baseline Position

- 4.28 The applicant's estimation of the trading performance of existing foodstores is derived from the 2016 Kirklees Retail Capacity Study Update. Although the Retail Study is based on household survey data which is over five years old, the application site benefits from an extant consent for considerably more retail floorspace than that which is currently proposed, of which includes units of a similar scale and nature. In this regard, the acceptability of the impacts of a proposal with significantly more floorspace has already been deemed acceptable by the Council and its' advisors. Therefore, we consider it a reasonable starting position to adopt the baseline data from the 2016 Retail Study.
- 4.29 As such, for the purpose of this assessment therefore, we consider the baseline position – which is based on the 2016 Study – to be sufficiently robust.
- 4.30 In this regard, Lichfields calculate the pre-development turnovers by multiplying the existing shopping patterns by the available expenditure within each of the four zones. Lichfields calculate the available expenditure using the population set out within the 2016 Study, and multiplying this by the average per capita convenience and comparison expenditure for each zone, sourced from Experian, in 2019 Prices.
- 4.31 A deduction is made to reflect Special Forms of Trading and base expenditure is projected forward using the Experian Retail Planner Briefing Note 18, published in October 2020.
- 4.32 On this basis, we are comfortable with the baseline position presented by Lichfields.

Turnover of the Application Proposal and Extant Scheme

- 4.33 The starting point is the consideration of the level of floorspace proposed within the extant scheme, and how the proposal differs from the permitted development.
- 4.34 Table 4.1 is taken from Table 7.1 of the Planning and Retail Statement and provides a comparison between the extant scheme and that which is now being proposed. The 2020 extant scheme allows for a total of 7,900 sq.m (gross) of comparison and convenience floorspace.
- 4.35 The proposed scheme seeks permission for 4,511 sq.m (gross) of comparison and convenience floorspace. In terms of net sales floorspace, the comparison sales area reduces considerably by 3,050 sq.m but the convenience sales area increases slightly by 388 sq.m. The increase in net convenience sales area is attributable to the requirement for an element of convenience sales within the proposed Home Bargains unit.

Table 4.1: Comparison between Extant and Proposed Scheme

	Proposed Scheme			Approved Scheme			Difference		
	Convenience Goods	Comparison Goods	Combined	Convenience Goods	Comparison Goods	Combined	Convenience Goods	Comparison Goods	Combined
Gross Floorspace (sqm)			4511			7900			-3389
Net Floorspace (sqm)	2038	1391	3,428	1650	4440	6090	388	-3050	-2662
Total Turnover (£m)	16.7	6.5	23.2	17.3	20.0	37.3	-0.6	-13.5	-14.1

4.36 In terms of turnover of the proposed scheme, Lichfields have adopted benchmark average sales densities for the two named operators; Lidl and Home Bargains. We provide details of Lichfields' assumed turnovers for the two units in Tables 4.2 and 4.3 below.

Table 4.2: Convenience Turnover of Proposed Scheme

Floorspace	Net Sales Area	Sales Density	Turnover 2026
Lidl Convenience Floorspace	1,131 sq.m	£11,386	£12.9m
Home Bargains Convenience Floorspace	906 sq.m	£4,205	£3.8m
Total	2,038 sq.m	-	£16.7m

4.37 Lichfields have assumed that 45% of the Home Bargains unit will be used for the sale of convenience goods, which we consider to be on the higher side of what would happen in practice. In any event, we consider this to be a robust position for the purposes of the impact assessment. Lichfields have adopted benchmark average sales densities for the two proposed units, derived from GlobalData. We are satisfied with the assumptions applied by Lichfields.

4.38 Lichfields' assumptions in respect of the comparison turnover of the scheme are provided in Table 4.3 below. Again, we are satisfied with the assumptions applies by Lichfields.

Table 4.3: Comparison Turnover of Proposed Scheme

Floorspace	Net Sales Area	Sales Density	Turnover 2026
Lidl Comparison Floorspace	283 sq.m	£6,603	£1.9m
Home Bargains Comparison Floorspace	1,108 sq.m	£4,205	£4.7m
Total	1,391 sq.m	-	£6.5m

4.39 Lichfields have also included the turnovers of the two commitments within the catchment area, being the proposed foodstore at Kenmore Caravans in Mirfield and the B&M store at the Blakeridge Mills

site in Batley (which opened in January 2021). We are satisfied with the assumptions applied by Lichfields in calculating the turnovers of these two developments, and consider it acceptable to have included them in the overall impact assessment.

Patterns of Trade Diversion, Impact and the Acceptability of the Proposal

- 4.40 Accepting the well-established principle that *like competes with like*, we envisage that the greatest impacts from a convenience perspective will occur at the existing large-format foodstores and within the catchment – particularly those with a similar offer, and that lesser impacts will arise at smaller local convenience shops and more distant supermarkets.
- 4.41 In terms of the comparison impacts, these will again likely occur at larger comparison stores which sell a similar range of products, large superstores which include a relatively wide range of comparison goods and town centre stores.
- 4.42 In this regard, Lichfields assume that the highest proportion of trade to the proposed convenience floorspace will be diverted from the Tesco Extra in Batley town centre, followed by the Asda in Morley and the Morrisons in Heckmondwike. Lichfields assume that approximately 17% of the trade will be diverted from the Tesco Extra, 13% from the Asda in Morley and 11% from the Morrisons in Heckmondwike.
- 4.43 In terms of impact levels, Lichfields assume that the highest level of impact will be felt on the existing Lidl in Heckmondwike town centre at -10% (solus) and -13% (cumulative). Despite the relatively low level of assumed diversion from the Lidl in Heckmondwike, the high level of impact is a direct result of the identified underperformance of the store in the baseline household survey data. Lichfields refer at paragraph 7.20 that Lidl have confirmed that the store is trading well and that they have no concerns about the future viability of the store should the subject application be approved. Furthermore, they have concluded that the two stores would serve principally different catchments given the distances between the two. We would agree with this conclusion, particularly having regard to the travel distances between the two.
- 4.44 In terms of other defined centres, Lichfields estimate that the highest level of impact is likely to be felt on the edge of centre Aldi store in Batley town centre. We do not consider this to be at a level which would have a wider significant adverse impact on Batley town centre, even when considering the potential for a loss of linked-trips between the store and the centre as a result of the diversion.

We consider the same conclusion also applies in respect of the diversion and impact on the Tesco Extra in Batley and the wider existing convenience offer in the town centre.

- 4.45 Reviewing the trade diversion assumptions and impact levels, we are satisfied with the approach taken by Lichfields in respect of the convenience floorspace diversion.
- 4.46 In terms of the comparison trade diversion, Lichfields assume that the highest proportion of trade will be diverted from Birstall Shopping Park, followed by Dewsbury town centre and then Batley town centre. In terms of Birstall Shopping Park, Lichfields assume that approximately 23% of the proposal's comparison turnover will be diverted from the existing retailers, 11% from Dewsbury town centre and a further 8% from Batley town centre.
- 4.47 We agree that the highest level of comparison goods diversion will be from the existing facilities located at Birstall Shopping Park. In respect of the defined centres, the highest comparison goods impact is expected to be felt on Batley town centre, at which when commitments are taken account of, an impact of approximately -3% is expected at 2026. This compares with an expected comparison goods impact of approximately -2% at Dewsbury town centre at 2026.
- 4.48 Having reviewed the assumed diversions to existing stores and centres in the catchment, we are satisfied with the levels of trade diversion applied by Lichfields. We are also satisfied that even when taking account of the extant retail developments, the cumulative impact on defined centres in terms of both the convenience and comparison floorspace, would not be at a level which could be considered to be significantly adverse.
- 4.49 The above must also be considered alongside the extant scheme and the fallback position. In this regard, permission already exists for the construction of four, large retail units, which could in our view, realistically accommodate the proposed operators with some amendments to the site layout. That permission does not expire until 2023 and has been considered acceptable by the Council in granting the consent in 2020.

Conclusion in Respect of Impact

- 4.50 As we set out above, we are unaware of any town centre investment which would likely be prejudiced as a consequence of the application proposal, which we find accords with the requirements of Policy LP13 of the Local Plan and the first part of the NPPF impact test as set out at paragraph 90 of the NPPF.

4.51 In terms of the second part of the test, we do not consider that the resultant impacts on the overall vitality and viability of the defined centres would be at a level which could be considered to be significantly adverse. Therefore, we also consider that the proposal complies with the second part of the impact test as set out at Policy LP13 of the Local Plan and the first part of the NPPF impact test as set out at paragraph 90 of the NPPF.

5 Summary and Recommendations

- 5.1 Kirklees Council instructed Nexus Planning to provide advice in respect of planning application reference 2021/62/92528/E. The application relates to a site located adjacent to Birstall Shopping Park, access from Bankwood Way in Birstall, and seeks full permission for the erection of a foodstore and retail unit with associated access, car parking, servicing and hard and soft landscaping. The site comprises an area of brownfield land previously occupied by a number of office buildings, which were demolished following a period of vacancy and the site has been cleared.
- 5.2 The application site benefits from an extant outline planning permission (reference 2018/60/92563/E) for four retail units with associated access, car parking and hard and soft landscaping. This permission was granted in January 2020. The conditions attached to this decision limited the gross floorspace to 7,896 sq.m, and that convenience goods should not exceed 30% of the gross floorspace (or 2,369 sq.m).
- 5.3 The purpose of this appraisal report is to consider the merits of the current application in terms of its compliance with retail and town centre planning policy, as set out by the statutory development plan and by the National Planning Policy Framework ('NPPF').
- 5.4 Paragraph 91 of the NPPF indicates that planning applications for retail uses that are not in an existing centre and not in accordance with an up to date development plan should be refused planning permission where they fail to satisfy the requirements of the sequential approach or are likely to result in a significant adverse impact.
- 5.5 In respect of the sequential approach to development, we have reviewed all the sites identified by the applicant and do not believe that any are both available and suitable to accommodate the application proposal, even allowing for appropriate flexibility. We are unaware of any other sequential sites offering realistic potential to accommodate the proposal⁴ and, as such, find that it accords with the requirements of the development plan and paragraphs 87 and 88 of the NPPF.
- 5.6 With regard to the first part of the impact test, we do not believe that the grant of planning permission for the proposed foodstore would lead to an adverse impact in respect of any existing, committed and planned public and private sector investment.

⁴ Whether these be located in centre, edge of centre, or in well-connected out of centre locations.

- 5.7 In terms of the second part of the impact test, and having regard to the assumptions applied by the applicant, we do not consider that any of the impacts on existing centres within the catchment area would be at a level which could be considered significant adverse.
- 5.8 Furthermore, planning policy is supportive of retail development which improves local customer choice and accords with sustainable development principles, providing no 'significant adverse' impacts occur at town centre locations. Most particularly, this is evident through paragraph 90 of the NPPF which requires a local planning authority to consider changes in consumer choice across the retail catchment area as a whole when determining planning applications for retail uses.
- 5.9 We advise that should the Council be minded to grant consent for the development, appropriate conditions are imposed which restrict the net sales area of the proposed units in respect of the quantum of convenience and comparison floorspace. In addition, given the nature of the development and the comparable unit sizes in defined centres, we would also recommend imposing conditions to restrict future sub-division of the proposed units without approval from the Council, should the intended operators vacate the premises in the future.

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