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Planning Development

Section 78 Appeal - Town & Country Planning Act 1990 (as amended)

Land at, Huddersfield Road/Leeds Road, Birstall, Batley, WF17 9AA

LPA Ref: 2022/92081

Appeal Statement of Case

1. Introduction and background

- 1.1 This appeal is submitted against Kirklees Council's decision to refuse planning permission for the demolition of existing buildings and erection of retail food store with associated parking and landscaping.
- 1.2 The Council's reason for refusal is based on a contention that the proposals would have a significant adverse impact on the vitality and viability of Birstall District Centre.

2. Site Description and proposals

- 2.1 Please refer to the accompanying Statement of Common Ground.

3. Key documents / correspondence

- 3.1 The key documents and correspondence in relation to retail impact matters are as follows (all produced by Robert Halstead Chartered Surveyors & Town Planners).
 - a) Retail Impact Assessment June 2022 and Appendix 1 Retail Impact Table
 - b) Retail Impact Assessment Addendum December 2022 and Appendices A to C
 - c) Revised Convenience Goods Impact Tables x 2 dated February 2023 together with covering e-mail dated 1st February 2023.
 - d) E-mail dated 4th December 2024 with Appendices 1 to 4
- 3.2 The LPA employed the services of a private planning consultancy firm (Nexus Planning) to undertake the assessment of retail impact on their behalf. Their response documents comprised:

a) Appraisal of Retail and Town Centre Issues November 2022 (superseded / withdrawn due to Copyright infringement).¹ (Appendix 1).

b) Appraisal of Retail and Town Centre Issues March 2023. (Appendix 2).

4. The appellant's case

4.1 The following sections will put forward the appellant's case in addressing the Council's reason for refusal, focused on the key areas of difference between the parties in relation to trade impacts on the vitality and viability of Birstall district centre.

4.2 The requirement for a Retail Impact Assessment in this case relates to Local Plan Policy LP13. This requires retail, leisure and office developments which are not located within a defined centre and that are greater than 300 sq.m gross² and within 800 m of the boundary of the town district centre, to submit a retail impact assessment. This diverges from national planning policy whereby the threshold is 2,500 sq.m.³

4.3 The application site is located approximately 50 metres to the east of the defined Birstall district centre boundary and is 'edge of centre' for the purpose of retail planning policy.⁴

4.4 This retail impact work was produced within the parameters and data collected under the Council's Kirklees District Retail Survey 2016 (as updated) (Appendices 5 & 6), which represents the only relevant published data in this regard. For this scale of proposal, and in line with Government practice guidance⁵, it was considered to be wholly disproportionate to conduct new household surveys on shopping patterns etc, and it is understood to be common ground that the LPA and agree this.

4.5 The retail impact assessment methodology adopted by the appellant was based on established planning practice guidance and included the following:

a) Existing shopping patterns for top-up convenience goods for Zone 9 residents are detailed in Columns 2 and 3 of the retail impact spreadsheet, and utilise data as per the footnotes from the Kirklees Retail Survey 2016 (2017 updated version). Out-of-centre individual stores with figures of less than 5%, and those outside the Kirklees district, were not detailed individually.

¹ The report utilised household survey data from another planning application relating to different site submitted by a firm named ID Planning, who subsequently provided an email dated 16 November 2022, in which they specifically stated that they, nor their client had given any permission for the data to be used (Appendix 3). This copyright law infringement was later acknowledged by the LPA (see e-mail at Appendix 4) and the Nexus report was republished in March 2023 without reference to this third party data.

² The proposals are 408 m² gross.

³ NPPF Paragraph 94

⁴ NPPF Glossary definition

⁵ PPG Town Centres and Retail: Paragraph: 017 Reference ID: 2b-017-20190722

- b) Columns 4 and 5 detail the survey-derived and benchmark turnover figures for individual stores and centres, again derived from the Kirklees Retail Study. Levels of alleged over/under trading are then detailed at Column 6. Based on these identified shopping patterns, it is assumed that 89.1% of the proposed stores trade will originate from within Zone 9 (Note: as a result of data received from the intended store operator Sainsbury, a later version was produced that increased the amount of pass-by trade – see Paragraph 4.6 below).
- c) Column 6 details the levels of under / over trading (Column E minus Columns D).
- d) Given the intended occupier is Sainsbury, sales density figures were sourced for the specific retailer at the year 2021, and then projected forward to the impact year of 2026 (Footnote 5 of the retail impact tables).
- e) The net sales area for the proposed store is taken from 90% of the gross sales area on the proposed plans – taking into account till space, circulation space etc. 95% of this gross sales floorspace is assumed to be convenience goods floorspace (239 sq.m).⁶ The total annual projected income at 2026 is therefore calculated on this basis (£3.18M).
- f) The proposed monetary trade diversion figures are detailed at Columns 7 based on a shift-share analysis of the existing top-up convenience goods shopping patterns from the Kirklees Household Survey data, with an element of professional judgement to take account of a number of factors including: the ‘like-affects-like factor; proximity of proposed / existing convenience stores; brand loyalty (and proximity of nearest equivalent brand); and the potential to increase market clawback of shoppers currently shopping elsewhere for top-up convenience goods.
- g) Predicted impacts are detailed in Columns 8 & 9. Percentage trade diversion figures were included for both survey-derived (Column G divided by Column E) and benchmark turnover (Column G divided by Column D) figures of stores/centres.

4.6 The retail impact work was altered through the course of the application for the following reasons:

- a) December 2022: Retail Impact Assessment Addendum and appendices responding to the Nexus Appraisal of Retail and Town Centre Issues November 2022 (the version subsequently withdrawn) including:
 - i) The impacts tables were amended to clarify that the Box A24 (Total Birstall District Centre) only relates to convenience goods. A further row was added to illustrate the total turnover for Birstall district centre, and the resultant trade diversions set against the district centre as whole. As a sensitivity test, in response to comments from Nexus in their November 2002 report, an additional column was added to the retail impact tables, to compare trade diversion based on *survey derived* data in addition to *benchmark* data.
 - ii) A second ‘sensitivity test’ version of the retail impact tables was produced to reference increased pass-by trade, following confirmation from the intended

⁶ Source Sainsburys Supermarkets UK

operator Sainsbury (Appendix 7) that they expected 55% of overall sales to arise from pass-by trade (indicating that the proposal is geared towards attracting passing roadside trade in this location). A conservative figure of 30% for the purposes of the retail impact tables was adopted, recognising that not all this pass-by trade may be likely to arise from outside the catchment area of Zone 9.

- b) February 2023: Revised retail impact tables x 2 (standard and increased pass-by trade) to update the benchmark turnover figures for existing stores and project these forward to 2026; and to correct a typographical error that did not alter any of the actual figures / calculations.

4.7 The retail impact work undertaken on behalf of the appellant also raised two potential anomalies (highlighted in yellow on the tables from December 2022 onwards) which were considered necessary to factor in, because of their importance in judging the impacts on the two central stores: Tesco Express and Co-op (then Nisa ⁷). These are:

- a) The *survey derived* trade for the Co-op ⁸ is significantly below the benchmark trading figures, because the number of respondents in the household survey appears to be statistically unreliable, at just two individuals. The appellant's view therefore was that a sensitivity test of the assessment of impacts against benchmark trading levels would also be appropriate in this case. Hence with reference to the February 2023 tables, the survey-derived turnover for the Co-op / Nisa in 2016 was alleged to be only £0.54 million according to the household survey (due to their being only two respondents), and yet the benchmark trading figure was £3.54 million.
- b) Consequently, the impact levels of 17% were deemed to be most likely excessively high. If, for example the benchmark £3.54M is utilised, this percentage reduces to just 2.5%. Whilst it is acknowledged the survey-derived figures cannot be completely ignored when analysing impact, there do appear to be reasonable grounds to conclude that the survey-derived figure, based on only two respondents, is most likely unreliable. In their report of March 2023, the Council's consultants Nexus agree, stating: "However, it is accepted that the Council's own survey is now rather dated and, in any event, identifies a turnover for the Co-op store at Low Lane which is unrealistically low."
- c) The benchmark trading performance of the Tesco Express in 2016 (£1.96M) from the Kirklees Household Survey data also appears to be based on what now appears to be an erroneous floorspace figure of 145 sq.m net convenience sales retail.
- d) The Council's consultants Nexus quoted the net convenience goods floorspace as 211 sq.m for Tesco. Footnote b of their retail impact assessment table at Appendix 1 of their report says that the source of this data is the Valuation Office Agency.
- e) However, upon verifying the net sales area figure from the Valuation Office Agency for the purposes of this appeal, it has been established that the net sales floorspace figures for both Tesco and Nisa have been significantly understated by Nexus.

⁷ Nisa is a subsidiary brand of the Co-op.

⁸ Kirklees 2016 Household Survey

- f) The actual net sales figure for Tesco is stated by the VOA to be 297 sq.m (Appendix 8 – Record dated 10th July 2025). If then reducing this figure by 5% to exclude typical comparison goods sales, the figure for net convenience sales is more likely to be 282 sq.m. This is double the amount quoted in the Kirklees Retail Study, and also notably higher than the figure Nexus used.
- g) This consequently makes a significant difference to estimates of benchmark turnover, and would consequently reduce the impacts experienced by the Tesco Store.
- h) The Nexus figure for the Nisa store was again significantly understated at 280 sq.m. According to the VOA records, the Nisa (now Premier) store net sales area is 362 sq.m (Appendix 9 - Record dated 10th July 2025). Reducing this by 5% for the net convenience goods area, this equates to 344 sq.m.
- i) Whilst it is also puzzling that the Nexus and VOA gross floorspace figures do indeed correlate, whereas the net floorspace figures do not, the reduced net sales areas cited by Nexus suggest the impacts predicted through their analysis would be significantly lower.

4.8 As such, as a further sensitivity analysis, the appellant’s retail impact tables have been amended to take into account the new floorspace figures, adapting the latest versions on the actual planning application dated February 2023 (see July impact tables at Appendices 10 & 11). The updating trading impacts (which are not materially different to the previous versions based on the appellant’s methodology) are as follows:

	Feb 2023 Impact Tables
Standard Impact	Convenience goods stores - 6.8 – 7.4% Town Centre as a whole -1.5 – 1.53%
Impact with increased pass-by trade	Convenience goods stores - 4.4 – 4.8% Town Centre as a whole – 0.98 – 0.99%

	July 2025 Impact Tables
Standard Impact	Convenience goods stores - 5.7 – 7.4% Town Centre as a whole - 1.5 – 1.53%
Impact with Increased pass-by trade	Convenience goods stores - 4.4 – 5.7% Town Centre as a whole – 1.17 – 1.19%

4.9 The updated tables (July 2025) demonstrate a number of points as follows.

- a) The total overall convenience goods trade diversion in relation to Birstall town centre as a whole ranges between 5.7% and 7.4%.
- b) Whilst the VOA floorspace figure for Nisa is higher than quoted in the Kirklees Retail Study, the (standard table) impact based on benchmark turnover figures only increases from 2.5% to 3.1%.
- c) The impact on Tesco is predicted to range between 6.3% and 7.5% for survey-derived and benchmark turnovers respectively, reducing to 4.9% - 5.9% if higher pass-by trips are accounted for (and also noting that according to the data, Tesco is overtrading by £0.74M at 2026).
- d) If looking at trading impacts in relation to Birstall centre as a whole, the numbers remain exceptionally low at around 1% to 1.5%.
- e) These impact figures are not considered to be significant, particularly against the backdrop of the reasonably vital and viable Birstall district centre with a considerably lower than average vacancy rate, and the fact that 89.8% of the property stock in Birstall is occupied by non-convenience goods businesses, so the town centre's viability and viability not dependent on the convenience goods sector. As such, the centre is less vulnerable as a whole to the predicted (relatively minor) changes in convenience goods shopping patterns.

4.10 In addition to the quantitative analysis above, the appellant puts forward a number of qualitative points below to support the contention that no significant adverse impact to Birstall district centre would occur:

- a) The proposed store location is a good edge of centre site, so much so that a number of the district centre commercial units situated at the eastern end of Nelson Street are virtually contiguous with the application site. The pedestrian routes have signalled crossings on all four arms of the junction between the site and the centre, allowing pedestrians to cross with safety and convenience.
- b) Birstall centre currently manages to support two national convenience retailers, which is a further indicator of healthy trading levels and a vital and viable district centre.
- c) Judged against a healthy, low vacancy rate⁹ district centre with a wide (independent) retail, service and leisure offer (and the overall environmental quality of Birstall being considered to be good and it being an attractive centre within a Conservation Area and having a central attractive market 'square' at its heart), the impacts from the appeal proposals are not in any way considered to be significantly adverse.
- d) Moreover, as alluded to above, the proposals would not compete with a significant proportion of other retail and non-retail businesses within Birstall centre.

⁹ The low vacancy rate appears to have bucked the national trend post-Covid.

- e) Whilst the appellant's detailed quantitative analysis of impacts indicate that the impacts on the two individual stores would be not be significant and no closures are predicted to occur as a consequence, the fact that Birstall centre has two reasonably sized convenience goods stores (as opposed to one) provides extra insurance against one of them failing. There is clearly enough trade to currently support two district centre convenience stores.
- f) However, without prejudice to the appellant's view that no stores would close as a result of the appeal proposals, in addressing the hypothetical scenario of one of them closing, the appellant is of the view that the centre would not be significantly impacted on as a whole with one 'anchor' convenience store remaining. It is also worth noting that the remaining store would benefit from trade diversion the event one of them did close. On this basis, the appellant considers that it could not be reasonably concluded the impact on the overall centre would be 'significantly adverse'.
- g) Neither of the existing retailers (Tesco and Co-op / Nisa) have objected to the planning application, providing further evidence that they are / were not concerned about the impacts arising from the proposed store.
- h) Over the course of this appeal and previous planning application submitted in 2022, the fact that the original Co-op store changed to its subsidiary brand Nisa (and a Premier store has since occupied the unit), indicates that there remains healthy and continuous demand from national brand top-up convenience goods businesses. It is noted that Premier have over 4,400 stores across the UK.¹⁰
- i) As such, a potential closure would not in itself necessarily indicate an adverse (or indeed significant adverse) impact on the district centre, as the evidence to date is that the original Co-op store has been quickly re-branded or re-occupied, and there is no reason to believe this wouldn't happen again in the future.
- j) Referring to the 2013 appeal by Tesco at Holmfirth in the southern part Kirklees¹¹, the appeal decision at Paragraph 44 stated: "The impact of the proposed foodstore on the Co-op is estimated by Tesco at 20%, or 23% cumulatively with the permitted Lidl store. Later, at paragraph 54, the Inspector concluded: Overall, the conclusion on retail impact has to be that the proposed supermarket would have no significantly adverse impact on Holmfirth town centre, or indeed on the edge-of-centre Co-op supermarket which acts as the town centre's anchor store."
- k) As such, even if hypothetically, the higher impacts presented by Nexus were to be given weight in this appeal, impacts of 23% were accepted as not being likely to lead to the closure of the store in the Holmfirth case. Since that time, in addition to an edge-of-centre Lidl being approved and built, an out-of-centre Aldi has also been approved and has reached a mature trading pattern. The town centre Co-op however still remains open and appears to trade well despite Aldi and Lidl being fiercely competitive on price.

¹⁰ Premier main website – 'About Us' section

¹¹ APP/Z4718/A/13/2191213 (Appendix 12)

- l) The store is likely to recapture a proportion of the 80% of the Zone 9 top-up convenience goods expenditure currently being spent elsewhere.
- m) The proposed Sainsbury's store will increase consumer choice in the area, benefiting local shoppers.
- n) Brand loyalty is also acknowledged to be an important factor in consumer shopping habits. The nearest Sainsbury store is outside Zone 9 in Gomersal, so any Sainsbury-loyal shoppers in Birstall (and its environs) are likely to divert to the nearest store ¹². The Kirklees Household Survey identified that Sainsbury stores were clearly too far distant to attract any Zone 9 expenditure, and therefore the proposed store is again likely to result in more Zone 9 convenience goods expenditure being retained.
- o) It is also noted that Birstall centre is surrounded by residential areas and contains its own (free) short stay town centre parking provision, and consequentially there is no reason to believe that many of the existing customers of the Tesco and Nisa (now Premier) would bypass Birstall centre in favour of the appeal proposal site (other than some living on the eastern side of the proposal site).
- p) As confirmed by Sainsbury the intended operator, the fact that the proposed store would be in a prominent main road location is likely to result in a proportion of its trade arising from pass-by traffic (the A62 being a busy commuter route). These passers-by may not have previously used the existing shopping facilities in Birstall centre, however the proposal could help recapture such trade as well as potentially creating linked trips into the centre itself.
- q) The site also benefits from being within reasonable walking distance of a significant proportion of local residents, thereby offering a sustainable shopping choice.

4.11 Turning then to the evidence presented by LPA (Nexus) in support of their contention that impacts are significantly adverse, the appellant is concerned about the following aspects of their evidence and methodology:

- a) Nexus do not appear to have fully or properly engaged with the appellant's evidence and methodology, instead producing their own retail impact table.
- b) Contrary to Government practice guidance, a vital omission in the methodology adopted by Nexus appears to be the absence of reliance on any published household survey data. The Nexus impact analysis therefore fails to comply with first bullet point in the PPG 'Is there a checklist for applying the impact test?' – "The following steps need to be taken in applying the impact test: - establish the state of existing centres and the nature of current shopping patterns ¹³ (base year) ¹⁴ "

¹² NOTE: the Gomersal store did not exist at the time of the Kirklees household shopping survey, and so would not have been picked up in terms of existing shopping habits.

¹³ Our emphasis.

¹⁴ Paragraph: 018 Reference ID: 2b-018-20190722

- c) Instead, Nexus appear to have relied upon benchmark trading data. This, however, contradicts established practice guidance, as well as their earlier position on the matter, as stated in their (withdrawn) November 2022 report at Paragraph 4.16:

“The trade diversion assessment undertaken does not actually utilise the 2016 Study in order to identify the turnover of existing provision. Instead, the assessment is based on the assumption that existing retailers will trade in line with company average benchmark trading performance. This is not ideal given that it does not reflect what is happening at a local level in Birstall.”¹⁵

- d) Nexus have referred to Costcutter and Howden Clough Stores in their retail impact table, and yet the Kirklees Household Survey did not register any shoppers from Zone 9 visiting these stores for top-up convenience goods shopping. As such, there is no logical reason to believe that trade diversions from these stores to the proposed store would in fact occur.
- e) More pertinently, as a consequence of not relying on published household survey data for existing shopping patterns, existing Zone 9 top-up convenience goods shopping patterns for all shops in Zone 9 (other than the Birstall stores), have been entirely omitted. As such, the starting point of a shift-share analysis based on these pre-existing shopping patterns is entirely absent from the Nexus retail impact analysis.
- f) The net convenience sales area for the proposed store stated by Nexus is incorrect. Their figure of 279 sq.m – stated to be the net sales area – is actually the gross sales area. The actual net convenience goods sales area is 239 sq.m.
- g) The sales density figure (at 2026) adopted for the proposed Sainsbury store is stated by Nexus to be £15,075 per sq.m, whereas the appellant’s figure is £13,289 per sq.m. The Nexus figure is higher than the sales density figure it adopts for Tesco Express, but there is no explanation of this difference, when essentially the two brands operate very similar trading models.
- h) Therefore, by (a) over-stating the floorspace of the appeal proposed store, (b) understating the floorspace of the Tesco and Nisa, and (c) raising the sales density figure for the appeal store, the trading impacts predicted by Nexus are higher than they should be on these three separate counts alone, irrespective of the other flaws identified above.
- i) Perhaps equally seriously, there is no background information, methodology or other justification provided by Nexus as to how the figures in the ‘proportion of proposal turnover diverted (%)’ have been formulated. Much of the Nexus data quoted and relied upon as part of its retail impact table at Appendix 1 of its report relies on ‘professional judgement’ and yet there is no explanation or rationale provided as to what this ‘professional judgement’ comprises and whether, in turn, it can be safely relied upon, particularly in the light of all the other methodology deficiencies highlighted above.

¹⁵ The appellant’s retail work did in fact fully utilise the Kirklees Household data from the earliest stage, however survey-derived turnover figures were later added.

- 4.12 There are further problems with the retail impact analysis produced by Nexus as follows.
- 4.13 The NPPF retail policy test at Paragraph 94 is concerned with “the impact of the proposal on town centre ¹⁶ vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment area...”
- 4.14 The Nexus analysis provides no qualitative or quantitative analysis on the likely impacts on Birstall centre as a whole. The only comment found at Footnote 9 of the Nexus report (below para 4.38), offers the opinion that the published Kirklees data on comparison goods turnover of the Birstall district centre at £21.11m at 2016 “is not considered to be a reliable indicator of Birstall’s comparison goods turnover as the district centre currently only has 12 comparison goods units,” However, Nexus have not evidenced any credible alternative to this sole source of published data.
- 4.15 Nexus’s labelling of the Tesco and Co-op as “anchor stores” within the centre, is questioned to some extent by the appellant. The appellant does not believe these stores anchor Birstall centre in a traditional sense (i.e. like a key department store in a shopping centre for example, or a major in-centre food store). In this case, the appellant is of the opinion this needs to be judged in relation to all the other factors outlined above – i.e. the fact that convenience retail provision represents only 10% of the total offer in this particular centre; and that the centre is reasonably vital and viable with a wide range of independent retailers and a low vacancy rate.
- 4.16 The Nexus analysis provides no acknowledgement or comment on the potential for clawback convenience top-up trade, with 80% currently leaking from Zone 9.
- 4.17 There is also no assessment or comment on the other key aspect of the retail impact test: consumer choice - i.e. the potential for the proposed Sainsbury’s store to increase consumer choice in the area, and the benefits this would bring to local shoppers.
- 4.18 There is no commentary on the fact there are two sizeable convenience stores in Birstall District centre (i.e. Tesco and Nisa [now Premier]). Nexus refer (4.44) to “the importance of the Nisa and Tesco Express stores to Birstall’s future overall health” but provide no rationale as to why they think this, nor any commentary on the whether they believe one or both stores will close as a result of the proposals, which is presumably critical to their argument relating to significant adverse impact.
- 4.19 Moreover, Nexus provide no commentary on whether or not they consider a significant impact on the centre as a whole would occur in the following scenarios: no (convenience) store closures, one store closure, or both stores close.
- 4.20 There is also no acknowledgement of the fact that neither of the two existing convenience retailers (Tesco and Nisa) have objected to the planning application.
- 4.21 In summary, the appellant is of the respectful opinion that the retail impact analysis presented by the LPA (via their consultants Nexus) is significantly flawed and provides no compelling evidence that a significant adverse impact on Birstall district centre would in fact occur.

¹⁶ Our emphasis

5 Other material planning considerations in favour of granting planning permission

- 5.1 The proposals would align with Paragraph 85 in the NPPF (i.e. helping “create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.”).
- 5.2 The proposed development would enable a well-known national retailer to invest in the local area of Birstall, by providing a valuable alternative retail outlet selling essential day-to-day goods, and through the creation of twenty full and part time jobs. Other economic benefits provided would include contributing to GVA ¹⁷, new investment, business rates
- 5.3 The proposals provide the opportunity to re-use and regenerate previously developed land of low environmental value in a sustainable urban area, in line with the ‘substantial weight’ aims of NPPF Paragraph 125, as well as the objectives of Local Plan Policy LP7.
- 5.4 The appellant is quite naturally concerned about the risk of ant-social behaviour and crime, should the site not be brought back into beneficial use through these appeal proposals (ref: NPPF Paragraph 96 [b]).
- 5.5 The existing access off Leeds Road is proposed to be improved, whilst the two other existing site access points are proposed to be permanently closed off. This would provide a road safety benefit as these access points are located adjacent to the signalised junction stop.
- 5.6 The proposed building is considered to be of suitable design that would enhance the Birstall Conservation Area. The wider design of the site is proposed to retain some original features of historic importance, such as the stone boundary wall at the front of the site, and the stone slabs on the forecourt are proposed to be re-laid once the building has been erected.

6 Case summary

- 6.1 The proposals represent a small retail convenience offer in a good edge-of-centre location.
- 6.2 This retail impact work produced by the appellant utilises the data collected under the Council’s Kirklees District Retail Survey 2016 (as updated), and the methodology has been clearly set out in line with Government planning practice guidance. Potential anomalies in the Council’s data have been identified and various sensitivities tests have been conducted.
- 6.3 This contrasts with the retail impact work produced on behalf of the Council by Nexus Planning in its assessment of retail impact. Their work appears to be contrary to Government practice guidance, and contains a number of methodological and factual flaws / errors . The appellant contends that the impacts predicted by Nexus are significantly over-estimated. More seriously is the fact that Nexus have not assessed the impact on the district centre as a whole (contrary to the key NPPF policy test), or assessed the second strand of the impact test – consumer choice.
- 6.4 The updated retail impact tables produced by the appellant (July 2025) as result of checking the VOA floorspace figures for the in-centre stores, demonstrate total overall convenience

¹⁷ the value generated by any unit engaged in the production of goods and services.

goods trade diversion in relation to Birstall town centre as a whole (essentially focused on the two existing convenience stores providing a similar offer to the appeal proposal) is predicted to range between 5.7% and 7.4%.

- 6.5 The impact on Tesco Express is predicted to range between 6.3% and 7.5% for survey derived and benchmark turnovers respectively, reducing to 4.9% - 5.9% if higher pass-by trips are accounted for (and also noting that according to the data, Tesco is overtrading by £0.74M at 2026).
- 6.6 Again, referring to the updated July 2025 tables, whilst the VOA floorspace figure for Nisa is higher than quoted in the Kirklees Retail Study and by Nexus, the (standard table) impact based on benchmark turnover figures increases marginally from 2.5% to 3.1%.
- 6.7 The predicted trading impacts on the Tesco Express and Nisa (now Premier) are considered to be well within reasonable limits, particular when considering its apparent over-trading position of the Tesco. The doubts over the statistical reliability of the low respondent rate for the Co-op (since Nisa and now Premier) mean that the suggested under-trading position suggested by the Kirklees Retail Study is cast into doubt.
- 6.8 The impact on Birstall district centre as a whole is predicted to be 1.5% on the standard impact analysis. Factoring in the predicted high proportion of pass-by trips as a sensitivity analysis, this predicted impact is reduced to less than 1%. Consequently, the appellant considers falls significantly short of the 'significant adverse impact' policy threshold.
- 6.9 Impacts are likely to be further reduced because the intended operator Sainsbury has predicted that 55% of their trade would arise from pass-by traffic, due to the prominent main road location (the A62 being a busy through road). These passers-by may not have previously used the existing shopping facilities in Birstall centre, however the proposal could help recapture such trade, as well as potentially creating linked trips into the centre itself.
- 6.10 The impacts predicted must also be judged against the facts that Birstall is a healthy and attractive historic centre, possessing a low vacancy rate. The centre also contains a wide (independent) retail, service and leisure offer, meaning that the proposals would not compete with a significant proportion of businesses within Birstall centre (90% of total stock). As such, the centre the town centre's viability and viability is not dependent on one particular sector and is therefore less vulnerable as a whole to the predicted (relatively minor) changes in shopping patterns.
- 6.11 Brand loyalty is an important factor in consumer shopping habits and the absence of a Sainsbury convenience store offer in the area, together with the increased consumer choice provided by the appeal proposals, is likely to result in more Zone 9 expenditure being retained than the current situation of 80% top-convenience goods outflow. In particular the Kirklees household survey demonstrated that zero expenditure from Zone 9 is being spent at any Sainsbury store currently.
- 6.12 Birstall centre also manages to support not one, but two national convenience retailers - Premier and Tesco, which is a further indicator of healthy trading levels within the centre

as a whole. Neither retailer ¹⁸objected to the planning application, providing further evidence that these national retailers are not concerned about the impacts arising from the proposed Sainsbury store.

- 6.13 The appellant does not conclude that either in-centre store is likely to close as result of the proposals, however even if it was hypothesised that one of the stores were to close (Co-op or Tesco), the other would remain open as an anchor store (and would benefit from trade diversion from the closing stores). On this basis, it could not be concluded the impact on the overall centre would be significantly adverse.
- 6.14 Moreover, Nexus have provided no commentary on whether or not they consider a significant impact on the centre as a whole would occur in the following scenarios: no store closures, one store closure, or both stores close.
- 6.15 Furthermore, over the course of this appeal and previous planning application submitted in 2022, the fact that the original Co-op store changed to its subsidiary brand Nisa (and a Premier store has since occupied the unit), indicates that there remains a healthy and continuous demand from national brand top-up convenience goods businesses. It is noted that Premier have over 4,400 stores across the UK.
- 6.16 As such, potential closure of would not in itself necessarily indicate an adverse impact on the district centre, as the evidence to date is that the original Co-op store has been quickly re-branded or re-occupied, and there is no reason to believe this wouldn't happen again in the future.
- 6.17 In the event the higher impacts presented by Nexus were to be given material weight in this appeal, impacts of 23% were accepted as not being likely to lead to the closure of the store in the Holmfirth appeal case the appellant has cited, and that continues to remains open and appears to trade well, despite out of town Aldi and Lidl stores being approved since.
- 6.18 In terms of other positive impacts, the relationship between the proposed good edge-of-centre development and Birstall centre is considered to be favourable for linked trips using non-car modes of transport. There are good quality road crossing facilities immediately adjacent to the site, linking the proposed site with Birstall centre.
- 6.19 The site also benefits from being within reasonable walking distance of a significant proportion of local residents, thereby offering a sustainable shopping choice.
- 6.20 In conclusion, the appellant contends that that the impact of the proposal on the vitality and viability of Birstall district centre, including taking into account the positive impacts on local consumer choice would not be significantly adverse.
- 6.21 The proposals are therefore considered to accord with NPPF paragraphs 94 & 95, in addition to Kirklees Local Plan Policy LP13.
- 6.22 For the reasons set out above, we therefore respectfully request that this appeal is upheld.

¹⁸ Co-op / Nisa at the time of the planning application

7 Conditions in the event the appeal is upheld

- 7.1 The appellant is happy to accept planning conditions in the event the appeal is allowed. A list of suggested conditions will be agreed with the LPA through the Statement of Common Ground.

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July 2025