

# Land off Huddersfield Road/Leeds Road, Birstall, Batley

Appraisal of Retail and Town Centre Issues

ON BEHALF OF KIRKLEES COUNCIL

March 2023

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# 1. Introduction

## Instruction

- 1.1 Kirklees Council (hereafter referred to as ‘the Council’) has instructed Nexus Planning to provide retail and town centre planning policy advice in respect of planning application reference 2022/62/92081/E, which relates to the redevelopment of land at Huddersfield Road and Leeds Road in Birstall. The application provides for the erection of a single storey local convenience store and associated works.
- 1.2 The application has been submitted by Wharfedale Ltd (‘the applicant’), with Robert Halstead Chartered Surveyors & Town Planners acting as planning agent.
- 1.3 The planning application is accompanied by a number of supporting documents. In respect of the application of retail and town centre planning policy, the key documents comprise: the Planning Policy Supporting Statement; the Retail Sequential Test Assessment; the Retail Impact Assessment; and the Retail Impact Assessment Addendum<sup>1</sup> (all of which have been prepared by Robert Halstead).

## Proposal, Application Site and Wider Context

- 1.4 The application site is located at the junction of Huddersfield Road and Leeds Road, and is currently fronted by a row of four, two-storey stone built terraced dwellings. Three of the dwellings are boarded up and unoccupied. The remainder of the site to the south east is occupied by a vehicle workshop with surrounding hardstanding, which is also currently unoccupied.
- 1.5 The convenience store is proposed to be sited in the same broad location as the existing buildings, with car parking located to the east. The application site measures a total of 0.23 hectares and is irregular in shape.
- 1.6 The description of development as provided by the applicant is as follows:  
  
**‘Demolition of existing buildings and erection of a retail foodstore with associated parking and landscaping.’**
- 1.7 The proposed foodstore will have a gross internal area of 408 sq.m<sup>2</sup>, with a net sales area of 279 sq.m. Although not specifically stated, given the scale of the proposal and the nature of the intended business, it is assumed that the net sales area will be predominantly used for the sale of convenience goods.
- 1.8 The application documents state that the foodstore will be occupied by Sainsbury’s.

## Structure of Our Report

- 1.9 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 National Planning Policy Framework (‘NPPF’).

<sup>1</sup> Following initial comments made by Nexus Planning in respect of the applicant’s approach to assessing the impact of the proposal, Robert Halstead has also provided an updated quantitative assessment and supplementary notes in an email to the Council dated 1 February 2023. These form part of the Retail Impact Assessment Addendum.

<sup>2</sup> The planning application form and Retail Impact Assessment identify that the proposal will have a gross internal area of 408 sq.m but the Sequential Assessment suggests that it will be 400 sq.m; we assume that the higher figure is accurate and proceed on this basis.

1.10 General planning policy matters and wider 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.

1.11 Our report is structured as follows:

- Section 2 sets out the retail and town centre planning policy of relevance to the application proposal;
- Section 3 considers the proposal in respect of its compliance with the sequential approach to development;
- Section 4 considers the proposal in respect of its compliance with the impact policy test; and
- Section 5 provides our summary of the proposal and the issues of particular relevance to retail and town centre planning policy.

## 2. Planning Policy Context

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

### National Planning Policy Framework

2.3 The most recent iteration of the 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.

2.4 In respect of the first of the two tests, paragraph 87 of the NPPF states that local planning authorities should apply a sequential test to planning applications for main town centre uses that are neither within an existing centre nor in accordance with an up-to-date plan.

2.5 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.'**

2.6 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.'**

2.7 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).'

2.8 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

2.9 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.'**

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

2.11 The site is not allocated for any specific use within the adopted development plan but is partly located within the designated Birstall Conservation Area. It is situated approximately 50 metres walking distance from the boundary of Birstall district centre, and therefore comprises an edge of centre site in planning policy terms.

2.12 In respect of retail planning policy, Local Plan Policy LP13 is of particular relevance. Policy LP13 relates to town centre uses and sets out the tests which should be applied to such development. The policy identifies a hierarchy for development, and sets out a sequential test which states 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.'**

2.13 Policy LP14 Shopping Frontages makes it clear that the Primary Shopping Area for District Centres is the full extent of the defined boundary, where retail uses and other main town centre uses are focused.

2.14 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 a defined town or district centre, the local impact threshold is 300 sq.m gross floorspace. As such, there is clearly a requirement to consider the impacts arising from the application proposal in this instance.

2.15 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

2.16 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 distinct strands of the impact test.

2.17 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 uses 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. 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.
- 3.2 Additional guidance on the application of the sequential approach is provided by the Town Centres and Retail PPG, which was last updated on 18 September 2020.
- 3.3 Paragraph 010 of the Town Centres and Retail 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.
- 3.4 In this instance, the application site is located approximately 50 metres away from the defined district centre boundary of Birstall. Accordingly, there is a need to consider in-centre and, potentially, well-located edge of centre sites (determined with reference to their proximity to the town centre boundary) in applying the sequential test.
- 3.5 In order to establish the context for the consideration of alternative sites, we first summarise how the Courts and the Secretary of State ('SoS') have considered the matter of flexibility in applying the sequential test, before then reviewing the appropriateness of the site search parameters identified by the applicant.

### Suitability and Flexibility

- 3.6 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.
- 3.7 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.
- 3.8 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.)

3.9 The Supreme Court has jurisdiction over England and, whilst there is 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<sup>3</sup>.

3.10 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.)

3.11 Paragraph 15 of the SoS's decision letter endorses the Inspector's conclusions in this regard.

3.12 It is helpful to further qualify the direction provided by the above cases by also acknowledging that the Courts have found that an individual operator's particular requirements are not generally of relevance in applying the sequential test. In considering proposals for a discount foodstore in Mansfield (Aldergate v Mansfield District Council & Anor [2016] EWHC 1670 (Admin)), Ouseley J concludes (at paragraph 35 of the Judgment) that:

**'In my judgment, "suitable" and "available" generally mean "suitable" and "available" for the broad type of development which is proposed in the application by approximate size, type, and range of goods. This incorporates the requirement for flexibility in [24] NPPF, and excludes, generally, the identity and personal or corporate attitudes of an individual retailer. The area and sites covered by the sequential test search should not vary from applicant to applicant according to their identity, but from application to application based on their content.'**

3.13 The above three cases are widely referred to in applying the sequential test. Whilst the exact requirements with regard to flexibility will depend on the prevailing circumstances for each proposal, we believe it to be clear that:

- sequential alternative sites should be able to accommodate a broadly similar form of development as the application proposal (allowing for flexibility in respect of format and scale) in the 'real world' in which developers operate; and that
- operators' distinct models are not generally of direct relevance to the test, and as such sequential alternatives should not be discounted due to individual operator preference.

## Area of Search and Parameters

3.14 The proposal seeks consent for the construction of a Class E small format foodstore with associated access, car parking, servicing and wider works.

3.15 In terms of the catchment area adopted, the Sequential Assessment states that it is considered that any reasonably available or suitable sites should be located within or close to Birstall district centre, as this would enable the

<sup>3</sup> Planning Inspectorate reference APP/G2815/V/12/2190175.



everyday shopping needs of local residents to be met. The text goes on to state that any sites should be located close to the defined centre to help promote linked trips and reinforce the vitality and viability of the centre.

3.16 In light of the scale and nature of the proposal, which will serve a localised catchment (principally relating to residential areas of Birstall), we are satisfied that Birstall district centre represents the focus for the sequential site search.

3.17 In terms of the sequential parameters adopted by the applicant, page 2 of the Retail Sequential Test Assessment states that:

**‘Whilst the issue of considering flexibility in terms of format and scale is acknowledged to be a requirement of paragraph 88 in the NPPF, the proposals in this case only relate to a single food retail convenience store, which should not consequently be the subject of size reduction or disaggregation.’**

3.18 The Assessment then goes on to state that in considering a degree of parking requirement, an alternative site would need to be in the region of 3,000 sq.m. This equates to 0.30 hectares, which is larger than the application site. It would appear that this scale of site is referred to in order to support car parking as part of the development.

3.19 We do not believe that dedicated car parking is a fundamental component of a proposal of this nature. Indeed, the Sainsbury’s Property Development and Estates webpage<sup>4</sup> makes it clear that they are ‘flexible on size as long as the location is right’ and that ‘parking is not essential’. Both Sainsbury’s and other retailers (including Co-op and Tesco) will consider new opportunities for convenience stores on sites which are substantially smaller than that associated with this planning application.

3.20 In light of the above (and taking account of the broad format of proposed convenience store development and the need to demonstrate a sufficient degree of flexibility), we consider that all sites and premises should be able to support a store of at least 250 sq.m gross in order to be considered suitable to support a broadly similar convenience store operation. Such a store does not necessarily need dedicated car parking within its curtilage.

3.21 We consider the applicant’s sequential site assessment on this basis below.

### Consideration of Sequential Alternative Sites

3.22 Page 3 of the Sequential Assessment states that a survey of Birstall district centre was undertaken in February 2022, which has been supplemented by an online search of commercial properties. The applicant’s search refers to two vacant premises in Birstall district centre, these being numbers 2 and 10 Low Lane and 10a Market Street<sup>5</sup>.

3.23 Valuation Office Agency records indicate that 2 Low Lane provides 71 sq.m of gross floorspace at ground floor level. Number 10 Low Lane is a residential property and likely occupies an even smaller footprint. Accordingly, both properties are therefore far too small to accommodate the proposed development, even when applying an appropriate degree of flexibility.

<sup>4</sup> As set out at [www.about.sainsburys.co.uk/about-us/property/property-development-and-estates](http://www.about.sainsburys.co.uk/about-us/property/property-development-and-estates).

<sup>5</sup> The submitted Retail Sequential Test Assessment provides a photograph of 10a Market Street rather than 10 Low Lane, but both of these addresses offer no potential to accommodate the proposal.

- 3.24 We have also undertaken an updated review of the online commercial property websites, and note premises are also being marketed at 13-15 Bond Street<sup>6</sup> but that this too is of a very limited scale and offers no realistic potential.
- 3.25 We also note that the former Birstall Sports & Social Club at Nelson Street provides around 340 sq.m of floorspace at ground floor level. The premises are currently vacant, but there is a banner draped across the frontage which reads 'Snooker Hall Opening Soon'.
- 3.26 These premises in their current form are not well suited in respect of accommodating a retail use. There is no shopfront, and the internal arrangements are unlikely to be satisfactory. Whilst such matters could potentially be remedied, we note that the building is not accessible to the rear and that the front of the building on Nelson Street would also unlikely provide for an appropriate servicing arrangement. On this basis, we do not believe that the Birstall Sports & Social Club premises are suitable to accommodate the proposed convenience store use.
- 3.27 In light of the above, we are satisfied that there are no alternative sites located within Birstall district centre which are both available and suitable to accommodate the proposed development.
- 3.28 The submitted Retail Sequential Test Assessment also refers to an alternative edge of centre site, this being the Evelex Auto Parts store at 14 Huddersfield Road. These premises are split into two at ground floor level (by a passage providing access to the rear) and are too small to accommodate the proposal. Furthermore, the site offers no sequential advantage over the application site and merits no further consideration on this basis.

### Conclusion in Respect of the Sequential Test

- 3.29 We have reviewed all of the sites and locations considered by the applicant in its submission and do not believe that any of them are both available and suitable to accommodate the application proposal. Whilst we note that other sites are being marketed in the area as set out above, we do not believe that any are available and suitable, such that they could support the proposed operation in practice (even allowing for appropriate flexibility in terms of format and scale).
- 3.30 Given the above, we find that the application proposal conforms to the requirements of the sequential test as articulated by paragraphs 87 and 88 of the NPPF.

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<sup>6</sup> [https://www.rightmove.co.uk/properties/121573724#/?channel=COM\\_LET](https://www.rightmove.co.uk/properties/121573724#/?channel=COM_LET).

## 4. Assessment of Impact

### Requirements of the NPPF and the Town Centres and Retail 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.
- 4.2 In assessing the significance of impacts arising from development, it is necessary to reflect upon the advice set out in the Town Centres and Retail PPG. In this regard, paragraph 018 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.)**

- 4.3 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.
- 4.4 Paragraph 016 of the Town Centres and Retail 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.’**

- 4.5 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 considered 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 As clarified in the preceding Section 3 of this report, we anticipate that the proposal will principally serve needs which arise in the Birstall area. We can confirm that we are unaware of any relevant investment within Birstall district centre which could be prejudiced by the application proposal.
- 4.8 Batley town centre has been successful in a Levelling Up Fund funding bid, which is focused around improvements to Commercial Street. The bid aims to provide for an increased focus on pedestrians and cyclists along Commercial Street and seeks to improve the public realm to encourage visitors to linger within the centre. The Council is also looking to secure investment to bring the former JBM Bargains premises at Commercial Street back into active use.

- 4.9 Birstall district centre and Batley town centre are around 2.5 kilometres distance<sup>7</sup> from one another and have a different role and function. Furthermore, the type of investment proposed at Batley is of a different nature to the application proposal. This investment would clearly not be impacted upon in practice.
- 4.10 We are unaware of any other investment within a defined centre which could be materially impacted upon by the proposal. We therefore find that the proposal complies with the first part of the 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**

- 4.11 The applicant sets out its approach to trade diversion impact within its standalone Retail Impact Assessment. This has been subsequently updated in the Retail Impact Assessment Addendum and associated additional submissions made in February 2023.
- 4.12 We set out below our appraisal of the principal inputs and assumptions relied upon by the applicant in assessing the impact of the convenience goods floorspace.
- 4.13 At the outset, it is accepted that the comparison goods floorspace associated with the application proposal is very limited. The notes which accompany Table 1 of the retail impact assessment suggest that comparison goods would account for around 5% of the store's sales area. The purchase of such goods will be largely incidental to general grocery shopping (and could include personal care goods or similar). On this basis, it is accepted that the comparison goods impact arising from the proposal will not of itself be of a significant adverse nature and the acceptability of the proposal is more appropriately determined with reference to its convenience goods impact.

#### **Assessment Period**

- 4.14 The applicant undertakes an impact assessment based on a test year 2026. In this regard, we note that paragraph 018 of the Town Centres and Retail PPG directs that the design year for impact testing should be the year that the proposal has achieved a 'mature' trading pattern.
- 4.15 The PPG states that this is conventionally taken to be the second full calendar year of trading after the opening of a new retail development. The applicant's Retail Impact Assessment indicates that the store could open in two years' time, which makes 2026 an appropriate design year.

#### **Baseline Position**

- 4.16 The submitted Retail Impact Assessment and subsequent Addendum refers to the Kirklees Retail Capacity Study Update of 2016, and the household survey which informed the Study. In addition to presenting the survey derived turnovers taken from the Kirklees Retail Study Update, the applicant's assessment also refers to the benchmark turnover of existing destinations (calculated with reference to company average trading performance).
- 4.17 In practice, the benchmark turnovers have been derived from the data presented in the Council's Retail Capacity Study. These sales densities have then been revised in accordance with the changes in convenience goods floorspace sales efficiency identified at Figure 4a of Experian Retail Planner Briefing Notes 15 through to 19 for the respective years following the publication of the Study.
- 4.18 Assessing the potential impact of a proposal against the company average benchmark turnovers of existing destinations is not ideal given that it does not reflect what is happening at a local level. However, it is accepted that

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<sup>7</sup> Based on the most straightforward route using public highways.

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.

- 4.19 In the absence of a more recent, publicly available household survey which appropriately identifies the turnover of smaller convenience goods destinations across the catchment area, we adopt a similar approach in undertaking our own assessment below.
- 4.20 In establishing the baseline trading position at 2026, we have calculated the benchmark turnover of the existing destinations within Birstall district centre with reference to Valuation Office Agency data in respect of the gross floorspace of existing retailers, net floorspace assumptions based on operators' typical trading models, and benchmark sales densities sourced from Globaldata 2022, where available. For those stores where benchmark sales densities are not provided by Globaldata, we have adopted an assumed sales density of £5,000 per sq.m. Our retail impact assessment adopts a 2019 price base.
- 4.21 The particular focus of our retail impact assessment is the stores that will trade most directly against the application proposal. In our view, this will be the Nisa (formerly Co-op) store at Low Lane and the Tesco Express at Smithies Lane. Both of these stores are within the defined boundary of Birstall district centre.
- 4.22 We are aware that, subsequent to our instruction to review the proposal, the Co-op store on Low Lane closed and has now subsequently reopened as a Nisa. For the purposes of this assessment and in light of the ongoing consistency with regard to the nature of products sold, we have assumed that the store will continue to trade at the benchmark average for a Co-op store.

### Turnover of the Application Proposal

- 4.23 We set out our own estimate of the turnover of the proposal below based on the proposed sales area of 279 sq.m and the company average sales density for Sainsbury's identified by Globaldata Convenience and Comparison Sales Densities of Major Grocers 2022 Estimate dataset.
- 4.24 As set out below at Table 4.1, we believe that the proposal would have a convenience goods turnover of around £4.0m at 2026 on this basis.

**Table 4.1: Estimated Convenience Goods Turnover of Application Proposal at 2026**

Gross Internal Area (sq.m)	Net Convenience Goods Floorspace (sq.m)	Sales Density at 2026 (£ per sq.m)	2026 Turnover (£m)
408	251	15,075	3.8

Note: Net sales area based on convenience goods sales occupying 90% of 279 sq.m net sales area; sales density derived from Globaldata Convenience and Comparison Sales Densities of Major Grocers 2022 Estimate dataset; 2019 prices

- 4.25 We note that other foodstore proposals are being promoted across the wider area, including planning application reference 2021/62/92528/E which provides for the development of a foodstore and retail unit at Bankwood Way in Birstall<sup>8</sup>. Whilst we do not model this commitment in undertaking the retail impact assessment, it should be noted that the Bankwood Way development may also take a small amount of trade from Birstall district centre.

<sup>8</sup> This planning application was resolved to be approved by Members at committee in March 2022.

## Patterns of Convenience Goods Trade Diversion

- 4.26 Robert Halstead has presented two convenience goods trade diversion scenarios in its Retail Impact Assessment Addendum. The two scenarios differ in respect of the proportion of the proposed store's trade which would originate from outside the local area (equating to Zone 9 of the Kirklees Retail Study Update).
- 4.27 In our view, both scenarios significantly underestimate the likely level of impact which will arise in Birstall district centre. In this regard, it is important to recognise that some of the pass-by custom attracted to the proposed store (by virtue of its location at the junction of Huddersfield Road and Leeds Road) could otherwise have been claimed by convenience stores in the local area.
- 4.28 In this context, we believe that the level of trade diversion which has been modelled from Robert Halstead from Nisa (formerly the Co-op) and Tesco Express stores in Birstall district centre is wholly unrealistic. Under the first scenario, Table 1 of the applicant's assessment suggests that only £0.37m of convenience goods turnover would be diverted from these two stores, and under the second scenario this assumed diversion reduces to £0.26m. This equates to around 12% and 8% respectively of the convenience goods turnover of the proposal as identified by Robert Halstead.
- 4.29 In considering the likely level of diversion which would occur in practice, it is important to recognise that Batley, Cleckheaton and Heckmondwike all serve a largely different catchment in respect of top-up grocery shopping, and we believe that the impacts arising in these areas will be very limited in practice.
- 4.30 In our view, the application proposal will trade most directly against stores performing a similar role (principally top-up food shopping) situated in the Birstall area. In this regard, the proposal will compete with Nisa (formerly the Co-op) and Tesco Express in Birstall district centre for the exact same customer base. The impacts arising at these stores will be substantially higher than elsewhere as these two stores compete for the same market opportunity.
- 4.31 We provide our own retail impact assessment below at Table 4.2 which utilises a baseline position identified with reference to the benchmark turnovers of stores (and draws on the more detailed assessment provided at Appendix 1 of this appraisal).

**Table 4.2: Nexus Planning's Assessment of Convenience Goods Retail Impact at 2026**

Store	Turnover (£m)	Proportion of Proposal Turnover Diverted (%)	Monetary Diversion (£m)	Post-Impact Turnover (£m)	Impact (%)
Nisa (formerly Co-op), Low Lane	3.0	22.0	0.8	2.2	27.8%
Tesco Express, Smithies Lane	2.8	27.5	1.0	1.8	36.8%
Costcutter, Dudley Avenue	0.3	0.5	0.0	0.3	5.7%
Howden Clough Stores, Leeds Rd	0.3	0.0	0.0	0.3	0.0%
Other	-	50	1.9	-	-
<b>Total</b>	<b>-</b>	<b>100.0</b>	<b>3.8</b>	<b>-</b>	<b>-</b>

Note: Assumed benchmark turnover based on VOA floorspace and Globaldata Convenience and Comparison Sales Densities of Major Grocers 2022 Estimate dataset; 2019 prices

4.32 As set out in the above table, we believe that:

- The impact of the proposal on Nisa (formerly the Co-op) at Low Lane could equate to around 27.8% of its turnover, such that its post-impact trading performance would be around £2.2m; and
- the impact of the proposal on the Tesco Express at Smithies Lane could equate to around 36.8% of its turnover, such that its post-impact trading performance would be around £1.8m.

4.33 We estimate that the proposal could divert around £1.8m from these two Birstall district centre convenience stores. This is a significant sum relative to the size of Birstall district centre<sup>9</sup>.

### The Health of Birstall District Centre

4.34 Birstall district centre is T-shaped and is focused on Low Lane (running east to west) and Market Street (running north to south). At the time of our visit in November 2022, there were 59 units within the centre. Whilst the centre accommodates both retail and service uses, the latter are particularly prevalent. More than one half of Birstall's units are occupied by leisure service or retail service uses. Some units are in a moderate state of repair and would benefit from further investment.

4.35 Whilst convenience goods occupy only six units (or 10.2% of the stock), the largest retail units in the centre are the Nisa at Low Lane and the Tesco Express at Smithies Lane. These two convenience stores clearly help drive footfall and help underpin the centre's role and function. Comparison goods units are generally of a very small scale. Other important facilities within the centre include the Community Centre and the Library & Information Centre. In addition, an outdoor market is held every Thursday which provides additional interest and activity.

4.36 We recorded five vacant units at the time of our site visit, which equates to a vacancy rate of 8.4%. This is less than the national average rate of 13.8% recorded by Experian Goad in September 2022.

4.37 We provide our summary of the composition of Birstall district centre below at Table 4.3.

**Table 4.3: Composition of Birstall District Centre**

Experian Goad Classification	Number of Units	Proportion of Units (%)
Convenience	6	10.2%
Comparison	12	20.3%
Financial Service	5	8.5%
Leisure Service	15	25.4%
Retail Service	16	27.1%
Vacant	5	8.4%
<b>Total</b>	<b>59</b>	<b>100.0%</b>

Note: Derived from Nexus Planning's site visit of November 2022

4.38 In visiting the centre, it is evident that there are relatively small number of anchor uses in the centre. Activity is focused around Birstall Library & Information Centre, Tesco Express and (to a lesser extent) the Nisa (former Co-op). A number of leisure service (i.e. takeaway) units are shuttered during parts of the day which has some impact on the centre's vitality.

<sup>9</sup> We note that Table 29 of Appendix 3 of the Kirklees Retail Capacity Study Update suggests that Birstall district centre had a comparison goods turnover of £21.11m at 2016 (in 2014 prices). However, this 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. The turnover of £21.11m is also higher than that attributed to a number of significantly larger town centres by the same Study.

4.39 Notwithstanding this, Birstall district centre's vacancy rate is below national average level and it is found to be a reasonably vital and viable centre. It is evident that Birstall's convenience goods offer is important in bringing custom into the centre and in underpinning its ongoing role and function.

### Acceptability of Identified Impacts

4.40 In reviewing the identified impacts, we note that:

- the proposal, by virtue of its national multiple convenience store offer and its location, would trade most directly against the Nisa (formerly the Co-op) and Tesco Express stores in Birstall district centre;
- the identified impact arising at these stores would amount to a relatively considerable proportion of the stores' turnover; and
- the Nisa (formerly the Co-op) and Tesco Express stores are the two largest retail units within the district centre and are of importance in anchoring the centre.

4.41 Whilst we recognise that the application proposal is situated in an edge of centre location, the A62 Huddersfield Road runs between the site and the district centre. Whilst the proposed Sainsbury's store is focused around day-to-day grocery provision, the road is heavily trafficked and there would likely be a lesser incidence of linked trips between the proposed Sainsbury's store and other attractions in Birstall when compared, for example, to the Tesco Express. The key issue is the loss of convenience goods trade and associated activity from the centre.

4.42 The impact assessment has been undertaken on the basis of benchmark turnovers and therefore does not provide accurate detail in respect of the future viability of stores. However, in practice, we believe that Nisa store may be particularly susceptible to competition. Whilst it has re-branded, there has not been investment into the interior of the Nisa store and, in visiting the store, we have observed relatively moderate levels of customers using the store.

4.43 We do not believe that the assessment provided by the applicant demonstrates that existing in-centre provision will continue to trade successfully. In practice, the trade diversion arising at the Tesco Express and Nisa stores will be substantial. This is due to the application proposal largely serving the needs of the same catchment area as these stores and providing a very similar offer, principally focused around top-up grocery needs.

4.44 Given the magnitude of the trade diversion and the importance of the Nisa and Tesco Express stores to Birstall's future overall health, we believe that the proposal would likely result in a significant adverse impact at Birstall district centre.

4.45 Due to the manner in which the application proposal would trade directly against existing in-centre provision and noting the importance of that provision to Birstall district centre, we find that the proposal fails to accord with the requirements of the second strand of the impact test.

### Conclusion in Respect of the Impact Test

4.46 As we set out above, we are unaware of any town centre investment that would likely be prejudiced by the application proposal, which we find accords with the requirements of the first part of the NPPF impact test.

4.47 In terms of the second part of the test, we believe that the trade diversion impacts would be focused around Birstall district centre. A substantial quantum of trade would be diverted from the Nisa and Tesco Express stores within the centre. Given the importance of these stores in underpinning the centre, we believe that the proposal is of a significant adverse magnitude such that it is contrary to the provisions of paragraphs 90 and 91 of the NPPF.



## 5. Summary and Recommendations

- 5.1 Planning application reference 2022/62/92081/E, seeks planning permission for the redevelopment of land at Huddersfield Road and Leeds Road in Birstall. The application provides for the erection of a single storey local convenience store and associated works.
- 5.2 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.
- 5.3 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 proposal and, as such, find that it accords with the requirements of paragraphs 87 and 88 of the 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 Paragraph 90 of the NPPF indicates that local planning authorities should establish a local retail and leisure floorspace threshold, above which there will be a requirement to submit an impact assessment. In this instance, Kirklees Local Plan Policy LP13 establishes a threshold of greater than 300 sq.m gross within 800 metres of the boundary of Birstall district centre.
- 5.6 There is no private or public sector investment which would be materially impacted by the implementation of the proposed development. The application therefore accords with the requirements of the first part of the impact test.
- 5.7 However, we believe that the Nisa (formerly the Co-op) and Tesco Express stores are of fundamental importance in underpinning the health of Birstall district centre. We believe that the application proposal would trade most directly against these stores and that the level of trade diversion from these stores would be substantial relative to their turnover. Due to the level of trade diversion which we believe would be apparent at these stores, we consider that the proposal fails to conform with the requirements of paragraphs 90 and 91 of the NPPF. For the same reasons, the proposal is not supported by Kirklees Local Plan Policy LP13.
- 5.8 The Council will need to consider all of the relevant provisions of the development plan, together with other material considerations, in determining the application. Notwithstanding this, the retail policy failure set out above should be given appropriate weight in the decision-making process.
- 5.9 We trust that our advice is clear and appropriately justified, but please let us know should further clarification be required.

## Appendix 1

Nexus Planning Impact Assessment

## Appendix 1: Nexus Planning Retail Impact Assessment for Birstall Convenience Store Proposal

Store	Gross Floorspace (sq.m)	Net Floorspace (sq.m)	Net Convenience Floorspace (sq.m)	Sales Density (£ per sq.m)	Turnover at 2023 (£m)	Turnover at 2026 (£m)	Proportion of Proposal Turnover Diverted (%)	Monetary Diversion (£m)	Post-Impact Turnover (£m)	Impact (%)
Nisa (former Co-op), 6 Low Lane, Birstall	450	280	266	11,296	3.0	3.0	22.0	0.8	2.2	27.8%
Tesco Express, Smithies Lane	398	222	211	13,471	2.8	2.8	27.5	1.0	1.8	36.8%
Costcutter, Dudley Avenue	88	70	67	5,000	0.3	0.3	0.5	0.0	0.3	5.7%
Howden Clough Stores, Leeds Rd	66	53	50	5,000	0.3	0.3	0.0	0.0	0.3	0.0%
Other					-		50.0	1.9	-	-
<b>Total</b>					-		<b>100.0</b>	<b>3.8</b>	-	-

### Notes

- Gross floorspace for Nisa (former Co-op) estimated by measuring footprint of store. Net sales based on Nexus professional judgement
- Gross floorspace and net sales area for Tesco based on VOA records for unit
- Gross and net floorspaces for Costcutter and Howden based on VOA records and Nexus judgements respectively
- Company average sales densities for Nisa and Tesco derived from Globaldata Convenience and Comparison Sales Densities of Major Grocers 2021 Estimate dataset. Nisa assumed to be trading at the same average as the former Co-op
- Average sales densities for Costcutter and Howden based on Nexus professional judgement
- 2019 prices



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