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**TELFORD TRUSTEE NO. 1 LIMITED AND  
TELFORD TRUSTEE NO. 2 LIMITED**

**COMMENTS ON REBUTTAL OF WATERMAN'S BRIEFING NOTE  
PREPARED BY OSBORNE CLARKE AND ISSUED TO TELFORD & WREKIN COUNCIL  
BY OSBORNE CLARKE ON 22 DECEMBER 2009**

**1. INTRODUCTION**

- 1.1 Osborne Clarke act on behalf of Asda Stores Limited ("**Asda**"). On 22 December 2009 Osborne Clarke sent to Telford & Wrekin Council ("**TWC**") a note seeking to rebut the points made in the note prepared by Waterman on the Environmental Statement ("**ES**") submitted by Asda to accompany its planning application for a supermarket on the Civic Offices site (W2009/0915) and Asda's outline planning application for residential development (W2009/0945). Waterman's note was sent to TWC with a letter from Nabarro LLP dated 11 December 2009).
- 1.2 We set out below our comments on Osborne Clarke's note. For the reasons set out below it is clear that despite Osborne Clarke's protestations, the ES fails to comply with the requirements of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 ("**1999 Regulations**") and that in the circumstances the only reasonable course open to TWC is to make a formal request for further information to be submitted pursuant to Regulation 19 of the 1999 Regulations on the basis that the ES should contain additional information in order to be an environmental statement within the meaning of the 1999 Regulations.
- 1.3 We have reviewed Osborne Clarke's note with Waterman and note there are also a number of inaccuracies and contradictions within the rebuttal itself. There are also a number of issues raised in Waterman's review note which have not been addressed in Osborne Clarke's note.
- 1.4 The majority of Waterman's concerns still stand and we confirm that we are still of the view that the ES does not meet the requirements of the 1999 Regulations. TWC must form its own independent view in this regard, and may wish to seek the advice of a third party (such as IEMA who offer ES review services). TWC itself must also determine if a Regulation 19 request needs to be made.
- 1.5 TWC must also form its own view of whether any of the information contained in Osborne Clarke's note constitutes further information for the purposes of the 1999 Regulations, which therefore requires further consultation. We have identified several pieces of such information in Osborne Clarke's note which are set out below.
- 1.6 Before considering the detail of Osborne Clarke's note we must also correct the statement at paragraph 1.1 of its note to the effect that the Waterman's note is dated 5 November 2009. The date of Waterman's Note is clearly given as "*December 2009*" in its heading and, as



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explained in our letter to TWC of 22 December 2009, the reference to 5 November 2009 is to the date when the first draft of the note was prepared.

## 2. COMPLIANCE WITH THE EIA REGULATIONS

### Main Alternatives Studied by the Applicant (Paragraph 2.1(i) of Osborne Clarke's note)

- 2.1 To qualify as an environmental statement as defined by the 1999 Regulations the ES must include at least the information referred to in Part II of Schedule 4 to the 1999 Regulations and such of the information referred to in Part I of Schedule 4 as is reasonably required to assess the environmental effects of the development.
- 2.2 Paragraph 4 of Part II of Schedule 4 to the 1999 Regulations requires the ES to include:  
*"4. An outline of the main alternatives studied by the applicant or appellant and an indication of the main reasons for his choice, taking into account the environmental effects".*
- 2.3 The need where reasonably required to provide an outline of the main alternatives in this manner is also referred to at paragraph 2 of Part I of Schedule 4 to the 1999 Regulations and that requirement is reiterated at Parts I and II of Annex C to Circular 02/99: Environmental Impact Assessment.
- 2.4 Paragraph 2.3.1 of the ES cross-refers to Appendix 11.1 of the ES which is the Retail Assessment prepared by RPS. Paragraph 4.7 of Waterman's note referred to the *"sequential approach"* referred to in the Retail Assessment and correctly noted that the ES is deficient as no information on the environmental effects has been provided in relation to the alternatives discussed as required by the 1999 Regulations. Part II of Schedule 4 of the 1999 Regulations requires the main alternatives to be outlined and an indication given of the main reasons for the applicant's choice *"taking into account the environmental effects"*. The ES does not do this.
- 2.5 Whilst Osborne Clarke refer to the assertion made in the ES that no alternative sites were considered suitable, viable and available, these are the tests applicable to the sequential approach set out in PPS6: Planning for Town Centres, but do not address the requirement for environmental effects to be considered as set out in the 1999 Regulations. The ES is plainly deficient in this respect.

### Description of Development (Paragraph 2(ii) of Osborne Clarke's note)

- 2.6 Osborne Clarke's note makes a general assertion that the descriptions set out within Chapter 2 and the subsequent chapters of the ES are sufficient for the purpose of identifying and describing impacts and mitigation.
- 2.7 A detailed analysis of the ES, however, reveals that this is not the case and that there are a number of specific omissions which mean that the ES fails to satisfy the requirements of Part II of Schedule 4 of the 1999 Regulations. The specific deficiencies are as follows and were referred to in Waterman's note:



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- (a) there has been a failure to provide proper information on the site as required by paragraph 1 of Part II of Schedule 4 to the 1999 Regulations. The area for each site is not given and the ES does not provide an adequate description of TWC's existing Civic Offices;
  - (b) the description of the proposed supermarket is lacking and omits reference to opening hours, heights of buildings, materials, proposed ground levels, retaining walls, acoustic fencing, landscaping, highways improvements, drainage and details of the construction process/programme;
  - (c) in respect of the residential application the outline planning application is deficient in that it does not identify what information has been submitted for approval to satisfy the requirements of Article 3 of the General Development Procedure Order 1995 (as amended in May 2006). These deficiencies were identified in Drivers Jonas' letter to TWC of 11 December 2009 in respect of the residential application. The amendments made to Article 3 of the GDPO in May 2006 were designed to ensure that a minimum level of information is submitted for approval without outline planning applications in part to allow the environment effects of development for which outline planning permission is sought to be properly assessed. The Milne case referred to at paragraph 2.1(ii) of Osborne Clarke's note provided part of the background against which the relevant amendments were made to the GDPO in May 2006. The Milne cases held that the assessment of environmental effects on the basis of illustrative materials in the context of an outline planning application was not sufficient and this supports the Trustees' position that inadequate information has been submitted for approval to discharge either the requirements of Article 3 of the GDPO or to sufficiently fix the development at the outline stage in order to allow a valid environmental assessment to be carried out;
  - (d) the fact that no alternative site has been identified for the relocation of TWC's Civic Offices and/or assessed is also a fundamental defect, as the planning application for the supermarket proceeds on the basis that alternative provision will be made. As a result it is impossible for the ES at this stage to properly consider the likely significant effects of the development as a whole.
- 2.8 In respect of construction and demolition providing a scatter gun approach to the provision of information related to the description of the proposals and the construction and demolition phases throughout the ES is not helpful.

**Non-Technical Summary (Paragraph 2(iii) of Osborne Clarke's note)**

- 2.9 For the reasons set out in Waterman's note the non-technical summary is defective and fails to meet the requirements of the 1999 Regulations and associated Government guidance.

**Lacks Proper Indication of Difficulties in Compiling the ES (Paragraph 2(iv) of Osborne Clarke's note)**



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- 2.10 The ES is deficient in this respect for the reasons set out in Waterman's note. Osborne Clarke have said that the vacation of the existing Asda supermarket within Telford's primary shopping area is "*fully addressed*" in the Retail Assessment contained within the ES which Osborne Clarke assert assesses the impact of "*reoccupation or no reoccupation*". This is plainly not the case as the impacts on the town centre have nowhere been properly assessed on the basis that there would be "*no reoccupation*" of the existing Asda unit. This is one of a number of fundamental defects in the manner in which the Asda application has been prepared for the reasons set out in Drivers Jonas' letter of 16 November 2009 to TWC and the note attached to Nabarro LLP's letter to TWC of 14 December 2009.

**Lack of Technical Data (Paragraph 2(v) of Osborne Clarke's note)**

- 2.11 This is insufficient for the reasons set out in Waterman's note. Waterman's have reviewed Osborne Clarke's note and nothing it contains alters this opinion.

**3. OTHER MATTERS (PARAGRAPH 3 OF OSBORNE CLARKE'S NOTE)**

**Floorspace – Current Telford & Wrekin Offices (Pages 2 and 3 of Osborne Clarke's note)**

- 3.1 For the reasons set out above the description of development is deficient in respect of both its description of the existing Civic Offices in terms of their floorspace and the number of people employed within them and the complete lack of clarity in respect of where the Civic Offices are to be relocated to.
- 3.2 In respect of the question of relocation, we would refer TWC to the points made at Section 3 of the note accompanying our letter to TWC of 14 December 2009. No formal decision has been taken by TWC as to where the Civic Offices will be relocated to.
- 3.3 Osborne Clarke state that the floorspace of the existing Civic Offices does not need to be identified in order to describe the likely significant effects and associated mitigation. This is clearly not the case as even if a firm alternative proposal for the relocation site had been identified, which it has not, it would be impossible to identify the adequacy of such replacement facilities both in terms of their size and potential employment without this further information about the existing Civic Offices.
- 3.4 Osborne Clarke go on to say that the ES makes the "*robust assumption*" that the Civic Offices will be relocated within the Southwater area and state that it is their understanding from the "*site owners*" that they will be able to provide vacant possession in time to allow the proposed development to be available for use upon the expiry of the existing Asda lease. Again we refer to the comments set out at Section 3 of the note attached to our letter to TWC on 14 December 2009. No information has been made available to the public as to whether or not there is any realistic basis for the assumptions referred to by Osborne Clarke and their understanding appears to be based on the letter from TWC's Head of Property and Design to RPS of 30 November 2009.
- 3.5 On a related issue it is clear that in this respect the likely worst case in terms of environmental impacts has not been assessed given that Asda itself requested a planning



permission with a lifetime of five years and TWC is proposing to grant planning permission for the supermarket with a lifetime of four years. This is another fundamental defect of the ES in that it fails to address the scenario where work does not start on the Civic Offices site until 2014 as could be the case. If the assumptions are as robust as Osborne Clarke suggest then Asda would not have requested a five year lifetime for the planning permission and the normal three year lifetime would have been sufficient.

- 3.6 In addition if it were to be assumed that the Civic Offices are to be relocated to the East Southern site as part of the development recently proposed by TWC and the Southwater Event Group ("**SEG**"), there has been no assessment of these proposals within the ES. If this is where the offices are to be relocated to then the ES should have included an assessment of the proposed relocation.
- 3.7 Osborne Clarke in the second paragraph at page 3 of their note state that the relocation would result in a "*moderate benefit*" in terms of employment. First no assessment has been undertaken to justify this statement. Second it is difficult to understand how a claimed re-provision of existing jobs (both for the Asda supermarket and the Civic Offices relocation) could achieve beneficial rather than neutral effects in terms of the number of people employed.
- 3.8 In addition if TWC subsequently decides to relocate its offices to the East Southwater site, then in order to ensure all the effects of the proposed development are assessed then it would be necessary to carry out such an assessment (which has not been done to date) and impose a restriction on the commencement of development on the Civic Offices site until the replacement offices had been constructed and occupied on the East Southwater site. Without such a restriction it would be open to TWC to proceed with the relocation in a manner which had not been assessed in the ES which would be wholly contrary to the regulatory requirements.

**Assessment of Separate Applications (Page 3 of Osborne Clarke's note)**

- 3.9 We agree with Osborne Clarke that there is nothing in the 1999 Regulations which prevents two applications being assessed within a single ES. The manner in which this has been done is, however, deficient for the reasons set out in Waterman's note as the approach adopted is inconsistent and incomplete in respect of the cumulative effects of the two proposals.
- 3.10 Osborne Clark say that it is irrelevant which site is developed first but this is clearly not the case as the impacts on the residential development would clearly be different in the event that the Asda supermarket is built before or after completion of the residential development. Clearly the residential scheme would introduce new residential receptors. As stated elsewhere in Osborne Clarke's note (at page six, paragraph 4.11), the development proposes a "*very high proportion of cut & fill*". Therefore as stated in Waterman's note, the "*worst case*" would be the scenario that the residential development is completed and operational prior to works on the Asda scheme commencing.



- 3.11 Osborne Clarke's note provides further information on the likely significance of construction noise effects, which was omitted from the ES. It is stated that "*the proposed development would raise no unusual or significant noise effects during the construction*". However, no assessment is provided to substantiate this. It is Waterman's view that, undertaking a "*very high proportion of cut and fill operations*" close to residential receptors could give rise to significant effects.
- 3.12 Osborne Clark make the remarkable assertion that the 1999 Regulations "*do not prescribe how an ES is undertaken or its structure*". It is clear that the whole purpose of the 1999 Regulations is to prescribe how an ES is undertaken and the High Court has on many occasions stressed the need for requirements of the 1999 Regulations to be met.

**Cumulative Impacts/Assessment of the West Southwater and Malinslee Link applications  
(Pages 3 and 4 of Osborne Clarke's note)**

- 3.13 Osborne Clarke assert that the potential continued vacancy of the existing Asda store has been assessed and that this scenario is fully set out in the Retail Assessment and is referenced in the socio-economic chapter of the ES as noted by RPS's letter of 3 December 2009. The contrary is, in fact, the case and the Trustees have already indicated the deficiencies of the Asda application in this respect. In particular the Retail Assessment submitted by RPS does not recognize that the greatest impact that would accrue from the Asda proposal being approved would be that it would not be possible to attract another occupier to anchor the north of the town centre. The fact that this likely impact has not been properly assessed is another fundamental defect with the Asda application.
- 3.14 Osborne Clarke refer to the June 2006 consultation paper issued by the Government "*Environmental Impact Assessment: A Guide to Good Practice Procedures*". Osborne Clarke assert that for the purposes of assessment the relocation of the Civic Offices "*would not count*". This is a remarkable assertion for the following reasons:
- (a) Asda appear to be arguing that the assumption that the Civic Offices site will relocate to Southwater can be treated as robust and relied upon without any indication of where or when or how that relocation is to be achieved, but on the other hand argue that for the purposes of cumulative assessment that relocation does not matter;
  - (b) the guidance set out in the Consultation Paper relates to different projects which may need to be taken into account as part of a cumulative assessment. The Civic Offices' relocation is, however, different because the relocation is a fundamental consequence of the Asda planning application rather than a consequence of a separate planning application or planning permission for an unrelated scheme. Asda treat the replacement of the Civic Offices as a given consequence of its development but have failed to assess its environmental effects.
- 3.15 Osborne Clarke say that as a result of the mitigation proposed, the construction impacts will reduce below the point where they are considered to be significant, even cumulatively. This does not remove the requirement for the likely significant effects to be assessed and it is important that this is done in order to judge the adequacy of mitigation measures proposed.



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- 3.16 Osborne Clarke's note provides "*further information*" on the likely significance of construction effects following mitigation which, in the case of noise was omitted from the ES. Osborne Clarke's note states that: "*as a result of the mitigation the construction impacts are reduced below the point where they are considered to be significant, even cumulatively*". However, no assessment is provided to substantiate this. It is Waterman's view that, undertaking a "*very high proportion of cut and fill operations*" close to residential receptors could give rise to significant effects and therefore without the prescription of suitable mitigation measures such effects would remain. No information is provided on the required mitigation measures in respect of noise. Further, the statement "*as a result of the mitigation the construction impacts are reduced below the point where they are considered to be significant, even cumulatively*" is not correct in respect of air quality as the ES states (paragraph 7.5.8) that even with mitigation that medium to low risks are still anticipated.
- 3.17 In respect of the potential relocation of the Civic Offices to the East Southwater site, even if this were to be treated as a commitment then we consider that those applications would be inextricably linked and that the ES should have considered the SEG application. Further, it is highly likely that the construction programmes for these two developments would overlap and therefore give rise to cumulative effects. Therefore the failure to consider these effects is an omission.

#### **Consideration of the 2016 Opening Year (Paragraph 3.1 of Osborne Clarke's note)**

- 3.18 Osborne Clarke say that the need to consider a 2016 opening year for the supermarket development on the Civic Offices site is incorrect and state that the ES explicitly makes reference to a 2014 date as being the year in which the current Asda lease expires and the "*anticipated opening year of the new store*".
- 3.19 The 1999 Regulations make clear that the purpose of an environmental statement is to assess the likely significant effects of the proposed development. The proposal from Asda was initially that the planning permission should have a lifetime of five years which if permission were to be issued in 2010 would allow the commencement of development to take place in 2015 with a possible store opening date, using Asda's assumptions, in 2016. TWC currently propose to grant a four year planning permission which would result in a potential scenario if permission could be implemented in 2014 with a store opening date in 2015.
- 3.20 As a result in assessing an opening year of 2014 alone the ES cannot assess all of the potential environmental effects of the development as proposed. In order to assess the reasonable worst case impacts the ES should have taken into account the potential for a store opening in 2015 or 2016. Asda's position on this point is inconsistent in that whilst it asserts that the 2014 date is robust it has recognized that slippage is always a potential issue and proposed the development on the basis that it would not even need to start the development until 2015.



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#### 4. COMMENTARY ON ES REVIEW (PARAGRAPH 4 OF OSBORNE CLARKE'S NOTE) (PARAGRAPH 4 OF OSBORNE CLARKE'S NOTE)

##### West Southwater

- 4.1 No new issues are raised by Osborne Clarke's note in respect of this part of the Waterman's note and for the reasons set out in Waterman's note and elsewhere in this note, Osborne Clarke's assertions are not correct. The description of description of development fails to meet the requirements of the 1999 Regulations. The description in the ES should be standalone, and in the absence of relevant drawings this is not sufficient. There is no mention of heights, materials, surface treatments etc. It is inadequate, particularly in relation to the Malinslee Link application. There is no description of the likely phasing of construction works in the document. Construction and demolition works are discussed in most chapters, but not all (for example the noise chapter).

##### Chapter 4 Transport

- 4.2 The significance of any claimed beneficial effects is not defined in the ES.
- 4.3 Osborne Clarke's note makes reference to paragraph 4.5.30 of the ES as providing the level of significance for traffic impacts; however this is incorrect as this paragraph of the ES only deals with claimed positive effects in respect to non-traffic related effects.
- 4.4 A new travel plan has been submitted and Osborne Clarke state that they do not consider this comprises "*further information*" and are requiring submission under Regulation 19 of the 1999 Regulations. The submission of a further version of the travel plan without proper public consultation is unacceptable and it is clear that the ES proceeded on the basis of the initial travel plan proposed and needs to be updated to reflect submission of a further version of the travel plan.

##### Chapter 5 Flood Consequence and Drainage

- 4.5 Osborne Clarke's note has not addressed the issue that no significance criteria have been identified. The ES has not demonstrated that the flood mitigation and SUDS measures can be delivered on the site.

##### Chapter 6 Landscape and Visual

- 4.6 Osborne Clarke's note has not responded to the point raised in Waterman's note that the assessment is not supported by visualisations. Further information on heights and massing of buildings along with likely materials and façade treatment are required to undertake a robust townscape and visual assessment. Without this information the assessment cannot be justified.
- 4.7 Osborne Clarke's note sets out "*further information*" on the proposals in relation to the ASDA service yard fence and ground levels. There is the need for further formal public consultation as a result.



## Chapter 7 Air Quality

- 4.8 Osborne Clarke's note attempts to provide clarification on the significance of effects in relation to construction effects. However, we note that this conflicts with the significance reported at paragraph 7.8.3 of the ES which states that there are no residual effects. Again this is "*further information*".
- 4.9 For operational effects Osborne Clarke's note sets out "*further information*" in relation to the sensitivity of opening years beyond 2014.
- 4.10 In relation to validation Waterman understand that continuous monitoring has been discounted due to timescales and cost. However diffusion tube monitors can be used for shorter durations and at reasonable costs. Therefore Waterman consider that it is reasonable that the ES should have included some monitoring to allow some verification of the modelled results.

## Chapter 8 Noise and Vibration

- 4.11 It is noted that the noise and vibration chapter contains a large amount of baseline and source data for plant noise and car parking noise; however, source data for delivery noise has not been provided making it difficult to verify the results of the assessment. In addition the calculation procedure used has not been provided. For clarity and to allow the assessment to be independently verified it is good practice for this information to be provided.
- 4.12 Based upon the findings of the assessment it is noted that a 4.5m acoustic fence is proposed on top of the existing 2m retaining wall resulting in a barrier of 6.5m in total which is obviously a substantial structure and may serve to be overly intrusive to the adjacent land uses. Again the level of attenuation provided by the barrier could not be verified in the absence of monitored source data.
- 4.13 Osborne Clarke's note states that the monitoring and assessment locations are appropriate and have been selected to be representative of the closest proposed potentially sensitive receptors to the development. TWC must, however, note that, contrary to what is stated in Osborne Clarke's note, Monitoring Location 1 is position within the ASDA site and therefore does not represent a residential receptor. In addition, there are inconsistencies in relation to the numbering on the plans, appendices and the chapter making the assessment difficult to understand.
- 4.14 An assessment should have been undertaken to determine the potential impacts of daytime delivery and plant noise on the job centre which is located immediately adjacent to the site boundary and may be subject to elevated noise levels as a result of the operation of the proposed supermarket.
- 4.15 Although the standards and guidelines selected by Asda are appropriate, given that the chapter is part of an ES it is best practice to adapt the adopted limits to produce a set of significance criteria which allow the potential impacts of a proposed development to be clearly identified.



- 4.16 A construction noise and vibration assessment has not been included in the Noise and Vibration Chapter. This is a serious omission.
- 4.17 The calculation procedures adopted for the assessment are not provided meaning that they cannot be independently verified by TWC or the Trustees. In addition, some of the results appear highly questionable. For example in the absence of mitigation delivery noise levels are higher at Receptor 1 (The Seven Gorges Public House) than at Receptor 3 (Proposed residential dwellings) although Receptor 3 is significantly closer to the service yard than Receptor 1 which seems unusual. However, it is not possible to verify these results given the lack of source data.
- 4.18 Waterman also question the moderate adverse impact assigned to plant noise which in the absence of mitigation is as much as 15 dB(A) above monitored background noise levels. A noise level of this magnitude would be likely to give rise to complaints which is considered to be equivalent to a substantial adverse impact.
- 4.19 Although the opening year for the proposed development assessed as 2014 it is unlikely that the residential dwellings would be occupied simultaneously during the first year of opening. As such traffic flows would change over time following the opening year. As a consequence it is good practice to assess a design year for the scheme usually taken to be 15 years in the future or the first year during which the development as a whole is fully occupied and operational.
- 4.20 It is also noted that although the proportional change in traffic noise levels has been determined no account has been taken of potential changes in speed and HGV composition. A more robust approach would have been to calculate Basic Noise Levels for each modelled link in line with the guidance provided in CRTN.

#### **Chapter 9 Ecology**

- 4.21 The survey results related to the assessed Phase 1 are missing in that they are not shown on plan.
- 4.22 In relation to breeding birds, the absence of existing records does not mean that species are absent. Osborne Clarke's note states that the scoping report did not indicate that breeding birds would be a significant feature on either site. It is unclear if it was agreed with the statutory consultees or that TWC agreed that this survey was not required.

#### **Chapter 10 Ground Conditions**

- 4.23 Osborne Clarke's note provides "*further information*" in relation to the remediation strategy and states that on-site remediation is proposed.
- 4.24 Waterman's comments still stand in relation to proposals in respect of impermeable areas and SUDS and there is insufficient information in the ES to determine the mechanism for this and therefore associated environmental effects.



## **Chapter 11 Socio-Economics**

- 4.25 In respect to the socio-economic issues Osborne Clarke has responded to the points made at paragraphs 4.31 to 4.34 of Waterman's note.
- 4.26 Osborne Clarke state that the loss of office accommodation has not been assessed as the Civic Offices will be relocated in order to the Asda development to commence. Osborne Clarke assert, similarly, that no account needs to be made of the current staff employed at the Asda store as they will be relocated to the new store. This is a fundamental defect in the approach adopted in the ES as it is clear that there is no evidence available as to the likely size, location or timing of delivery of the replacement Civic Offices which can be relied upon at this. In addition, given that Asda has applied for a planning permission which had a five year lifetime and TWC is proposing to grant a planning permission with a four year lifetime there is no assessment of what would happen to Asda's existing staff in the event that the lease on its existing unit expires and that there is then a gap between that event and the opening of its new store. Asda has chosen to assess its most favourable commercial scenario in the ES but this is wholly inconsistent with its proposal that the planning permission have a five year lifetime and TWC's proposal that it should have a four year lifetime.

### **NTS**

- 4.27 As stated above, Waterman's views in relation to the NTS still stand.

### **Presentation**

- 4.28 Interestingly Osborne Clarke's note states that if they had been approached for a copy of the ES Waterman's would have been provided with a CD therefore ensuring the quality of any copy was identical to the original. The ES reviewed was received in digital format from TWC. This media should contain documents of suitable quality to allow meaningful consultation.

### **Objectivity**

- 4.29 Waterman's views still stand.

### **Cumulative Impact**

- 4.30 We have commented on this issue above.

### **Malinslee Link**

## **Chapter 2: Site Description/Description of Proposals/Alternatives**

- 4.31 For the reasons set out above the description of development and the extent of information submitted for approval with the residential application is incomplete and fails to meet even the minimum requirements set by Article 3 of the GDPO.



- 4.32 Reference is made in Osborne Clarke's note to parameters but none appear to have been submitted for approval. The effect of this is that the residential application is, in effect, a "bare" outline planning application of precisely the sort which has been held to be inadequate in the Milne cases to which Osborne Clarke have referred.

#### **Chapter 6: Townscape and Visual**

- 4.33 We restate our comments in relation to visualisations as well as information on heights and massing of buildings to ensure a robust townscape and visual assessment. Without this information it is considered that the assessment reported cannot be justified.

#### **Chapter 7: Air Quality**

- 4.34 As stated above, the "worst case" in relation to construction effects has not been assessed. Osborne Clarke's note states that TWC will deal with any issues that arise by way of a condition. The purpose of the ES is to set out the potential effects, mitigation and residual effects in order to allow information on environmental impacts to inform decision making on planning applications. Without setting out the required mitigation measures, TWC would have little basis for drafting appropriate planning conditions to enforce such measures.

#### **Chapter 8: Noise and Vibration**

- 4.35 Osborne Clarke's note sets out "further information" in relation to the NEC B category for the proposed residential development, with the ASDA scheme in completed and operational. However, consideration is also required to future noise levels with the proposed supermarket in operation when noise levels are likely to be significantly higher than those currently experienced. As a consequence it is considered that although the provision of mitigation would be secured through a suitably worded planning condition, the ES chapter as a minimum should set out potential mitigation measures.

#### **Chapter 9: Ecology**

- 4.36 The offsite mitigation should be assessed and demonstrated that it is feasible. Waterman's comments therefore remain.

#### **Chapter 10 Ground Conditions**

- 4.37 As set out in our previous comments, it is highly questionable whether a balance cut and fill and onsite remediation is achievable to meet levels suitable for residential development.
- 4.38 Osborne Clarke's note states that some of the technical appendices were provided electronically. However, they have not been readily available for consultation.
- 4.39 As stated in Waterman's previous comments, the Malinslee Link application should have been assessed against suitable contamination thresholds for residential development.



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## **Chapter 11 – Socio-Economics**

- 4.40 Osborne Clarke's note sets out "further information" on the significance of effects. It states that "We are strongly of the view that the provision of c.79 residential units (resulting in c.197 people) would not give rise to significant environmental effects". However this contradicts the ES where at paragraph 11.6.5 it is claimed that moderate beneficial effects are anticipated in relation to population and housing.

## **5. CONCLUSIONS**

- 5.1 For the reasons set out above Osborne Clarke's note does not provide an adequate response to fundamental deficiencies in the ES identified in Waterman's note and as a result TWC should now issue a formal request that further information is submitted pursuant to Regulation 19 of the 1999 Regulations in order to seek to remedy these fundamental defects.

**NABARRO LLP**  
**4 JANUARY 2010**