

From: [Adam Walker](#)
To: [DCAdmin](#)
Subject: FW: ITEM 10 - STRATEGIC PLANNING COMMITTEE 18TH NOVEMBER - PROPOSED OUT OF CENTRE RETAIL DEVELOPMENT (LIDL AND HOME BARGAINS). LAND OFF BANKWOOD WAY, BIRSTALL RETAIL PARK, BIRSTALL, BATLEY. PLANNING REFERENCE: 2021/62/92528/E
Date: 16 November 2021 18:11:07
Attachments: [LT2021116 Bistall.pdf](#)

Please log as a representation on this app. Thanks

2021/62/92528/E

From:
Sent: 16 November 2021 10:16
To: Mathias Franklin <Mathias.Franklin@kirklees.gov.uk>
Cc: Adam Walker <Adam.Walker@kirklees.gov.uk>
Subject: ITEM 10 - STRATEGIC PLANNING COMMITTEE 18TH NOVEMBER - PROPOSED OUT OF CENTRE RETAIL DEVELOPMENT (LIDL AND HOME BARGAINS). LAND OFF BANKWOOD WAY, BIRSTALL RETAIL PARK, BIRSTALL, BATLEY. PLANNING REFERENCE: 2021/62/92528/E

Dear Mr Franklin,

We act on behalf of _____ and submit the attached representation in respect of the above planning application.

As our representations provide a firm basis for the item to be withdrawn from the agenda I will call your office to provide any further explanation that might assist.

Otherwise if you or your case officer have anything further on which you would like clarification on, please do not hesitate to contact me.

Because of the short time before the meeting, we are circulating the attached letter to Members and Substitute Members of the Committee.

Kind regards

16th November 2021

Mr M Franklin
Head of Planning
Kirklees Council
Flint St
Huddersfield
HD1 6LG

21 BUCKINGHAM STREET
LONDON WC2N 6EF

Via Email: mathias.franklin@kirklees.gov.uk

Dear Mr Franklin,

**ITEM 10, STRATEGIC PLANNING COMMITTEE 18TH NOVEMBER 2021 :
PROPOSED OUT OF CENTRE RETAIL DEVELOPMENT (LIDL AND HOME
BARGAINS). LAND OFF BANKWOOD WAY, BIRSTALL RETAIL PARK, BIRSTALL,
BATLEY. PLANNING REFERENCE: 2021/62/92528/E**

We make objections to the above planning application on behalf of our client
occupy a town centre supermarket in Batley which provides an important
service to the local community having first opened in September 2003. The store
facilitates linked trips with other shops and services in the town centre and thus supports
the centre's overall vitality and viability.

Upon reviewing the officer's report for consideration at the Planning Committee we have
identified the need for various matters to be subject to further consideration before the
application should be determined. These are set out below.

Unavailability of Important Background Documents

The Officer's Report before Committee relies extensively on advice received from a retail
consultant on the Council's behalf (a report by Nexus Planning) – see at paragraphs
10.11, 10.18, 10.24, 10.25, 10.26 and 11.3. The Nexus advice in particular has informed
the conclusion in the report that *"The retail impacts of the scheme have been
independently assessed and it has been concluded that the development would not result
in any significant adverse impacts on the vitality of nearby town centres"* (paragraph 11.3).
It is thus relied upon as the basis upon which the retail aspects of the scheme (ie
compliance with the sequential and retail impact tests in Local Plan policy LP13 and the
NPPF) have been considered acceptable.

However, that the Nexus advice exists has only come to light following the publication of
the Officer Report and whilst the report does summarise its contents, a full copy of the

advice is still yet to be filed and made available to the public on the Council's website. It is important that third parties and objectors are privy to this material in order to meaningfully engage in the process of application scrutiny in the public interest.

There can be no doubt that the Nexus report constitutes a background document for the purposes of s.100D ('Inspection of Background Papers') of the Local Government Act 1972. The recent judgment of Mr Justice Jay in *Save Warsash v Fareham and Natural England* [2021] offers a reminder of the importance of providing such material to third parties and objectors in a timely manner.

We must therefore request that the application be withdrawn from the agenda or otherwise deferred to enable ourselves, and other third parties, sufficient time to make further representations, as necessary, to the application in light of the content of the Nexus advice once it has been made available in the public domain. Notwithstanding that we reserve the right to comment on the contents of that advice, we set out our significant concerns in relation to the applicant's submissions in respect of retail (and other) matters below.

Lack of an Up-to-Date Health Check of Town Centres

The NPPG sets out the 'steps' that need to be taken in applying the impact test. The first of these steps is to "*establish the state of existing centres and the nature of current shopping patterns*" (our emphasis). It sets out 13 indicators which are routinely used in assessing the health of town centres in retail impact studies. Importantly, it explains 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 the new development may lead to a significant adverse impact*" (our emphasis).

However, the applicant has failed to undertake a robust health check analysis to demonstrate the health of the existing town centres. Instead, their agent, Lichfields, rely on the Council's 2019 survey data, but recognise the deficiencies of this approach ie that "*the impact of the restrictions imposed as a result of the recent Covid-19 pandemic mean that it is difficult to establish an accurate indication as to the centre's current composition*" (paragraph 5.8). Whilst they claim that "*as a result of the Covid-19 pandemic, it has not been possible to visit existing centres... and undertake a detailed review of their vitality and viability*", retailing has now emerged out of lockdown, and there is an opportunity for a more adequate assessment of the health of the relevant centres to be undertaken, including real world scrutiny. It would seem inappropriate to make judgements on the application's trading impact when the essential starting point – to 'establish the state of existing centres' has not yet been adequately undertaken.

Disaggregation

The scope for disaggregating the proposed elements of the scheme into their constituent parts, in order to undertake sequential site assessment, has not been considered in the Officer's Report. That is a fundamental oversight. Whilst there is no explicit requirement to disaggregate in the NPPF, various appeal decisions have considered this issue and

Inspector's (see for instance in decisions at Tollgate and Kingswood) have considered that in some circumstances, there will be a need to consider disaggregation.

In this particular case, there is no functional or commercial relationship between the two proposed retail units and garden centre serving the unit that is planned to be operated by Home Bargains. The only element that links them is a joint servicing area to the rear of both units. That is not a requirement that prevents individual units being separately assessed. It should not be seen as commercially or functionally necessary to accommodate more than one discount retailer's operation on each sequential opportunity site that is reviewed.

As a consequence, we identify that several sites in the applicant's sequential assessment have been rejected on the basis that they are not able to accommodate all elements of the proposed development. The site at Scatterd Works, for instance, measures 0.5 hectares which we note meets the general site size requirements of discount operators but the applicant dismisses its suitability on the basis that the site is "*...around a third of the application site and is therefore too small to accommodate the development*" (paragraph 6.26). The assessment of this site, and other sites considered in the assessment, should therefore be revisited applying disaggregation.

The Need to Extend the Catchment area for the Purposes of Sequential Testing

The NPPF requires that "*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*" (our emphasis). Flexibility over the extent of the catchment that would serve the proposed development must reasonably be a matter that is caught by this requirement. It would make no sense whatsoever for town centre or edge of centre sites not to be explored because potential opportunities may fall beyond an otherwise self-serving catchment area. Indeed, the NPPG confirms it to be a consideration that "*should be taken in account in determining whether a proposal complies with the sequential test*" in that it questions whether, "*with due regard to the requirement to demonstrate flexibility, has the suitability of more central sites to accommodate the proposal been considered*". A number of centres, including Gomersal and Drighlington, sit within a short, and less than 5-minute drive time from the application site ie consistent with the area of sequential search frequently adopted by the discount foodstore operators elsewhere. The applicant's sequential assessment is thus flawed in that it does not consider any potential opportunities within these centres, that might be 'more accessible' or 'better connected' than the application site in line with NPPF paragraph 88. A more widely cast assessment should be provided.

Lack of Robust Assessment of the Local Plan Priority Employment Areas Policy

The application site is located in a "Priority Employment Area" (PEA). PEAs are a critical source of employment land supply. Whilst we agree with officers that in principle retail could be considered an "*employment generating use*" in line with the justification to policy LP8 ('Safeguarding Employment Land and Premises') of the Kirkless Local Plan at paragraph 7.21, the Officer's Report does not reach a conclusion as to whether the proposal satisfies the test against the first limb of the policy. This provides that "*proposals*

for development or re-development for employment generating uses in Priority Employment Areas will be supported where there is no conflict with the established employment uses" (our emphasis).

Conclusion

The Officer's Report before Committee relies very extensively on advice received from the Council's retail consultant. That this advice exists has only come to light following publication of the report. However, in order to enable third parties the necessary opportunity to consider the advice, it must be made available for public inspection. The application should be withdrawn from the agenda or deferred to ensure that third parties have sufficient time to consider its contents.

The applicant's agent has not carried out an up-to-date health check of town centres affected by this proposal. Rather, they have relied wholly on very dated, pre-pandemic 2019 sources, without any visit to the centres affected, or an up-to-date assessment of their health.

It is necessary, in the circumstances applying to this application, that disaggregation is applied to the elements of the proposed development. The constituent elements can then be properly considered for the purposes of sequential testing. Sequentially preferable sites have been rejected on the basis that they cannot accommodate the development as a whole, but they may be able to accommodate the proposed retail units individually ie by disaggregating the overall proposal.

Applicants and Local Planning Authorities are required to demonstrate flexibility in sequential testing. Centres that fall within the likely catchment of the proposal, and potential opportunities therein, have been inappropriately ignored.

The application site lies within a Priority Employment Area, and the relevant Local Plan policy sets a test that must be met for employment generating uses – ie that "*...there is no conflict with established employment uses*". The Officer's Report does not assess the proposal on this basis and erroneously concludes that because the uses would be job-generating that the policy is therefore complied with.

We therefore request that the above issues are addressed by officers before the application is presented to Planning Committee.

Yours sincerely,