

PLANS BOARD

Minutes of a meeting of the Plans Board held on Monday, 7 December 2009 at 6.00 p.m. in the Civic Offices, Telford, Shropshire

PRESENT: Councillors I.T.W. Fletcher (Chairman), R.G. Chaplin, E.A. Clare (substitute for Councillor F.R. Picken), V.A. Fletcher (substitute for Councillor N.A. Dugmore), J.A. Francis, G.M. Green, C.F. Smith (substitute for Councillor H, Rhodes) and M.J. Smith

ALSO PRESENT: Councillors N.A. Dugmore and A. Lawrence

PB-62 APOLOGIES FOR ABSENCE

Councillors N.A. Dugmore, H. Rhodes and F.R. Picken

PB-63 DECLARATIONS OF INTEREST

None.

PB-64 W2008/1083 – LAND ADJACENT TO GRANGE LANE, REDHILL, TELFORD, SHROPSHIRE

This was an application by SITA (UK) Ltd for the construction of an Energy from Waste (EfW) plant on a site adjacent to the existing Granville Landfill Site. EfW was a collective term for a number of thermal treatment techniques. The most commonly used to date in the United Kingdom was Mass Burn or direct combustion (incineration), in which waste was burned to provide heat, which was then used to generate electricity. EfW incineration plants could burn any organic materials, including those that were not readily degradable such as wood based wastes and plastics. The outputs of direct combustion plants produced incinerator bottom ash (IBC) and fly ash, which was a product of the abatement processes used to remove pollutants from the flue gases. The bottom ash could be used as a secondary aggregate, subject to quality criteria, but the fly ash had to be disposed of as a hazardous waste.

The application site occupied 4.15ha of predominantly undeveloped grassland currently used for grazing on the eastern fringe of Telford, approximately 2.5kms from its centre. An area of 0.15ha of land in the north-eastern and south-western corners of the site was in temporary use as a car park and for the siting of a portakabin associated with the adjacent temporary landfill site. To the east, the site was bounded by a Community Recycling Centre (CRC) and the existing Granville landfill site.

The site lay within the built up area of Telford, as defined on the Local Plan proposals map, immediately adjacent to the boundary with the Borough's rural area and was part of a larger swathe of Green Network that extended northwards to the southern edges of Muxton and westwards towards Redhill Way. The boundary of the Borough with the newly formed Shropshire Council lay approximately 600m to the east and the nearest residential housing estates at Priorslee lay approximately 700m to the south and the nearest

residential property only a few metres from the site boundary. The site was accessed via Grange Lane off the A5(T), which also served as the existing public vehicular access for both the Granville landfill site and the CRC. To the north of the site were a Local Nature Reserve, the Granville Country Park, and a golf course with views to the south, including towards the proposed EfW site.

The report set out a non-technical description of the proposed application, its intended operation and incineration processes, full details of which were included in the applicant's supporting Environmental Statement (ES) and supporting technical appendices, all of which were available for public inspection with the application. The Board was asked to note that the conclusions mentioned in this part of the report were those of the applicant and were not necessarily shared by officers.

The ES identified that the EfW plant would be powered by approximately 62,000 tonnes of mainly municipal waste per annum although, correspondence from the applicant had established that the plant could take commercial waste. The annual output from the operation would be approximately 17 megawatts of steam energy, capable of being converted in part to electrical energy but also for heat energy, which could be used to supply combined heat and power to local businesses, although the application did not include end users or infrastructure to provide onward transport of heat or power. About 15,000 tonnes per annum of ash residue from the incineration process would have to be removed from the site by lorry for recycling, landfill or further treatment at a specialist facility.

The EfW incineration facility would be sited in a building which would also house a waste reception hall, waste crusher and ash bunker, offices, workshops and visitor centre. The maximum dimensions of the main building were 105m long, 63m wide and 32m high, together with a chimney stack for dispersion of waste gases rising to a height of measuring 65m. The total footprint of the building would be approximately 4,900sq m. i.e. about 0.5 ha. A significant proportion of the western site area (approximately 1.9 ha) was associated with a screening mound and landscaping and a further c.0.4ha in the south-east of the site would be open, with the remainder comprising access and circulation roads, water storage and attenuation ponds, car parking, air cooled condensers, oil tank and further planting.

The report described the process, and associated energy recovery and utilisation. It was noted that the emissions from the 65m high stack would have to comply with the emission levels permitted under the European Waste Incineration Directive and by the Environmental Permit that the applicants would have to obtain from the Environment Agency before the plant could operate.

The facility would operate 24 hours a day, 7 days a week, apart from any planned and unplanned shutdowns of which there would be, typically, two per year for maintenance each lasting approximately 7 days. Waste deliveries would take place between 7am – 8pm Mondays to Fridays and 8am – 5pm Saturdays and Sundays although the plant would be required to receive waste

outside these hours, for example in emergencies. During shutdowns, waste would be diverted from the facility to other disposal or processing sites, including the adjacent Granville landfill site.

Construction would take some two years followed by a commissioning period of up to four months. Construction works would take place between 7am–7pm Monday to Friday and from 7am–4pm on Saturdays. Noisy activities such as piling would not take place on Saturday afternoon but, should it be necessary to have extended working hours, this would be by agreement with the Council in advance.

The design of the building had been dictated by the operational requirements of the plant, whilst at the same time aiming to be sympathetic to its surroundings and responding positively to the physical constraints of the site. It would be clad in various coloured, profiled cladding of shades of dark greens and mid to light greys and the slim line steel chimney stack would be epoxy painted in light grey. Visibility of the plume would vary with weather conditions and times of day and year but the applicant had concluded that, overall, the impact of the plume visibility would be low.

The applicant considered that the proposals would have a slight/moderate impact on the surrounding landscape, mainly through aesthetic and perception changes to the local landscape as a result of the building, but the ES stated that this would be largely localised as the site was well screened by nearby landforms. Overall the applicant believed that this site could accommodate the proposed development more easily than other character areas in the Borough.

The ES considered that the proposed plant would have a limited impact on transportation in terms of traffic flows, as the adjacent landfill site already attracted the waste that would be transported to the EfW. Under the proposal a proportion of this waste would be diverted to the EfW incineration plant with some of the residual waste that was not suitable for burning being disposed of in landfill. There would be an increase in vehicle movements should current rates of infilling at the landfill site resume once the EfW incineration plant was operational. A clock-wise one-way system was proposed around the site using a single entry/exit point off Grange Lane and the internal access road would be sufficiently long to prevent vehicles queuing out of the site and onto Grange Lane towards the CRC. The applicant considered the potential level of increase to be within the existing capacity of the landfill operation and, therefore, not significant but had proposed to implement a Travel Plan to encourage and facilitate more sustainable transportation by its staff.

With regard to alternative sites, the applicant had concluded that the proposed site was the most appropriate as it had been allocated at one time in an emerging Waste DPD. However, it was noted that this document had been withdrawn following criticism from the independent Planning Inspector at the Core Strategy Public Inquiry and was no longer relevant. The applicant considered that the proposed site was away from significant built up areas and residential development, was adjacent to an existing waste management

site and had good access to the primary road network and that the Green Network and landscape impacts could be addressed.

Any noise generated by the development was likely to arise during construction, as set out in the report and associated HGV noise (but this would not be dissimilar to that of HGVs currently visiting the landfill site). The operational noise emitted from the fan via the exhaust stack had the greatest potential to contribute to community noise, although it would be steady, and the proposals included appropriate mitigation measures including the construction of a 3-4m. high landscaped bund along the western site boundary.

The site, save for 0.15 ha, had no planning history as it had always been in agricultural use. However there were a series of relevant planning applications for landfill and non-landfill activities in relation to the adjacent Granville Landfill Site and Community Recycling Centre (CRC), as detailed in the report.

The consultation responses received were summarised in the report but were available in full on the planning file. With regard to non-Council consultation responses, Members' attention was drawn to those from the West Midlands Regional Assembly, the Environment Agency, Natural England, and the Shropshire Wildlife Trust and, for Council responses, to those of the Drainage Engineer, the Environmental Project Team, and Highways Management. Further consultation responses had been received from Advantage West Midlands and Telford Friends of the Earth, as tabled at the meeting.

Objections had been submitted by Friends of the Earth (West Midlands), Telford Friends of the Earth, David Wright, M.P., Mark Pritchard, M.P., various parish councils, the former Bridgnorth District Council, and Kaleidoscope Child Care. In addition, Telford PAIN, a local pressure group, had submitted several letters of comment and information in objection, as summarised in the report. 244 letters and e-mails of objection (including from the Cottage Kennels/Cattery on Grange Lane as the nearest property to the site) had also been received from residents, as summarised in the report, together with a petition signed by 58 people opposing the application. One letter of support for the incinerator had been received. A further 8 letters of objection had been received, as summarised in the update tabled at the meeting.

With regard to the planning considerations relevant to this applicant, it was necessary that the officer report was read in conjunction with the three independent consultant reports commissioned by the Council, whose reports were appended to the main report. The report discussed in detail the issues relating to the waste generated and currently managed by Telford & Wrekin, its Waste Management Policy, links with the EfW and the waste treatment gap, and the Waste Treatment Capacity in the West Midlands Region.

The Council's future waste management policy would be based on the consideration of local and regional need and a review of all technologies and potential locations for required facilities. As the assessment of these options was just beginning, it was the view of officers that this proposal was

premature, as there remained sufficient treatment capacity within existing and permitted waste management facilities within the Borough and the West Midlands Region to allow the Council adequate time to undertake its Local Development Framework Review, adopt a waste management strategy, and provide required waste management facilities to provide a continuous service.

The applicant's ES considered that one of the advantages of the proposed site would be its co-location with the existing adjacent waste management activities of the Granville Landfill Site, the CRC and the potential end users of the waste heat energy produced. However, even if there was evidence that additional waste treatment capacity was required, there would still be a need to assess whether the proposed site was appropriate for the proposed use and the Board's attention was drawn to the relevant local and regional policies. Ownership of the site and the adjacent Granville landfill site was not justification alone that the development should be sited at Granville.

Site selection criteria for waste management facilities were set out in regional policy W7 of the West Midlands Regional Spatial Strategy (WMRSS2) and required, in addition to other criteria, that the development did "*not harm the openness of land*". In addition, Joint Structure Plan Policy (JSP) P67 and Wrekin Local Plan (WLP) Policy NR1 only permitted the siting of waste management proposals where it could be demonstrated that they would not have unacceptable adverse impacts on interests of acknowledged importance.

The application site abutted a CRC and an operational landfill site, both of which had a degrading effect on the physical and perceived character of their immediate landscape context but, unlike the proposed EfW scheme, they were not permanent uses. The conclusions of the applicant's ES had failed to adequately acknowledge the substantial change that the site and its immediate surroundings would undergo in the medium term following cessation of the landfill site and its agreed restoration. Therefore, officers considered that the development proposals and their permanency had the potential to directly remove land from the Green Network and to adversely impact on the landscape character and visual amenity of the adjacent parts of the network.

Officers had also given consideration as to whether the proposal was compliant with the aims of relevant regional and local policies in respect of the Green Network. Their overall conclusion, shared by the Council's landscape consultants EDP, and set out in the report, was that there were no material considerations to justify going against Green Network and Open Space policy and, hence, the application was contrary to WMRSS2 Policies QE4 and W7 and WLP policies OL3 and OL4, Core Strategy policy CS11.

With regard to alternative sites, an alternative site assessment was initially carried out by the applicant, as contained in the ES. Following evaluation, the applicants had concluded that the application site was the most appropriate site because it had been allocated at one time in the emerging Waste Development Plan Document (now withdrawn), was away from significant built-up areas and residential development, was an existing waste

management site with good access to the primary road network, and that the Green Network and landscape impacts could be addressed. However, the assessment undertaken by the Council's consultants had shown that, having considered a limited number of sites, there were other more appropriate alternative and available sites for a waste management facility. They considered that the alternative site assessment undertaken by the applicant to be flawed and, had the Granville site been included as a potential alternative waste management site at the outset of the consultant's assessment, it would have been discounted given its inappropriate Local Plan allocation as Green Network.

Concern had been expressed amongst residents regarding the potential for harmful emissions from the proposed EfW, particularly on those living closest to the plant. Whilst "fear" could be a material factor, it was considered that this stance could not be applied here because of the national policy position set out in PPS10, PPS23; advice of the Health Protection Agency (HPA) that such facilities could operate safely; and the role of other bodies which monitored and regulated emissions under Environmental Permitting Regulations in line with European and national legislation. With regard to the call from some members of the public and the Telford & Wrekin Primary Care Trust for a Health Impact Assessment (HIA) to be carried out on the proposed facility, there was no statutory requirement for this and, in light of the advice from the HPA and set out in the ES submitted with the application and the quantitative elements of the proposed development, it was considered that it was not necessary to undertake an HIA.

Over 19,000 HGVs already brought waste to the landfill site and approximately 75,000 private cars visited the adjacent CRC. Most of the HGV vehicles initially visiting the proposed EfW facility would be those diverted from the landfill site and so, initially, there would be limited impact on traffic flows. Whilst there were likely to be variations in traffic, the traffic assessment undertaken had concluded that the proposed increase in traffic movements was within the existing day-to-day operating capacity of the road network and the existing landfill site. However, should planning permission be granted, highway engineers had recommended a condition that the access, internal roads and parking/turning areas were all surfaced in a bound material (not a loose material such as chippings). They had also requested £15,000 towards traffic management/safety measures on the A5, to be secured by a Section 106 agreement, and a condition requiring the applicant to implement a Travel Plan.

The report set out the following conclusions.

With regard to the Waste Hierarchy, notwithstanding the prematurity of the submission of the planning application, it was considered that the site was wholly unsuitable for the development of a permanent waste management facility of this size and effect. There was no clarity that the proposal was either a suitable or best practicable means of contributing to local waste management needs. Whilst EfW was, in principle, a more acceptable option than landfill, as it was higher up the waste hierarchy, it was necessary for it to form part of a combined waste management strategy which prioritised options

further up the hierarchy and only resorted to incineration (and landfill) once these options had been exhausted. There was, therefore, a potential for the proposed EfW plant to prejudice both movement up the waste hierarchy and the evolution of a preferred waste management strategy for Telford & Wrekin that could lead to the Government's objective of minimising waste and its transfer becoming unviable in the local area.

In addition, the flexibility to utilise appropriate treatment technology would be inhibited as waste, which could be treated by alternative means higher up the waste hierarchy, would be still be incinerated in order to ensure that the EfW plant remained commercially viable. It was, therefore, considered that the proposed development was contrary to national Waste Strategy, PPS10, WMRSS2 Policy W1 and JSP Policy P65. Although a benefit of this particular option was its creation of energy by providing heat and electricity outputs, the application had not included any such proposals.

The Council considered that there was sufficient capacity within existing and committed local and regional waste management facilities to accommodate part of Telford & Wrekin's municipal waste stream, or to displace waste from existing EfW plants, thus releasing capacity that could be utilised by the Council at least in the short to medium term (5-10 years). This would allow the Council to undertake a full and robust appraisal of the various waste management options and to produce a waste management strategy to meet future requirements. It, therefore, could not currently be proven that the proposed EfW facility was *'the right type'*, *'in the right place'*, or *'at the right time'*, as required by PPS10.

Future policy would be based on the consideration of local and regional need and a review of all technologies and potential locations for required facilities. In order to deliver a robust and proper strategy all options would be considered and assessed on their relative merits and shortcomings and, as the Council had only begun the options assessment, the proposal for the Granville EfW remained premature. In addition, the application had not demonstrated any co-location benefits arising from the siting of the EfW adjacent to the landfill nor were there any arising from the siting of the EfW adjacent to the CRC.

The proposal site was not allocated for any form of development within the Local Plan and was specifically protected against built development as part of the Green Network in the east of the Telford urban/rural fringe area with amenity, recreation and landscape value. There was, therefore, a presumption in favour of preserving the Green Network and the proposed EfW did not meet any of the criteria established within the Local Plan in WLP Policy OL4 and CS Policy CS11.

By virtue of its commanding location in an elevated location on the interface between the town and the rural landscape, the proposed development did not comply with the provisions of JSP Policy P67 and WLP Policy NR1, both of which required that proposals for waste management should not have unacceptable impacts on interests of acknowledged importance, including landscape character.

The availability or abundance of commercial and industrial waste might not normally be a material factor in determining an application of this nature, as the viability of a facility was a question for the marketplace to determine. However, it was relevant in this particular instance as the restoration of the Granville landfill back to countryside with amenity and recreation value following expiry of the temporary planning permission in 2025, and which had a degrading effect on the perceived character and quality of the local landscape would be delayed. The EfW facility would be a permanent, uncharacteristic and intrusive form of development, with an ongoing impact on the area following restoration in accordance with the Council's long term countryside/recreation aims for this area of Telford and with a public expectation that this would happen.

The existing CRC site might be removed in the future as the Council was currently reviewing its overall provision of CRC sites for Telford and the Borough and the optimum location for a CRC was yet to be determined. Furthermore, this CRC facility was small in comparison to the proposed EfW. The planning balance needed to consider the site as an open land resource within the protected Green Network and, following the cessation of the landfill, its future as a public recreation asset with strong links to Granville Country Park

There was acknowledged significant pressure on land within the urban fringe and the proposed EfW facility would increase this, forming an 'island' of development separate from the built up areas of Telford. This could increase pressure from other forms of development for the release of further Green Network land and would undermine the spatial strategy for the future direction of development in Telford, as provided within the Development Plan.

Based on an initial assessment of alternative sites available, it was evident that there were a number of sites that were preferable to the proposal, as described in the report. Planning policy favoured the development of waste management facilities within employment/industrial areas or on brownfield land, as stated in PPS10 and policy W5 of the WMRSS2. It was, therefore, considered that there were alternative preferable sites and that the applicant had not fully considered alternative locations and had failed to demonstrate that alternative sites existed.

With regards air quality and emissions, as set out above, officers did not consider that there were grounds for refusal based on air quality and emissions, or fear to human health. In addition, officers considered that any issues relating to highways, traffic, nature conservation, historic conservation water and noise could be adequately controlled by the imposition of conditions should planning permission be granted.

The application had been advertised as a departure from the Development Plan and the public consultation period expired on 11th December.

Councillor A. Lawrence, Ward Member for Muxton, was invited to address the Board. He said that this issue had prompted the most number of comments and complaints of any since he was elected to the Council in 2003. Residents

were very concerned at the potential for further erosion of the Green Network in this part of Telford particularly in view of the fact that they were aware that the landfill site would ultimately close and be restored back to recreational use and they did not wish to see industrial activity in the area. In conclusion, he referred to the policy implications weighted towards refusal of the application, as highlighted in the officer's report.

Councillor N.A. Dugmore, the other Ward Member for Muxton, was also invited to address the Board and echoed the comments of Councillor Lawrence. He considered that the application had poor environmental credentials with potential for enormous and, in certain areas, incalculable impact upon the locality. In addition, he expressed concern at the effect of emissions from the facility and hazardous ash residue arising from the process. As covered comprehensively in the officer's report, he believed that there was already ample incinerator capacity in the area to meet the Council's commitment to recycling.

A number of Board Members believed that the application was for the wrong site and premature to the Council's needs and that other options should be more fully investigated. Councillor E.A. Clare referred to problems caused over the years by the landfill site and considered that this application, if approved, would only serve to exacerbate these.

In summing up the debate the Head of Planning & Transport said that approval of the application would have a serious effect in terms of policy upon the Council's ability to rise up the Waste Hierarchy and would be detrimental to developing the principles of reducing, re-use and recycling. Although the proposal was better than landfill, it was still at the low end of the Hierarchy and would not promote the better management of reducing and recycling waste.

In conclusion he drew the Board's attention to the recommendations in the officer's report and proposed that Reason 1 for refusal be amended to make reference to 'the loss of best and most versatile agricultural land' and that in Reason 3 the word 'transfer' be deleted and replaced by the word 'recycling'. On being put to the vote it was unanimously

RESOLVED: that following expiry of the departure time period on 11th December 2009 delegated authority be granted to the Head of Planning & Transport, following consultation with the Chairman of the Plans Board, to REFUSE PLANNING PERMISSION for the following reasons:-

1. Green Network

The proposed development would be a visually prominent and permanent encroachment into the designated Green Network which was not consistent with the stated aims and objectives of land within the Green Network. By reason of its location, permanency, scale and mass the proposals would erode the identity of this part of the town, would conflict with the aim of providing an appropriate supply of open land and would have a

negative impact upon the character, appearance and amenity of the Green Network and the local area and Granville Country Park, especially following completion of the landfill reclamation proposals and would result in the loss of best and most versatile agricultural land. As such, the proposal would be contrary to WMRSS2 Policy W7, Joint Structure Plan Policy P67, Wrekin Local Plan Policies OL3 and OL4 and LDF Core Strategy Policy CS11;

2. Landscape

The proposed development by reason of its location, design, scale, mass, height and permanency would be visually harmful to the open character of this part of Telford's urban fringe area and be detrimental to the setting of this area by delaying the restoration of the landfill site back to open land and as such would be contrary to WMRSS Policies QE6 and W7, Joint Structure Plan Policy 67 and Wrekin Local Plan Policy NR1;

3. Waste hierarchy

The proposed EfW facility, without removal of the biodegradable fraction for biological treatment or the absence of a materials recycling facility at the "front end", had the potential to prejudice movement up the waste hierarchy and prejudice the evolution of a preferred waste management strategy for the Borough that could undermine the government's objective of minimising waste (and the recycling of waste) and hence would be contrary to the advice in the national Waste Strategy, PPS10, WMRSS2 Policy W1, Joint Structure Plan Policy P65;

4. Prematurity

The proposed development was considered premature to the consideration of the emerging LDF waste policies and there was no urgent local or regional need for the proposed EfW facility that would warrant pre-empting the LDF Review;

5. Alternative sites

The applicant had inadequately considered and failed to demonstrate that there were no preferable alternative sites and hence the proposed development would be contrary to PPS10 and WMRSS2 Policies W5 and W7.

The meeting ended at 8.36 p.m.

Chairman:

Date:

PLANS BOARD

Minutes of a meeting of the Plans Board held on Wednesday, 16 December, 2009 at 6.0 p.m. in the Civic Offices, Telford, Shropshire

PRESENT: Councillors I.T.W. Fletcher (Chairman), E.A. Clare (substitute for Councillor F.R. Picken), R.G. Chaplin, N.A. Dugmore (Vice-Chairman), J.A. Francis, G.M. Green, Y.C. Hicks (substitute for Councillor M.J. Smith) and C.F. Smith (substitute for Councillor H. Rhodes)

ALSO PRESENT: Councillor R.T. Kiernan for planning application W2009/0947

PB-65 MINUTES

RESOLVED – that the minutes of the meeting of the Plans Board held on 25 November, 2009 be confirmed and signed by the Chairman.

PB-66 APOLOGIES FOR ABSENCE

Councillors H. Rhodes, F.R. Picken and M.J. Smith

PB-67 DECLARATIONS OF INTEREST

Councillor C.F. Smith declared a personal interest in planning application W2009/0544 and stated that he would leave the room during determination thereof.

Councillor I.T.W. Fletcher declared a personal interest in planning application W2009/0947 and stated that he would vacate the Chair and leave the room during determination thereof.

PB-68 CHAIRMAN'S ANNOUNCEMENT

The Chairman of the Plans Board informed the Board that, with regard to planning applications W2009/0915 (Land at Malinslee House, Malinsgate, Town Centre, Telford) and W2009/0945 (Land off Southwater Way, Town Centre, Telford) he had been advised by the Council's Solicitor that, in view of the late objections made within the time limit but only recently received and the need to make an appropriate, considered response, he was proposing that their determination be deferred until January 2010.

RESOLVED – that planning applications W2009/0915 and W2009/0945 be deferred until a meeting of the Plans Board in January 2010.

PB-69 PLANNING APPLICATIONS FOR DETERMINATION

- (a) W2009/0544 – St. Luke's Catholic Primary School, Church Road, Trench, Telford, Shropshire

Determination of this application had been deferred at the meeting of the Plans Board on 25 November, 2009 to allow Members to undertake a site visit. A number

of issues raised for clarification at that meeting had been addressed in the current before the Board.

The reasons for refusal of the 2005 planning application for a Roman Catholic Church, with associated car parking and a new vehicular access, were set out in report. However, the current application had been the subject of pre-submission discussions with Planning and Highway Officers, whereas there had been no such discussions before the 2005 application was submitted. As a consequence, the current scheme was better thought out and justified and, in particular, it was considered that the appearance, layout, access and parking arrangements were a marked improvement over the previous scheme. In addition, the present proposal did not involve the loss of a playing field, as was the case in 2005. The Highways Engineer had no objection to the current application and had confirmed that he could not substantiate a highway reason for refusal based on access and parking issues.

Whereas the 2005 application had been solely for an independent church building, the current one was for an annexe extension that would provide church, school, and community facilities. Policy OL4 of the Wrekin Local Plan permitted development within the Green Network if community benefits were an integral part of the proposal and it was considered that, as the proposed annexe would be available for general community uses, it complied with the policy and overcame the first reason for refusal of the 2005 application.

The recommended two metre high acoustic fence would be erected along the northern boundary of the site, as described in the report. It was understood that the school owned the existing fence and hedgerow and, therefore, would be able to replace it with a 2-metre high acoustic fence, which would also have the effect of giving the occupants of the adjoining houses some degree of added security.

At the previous meeting of the Board Members had also requested a breakdown of the addresses of the 163 people who had written in supporting the application and of the 218 people who had signed a petition in support, and this was set out in the update sheet tabled at the meeting.

Since the Plans Board meeting on 25th November the applicants had submitted additional information which they wished to bring to Members' attention. With regard to parking facilities and traffic movements, the extended 45 place car park would be sufficient to cover all but the most exceptional circumstances and only very rarely would there be a need to use the school playground as an overflow car park. These occasions would always be outside the school day. The number of weddings and funerals would vary but recent history suggested 10–12 funerals and 4-5 weddings a year. For both it would be the parish priest's policy not to allow 'large' events during the school day, i.e. one where approximately 20+ cars were expected. Large events would be scheduled for non-school days with weddings typically being held on a Saturday.

The new building was of a flexible design so that it could reasonably be used both as a church and a hall. With regard to social/community events, the present school hall had accommodated approximately 6 per year where an occasional license had been obtained. No permanent licence would be obtained, not least because this would be

contrary to diocesan policy but should this be necessary any application would be advertised and local residents would have the opportunity to comment. The licensing authority would determine whether or not an occasional license should be issued and this was not, therefore, a material planning matter.

After receiving this information, and coupled with the fact that the Council's Highways Engineer was not objecting to the application, the recommendation to Plans Board for approval of the application remained unaltered.

Councillor C.F. Smith spoke as one of the Ward Members for Trench & Wrockwardine Wood. With regard to the addresses of those people who supported the application, he pointed out that, while the largest single number was from the Ward, the overall majority were not. The previous application had been refused in 2005 and, whilst the current application had been improved, there had been no changes to the site and he, therefore, questioned why the application was now recommended for approval. He expressed concern regarding the impact of the additional parking spaces and the potential noise nuisance for adjoining properties. He believed that the proposed acoustic barrier would not be sufficient to address this issue and would also cut out sunlight from gardens and take away the wildlife habitat provided by the existing hedge. With regard to the highways issues, he noted the proposed improvements but did not consider that these had fully addressed the concerns of residents. Whilst acknowledging the need for a new hall for school use, he queried whether the proposal was over-development and whether this was the best site for a new church in north-east Telford. If approved, there would be increased traffic in the area all week rather than just for five days as at present.

(Councillor Smith left the meeting during discussion and determination of the application)

A number of Members spoke in support of the application given its benefits for the school and the community and the improvements to parking and access made since the 2005 application. However, other Members expressed concern over the impact of the development on the amenities of local residents from traffic and noise and questioned whether this was the most appropriate site for a church. The Planning Officer responded that the decision was one of balance between providing new community facilities and improved access and parking and the needs of residents. However, given that the Highways Engineer was now satisfied with the proposed scheme, it would be difficult to refuse the application on those grounds.

RESOLVED – that with respect to planning application W2009/0544 planning permission be granted subject to the conditions as set out on the update sheet included with the report.

(Councillor C.F. Smith returned to the meeting)

(b) W2009/0745 – Highbury Villa, Drury Lane, Rodington, Shropshire

This application sought planning permission for the erection of a single storey side extension to the existing annex accommodation to provide a full granny annex on this site in the rural area. The main property was a large detached one with a detached gable fronted double garage to the rear and a smaller single storey

outbuilding to the side, which was currently used for storage but contained separate rooms for a kitchen lounge and bedroom and, therefore, was able to be used as ancillary living accommodation.

The proposed development would have a length of approximately 6m., which would be shorter than the existing building and with a width of approximately 3m. It would retain the same depth as the existing building but would be stepped back by half a metre. The proposal would be of a very similar character to that of the existing outbuilding with a small gable styled porch feature, although this would be well screened from the street scene by the existing dwelling and outbuilding. It was, therefore, considered that the proposal would not be detrimental to the character and appearance of the existing building and the surrounding area. The property benefited from a modest plot and, therefore, the development would leave adequate amenity space within the curtilage of the dwelling.

The proposed development would be on the opposite side of the car parking area to the neighbouring depot, which was approximately 7m. away. There would be one additional window on that side elevation but, as this would be a bathroom window, there would be no detrimental overlooking of the neighbouring industrial properties. At this distance and as the development would be single storey, it would not lead to a detrimental level of overshadowing.

Given the rooms in the existing annex, the unit would then include a separate bedroom, bathroom and kitchen, which was contrary to policy for the creation of new dwellings within the open countryside. A condition was, therefore, required to control its future use but, due to previous issues relating to enforcement of such units in the rural area, it was considered that a Section 106 agreement would ensure this was not breached. The applicant had now agreed to enter into a Section 106 legal agreement to ensure that the proposal stayed ancillary and linked to the main dwelling.

As the proposed development would not dominate the site, was in keeping with the character and appearance of the general area and not of detriment to the amenities of the neighbouring properties, it complied with policies UD2 of the Wrekin Local Plan and CS15 of the Core Strategy.

RESOLVED: that with respect to planning application W2009/0745 delegated authority be granted to the Head of Planning & Transport to grant planning permission subject to the applicant entering into a Section 106 agreement with regards to the proposed development remaining linked to the main dwelling as ancillary accommodation and to the conditions as set out in the report.

(c) W2009/0768 – Old Hall Building, King Street, Wellington, Telford, Shropshire

This was an application for the erection of a two storey rear extension, following a partial demolition, and a single storey extension for use as a mosque. The Plans Board had previously approved a change of use of the former Territorial Army Centre to a Mosque and ancillary facilities, together with the remodelling of the facade (W2007/0667) and, therefore, the principle of redeveloping the site for a mosque had already been established. At the time of the current submission the applicants had

demolished the majority of the building but had retained the front façade. This was not in accordance with the previously approved plans but was in accordance with the current application.

The agents who had dealt with earlier application had failed to address the religious needs of the proposed users and new agents had been appointed to redesign the layout to provide the necessary accommodation thus limiting the usability of the site. The consequence of redesigning the layout had resulted in addressing the external parameters and, therefore, the main issues being considered under this application were those of design.

The previous application sought to remove the front elevation of the Drill Hall whilst retaining the rear aspects but the present proposal sought to retain the front elevation with the erection of a two storey element which displayed modern architectural features set back from the front elevation. The proposal would be slightly higher than the ridge of the Drill Hall but with a curved roof and elevations, which would be rendered in a light colour. The proposed set back acted as a buffer and would be well screened at a pedestrian level on King Street by the retained façade.

Taking this into account it was considered that the proposed design was more in keeping than the previous approval, respecting and reinforcing the architectural features of the Drill Hall and the character of the surrounding area. Whilst it was accepted that this was a modern development attached to a mature façade, it was considered it would preserve the Drill Hall whilst giving it a modern twist which met the needs of the user.

The proposal would provide 27 parking spaces and, as parking along King Street would be restricted by yellow lines, users could not overspill onto the highway. Occasional events such as weddings and funerals would require additional parking and, consequently, an agreement was in place with New College to cater for such events. The Council's Highway Engineer had raised no objections subject to the inclusion of the previous conditions relating to the Travel Plan.

The proposed hours of use had not been conditioned on the previous application but, given the location of the site on a main road into Wellington, it was considered that the nature of the use was acceptable. As the principle of use had already been accepted on the site, it was considered that the revised proposal respected and reinforced the Drill Hall and the surrounding area, and was less intrusive than that previously approved. Subsequently it was considered that the proposed application met the criteria of Local Plan Policy LR1, UD2 and Core Strategy Policy CS15.

A number of Members expressed concern at the possible traffic congestion that could result from this application but the Planning Officer informed them that the applicant already had an agreement with New College to pay for use of its parking facilities.

RESOLVED – that with respect to planning application W2009/0768 planning permission be granted subject to the conditions as set out in the report.

(d) W2009/0794 – Roden Lane Farm, Roden Lane, Roden, Shropshire

Determination of this application had been deferred at the meeting of the Plans Board on 25 November, 2009 to allow Members to undertake a site visit. Members were now informed that the Council's Environmental Health Officer had raised no objections to the proposals subject to the conditions set out on the update sheet. In addition, an informative had been recommended whereby the enclosed run areas and the kennels would require a good level of ventilation to ensure thermal comfort. Comments had also been received from the applicant's agent, as set out in the report, and the issues raised by the Council's Arboricultural Officer had been satisfactorily addressed.

The update sheet tabled at the meeting informed Members that the representative of local residents had now withdrawn the objections to this application, for the reasons set out. However, they would continue to press their case for longer term protection against a change of mind/regime at the Dogs Trust (and/or any other constituent) to future development plans on the overall site. However, the planning officer reminded Members that any such application would be considered on its merits at the time.

Members considered the application would provide improved facilities for the dogs, thus reducing their stress.

RESOLVED – that with respect to planning application W2009/0794 planning permission be granted subject to the conditions as set out in the update sheet tabled at the meeting.

Informative: The enclosed run areas and the kennels will require a good level of ventilation to ensure thermal comfort.

(e) W2009/0811 – Ketley Hall, Red Lees, Ketley, Telford, Shropshire

This application sought full planning permission for the erection of a detached single storey one-bedroomed dwelling together with associated car parking spaces and amenity area on an 'L' shaped site, located on the north-west boundary of the Hall, a three-storey Grade II listed building, some 20 metres from the Hall. Access to the new property would be via the existing private driveway to Ketley Hall from Red Lees. Ketley Parish Council had requested that the application be determined by the Plans Board.

The site was located in a predominantly residential area, with a modern two-storey residential estate to the south, previously used as a haulage yard. The proposed dwelling would be located very close to the boundary (approximately 1.2m.) with the adjoining dormer bungalow, Champions Ridge, but would present a blank elevation and 3 rooflights and existing boundary screening would ensure that there would be no overlooking or loss of privacy of adjoining residential amenities.

Ketley Parish Council had no objections to the proposed design but considered it would be too close to the listed building and were concerned about the access arrangements and the additional pressure on the exit onto Red Lees. These comments had been noted but the proposed dwelling was very modest and had

been designed to have the scale and simple form of an outbuilding, subservient to the main house. Given the proposed siting of the new dwelling, it was considered that the proposal would not affect the setting of the Hall. In addition, it would appear smaller in footprint and height than the adjacent dormer bungalows beyond the site boundary and would accord with national and local planning policies relating to listed buildings. Landscaping and boundary treatment to the new property would be important in order to protect the setting of the listed building, and this would be controlled by condition.

The plans had been amended in accordance with Conservation Officer's advice to simplify the design and give the building more vertical emphasis, with fewer glazing bars, omission of timber features, and the addition of sills to windows on the front and side elevations. Therefore, it was considered that the amended scheme was acceptable, by virtue of its modest size, the simple design, and siting within the grounds of, but a sufficient distance from Ketley Hall, and with no adverse effect on adjoining residential properties.

Members considered that the proposed dwelling would be well screened and was an improvement upon the site's previous use as a haulage yard.

RESOLVED – that with respect to planning application W2009/0811 planning permission be granted subject to the conditions as set out in the report.

- (f) W2009/0917 – Oakengates Leisure Centre, New Road, Wrockwardine Wood, Telford, Shropshire

This application by Telford & Wrekin Council was for the siting of one new storage container and a portable w.c. facility near to the athletics running track. It was also proposed to regularise the situation regarding eight existing metal storage containers on the site some of which were the subject of now expired temporary permissions and others which had been in situ for many years and were, hence, immune from enforcement action. In addition it was proposed to relocate container 'K' which had been given planning permission earlier this year (W2009/0401)

The proposed single 9 metre long container would be sited within the existing gated compound adjoining the car-parking area and would be used to store an 'indoor mobile sports hall' trailer for use around the community by disabled persons. It was essential to store this trailer within a secure compound for insurance purposes but in this location it would have little impact on the appearance of the area and would not detract from local amenity. All the existing containers as well as those proposed, were situated well within the Leisure Centre site and, therefore, would have little impact on the residential amenities of any dwellings which adjoined the site. It was proposed to paint all of them dark green which would result in a unified appearance and would further reduce their visual impact on the site.

As there were no proposals for a permanent storage building on the Leisure Centre site and officers considered that the metal containers were unsuitable to form a permanent development, a temporary planning permission for the new containers for 3 years was considered appropriate in this case. .

Councillor Smith welcomed the application, which would provide needed secure storage facilities and which, if painted dark green, would blend in with their surroundings.

RESOLVED: that with respect to planning application W2009/0917 planning permission for a temporary period of three years be granted subject to the conditions as set out in the report.

(g) W2009/0947 – 6, 8 The Avenue, Wrockwardine, Shropshire

This application sought planning permission for the erection of 4 dwellings following demolition of a pair of semi-detached, post-war properties with limited character, within the designated Conservation Area of Wrockwardine. They were sited approximately 12m. from the rear of the pavement, and followed a similar building line as the adjacent semi-detached properties to the north and south, which had similar architectural character but with differences between the exact features. Members noted that a previous application, W2008/0011, had been refused on the grounds of an insufficient demonstration of need, failure to preserve or enhance the Conservation Area, and failure to demonstrate that protected species would not be adversely affected.

In line with the criteria of saved Policy H24 of the Wrekin Local Plan, an exceptions policy for small scale affordable housing schemes, the applicant's Design and Access Statement (DAS) provided details of this need and was accompanied by the Housing Needs Survey template undertaken in Wrockwardine during March 2009. The findings of the survey were that there was a need for 2-bedroomed properties with support for a small development to provide affordable housing within the village. The Housing Needs Survey and findings were supported by the Council's Housing Enabling Officer, who was also satisfied that there were no forthcoming sites within the identified suitable settlements which would cater for this need. The village had a predominantly older population and the provision of housing for younger families would create a more balanced, mixed and sustainable community. It was expected that a lettings plan would be agreed between the Council and the Trust to ensure that the properties were allocated appropriately.

Policy H24 required development not to have an adverse impact on the character and setting of a village, no overriding environmental problems, and satisfactory access and services. The design of the dwellings had been subject to pre-application advice following the refusal of a similar application (W2008/0011) and officers were now satisfied that the proposed design would preserve and enhance the Conservation Area. With regard to parking, the Highways Officer would have had no objections if two off-road and two on-road spaces had been provided, as per the existing parking facilities, but the applicants had preferred to submit an application with four spaces on site. Whilst it was considered that this would address the nature of the Conservation Area more appropriately, it was not a sufficient reason to refuse this application and it was, therefore, considered acceptable.

Previous concerns with regard to protected species had been addressed following the submission of a survey which had concluded that, while there was a colony of bats within the village, there was no evidence they had used the existing properties

on the site for the purposes of roosting or harbourage. In addition, no evidence of nesting birds or barn owls had been found either internally or externally. Therefore, it was considered that the proposal had addressed the previous grounds of refusal and, that subject to the applicant entering into a Section 106 Agreement to ensure that the dwellings were affordable accommodation in perpetuity, it should be approved.

Since preparation of the report to Members, comments had been received from Wrockwardine Parish Council which fully supported the proposed development subject to the units remaining affordable housing. They considered that the Wrekin Housing Trust had sufficiently identified a need for such housing in the village and that the encouragement of a younger generation in what was an increasingly elderly one would help to ensure a more balanced population.

These comments were supported by Councillor J.M. Seymour, one of the Ward Members for Wrockwardine. Councillor R.T. Kiernan, the other Ward Member, was invited to address the Board and indicated his support for the application but referred to the need also for affordable family housing to be provided.

Members welcome the application, which would provide much needed affordable housing of a design in keeping with this Conservation Area.

RESOLVED – that with respect to planning application W2009/0947 delegated authority be granted to the Head of Planning & Transport to grant planning permission subject to the applicant entering into a Section 106 agreement to provide 100% affordable housing, and to the conditions as set out in the report.

PB-71 SITE VISITS

None.

PB-72 PLANNING APPLICATIONS DEALT WITH UNDER DELEGATED AUTHORITY

The Board received for information details of the planning applications that had been determined under delegated powers.

The meeting ended at 7.06 p.m.

Chairman:

Date:

TELFORD & WREKIN COUNCIL

PLANS BOARD – 06TH JANUARY 2010

Schedule 1 : Planning Applications for determination by Board

`A' List : Major developments and/or cases in conflict with policy

W2009/0168 Demolition of existing block of flats and erection of new block of 11 no. flats and 9no. houses Former Windor Flats site, Arleston Lane, Wellington, Telford, Shropshire. Recommendation Code: FG - Ward: Arleston.....	1
W2009/0915 Erection of superstore, petrol filling station, car parking, servicing and associated landscaping and access including realignment of part of Southwater Way Land at, Malinslee House, Malinsgate, Town Centre, Telford, Shropshire. Recommendation Code: FG - Ward: Malinslee.....	10
W2009/0919 Upgrade of Victoria Park to include resiting car park, new footpaths and fencing, creation of marsh habitat and meadows Victoria Park, Water Lane, Newport, Shropshire. Recommendation Code: FG - Ward: Newport East.....	40
W2009/0945 Residential development and associated access (Outline) Land off, Southwater Way, Town Centre, Telford, Shropshire. Recommendation Code: OLG - Ward: Malinslee.....	46
W2009/0962 Change of use from Use Class A4 to mixed Use Classes A3, A4 and A5 and internal and external alterations (part retrospective) *****AMENDED DESCRIPTION***** The Royal Oak, High Street, Madeley, Telford, Shropshire. Recommendation Code: FG - Ward: Madeley.....	56
W2009/0994 Erection of 4no. freestanding sponsorship signs measuring 1200 x 500mm Brockton Roundabout, Halesfield, Telford, Shropshire. Recommendation Code: ADG - Ward: Cuckoo Oak.....	62

Agenda Type : A

W2009/0168 Demolition of existing block of flats and erection of new block of 11no. flats and 9no. houses,
Former Windor Flats site, Arleston Lane, Wellington, Telford, Shropshire.
Recommendation Code: FG
Ward: Arleston

APPLICANT:
Wrekin Housing Trust

RECEIVED ON:
18/02/09

PARISH
Wellington

WARD
Arleston

CASE OFFICER:
Elizabeth Attwood

THIS APPLICATION WAS CONSIDERED BY PLANS BOARD ON 8TH APRIL; MEMBERS RESOLVED TO GRANT THE APPLICATION SUBJECT TO A S106 FOR OFF SITE CONTRIBUTIONS OF £12,000 TOWARDS OUTDOOR PLAY FACILTITIES

THE APPLICATION WAS CONSIDERED AGAIN BY MEMBERS ON THE 29TH APRIL 2009 WITH REGARD TO THE PROVISION OF 100% AFFORDABLE HOUSING AND NO FINANCIAL CONTRIBUTIONS. MEMBERS RESOLVED TO GRANT APPROVAL SUBJECT TO THE PROVISION OF A CONTRIBUTION TOWARDS OUTDOOR PLAY FACILTITIES.

Members resolved to grant consent for this application, giving delegated authority to the Head of Planning to negotiate a financial contribution towards off site leisure facilities. Since this date officers have attempted to negotiate a financial contribution, however the Wrekin Housing Trust have been unable to meet this agreement with the provision of 100% affordable housing, as a housing grant has not been achieved on the site.

Subsequently, the applicants have reverted back to the previous resolution on the 8th April 2009 and the alternative application resolved to grant in November 2008, where the only contribution sought was for £12,000, and no affordable housing. However, due to the lack of grant available which the applicant was relying on the applicant can only provide £5,000.

Officers recommend that this contribution is accepted, to enable the applicant to progress with the site clearance and redevelopment immediately, providing replacement dwellings where there is demand for such type of housing.

On this basis, it is considered that the officer recommendation is revised to:
RECOMMENDATION: Subject to the applicant entering into a Section 106 agreement to provide a financial contribution of £5,000 towards off site play facilities, then delegated authority is granted to the Head of Planning to GRANT PLANNING PERMISSION subject to the following conditions:

1. A3 - Full with no reserved matters
2. C118 - Development in accordance with submitted plans
3. B15 - Sample of materials
4. B17 - Sample brick panel
5. B18 -

Details of windows and doors 6. B19 - Details of enclosure 7. B25 - Landscape management plan 8. B26 - Landscape maintenance 9. B33 - On-site construction 10. B34 - Mud on road 12. C104 - Drainage including water attenuation measures 13. C80 - Landscape implementation 14. C87 - Parking loading, unloading and turning 15. Non-standard - foundations designed to take into account the actual site ground conditions. The detailed foundation design must be submitted to and approved in writing by the LPA prior to the development commencing. Development shall be in accordance with the agreed details. 16. B56 - protection of new dwellings from noise. 17. C100 - contaminated land 18. Non-Standard - Prior to the commencement of development details shall be submitted to, and approved in writing by, the PLA in respect of the design of the foundations and retaining walls to be used on site. 19. Non-standard - no buildings or trees planted within 2.5m of 225FWS on site.

INFORMATIVES 1. SIE22 - Conditions 2. SIE26 - Reasons 3. SIA6 - S106 Agreement Required

REASONS FOR APPROVAL: The proposed housing development is acceptable as it constitutes the redevelopment of a previously developed site within the urban area. The traffic movements generated by the development can be accommodated without any detriment to highway safety. The scale, mass and design of the proposal are acceptable and in keeping with the character of the local area. There will be no adverse impact on residential amenities. A section 106 agreement will secure affordable housing on the site.

THIS APPLICATION WAS CONSIDERED BY PLANS BOARD ON 8TH APRIL 2009; MEMEBERS RESOLVED TO GRANT THE APPLICATION SUBJECT TO A S106 FOR OFF SITE CONTRIBUTIONS OF £12,000 TOWARDS OUTDOOR PLAY FACILTITIES.

The proposed S106 contributions towards outdoor play facilities were agreed in the previous application W2008/1006, reported to Plans Board in November 2008. This application remains undetermined as the S106 agreement has not yet been signed.

As your officers have pursued the S106 agreement relevant to this application, the agent and applicant have contested agreeing to the £12,000 reported to committee. In addition no written conformation has ever been received confirming this amount.

The applicants contest that the proposal to demolish and rebuild the dwellings not only complying with current building regulations, but meeting lifetime homes level 4 of the Code for Sustainable Homes results in a financial loss.

However in recognition o the growing shortage of affordable homes and the increase in homelessness, the Wrekin Housing Trust proposes to offer 100% social housing on the site in lieu of the contributions towards outdoor play facilities. This is considered acceptable.

On this basis, it is considered that the officer recommendation is revised to:
RECOMMENDATION: Subject to the applicant entering into a Section 106

agreement to 100% Social Housing then delegated authority is granted to the Head of Planning to GRANT PLANNING PERMISSION subject to the following conditions:

1. A3 - Full with no reserved matters 2. C118 - Development in accordance with submitted plans 3. B15 - Sample of materials 4. B17 - Sample brick panel 5. B18 - Details of windows and doors 6. B19 - Details of enclosure 7. B25 - Landscape management plan 8. B26 - Landscape maintenance 9. B33 - On-site construction 10. B34 - Mud on road 12. C104 - Drainage including water attenuation measures 13. C80 - Landscape implementation 14. C87 - Parking loading, unloading and turning 15. Non-standard - foundations designed to take into account the actual site ground conditions. The detailed foundation design must be submitted to and approved in writing by the LPA prior to the development commencing. Development shall be in accordance with the agreed details. 16. B56 - protection of new dwellings from noise. 17. C100 - contaminated land 18. Non-Standard - Prior to the commencement of development details shall be submitted to, and approved in writing by, the PLA in respect of the design of the foundations and retaining walls to be used on site. 19. Non-standard - no buildings or trees planted within 2.5m of 225FWS on site.

INFORMATIVES 4. SIE22 - Conditions 5. SIE26 - Reasons 6. SIA6 - S106 Agreement Required

REASONS FOR APPROVAL: The proposed housing development is acceptable as it constitutes the redevelopment of a previously developed site within the urban area. The traffic movements generated by the development can be accommodated without any detriment to highway safety. The scale, mass and design of the proposal are acceptable and in keeping with the character of the local area. There will be no adverse impact on residential amenities. A section 106 agreement will secure affordable housing on the site.

The previous officer report is attached below.

OBJECTIONS: No.

MAIN ISSUES: Principal of development, character and appearance of the buildings and loss of trees.

PROPOSAL: This application is for the demolition of the existing Windsor flats which comprised of 21 properties of either one or two bedrooms and the redevelopment of the site for a combination of 11 two bed roomed flats, 8 three bed roomed houses and 1 four bed roomed house to provide a total of 20 units. In addition, revised access arrangements and parking facilities on site are to be provided.

SITE AND SURROUNDINGS: The site is located close to the Bucks Head junction on the main Bennetts Bank road into Wellington. The site is currently occupied by a single existing block of flats which covers the majority of the site with the remainder of the land put over to parking use on the western boundary and an informal area of recreation space on the eastern boundary. Access to the site is reached off Arleston

Lane to the south.

The land to the east rises steadily away from the existing building with a number of trees forming a substantial belt of planting on top of the bank. The difference in ground levels between the development site and the top of the bank is approximately 5.0 to 6.0 m.

The surrounding area to the east and south is predominantly residential with a small estate of bungalows off Hornbeam Close abutting the site. On the opposite side are six dwellings which front onto Arleston Lane and on the opposite side of the road is a builder's merchants. To the north lies the TCAT college campus and the Bucks Head public house.

To the north east of the development area directly abutting the site is an old British Telecom exchange site. This is occupied by a small service building to the south of the plot of land and a large area of open land to the front which is approximately 20m in length. The site has been sold off and has recently secured planning permission for an extension to create a one bedroomed dwelling with access across the site which is the subject of this application and the provision of a parking space.

HISTORY: A similar application is for the demolition of the Windsor flats and the redevelopment of the site for a combination of eleven 2 bedroomed flats, three 3 bedroomed houses and a 4 bedroomed with a revised access and parking facilities was approved subject to the completion of a S106 agreement relating to outdoor recreation provision was approved by Plans Board on 19th November 2008.

PLANNING POLICY: National Planning Policy PPS1: Delivering Sustainable Development PPS3: Housing PPG14: Development on Unstable Land, PPS 23: Planning and Pollution Control.

Core Strategy: CS1 Homes, CS5 District and Local centres in Telford, CS10 Community Facilities, CS15 Urban Design.

Wrekin Local Plan UD2: Design Criteria H6: Windfall Sites in Telford & Newport H22: Community Facilities H23: Affordable Housing LR6: Developers Contributions to Outdoor Recreational Open Space Provision Within New Residential Developments

CONSULTATION RESPONSES: A Site notice, 24 direct neighbour letters and a press advertisement publicised the application; no comments or objections have been received.

Wellington Town Council: No objections.

Severn Trent Water: No objection to the scheme, subject to a condition in respect of drainage details being provided including sustainable drainage principles.

The Fire Service has no objection in principle as matters relating to access for emergency vehicles and water supply for fire fighting are dealt with under Building Regulations. Nevertheless, they have supplied an advice sheet for information.

The Council's Ecological Officer: Sufficient ecological information has been provided to demonstrate that the development will not have an adverse effect on legally protected species and no further ecological information is required.

The Council's Highways Engineer: has confirmed that he has no objection in principle subject to conditions. However, advises that the Local Highways Authority would not adopt the proposed access, parking or turning areas.

The Council's Engineering Services: No objection in principal although details of foundations to be approved prior to determination of the application.

The Council's Contaminated Land Officer: No objection in principle subject to a condition relating to contaminated land given the historical use of the site.

The Council's Pollution Control Officer: No objection in principle subject to a scheme for acoustic glazing in the noise sensitive rooms.

The Council's Outdoor Recreation Officer: has no objection in principle subject to the provision of a section 106 agreement to provide contributions to the improvement of the nearby play area.

The Council's Arboricultural Officer: Although the scheme involves the loss of some trees to facilitate parking, these are not considered to be particularly good or worthy of attention. As there appears to be space within the development site for a replacement trees to be planted as compensation it is recommended a suitable landscaping scheme be submitted to provide compensatory planting is part of the development.

The Council's Housing Officer and Private Sector Housing Officer had not responded at the time of writing this report; any comments received will be reported to Members at Plans Board.

PLANNING CONSIDERATIONS: Planning permission for the demolition of the Windsor flats and the redevelopment of the site for a combination of eleven 2 bedroomed flats, three 3 bedroomed houses and a 4 bedroomed has already be granted subject to a S106 agreement. Therefore, the principle has already been agreed.

Policy H6 states that housing development will be permitted on land under 0.4 hectare that is within the Telford built up area when the site can be adequately accessed and parking provided, when the site can be adequately drained, when the Council is satisfied that, where there are land stability and contamination issues, the developer has taken adequate remedial action, where the proposal does not have an adverse impact on the local environment, especially in its relationship with adjacent land uses and where the proposal shows a high quality of design.

Policy UD2 provides guidance to assess whether or not proposals are of an appropriate design quality and relate positively to their context. It advises the Council to assess proposed development in relation to its scale, massing, form, density,

orientation and layout, proportions, materials, landscape elements, access, parking and spatial quality.

Policy LR4 and LR6 requires developers to contribute to the provision of recreational open space and policy H22 requires contributions towards community facilities. Therefore, the developer of the site will be required to provide £600 per property for recreational facilities. This contribution of £12,000 will be secured by way of a S106 Agreement.

Policy CS1 states that housing development will seek to provide every household in the Borough with an affordable, decent and appropriate home. With policy CS5 requiring all new residential development to be situated in highly accessible locations, creating vibrant, safe and attractive places, with designs which respect and respond to the locality.

Moreover, policy CS15, amongst other issues, states that development will assist in creating and sustaining safe places, positively influencing the appearance of the local environment.

National guidance contained in PPS1, asserts that development should be of high quality design, respond to local context and should reinforce local distinctiveness. High quality design should add to the overall character and quality of an area, not just for a short time but over the lifetime of the development. Where proposals are inappropriate in their context or they fail to improve the character and quality of an area, the proposal should not be accepted.

Furthermore, PPS3 gives Government advice on new housing developments, amongst other issues it states that development should:

- * maintain and improve local character, *
- * be easily accessible and safe, *
- * be well integrated with, and complement, the neighbouring buildings and the local area more generally in terms of scale, density, layout and access, *
- * create, or enhance, a distinctive character that relates well to the surroundings.

PPS1 and PPG3 also guide LPA's to avoid the inefficient use of land through promoting higher density development whilst being mindful of the wider context. The re-development of the site with 20 units is considered acceptable and appropriate to the wider context and character of the area.

The next issue of consideration is the character and appearance of the development especially given that the site is identified as being on one of the major development corridors through the Borough as identified in Policy UD6 of the Local Plan. This policy seeks to ensure that any development is of an appropriate scale and form and utilises materials that respect the area. It also seeks to ensure landmark and focal point sites are developed to enhance the character and appearance of an area. In addition boundary treatments and landscaping are also seen as matters of significance to ensure that the form of any development undertaken on the site enhances the wider area.

The current built form on the site consists of the block of flats that runs from

Bennetts Bank to the north to Hornbeam Close to the south. The elevation facing Bennetts Bank is a particularly unattractive facade comprising of a three-storey building with a flat roof and little or no architectural features other than the window themselves and a brick course in-between first and second floors. The impact of the building was lessened somewhat in the past by a line of trees that sat at the front of the site however these have now been removed and the building immediately fronts the road with no screening.

The proposed elevation to Bennetts Bank presents an asymmetrical designed property rising to four storeys on the eastern end and down to a three-storey structure closer to the traffic lights on the western side. In addition, there will be infill panels between the windows and the central service well is to be in-set slightly helping to break up the massive brickwork at the front. The walls are to be a combination of light buff brick, off-white render and cedar panels and there is to be a sedum roof. This combination is felt to provide visual character to the property which will complement the character of the area.

The layout optimises the number of apartments that can be facilitated on the site whilst at the same time minimising the impact to the neighbours on the western boundary. This design approach, provide some notable mass and significant development facing Bennetts Bank. In this respect therefore, it is considered that the proposal complements policy UD6 and the corridor designation fronting the site.

In respect of the other elevations fronting the public domain, there are three dwellings that face Hornbeam Close and Arleston Lane towards the south which have a main entrance into the estate for parking. The revised plans for the site now show entrances with gateways fronting Hornbeam Close so that the properties respect the street scene and this arrangement is felt to be acceptable. Given the boundary treatments to the east and west, the site is relatively independent from its neighbours on either side and will not have a detrimental impact on the character of the area.

The position of units referred to as 4 to 9 (inclusive) on the drawings are the same 2 1/2 storey design as the previous approval. However, the block has been relocated into the centre of the site to ensure that the right of access across the site enjoyed by the aforementioned BT building is not obstructed. This now positioning also improves the relationship with the existing BT building and the proposed dwellings and is therefore deemed acceptable. The alteration to the layout necessitated an amendment to the internal road layout, parking bays and bins stores, which is also deemed appropriate. Furthermore, the Council's Highway Engineer has confirmed that the layout is adequate subject the imposition of a condition requiring the parking, loading, unloading and turning areas being properly laid out, hard surfaced and drained, and the space being maintained.

The development requires the removal of some of the trees on the site. The Council's Arboricultural Officer has considered the proposals and has commented on the state of the trees. They are not seen as being of any particular value and a landscaping scheme to plant replacements would be appropriate. This is considered acceptable and will address the loss of the trees on the site

Guidance contained PPG14 asserts that, the handling of individual applications for development on land which is known or suspected to be unstable or potentially unstable will need to take account of the potential hazard that such instability could create both to the development itself and to the neighbouring area. Whilst there is scope for flexibility and each application must be treated on its merits, it is important that a local planning authority should be satisfied by the developer that any instability has been taken into account.

The Council's Geotechnical Officer has inspected the plans and whilst they have no objections to the proposal in principle have suggested that the details of the foundations be submitted before determination. Given that there is a history of subsidence on the site, it is considered necessary to impose predevelopment condition to ensure the stability of the development.

Inter alia, PPS23 states that LPA's should pay particular attention to development proposals for sites where there is a reason to suspect contamination, such as the existence of former industrial uses, or other indications of potential contamination, and to those for particularly sensitive use such as housing likely to be used by families with children. In such cases, it should normally require at least a desk study of the readily-available records assessing the previous uses of the site and their potential for contamination in relation to the proposed development. If the potential for contamination is confirmed, further studies by the intending developer to assess the risks and identify and appraise the options for remediation should be required.

Furthermore, the remediation of land affected by contamination through the granting of planning permission (with the attachment of the necessary conditions) should secure the removal of unacceptable risk and make the site suitable for its new use.

Therefore, given the previous uses of the site as a sand pit, it is considered necessary to impose conditions relating to contaminated land. This will ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers and neighbours.

Planning Policy Guidance 24 guides local authorities in England on the use of their planning powers to minimise the adverse impact of noise. With this in mind and the close proximity of the proposed dwellings to Bennetts Bank and Arleston Lane, it is considered necessary to impose conditions relating to acoustic glazing in the noise sensitive rooms.

In conclusion, having regard to consultation responses and planning guidance, officers consider that on balance, the principle of redeveloping this site for residential use is acceptable subject to conditions, mitigation works and planning obligations.

The site is within this highly sustainable location just outside Wellington District Centre, and the traffic movements generated by the development could be accommodated without detriment to highway safety. The proposed development would not be harmful to the residential amenities of nearby dwellings, and the redevelopment of the site will have a positive impact upon the visual quality of the locality and the streetscene.

RECOMMENDATION: Subject to the applicant entering into a Section 106 agreement to provide financial contributions towards outdoor recreation provision then delegated authority is granted to the Head of Planning to GRANT PLANNING PERMISSION subject to the following conditions:

1. A3 - Full with no reserved matters 2. C118 - Development in accordance with submitted plans 3. B15 - Sample of materials 4. B17 - Sample brick panel 5. B18 - Details of windows and doors 6. B19 - Details of enclosure 7. B25 - Landscape management plan 8. B26 - Landscape maintenance 9. B33 - On-site construction 10. B34 - Mud on road 12. C104 - Drainage including water attenuation measures 13. C80 - Landscape implementation 14. C87 - Parking loading, unloading and turning 15. Non-standard - foundations designed to take into account the actual site ground conditions. The detailed foundation design must be submitted to and approved in writing by the LPA prior to the development commencing. Development shall be in accordance with the agreed details. 16. B56 - protection of new dwellings from noise. 17. C100 - contaminated land 18. Non-Standard - Prior to the commencement of development details shall be submitted to, and approved in writing by, the PLA in respect of the design of the foundations and retaining walls to be used on site. 19. Non-standard - no buildings or trees planted within 2.5m of 225FWS on site.

INFORMATIVES 7. SIE22 - Conditions 8. SIE26 - Reasons 9. SIA6 - S106 Agreement Required

REASONS FOR APPROVAL: The proposed housing development is acceptable as it constitutes the redevelopment of a previously developed site within the urban area. The traffic movements generated by the development can be accommodated without any detriment to highway safety. The scale, mass and design of the proposal are acceptable and in keeping with the character of the local area. There will be no adverse impact on residential amenities. A section 106 agreement will secure financial contributions for outdoor recreation space.

Notes

Agenda Type : A

W2009/0915 Erection of superstore, petrol filling station, car parking, servicing and associated landscaping and access including realignment of part of Southwater Way Land at, Malinslee House, Malinsgate, Town Centre, Telford, Shropshire.
Recommendation Code: FG

Ward: Malinslee

APPLICANT:
ASDA Stores Ltd

RECEIVED ON:
23/10/09

PARISH
Great Dawley

WARD
Malinslee

CASE OFFICER:
Gareth Thomas

THIS APPLICATION WAS DEFERED FROM PLANS BOARD ON 16TH DECEMBER 2009

MAIN ISSUES: Retail Impact on town centre, Sequential assessment, Access and parking, Land Stability, Pollution Control, Biodiversity

SITE DESCRIPTION:

The planning application covers a site of 2.7 ha in area and is located between Malinsgate/Coach Central, which runs east-west along the site's northern boundary, and Southwater Way, which runs east-west along the site's southern boundary. Both Malinsgate and Southwater Way form separate spurs off the Malinslee roundabout.

The site can be described as forming two main parts. Firstly the Malinslee House and Walker House civic buildings, comprising the principal offices of Telford & Wrekin Council and secondly, the terraced surface level car parking and landscaped areas surrounding the complex. The existing buildings date from the 1970s and consist of largely uninspiring exposed concrete clad panels with ribbon glazing that gives the impression of a grey and dour civic headquarters. Nevertheless the site is well landscaped, particularly to the north east and south east boundaries, consisting of semi-mature trees and ornamental shrub planting.

The site is currently separated from the Shopping Centre to the north by Malinsgate and Coach Central and the 'Box Road', which forms an acknowledged difficult pedestrian environment. Access across Coach Central (and on to the Town Centre) for pedestrians is via an existing light controlled crossing

To the north-west of the site, between the Civic buildings and the Malinslee Roundabout lies the Job Centre and beyond, the Severn Gorge Public House together with their associated car parks. Across the road from the public house are the offices of the National Farmers Union. The Malinslee roundabout is one of the principal gateways into the town centre.

Directly across Southwater Way to the west of the application site is the Malinslee Link site, which is the subject of a separate outline planning application for

residential development to be considered at the same meeting as this application – W2009/0945. This site is currently an area of semi natural green space but is being promoted by this Council for residential purposes as part of the Local Development Framework (LDF) process.

Immediately to the south of the application site (and south-east of the “residential site” above), on the opposite side of Southwater Way is the imposing mass of the ‘Spout Mound’, a former colliery tip that has become a woodland feature on the local view point. There is some evidence of slippage of this mound, particularly in the direction of the Town Park to the south.

Importantly, there is a fall across the site running north-west to south-east of some 9 metres, which has resulted in the terracing of both the built form of the Civic buildings and the car parks. This natural feature has formed a constraint and an opportunity for the proposal from a design perspective.

RELEVANT PLANNING HISTORY

There are no planning decisions within the application site that have relevance to the consideration of this proposal.

THE APPLICATION

The application for full planning permission is described in the particulars as a “superstore”, but for the purposes of this report may be better described as a foodstore. The foodstore will replace the Civic headquarters, which in turn is likely to be relocated to a site elsewhere in Southwater. The principal elements of the development proposal comprise:

- New foodstore to provide 7,897 sq m of gross floorspace with a total net area of 4,076 sq m. (2,500 sq.m net convenience goods and 1,576 sq. m net comparison goods) The store is to be located at first floor (on stilts) along the north-west boundary of the site with customer and service access via a realigned Southwater Way and, in the form of a ‘left in’, ‘left out’ access from Malinsgate.
- 500 space car park inclusive of 22 disabled spaces and 19 parent-child spaces and 10 trolley bays. Cycle racks enabling secure storage will be provided outside the store.
- Six bay ‘automatic’ Petrol Filling Station (PFS) with access/egress via Southwater Way.
- Provision of full traffic signal control at the junction of Malinsgate/Woodhouse Central/Coach Central incorporating a reduction of the size of the central island, realignment of kerblines to reduce the engineering of the ‘Box Road’.
- Pedestrian routes through the site linking the proposed store to adjoining land to the south-east and the Malinslee housing area to the north-west.

The application is subject to an Environmental Impact Assessment (EIA) and is accompanied by supporting information, as follows:

- Environmental Statement (ES)
- Design & Access Statement

- Report on Consultation (public engagement/consultation)
- Tree Survey and Arboricultural Implications and Assessment
- Construction and Demolition Waste Report
- Retail Impact Assessment (contained within the ES)
- Traffic Assessment and Outline Travel Plan (contained within the ES)
- Slope Stability Assessment (contained within the ES)
- Flood Consequences and Foul Sewage and Utilities Assessment (contained within the ES)

PUBLICITY AND CONSULTATION

The application has been advertised in the local press and on site as an Application the subject of EIA, as a Departure Application and of major significance. In addition, 12 immediate neighbours have been notified of the planning application.

A Statement of Community Involvement in the form of a Report on Consultation has been submitted with the application, summarising the measures taken to consult and involve the community prior to the submission of the application. However officers note that it has not been counter-signed by community representatives to confirm that it is a true record of this process and the outcomes from it.

The applicants explained the process followed as follows (in summary):

- Wrote to all identified stakeholders informing them of the applicant's intentions to bring forward a planning application;
- Issues a press release
- Organised a 2-day public exhibition preceded by a VIP preview in the main foyer of the existing Asda at Telford Town Centre in August 2009
- Creation of a dedicated web site (www.asda-telford.co.uk) which contains stakeholder feedback etc
- Full-colour quarter-page advert in the local press running the week before the exhibition
- Handing out of circa 1600 leaflets
- Consideration and follow-up of 200 forms received by the "Asda planning team"
- One-to-one meetings with identified stakeholders e.g. political leaders

CONSULTATION RESPONSES:

Great Dawley Parish Council: No objection but concerns expressed regarding PFS – already one PFS in town centre; another PFS would generate additional traffic; in close proximity to the proposed residential area.

Engineering Services: No objections subject to the imposition of conditions relating to retaining wall, foundation design, soil gases, slope stability and earthworks.

Pollution Control: Recommend Conditions.

Drainage Engineer: Reduction in current Surface Water discharge to the public sewer of 50% will be necessary together with provision of Attenuation up to 1 in 100 year storm (+30%). The Flood Routing and levels on the site are achievable with

details to be further approved in accordance with a recommended condition. No development shall take place until a scheme for surface water limitation and flood routing has been submitted and approved by the Planning Authority. The approved scheme shall be completed before the development is occupied.

Highways Section: Recommends Conditions and a section 106 Obligation including the payment of a financial contribution for major highway projects (in line with a planned approach advocated in the Central Telford Area Action Plan) of £720,000 to include provision of a pedestrian crossing/junction improvements at Malinsgate/Coach Central/Woodhouse Central plus an additional sum of £5,000 for monitoring of the store travel plan.

The Transport Assessment has been produced using a different methodology to that currently being employed by the Local Highway Authority (LHA). The LHA is adopting a plan led approach (through the Central Telford Area Action Plan) to determine the impact of the development on the local highway network and to this end it is using both a VISUM and a VISSIM model to ascertain the impact of this and any future development proposals on the adjacent highway network and any corresponding mitigating highway and transportation measures. Therefore, it can be confirmed that the contribution, towards the Major Schemes Infrastructure identified in Table 5 Section 5 of the Central Telford Area Action Plan, June 2009, has been calculated using the LHA's own methodology broadly outlined above.

Similarly, whilst the Highway Authority is supportive of the new pedestrian crossing hub at the junction of Coach/Malinsgate/Woodhouse, the submitted layout is not satisfactory at this time. The LHA is in discussions with the applicant to revise the design to meet the standards contained in the Design Manual for Roads and Bridges and supported with a safety audit and AutoTrak runs.

In terms of the internal layout LHA recommends minor changes to the car parking arrangements. The site has a pedestrian entrance off Southwater Way. This is shown to tie into the realigned footway link to Malinslee (see W2009/0945). The submitted plans show a raised pedestrian table at this location but LHA would recommend a signalised crossing point is used instead

Highways Agency: Awaited – to be updated in the addendum report

Planning Ecologist: No objection

Environment Agency: Site within Zone 1 Flooding Zone. SUDS drainage recommended; Contamination Risk Assessment condition recommended.

Tree Officer: Concerned about loss of trees, three of which are worthy of TPO together with the loss of a commemorative tree. Should support be given, advise relocation of trees that are capable of translocation, as agreed with applicants and to be covered by condition.

Land Contamination Officer:

The report has identified the following site issues:

1. Elevated Polyaromatic Hydrocarbons and aromatic hydrocarbons in the C12-C16 and C16-21 range, with the potential to impact upon groundwater
2. Ground gas- Elevated concentrations of CO₂ have been observed to 16.4%, and methane at 3.8%, albeit with negligible flows at 0.3L/hr. As such, ground gases have been characterised as "Characteristic situation 2" based upon CIRIA 665. I am in agreement with the proposed gas mitigation measures as per section 7.2 of the report.

Given point 1 above, the report proposes that a Detailed Quantitative Risk Assessment (DQRA) be undertaken. I am in agreement with these proposals. You may wish to include the requirements of a DQRA as a pre-commencement condition.

As an aside, the petrol station will require a petroleum license and a Permit to operate via the Environmental Permitting Regulations 2007 prior to opening.

Planning Policy Team: Wrekin Local Plan: The site is identified, in part, for employment use as part of the section 7(1) approval T90/0022 for office development granted permission 16 August 1991. However, this application will not be implemented. The site is not covered by any other specific designations therefore no site-specific issues are raised by this proposal. However, a number of policies should be considered as relevant to this proposal, namely Policy TC2 New Shopping Development in Telford Town Centre and Policy E9 Non-Employment Uses within Employment Areas.

The proposal is in conflict with Policy TC2, which directs new retail development to locations shown on the Wrekin Local Plan proposals map. In relation to Policy E9, the proposal will result in the loss of office floor space. However, this will be replaced on another site within the town centre. The development is also in close proximity to the town centre and existing public transport connections therefore accords with PPG13 transport policies. Further justification for transport proposals is set out in the Transport Statement.

Policy CS4 of the adopted Core Strategy in broad terms identifies Central Telford as the for major retail development serving the needs of the borough and the sub-region, and seeks to consolidate Central Telford and enhance it as the hub of the service centre hierarchy by recognising its role as a settlement of significant development (set out under RSS Policy SS1) and strategic town centre (identified under RSS Policy PA11). Therefore, due to the scale and nature of development proposed being most appropriately located within Central Telford, the proposal does not undermine the policy objectives of the Core Strategy.

Objection received from Telford Trustee No. 1 Limited and Telford Trustee No. 2 Limited ("the Trustees" of the Telford Shopping Centre):

"The Trustees strongly object to the proposed development which would conflict with important national policy on planning for town centres, is recognised by Asda as being in conflict with the saved policies of the adopted Wrekin Local Plan (1995-2006) and would result in significant and unacceptable impacts on the existing town centre.

The proposed development would result in the unnecessary loss of the key food retail anchor store from the town centre to a site within the ownership of TWC. It is difficult to envisage a more stark example of a proposal that would damage confidence and future investment in the centre and cause an unacceptable retail impact. As such it flies in the face of the Government's town centre first policy particularly in current economically uncertain times.

Below we set out the Trustees' objections based on their initial review of the planning application. In summary the Trustee's initial objections are on the following grounds:

- (i) Conflict with the sequential approach – there are available, suitable and viable sites for the development proposed within and at the edge of the existing town centre which are sequentially preferable to the Civic Offices site. Asda has failed to provide evidence to demonstrate why sequentially preferable sites are not available, suitable and viable in accordance with Planning Policy Statement 6: Planning for Town Centres ("PPS6");
- (ii) Unacceptable impact on the town centre – the Retail Impact Assessment submitted in support of Asda's application is fundamentally flawed for a number of reasons as set out in section 3 below. The proposed development would cause a significant and unacceptable impact on the town centre;
- (iii) Conflict with the adopted development plan – paragraph 4.5 of the Planning Statement acknowledges that the proposed development is "in conflict with Policy TC2" of the adopted Wrekin Local Plan. In addition, the proposal does not accord with Policy TC1 and is also in conflict with the vision set out in Policy CS4 and elsewhere within TWC's adopted Core Strategy Document 2007 to consolidate and enhance the Town Centre in the period to 2016. No weight should be attached to the emerging Central Telford Area Action Plan ("CTAAP");
- (iv) Prematurity - the acceptability of retail on West Southwater and the Civic Offices site in terms of scale, location and phasing are key issues for CTAAP which has reached submission draft stage. The grant of planning permission for Asda in advance of the consideration of CTAAP at an Examination in Public would clearly have a substantial effect which would be so significant that granting planning permission would clearly prejudice CTAAP's consideration;
- (v) Uncertainty regarding the replacement for the Civic Offices - no evidence has been submitted with the planning application explaining where it is proposed to relocate the Civic Offices to or to demonstrate that the assumption that Asda will obtain vacant possession of the application site by early 2013 is correct. Asda is clearly concerned about the potential for such a delay as, unusually, it has requested that the usual three year duration of any planning permission be extended to five years. Without clarity on this aspect the grant of permission could blight investment in the town centre for years to come;
- (vi) Highway impacts have not been adequately addressed – the Transport Assessment prepared by Savell Bird & Axon in support the application contains a number of serious omissions, deficiencies and inaccuracies; and

(vii) The scheme's design fails to address key urban planning requirements – the proposed development has been designed as a stand alone superstore divorced from the town centre's primary shopping area ("PSA") with no proper regard to its urban environment.

Emails of support have been received from two individuals on the basis that a standalone Asda store would meet the needs of residents living close-by and offer free car parking.

PLANNING POLICY CONTEXT

Saved Wrekin Local Plan Policies :

TC1 Town Centre

TC2 New Shopping Development in TC

TC14 Town Centre Design

E9 Non-employment uses within Employment Areas

EH3 Flooding

EH7 Contaminated Land

UD2 Urban Design

UD4 Landscape Design

UD5 Public Art requirements

S1 Service Centre Hierarchy

S2 Site Selection

T14 Parking, Servicing and Commuted Parking Payments

Core Strategy 2007:

CS3 Telford – focus for Borough's spatial development

CS4 Telford Town Centre

CS5 District and Local Centres

Regional Planning Policies

Policy PA11: Strategic Town Centres

National Planning Policies:

PPS6 Retailing

PLANNING POLICY BACKGROUND

Joint Shropshire and Telford and Wrekin Structure Plan 1996-2011 represents the strategic planning framework pending replacement by the LDF; it is however dated, but contains "saved" policies that are considered relevant to the consideration of this proposal. The Plan outlines a strategy that seeks to:

- Conserve resources and the environment by reducing reliance on car travel and length of journey, fostering bio-diversity and the conservation of natural resources
- Improve the quality of life by: protecting the natural and cultural assets of the area; improve employment prospects; and tackle levels of deprivation
- Achieve a sustainable environment by careful location of development; improve access and maximise use of previously developed land and existing infrastructure; and

- Foster a prosperous economy, support for the rural economy and encourage inward investment

The saved policy of relevance to this proposal includes:

- Policy 31 Sustainable Transport Strategy

Wrekin Local Plan (1995-2006) – This Plan together with the above Structure Plan form part of the ‘Development Plan’ (along with the Core Strategy) The Structure and Local Plans however are becoming increasingly dated and they are currently being superseded by LDF documents. However the “saved” policies of the Local Plan (some 88 in total) will continue to have weight in the determination of planning applications for the moment.

The West Southwater site lies within the Telford Town Centre boundary as identified on the Proposals Map and is partially allocated for employment uses. Although it abuts retailing to the east, the proposals represent a Departure to the Development Plan. The “saved” policies of relevance, include:

- Policy TC1 (Town Centre) which permits development which contribute to its function as a multi-purpose sub-regional centre subject to provisos contained within TC2, 3, 4, 6 and 7;
- Policy TC2 (New Shopping Development in Town Centre) – which restricts the location of further shopping to areas defined on the Inset Proposals Map and in accordance with TC3, 4, 6 and 14.
- TC14 – Town Centre Design

Telford Core Strategy -The Core Strategy Development Plan Document (DPD) was adopted in December 2007 and is the key strategic LDF document that sets out the vision and spatial development strategy for the area and for subsequent DPDs to follow.

Telford is identified as a Strategic Town Centre under the adopted Revised RSS 2008 and a Town Centre in the Core Strategy. Policy PA11 of RSS states that the Strategic Town Centres will be the focus for major retail developments and PA13 states that it is not envisaged that “any further large-scale (10,000 sq m plus) out of centre retail developments or extensions to existing developments will be required” during the period to 2021. The policy goes on to say that “Smaller-scale out of centre retail proposals should be considered in the light of policies and proposals in development plans and take full account of Government guidance including the requirement to demonstrate ‘need’ and the sequential test. No out-of-centre developments should be redefined as town centres”. The RSS Panel report to the Phase II Changes gave endorsement to the level of growth of retail development and to the focus on Telford Town Centre.

Policy CS4 in the adopted Core Strategy states that “Central Telford Area will be the focus for major....retail....development serving the needs of the Borough and the sub-region...”

The Council is currently pursuing a more up-to-date spatial development approach through the LDF process and has submitted the Central Telford Area Action Plan

(CTAAP) document to the Secretary of State following a period of consultation. It has limited weight as a tool for development control at this particular time. Nevertheless it is an indication of the Council's spatial planning ambitions and is worthy of mention as we enter the period of uncertainty that many Councils face as the new Development Plan system is introduced. Possibly of greatest significance at this time and where we can reasonably consider (on the basis of the most up-to-date evidence) are the references within the Plan to the retail studies that have informed the Council's thinking.

In relation to new additional retail provision, the Council has commissioned a strategic retail study to assess the quantitative need for retail floorspace within the Borough – the White Young Green (WYG) Retail and Leisure Study 2006, updated 2009. WYG identifies that there is a net convenience capacity of between 2,560 sq m and 5,120 sq m (net) by 2016, increasing to between 3,490 sq m to 6,980 (net) by 2021. The Council's approach within CTAAP is to propose that this can be met in the primary shopping area (PSA) and the proposed PSA represents an extension to those collective areas previously allocated within the Local Plan for retail purposes; the application site sits within the proposed PSA.

Draft Policy CT2 in the CTAAP states that new retail development will be permitted to meet the need in the Town Centre and facilitate its regeneration and should come forward in the form of mixed proposals. Supporting text emphasises that when determining applications for out of centre retail applications, the principles of PPS6, in particular its sequential approach to site selection, will be applied.

As will be seen later the application will need to be assessed against both Local and National planning policies. Considerable reliance will be placed by both the applicants and objectors on Planning Policy Statement 6: Planning for Town Centres (PPS6). PPS6 requires out-of-centre retail developments to be assessed in accordance with an assessment of the need for the development; an assessment that the development is appropriate in scale; that there are no more central sites; that there are no unacceptable impacts on existing centres; and, that the location is accessible. The guidance goes on to state that development as a general rule should satisfy all of these criteria, whilst also taking account other relevant local issues and material considerations.

At this time, PPS6 is under review. However, it is worth pointing out in passing that the review draft PPS6 (July 2008) which has fed into PPS4 Draft (May 2009) proposes to refine the policy approach to planning for town centres rather than to make significant changes, and in so doing, proposes to strengthen the Government's policy on positive planning for town centres. There is no proposed change to the requirement for LPAs to assess the need for new town centre development or to take account of scale, impact and accessibility considerations, or the sequential approach to site selection when producing retail strategies or proposals for inclusion in their development plans.

A key change relates to how certain planning applications should be considered and tested. The draft proposes the removal of the requirement for the applicant to demonstrate a 'need' for a proposal which is in an edge-of-centre or out-of-centre

location and which is not in accordance with an up to date development plan strategy.

The draft PPS6 proposes to replace the existing impact assessment with a new impact assessment framework which applicants outside of town centres will need to undertake in certain circumstances. Key features of the new test are a broader focus with emphasis on economic, social and environmental as well as strategic planning impacts; identification of key impacts including impact on planned investment, whether the proposals is of an appropriate scale, impact on centre trade turnover; identification of wider impacts such as accessibility, traffic, employment and regeneration and how the proposal would make efficient and effective use of land.

KEY ISSUES AND PLANNING CONSIDERATIONS

The Development Plan

Before considering retail planning issues in detail, some consideration should be given to the status of planning policy documents that have been described above and what weight should be given to the various documents in the determination of this application.

The Development Plan comprises the following documents:

- The Regional Spatial Strategy (RSS) for the West Midlands. Part of the statutory development plan for Telford and Wrekin, it contains policies to apply to development and to be taken into account in preparing the Council's LDF. LDF documents are required to be in general conformity with RSS.
- Shropshire and Telford & Wrekin Joint Structure Plan 1996-2011. Policies within the Joint Structure Plan have formed part of the local Development Plan since November 2002. By Direction of the Secretary of State in September 2007, a number of Structure Plan policies ceased to form part of the Plan, whilst others were 'saved', until expressly replaced by new Local Development Framework policies.
- Telford Core Strategy -The Core Strategy Development Plan Document (DPD) was adopted in December 2007 and is the key strategic LDF document that sets out the vision and spatial development strategy for the area and for subsequent DPDs to follow.
- The Wrekin Local Plan was prepared in the mid / late 1990s, adopted in February 2000, and had an end date of 2006. In September 2007 certain policies were formally "saved", recognising that they were consistent with national policy and up-to-date. Whilst not part of the LDF these policies remain in force and form part of the development plan (all other Local Plan policies were discontinued at this date).

The relevant policies have been explained in the preceding section.

The application has been advertised as a "Departure" to the Development Plan thereby recognising that the proposed development is in conflict with saved Local Plan policy TC2 (that seeks to limit retail development to sites allocated for this purpose on the Inset Map to the Local Plan).

But although this Policy is 'saved', this must also be tempered by the fact that the original policy was formulated to respond to growth pressures within the particular Plan period up to 2006, extended to September 2007. As with most Development Plans, there is a period of uncertainty as LPAs move from one Plan to another. Clearly the RSS proposes a growth in households of 26,500 between 2006 and 2026 within Telford and the Council has responded to this growth scenario as part of the Core Strategy in its WYG retail study by assessing the level of retail floorspace required to meet this level of growth.

There is an argument therefore to suggest that strict adherence to Policy TC2 would not constitute a proportionate response to the significant growth proposed for Telford in the RSS and may be damaging to the Council's aspirations going forward. Accordingly, while saved policies of the Local Plan and the approved RSS have the weight of s38(6) of the Act, the WYG report should be given appropriate weight and along with Planning Policy Statement 6 (PPS6) constitute material considerations that might outweigh the Local Plan policy, and this is explored in detail below.

A further policy consideration for Members here is Policy CS4 of the Council's own Core Strategy that in recognition of the RSS population figures albeit with a time horizon to 2016, acknowledges that "the role of the Central Telford Area will be consolidated and enhanced as the hub of the service centres hierarchy by [inter alia] creating more shops..." If Members accept the arguments using PPS6 contained within the remainder of this section of the report, then the proposal would clearly comply with the Core Strategy ambitions.

Central Telford Area Action Plan (CTAAP)

Again, before Members consider retail planning issues in detail, it would be appropriate to comment on whether CTAAP should play any part in consideration of the planning merits of the proposal. In agreement between the Council and the Planning Inspectorate, the examination of CTAAP has been suspended to allow additional work and consultation to be undertaken to support its policies. The suspension has the effect of placing the plan at "pre-submission" stage for the purposes of status in planning terms.

The principal objectors (Telford Trustees etc.) suggest (correctly in your officers' opinion) that CTAAP should not be afforded any weight given its current uncertain status but then goes on to argue that that the Council should refuse the application on the grounds that the development would be premature in the context of the emerging Action Plan. This argument appears inconsistent and conflicting and there is a need to consider the 'prematurity' point further at this point of the report.

Members' attention is drawn to paragraph 17 of the ODPM's document "The Planning System: General Principles" (2005) which sets out that "in some circumstances" ... "it may be appropriate" to refuse permission on prematurity grounds. This is a matter of discretion for the decision maker. It may be appropriate where a proposed development is so substantial, or where the cumulative effect would be so significant, that granting permission could prejudice the DPD by predetermining decisions about the scale, location or phasing of new development which are being addressed in the policy in the DPD. The Government advises that a

proposal for development which has an impact on only a small area would rarely come into this category.

It is the view of your officers that 'prematurity' arguments would be stronger if the proposal was being assessed against the provisions of CTAAP; clearly this is not the case and as will be noted later in this report the proposals stand to be determined outside the CTAAP. Furthermore, the development proposal is not so significant that by dealing with the application now it would seriously prejudice a particular policy provision or development proposal that would be covered in the CTAAP. Indeed, the application can be appropriately assessed against PPS6 tests on the basis of an edge-of-centre development, something that would occur with or in the absence of CTAAP.

The background research on highway considerations, which has contributed to the preparation of the LDF and CTAAP, has been used to advise consideration of this planning application. It is considered that the traffic modelling undertaken as part of this work represents the most up-to-date methodology available to the Council – see later in the report under Highway Considerations.

Retail Planning Considerations

The application raises issues relating to retail planning policy and the need to protect the town centre as the primary focus for retail development. This is highlighted by the principal objector to the scheme. The stance adopted by these particular objectors is an important consideration for the Council as they represent an important stakeholder in the economy of this town centre. It is therefore appropriate to consider two issues of principle raised by the Trustees. Firstly, they fear that the proposal if permitted would result in the loss of an important 'anchor' to the town centre shopping centre and secondly that this loss would damage the confidence and investment in the town centre, possibly beyond just their stakehold, thereby being in conflict with the Government's town centre first policy.

What the applicants and the objectors appear to agree upon is that the existing Asda store in 'qualitative' terms is inadequate for today's shopping experience and requirements. The owners of the Shopping Centre have announced that they are now proposing a new foodstore within the town centre, on the Red Oak Car Park. Although no application has been lodged as yet, the Council might be facing proposals that may appear on the face of it to be competing directly for a slice of the retail capacity available in Telford. Given that there may also be the prospect of Asda's existing store at shopping centre being re-occupied by another convenience operator, the question of quantitative need will inevitably arise.

PPS6 is presently under review but the extant guidance requires out-of-centre retail developments to be assessed in accordance with the following criteria:

- The need for the development;
- That the development is appropriate in scale;
- That there are no more central sites that can accommodate the development;
- That there are no unacceptable impacts on existing centres; and,
- That the location is accessible.

The guidance goes on to state that development as a general rule should satisfy all of these criteria, whilst also taking account of other relevant local issues and material considerations. The tests for assessment are an appropriate methodology against which support or otherwise can be given to this proposal and how these may be undertaken are described in the following paragraphs below.

With regard to the demonstration of 'need' the guidance recognises that both quantitative and qualitative factors are of relevance albeit that local planning authorities tend to place greater weight on quantitative matters. Assessments should be on a 'goods' basis and should generally look to no more than five years ahead. The catchment area that is to be used to assess future need should be realistic and well related to the size and function of the proposed development and take account of existing centres. In addition qualitative considerations might provide additional justification for any development. A key consideration in qualitative terms is to provide for customer choice and ensuring that an appropriate distribution of locations is achieved; and provision is made for a range of sites for shopping which allow genuine choice to meet the needs of the whole community.

With regards to the issue of scale, the Guidance seeks to ensure that the scale of new development is directly related to the role and function of a centre and its catchment. The aim should be to locate the appropriate type and scale of development in the right type of centre.

In dealing with the sequential approach, the relevant centres in which to search for sites will depend on the overall strategy set out in the development plan, the nature and scale of the development and the catchment the development seeks to serve. When considering alternative sites, developers should be able to demonstrate that in seeking to find a site in or on the edge of existing centres, they have been flexible about their proposed business model in terms of the following considerations:

- The scale of the development
- The format of their development
- Car parking provisions, and
- The scope for disaggregation

In considering flexibility, the Guidance states that a single retail operator should not expect to split their proposed development into separate sites where flexibility in terms of scale, format, car parking provision and the scope for disaggregating has been demonstrated. It is not the intention of PPS6 to seek arbitrary sub-division of proposals.

Where a site is proposed in an edge of centre or out of centre location and is not in accordance with an up-to-date development plan strategy, LPAs should assess the impact of the potential development.

Quantitative Need

In terms of need, PPS6 currently requires a quantitative need assessment of the additional floorspace generated to be undertaken. The evidence prepared in support of the Council's Core Strategy (the White Young Green Borough-wide Retail Study – WYG) has been used by the applicant to determine whether the additional

floorspace would prejudice the Council's objective of securing the future health of the town centre as the primary shopping destination for Telford.

WYG suggests that Telford will generate a growth in convenience expenditure within the primary catchment area (PCA) that may be influenced by this development rising from £180.4m in 2009 to £192.3m in 2014 and £199.3m in 2016. With retention levels equating to 69% (% of expenditure retained within the catchment area rather than leaking to other areas beyond the catchment area) and allowing for inward expenditure from areas outside the primary catchment area, the available expenditure amounts to £173.1m in 2009, £184.1m in 2014 and £190.5m in 2016. Allowing for increased benchmark turnover from existing stores arising through efficiency improvements etc, and deducting committed retail developments (at Donnington, Madeley and recently Snedshill), this would equate to 'headroom' (available) capacity for new developments of £54.8m in 2009 growing to £62.8m in 2014 and £68m in 2016. This is more than sufficient to accommodate the proposed new store and the re-occupied Asda store at The Shopping Centre and leaving yet further headroom for additional convenience provision should future proposals come forward.

The objectors do not appear to dispute the Council's quantitative need assessment but do question the basis for the PCA and suggest that PCAs should be assessed against 10-15 minute drive times. The applicants however feel confident that they possess adequate and demonstrable knowledge of their customer base from data held about their current store. However a short further sensitivity analysis has been undertaken comparing the outputs from the 10-15 minute drive time with the submitted PCA evidence and this shows there is reasonable correlation with the differences not affecting the study between them which do not materially affect the Study or assessment undertaken.

Turning to the relatively modest comparison goods element that will be available at the proposed Asda superstore, this equates to some £13.6m of annual turnover. The WYG Study suggests that there is available capacity for £72m in 2014 and £156.6m by 2016. That equates to 12,783 sq m of floorspace requirement in 2014 and 26,985 sq m at 2016. The proposal would take up 19% of expenditure capacity in 2014 or 12% of equivalent floorspace capacity and by 2016 this would reduce to 9% of spending capacity or 6% in floorspace capacity terms. The comparison goods requirement identified in the RSS is 70,000 sq m of floorspace between 2006-26 and this was accepted EIP Panel into the Phase II Modifications in the report to the Secretary of State.

Your officers are satisfied that a quantitative need exists that could easily support this development in addition to the existing convenience foodstore in the Shopping Centre.

Qualitative Need

PPS6 states that when assessing the qualitative need, a key consideration will be to provide for consumer choice by ensuring:

- An appropriate distribution of locations is achieved subject to ensuring the vitality and viability of existing centres and the application of a sequential approach to site selection and to improve accessibility; and
- Provision is made for a range of shopping, leisure and local services, which allow for genuine choice to meet the needs of the whole community.

The applicant claims that the existing store is under-trading as a result of poor layout and aisle arrangement, poor car parking and requirement to pay at kiosks – all of which result in a poor shopping and customer experience. This is at odds with the applicant's own RIA and tables in the appendix to that report, which suggests that the existing store is over-trading. The difference is explained on the basis that the over-trading figures are derived from an analysis of the household shopper survey, whereas the under-trading figures are obtained directly from Asda. This has little effect on retail capacity, which is derived in part from the catchment survey results as it is the overall level of spending that is the crucial factor which defines retail capacity and it is apparent that evidence exists that other large convenience stores in Telford are over-trading, citing their own Donnington Wood store and the Tesco Extra at the Wrekin Retail Park.

The objectors claim that the proposed store will be unable to compete with the much larger Tesco Extra and seriously question the applicant's claim that Tesco Extra is over-trading by 70% and Donnington Wood Asda by 100%. Irrespective, they suggest that the surplus expenditure arising from over-trading should be directed to a sequentially preferable, more centrally located new foodstore, which in addition would avoid customers having to traverse the difficult Box Road configuration. Whether the figures are entirely accurate is open to conjecture but your officers acknowledge that there is evidence of over-trading at both the out of centre stores and it would be desirable for this expenditure to be 'clawed back' to the Town Centre.

Members will need to ask whether the new proposed store will lead to qualitative improvements. Clearly any new modern store will offer an enhanced shopping experience and the applicant argues that a dedicated car park under the direct control of the store operator will certainly provide greater convenience to shoppers who presently shop at the existing Asda store at the Shopping Centre. The existing Asda store is presently compromised and appears to be unable to provide the qualitative opportunities necessary, at least as far as Asda is concerned. The applicants argue that a new store will provide an enhanced shopping experience and lead to qualitative improvements. These qualitative improvements in policy terms can include elements contained within the proposal such as wider range of goods, brighter store, wider aisles, the availability of convenient car parking etc.

Your officers consider that on balance, in terms of qualitative need there appears to be a draw of trade away from the town centre convenience store (Asda) to out-of-centre stores like Sainsbury's at the Forge Retail Park, Asda Donnington and Tesco Extra at the Wrekin Retail Park who can offer the qualitative experience and accessibility including (free) car parking facilities. The proposal would help off-set some of the deficiencies of existing provision.

Sequential Test Considerations

PPS6 requires a sequential approach to site selection for sites neither located within an existing centre nor allocated in the development plan. All options are required to be assessed within the town centre before moving on to edge-of-centre locations, followed by out-of-centre sites. This is a simple but nevertheless reasonable approach to adopt in order to protect vitality and viability of our town centres thereby encouraging linked shopping trips and use of a variety of transport modes.

Unlike CTAAP, the adopted Local Plan does not identify a Primary Shopping Area (PSA) for Telford although it does define the town centre. But it is recognised that the natural albeit imaginary boundary for the PSA in terms of Telford Town Centre can reasonably equate to land within the 'Box Road' and it is, after all, where the Local Plan sought to allocate retail uses to satisfy the needs of Telford at the time to 2006. It is clear that the Local Plan is increasingly dated and the Council has through the LDF process updated its retail capacity figures in the light of RSS population and household growth figures.

It is argued that PPS6 should be afforded greater weight than the Local Plan because it is a more up-to-date policy approach to retail developments. Given that the Council cannot rely on the provisions of the draft CTAAP as explained earlier, for the purposes of PPS6 it can be reasonably concluded that the application site for this proposal falls in an edge-of-centre location (although still within the Town Centre), thereby necessitating a sequential analysis to be undertaken against which the application can be assessed.

The sequential approach requires developers to be flexible in their requirements to the extent that they should look to reducing the footprint of their stores in order to secure more sustainable locations. In looking at other sites under the sequential approach, PPS6 acknowledges that such alternative sites should be reasonably 'available' in terms of time span, 'suitable' in terms of site characteristics and 'viable' in terms of servicing, costs of acquisition, design and operational considerations.

On this issue the applicants have pointed out that they require 2.2 Ha as a minimum and that this is somewhat less than ideal for a large quality foodstore like Asda. In choosing the Civic site, the applicants point out that they have already made compromises by incorporating undercroft car parking and travelators into the design. They claim that it would be unreasonable to expect the applicant to reduce further their minimum area requirement in the context of sequential analysis. This is reasonable in the opinion of your officers.

Realistically, there are few opportunities within the Box Road, which as described above is the natural 'PSA' for Telford. The Red Oak car park and the Ash Grey car park formed part of the applicant's sequential assessment, both of which are sequentially preferable to the application site. In relation to the Red Oak CP, the applicant considers that this would not be a viable proposition as the development of a new store at this location would have practical and economic impact on the current Asda which would need continuity of operation whilst the new store is built, effectively on a large part of 'their' car park.

Not surprisingly, the objectors who are keen to bring forward their own scheme for the Red Oak car park maintain that this site is readily available and that the applicants have failed to clearly demonstrate its lack of availability and suitability in

compliance with PPS6 tests. This is an important point as the objectors have commented that active discussions did take place between themselves and Asda and that it was the Council's intervention in bringing forward the Civic site that has threatened future investment in the PSA. Moreover the objectors consider that continuity of operation is not an unfamiliar phenomenon in other town centres and is, in any event, not a planning issue.

The Council has to consider whether the two sequentially preferable sites in terms of PPS6 are genuinely available, suitable and viable. Taking the larger Red Oak car park site first, there appears to be a major constraint to the development of this site in that Asda would be able to block the early development at Red Oak. The existing lease between Asda and the owners of the Shopping Centre obliges the Trustees to maintain 600 parking spaces on the Red Oak car park during the period of the lease. Whilst the Red Oak CP site is closer to the heart of the centre ('PSA') and sequentially preferable and suitable, this site would not be available until 2014 at the earliest given Asda's current leasehold arrangements.

Turning to the question of viability, it is acknowledged that the particular set of circumstances arising within the Telford Town Centre is unusual in that it is Asda who is proposing the development and who are already within the town centre and have control over the Red Oak car park until 2014. In order for the Red Oak site to be viable in PPS6 terms, its redevelopment must be practicable to the end user, the applicant. The viability or 'practicability' of this site at the Red Oak car park coming forward is dependent upon agreement by Asda at least until 2014. Paragraph 3.16 of PPS6 highlights that LPAs should take into account genuine difficulties that the applicant can demonstrate are likely to encounter in operating the applicant's business model from sequentially preferable sites. Asda is unlikely to enter into any agreement with the owners of the Shopping Centre that brings forward the Red Oak site before 2014 as to do so would cause significant disruption to Asda, which could jeopardise their business at Telford, possibly irretrievably. Your officers conclude therefore that the Red Oak car park site is not viable as Asda has provided evidence to demonstrate that the business model could not operate viably from this site.

In relation to the Ash Grey car park, the applicant maintains that this would be too small to provide a reasonably sized store. Given that Asda's requirement is for a smaller store than their current location and that this requires a minimum site area of 2.2 Ha, your officers would agree that this site is unsuitable and unviable.

Moving out from the 'PSA', PPS6 sequential analysis requires an assessment of sites elsewhere within the town centre. The applicant has considered options at other edge-of-centre locations, including most importantly the area that has been designated as Eastern Southwater and Central Southwater in the consultation draft CTAAP, both of which enjoy a similar standing as the site of this planning application in terms of being edge-of-centre sites, but sufficiently close to the PSA so as to operate as part of the town centre shopping area. The site consists of two large retail 'boxes', including the presently occupied 'The Range' and the area adjoining the Town Park and consisting of Meeting Point House, the Library, the Ice Rink and Bingo Hall. These have been dismissed as unsuitable – the site of the large retail 'boxes' because The Range is still occupied and the car park used extensively as a shopper's car park and therefore, both are 'unavailable', whilst the Council has

ambitions for the remainder of Southwater to become the cultural and leisure heart of Telford town centre.

Elsewhere, edge-of-centre sites have been explored although strongly discounted including the Cherry Pink Car Park, Mattherson House, Blue Willow Car Park and Lime Green Car Park. The applicants claim and your officers agree that none of these sites are suitable, available or viable for a foodstore.

The search for another sequentially preferable edge-of-centre site is largely academic as there is little doubt that within Central Southwater, it is the Civic site that undoubtedly offers the most realistic and ideal opportunity for a foodstore on several counts. Of importance is that this site is the closest site to a large somewhat deprived residential area; it is also close to the bus station, and; there are proposals within the application scheme enhance and improve the recognised pedestrian difficulty associated with the box road and link to the wider residential area in Malinslee.

Finally on the subject of sequential analysis, other centres have been considered including Hadley, Dawley, Oakengates, Donnington and Madeley. Such analysis in the view of your officers may be superfluous because in planning policy terms, Telford Town Centre is the highest order retail centre within the Borough's retail hierarchy and no other District Centre is able to compete in retail planning terms; however PPS6 requires this to be done.

Your officers have concluded that the applicants have demonstrated that there are no sequentially preferable sites within the 'PSA' or elsewhere within the town centre that could be described as available, suitable and viable. Your officers also agree with the applicant's findings in respect of other centres.

In policy terms, there appears to be no other sites within any edge-of-centre locations better placed than the application site. Whilst the Red Oak Car Park may be sequentially preferable, this site is not available in terms that would meet PPS6 tests until at least 2014. There is a strong argument to suggest that the proposed site would for all intents and purposes perform as part of the town centre retail offer and help kick-start the re-development and regeneration of the remainder of Southwater.

Retail Impacts on the Town Centre

The applicants have provided a useful 'health check' on Telford and conclude that the town centre performs reasonably well, despite present economic difficulties nationally, against the vitality and viability indicators set out in PPS6. Further analysis of trade draw has been undertaken to ascertain the likely impacts arising, particularly on the town centre should planning permission be granted for this development. This assessment has to assume that the existing Asda store within the Shopping Centre is re-occupied for it to be realistic in terms of impact on the town centre. The conclusions suggest that the proposed new foodstore would draw trade from Sainsbury's (31%) followed by other convenience shops in the Town Centre (Iceland and M&S Foodhall) (24%) and then Donnington Wood Asda and Tesco Extra at the Wrekin retail Park (9% each). This would be off-set by increasing comparison trade in the town centre. Impacts to out-of-centre convenience stores

are not normally considered to be a planning issue, but rather a matter for commercial competitiveness.

In terms of the Town Centre itself the principal objectors stress that the new Asda store's trade diversion would mean £5m less being spent in the PSA. This is correct but only if the proposed store failed to function as part of Telford Town Centre i.e. as an out of centre/town stand alone store. The applicant has strongly countered this by arguing that the evidence from retail analysis and shoppers' surveys would suggest that the proposal would function as part of the town centre, because of proximity and good accessibility and serve the needs of a deprived residential area of Telford in addition. Evidence put forward by the applicant of its experience in other towns suggests that the presence of Asda stores in those towns results in significant levels of linked shopping trips.

The objectors believe that retail impact considerations put forward in the application are flawed. They claim that the loss of Asda from its current location would be unlikely to result in that store's re-occupation by a national food retailer thus causing detriment to the vitality and viability of the town centre. They also provide conflicting evidence on vacancy rates and health indices citing that the Telford Shopping Centre has seen a reduction in the number of national retailers leaving the Centre and being replaced by temporary low-end retailers, which reduces in turn the retail offer that is available and its appeal to shoppers.

There is a degree of conflict between the evidence put forward by the applicant and that submitted by the objectors, who presumably can refer to up-to-date evidence of what's actually happening on the ground. But your officers believe that there is a quantitative need for additional capacity to be provided in the convenience sector going forward and that arguments about the current economic climate do not alter the fact that we are planning for a period well beyond the present recession.

On this latter point, the applicant has pointed out that the re-development of the Red Oak Car Park, even if that would be made available to Asda would result in the loss of parking and this, together with the resultant disruption to Asda would have an impact on their trade of up to 80%. The applicant claims that this figure is so high that it would result in the present store (already under trading and impacted upon by parking charges, outdated design and poor layout) having to close whilst the construction of the replacement store proceeded. If this was to happen it would in turn have a seriously detrimental impact on the viability and vitality of the town centre.

In relation to impacts on the Town Centre, there is a compelling argument to suggest that in order to secure the best outcome for the town centre the local planning authority should support the relocation of Asda to a new purpose built store without disruption and then pave the way for the redevelopment of the Red Oak car park site and existing Asda store for further retailing which the quantitative analysis shows is needed. The alternative – the “do nothing approach” - would slow down retail growth in the town centre and the regeneration opportunities would be diminished, at least up to 2014 and possibly beyond.

Your officers are satisfied that the evidence provided by the applicant and supported by the Council's WYG Study would suggest that the proposal will not harm the vitality and viability of the town centre in terms of retail impact. It is accepted that the

proposal would function as part of the town centre retail offer, provide for linked trips and serve the needs of the local community thus encouraging social inclusion. In this context, the site is close to the bus station, pedestrian and cycle routes and within very close proximity to residential areas and would offer qualitative improvements to those living close by and others using different transport modes of travel. Moreover, it would help deliver one of the Council key objectives to regenerate the Southwater area of the town centre by providing a western anchor to the Southwater regeneration area.

Having regard to the above assessment, your officers conclude that the proposal accords with national and local planning policy in relation to retail planning considerations.

Design Considerations

The site falls away some 9 metres from the north-west and this has influenced both the siting and the car parking opportunities. The building will be located to the north-west and will incorporate undercroft parking. Essentially the sales floor level of the store is at about grade along its north western edge, but in the region of 5m above car park level along the elevation facing south east. All customers accessing the store, whether they have arrived by car, cycle or on foot, will access the store via a spacious vertical circulation pod on this elevation which will house stairs, lifts and travellers (inclined moving ramps which can be used by trolleys)

The Design & Access Statement explains that the goal for the proposed ASDA development has always been to provide a bright modern building, with crisp clean lines utilizing good quality, sustainable, low maintenance materials which sit comfortably within its surrounding environment. With that in mind the restaurant and 'colleagues' areas' have been sited along Malinsgate in order to provide some active frontages along the main road and key elevation. The main aspect however faces down to Southwater, in preparation for the redevelopment and regeneration of this area later. The intention always has been to provide a 'book-end' feature to this end of Southwater, with the future new 'High Street' leading from the Telford International Centre right up to the front entrance to this site.

The design of the development is described in the Design & Access Statement, which subdivides and explains the design concept in the following terms:

The Front Entrance: Double height predominantly glazed feature with the sales floor sitting above the undercroft parking, for the most part screened from view by the circulation pod. The pallet of materials consists of glass, white flat panel cladding and sustainable timber cladding, with the canopy and supporting columns providing articulation and modelling to the frontage.

The Gable Elevation facing Malinsgate: the various offices and restaurant areas have been positioned along this elevation to provide interest and variety, rather than the traditional blank sales area. Glazing is used to offer views in and out with a mixture of timber and white cladding elsewhere. A vertical access tower connects the undercroft with the upper areas and sales floor with a colonnaded canopy and

'brise soleil' (as the House of Fraser building opposite) providing depth and modelling.

The Gable Elevation facing Southwater Way: is set a little into the development and screened by existing and proposed trees. There is little scope for glazing to this elevation but a combination of timber and flat panelling will help break up this elevation. At a higher level, translucent glazing panels are used to provide light into the store and allow light out at night. The front entrance glazed area will form the end to this elevation

The Rear Elevation facing towards Malinslee Roundabout (although screened by the intervening Job Centre): The design of this elevation is somewhat utilitarian but having to accommodate the rear service yard. The proposal here comprises a mix of timber, white flat panelling and grey louvers accommodating the plant area. A pedestrian and cycleway runs alongside, which is proposed to be planted. A planning condition will require full details of walling to be agreed as timber fencing will not be sufficient at this location.

The Petrol Filling Station: By necessity – in order to afford site protection from potential slippage of Spout Mound, a retained landscaped bund will be provided which will soften the PFS area and provide a greener, softer edge from Southwater Way and Malinslee.

Pedestrian linkages were highlighted as fairly crucial in the pre-application discussions, particularly to create strong pedestrian linkages between Malinslee residential areas and the town centre, and south-eastwards towards Southwater. A 5 metres wide desire line is provided east-west and north-south that opens up into a public realm area 10 metres in width as pedestrians head towards Woodhouse Central/Coach Central. This can accommodate public art and form a useful outdoor space. In turn this connects to a wide at grade link onto Malinsgate and then towards a more pedestrian friendly crossing and pedestrian way towards House of Fraser or the Bus Station. There is also a strong 5 m wide tree lined pedestrian route leading from the store entrance towards the existing cycleway-footpath to the south-eastern boundary. This connection point will form a 'gateway' to the site and provide a strong legible access from the Southwater direction to the south-east and the future redeveloped area.

Your officers believe that there have been some physical constraints arising from the sloping nature of the site and the inclusion of steps and ramps at key points (the Malinslee entrance and the Southwater entrance) is unfortunate, however the vast majority of the development is well designed and is likely to achieve BREEAM Very Good standard of sustainability. With suitable conditions requiring the submission of further details, the development can be supported from a design point of view.

Highway and Transportation Issues

The proposals show two access points into the site; the main access via a proposed priority junction off Southwater Way providing access/egress for customers and servicing plus access/egress to the PFS. A secondary additional access is proposed from Malinsgate providing left-in/left-out arrangement for shoppers. Pedestrian linkages are given precedence in the design of the store, with the aim to

achieve improved and enhanced pedestrian linkages from the site to the remainder of Southwater in an east-west direction and across the site roughly north-south to open up linkages and footfall to the town centre from Malinslee housing area to the south-west.

Configuration changes are proposed in order to facilitate these proposals to Malinsgate/Woodhouse Central/Coach Central. Whilst the basic form of these junctions will remain as existing, it is proposed to enhance conditions for traffic and pedestrians by introducing a full traffic signal control that will be integrated with the existing House of Fraser car park traffic signals. In addition to the signalisation changes, the central island will be reduced in size and kerbs realigned to tighten the corner radii. The applicants suggest that these engineering works will start the process of reducing the dominance of the 'Box Road', slowing traffic and enhance pedestrian facilities and improve the environment for pedestrians. The entire junction, including the bus priority lanes, car park entrance and flow systems along Malinsgate/Coach Central//Woodhouse Central will be improved and be less 'highway dominated'. Multiple phases (movements) will be achieved resulting in greater efficiency of this part of the Box Road, particularly for pedestrians.

Indeed pedestrian accessibility and permeability are key to the successful integration of this proposal. It is accepted that the new 10m wide signal controlled pedestrian crossing will improve pedestrian flows to the town's shopping centre. However, it must be pointed out that although the configuration changes in this area appear to be possible, the LHA has suggested revisions to meet the standards contained in the Design Manual for Roads and Bridges and supported with a safety audit and AutoTrak runs. Your highway officers advise that conditional consent is possible.

The site has a pedestrian entrance off Southwater Way. This is shown to tie into the realigned footway link to Malinslee (see W2009/0945). The submitted plans show a raised pedestrian table at this location. However your highway officers consider that a signalised crossing point is used instead

The proposal shows a 500 space car park partly at grade, partly undercroft; PPG 13 would require 1 space per 14 sq m equating to a maximum of 580 spaces. A slightly lower allocation as proposed would reflect the site's central location and opportunities for more sustainable forms of transport. 500 spaces is deemed acceptable. In addition sheltered bike parking/storage is proposed. Servicing arrangements appears sufficient and largely separated from customer traffic and pedestrian movements. The LHA has again advised minor changes to the car parking arrangements and undercroft parking

The LHA's modelling work was completed as this report was being prepared and it is against this modelling work that your Highway Officers has assessed this application rather than the simple traffic modelling undertaken by the applicants. The Council is pursuing a plan-led approach in relation to strategic Borough-wide highway improvements and transport measures that will be deemed necessary to permit the scale of development envisaged in the Core Strategy and RSS. This modelling has identified the mitigating highways and transportation measures that will be necessary and your officers have carried out an initial assessment of the corresponding financial contribution that will be required.

Flood Consequences

PPS 25 'Development and Flood Risk' 2006 emphasises the importance of taking into account the consequences and not just the probability of future flooding events and adopts a risk based approach to steer developments to areas of least probability of flooding, taking account of climate change. The Council has produced a Strategic Flood Risk Assessment and the application site falls within Flood Zone 1 with no local issues. The EA's indicative floodplain suggests that there are no known flood risks within the application site and is assessed as having a less than 1 in 1000 annual probability in any year. The Council's work has revealed some flash flooding hotspots on site that occurs when surface water sewers in the vicinity reach capacity.

The ES assessed the impact of the proposal in relation surface and ground water quality, groundwater, drainage and flood risk. No watercourses are located within the site but investigation did take place on the effects arising from the proposal on surface water features in the area, namely Southwater Lake, Spout Pool and Withy Pool. It was concluded that in relation to each water feature, the development would be unlikely to have any notable impact on these systems.

In terms of both foul and surface water drainage, the site already benefits from Civic's drainage systems. The proposal will meet the Council's policy contained within LDF Surface Water Drainage SPD, which seeks a 50% reduction in existing surface water flow rates.

Ecology and Nature Conservation

An ecological impact assessment has been undertaken following an earlier scoping exercise and included the following surveys:

- Habitats and vegetation communities
- Invertebrate survey
- Reptile survey
- Badger survey
- Bat survey

The Civic site (unlike the corresponding application at Malinslee Link) supports no semi-natural habitat comprising buildings, car parks and associated landscape plantings. The site does not form part of any statutory or non-statutory site of nature conservation value. The only ecological impact is the loss of semi-mature trees, but even this has very little (site specific) impact. The Council's Ecologist confirms that the surveys reasonably conclude the low ecological value of this site.

Landscape Strategy and Arboricultural Considerations

An understandable and legible landscape strategy accompanies the D&A Statement and will form the landscaping framework for detailed planting. It has been designed in conjunction with the proposed Malinslee housing site to the south.

Specific landscape planting has been included within the design proposal to lessen the landscape and visual impact of the new supermarket. This includes additional trees and shrubs next to Southwater Way to replace some which will be removed, new trees and evergreen shrubs next to the proposed petrol filling station which is part of the supermarket car park, more tree and evergreen shrub planting to the eastern boundary to screen views of parked cars and partially screen the view of the supermarket, new trees and shrubs to a new landscaped area next to the western boundary to partially screen views of the supermarket and its service yard, more trees and evergreen shrubs to the northern boundary to partially screen views of the supermarket and entrance road.

There are proposals for tree felling and these works will have an impact on the local scene. A total of 85 trees are scheduled for removal from an existing 123. The Tree Officer has identified two Red Horse Chestnuts and a Horse Chestnut of some 40 years of age that are worthy of TPO status and in terms of arboricultural standards are of B1 status, which according to British Standards means of moderate quality with a life contribution of a further 20-40 years. In addition a commemorative American Sweetgum is also proposed to be felled. This tree together with a Wellingtonia which has A1 status can be replanted

A condition will be imposed requiring further details of translocation of some of the trees. However it must be emphasised that the removal of a considerable amount of trees and shrubs will take place if planning permission is granted. Although regrettable, it is felt on balance that the design of the store and the use of natural levels to facilitate a respectful design should be supported albeit at the expense of the majority of trees at this location. It is important to recognise that there are no fully mature trees at this site and most semi-mature trees date only from the time of the new town. This is not to denigrate this resource as most certainly the trees really do contribute to the overall townscape at this location. But in this instance provided a comprehensive new planting scheme takes place, your planning officers, at least, consider it is a price worth paying.

Noise and Pollution Control Issues

The report accompanying the ES aimed to identify background noise levels and potential noise arising from supermarkets activities, and how those would affect existing and future sensitive receptors. The following issues were considered and assessed:

- Servicing activity,
- Mechanical plant
- Car parking
- Activities on the car park such as trolley movement and collection.

The assessment method chosen is based on Planning Policy Guidance PPG 24 Planning and Noise: 1997 (PPG24).

The types of noises that are normal to Supermarket operations are of a different nature than those compared to a normal background. They can consist of sudden, short-term 'impulse' noises arising from the use of shopping trolleys, delivery activities and customer activities, as well as the 'drone' of fan noise. Whilst the report submitted gives a measure of comfort in terms of overall noise levels, there is limited detail. This will need to be clarified in respect of appropriate standards, and control measures, with conditions imposed if a grant of planning permission is forthcoming.

Control Measures:

Mechanical Plant: Given the level of experience Adsa has with supermarket plant and the acoustic louvers in place the control measures appear acceptable.

Car Parking: The ES has considered car door/boot slams and appears to consider there to be no other sufficient noise impacts. However the report makes no mention of noise generated by customer trolley movement or supermarket employee collection and storage (see Car Park Activities below). In respect of Car Parking, the ES suggests that distance and character of the noise from the car park, as well as the barrier effect of the building, sufficiently protects the proposed residential properties from adverse impact.

Car Park Activities: These sources of noise occur at the same time as noise impacts from deliveries and car doors slamming etc. This can give rise to problems and additional control measures such as acoustically protected trolley collection points may be required.

HGV and other vehicle delivery: Additional control measures may be required to reduce impact. It may be necessary to extend the noise barrier shown on the plans in order to offer appropriate protection. The service area itself is basically an open yard surrounded by a high barrier. There is also some concern that the queuing of HGV traffic might occur on Southwater Road and have the potential to cause noise nuisance to the proposed residential properties without any noise protection measures in place. Controls may be necessary that restrict the hours of use of the service area.

Light Pollution: A scheme of light pollution control should be the subject of a planning condition requiring approval of details.

Air Quality: There are currently no air quality management areas with Telford and Wrekin administrative area. The information contained in the ES has been assessed and shows a slight increase in air pollutants predicted. A review of the area's air quality would be reviewed in the air quality assessments undertaken by your Pollution Control Service. Should the development be granted planning permission, this redevelopment would be included in that assessment. The additional work carried out should be funded by the applicant as part of a section106 agreement.

Petroleum Licensing: under the Petroleum (Consolidation) Act the applicant will need to apply for a Petroleum Licence.

Ground Conditions

The close proximity of the site to Spout Mound to the south west was viewed as potentially problematical, particularly given evidence of minor recent slippages. The drilling of the mound and laboratory testing took place to ascertain the slope's factor of failure. The analysis suggests that the factor of failure which could directly affect the proposed development is within acceptable tolerances.

The Loss of the Civic Buildings

It is appropriate to make a short comment on the loss of the Civic buildings as the objectors to the proposal have raised it as part of their submissions, although it is open to conjecture whether the protection of existing uses such as these is a material planning consideration. The objectors argue that the relocation of the Council offices from the application site constitutes the loss of a "community facility" to which Core Strategy policy CS10 applies. Paragraph 9.65 of the Core Strategy notes that community facilities include "education, health, and social facilities such as schools, health centres, hospitals, libraries, community/day centres, prisons, village and community halls, post offices and churches" with public houses and local shops also forming part of the fabric of a community. It is highly unlikely that the existing Use Classes Order Class B1 office use can be described as a community facility as the CS Policy CS10 intended. In any event, the Council will need to react to the loss of Malinslee House and Walker House as it sees fit. The ES makes only scant reference to the sustainability gains that will occur from demolishing the current poor quality build Civic complex and its redevelopment by a BREEAM Very Good standard store construction. The Council will be considering a report on the preferred site for the relocation of its main administrative headquarters next month, although the Head of Property & Design has confirmed that his preferred location is at the Southwater Core area, which is currently the subject of a planning application for a mixed use development, to include B1 Office uses.

Other issues

The applicants have requested any approval to be accompanied with a 5 year time limited as opposed the usual 3 year approval, on the grounds that the relocation of Telford and Wrekin Council offices needing to be relocated, (planning permission gained and new building constructed) prior to vacant possession of the site being available. The likely timetable for site acquisition is early 2013. The Local Planning Authority has the discretion under section 91 of the Town and Country Planning Act 1990 (as amended) to grant permissions for longer than the statutory default period. Your officers consider that a request to increase the time limit is reasonable and justifiable; however, a period of 4 years is suggested to allow for vacant possession of the site and implementation of the store, in accordance with predicated timetables. This would help to prevent disruption of the operation of the existing store.

Planning Obligations Requirements

As landowner, the Council is an interested party; as such therefore, the avenue of a section 106 Obligation under the Planning Act is not open to Plans Board. A different approach is recommended - rather than entering into a formal Section 106 Agreement with itself, commitments will be made on behalf of the Council as landowner to abide by the planning 'obligations' and, should the land be transferred to make it a condition of that transfer that the new owner will have to enter into a Section 106 agreement to ensure that the obligations bind future owners.

The Council as both local planning authority and local highway authority intend to adopt a plan-led approach to planning contributions, particularly in terms of infrastructure provision and this is entirely consistent with the Government's Community Infrastructure Levy (CIL) approach. In relation to local highway network, the Council is using both a VISUM and VISSIM model to ascertain the impact of future development proposals on the adjacent highway network that will lead to an improved understanding of corresponding mitigating highways and transportation measures that will ameliorate these impacts.

Your highway officers have identified inadequacies in the TA lodged with the planning application; these concerns are shared by the Highways Agency who may issue a Direction to defer consideration before the meeting of Plans Board this evening. Members will be updated at the meeting. However there is also some unity as to how these issues can be resolved. Members will be familiar with the scale of developments that will emerge over the next few years within the town centre in particular. Clearly developments cannot be allowed to proceed without contributing to infrastructure improvements and it is now becoming accepted practice to seek financial contributions towards major highway schemes based on the number of additional trip generation.

Members will recall the recently approved by Plans Board at Snedshill and The Forge Retail Park where contributions were sought from developers based on the impacts on the local highway network. A similar approach will be recommended here.

The LHA has assessed the impacts arising from the development using their own methodology and traffic modelling and advise that in accordance with the plan-led approach, a financial contribution of £720,000 will be necessary towards the provision of Major (highway, transport and traffic) Schemes and new pedestrian crossing hub at the junction of Coach/Malinsgate/Woodhouse. An additional sum of £5,000 will be required for monitoring of the store travel plan.

In addition, the Council should seek a contribution to public art in line with Local Plan Policy. Known as the percentage for art approach, it is recommended that a sum of £75,000 be required to commission public art on the site.

In addition, and in line with recent developments a sum of £10,000 be sought to monitor and enforce section 106 Agreement and conditions.

Conclusions:

The application has been the subject of an Environmental Statement under the Town & Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. The impacts have been fully assessed by the Local Planning Authority and the conclusions reached that any outstanding environmental effects can be satisfactorily mitigated with the use of planning conditions.

The proposed retail store has been fully considered and assessed to be in accordance with guidance in PPS6, the RSS and Core Strategy policies CS3 and CS4. The proposed store is of a suitable scale, mass and design, which respects and responds positively to the site context and surrounding environs, strengthening local identity of Telford Town Centre. The site layout creates and reinforces pedestrian linkages to produce a safe and secure environment in accordance with the urban design policies in the Core Strategy and Wrekin Local Plan. The traffic movements generated by the development can be accommodated without detriment to the highway safety. The layout also provides adequate car parking and bike storage provision. The development will preserve either in-situ or through translocation those trees on the site which are of important value to the visual amenities of the area and reinforce this through additional tree planting and landscaping. Issues of ground conditions, flooding, drainage, ecology, noise and pollution have been fully assessed and it is considered that any impacts can be adequately mitigated through the imposition of suitable conditions. The proposal creates a demand for additional off-site requirement, which can be adequately achieved through planning obligation contributions.

RECOMMENDATION: That the application be referred to Secretary of State under The Town and Country Planning (Consultation) (England) Direction 2009 and subject to confirmation from the Secretary of State that she does not wish to call-in the application for determination and subject to the Council as landowner agreeing that the land will be bound by the obligations in respect of the provision of a sum of monies comprising a contribution of £720,000 for the provision of major highway schemes including new pedestrian crossing hub at the junction of Coach/Malinsgate/Woodhouse, £5,000 for monitoring of the store travel plan, £5,000 for the monitoring of air quality post development, £75,000 for the commissioning of public art on or off site as may be subsequently agreed and £10,000 for monitoring of covenants and planning conditions the Head of Planning & Transportation is authorised to **GRANT planning permission**, subject to the following conditions:

1. NS - Four year time limit condition
2. B23 - Landscaping
3. C80 - Landscape Implementation
4. B4 - Materials
5. B19 - Details of enclosure
6. B33 – On-site construction
7. B34 – Mud on road
8. NS – Environmental Health noise protection scheme
9. NS – Environmental Health restriction on noise levels
10. NS- Environmental Health time restrictions on delivery and service area use.
11. NS- Environmental Health illumination details

12. NS- Highways amended junction details
13. NS – Highways footways and parking materials
14. NS – Highways Travel Plan
15. NS – Trees Protection and Translocation scheme
16. NS – No dig method
17. NS – Drainage Ground water and Surface water limitation.
18. NS – Limit of floorspace
19. NS – Environment Agency Land contamination risk assessment
20. NS – Environment Agency Land contamination monitoring
21. NS – Environmental Health Land Contamination
22. NS – Demolition and construction hours of operation
23. NS - Retaining Wall details
24. NS - Foundation Design
25. NS – Earthworks Specification
26. NS – Soil gas protection
27. NS – Slope Stability

Informatives

- NS – Environment Agency guidance
- NS – Environmental Health guidance
- NS – Advertisement requires separate consent
- Sie20 – Land Contamination

REASONS FOR THE GRANT OF PERMISSION:

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The proposed retail store has been fully considered and assessed to be in accordance with guidance in PPS6, the RSS and Core Strategy policies CS3 and CS4. The proposed store is of a suitable scale, mass and design, which respects and responds positively to the site context and surrounding environs, strengthening local identity of Telford Town Centre. The site layout creates and reinforces pedestrian linkages to produce a safe and secure environment in accordance with the urban design policies in the Core Strategy and Wrekin Local Plan. The traffic movements generated by the development can be accommodated without detriment to the highway safety. The layout also provides adequate car parking and bike storage provision. The development will preserve either in-situ or through translocation those trees on the site which are of important value to the visual amenities of the area and reinforce this through additional tree planting and landscaping. Issues of ground conditions, flooding, drainage, ecology, noise and pollution have been fully assessed and it is considered that any impacts can be adequately mitigated through the imposition of suitable conditions. The proposal

creates a demand for additional off-site requirement, which can be adequately achieved through planning obligation contributions.

Notes

Agenda Type : A

W2009/0919 Upgrade of Victoria Park to include resiting car park, new footpaths and fencing, creation of marsh habitat and meadows Victoria Park, Water Lane, Newport, Shropshire. Recommendation Code: FG - Ward: Newport East

APPLICANT:
Telford & Wrekin Council

RECEIVED ON:
19/10/09

PARISH
Newport

WARD
Newport East

CASE OFFICER:
Anna Robinson

OBJECTIONS RECEIVED: Yes

MAIN ISSUES: Character and appearance, Impact on the Conservation Area, Impact on adjoining residential properties

THE PROPOSAL: The application seeks planning permission for various works to upgrade the whole of Victoria Park, as part of the Borough Town's Initiative for regeneration. The scheme includes the re-siting of the car park, new footpaths and fencing, creation of marsh habitat and meadows and replacement of trees and hedges. It is intended to improve accessibility to the Park and enhance its value as leisure open space for the local community.

The Design and Access Statement asserts that as this is the first of the Borough Towns' Open Space projects in Newport; its implementation would have a significant impact in the Telford and Wrekin Council Regeneration Programme. Under a separate contract, the existing playground to the south of the Park is to be refurbished. The regeneration of Victoria Park is likely to be the first phase of redevelopment in this part of Newport. A feasibility study has been undertaken establishing potential housing sites on the burgage plots opposite which would overlook the park, and the creation of a formal pedestrian link from Water Lane to St Marys Street and the centre of the town.

THE SITE AND SURROUNDINGS:

The application site comprises Victoria Park, which is an established area of public open space, extending from the northern edge of Water Lane, east to Victoria Park Road, with a Definitive Right of Way linking the two roads running through the centre of the site. The disused Shropshire Union Canal Newport Branch is located to the north and west. The western corner of the site is located within Newport Conservation Area. The canal is designated as a Site of Special Scientific Interest (SSSI). Residential properties on Victoria Park Road adjoin the Park, and No.'s 6, 10 and 11 Water Lane are adjacent to the existing vehicular access and car parking facilities, which adjoin the canal basin. Rear gardens to properties in Victoria Park Road border the Park, along with the public swimming pool.

The Park consists mainly of grass, hedges and trees, and the site undulates, with the east of the site elevated towards the swimming pool. There are a limited number of footpaths, and views of the park from Water Lane are blocked by existing hedge boundary.

CONSULTATION RESPONSES:

The Council's Drainage Engineer states the requirements of the Flood Risk Assessment should be followed. Details of the proposed SUDS system should be submitted including calculations and a layout plan showing pipe numbers and sizes.

Following the submission of an additional survey for great crested newts, the Council's Environmental Planner is happy that no further surveys are required and the development can be carried out with the following informatives:

- the inclusion of a 5m minimum stand off from the canal to prevent damage to the SSSI and local wildlife habitats
- approval to be sought from Natural England
- removal of trees to be carried out outside nesting season (March through August)
- removal of hedges to be carried out before the beginning of February, when it has been known that blackbirds will nest in suitable weather
- follow the recommendations in the tree and hedgerow survey regarding the tree species to plant
- adding refugia and hibernacula to enhance the area for wildlife, particularly in the marshy area, the wildflower areas and near the canal. These can include piles of logs, rocks and grass cuttings.

With reference to the report by Evolution Ecology, the Arboricultural Officer makes the following comments:

- 13 of the 23 trees featured on the plan are to be felled
- No objections to the removal of the following trees on grounds of health & safety: T9 & 10 are in poor condition and either dying or dead, T12 has a structural defect which will eventually lead to its failure
- The removal of the other four trees in this line will break up the wildlife corridor referred to in the report; however the felling of the 13 trees is mitigated by the planting of 25 new trees
- Application does not state specific tree replacements, species, size, planting methodology & specification
- Consider replacement planting of Tulip trees would greatly enhance the visual amenity of the area, but the mature crown spread is around ten metres so they should be set back, to avoid encroaching highway
- Are the recommendations in the Evolution Ecology report to plant Field Maple, Rowan, Wild Cherry, Bird Cherry, Whitebeam and Silver Birch as replacements? All of these trees are native to the British Isles and would greatly benefit the wildlife in the area. However they are not long lived in arboricultural terms, with the Field Maples offering the greatest life expectancy
- The site could accommodate the planting of a few English or Sessile Oaks, as these will also increase the biodiversity and character of the park
- If the trees suggested in the report are to be planted next to the footpaths, root barriers should be installed along the path edge, to avoid future disruption and damage

The Conservation Officer has no comments to make with regard to the upgrade of the park.

Highways comments are awaited and will be reported to Members at Plans Board.

Sport England has confirmed that this site does not constitute a playing field and that the site is general open space and not used for formal sport. Thus they do not wish to comment on the application.

Telford Angling Association objects to the relocation of the car parking spaces adjacent to the canal basin and makes the following comments:

- The Angling Association rents fishing rights on the basin, with fishing platforms next to the existing car park. These platforms were developed as disabled user friendly.
- The current proximity of the car park to the platforms enables disabled anglers to be independent
- Relocation of the car park means anglers will have to transport their fishing tackle some distance from their car to the canal side, which would be a problem for wheelchair users, or people with severe walking difficulties, with valuable fishing equipment being left unattended each time they return to their car for the next consignment
- Helpers would be required and this would take away independence and would be an infringement of their rights
- There are very few fishing venues in Telford which offer this degree of independence, therefore it would be a tragedy if the facility was taken away, and would show Telford & Wrekin Council in a very poor light.

Comments have been received from local residents of Water Lane regarding the proposal, during a meeting between the residents and the Applicant (the Council); these are summarised below:

- Provide strong effective planted barrier to boundary to No.11 Water Lane, which would overcome need to move car park from property
- Do not provide separate pedestrian access at side of No.11
- Move cycle parking away from No.11
- Do not want existing access to be maintained as gates will create enclave for potential anti social behaviour and would be a nuisance to use, and there would be other access to maintain the canal. No.6 Water Lane partially 'owned' as result of use and maintenance since 1991
- Provide rear access to No.'s 10 and 11 Water Lane from new car park, in accordance with pre-application discussions

PLANNING HISTORY:

Associated application – W2009/0913 Felling of tree within Newport Conservation Area

W79/0038 Construction of parking facilities, alterations to existing vehicular and pedestrian access and general improvements

POLICY CONTEXT:

Local Development Framework Core Strategy
CS6 Newport
CS8 Regeneration
CS9 Accessibility and Social Inclusion
CS10 Community Facilities
CS11 Open Space
CS14 Cultural, Historic and Built Environment
CS15 Urban Design

PLANNING CONSIDERATIONS:

Policy CS8 of the Core Strategy sets out that regeneration strategies shall be implemented in the two main market towns of the Borough, in Wellington and Newport, in order to improve the environment, maintain services in the towns and ensure long term vitality and viability. In Newport, Policy CS6 asserts development should seek to support the market town role of Newport and its regeneration.

Policy CS6 states that Newport's spatial development will include increasing accessibility to local services and facilities as well as enhancing the built and natural environment of the town.

Victoria Park is an important public facility and comprises an area of open space with footpath link from the housing development to the east of Newport with the centre of the market town. However, the planning history suggests that there have been no significant improvements to Victoria Park since the late 1970s when an application was submitted for the car park, vehicular and pedestrian access arrangements etc.

The proposed upgrade of the park includes the relocation of the public car park further east along Water Lane, with improved vehicular access, visibility, improved lighting and surveillance and 37 parking spaces, as existing provision. The existing vehicular access on to Water Lane will be retained with new lockable metal gates for future maintenance of the canal and to provide continued parking facilities for the private residential properties in Water Lane, who currently use the public car park. The relocation of the car park will enable the canal basin and adjacent land to become an area of significant amenity value, with planting and seating, replacing the existing tarmaced and paved area. The majority of the new car parking area will be repositioned outside the Newport Conservation Area, and the proposed alterations will enhance the character and appearance of this part of the Conservation Area.

Landscaping of the site comprises additional footpaths through the park, regrading of land, and wild flower meadow planting and marsh habitat, with timber footbridge link. The soft landscaping has been designed to increase biodiversity in the Park. Seating will be provided by new benches at a variety of locations adjacent to the new footpaths and picnic tables will be positioned adjacent to the canal basin on the site of the former car park. Along Water Lane there will be 1.5 metre high fencing and decorative metal feature gateway panels to the pedestrian entrance. It is not intended to lock the park at night, and the area will be illuminated by a combination of lighting columns and bollards.

The tree report established that a number of the trees were dangerous and required removal. Others are to be removed to accommodate car parking and a new tarmac footpath. Whilst this will mean the loss of a number of semi-mature tree species, the Council's Arboricultural Officer is supportive of the proposed replacement tree planting.

With regard to the Telford Angling Association comments, the Agent has asserted that the proposal includes 2 designated disabled parking spaces within the 37 space car park. The disabled spaces are located as close as possible to the canal basin (approx. 40 metres away), and adjacent to the footpath which leads to the canal basin and fishing platforms. There are currently no designated disabled spaces, so whilst it is slightly further from the fishing platforms than the existing parking area, the provision of disabled parking is an improvement. The Agent states that the new footpath has been designed to conform to Disability Discrimination Act requirements in order to provide greater accessibility to the park.

The local residents' comments are noted; however the car park has been resited to improve visibility etc. for vehicles exiting the site and to provide improved public facilities within Victoria Park adjacent to the canal basin. The existing vehicular access will be locked, and with the use of fencing and landscaping, this area should be private and secure and will not lead to potential anti social behaviour.

In accordance with policies CS6, CS8, CS9, CS10, CS11, CS14 and CS15 of the Core Strategy, the proposed regeneration of Victoria Park is intended to improve the existing parkland area and leisure/recreation facilities for the local community, improve accessibility with enhanced pedestrian routes, and maximise views of the historic townscape of Newport. Furthermore, the proposed upgrade of the park will enhance the appearance of the park and area and through the variety of features – different habitats and landscaping – will increase use of the park. In conclusion, the proposal would accord with the relevant Core Strategy policies and will provide improved facilities for the local community and aid regeneration of this part of Newport, with the intention of initiating redevelopment of further sites on Water Lane and maintaining the vitality of Newport.

RECOMMENDATION: GRANT PLANNING PERMISSION subject to the following conditions:

A3 Statutory time limit

C86 Parking to be laid out, surfaced and drained, and thereafter be maintained

Development in accordance with Flood Risk Assessment

SUDS details to be submitted

REASON FOR APPROVAL

The proposed regeneration and improvements to Victoria Park will improve the existing parkland area and leisure/recreation facilities for the local community, improve accessibility, maximise views of the historic townscape of Newport, and enhance the appearance of the park and area, with the intention of increasing its usage by local residents and will support the regeneration of Newport and help

strengthen Newport's role as a market town. It will improve the visual amenity of Water Lane and enhance the adjacent Conservation Area.

Notes

Agenda Type : A

W2009/0945 Residential development and associated access (Outline)
Land off, Southwater Way, Town Centre, Telford, Shropshire.
Recommendation Code: OLG
Ward: Malinslee

APPLICANT:
ASDA Stores Ltd

RECEIVED ON:
30/10/09

PARISH
Great Dawley

WARD
Malinslee

CASE OFFICER:
Emma Green

THIS REPORT HAS BEEN DEFERED FROM PLANS BOARD 16TH DECEMBER 2009.

OBJECTIONS RECEIVED: YES

MAIN ISSUES: Principle of development, impact on character and appearance of area, impact on neighbouring properties and highways implications.

PROPOSAL:

This application seeks outline planning permission for a residential scheme of approx. 79 units. The issue of access is to be considered at this stage with all other matters reserved for later consideration.

The indicative layout plan, shows that the proposed scheme could comprise of 7 x 3 bed 3 storey townhouses, 9 x 3 bed 2.5 storey townhouses, 4 x 4 bed 3 storey townhouses and 59 x 1 or 2 bed apartments in blocks of between 3 and 5 stories.

SITE AND SURROUNDINGS

The application site area is 2.6 hectares, (however due to constraints in terms of trees, green network etc, only approx. 1 ha is potentially developable) and is currently open space, in a prominent location at Malinslee Roundabout and is a 'gateway' to the retail centre of Telford.

This site is considered to fall within Telford centre and is bounded to the east by Southwater way, which is a route to Council and retail car parks. There is an informal hedgerow, tree planting along this boundary currently. The Severn Gorge Public House and Job centre building with associated car parking are opposite the site. Alongside are the Council Offices, the site of which is subject to a separate proposal for a new Asda store.

There is a significant tree bank to the north and west of the site, which screens the existing residential area of Malinslee which comprises of a mix of 1 and 2 storey dwellings, interspersed with areas of open land and shared parking courts.

To the south is the footpath link (Silkin Way) to Malinslee, which is poorly illuminated, however frequently used and Spout Mound.

To the north of the site there is the existing NFU building and associated car parking, which had a hedge and fence boundary with the site.

There are ground level differences of approx. 20m across the site due to the tree bank; however the developable area is largely a plateau, with a gentle slope to the south.

CONSULTATION RESPONSES

The Councils Geotechnics Engineers raise no objections to the proposal subject to conditions relating to shallow mining and land contamination and slope stability.

The Council's Sport and Recreation Officer has raised no objections, although the provision of a LEAP on site is not considered necessary due to proximity to Telford Town Park, however a contribution towards these facilities is considered necessary due to the increase demand this development will create. Furthermore, any open space to be adopted by the Council will need to be accompanied by a design and commuted sum for maintenance, which is to be agreed with the LPA.

The Councils Drainage Engineer no objections subject to a suitable condition relating to ground water and surface water limitation.

The Councils Planning Policy Officer has no objections as the proposal contains positive sustainable aspects and will retain the existing green network provision.

The Councils Highways Engineer has no objection to the proposal in principle. The proposed junction due to its location adjacent to the raised platform for the Silken Way crossing will need to be amended to be a raised junction to incorporate the existing feature, details to be submitted via condition.

The amount of journeys created by the development warrants the inclusion of a contribution of £85,278.13 for strategic road improvements in the vicinity.

The Councils Arboricultural Officer has no objections in principle subject to tree protection conditions.

The Councils Environmental Health Officer: The layout of the site should be orientated so that noise sensitive rooms are located away from major sources of noise, i.e. living and bedrooms to face into the development. Careful layout of the site to protect amenities is recommended. Noise from the supermarket development and local roads maybe issues that need consideration, although this can only be considered following assessment, which can be secured via appropriate conditions.

The Councils Scientific Officer has raised no objections to the proposal in terms of land contamination, subject to inclusion of relevant conditions.

The Councils Education Officer has raised no objections and seeks a contribution of £75,367.19 for the provision of primary education due the additional demand this scheme will create.

The Councils Ecological Officer has no objection to the proposal subject to

conditions for mitigation of impact on invertebrate species and moths.

The Councils Housing Officer has no objection in principle and would seek to secure a minimum of 25-30% affordable units with type, tenure and location to be agreed at the layout reserved matters stage, when more detailing is available.

Natural England has no objection to the proposed development in respect of legally protected species.

Environment Agency no objection to the proposal subject to imposition of conditions relating to contamination and monitoring to protect controlled waters

Shropshire Wildlife Trust consider that the reduction in ecological network is difficult to compensate or mitigate and that the proposed attenuation area, will offer a reduced ecological corridor.

Great Dawley Parish Council has no objections to the proposal and welcomes the preservation of trees and woodland and supports a mixed housing scheme however, has some concerns regarding drainage implications.

During the consultation process 1 letter of objection has been received and the comments can be summarised as follows:

Concerns about creation of a footpath link or road adjacent to 60 Coachwell Close, linking to the new Asda development site.

POLICY

The following planning policies are relevant in the determination fo this application

National Planning Policy

PPS1 – Delivering Sustainable Development

PPS3 – Housing

PPS9 - Biodiversity and Geological Conservation

PPG13 - Transport

PPG14 - Development on unstable land.

PPS 23 - Planning and Pollution Control

PPG24 - Planning and Noise

PPS25 - Planning and Flood Risk

Core Strategy

CS1 – Homes

CS3 – Telford

CS4 - Central Telford

CS9 – Accessibility and Social Inclusion

CS11 – Open Space

CS12 - Natural Environment

CS15 – Urban Design

Wrekin Local Plan (saved policies)

UD2 – Urban Design

UD6 - Major Transport Corridors and Gateways into Telford
 H6 – Windfall Sites in Telford and Newport
 H22 - Community Facilities
 H23 – Affordable Housing
 TC1 - Town Centre
 TC7 - Housing Development
 TC14 - Town Centre Design
 EH7 – Contaminated Land
 EH8 – Remedial Action on Contaminated Land
 EH14 - Land Stability
 T4 – Development Principles
 T22 - Planning Obligations
 OL3 - Green Network
 OL4 - Development in Green Network
 OL6 - Open Land
 OL11 – Woodlands and Trees
 LR4 – Outdoor Recreation and open space.
 LR6 - Developers contributions to outdoor recreational open space provision within new residential developments.

PLANNING

CONSIDERATIONS

The proposal is for outline planning permission for approximately 79 dwellings and retention of existing woodland area.

Principle of Development: The application site is located on the edge of Telford Centre, and is designated as a ‘gateway’ site and for employment use in the Wrekin Local Plan. The application of course has been advertised as a “Departure” to the Development Plan thereby recognising that the proposed residential development is in conflict with allocations detailed in the Wrekin Local Plan. To date there has been no interest in an employment use on this site and Policy TC7 of the Wrekin Local Plan does permit housing development in the Town Centre on land that is not committed or required for other uses. Furthermore, the emerging guidance in CTAAP seeks to increase the mix of uses within Telford and introduce high density, high quality residential development on suitable site. The Malinslee link is identified in CTAAP as a suitable site for residential use, although as this is only emerging guidance limited weight can be afforded to this document.

As with most Development Plans, there is a period of uncertainty as Local Planning Authorities move from one Plan to another. Clearly the RSS proposes a growth in households of 26,500 between 2006 and 2026 within Telford, and new sites, not previously allocated in the saved plan, will need to come forward to deliver this level of growth.

Policy CS4 of the LDF core strategy states that Central Telford will be the focus for major housing, employment, retail, recreation, leisure and mixed use development. With the aim of encouraging people into the town centre at different times of the day and night, and to make the area easier, safer and more pleasant to walk in and with a mix of uses developed at a higher density.

It is considered that this proposal would improve the linkages of Malinslee and the Town Centre, creating a safer environment by improving the existing Silkin Way link with increased surveillance and aid in the introduction of the 24 hour economy to Telford. If the original allocations in the saved local plan were adhered to this could limit the growth potential of Telford and Wrekin and damage the Council's aspirations to move forward with achieving a mix use for Telford Town Centre. If members are to accept the argument giving greater weight to the more recent policies in the Core Strategy, accordingly, this is a suitable site for residential development in accordance with policy CS4 of Core Strategy and TC7 of the Wrekin Local Plan.

Highways: This permission seeks approval for access along with the principle of development. Access to the site is to be gained from a single point off Southwater way. The central location of the site will allow for greater travel by foot and bicycle and use of public transport. The form of junction proposed is a simple priority junction, which the highways authority considers is appropriate for a development of this scale. However, concern is raised about the proximity of this junction to the raised pedestrian crossing point for the Silkin Way. It is therefore recommended that notwithstanding the submitted details that the access be formed as a raised table junction, which will incorporate the existing raised crossing. This detail can be secured through the imposition of a condition.

The indicative layout is insufficient information to comment on parking levels etc and will need consideration at the reserved matters stage. The layout will need to incorporate the following features; adopted carriage way width should be 5.5m reducing to 3.5m at any narrowing's with a minimum 2m wide footways. Visibility to accord with road speed as defined in Manual for Street. A turning facility for refuse vehicles needs to be included and the layout should not place any dwelling beyond a 40m servicing distance from the adopted highway. These details will be included as an informative on the decision document.

The indicative plans propose the realignments of the main footway to Malinslee. This is an adopted link and any realignment will require a formal 'stopping up' of any section that is no longer required, an informative on the consent would be sufficient to cover this issue.

The transport assessment has been carried out on the assumption that the site will accommodate 79 dwellings and the Highways Authority recommends that consent is limited unless otherwise agreed in writing. Due to the number of dwellings and the location of the development a contribution for off site contributions' (in line with a plan-led approach advocated in CTAAP) is required. This is based on the number of additional journeys created by this development and requires a sum of £85,278.13 for off site highway works. Planning Officers concur that it is reasonable to limit the scope of the permission to 79 units, unless otherwise agreed in writing, to give certainty to the decision making process. The proposal is considered in accordance with policies CS9 of the Core Strategy and 'saved' policy T4 of the Wrekin Local Plan.

Green Network, Open Space and Protected Species: Part of the site is designated as Green Network, this is the tree mounds to the west and land to the south

adjacent to the existing footpath link. Policies OL3 and OL4 seek to protect this land. The proposed residential development has been planned to ensure that the Green network area is retained. The rest of the site is currently open marsh land and whilst not protected does afford a wildlife habitat and the loss of this will impact on existing species using the site. There is to be no impact on any protected species, however mitigation and translocation of other species on the site has been identified as an issue and the imposition of relevant conditions are considered sufficient to ensure that this impact is managed. Accordingly, it is considered that the proposal is in accordance with 'saved' policies OL3 and OL4 of the Wrekin Local Plan, Policy CS12 of the Core Strategy and PPS9.

Design Principles: The proposed developable area of the site is approx 1 ha and the indicative layout drawings are sufficient to demonstrate that 79 dwellings could be accommodated on the development. There is however some concerns raised that the indicative layout is too heavily reliant on apartments and does not afford an adequate mix of unit types. Whilst a high level of density is deemed appropriate within this edge of centre location, the mix of development to create a sustainable community must also be reflected and it is therefore considered that a condition to limit the number of units to a maximum of 79 would be appropriate to aid in achieving this at the reserved matters stage.

This is in part a 'gateway' site, and will require a landmark building, the indicative layout shows that heights rise to 5 stories at the south eastern corner of the site, however, it is considered that this is an inappropriate location for such a landmark, which should be located to the north of the development. It is expected that the scale of the buildings along the southern boundary would be of a more traditional domestic scale up to a maximum of 3 stories to reflect the pattern of development in Malinslee while still providing adequate surveillance of the open space and footpath link. A condition relating to heights is considered necessary to ensure that a landmark building is provided in a suitable location.

A change in the scale and character of development within the site is considered appropriate given the constraints of the site and proximity of the internal development to the existing trees. Accordingly, it is considered that sufficient information has been provided to indicate that detailed submissions at reserved matters stage can be adequately designed and the scheme therefore complies with Policies CS15 of the Core Strategy and 'saved' policies UD2 and UD6 of the Wrekin Local Plan.

Trees and visual amenity: The existing tree bund to the north and west boundary of the site is to be retained. The retention of these trees will ensure that the visual amenities of the site are retained. There are a number of trees to be removed from elsewhere on the site, but these are category C trees, are poor quality specimens and do not merit retention or relocation. Conditions relating to construction methods and protective measures are considered sufficient to ensure that the proposed development will not adversely impact the retention of the trees and the visual amenity therefore afforded to the site by their retention. The proposal is considered to accord with 'saved' policy OL11. Furthermore, as the trees are to be largely retained, it is considered that the proposed development will not adversely impact on the local bird or bat populations.

Layout and Impact on neighbouring properties: The indicative layout shows development is to be contained to the east of the existing tree belt which is to be retained. The tree belt is located on a bank and the developed land is set at a lower level in relation to the existing residential development in Malinslee. It is noted that the massing drawings do indicate that the development could be in parts up to 4/5 stories in height, these elements of the proposal are indicated adjacent to Southwater Way. It is considered that the retained bank and tree belt are sufficient to screen the development from the existing residential development of Malinslee to ensure that there is no adverse impact on residents amenities in terms of overlooking or loss of privacy, whilst reinforcing the residential nature of the area and providing natural surveillance to the used footpath link to improve access from the existing residential area and the wider town centre.

Education: The level of residential development will have an impact on existing levels of educational provision. In accordance with 'saved' Policy H22, and based on the indicative numbers provided on the scheme it is considered that a sum of approx. £75,000 is required as a contribution for primary education facilities.

Affordable Housing: The indicative layout proposes a scheme with 75% of development being apartments, and whilst there is a need for apartments, there is a greater need for housing, particular 2 and 3 bed units and a small number of 4 bed houses. The indicative layout currently has no 2 bed houses, and the Housing policy officer considers that it would be beneficial if at the reserved matters stage, 2 bedroomed dwellings could be included in the proposal, to create a greater balance and meet a wider range of needs.

There is also no indication of the split between 1 and 2 bed apartments, a limited number of 1 bed apartments would be acceptable for affordable provision, but due to the limited and inflexible nature for the types of households who can occupy them, for the purposes of providing affordable accommodation more 2 bed apartments would be acceptable.

If the mix of affordable is to be largely provided by apartment accommodation, then a percentage of 35% would be required. If more dwellings are to be included then this figure could be reduced to 30%, these figures are based on the indicative housing numbers and types. There is scope that the overall percentage could be amended if the layout can provide some 2 bedroomed houses. It is considered that the proposed development is acceptable subject to an agreement on the type and level of affordable housing, which is to be secured between 25-30% at the time of determining the reserved matters stage for layout, when a clear idea of number and types of units is available. An informative of potential break downs of tenure for affordable housing is to be included on the decision document. The proposal is considered acceptable and in accordance with the requirements of 'saved' policy H23 of the Wrekin Local Plan.

Leisure and Open Space: The indicative drawings show the potential for the inclusion of a LEAP, within the development site. However, given the proximity of the site to Telford Town Park, this facility is considered unnecessary as there is adequate provision locally. Nevertheless, this residential development will create a

demand for such provision and an off-site contribution for improvement works to the Town Park would be reasonable. A sum of £600 per dwelling for 2 bed plus units is considered acceptable.

The space indicated as a LEAP could be used for open space or developable land, as deemed necessary by any layout to be submitted. Any open space on the wider scheme will need to include details for long term management and if it is to be adopted by the Council a commuted sum for maintenance will need to be agreed along with the design. The proposal is therefore considered acceptable in accordance with 'saved' policy LR6 of the Wrekin Local Plan.

Other Planning Obligations: the Council is seeking a sum of £10,000 to monitor and enforce section 106 agreements and conditions on strategic projects within the borough; this request is in accordance with other recent developments.

Ground conditions: The Councils Geotechnical Engineers consider that the applications are acceptable subject to conditions on shallow mining and land contamination and slope stability, in accordance with 'saved' policies EH7 and EH8 of the Wrekin Local Plan.

Drainage: The proposed foul drainage is to be linked to existing provision, and Severn Trent Water have confirmed that there is capacity for approx. 100-150 dwellings on this site, subject to a change in capacity with the Council offices being redeveloped. The green attenuation space provided to the south of the site is to accommodate a SUDs drainage solution. Due to the natural gradient of the land, this site is preferred and will allow for drainage via gravity. As a result of this SUDs solution there is negligible impact on surface water drainage in the vicinity. The Councils Drainage Officer has raised no objection to the scheme subject to a condition relating to ground water and surface water limitation drainage. The proposal is in accordance with guidance in PPS25.

Noise: The proposed development along Southwater way is to be set back due to an existing sewer easement. This set back will help to mitigate issues of noise arising from the road. The proposed Asda store on the opposite site, it to have the delivery and service yard located adjacent to Southwater Way, to ensure issue of noise are mitigated, the Asda scheme proposes the inclusion of an acoustic fence. The Councils Environmental Health officer requires additional information to be submitted to ensure that residents amenities are protected from the proposed supermarket opposite, this can be achieved through the imposition of a condition. Furthermore, an additional condition regarding sound insulation measures is considered necessary to ensure adequate amenity for future occupiers. Accordingly, the development is considered acceptable and in accordance with guidance contained in PPG24.

Other Issues: During the consultation period one neighbour has raised an issue relating to the proposed links to the existing Malinslee estate, and potential loss of garden space. There are to be no works proposed to widen or alter the existing footpath links, but the new development will connect to these existing footways to

improve access and legibility between the proposed development and existing uses.

Planning Obligations: because the Council is land owner, rather than entering into a formal Section 106 Agreement with itself, commitments will be made on behalf of the Council as landowner to abide by the planning 'obligations' and, should the land be transferred to make it a condition of that transfer that the new owner will have to enter into a Section 106 agreement to ensure that the obligations bind future owners.

In conclusion, the loss of some open space is considered acceptable, as the development will provide a link between the Town Centre and existing residential areas and encourage use of the Town centre day and night in accordance with the aims of policy CS 4 of the Core Strategy. The proposed dwellings are of a size and tenure to meet local need, and are to include a minimum of 25% affordable units. The site is in a highly sustainable location in relation to Telford town centre, with good access to public transport. Having regard to local objections and planning policy and guidance, officers consider, on balance that the principle of residential development and access subject to the revised access junction are acceptable subject to conditions.

RECOMMENDATION: that the Head of Planning and Transportation be authorised to GRANT OUTLINE PLANNING PERMISSION subject to the Council as landowner agreeing that the land will be bound by the obligations in respect of the provision of a minimum of 25% affordable housing subject to an agreement of type, mix and location at the layout reserved matters stage, a sum of monies for highways improvements, a commuted sum of £600 per dwelling for play facilities, a commuted sum for maintenance of open space, £10,000 for the monitoring and enforcement of S106 agreements and a sum of monies for primary school education contributions and the following conditions;

1. A1 – Standard Outline
2. A2 – Submission of Reserved Matters
3. B10 – Standard Outline
4. B11 - General Details required
5. B33 – On site Construction
6. NS – Highways details of layout, surface water and construction details
7. NS – Highways for the raised junction details.
8. B34 – Mud on road
9. B41 – Shallow mineworkings
10. B42 - Untreated Mine shafts
11. B44a – Contaminated Land
12. NS - Land contamination
13. B46 - Slope Stability
14. NS – Drainage limitation
15. NS – Limit on number of units to a maximum of 79 dwellings.
16. NS – No approval of indicative layout
17. NS – Building Heights
18. NS – Trees – protective fencing
19. NS – Trees – no dig methods
20. NS – Environmental health noise survey

21. NS – Environmental health sound insulation measures
22. NS - Water contamination
23. NS - Monitoring - water contamination
24. NS - Species Mitigation strategy
25. NS - Building to achieve Code for Sustainable Homes

Informatives:

Sie17 - Mineral Area

Sie22 – Conditions

NS - Environment Agency best practice and guidance

NS – Highways details

NS – Affordable Housing percentage and unit type details.

Sie26 – Reasons for granting outline planning permission

The proposed residential development is acceptable in principle. The traffic movements generated by the development could be accommodated without detriment to highway safety, subject to the inclusion of a raised table junction. The layout of the development would preserve those trees on the site, which are important to the visual amenities of the locality. The environmental issues raised in the EIA have been fully considered and any impacts can be mitigated through the imposition of relevant conditions. Furthermore, the residential development would not be harmful to the residential amenities of nearby dwellings. The additional demand for play facilities and education can be met by financial contributions to existing facilities.

Notes

Agenda Type : A

W2009/0962 Change of use from Use Class A4 to mixed Use Classes A3, A4 and A5 and internal and external alterations (part retrospective) *****AMENDED DESCRIPTION*****

The Royal Oak, High Street, Madeley, Telford, Shropshire.

Recommendation Code: FG

Ward: Madeley

APPLICANT:
Mr S Hussain

RECEIVED ON:
06/11/09

PARISH
Madeley

WARD
Madeley

CASE OFFICER:
Elizabeth Attwood

CLLR GILL GREEN HAS REQUESTED THAT THIS APPLICATION IS DETERMINED AT PLANS BOARD

OBJECTIONS RECEIVED: YES

MAIN ISSUES: The amount of existing food relating uses in the area, parking, residential amenity, impact on the vitality and viability of Madeley, and the character and appearance of the Ironbridge World Heritage Site and Severn Gorge Conservation Area.

THE PROPOSAL:

This application is considering a change of use from a Public House to a bar and restaurant operating from the existing lounge area and hot food takeaway in the existing bar area. This will enable the applicant to move from smaller premises which he owns on the opposite side of the road to the application site.

The proposed opening hours for the bar, restaurant and takeaway are:

Monday to Friday 11:00am to 12:00pm

Saturday 11:00am to 12:30pm

Sundays and Bank holidays 11:00am to 12:00pm

It is assumed that these times are written in error and should be 12:00am and 12:30am rather than pm otherwise it would indicate that the proposal is open for 1 hour on Monday to Friday and Sundays and Bank Holidays and 1 1/2 hours on Saturdays.

HISTORY:

A second application (W2009/0963) for a new extract fan and steel cowl in the kitchen, a re-location of an internal door at the bottom of the stairs at ground floor level, and a stud partition wall and door on the second floor to provide fire protection from the kitchen to the landing, has recently been granted Listed Building approval subject to the submission of additional details and detailed drawings.

SITE AND SURROUNDINGS:

The site is located within the Ironbridge Gorge World Heritage Site and Severn Gorge Conservation Area and situated at the lower end of Madeley High Street, as defined as the Secondary Zone in the Wrekin Local Plan.

The premises is a C18 grade II Listed Building finished in red brick building with a steeply pitched plain tile roof with gable ends and painted stone covered eaves; the property is two storeys in height with an attic and front facing flat topped dormer windows with sash with glazing bars. The windows on the front elevation are modern casements in original openings with voussoired heads with keyblocks. The central doorway is modern and there is a collection of various extensions to the rear. The original stables and coach housing with accommodation above is located to the north west and a large car parking area beyond. There is an adjoining vacant A1 shop unit to the east, a community hall to the west and a large detached residential dwelling to the north (rear). The application forms states that there are no trees on/adjacent the site. However, there is a mature Oak tree on the car park. Nonetheless, it is not affected by this application.

The current use of the premises is a Public House (A4) and the proposal is to change it to mixed use including a bar (A4), a restaurant (A3) and take away (A5).

PLANNING POLICY CONTEXT:

National Guidance:

PPS1: Delivering Sustainable Development

PPS6: Planning for Town Centres

PPS23: Planning and Pollution Control

PPG24 Planning and Noise

Wrekin Local Plan:

UD2: Design criteria,

S15 Madeley Secondary Zone.

Core Strategy:

CS5 District and Local Centres in Telford,

CS1 Community Facilities,

CS15 Urban Design.

CONSULTATION RESPONSES:

A newspaper advertisement, Site Notice and 19 direct neighbour notification letters have advertised the proposal. Four letters of objection have been received; the issues raised are:

- The application is retrospective,
- lighting, trunking, CCTV camera etc attached to the front elevation of the building,
- Already too many takeaways in the area,
- Noise, nuisance, traffic,
- Anti-social behaviour,
- Ambiguity over opening hours,
- Premises licence is required,
- Council are not exercising their statutory powers,
- WHS status,

- Area should be enhanced to make it more attractive to tourists and visitors,
- Confusion over A3, A4, A5 terminology,
- No desire to see building empty ,
- Adequate parking but users of take away facility do not tend to use car parks and stop out side on the double yellow lines causing obstruction and blocking private drives,
- Previous interested take away chain (Dominos Pizza) was advised that no further takeaways in the area would be allowed and pulled out of the sale.

The Planning Enforcement Officer has been advised and requested to investigate the above allegations. Likewise the Licensing Enforcement Officer is aware of the issues relating to trading hours and licence and is investigating the matter.

Conservation Officer: no objections.

Environmental Health Officer: no objections.

Highways Engineer: acknowledges that the access to the car park is substandard and there are on-going problems with on-street parking in the area; however has no objections to the proposed mixed use given the extant use of the building.

Madeley Parish Council: has objected to the proposed change of use, the issues raised are;

- The site is within the WHS and Conservation Area and is listed building,
- Saved policy S15 states that the number of takeaways have reached the maximum acceptable,
- proliferation and saturation of similar uses in the area,
- the applicant's former premises will remain as a takeaway
- there is no premises licence for the sale of hot food after 11:00pm
- there is prior history of licensing non-compliance,
- lack of information,
- CCTV, lighting features, signage is out of character,
- Comments from English Heritage and the Council's Conservation Officer should be sought,
- The Royal Oak pub sign should be preserved; the premises was first licensed in 1850 and has significant importance for Madeley,
- This application should be considered as retrospective.

PLANNING CONSIDERATIONS:

PPS1 outlines that development must be appropriate in its context and should improve the character and quality of an area, and that if a development fails to achieve this, it should not be accepted.

PPS6 reports that sustainable development is the core principle underpinning planning. The planning system has a key role in facilitating and promoting sustainable and inclusive patterns of development, including the creation of vital and viable town centres. The Government is committed to developing and supporting successful, thriving, safer and inclusive communities, both urban and rural. In making their decision, local planning authorities should also consider relevant local

issues and other material considerations. The mix of uses in local centres should be carefully managed.

PPS23 cites that, "*Any consideration of the quality of land, air or water and potential impacts arising from development, possibly leading to an impact on health, is capable of being a material planning consideration, in so far as it arises or may arise from any land use*".

PPG24 guides local authorities in England on the use of their planning powers to minimize the adverse impact of noise. It outlines the considerations to be taken into account in determining planning applications both for noise-sensitive developments and for those activities which generate noise.

Core Strategy policy CS5 states that the mix of uses in Local centres will be carefully managed.

Saved policy S15 of the WLP advises that, subject to the overall impact on the environmental quality of the District Centre uses falling within A2, B1, C2, and D2 will be permitted.

Policy UD2 provides guidance to assess whether or not proposals relate positively their context.

Policy CS10 of the Core Strategy seeks to resist the loss of community facilities; public houses are considered such as facility, forming a vital part of the fabric of a community.

The Environmental Health Officer has advised that has no objection in respect of noise and potential vehicle/pedestrian movements given the extant use of the premises and the High Street location.

The Highways Engineer: acknowledges that the access to the car park is substandard and there are on-going problems with on-street parking in the area; however has no objections to the proposed mixed use given the extant use of the building.

For clarity, prior to the amendments to the Use Classes Order in 2005 and 2006 restaurants, pubs, wine bars, snack bars, cafes, nightclubs and takeaways were classed as the same 'use' under A3 of the Use Classes Order 1987. In 2005 and 2006 the Order was amended and the aforementioned uses were reclassified as A3, A4 and A5. The purpose of the changes were to give local authorities more control to manage town centre development, while minimising the negative impacts of a proliferation of pubs, takeaways and nightclubs. Within the Use Classes Order is the provision for change which does not require planning permission known as *permitted change*.

The building currently enjoys an A4 use (drinking establishments), which could change to A3 (restaurant and café) under permitted change as per the Use Classes Order 2006. With this in mind the main consideration is whether or not the additional use as an A5 (takeaway) element is appropriate.

A quick 'Use' survey of the High Street reveals:

- 7 x D1 (clinics, consulting rooms, day centres, health centres)
- 8 x A3, A4 & A5 (restaurant, drinking establishments, hot food takeaway)
- 3 x D2 (dance hall, gyms)
- 6 x A2 (professional and financial)
- 8 x A1 (shops, hairdressers) (including 1 long term vacant adjacent the application site).

There are seven existing A3 and A5 uses and one A4 use in the locality; the additional text supporting policy S15 states that, there has been an increase in restaurants/takeaways occupying vacant shop units and the Council feel that these are now reaching the maximum acceptable level established by policy S27 (limits to A3 uses (now A5)) and that no further A3 (A5) uses should be permitted in this area.

Beyond the retail core of Anstice Square and Russell Square, there is a peripheral area of marginal retail and service based on High Street and Court Street, which make up the secondary zone. Empty properties in the secondary zone present opportunities for some retail growth. However, both capacity and demand for retail in this area appears to be limited. As retail development in the secondary zone is only marginal to the success and vitality of this Centre, the Council will encourage the use of premises within these streets for offices and residential.

As mentioned previously, planning permission would not be required if the unit was being occupied for either the A3 or A4 element of the proposal. However, the proposal requires consent for these elements in addition to the A5 use as the unit will be used for a mixed use. The WLP policy S15 and the explanatory text makes reference that no further A3 uses should be granted in this area. This policy refers to A3, which is now separated into further classes A3, A4 and A5. The unit as existing occupies an A4 use, and subsequently under saved policy S15 is part of this defined 'A3 use'. As the existing unit is defined already as part of this A3 use the proposal will not introduce any further A3 (now A3, A4 or A5) uses within Madeley. Consequently it is considered that the proposed change of use meets the criteria of policy S15.

Policy CS10 seeks to resist the loss of community facilities including Public Houses. However, following the recent test case at appeal, the Planning Inspectorate considered this policy is purely for the rural community and not within the built up areas of the Borough. Therefore, as the proposal lies within the Secondary Zone of Madeley it is considered that the proposal is not in conflict with this policy.

Therefore, the change of use proposed by this application is considered appropriate and compliant with both local and national policy. Comments raised in the representations received are noted and 'material' issues have been considered; other matters have been reported to the relevant authorities.

Accordingly, it is recommended that the proposal is approved as it would not have a detrimental impact upon the vitality and viability of the High Street, or the character or appearance of this part of the Severn Gorge Conservation Area or the Universal Value of the Ironbridge Gorge World Heritage. The proposal is therefore compliant with 'saved' policies UD2 and S15 of the adopted Wrekin Local Plan 1995-2006,

policies CS5, CS10 and CS15 of the Core Strategy, and guidance contained in PPS1 and PPS6.

RECOMMENDATION : to GRANT PLANNING PERMISSION subject to the following conditions:

1. A3.
2. Opening hours.
3. sie22.
4. sie26.
5. Informative – This planning permission does not purport to grant a change of use for outbuildings or new signage.

Notes

Agenda Type : A

W2009/0994 Erection of 4no. freestanding sponsorship signs measuring 1200 x 500mm

Brockton Roundabout, Halesfield, Telford, Shropshire.

Recommendation Code: ADG

Ward: Cuckoo Oak

APPLICANT:

Telford & Wrekin Council

RECEIVED ON:

17/11/09

PARISH

Madeley

WARD

Cuckoo Oak

CASE OFFICER:

Tom Lewis

OBJECTIONS RECEIVED: No

MAIN ISSUES:

Impact on visual amenity and highway safety.

THE PROPOSAL:

The proposal is for the erection of 4no. freestanding non-illuminated advertising boards 1200mm x 500mm raised by 400mm on twin poles, on the Brockton Roundabout. The proposed advertisements currently do not have a sponsor and therefore the applicant is seeking consent for a large sign with the corporate community sponsorship border on it.

THE SITE AND SURROUNDINGS:

The roundabout is situated on the A442 between the eastern primary and Bridgnorth, the island is also a main junction connecting Sutton Hill to the Halesfield Industrial Estate. The site is on the edge of the built up area of Telford but not directly within the residential area.

CONSULTATION RESPONSES:

The Council's Highways Engineer has asked for some changes to the proposal which the agents are in the process of providing these amendments to move one of the signs away from the run off road.

PLANNING HISTORY:

W99/0028 – Display of four advertisement boards 1,000m by 385mm – Granted

POLICY CONTEXT:

Wrekin Local Plan Policy S31 – Advertisements, Shop fronts and Hoardings.

PLANNING CONSIDERATIONS:

Various signs to promote local businesses have been installed at several roundabouts in Telford and Wrekin as part of the Telford and Wrekin Community Sponsorship scheme. The signs are considered generally acceptable where they would not result in visual clutter or a distraction to highways users. In this regard, the Highways Engineer has raised no objections to the advertisements subject to amendments. The signs are an adequate size for the island and are therefore

acceptable. To ensure the proposed signage is not of detriment to the character and appearance of the surrounding area, a condition will be placed requesting details of the proposed adverts to be submitted and approved in writing. Subsequently it is considered the proposed application complies with local & national criteria.

RECOMMENDATION:

GRANT ADVERTISEMENT CONSENT subject to the planning conditions:

- 1-5. E158 Standard Advertisement consent conditions.
6. The signage should not exceed a width of 1200mm and a depth of 550mm
7. The signage should not be higher than a maximum height of 900mm above the adjacent carriageway channel level.
8. Details of the content of the signs to include lettering/font size shall be submitted to and approved in writing by the Local Planning Authority before the sponsor's advertisement is displayed.
9. Informative SIE22 Conditions
10. Informative SIE26 Reasons for the Grant Planning Permission

The scale, location and design of the advertisements would respect the visual amenities of the locality and not be a danger to highway safety.

Notes

APPENDIX – 1

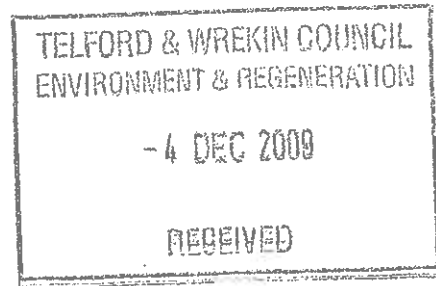
W2009/0915

**PROPOSED ASDA STORE AT LAND AT
WEST SOUTHWATER TELFORD.**

PW/JCC9033

03 December 2009

Mr Gareth Thomas
Development and Design
Telford & Wrekin Council
Darby House
PO BOX 212
Telford
TF3 4LB



Dear Mr Thomas,

Town and Country Planning Act 1990
Proposed Superstore Store at Land at West Southwater, Telford
Application made on behalf of Asda Stores Ltd (LPA Ref: W2009/0915)

We write in response to the letter of objection dated 16 November written by Drivers Jonas on behalf of Telford Trustees No. 1 Limited and Telford Trustees No. 2 Limited ("the Trustees"). Rather than respond on a paragraph by paragraph basis, we instead set out our comments under various topic headings.

Introduction

Many of the points raised in the Drivers Jonas introduction are summaries of points addressed below. However, there are two points that are better addressed up front. Drivers Jonas state that the proposed development would result in the loss of a key anchor from the town centre. This fundamental misconception, that the application is for a replacement superstore store, is carried right through their letter. In fact the application is for a new superstore to serve the needs of Telford, as identified in the WYG retail study and the RSS, and is not predicated upon Asda occupation (albeit that this will be the likely practical consequence of the development) or closure of the existing floorspace currently occupied by Asda.

They go on to say that the loss of such an anchor would damage confidence and future investment in the centre. However the redevelopment of the existing Asda store was a key element of Hark's proposals for the shopping mall and, by implication, Asda would have to move out within the same timeframe. Furthermore Drivers Jonas appear to take no account of the fact that the proposed development will actually 'kick-start' the regeneration of Southwater and, in concert with proposals which are the subject of a separate live planning application for Southwater Core, will actively encourage investment in the centre of Telford.

Sequential Approach*Red Oak car park*

Our retail assessment, submitted in support of the application, considered that the Red Oak car park would not be a viable option for Asda. Drivers Jonas question this conclusion and suggest that it is unsupported by appropriate evidence. Further evidence is therefore provided in this regard in the form of letters dated 25 November and 1 December 2009 from Asda's property agent Marsh and Baxter, as well as Illustrations A

- 4 DEC 2009

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and B prepared by RPS (attached). The Marsh and Baxter letter dated 25 November makes clear that negotiations were held with the Trustees over an 18 month period during which time numerous options and different sites within the town centre were considered. The outcome of this process was reported to Asda's Board on a number of occasions, but was ultimately found to be unviable due in part to the inevitable impact upon the operation and trade of the existing store.

The same is true of the proposals now being put forward by the Trustees, the subject of the recently held public consultation event. The Marsh and Baxter letter dated 1 December confirms that the resultant loss of parking and disruption would have an impact on trade of circa 80%; a figure so high that the store (already under trading and impacted upon by parking charges, outdated design and poor layout) would have to close over the construction period.

While numerous options were considered during the 18 months of negotiations with the Trustees and a further option is now being put forward by the Trustees, the fundamental point is that the construction of a supermarket on the Red Oak car park would cause immense disruption and significantly reduce available car parking within the existing store's principal car park. This is true for any scheme in this location. To demonstrate this we have produced two illustrations. Illustration A shows a store footprint of 4,090 sqm net sales and 7,850 sqm gross as per our application scheme (red shading) and an appropriately sized service yard (yellow shading). To this we have added a 5m construction margin around the footprint and approximately a 2000 sqm allowance for a contractors compound (blue shading). It should be noted that the only allowance for car parking within this illustration is that which can be accommodated beneath the store. As you know from consideration of our West Southwater application, this level of parking is insufficient to service a store of this size. Accordingly, this is a very robust exercise. The Red Oak car park has approximately 750 spaces and the combined shaded area on Illustration A would take out around 450 of those spaces (approximately 60% of the parking).

In order to demonstrate flexibility, Illustration B shows the position for a smaller store of 3,250 sqm net sales and 7,150sqm gross (again making no allowance for parking other than beneath the footprint of the store). We consider that this takes flexibility to an unrealistic level as this would provide a store very considerably smaller than the proposed or existing store. Nonetheless, this would result in the loss of approximately 350 car parking spaces (approximately 46% of the total).

It should be clear from the above that the impact of losing around half of the Red Oak car parking spaces during construction would be simply untenable on the existing Asda store, with that impact being of a similar order of magnitude to that set out in the Marsh and Baxter letter of 1 December. Indeed, it is to protect against this sort of significant impact that Asda's existing lease of their store obliges the Trustees to maintain 600 parking spaces on the Red Oak car park.

While it may sometimes be possible to suffer significant disruption while continuing to viably trade from a store, this very much depends upon the trading characteristics of the store in question. A strongly performing store, trading above company average levels with limited competition, would be able to withstand the loss of trade associated with disruption far better than a poorly performing store. The existing Asda store is significantly under trading (some 20% below the company average), has a low spend per customer and

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within the context of Telford is surrounded by unconstrained active and attractive competitors resulting in it being far less able to withstand the disruption that would flow from redevelopment of the Red Oak car park.

Moreover, the end product of redeveloping the car park would not justify the investment of providing it as the potential store arrangements explored with the Trustees in the 18 months of negotiations, and the proposals now being put forward by the Trustees, result in poor compliance with Asda's minimum design principles.

Many of the comments made by Drivers Jonas on page 4 of their letter are all predicated upon the application being for a replacement Asda store. As previously stated, while the practical implications of approving the application will be that Asda relocate, the planning basis on which the application has been made is that additional superstore floorspace is needed in Telford to go some way in meeting the needs established in the WYG study and the RSS.

Before moving on, it is worth addressing the selective quotation of PPS 6 in this part of the Drivers Jonas letter. It is rarely helpful to quote national policy back to Local Planning Authorities, however, it is worth noting that, in considering suitability operators need to demonstrate flexibility in terms of scale, format, car parking and disaggregation (para 3.15 of PPS6). This we have done, as set out in the appended letter from Marsh and Baxter. Furthermore, paragraph 3.16 of PPS6 requires LPAs to take account of genuine difficulties in operating the applicant's business model in respect of assessing sequential sites. The construction of a superstore within the existing store's car park will clearly result in "genuine difficulties", as set out above. This will remain the case while the existing Asda continues trading.

Finally, Asda welcome the development of the car park for a foodstore, as noted at the bottom of page 4, providing its construction does not conflict with Asda's tenancy period for their existing store (i.e. not before 2014).

Ash Grey car park

We can confirm that Ash Grey was considered as part of the discussions with the Trustees, however, it was dismissed as the size of the site is inadequate to allow the required scale of development or for the design to meet detailed design and operational requirements, even taking a flexible approach. As noted in paragraph 5.11 of the submitted RIA, taking a flexible approach we consider that only sites in excess of 2.2 ha are capable of being suitable to accommodate the proposed development. The area of Ash Grey car park is approximately half that (between 0.95ha and 1.5ha depending on what allowance is made for maintaining servicing requirements of the existing key tenants in this locality. Clearly, this is very significantly below the size of site required.

Illustrations A and B perform the same exercise for the Ash Grey car park as that set out above in relation to Red Oak. It can be seen that the small size of the site results in wholesale loss of the Ash Grey car park and a physical inability to accommodate the development while maintaining service routes for existing stores in this location. Again, no account has been taken of the parking requirements associated with developments of this size other than that which could potentially be accommodated beneath the store's footprint. However, it is clear from the illustration that insufficient space exists to provide any frontage parking. Equally, no account has been taken of any rights the existing

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tenants (such as BHS, Primark and M&S) may have over the maintenance of service provision or customer parking.

Redevelopment or extension of the existing store

There are two primary points to note in this regard. Firstly, Asda's requirements for Telford are not for additional floorspace quantum, as demonstrated by their application. As such, the suggestion that the existing store could be extended is of no value whatsoever to Asda specifically and would have to practically double in size in order to meet the needs of Telford set out in the WYG report and the RSS. Accordingly, there is no value in pursuing an extension of this store.

Secondly, a refurbishment of the existing store would have impacts upon the existing operation even greater than the development of Red Oak car park, discussed above. Such a refurbishment would have to address the issues identified in the RIA (para. 5.21), namely relaying the floor, improving linkages between the store and the surface car park at the rear (in such a way as to avoid the loss of the bakery or the creation of security issues). The improvements would still result in a compromised store in comparison to competing modern stores in Telford and the effects of this work on a trading store would be so significant as to effectively demonstrate that the site is unavailable as well as unsuitable and unviable until such time as Asda no longer occupy the store (after 2014).

Finally, it should be noted that extension, or even refurbishment and continued operation of the store does nothing to assist the Trustees in their plans to redevelop the town centre as an enlarged sub-regional shopping centre and may very well present them with a significant additional constraint. Neither does it meet the need for additional floorspace identified in the RSS.

Edge of Centre Sites

The order of site assessment under the sequential approach to site selection is set out in paragraph 2.44 of PPS6 where, *inter alia*, it is confirmed that "in considering alternative sites with similar locational characteristics in terms of the sequential approach...local planning authorities should give weight to those locations that best serve the needs of deprived areas". The application site is edge of centre and, following PPS6, the only point at which another edge of centre site becomes preferable is where it better serves the needs of deprived areas.

The application site is better located than any other edge of centre site in terms of pedestrian links to the Malinslee area of Telford, allowing an almost straight line of pedestrian linkage with the town centre, via the enhanced pedestrian crossing over the Box Road.

The Central Southwater site, by contrast, is bounded to the south by the Town Park with no pedestrian routes linking to the residential areas further to the south. Moreover, while the Drivers Jonas letter places some weight upon the bridge link over the Box Road, no reference is made to the fact that this link closes every evening, reopening in the morning. While this closure would have no effect on customers of the town centre, as the town centre would also be closed, it does act as a barrier to movements to facilities such as the bus and train stations, customers of the proposed superstore living to the north and office and shop workers on their way to and from work. By contrast, the enhanced pedestrian crossing over the Box Road proposed as part of our application would remain open and available for use 24 hours a day. Drivers Jonas appear to be preoccupied with the nature

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of the existing linkages whereas the appropriate factor to consider is the nature of linkages that are proposed as part of the development.

In addition, the development of a large space user on the Central Southwater site would have a deleterious effect upon the regeneration plans for the Southwater area as a whole. Much of the design rationale for the form of the current application proposal is to provide a western anchor to the Southwater regeneration. The provision of this large scale development (which, by necessity, could only have one front) 'half way along' the Southwater regeneration area would result in sterilisation of remaining land to the north (i.e. the current application site).

In summary, the application site is better placed to serve the needs of deprived residential areas, being better connected to Malinslee. The proposed crossing of the Box Road would provide more convenient access to the town centre, both in terms of location and hours of available use, than the bridge link referred to by Drivers Jonas. As such, the edge of centre Central Southwater site is not sequentially preferable to the edge of centre application site.

Retail Impact

In considering what Drivers Jonas refer to as "the additional store argument" they appear to have confused the need to undertake a robust assessment of need (section 4 of the RIA, which Drivers Jonas quote from) with the commercial reality of reoccupying the existing Asda store in its current state. We agree with Drivers Jonas at paragraph 3.4 of their letter that the existing store is qualitatively deficient. However, an occupier *may* be found in the short term and could certainly be found in the medium term if the store were improved once it became available for the works to be carried out (i.e. after the Asda tenancy has ended). Accordingly, the only robust way to proceed with the assessment of retail capacity assessment is to assume that a high turnover occupier is in occupation of that unit. Irrespective of whether another retailer wishes to occupy it the store would remain as an existing building with planning permission for food retailing and our retail assessment therefore had to take account of that. Our analysis therefore proceeded on the basis that the new development would be an additional store rather than just a replacement. Our findings were that there is capacity, and hence a quantitative need, for an additional store in Telford that could trade alongside another retailer in the existing unit should that store be reoccupied. However, it is no part of our case that the proposed store is only acceptable if the existing store is re-let to another food occupier.

Drivers Jonas assert that the existence of planning permission on the application site would jeopardise the potential for a new foodstore on the Red Oak car park. We disagree; clearly the Trustees would have to be realistic about rental levels and parking arrangements but these are matters which are fully within their control. Furthermore one of the factors influencing viability, namely the impact of the construction of the new store on the trade of the existing Asda store while it is being built, would be removed. Our study demonstrates that need exists for both sites.

Vacancies

There is little to be gained in addressing the vitality and viability point made by Drivers Jonas at length as one only has to walk around the town centre to see that it is indeed a thriving centre with good vitality and viability in the current economic climate.

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On a couple of specific points it should be noted that the percentage rates quoted in paragraph 3.11 of the Drivers Jonas letter relate to vacancies "and short term let retail floor space". That is to say it relates to all vacant units and some units which are not vacant at all! Clearly, this is a very unusual premise to examine vacancy rates from. Furthermore, it is worth placing the vacancy figures in the context of the national average. As set out in the RIA (para 6.14), the vacancy rate of Telford shopping centre is actually below the national average of 11.7%. It should be noted that even Drivers Jonas only claim that the vacancy rate is "slightly above" the national average (paragraph 3.29 of the letter), even taking account of occupied units on short term tenancies. To conclude on this point, the level of vacancies within the shopping centre is close to the national average level and, from Goad and our own survey, appears to have decreased slightly over the last year.

In respect of the potential vacancy of the Asda store, this will not occur until 2014. Furthermore, regardless of the outcome of the current application, this vacancy is likely to occur given the difficulty of redeveloping the existing site while Asda remain in situ and the inability to agree viable terms with the Trustees. It would also occur under the Trustees' proposals to provide a foodstore on the Red Oak car park. Perhaps more pertinently, the Trustees' plans to redevelop the town centre will inevitably result in disruption and vacancy within the centre as that work is progressed. Given that Asda will remain in situ until 2014, it is likely that any vacancy of the unit will be seen in a completely different short term context of redevelopment and may even facilitate that redevelopment. Accordingly, the current planning application does not raise significant issues regarding the vacancy of this unit and its implications for the centre as a whole.

Quantitative Need

Drivers Jonas question the use of the WYG study notwithstanding the fact that PPS6 confirms that need assessments should "wherever possible, be based on the assessment carried out for the development plan document, updated as required..." The WYG study is an up-to-date, thorough, survey-based piece of work and provides an appropriate basis upon which to base our assessment and allows the LPA to consider our retail assessment against a consistent background.

Drivers Jonas then go on to accept that the Primary Catchment Area adopted for our assessment (assumed to be the same as that of the existing store from which 80% of its turnover is derived) comprises zones 4-6 is an improvement but ought to be supported by a 10-15 minute drive time. It should be noted that the identification of the PSA was undertaken with the benefit of knowing where the existing Asda store draws from, as set out in the household survey contained within the WYG report. That is to say, it is based upon the actual areas from where customers are drawn to a food store of approximately the same size as the proposed store, located in approximately the same location. To simply ignore the evidence available for the shopping patterns of the non-PSA zones would be illogical and require the use of significantly less robust assumptions. We consider, therefore, that it is beyond criticism. Nonetheless, we enclose a plan showing 10 and 15 minute drive time isochrones. One can see that there is a reasonable degree of correlation between the 10 minute isochrone and the PCA, notwithstanding inevitable differences between drive times and postcode sector boundaries, and if anything the isochrone is larger.

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What is absolutely clear is that the submitted RIA is not based upon a sub-regional shopping centre's catchment area, as claimed by Drivers Jonas in paragraph 3.30, rather it is based on actual food shopping patterns as detailed in the WYG retail study undertaken on behalf of the Council.

Drivers Jonas have suggested that it is impossible to identify which stores actually fall within our PCA (zones 4-6), but that is clearly not true. An examination of the study area plan included as Appendix 1 of our RIA readily indicates which stores/centres fall within which zones. If it will assist you we can confirm that Oakengates; Donnington (including the Asda at Donnington Wood); Hadley; Telford; Dawley; and Madeley all lie within zones 4-6.

At their paragraph 3.19 Drivers Jonas summarise the calculations in our convenience capacity table (Table 14) and say that our identified headroom potential/capacity of £54.8m at 2009 and £68m at 2016 is excessively large. However they provide no reasoning for that conclusion. They have made no objection to our estimates of total available expenditure within the PCA (which are derived from WYG's population figures and the latest Experian local per capita spending estimates), and both the level of spending retained by existing stores in the PCA and the level of spending from outside zones 4-6 that is also captured by the PCA stores are not our estimates but rather have been derived from the results of WYG's household survey. Similarly, the estimates of the benchmark company average turnovers of the existing stores have been largely derived from floorspace figures in the Council's retail study as well as the latest sales density estimates from Verdict. The estimates of the expenditure that is actually available within the PCA and the average level of turnover required by the existing stores therefore does not appear to be in dispute. The calculation of the headroom to accommodate additional floorspace is therefore straightforward and clearly shows a surplus of £68m at 2016, falling to £45m once existing commitments have been taken into account. That clearly demonstrates a quantitative need for additional floorspace within the PCA.

At their paragraph 3.20 Drivers Jonas point to the fact that the survey derived turnover of the existing Asda store (in our Table 12) shows the store is overtrading, while our RIA (Table 16) has contended it is undertrading. As you (and certainly your consultants WYG) will be aware, household shopper surveys can sometimes produce erroneous results and in this instance while the survey does suggest a turnover that is above the company average level, Asda themselves have informed us that their store is in fact trading significantly below the implied levels. However, this discrepancy makes no material difference to our capacity assessment. The level of available expenditure within the PCA is derived from the survey results (which includes the Asda overtrading); however if the turnover of the existing Asda were to be reduced to more accurately reflect its actual trading level, the overall level of spending within the PCA would remain largely the same, since the spending deducted from the Asda would logically be expected to be reapportioned to other stores in the area. The overall level of spending within the PCA, and hence the final headroom figure, would therefore remain largely the same. Even if that were not the case, our impact table (Table 12) assumes the existing Asda is trading around 10% below its company average level, which equates to almost 20% (£7.6m) below the level identified by the household survey. If that reduced level of turnover were to be incorporated in our capacity assessment but with the £7.6m of spending not reapportioned amongst other stores in the PCA, then the level of retained expenditure shown in our Table 14 would be reduced, which would in turn result in a reduction in the final headroom potential/capacity. However even in such a worst case scenario the level

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of headroom/capacity (£37.8M at 2016) would still be well in excess of the net increase in turnover that will result from the proposed development (£27.8M).

Qualitative Need

Once again Drivers Jonas fail to recognise that the application proposal is for a store *in addition* to the existing floorspace within the town centre. It is not a replacement of that store. Accordingly, their comments about the location within which qualitative improvements can be made and to which re-apportionment of trade can take place are misplaced as in fact, once the Asda tenancy has ceased, that floorspace can be qualitatively improved such that it too attracts additional trade.

Impact

At paragraph 3.30 Drivers Jonas reiterate their contention that our catchment area is too large, the WYG study having assessed the catchment of the sub-regional shopping centre. However as we have already said (in the quantitative need section above), while we have adopted the study area from the WYG study we have assumed the PCA of the proposed store will be smaller and only comprise zones 4-6. The WYG study area was utilised so as to comply with PPS6 guidance and allow us to make use of the household survey results, which allow both the inflow and outflow of expenditure to be identified. The wider extent of the study area is therefore not an issue, since the survey results allow us to identify how much spending is actually being captured by the PCA. Drivers Jonas' suggestion that we have identified an 'unrealistic level of expenditure' is therefore incorrect, since our capacity analysis (Table 14) only takes account of the spending that is already being captured by the PCA (zones 4-6). (We would emphasise that the PCA of the Asda store is clearly very different to the PCA of Telford Town Centre, reflecting the very different roles that are performed by food stores and sub-regional shopping centres).

In relation to the suggestion that we have omitted the Iceland and M&S stores from the analysis, our tables use the same format as the WYG study. Other stores such as Iceland and M&S are included within the 'other town centre stores' entry (£12m of turnover being estimated for these other shops in Telford town centre).

Paragraph 3.31 states that diversion of £30m of convenience expenditure from the existing Asda to a new store at West Southwater would represent 71% of all convenience expenditure being taken out of the primary shopping area, which they say would have a negative impact on the centre. However that overlooks the fact that: a) there is a clear quantitative capacity for another foodstore; and b) a new store at West Southwater would effectively function as part of the centre, because of its proximity and the good pedestrian linkage it will enjoy. In terms of the impact on shoppers visiting the centre, that should be positive, since they will have access to a better and more modern store and free car parking for Asda customers (and charges consistent with town centre car parks for other users). Further benefits will accrue if the existing Asda unit is reoccupied (which would provide more choice and competition) or the unit is incorporated within the Trustees' planned redevelopment. In terms of the comparison turnover of the proposed development, that is small compared to the capacity/need identified by your own consultants. Telford is a sub-regional shopping centre whose offer is primarily comparison goods based. The diversion of £13m of turnover, which is derived predominantly from items purchased as ancillary to a food shop and which is mostly already spent in the Asda store will have no impact on the vitality and viability of Telford, which the WYG study calculated (from their household survey) had a comparison goods turnover of £429.3m in 2006.

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Paragraph 3.32 of the letter calls into question the likelihood of linked trips being undertaken between the proposed store and the town centre. The public consultation exercise undertaken in relation to the proposal, set out in the Statement of Community Involvement, resulted in 1,600 questionnaires being handed out and 199 being returned. The questionnaire included a question on whether customers would continue to use the town centre for other shopping requirements; 94% of respondents confirmed they would.

The significant improvement to pedestrian crossing facilities across the Box Road at all times of the day, proposed as part of the development, will facilitate high levels of linked trips and, given the lack of suitable, viable and available sites within the town centre, we consider that the proposed development complies with national policy in this regard.

A substantial percentage of people will always undertake dedicated main food shopping trips wherever the store is located and will not link those trips with visits to other shops and services. However, it is now widely accepted, based on evidence, that there are linked trips to centres associated with large food stores, including from edge of centre locations. The degree of inter-linkage depends on a number of factors, including the distance of a store from the centre and its relationship to it. A Donaldsons' survey undertaken in 1995 in relation to a Sainsbury store in Devizes found: *"Of those respondents who had come specifically to shop at the Sainsbury more than half of them (59%) also visited other shops in Devizes on the same trip. These results illustrate the Sainsbury store's strong draw and the link this draw has with town centre retailing"*. It is relevant to add that the Sainsbury store (now Morrisons) in Devizes is separated from the town centre by a fairly major road and is 300m away from the centre.

Asda has also undertaken a number of surveys of linkage between its edge of centre stores and the nearby town centres. The findings of their exit surveys are outlined below together with the distance of the store from the town centre.

Centre	Distance from Asda Store (metres)	Percentage of Linked Trips
Bromsgrove	210	75%
Long Eaton	265	45%
Spennymoor	110	56%
Pwllheli	105	64%
Llangefni	150	46%

Drivers Jonas claim that no analysis has been undertaken of impact upon the town centre if the existing store were not reoccupied. That is incorrect as column 5 in our Table 16 details the impact of the proposed new store after the closure of the existing one but before its reoccupation (which is then noted in the subsequent columns).

Drivers Jonas query why the reoccupied Asda floorspace at The Border would draw more trade from out of centre locations than the proposed store at West Southwater. The reason is simply that many existing Asda customers will move across to the proposed new store and would therefore provide the majority of the turnover of the proposed new store. The occupier of the Border floorspace would be a new occupier and accordingly would draw its trade from existing facilities, many of which are out of centre. It can be expected that a large proportion of its turnover would come from the West Southwater Asda, since

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that would be the closest competitor: the remainder would largely be from other large stores in the wider area (food superstores generally compete with other comparable stores).

At their paragraph 3.35 Drivers Jonas note that even if the existing Asda unit is reoccupied, the trade diversion resulting from the new store at West Southwater would mean £5m less turnover in the primary shopping area than currently exists with the current Asda: since the application site is not currently within the PSA the turnover of the centre would therefore fall as a result of the proposed development. That is correct, however it ignores the fact that the proposed development will effectively function as part of the centre, having good linkage to the existing PSA. Given that Telford is a sub-regional shopping centre whose retail offer is primarily non-food based; the identified quantitative capacity for new food and non-food floorspace and the good linkage the new store will have to the PSA, it is not at all likely that the development will seriously undermine the vitality or viability of the centre.

Departure from Development Plan

We have accepted that the proposed development is in conflict with saved Local Plan policy TC2 but have drawn attention to the fact that this policy does not contemplate population growth and associated retail need beyond 2006. The RSS confirms a growth in households of 26,500 between 2006 and 2026 and the WYG retail and leisure study draws conclusions on behalf of the LPA as to the level of retail floorspace needed to meet this growth. Accordingly, while saved policies of the Local Plan have the weight of s38(6) of the Act, the RSS and the WYG report are very weighty material considerations which, given the time horizon of policy TC2 and the significant change in circumstances facing Telford since the Local Plan's adoption in February 2000, outweigh that policy. Even if no weight can be afforded to the RSS in this matter, as Drivers Jonas inexplicably imply, one can fall back on national policy as a weighty material consideration, in the form of PPS6, with which we fully comply.

A further policy consideration is Policy CS4 of the Core Strategy which, having cognisance of the RSS population figures and a time horizon to 2016, recognises that "the role of the Central Telford Area will be consolidated and enhanced as the hub of the service centres hierarchy by [inter alia] creating more shops..." The proposed development clearly complies with this.

Drivers Jonas seek to argue that the relocation of the Council offices from the application site constitutes the loss of a "community facility" to which Core Strategy policy CS10 applies. Paragraph 9.65 of the Core Strategy notes that community facilities include "education, health, and social facilities such as schools, health centres, hospitals, libraries, community/day centres, prisons, village and community halls, post offices and churches" with public houses and local shops also forming part of the fabric of a community. While this is not an exhaustive list none of the uses quoted are even close to Use Class B1 office use either in character or spirit. Accordingly, we do not consider that Policy CS10 is engaged. In any event, we understand that the Council are taking a report to committee in January 2010 recommending that the Civic Offices be retained within the Southwater area such that alternative provision will be able to be provided concurrently with the vacation of the current office (see attached letter from the Council's Head of Property and Design). As such, the requirements of policy CS10 would be complied with if it were to be engaged.

Drivers Jonas then move on to consider the weight to be afforded to CTAAP. It should be noted that our submission is in no way based upon the CTAAP as we recognised that it

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could be afforded limited weight at the time of the application submission. Drivers Jonas draw attention to the fact that they have objected to the document (without pointing out that others, including our client, have supported the document - a fact which potentially significantly affects the weight it could be afforded) and that the Inspector has made plain his thoughts on the soundness of the document as submitted. However, it is important to note that the Inspector's concerns set out at the Exploratory Meeting in no way related to the spatial distribution or quantum of retail allocation or the principle of regeneration being proposed through the development of Southwater. Indeed, he specifically applauded the vision and objectives of the document.

What is certainly the case is that the policies of the CTAAP represent the most up-to-date expression of the Council's aims, objectives and ambitions for Telford and that these include the regeneration of the Southwater area by mixed use development, including retail. Our proposals are not only in line with these ambitions but, in concert with the proposals for the Southwater Core, actually 'kick start' the process of regeneration.

Prematurity

Drivers Jonas seek to argue on the one hand that CTAAP can be afforded no weight at all and, on the other, that the application should be refused for being premature to CTAAP. This is clearly inconsistent.

Regardless of the status of CTAAP, the application before you is for retail development, for which there is a proven need, which is proposed on the most sequentially preferable site and results in no unacceptable retail impact. Paragraph 17 of the ODPM's document "The Planning System: General Principles" (2005) sets out that "in some circumstances" ... "it may be appropriate" to refuse permission on prematurity grounds. It is clear from this wording that this is a matter of discretion. It is our strong contention that it cannot be appropriate to refuse the Asda proposals on prematurity grounds when national policy (PPS6) is fully complied with and the policies and status of the document in question (CTAAP) are not being relied upon for that compliance. The proposals stand to be determined outside of CTAAP and cannot be considered premature to it.

Furthermore, the CTAAP position has moved on since the Drivers Jonas letter in that it has now been confirmed that the examination process has been suspended for a period of up to six months. "The Planning System: General Principles" notes that "Where a DPD is at the consultation stage, with no early prospect of submission for examination, then refusal on prematurity grounds would seldom be justified because of the delay which this would impose in determining the future use of the land in question." Given that the examination has been suspended to allow further work and associated consultation, we consider that this element of the ODPM's guidance is invoked and refusal on prematurity grounds is not justified because of the delay which this would impose in determining the application and the future use of the application site. The significant amount of additional work now being commissioned and consulted upon has the effect of placing the plan at "pre-submission" stage for the purposes of this issue.

Loss of Council Offices

As stated on the application form, the Civic Offices are to relocate, thus maintaining current employment levels. It is not the case that Telford and Wrekin can simply divest itself of all the functions currently carried out at the application site such that the jobs would be lost. Indeed, as stated above, we understand that the Council are taking a report to committee in January 2010 recommending that the Civic Offices be retained

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within the Southwater area (see attached letter from the Council's Head of Property and Design). We understand that the Council's Estates Department envisages being able to deliver vacant possession of the site in early 2013, allowing construction of the store in time for a seamless transition of employment for colleagues upon termination of Asda's existing lease. Furthermore, we understand that the Council is fully aware of the restrictive covenants referred to in Drivers Jonas' letter and we are confident the issues will be dealt with by them.

Highways Issues

Please see attached Technical note prepared by Savell Bird & Axon which address the highways matters raised.

Design Issues

Active frontages

In paragraph 8.3 of the Drivers Jonas letter they state that the store is "*within 5m distance of the existing job centre*". In actual fact the store will be no closer than 10m from the nearest point of the job centre and will be over 30m distant for much of its length. Drivers Jonas also state in paragraph 8.3 that "*this 75m long inactive edge is against an existing footpath*" whereas the actual length of the north west elevation nearest the footpath is under 50m, and this will be separated from the cycle way footpath by a 5m margin which contains soft landscape and tree planting. In conclusion, they suggest that this is "*creating a very hostile environment*" whereas the reality will be very different from the picture painted. The cycle way footpath is around 3m wide and flanked for much of its length by soft landscape margins on both sides. The job centre car parks to the north west are open to this existing path, so it will by no means feel narrow or confined. The north west store elevation which interfaces with this path is to the store warehouse, but incorporates a variety of materials and is screened by landscape and tree planting as noted above and illustrated by the application drawings.

Paragraph 8.2 also refers to the south west elevation as being "*a blank elevation completely devoid of any activity*". While the use and function of the building as a food store requires fixturation to run internally along this elevation, again a considered mixed pallet of materials has been used which includes "Kalwall" at high level above the height of the fixturation. This is a translucent material that will allow natural daylight into the store during the day and produce a soft glow of light during the hours of darkness to signify activity within the store.

The remaining two elevations are the south east elevation and the north east elevation facing Malinsgate. Both of these elevations are genuinely active elevations as described within the DAS. In paragraph 8.2 Drivers Jonas state that "*the only activity indicated is the centre door to the traveller*" whereas there are actually two entrances into the store illustrated by the application drawings, and the high proportion of glazing will afford views of the travellers within (inclined moving walkways) and the inner areas of the store beyond. A considerable degree of theatre and activity will be created and will be highly visible here.

As far as the north east elevation facing Malinsgate is concerned, a conscious effort has been made to locate the customer and colleagues restaurants and offices along this gable in order that views into these busy areas can be created from Malinsgate. This will also be reinforced by emitted light after dusk. The colleagues' and visitors' entrance to the store is also located on this elevation directly accessible off Malinsgate.

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Permeable urban development

Drivers Jonas state that the "car park is raised, resulting in a retaining wall along the site's western edge". As we have taken advantage of the site's natural topography, the car park is actually "cut in" below the store along the western edge and totally hidden from view here. We assume that their comments are really aimed at the south eastern boundary where by necessity of providing a balanced cut and fill across the site to meet sustainability objectives, the car park levels are elevated above the existing cycle way footpath. However, a positive pedestrian connection has been proposed to this cycle way footpath and the Southwater areas beyond by virtue of a 4m wide ambulant disabled flight of steps and an alternative ramped solution. The legibility at this point is reinforced by provision of a canopy and proposed signage as explained and illustrated by the DAS.

Access

The Drivers Jonas letter suggests that the recognized importance of pedestrian linkages has not been carried through, and that "the illustrative desire lines are not supported with active uses, enclosure or passive surveillance". In fact we have recognized and provided legible pedestrian linkages through the site which have good passive surveillance. The Malinslee / Town Centre linkage is located along the front of the proposed store and passes both entrances into the store. We are also proposing to make provision for public art installations to reinforce this linkage.

The linkage through the car park to the South East is wide (5m) and is defined by semi mature trees at around 6m tall at time of planting.

In conclusion, we consider Drivers Jonas' letter to be ill conceived and primarily aimed at securing a preferable negotiating position for their clients in the hope that, if refused, Asda will be forced to agree to commercially unfavourable terms being insisted upon by the Trustees. We consider the proposed development to be acceptable and beneficial to Telford's long term future for the reasons set out in the application submission and commentary above.

The aims of the application are to preserve 350 jobs and a viable business in Telford for the next generation. The contention that Asda can stay on a site whiles being redeveloped to give them, ultimately, an inadequate store at the end of it, is not credible. For this reason we ask you to grant planning permission for the application which has extremely high levels of support from the public.

Yours sincerely,



PETER WALDREN
Planning Director
waldrenp@rpsgroup.com

Encl.

c.c. Asda Stores Ltd



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Our ref GB/LG/CM/62716

By email and post

16 November 2009



FAO: Gareth Thomas

Dear Mr Thomas

Town & Country Planning Act 1990
Proposed Asda Store at land at West Southwater, Telford.
Application made on behalf of Asda Stores Limited (LPA Ref. No. W2009/0915)

We act on behalf of Telford Trustee No. 1 Limited and Telford Trustee No. 2 Limited ("**the Trustees**") and write in connection with the above-mentioned planning application which was submitted to Telford & Wrekin Council ("**TWC**") by Asda Stores Limited on 13 October 2009. The application proposes a replacement for Asda's existing store within the town centre by a new store on the Civic Offices site at West Southwater on land owned by TWC.

This letter sets out the Trustees' initial representations on the planning application. The Trustees are still in the process of reviewing the detail of certain documents accompanying the planning application and, therefore, reserve their right to comment in due course on additional matters, for example the approach adopted in the Environmental Statement, once that process has been completed. They also reserve the right to submit additional representations on the points raised in this letter.

1. INTRODUCTION

- 1.1 The Trustees strongly object to the proposed development which would conflict with important national policy on planning for town centres, is recognised by Asda as being in conflict with the saved policies of the adopted Wrekin Local Plan (1995-2006) and would result in significant and unacceptable impacts on the existing town centre.
- 1.2 The proposed development would result in the unnecessary loss of the key food retail anchor store from the town centre to a site within the ownership of TWC. It is difficult to envisage a more stark example of a proposal that would damage confidence and future investment in the centre and cause an unacceptable retail impact. As such it flies in the face of the Government's town centre first policy particularly in current economically uncertain times.
- 1.3 Below we set out the Trustees' objections based on their initial review of the planning application. In summary the Trustee's initial objections are on the following grounds:
 - (i) **conflict with the sequential approach** – there are available, suitable and viable sites for the development proposed within and at the edge of the existing town centre which are sequentially preferable to the Civic Offices site. Asda has failed to provide evidence to demonstrate why sequentially preferable sites are not available, suitable and viable in accordance with Planning Policy Statement 6: Planning for Town Centres ("**PPS6**");
 - (ii) **unacceptable impact on the town centre** – the Retail Impact Assessment submitted in support of Asda's application is fundamentally flawed for a number of reasons as set out in section 3 below. The proposed development would cause a significant and unacceptable impact on the town centre;

- (iii) **conflict with the adopted development plan** – paragraph 4.5 of the Planning Statement acknowledges that the proposed development is "**in conflict with Policy TC2**" of the adopted Wrekin Local Plan. In addition, the proposal does not accord with Policy TC1 and is also in conflict with the vision set out in Policy CS4 and elsewhere within TWC's adopted Core Strategy Document 2007 to consolidate and enhance the Town Centre in the period to 2016. No weight should be attached to the emerging Central Telford Area Action Plan ("**CTAAP**");
- (iv) **prematurity** - the acceptability of retail on West Southwater and the Civic Offices site in terms of scale, location and phasing are key issues for CTAAP which has reached submission draft stage. The grant of planning permission for Asda in advance of the consideration of CTAAP at an Examination in Public would clearly have a substantial effect which would be so significant that granting planning permission would clearly prejudice CTAAP's consideration;
- (v) **uncertainty regarding the replacement for the Civic Offices** - no evidence has been submitted with the planning application explaining where it is proposed to relocate the Civic Offices to or to demonstrate that the assumption that Asda will obtain vacant possession of the application site by early 2013 is correct. Asda is clearly concerned about the potential for such a delay as, unusually, it has requested that the usual three year duration of any planning permission be extended to five years. Without clarity on this aspect the grant of permission could blight investment in the town centre for years to come;
- (vi) **highway impacts have not been adequately addressed** – the Transport Assessment prepared by Savell Bird & Axon in support of the application contains a number of serious omissions, deficiencies and inaccuracies; and
- (vii) **the scheme's design fails to address key urban planning requirements** – the proposed development has been designed as a stand alone superstore divorced from the town centre's primary shopping area ("**PSA**") with no proper regard to its urban environment.

2. CONFLICT WITH THE SEQUENTIAL APPROACH

- 2.1 Current guidance in PPS6 sets out at Chapter 3 the Government's advice on assessing proposed developments for town centre uses such as retail. Paragraphs 3.13 to 3.19 set out the sequential approach to site selection and state that when considering sites at edge or out of centre locations, all options within the relevant centre should be "**thoroughly assessed**" before such less central sites are considered.
- 2.2 RPS plc, Asda's planning consultants, acknowledge in their Retail Impact Assessment that the Civic Offices site is at an "**edge of centre**" location in sequential terms and, therefore, the sequential approach must be applied to establish whether there are any alternative sites within Telford's PSA that can be considered available, suitable and viable to accommodate the proposed development. RPS conclude that no such sites exist.
- 2.3 Paragraph 3.19 of PPS6 states that where it is argued that otherwise sequentially preferable sites are not appropriate for the particular development proposed, applicants should provide "**clear evidence to demonstrate why such sites are not practicable alternatives**" in terms of "**availability**", "**suitability**" and "**viability**".
- 2.4 The Government's advice is that unless applicants for development on edge or out of centre sites can provide such "**clear evidence**" then their applications should be refused permission to support the Government's policy of promoting and enhancing existing centres by focusing development in such centres. Mere assertion by the applicant is not sufficient. If it was then this would effectively circumvent the whole purpose of the Government's policy.
- 2.5 Paragraphs 5.19 to 5.75 of the Retail Impact Assessment submitted with the planning application set out as arguments as to why Asda considers it has satisfied the sequential approach although only at paragraphs 5.19 to 5.28 does the assessment briefly consider options within the PSA. For

the reasons set out below, however, it is clear that the applicant has failed to demonstrate that there are no available, suitable and viable sites for the development within the PSA or on sequentially preferable edge of centre sites.

Red Oak Car Park

- (i) one obvious sequentially preferable site for the proposed development is located within the existing surface level car park in the north east corner of the PSA known as the "**Red Oak**" car park. This site is available, suitable and viable for the development proposed;
- (ii) paragraph 5.25 of the Retail Impact Assessment submitted with Asda's planning application comments on this site. This is the only analysis of the Red Oak car park as an option within the PSA submitted with the Asda planning application and seeks to dismiss that option in a single paragraph on the basis that RPS have been "**advised**" by Asda that a viable scheme cannot be identified due to problems related to high costs and low trading potential coupled with alleged practical and financial implications for the operation of the existing food store and issues connected with continuity of trade. No clear evidence of the type required by paragraph 3.19 of PPS6 has been submitted to support these assertions;
- (iii) the Trustees note that nowhere is it suggested within the materials accompanying the application that the Red Oak car park site is not "**available**" or "**suitable**" for development for a food store of the type now proposed on TWC's Civic Offices site. Indeed, the letter from Marsh & Baxter Properties Limited to RPS dated 10 October 2009 attached to the Planning Statement accompanying the planning application acknowledges that there have been negotiations between Asda and the Trustees in respect of this option and that a store could be delivered which would have "**adequate but "poor" compliance with Asda's design principles**";
- (iv) as a result it is clear that the Red Oak car park site is available and suitable for the development proposed. The fact that Marsh & Baxter Properties Limited have acknowledged that a potential scheme was "**adequate**" in complying with Asda's design principles is material and the fact that Asda may consider that compliance "**poor**", according to Marsh & Baxter Properties Limited's letter, is not sufficient to render it unsuitable for the purposes of PPS6. Indeed paragraph 3.19 of PPS6 states that the test of "**suitability**" must be applied with due regard to the requirement for operators to demonstrate flexibility;
- (v) the sole purported objection to the Red Oak car park site as a sequentially preferable alternative to the Civic Offices site is therefore based on an assertion by Asda that its development would not be viable;
- (vi) in order to succeed on that point Asda would need to provide, in the words of paragraph 3.19 of PPS6, "**clear evidence to demonstrate**" why the development of the Red Oak car park site is not practicable in terms of its viability. In applying this element of the sequential approach to cases which have been the subject of appeals or call-ins the Secretary of State has made it clear that the onus is on the applicant to discharge this test;
- (vii) no cogent evidence has been submitted with the application to discharge this burden of proof and all that appears are assertions on the issue which should carry little or no weight in the determination of the planning application. As stated above paragraph 5.25 of the Retail Impact Assessment merely states that RPS was "**advised**" by Asda that a viable scheme could not be identified and the letter from Marsh & Baxter Properties Limited seeks to cast doubt on the actual viability of the scheme without providing any clear evidence. Their letter does not even rule out the possibility that Asda could approve a deal for the delivery of a new store at the Red Oak car park;
- (viii) the reality of the position is that the Trustees have been in discussions with Asda in respect of the opportunity to provide a new store on the Red Oak car park, other new build options and the renewal of the lease of their existing store in the PSA before and since the Trustees

acquired their freehold ownership of the Telford Shopping Centre and surrounding land interests including land at Central Southwater in 2007;

- (ix) extensive discussions between Asda's and the Trustees' architects took place in 2007 and 2008 and as a result the position was reached that a layout for a new store for Asda on the Red Oak car park site was considered by Asda to be generally sufficient for it to take to the next stage of considering the potential turnover to then inform detailed negotiations with the Trustees on the financial terms of a deal. That position was reached in early September 2008;
- (x) later in September 2008, however, TWC announced that it was seeking bidders for the development of the Civic Offices site and was prepared in its capacity as landowner to consider any form of redevelopment. Whilst it is clear that the site is not acceptable in planning terms for retail development, the potential threat to Asda of a competing operator securing the Civic Offices site for a food store would have been all too apparent. As has been noted by RPS in the materials submitted with the application the Civic Offices site offers a less constrained site outside the PSA with the ability to provide dedicated rather than town centre car parking, at grade and within the operator's sole control;
- (xi) realising the significant threat of another occupier seeking permission on the Civic Offices site and the significant impact that would have on its existing unit and the prospects of delivering a new unit on the Red Oak car park, Asda, it must be assumed, outbid other developers/food store operators to secure the Civic Offices site before the deadline for offers for the disposal of the Civic Offices site expired on 12 November 2008;
- (xii) whilst discussions on phasing and other matters continued until early in February 2009 from that point Asda did not progress discussions with the Trustees further on the Red Oak option seeking instead to discuss either the renewal of the lease of its existing store or its extension with the Trustees. Between September 2008 and February 2009 the Trustees awaited details of Asda's financial appraisal for the Red Oak option but they were not forthcoming and neither were the Trustees' asked by Asda for a detailed financial proposal for that option;
- (xiii) it is clear that Asda's decision not to progress such discussions was reached in light of the clear threat to the PSA posed by the possibility of a permission being granted for a new food store on the Civic Offices site. Had that threat not existed there is good reason to believe that following the identification of a scheme design that was adequate for Asda in September 2008 detailed financial negotiations with Asda on the Red Oak option would have proceeded and a deal could have been struck on a mutually acceptable basis to the Trustees and Asda;
- (xiv) that Asda chose not to pursue these detailed financial discussions with the Trustees is not surprising in circumstances where the threat of a store emerging on the Civic Offices site had arisen and Asda had decided to bid for it and would subsequently have been in negotiations with TWC about the purchase. Neither is the fact that it is alleged on behalf of Asda that the Red Oak option is not viable. Asda, having agreed that an adequate option exists for the Red Oak car park in design terms must clearly have realised when it made its bid to TWC for the Civic Offices site that it had to assert that the Red Oak scheme is unviable to overcome the sequential approach if it were to have any chance of securing consent on the Civic Offices site;
- (xv) as a result, the mere risk of a food store securing consent on the Civic Offices site, in forcing Asda to put the Red Oak option on hold, has already clearly had a negative effect on future private sector investment needed to safeguard and enhance the vitality and viability of the town centre;
- (xvi) the Trustees will be submitting a planning application for a food store on the Red Oak car park to TWC in December 2009 which will demonstrate that the site is suitable and available for the development now proposed by Asda at the Civic Offices site;

- (xvii) in the event that the current Asda planning application is refused, as the Trustees consider it should be, then the discussions between Asda and the Trustees should recommence on the Red Oak option. Given that those discussions appeared to be progressing well up until the point TWC started to market the Civic Offices site there is no reason why those discussions cannot recommence if the threat of a competing store at that site is removed;
- (xviii) paragraph 5.25 of the Retail Impact Assessment also refers to issues regarding continuity of trade during construction. Asda's concerns on this issue were being addressed in discussions on the Red Oak option before Asda withdrew from discussions on that option. This is an issue which often arises in town centre locations and is part and parcel of the urban regeneration process if town centres are to grow and expand their retail offer. Whilst in commercial terms Asda would clearly prefer to decant from the town centre to an unconstrained new store in a single move that is not a planning argument that should be afforded weight and runs totally contrary to the Government's policies for the sustainable regeneration of town centres. The Trustees working with their architects and project team have devised a construction strategy which would provide for continuity of trade during the construction process.

Other Sites within the PSA

- (xix) at paragraph 5.25 of the Retail Impact Assessment, RPS asserts that there is only one other potential site within the PSA, being the "Ash Grey" car park and conclude that the size of the site would be inadequate to allow the required scale of development or meet Asda's detailed design and operational requirements. The Trustees disagree with this assertion as it is clear that a store could be accommodated on the Ash Grey car park and, indeed, this was a location which was initially the basis of Asda's discussions with the Trustees;
- (xx) in addition RPS has failed to assess the options of redevelopment or extension of the existing Asda unit within the PSA. Again these options could provide an available, suitable and viable alternative within the PSA to the development now proposed at the Civic Offices site;

Summary of PSA Sites

- (xxi) the three options of the redevelopment of the Red Oak or Ash Grey car parks or the redevelopment or extension of the existing Asda store within the PSA all represent available, suitable and viable alternatives to the Civic Offices site. Each would satisfactorily perform the function of a northern food store anchor to the PSA and whilst the Trustees consider that the redevelopment of the Red Oak car park would provide the best option, all three would provide a more appropriate choice in applying the sequential approach than the Civic Offices site;

Edge of Centre Sites

- (xxii) in the Retail Impact Assessment, RPS also considers other edge of centre sites and at paragraphs 5.37 to 5.41 they comment on "Central Southwater". RPS recognise that the Central Southwater site is well related to the existing PSA with access available via a pedestrian bridge adjacent to the former market and library over the Box Road. RPS have also acknowledged that the site similarly benefits from close proximity to the bus station. Contrary to RPS's assertions to the contrary, however, this site is suitable, available and viable for development and sequentially preferable to the Civic Offices site;
- (xxiii) RPS asserts there is no evidence at present to suggest that the Central Southwater site is available for redevelopment and state that the largest unit on the site, the Range, is occupied. The position is, however, that the site is available for immediate redevelopment. A large proportion of the site is within the single ownership of the Trustees (with that area being sufficient to accommodate a food store of the type now proposed on the Civic Offices site). The site is occupied by two units, one vacant which extends to 1,780 sq. m. and one which is occupied by the Range on a short term lease which is capable of termination at any stage by the Trustees with minimal notice. The Range benefits from open Class A1 consent and has a

net sales area of just over 3,500 sq. m. Whilst not presenting any obstacle to redevelopment it could therefore also be occupied at short notice by a food retailer without the need for planning permission;

- (xxiv) RPS refer to the inevitable loss of car parking spaces and general disruption to the operation of the site if developed for a food store but none of those issues would prevent redevelopment and re-provision of adequate car parking and these issues are clearly insignificant when compared with the need to relocate TWC's functions from the existing Civic Offices on the site now proposed for redevelopment by Asda and the fact that no details of the relocation strategy for the Civic Offices have been submitted with Asda's application;
- (xxv) RPS state that notwithstanding its representations on these issues even if the site were available and viable to accommodate a new food store this site is not considered to be suitable as it would conflict with and be prejudicial to the aspirations of TWC as set out in the emerging CTAAP. For the reasons set out below no weight can be attached at this stage to the policies of CTAAP which are currently considered as being **"unsound"** by the independent Inspector who has been appointed by TWC to consider CTAAP;
- (xxvi) the existence of a well utilized and direct bridge link from Central Southwater to the PSA is also significant and means that it is already **"well connected to and within easy walking distance"** of the PSA (see the definition of **"edge of centre"** at Table 2 of PPS6). This is to be contrasted with the Civic Offices site which is described in Asda's own Planning Statement at paragraph 2.5 as being **"currently separated from the primary retail area of the Town Centre to the north-east by Malinsgate/Coach Central. This currently forms something of a barrier as pedestrian linkage across this road could be better"**. Again this indicates that the Central Southwater site is to be preferred sequentially to the Civic Offices site;
- (xxvii) if there were a need to consider edge of centre sites for the development proposed, which given the existence of options within the PSA it is clearly not, then Central Southwater would be sequentially preferable to the Civic Offices site.

CTAAP

- (xxviii) in the Retail Impact Assessment at paragraph 5.28, RPS make reference to the policies in the submission draft of the CTAAP. In the context of applying the sequential approach to the Asda planning application, no weight can be attached to CTAAP. This is because the relevant policies are the subject of significant detailed objections on behalf of not only the Trustees but other key stakeholders within Telford town centre and, indeed, TWC in its capacity as land owner.
- (xxix) In addition the Inspector appointed by TWC to conduct the Examination in Public into CTAAP has recently advised that he is currently minded to find the plan **"unsound because the absence of detail or content would make it ineffective or in conflict with national policy"**. As a result of his serious concerns regarding the policies within CTAAP the decision has been made to postpone consideration of CTAAP and it remains to be seen whether or not TWC will proceed with CTAAP as currently drafted or whether, as would appear necessary, it will be withdrawn or at the very least the subject of significant amendments;

Draft PPS4

- (xxx) in terms of emerging Government guidance, RPS has referred to draft Planning Policy Statement 4: Planning for Prosperous Economies (**"PPS4"**). In respect of the sequential approach, however, RPS has failed to refer to or explain that given the Government's commitment to protection and enhancement of existing town centres, it has proposed enhancing the importance of the sequential approach. At paragraph EC21.1(1) of draft PPS4 the Government has proposed that local planning authorities should **"refuse planning**

permission where the applicant has not demonstrated compliance with the requirements of the sequential approach".

- 2.6 As a result, the Trustees consider that the only reasonable course for TWC in its capacity as local planning authority is to refuse the Asda planning application on the basis of conflict with the sequential approach.

3. UNACCEPTABLE IMPACT ON THE TOWN CENTRE

The Additional Store Argument

- 3.1 Paragraphs 3.20 to paragraph 3.23 of PP6 set out the Government's advice on the preparation of impact assessments in respect of edge of centre proposals which are not in accordance with an up to date development plan strategy as is the case for the proposed development at the Civic Offices site.
- 3.2 The question of retail impact is dealt with at paragraphs 4.6 to 4.10 of the Planning Statement submitted with the Asda planning application and at section 6 of the Retail Impact Assessment.
- 3.3 As part of the assessment, however, paragraph 2.4 of the Retail Impact Assessment assumes that the Asda proposal on the Civic Offices site would represent an additional superstore that would provide a net increase in the quantum of retail floor space in Telford. The Retail Impact Assessment proceeds on the basis that the Asda proposal at the Civic Offices site would be an **"additional"** superstore on the assumption that the existing Asda unit within the PSA would be occupied by either Tesco or WM Morrisons whose average sales densities have been used in order to arrive at a notional benchmark for the turnover of the reoccupied store (see paragraph 4.22 of the Retail Impact Assessment).
- 3.4 The reality, however, is that if Asda secures consent on the Civic Offices site then it is highly unlikely that the existing store would be reoccupied by occupiers such as Tesco or WM Morrisons given that the existing Asda store within the PSA would be regarded as inferior to a new Asda store on the Civic Offices site by superstore operators as evidenced by Asda's current position.
- 3.5 The assumption of reoccupation of the existing Asda store by Tesco or WM Morrisons is further undermined by the information submitted with the Asda application and in particular:
- (i) Asda asserts that it has been unable to reach a satisfactory agreement with the Trustees on the renewal of its lease. As stated above, that assertion must be viewed in light of the need for Asda to argue that is the case as part of its attempt to satisfy the sequential approach and show that no alternative options exist within the PSA. The Trustees' position is that in the absence of the potential for a new store on the Civic Offices site then a deal could be done on acceptable terms and indeed discussions have progressed on this issue with Asda even since it completed its deal with TWC as the owner of the Civic Offices site. Even assuming Asda is correct that there is no prospect of a commercial renewal of its lease being agreed, which the Trustees disagree is the case, then on what basis can Asda reasonably argue that Tesco and WM Morrisons would be able to agree terms with the Trustees? Asda is seeking to argue this point both ways by saying that it would not be possible for it to reach agreement with the Trustees but that Tesco or WM Morrisons would;
 - (ii) paragraph 5.21 of the Retail Impact Assessment alleges that there are inherent deficiencies in the layout and operation of the existing unit (which the Trustees dispute) and that various other improvements would be required but that even if these were delivered this would still result in a **"compromised"** store in comparison to competing modern stores in Telford which RPS allege raises **"further questions over its viability as well as suitability in the short term"**. Again, although this is disputed, if it is true it would apply equally to an incoming Tesco or WM Morrisons occupation;

- (iii) whilst at paragraph 5.22 of the Retail Impact Assessment, RPS state that it would be logistically and commercially much easier for a new operator to secure the existing Asda site once its lease expires in 2014 and modernise and refit the unit without the constraint of having to secure continuity of trade, this ignores the effect which the existence of a planning permission for a new store at the Civic Offices site, which in the words of RPS at paragraph 4.9 of the Planning Statement is at a "**less constrained edge of centre location**" would have. It is clear that it would act as a major deterrent to any potential occupier.
- 3.6 As a result the Retail Impact Assessment which has been submitted with the Asda planning application is wholly insufficient and fails properly to assess the likely impact on the future vitality and viability of the PSA. Whilst at paragraph 1.5 of the Retail Impact Assessment RPS assert that they have assessed a "**worst case scenario**" this is plainly not the case and the potential impacts of the development have been grossly underestimated.
- 3.7 In addition and for similar reasons the grant of planning permission for food retail use on the less constrained Civic Offices site would seriously jeopardise the potential for a new food store development to come forward on the sequentially preferable Red Oak car park site.
- 3.8 As a result there would be likely to be an unacceptable impact on future public or private sector investment needed to safeguard the vitality and viability of the Town Centre for the purposes of paragraph 3.22 PPS6.
- 3.9 The likely effect, therefore, is that a food retail use on the Civic Offices site would remove the main dedicated food store offer from the existing PSA which would reduce the range of services provided by the Town Centre within the PSA and create an unacceptable impact again pursuant to one of the key issues identified by paragraph 3.22 of PPS6.

Vacancies

- 3.10 At paragraph 6.32 of the Retail Impact Assessment RPS assert that "**Telford is a thriving centre, with good vitality and viability. It continues to perform well in spite of difficult economic conditions and where many other centres nationally have experienced a sharp rise in the rate of vacant rates, Telford has been stable over the past 3 years, in fact experienced a small reduction over the past 12 months**"
- 3.11 On the contrary, however, during the last 12 months the decline in the economic climate has had a direct impact on the vitality and viability of the Telford Shopping Centre. Since the Trustees purchased the centre in 2007 the proportion of vacant and short term let retail floor space in the town centre has increased from 2.2% to over 14.4%, and this could increase further as the retail market is unlikely to improve in the short term. Short term lets are often used to provide activity where there have been permanent losses of long term tenants to try to reduce the adverse impact of gaps in the centre but are terminable at short notice by the occupiers.
- 3.12 RPS appear to contradict their earlier assertion by acknowledging in paragraph 6.33 of the Retail Impact Assessment that there are "**casualties of the recession**," but asserts these can be "**traced back to collapses of the retailer nationally, rather than underlying poor performance in Telford**". While some of the vacancies can be attributed to the winding up of national retailers, such as Woolworths, the closure of these stores has left gaps in the centre which have not been taken up, or units which are occupied by temporary low-end retailers. This reduces the retail offer in the town centre serving to weaken its appeal to both shoppers, investors and existing and potential retailers.
- 3.13 In measuring the vitality and viability of town centres Chapter 4 of PPS6 identifies retailer representation as an important factor and recognises that changes in representation of types of retailer can be significant. The marked increase in the short term lets since 2007 is clearly a case for significant concern in this respect.



- 3.14 In addition, and for the reasons referred to above the closure of the existing Asda store with little prospect of reoccupation for a food use by a Tesco or a WM Morrisons will leave a significant vacancy of itself.
- 3.15 In addition Asda claims a benefit of the proposal is that it would allow it to move to a "less constrained" edge of centre location and will "in turn also free up land within the primary shopping area, thus creating further floor space for the sale of non-food goods and helping to support the aim of bolstering and expanding Telford's role as a sub-regional centre" (paragraph 4.9 of the Planning Statement). This conflicts with statements elsewhere that the existing Asda store may be occupied by a replacement food store operator and undermines Asda's assessment both of the retail impact on that basis. It also ignores the very significant effects which would occur in the event that the existing centre is stripped of any major food store operator which creates significant footfall and there has been no assessment of the impact on investment and the value of the existing asset and activity levels which would arise if this were the case.
- 3.16 Paragraph 5.10 of the Retail Impact Assessment also makes the assertion that new superstores are rarely, if ever, incorporated within primary shopping frontages of sub-regional centres and generally they are located on the edge of such centres. This statement is completely at odds with the Government's advice in PPS6 and emerging policy contained within draft PPS4, and appears to be an argument that commercial priorities which will naturally seek out less constrained sites should take precedence over planning policy.

Quantitative Need - Convenience Goods

- 3.17 The Retail Impact Assessment prepared by RPS utilises the fundamentals and the study area of the White Young Green ("WYG") May 2009 Assessment. However, the WYG study was prepared for the town centre as a whole, whereas the Asda application is a stand alone food store. RPS's approach of using the wider study area is questionable, as people are often likely to travel shorter distances to undertake convenience shopping (a 10-15 minute drive time isochrone usually represents the standard model for a food store retail catchment plan even at peak times) than they would be for comparison. Therefore the study area is potentially too large, creating an oversized catchment that distorts the amount of expenditure available. This is also contrary to PPS6 which states at paragraph 3.10 ***'The catchment area that is used to assess future need should be realistic and well related to the size and function of the proposed development'***.
- 3.18 RPS reduce the Primary Catchment Area of the new Asda store to Zones 4, 5 and 6 of the WYG study. Whilst this represents an improvement, it is still not satisfactory and should be supported by a 10-15 minute drive time. Furthermore, it is impossible to identify which stores identified by RPS actually fall within Zones 4-6. Therefore stating that 69% of all the available expenditure from these three zones is spent within them is impossible to verify. Our concerns with regard to the study are highlighted further as we have reservations over the amount of available expenditure (and the fact that out-of-town expenditure was included) that was highlighted by WYG.
- 3.19 RPS add all of the expenditure from residents of other zones that is being spent in Zones 4-6. This equates to £48.7m in 2009, thus creating total expenditure within Zones 4-6 of £173.1m, which rises to £190.5m by 2016. RPS apply benchmark Sales Densities to each store, taken from Verdict's 'UK Grocery Retailers 2009'. The process of deducting benchmark turnover of all stores within Zones 4-6 from available expenditure allows a headroom capacity which is estimated to be £54.8m in 2009 rising to £68m by 2016. It is our view that this figure is excessively large.
- 3.20 Utilising Asda's benchmark national turnover the existing store would expect to achieve a turnover of £50.3m (of which £37.3m would be from convenience sales and a further £13m from the sale of comparison goods). RPS claim at paragraphs 4.23 and 4.24 of the Retail Impact Assessment that the existing store is trading below their company average level which they argue is a key justification for their move to the Civic Offices site. However, it can be clearly seen in Table 12 of the RPS Retail Impact Assessment that in fact the existing Asda has a turnover of £41.6m from the

sale of convenience goods. This actually represents a turnover of £4.4m above the benchmark (which is almost 12%). No reference is given for the turnover of comparison goods sales.

Qualitative Need

- 3.21 In qualitative terms Asda claims that in order to meet shopper's needs it must be provided with shops which they actually want to use. Access to a *'large modern store that provides a comfortable shopping environment and can offer a full range of goods with high quality, low cost car parking'*, is stated as necessary. RPS state that the existing Asda is trading at a distinct disadvantage compared to competing superstores as its car parking is poorly laid out, and that customers have to pay for resulting in queues. This is cited as a reason for the store under trading, even though evidence has been presented by RPS to the contrary (see above).
- 3.22 The proposed store at Civic Offices site is claimed to function as part of the town centre providing a more comfortable layout which will also be closer to the bus station and residential areas. We challenge Asda to prove this statement, as the proposals seem to represent a car only solution that is irrelevant to a town centre location. RPS state at paragraph 4.36 of the Retail Impact Assessment that 25% of all expenditure from the south of the town (Zone 5 of the Study Area) is being spent in Asda Donnington and the Tesco Extra at Wrekin Retail Park, both of which are in out-of-centre locations. In reality, the Table 4 of the RPS study identifies that only 10% is being spent in Asda Donnington. It is evident that 20% is being spent within the Tesco Extra. However, the Tesco Extra is significantly larger than the proposed Asda store and given the size and extent of the new store (i.e. smaller than the existing) it is surely unlikely that the new Asda can compete with the range of goods provided by the Tesco at Wrekin Retail Park.
- 3.23 The RPS Retail Impact Assessment, which is clearly flawed, identifies that the Tesco Extra is overtrading by approximately 70% and that the Asda Donnington is over trading by approximately 100%. Asda claim that offering an improved food store will allow the new Asda to compete with these stores and re-apportion some of that trade. However, if trade is being re-apportioned it should be directed to the town centre – i.e. the most sequentially preferable location. It is our view that there are four sequentially preferable locations to the application site (Red Oak Car Park, Ash Grey Car Park, the site of the existing Asda unit and Central Southwater). Furthermore, the proposed re-location of the Asda to the southwest will actually make it less accessible from the north as customers will have to traverse the Box Road. Therefore it is less likely that custom will be drawn from the Tesco Extra at Wrekin Retail Park, which is located to the north of the Town centre.
- 3.24 Asda also claim that the new store will increase choice and competition within the Town Centre, an assumption purely based upon the re-occupation of the existing Asda by another operator which we have already commented on above.

Impact

- 3.25 Paragraph 3.20 of PPS6 states **'Impact assessments should be undertaken for any application for a main town centre use which would be in an edge-of-centre or out-of-centre location and which is not in accordance with an up-to-date development plan'**. The application site is evidently not part of the PSA and is by definition edge-of-centre at best, due to its physical separation from the PSA. Furthermore, part of the application site is allocated in the adopted Local Plan (The Wrekin Local Plan) for employment use. Policy TC2 of the adopted Local Plan (New Shopping Development in Telford Town Centre) states that development of further shopping within the Town Centre boundary will only be permitted in areas defined on the Town Centre proposals Inset Map. The application site is not identified for development on the Inset Plan. Therefore the application should be supported by a robust assessment of impact upon Telford town centre.
- 3.26 To a large extent the applicant seeks to claim that the development plan is out of date, and to justify the proposed development against the policies set out in CTAAP, which as discussed elsewhere in this letter has been described as "unsound" by an independent inspector. However, it should be

noted that Policy TC2 of the adopted Local Plan was 'saved' by Telford & Wrekin Council in September 2007 and therefore clearly forms part of the adopted development plan, while no material weight can be put on CTAAP at this stage.

- 3.27 The information submitted by the applicant does not sufficiently consider the impact of the proposals upon Telford town centre. Paragraph 3.21 of PPS6 specifically states ***'In assessing sites, local planning authorities should consider the impact of the proposal on the vitality and viability of existing centres within the catchment area of the proposed development... The identification of need does not necessarily indicate that there will be no negative impact'***.
- 3.28 Paragraph 3.22 of PPS6 states that the following should be taken into account with regard to impact:
- (i) the extent to which the development would put at risk the spatial planning strategy for the area and the strategy for a particular centre or network of centres, or alter its role in the hierarchy of centres;
 - (ii) the likely effect on future public or private sector investment needed to safeguard the vitality and viability of the centre or centres;
 - (iii) the likely impact of the proposed development on trade/turnover and on the vitality and viability of existing centres within the catchment area of the proposed development;
 - (iv) changes to the range of services provided by centres that could be affected;
 - (v) likely impact upon the number of vacant properties in the primary shopping area;
 - (vi) Potential changes to the quality, attractiveness, physical condition and character of the centre or centres and to its role in the economic and social life of the community.
- 3.29 In this regard, the impact analysis within the RPS Retail Impact Assessment is wholly insufficient. In the first instance RPS provide an inaccurate analysis of the existing town centre. RPS state that the centre is performing relatively well given the current recession, and that there is no notable difference in the number of units or floor space which is vacant from the buoyant trading conditions of 2006, and even a drop in vacancies over the past 12 months. This is emphatically not the case. Information provided to us by the Trustees indicates that when they acquired the centre there were only 16 units which were vacant or on short term lets within their ownerships, which represented only 2.6% of the entire retail floor space within the Trustees' ownership. By October 2008 this number had risen to 29, which represented 9.3% of the entire floor space within the Trustees' ownership. This number has continued to rise steadily and at the 1st November 2009 stands at 35 units (14.4% of the retail floor space within the Trustees' ownership). This is slightly above the national average, contrary to the commentary provided by RPS. It is therefore evident that the centre has been severely affected by the recession.
- 3.30 The RPS analysis is almost entirely based upon evidence of overtrading. However, as previously discussed the catchment utilised is too large (a catchment for a Sub-Regional Shopping Centre as opposed to a food store), thus creating an unrealistic level of expenditure, to which survey results are applied. Furthermore, RPS state that Iceland is the only other main food store in the centre. This is incorrect, and disregards the Marks & Spencer store which has a relatively large convenience offer. RPS have not identified the turnover of these stores and therefore a claim that the convenience offer of the Town Centre is overtrading by 46% (as suggested by Table 12 of the RPS assessment) cannot be relied upon without further evidence.
- 3.31 Taking the proposed Asda at the Civic Offices site in isolation, RPS claim that £7m of convenience expenditure would be drawn into the centre from out-of-centre locations. They claim £2.5m will be drawn from the Sainsbury's at Forge Retail park, £2.5m from Asda Donnington and £2m from the Tesco Extra at Wrekin Retail Park. However, Table 16 highlights that £30.1m of convenience

expenditure will be taken to Southwater (an edge-of-centre location) from the PSA as a result of closing the existing Asda store. Using the RPS data it is evident that by 2011 this would represent **71% of all convenience expenditure being taken out of the PSA**. It is evident that in isolation this would represent an enormous (negative) impact upon expenditure within the town centre. Such a scenario would have a detrimental impact upon the vitality and viability of the town centre. A further £13m of comparison goods expenditure would be drawn out of the existing centre. No analysis of this impact is provided by the applicant.

- 3.32 In addition to the impact identified above, re-locating a key anchor from the PSA would have an additional impact upon linked trips. The RPS assessment gives no consideration to the impact on pedestrian footfall, or linked trips. Moving a destination retailer to a site detached from the rest of the Town Centre would inevitably reduce linked trips to the PSA, which would result in a negative impact upon the vitality and viability of the centre. This in turn reduces footfall and reduces the opportunity for impulse shopping, which in turn makes investment within the centre less attractive and increases the prospect of vacant units. The work undertaken in this regard is wholly unacceptable, and cannot be deemed to satisfy PPS6 in terms of impact upon the town centre.
- 3.33 RPS justify the impact on one simple assumption – that the existing store would be re-occupied by Tesco or WH Morrisons. As has been identified above, that is by no means a reliable assumption. It seems strange to assume that either Tesco or WM Morrisons would want to occupy what is by Asda's own description a **'dated store design and layout, which inhibits efficient operation'** when Asda would have a modern facility less than 400m away. Furthermore, Asda claim that £9.1m of the trade from the re-occupied store (by Tesco/WM Morrisons) would come from the new Asda at Southwater, thus resulting in both stores trading between 10 and 15% below company average in 2014. Not only would this dilute the retail offer of the town centre, by spreading it across too great an area reducing vitality, but we would question why Tesco or WM Morrisons would want to open a new facility that would trade well below benchmark turnover. It is our view that it is highly unlikely that the existing Asda would be re-occupied by an operator which would have sufficient retail standing to anchor this part of the town centre. No analysis has been provided, of the impact upon the vitality and viability of the centre if the existing store were not to be re-occupied.
- 3.34 Even in the unlikely event that Tesco or WM Morrisons did decide to re-occupy the existing store the assumptions on any re-occupation appear extremely contrived. Asda claim that the re-occupied store would take £6.5m from Sainsbury's at the Forge Retail Park, £2.2m from Tesco at Wrekin Retail Park and £2.4m from Asda Donnington. This suggests that a new retailer, operating from a store which Asda claim is **'outdated'** and **'inefficient'** would draw a significantly greater amount of trade from out-of-centre locations than the new Asda on Southwater. If this were indeed the case, it would seem more prudent for Asda to remain in its existing store.
- 3.35 Furthermore, even if re-occupation occurred under the assumptions made by RPS, the store is expected to have a turnover which is circa £5m lower than the existing Asda. Therefore RPS' statement that expenditure within Telford Town Centre would raise by 52% is completely incorrect, and based solely upon the assumption that CTAAP is adopted with an extended PSA. Convenience expenditure within the existing town centre (defined by the existing PSA which is enclosed in the Box Road) would in fact fall 15%, whereas expenditure to the Civic Offices site, an edge-of-centre location, would increase by £30.7m. This does not even take account of the reduction in linked trips or the loss of comparison goods expenditure, for which there is no analysis provided.
- 3.36 As a result it is clear that the Retail Impact Assessment submitted with the Asda application is deficient in a number of crucial respects and that the application should be refused on the grounds that the proposed development is likely to have a significant adverse impact on the vitality and viability of Telford Town Centre.

4. DEPARTURE FROM THE DEVELOPMENT PLAN

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- 4.1 RPS at paragraph 4.3 of the Planning Statement says that the development of the site is "**established by Policy TC1**" of the Wrekin Local Plan, which permits new development within the Town Centre boundary. Although RPS go on to state at paragraph 4.5 of the Planning Statement that the proposed development is "**in conflict with Policy TC2**" they suggest these policies are out of date and that the scheme is justified on the basis of the findings of the submitted Retail Impact Assessment which is more up to date. We make comments elsewhere about the lack of robustness of the submitted retail assessment. In terms of the weight to be attached to the Local Plan policies, both Policy TC1 and Policy TC2 were "**saved**" by TWC in September 2007 and forms part of the "**development plan**" for the purposes of Section 38(6) of the Planning & Compulsory Purchase Act 2004. Section 38(6) requires that the determination of the planning application must be made in accordance with the plan unless material considerations indicate otherwise. Whilst Policy TC1 allows for new development and changes of use within the Town Centre boundary, the policy is subject to the provisions identified in policies TC2, 3, 4, 6 and 7. The identified Town Centre boundary is extensive and is not relevant in terms of the provisions of PPS6.
- 4.2 The proposal does not accord with Policy TC1 by virtue of its link to Policy TC2 which states that development of further shopping within the Town Centre boundary will only be permitted in areas defined on the Town Centre proposals Inset Map. The Civic Offices site is not identified for such development on the Inset Plan.
- 4.3 The proposed development is also in conflict with the vision set out in Policy CS4 and elsewhere within TWC's adopted Core Strategy Document 2007 to consolidate and enhance the Town Centre in the period to 2016. Whilst the Central Telford Area is identified in the Core Strategy for mixed use development including retail it is clear from the adopted Policy that the detailed locational provisions of Policy CS4 will be included in the CTAAP and we comment on the weight to be attached to CTAAP below.
- 4.4 In addition the proposed development is in conflict with Policy CS10 "Community Facilities" of the Core Strategy. The existing Civic Offices should be regarded as buildings used for the benefit of the community and Policy CS10 provides that their loss will be resisted and only where a lack of need is demonstrated or "**where acceptable alternative provision exists or is proposed concurrently**" will development for other uses be considered. The proposed development would involve the loss of the Civic Offices but no alternative provision has been identified or has been proposed concurrently with the Asda planning application.
- 4.5 At paragraph 4.5 of the Planning Statement accompanying the Asda application and elsewhere within the application materials reference is made to the CTAAP. For the reasons set out above significant objections have been raised to the relevant policies within the CTAAP by the Trustees and others (including TWC's Estates Department) and the Inspector appointed by TWC has expressed his current view as being that the submission draft CTAAP is "**unsound**".
- 4.6 As a result no weight should be attached to the CTAAP or Asda's argument that the proposed development would be in accordance with the emerging policies within the CTAAP.
- 4.7 Whilst paragraph 18 of The Planning System: General Principles (2005) states that where a development plan document has been submitted for a determination but no representations have been made in respect of relevant policies then considerable weight may be attached to those policies because of the strong possibility that they will be adopted the guidance states that the converse may apply where there have been representations which oppose the policy and that much will depend upon the nature of those representations and whether there are representations in support of the particular policies.
- 4.8 In the current circumstances the Trustees and others have made detailed objections to the principle of the extension of the PSA proposed in the CTAAP on the basis that it would be completely inappropriate in planning terms to identify the West Southwater site which includes the Civic Offices site for retail development. Those objections go to the heart of the policies which Asda refer to in

the material supporting their planning application which significantly reduces any weight which could be attached to the CTAAP. This coupled with the fact that the Inspector appointed by TWC has felt unable to progress with the Examination in Public into the CTAAP because of his concerns about the soundness of CTAAP as currently drafted and decided to hold an Exploratory Meeting means that any limited weight which could be afforded to those policies is significantly further reduced if not removed altogether.

- 4.9 Paragraph 4.5 of the submitted Planning Statement states that the proposals accord with the Regional Spatial Strategy (RSS). However paragraphs 3.23 of the submitted Retail Impact Assessment draws attention to the fact that the endorsement by the Panel of the emerging allocation for Telford (to which the Trustees have objected) does not give any view on the form or location for town centre development at Telford as that is a strategic matter. Furthermore the RSS does not deal with convenience floorspace on the basis that this is not considered to be of strategic significance, nor have the recommendations of the Panel in respect of the allocation of comparison floorspace been accepted by the Secretary of State. Notwithstanding this we have demonstrated in the representations to CTAAP that, all retail floorspace requirements for Telford town centre can be accommodated within the PSA without the need to extend beyond its current boundaries. We do not see therefore how it can be asserted that the proposal is in compliance with the RSS.
- 4.10 For the reasons set out elsewhere in these objections consideration of all other material considerations should indicate that the application is not only in conflict with adopted policy but would cause unacceptable impacts on Telford Town Centre.
- 4.11 The General Development Procedure Order 1995 ("GDPO") at Article 8(2)(a) and (b) requires an application accompanied by an Environmental Statement and which "**does not accord with the provisions of the development plan in force**" to be publicised in the manner set out Article 8(3). We assume that this has been done.
- 4.12 In addition the Town & Country Planning (Consultation) (England) Direction 2009 ("**2009 Direction**") requires in these circumstances that the application be referred to the Secretary of State if TWC does not propose to refuse the application. This is because the proposal is classified as "**development outside town centres**" for the purposes of the 2009 Direction, in that it is at an edge of centre site, is not in accordance with one or more provisions of the development plan and includes the provision of a building where the floor space to be created by the development is more than 5,000 sq. m. gross (the Asda proposal is for 7,897 sq. m. gross).

5. THE ASDA APPLICATION IS PREMATURE IN THE CONTEXT OF THE CTAAP

- 5.1 At paragraph 4.5 of their Planning Statement RPS conclude that the acceptability of the proposed development is established with regard to the current policy context (which is clearly not the case for the reasons set out above) and does not prejudice the potential future policy context by predetermining the outcome of the CTAAP Examination in Public.
- 5.2 The Trustees fundamentally disagree with this interpretation. Paragraph 17 of the Office of the Deputy Prime Minister's Town Planning System: General Principles (2005) sets out the circumstances where it may be justifiable to refuse planning permission on grounds of prematurity where a development plan document is being prepared or is under review but has not yet been adopted.
- 5.3 The acceptability of retail on West Southwater and the Civic Offices site in terms of scale, location and phasing are key issues for CTAAP which has reached submission draft stage. The effect of granting planning permission for Asda in advance of the consideration of CTAAP at an Examination in Public would clearly have a substantial effect which would be so significant that granting planning permission would clearly prejudice CTAAP by predetermining decisions about the scale, location or phasing of new development which are clearly being addressed in the context of CTAAP.

- 5.4 Given the proposed timing of the implementation, as discussed below, is to be delayed to after the vacation of the council offices and so not before 2013, there is no justification for bringing this application ahead of the plan-led system providing a proper policy basis for it. Rather if this application were to be approved now, it would profoundly compromise the formulation of policy with CTAAP, contrary to the correct order of policy and decision making.
- 5.5 This is, therefore, one of the cases where prematurity is clearly an issue and the Asda application should properly be refused on that ground.

6. LOSS OF COUNCIL OFFICES

- 6.1 The Asda application is predicated on the basis that the existing Civic Offices will be relocated to facilitate the Asda scheme.
- 6.2 The application does not state the existing number of staff employed in the Civic Offices or provide any information on the details of the replacement facilities and the staff to be employed in any replacement facility.
- 6.3 The lack of any proposals in relation to the relocation of the Civic Offices is of concern. Clearly this leaves in question where within Telford or elsewhere TWC will be relocating to. For example if the relocation is to temporary facilities or permanent replacement facilities which are not within the Town Centre then this could cause additional unacceptable adverse impact on the Town Centre which should be taken into account when considering the Asda application. There is simply no information at this stage and therefore this represents a fundamental defect with the current application and undermines the assessment work which has been carried out to quantify the full range of likely significant effects of the development in particular in terms of socio-economics.
- 6.4 In addition in the Planning Statement RPS state that it is a requirement for the relocation of the Civic Offices that they be granted planning permission and be constructed before vacant possession can be obtained to allow construction of the proposed Asda store. Paragraph 2.13 of the Planning Statement states that vacant possession is likely to be secured "**early 2013**" which results in the "**likelihood**" being, in RPS's view, that the new store would not be available for use until 2014.
- 6.5 In the absence of any clear indication of the proposals for the relocation of the Civic Offices, the need for the grant of planning permission and an application for planning permission for such replacement facilities and the factors which may affect the availability of alternative accommodation it is impossible at this stage to reach any clear view on whether vacant possession is likely to be delivered early in 2013 as RPS assert. In the Trustees' view even adopting a best case scenario this timetable appears overly optimistic. Whatever the Trustees' view, however, the position is that there has been simply no evidence submitted with the planning application to demonstrate that this assumption is reasonable. In the event that it is not, however, and there is delay then this would push back the date by which Asda could open a store on the Civic Offices site.
- 6.6 Asda is clearly concerned about the potential for such a delay as, unusually, it has requested that the usual three year duration of any planning permission be extended to five years. The reasons for this are given at paragraph 2.14 of the Planning Statement but RPS's argument is contradictory in that on its assumptions Asda is likely to be in a position to implement the development following vacant possession "**early 2013**" which is three years from the earliest date that TWC is likely to be in a position to grant planning permission which will be in 2010. Using RPS's own assumptions therefore there appears no reason to seek a longer permission.
- 6.7 That request has, however, been made and TWC will need to consider the application on that basis. This raises a number of additional concerns and grounds of objection as follows:

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- (i) if vacant possession of the Civic Offices site is not delivered before 2013 then when Asda's lease on its existing store expires in 2014 there is the potential for a period during which there would be no dedicated food store offer within Telford.
 - (ii) If that delay ran to towards the end of the five year period requested by Asda then, applying Asda's assumptions, it would close its existing town centre store in 2014 and could implement the planning permission for the Civic Offices site as late as 2015. With a one year construction period, as has been claimed by Asda, this would give a store opening in 2016.
 - (iii) as a result on the basis of the permission which Asda has applied for giving a five year period for implementation a worst case assessment should be on the basis that Asda does not implement until the end of the five year period. All of the assessment works submitted by Asda, however, assumes the 2014 opening date with a seamless transition of trade and employment from its existing store within the PSA. Whilst this is one of a range of possible outcomes it is not a robust assumption if, as Asda must, there is a requirement to assess the worst case potential impacts for the purposes of the Environmental Statement and the Retail Impact Assessment.
 - (iv) In terms of the timing of the development and the prospects for its delivery it is also relevant that the Homes & Communities Agency have restrictive covenants over the Civic Offices site which would need to be formally released if the Asda development is to proceed. Nowhere in the application material submitted by Asda is there reference to the existence of these restrictive covenants which are not only relevant to the question of whether or not Asda's development can be delivered but also to the question of the availability of the Civic Offices site for the purposes of the sequential approach. For example the covenants may not be released or may only be released at a cost which renders the Asda scheme unviable.

7. HIGHWAYS ISSUES

- 7.1 The Transport Assessment prepared by Savell Bird & Axon in support the application contains a number omissions, deficiencies and inaccuracies:
- (i) Savell Bird & Axon has not provided any detailed drawings of the proposed highway arrangement of the site access or at Woodhouse Central/Coach Central/Malinsgate as part of the Transport Assessment despite changes to the highway network being proposed;
 - (ii) at paragraph 1.1 Savell Bird & Axon, whilst acknowledging that the development of the superstore and the residential development at Malinslee are the subject of separate applications, state that the impacts of both are addressed in the Transport Assessment. The impact of vehicle trips associated with the residential development is, however, not included in the capacity assessments, as it has been assumed that they will not have an impact on the highway networks. Similarly, the relocation of the Civic Offices and associated traffic generation has not been considered in the Transport Assessment. As a result the number of vehicles on the network is underestimated;
 - (iii) in relation to highway network flows insufficient traffic count data has been provided to determine the accuracy of the work which was presented, for example, the ATC outputs show all vehicle movement and do not distinguish those movements made by heavy goods vehicles ("HGV") which are needed for capacity assessments;
 - (iv) no reference has been made to Planning Policy Statement 1 (PPS 1): Delivering Sustainable Development, PPS1 Supplement: Planning and Climate Changes or the 2007 Guidance on Transport Assessments. It would be expected that for a development of this scale these key policy and guidance documents should have been considered;
 - (v) the Transport Assessment states (paragraph 2.41) that there is an improvement in terms of road safety for users as a result of the changes of the highway layout, however, no evidence is

provided to support this statement. Significantly, whilst only a Stage 1 Road Safety Audit could be completed with the information submitted as part of the application, it would normally be expected that enough information be submitted with a detailed application to enable a Stage 2 Safety Audit to be completed;

- (vi) the Transport Assessment states in paragraph 4.29 that the swept path analysis illustrated in Figure 5 of the Transport Assessment demonstrates "**an articulated vehicle can enter and leave the service yard in forward gear without encroaching on the opposite side of the carriageway on the dedicated service road.**" However, the HGV swept path is clearly shown in Figure 5 to encroach on the opposite side of the service road, especially when entering the service yard;
- (vii) paragraph 6.5 of the Transport Assessment states that the future assessment years are 2014 (the year of opening), and 2024 (10 years after the year of opening). This is on the basis of old guidance, as current guidance on Transport Assessments requires assessment of the local road network to be at least five years after submission of an application and at least 10 years after submission for assessment of the strategic highway network;
- (viii) a framework travel plan is provided in appendix E. It is only partly relevant as the second half refers to a site in Somerset. According to the 2009 Good Practice Guidelines a framework travel plan is an "**overarching travel plan embraces a large development which may have mixed uses and multiple occupiers/phases**". We therefore consider the use of a framework travel plan to be inappropriate for the development of a food store. In paragraph 1.5 it is further stated that the document represents an interim travel plan. An interim travel plan is defined in the 2009 Good Practice Guidelines as a "**travel plan presented with an outline application.**" For a detailed application a full travel plan should have been prepared.

- 7.2 The comments set out above are the Trustee's initial comments on the highways aspects of the development and they reserve the right to make additional comments in due course.
- 7.3 In addition it is stated in the Planning Statement that planning permission "is sought" for the new supermarket and "pedestrian routes around the boundaries of the sites and through the car park linking Malinslee (and the Malinslee Link Site) to the primary retail area of the town centre (to the north-east) and to adjoining land to the south-east" (paragraph 2.11). The pedestrian routes around the boundaries of the site are not, however, included within the application site boundary.
- 7.4 On plan number PL-10 Rev G accompanying the Asda application ("Site layout as proposed") to the north-east of the application site an area is identified as "Highways designed by highways consultants including pedestrian-friendly linkage across carriageways to town centre". It is therefore unclear what works are proposed and whether this detail is being submitted for approval at this stage.
- 7.5 This is an important issue as RPS have recognised that Malinsgate/Coach Central forms a barrier between the site and the PSA.

8. DESIGN ISSUES

- 8.1 An initial review of the application plans and Design and Access Statement indicates the Asda scheme fails to address key urban planning requirements.

Active frontages

- 8.2 The proposal does not engage with neighbouring sites or encourage future engagement as it includes an at grade car park across the whole of the site with the store at least four metres in the air above half of it. No ground level activities are provided at any edges of the site the only activity indicated is the centre door to the travelator, which is 60 m from the nearest boundary. The site analysis in the Design and Access Statement identifies the front two thirds of the south elevation as

a location requiring active frontage, however, this aspiration is not carried forward by the scheme drawings which show a blank elevation completely void of any activity.

- 8.3 The building presents the land to the north west of the site with a long blank 7m tall elevation, within 5m distance of the existing job centre. This elevation is the only part of the building which directly relates to any edges of the site, but unfortunately this 75m long inactive edge is against an existing footpath, thereby creating a very hostile environment.

Permeable Urban Development

- 8.4 Previous proposals for the Civic Offices site included denser development, but with smaller building footprints. The objective of the previous masterplan work was to provide a mixed use, permeable urban development with activity on many levels. The buildings would enclose the streets and create an environment with good passive surveillance. The current proposal does not support those objectives.
- 8.5 In order to create a flat car park for the foodstore's customers the large car park is raised, resulting in a retaining wall along the length of the site's western edge. At the point of the "**potential pedestrian connection to/from adjacent site**" there is a 2.5m level difference. This connection was one of the major concepts of all previous masterplans. The 2.5m retaining wall shows no regard to potential connectivity.

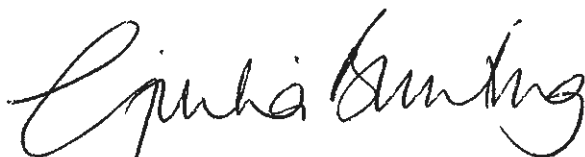
Access

- 8.6 In the Design and Access Statement RPS highlight the importance of pedestrian linkages into and through the site, however, this objective has not been carried through into the proposal. The main car park access road layout for Malinsgate crosses the principal pedestrian and cycle connection causing a physical barrier to pedestrian and cycle access. The illustrative desire lines are not supported with active uses, enclosure or passive surveillance. In fact, the routes are through the middle of a sea of at grade car park and across the substantial circulation roads that Asda shoppers will utilise to reach the parking spaces.
- 8.7 The comments set out above are the Trustees' initial comments on the design issues and they reserve the right to make additional comments in due course.

9. CONCLUSIONS

- 9.1 For the reasons set out in this letter there are compelling reasons why the proposed development is in direct conflict with important national planning policies, the provisions of the development plan, would cause unacceptable adverse impacts on the town centre and should be refused permission.

Yours sincerely



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for DRIVERS JONAS LLP

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cc Rob Cossey Hark
Martin Evans Nabarro
Paul Clark CTAAP Inspector
Government Office for West Midlands



N A B A R R O

Via e-mail and post
gareth.thomas@telford.gov.uk

Planning Department
Development and Design
Telford & Wrekin Council
Derby House
PO Box 212
Telford
TF3 4LB

For Attention of: Gareth Thomas

11 December 2009

Our ref: PH/MDE/T1784/00003

Dear Sirs

Town and Country Planning Act 1990: Proposed Asda Store at Land at West Southwater, Telford – Application made on behalf of Asda Stores Limited (LPA Ref. No. W2009/0915)

We act on behalf of Telford Trustee No. 1 Limited and Telford Trustee No. 2 Limited ("**the Trustees**").

Today Telford and Wrekin Council ("**TWC**") will have received a planning application from the Trustees for a supermarket and other mixed use development at the Red Oak Car Park. This application is expressly intended to accommodate Asda's desire to have an improved store, but to do so in the town centre in accordance with policy.

You were informed by Drivers Jonas, the Trustees' planning consultants, that the Trustees intended to submit this application in early December 2009 and that it and the Asda application needed to be considered together. Contrary to previous indications from your department that the Asda application was to be considered at the 6 January 2010 meeting of the Plans Board, the Trustees were shocked to discover that it has been brought forward for consideration at the Plans Board meeting on 16 December 2009. Amongst other failings this has resulted in the officers' report being rushed out in advance of the end of the consultation period (today) in the knowledge that the Trustees and others had yet to complete their full responses.

The officers' report cannot be considered a complete or a sufficient basis for determination. We enclose additional representations prepared by Waterman, the Trustees' environmental consultants, identifying the serious shortcomings of Asda's Environmental Statement which need to be remedied prior to any determination.

Further, having read the officers' report the Trustees consider its analysis deeply flawed and additional submissions will be made at the beginning of next week. For the first time, in the officers' report the

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Trustees and their team have been alerted to additional information from Asda of which the Trustees still have incomplete copies of despite requests made yesterday by Drivers Jonas.

At the heart of the justification for permission in the officers' report is an assertion that the Red Oak site is not available because Asda would "*block*" its availability. Quite apart from the self-serving use of that assertion to justify Asda's own move to a less sequentially preferable site, the Trustees' planning application demonstrates that the Red Oak site can be built out whilst maintaining continuity of trade. In addition to the host of other fundamental objections to the Asda scheme, that key point alone is sufficient to require that the Asda application be refused. Moreover, TWC, in its capacity as local planning authority, has not sought to consult the Trustees on these issues.

Consequently, the unseemly haste in seeking to determine the Asda application and the fact that this is being done before consideration of the Red Oak application only adds to the existing impression that TWC is not approaching the application in respect of its own land in a manner expected of an objective planning authority acting in the public interest.

The Trustees consider that the only proper approach is to defer the Asda application and consider both applications together. The Trustees will challenge any purported resolution to grant through the High Court and/or by "call-in".

As stated above further representations will follow this letter.

Yours faithfully

Nabarro LLP

NABARRO LLP

Enc.

- Waterman Briefing Note

BRIEFING NOTE 01(v3)

West Southwater and Malinslee Link

Environmental Statement Review

December 2009

1.0 Introduction

- 1.1 This briefing note covers the headline issues with respect to our review of the RPS Environmental Statement (ES) for 'Land at West Southwater and Malinslee Link, Telford' October 2009.
- 1.2 A planning application has been submitted for redevelopment of West Southwater (full planning application for *the erection of superstore (ASDA), petrol filling station, car parking, servicing and associated landscaping and access including realignment of part of Southwater Way*) and the Malinslee Link site (outline consent for circa 79 dwellings).
- 1.3 One ES has been submitted for both of these applications. This note focuses on West Southwater application. We have also provided comments in relation to the Malinslee Link part of the ES. For clarity we have provided separate comments on the two applications, where possible.
- 1.4 This note provides:
- Commentary in respects to compliance with the EIA Regulations;
 - General comments highlighting the main concerns in relation to the scope, quality and compliance of the ES (set out for each technical topic covered in the ES). Reference has also been made to Institute of Environmental Management and Assessment's (IEMA's) ES Review Criteria. For this section we have dealt with the West Southwater (ASDA) and the Malinslee Link applications separately.
- 1.5 Overall it is considered that in a number of areas the ES is deficient, as it does not comply with the EIA Regulations. There are also numerous omissions and errors throughout the document, we have not included all of these within this note but rather highlighted the key issues.

2.0 Compliance with the EIA Regulations

- 2.1 The RPS ES for 'Land at West Southwater and Malinslee Link, Telford' October 2009 does not fully meet the requirements of the EIA Regulations. The following provides commentary on the key failings of the ES, pertaining to the West Southwater site:
- i) The alternatives section does not meet the EIA Regulations which requires the ES to include '*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.*' Evidence is available on the negotiations between ASDA and Telford Trustee No.1 and Telford Trustee No.2 in relation to options on the Trustees landholdings. We would also refer to comments below in the 'Alternatives' section of this note.
 - ii) The description of the proposed development is lacking and is not considered to fully meet the requirements of the EIA Regulations which require '*Description of the development, including in particular..... a description of the physical characteristics of the whole development and the land-use requirements during the construction and operational phases.*' For example, no description is provided of the construction and demolition phase/s, limited information is provided on the PFS (nothing provided on the size of proposed petroleum storage or its design). In respects of the completed development, the reader is therefore required to read the ES alongside the development plans, when the ES should be a standalone document. Furthermore, no justification is provided as to why, in this instance, the development is taken to mean both the application at West Southwater and

the Malinslee Link application. In regard to the Malinslee Link application, the description is inadequate as it fails to provide even the minimum information required for outline planning applications (refer to the Malinslee Link Site Description / Description of the Proposals section of this note and further comments to be provided by Drivers Jonas on this application).

- iii) The non-technical summary (NTS) is overly technical and not written in plain English. For example, the noise section states '*In line attenuators and an acoustic louvre screen to the roof top plant.....*'. Additionally the significance of impacts is provided in an annex, rather than within the NTS document itself, and in a tabular form, which appears to be a direct copy of the main text of the ES, without suitable modification for the likely reader of the non technical summary.
- iv) The EIA Regulations require '*An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the applicant in compiling the required information*'. Whilst some of the technical studies do highlight some difficulties (for example in the Air Quality Chapter it is explained why it has not been possible to verify the air quality model), a number of difficulties are identified in this note which should have been highlighted in the ES. It is our view that the assumptions / approach taken in the EIA to address these difficulties should be clearly stated in the ES. For example, the assumptions in respect of what would happen to the existing ASDA store and PFS once they cease to operate and the store is vacated has not been clearly defined and it is unclear what has been tested in the EIA.
- v) There are also a number of areas where technical data which supports the assessments has not been provided which could arguably be a non-compliance with the EIA Regulations. Most notably noise calculations and monitored data recorded at existing ASDA facilities have not been provided. The socio-economic chapter is also lacking in data to substantiate the assessment; (however, in this case rather than omitting to include such data within the ES, the assessment has not actually made reference to any data).

2.2 The above points are also relevant to the Malinslee Link site. Additionally, and rather significantly, as the parameters that have been assessed for the outline application are not set out in the ES, we are unable to ascertain if the 'likely significant environmental effects' of this development have been fully assessed.

3.0 Other Matters

Floor Space – Current Telford and Wrekin Offices

- 3.1 The ES does not state the existing total floor area of Telford and Wrekin Council office accommodation (which we understand is approximately 9,000m² with 860 employees) which will be lost from the West Southwater site as a result of the ASDA proposals.
- 3.2 A key assumption that is made within the ES is that the existing offices will be relocated prior to the commencement of works on the West Southwater site. However, the proposed site for the relocated offices has not been identified and, to our knowledge, no application has been made for the new office site to date. Therefore no information has been provided on the effects of the loss or gain in office floorspace in the area and other associated indirect effects. We would normally expect this information in order that the likely environmental impacts associated with the change or loss of land use can be identified and assessed.
- 3.3 Furthermore, it is not clear what assumptions have been made in the ES with regards to the relocation of the Council offices and therefore what has been tested in the ES. Clearly if the office accommodation cannot be delivered prior to the expiry of the existing ASDA lease (2014), this then would have implications for the West Southwater proposals and the ES. Furthermore, it could be argued that the relocated office scheme application is part of a wider a more substantial development, given it is undeniably linked to the delivery of the West Southwater (ASDA) scheme (refer to the Circular 02/99: Environmental Impact Assessment, as amended). Therefore we are of the view that the ES should have given consideration to the office relocation scheme.
- 3.4 We would expect that the socio-economic assessment would provide a calculation of the likely change in levels of employment, based on the existing and proposed floor areas and land uses.

However, the number of employees lost from the site has not been considered in the West Southwater ES as only the scenario of the 'relocation' of the TWC offices within the Town Centre has been considered. Given that this application does not commit to providing alternative accommodation, it is hard to see how relocation can be relied upon. Indeed it is somewhat harder to appreciate how the provision of the relocated offices could result in a *moderate benefit* with respect to employment, as reported in the RPS ES (paragraph 11.6.12). In any event, a 'replacement' is unlikely to result in a moderate beneficial effect. Therefore, it is considered that in the absence of an identified replacement site, the assumption and the basis of the assessment is unsubstantiated.

- 3.5 As noted above, recently three major applications have been submitted to TWC; West Southwater (ASDA), Malinslee Link Residential scheme and East Southwater (TWC and SEG). None of these schemes provide replacement office accommodation for the Council offices. Whilst office accommodation is provided in the East Southwater application no commitment is given to its potential end user or occupants.

Assessment of Separate Applications

- 3.6 The ES provides, for the majority of the environmental topics, an assessment of the ASDA application, an assessment of the Malinslee Link residential development application and then an assessment of the two developments. Commentary is provided on the significance of the effects for each application separately and is generally presented clearly. However, in some instances this has not occurred. For example, the air quality chapter does not differentiate between the construction effects of the two sites. It is believed that the commentary provided addresses the scenario that both sites are constructed simultaneously, although as no construction programme details are provided this is unclear. Furthermore, the significance of the demolition and construction effects is not stated for either application.
- 3.7 As noted earlier the description of the Malinslee Link outline application is deficient. Therefore it is unclear what has been tested in the ES and if this is adequate.
- 3.8 As noted elsewhere, it is unclear why the ES has assessed both the West Southwater and Malinslee Link planning applications.

Cumulative Impacts / Assessment of the West Southwater and Malinslee Link Applications

- 3.9 This note does not comment on the defects in the retail assessments submitted with the ASDA application already identified in Drivers Jonas' letter to the Council of 16 November 2009. In particular the ES fails to assess the serious impacts which would result from the likely scenario whereby no replacement supermarket operation reoccupies the existing ASDA unit if ASDA relocates to the Civic Offices site.
- 3.10 The approach to the cumulative assessment is lacking. Information on the proposed construction programme / phasing of each of the developments is not set out clearly within the ES. This is important as often the most significant impacts from urban development arise during demolition and construction phase, especially if the construction programmes from more than one development should overlap.
- 3.11 Generally the ES provides an assessment of the West Southwater application, Malinslee Link application and then the combined effects of both of the applications. However, no justification or reasoning is provided for why the EIA has assessed the combined effects of West Southwater and Malinslee Link applications (and no other developments).
- 3.12 The majority of the chapters have not provided sufficient assessment of the scenario that the construction programmes for the West Southwater and the Malinslee Link developments overlap. Generally the ES repeats the 'stand alone' impacts of each of the developments. As such there is no change in the magnitude or duration of the effects described, nor is any justification provided as to why there would be no change. It is considered that the assessment reported in the ES is unlikely to be a true representation of the environmental effects should both developments be constructed at the same time. For example, it would be likely that the noise and dust effects would be increase in both duration and magnitude.

- 3.13 Conversely if the Malinslee Link application was constructed first, a scenario would arise whereby new residential receptors would be present during the construction of the West Southwater scheme. The ES has not considered this scenario. The ES does not provide any information on the likely phasing or justification for not considering this scenario. Further, no commentary has been provided on the likelihood that the West Southwater scheme could be delayed due to the need to decant the civic offices. In the absence of any justified reason for excluding this scenario, it is considered that the EIA should have considered the effects on the new residential receptors at the Malinslee Link site, which could be the 'worst-case' construction scenario for some assessment such as air quality and noise.
- 3.14 Cumulative effects with any other developments are not considered within the ES. There is no commentary to describe if there are any other schemes which could give rise to significant cumulative effects. As previously mentioned it is surprising that the proposals for new civic offices are not considered. Given the need for this scheme to be completed in order for the ASDA site to be delivered, it is considered that these applications are linked and the ES should have considered the likelihood of cumulative effects of both of these schemes.

Consideration of 2016 Opening Year

- 3.15 The ES provides insufficient detail with respect to the proposed opening date of the ASDA, or indeed the Malinslee Link site. As stated above, no information on the construction programmes or phasing is provided within the ES. Given the use of 2014 traffic data it is assumed that this is the proposed opening year, although this has not been explicitly stated in the ES. No indication of the reasonableness of a 2014 opening year this assessment is given. It is clear that the ASDA site is reliant on the construction of the replacement TWC offices. The implications of this on the assumed construction programme have taken this into consideration.
- 3.16 The socio-economic effects only seem to consider the relocation of the ASDA, and there is no consideration of the possible scenario that ASDA (temporarily) ceases trading within Telford Town Centre, if the opening date for the new store extends beyond 2014. Such a scenario would have significant impacts with respect to socio-economics, both directly (employment) and indirectly (loss of only large food store in Telford Town Centre).
- 3.17 In relation to the air quality and noise, the 2016 completion (opening year) traffic flows are unlikely to result in a change in terms of the significance of effects (notwithstanding issues identified by PBA with respect to the traffic model used). However, the interim scenario would be likely to have very different traffic flows and effects, at both local and potentially county level. Changes in the assessment of traffic flows and effects would therefore also have implications for the air quality and noise assessments.

4.0 Commentary on ES Review

West Southwater

Ch 1. Introduction (and Methodology)

- 4.1 No overall methodology is provided for the ES. We would expect this to include information pertaining to the 'screening' (determining the need for EIA) and 'scoping' of the ES. Whilst formal 'screening' and 'scoping' is not required by the EIA Regulations, it would be expected that some commentary on these important stages of the EIA process is provided within the ES. The 'Introduction' chapter does include some text on the need for EIA, but it is inconclusive as to why an EIA is required for this particular scheme and does not explain why an EIA has been undertaken. No commentary is provided on the overall scope of the EIA. Without this commentary, it is difficult to see how the scope of EIA was determined. It should however be noted that a number of chapters do provide some details in respect of the specific scope of technical assessments (for example the ecology assessment does include an explanation of the ecology scoping exercise undertaken, albeit the associated reports and correspondence are not included within the ES).

- 4.2 In accordance with best practice, details of consultation undertaken during the EIA should also be provided in the ES. Based on the information provided within the ES, there is no evidence that any consultation with the public, and that only limited consultation with statutory stakeholders and TWC has been completed. However, the covering letter to the West Southwater application states that extensive pre-application consultations have been undertaken. If this was the case, it would be expected that the scope of the EIA would have been discussed and agreed with TWC.
- 4.3 There is no detail on the approach to the applications, and why in this instance the on ES has been prepared to cover both the West Southwater and Malinslee Link applications. In the absence of knowledge of the inter-relationship between the schemes the ES becomes difficult to determine the adequacy of the ES.

Ch 2. Site Description / Description of the Proposals / Alternatives

- 4.4 The description of the sites is insufficient. It does not provide the area of each site. It does not properly address existing uses (TWC offices), indeed floor areas for proposed landuses are not given on the planning application form (and presumably the applicant would have had the information available to them). In addition, the issue of land ownership is unclear; this should be stated and / or illustrated on a plan. The drawing accompanying this chapter does not show the full extent of the boundary of the sites and the redline boundaries are not sufficiently clear. Indeed only one boundary is shown which encompasses both sites, rather than showing the two application sites individually.
- 4.5 The description of the proposed ASDA store is lacking and does not allow the potential environmental effects to be easily identified (omissions include; opening hours, heights of buildings, materials, proposed ground levels, retaining walls, acoustic fencing, landscaping, highways improvements, drainage, and details of the construction process/programme).
- 4.6 Given that the ES assesses two applications, it would be reasonable to expect that the description sets out the inter-relationship between these applications, and the approach to the assessment of the likely environmental impacts (i.e. the approach to the 'cumulative' impact of the two developments). It is also considered that commentary should have been provided on the assumptions related to 'replacement' TWC civic offices.
- 4.7 The EIA Regulations 1999 (as amended) require '*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*'. The ES is considered deficient as no information on environmental effects has been provided in relation to the alternatives discussed. The ES does make reference to the retail sequential test. However, the alternative sites considered / identified and the reasons for the applicant's choices are not clearly stated in the ES. Alternative layouts and designs are alluded to, but none are set out in the ES, although it is noted that these are identified and discussed within the Design and Access Statement. As stated above, we understand that evidence is available on the negotiations between ASDA and Telford Trustee No.1 and Telford Trustee No.2 in relation to options that ASDA considered on the Trustees landholdings.

Ch 3. Planning Policy

- 4.8 Whilst it is not considered that this chapter necessarily needs to be included with the ES, the planning policy chapter lacks objectivity and is considered to be overly favourable of the scheme. Some planning policy, notably Annex to PPS1 is omitted.

Ch 4. Transport

- 4.9 This ES chapter has numerous omissions. The ES chapter does not provide any significance criteria relating to any road user other than vehicles, and that the significance criteria which have been identified are not then used in the assessment. Indeed some impacts are not assigned any significance whatsoever. Furthermore, the assessment focuses on traffic with pedestrians, cyclists and public transport largely ignored. There is some lack of consistency with other chapters particularly in respect to the movement of waste, proposed cut and fill balance on the site, and removal of materials off site during construction operations.

- 4.10 PBA have provided comments detailing technical problems with the Transport Assessment and traffic model separately. These comments would also relate to the ES chapter.
- 4.11 Reference should be made to the 'Ground Conditions' section of this note which raises questions over the reasonableness that a 100% cut and fill balance (including the use of demolition arisings) can be achieved on site. This would therefore have implications for the assessment of construction traffic.

Ch 5. Flood Consequence and Drainage

- 4.12 The significance criteria defined in this ES chapter are not consistently applied in the assessment. Limited detail is provided on, and no commitment made to, the provision of SuDS and attenuation measures. This is considered deficient for a detailed planning application. For example, consideration is given to the use of permeable paving, however, the planning application drawings show 'tarmac' to be employed across the car park surface. The implementation of permeable paving should be stated in the landscaping proposals (possibly identified as porous asphalt), and we would anticipate this detail being provided at this stage of the planning process. The assessment poses a number of options for mitigation; however, without firm commitment the significance of impacts reported cannot be justified. There is no consideration of the PFS in a number of sections of this assessment, particularly pertaining to contamination of surface waters, in for example an accidental spillage.

Ch 6. Landscape and Visual

- 4.13 It is unclear how the viewpoints were identified, or whether they were agreed with TWC. In the absence of visual information showing the proposals (e.g. computer generated images such as verified visual photomontages or wirelines) it is rather difficult to appreciate the impacts that are assessed or to justify the reported effects.
- 4.14 Certain details of the development are set out in this chapter that are not included in the development description, including for example details of the acoustic fence. It should be noted that a 3m acoustic fence is stated, however this is shown as 4.5m high on the planning application drawings.

Ch 7. Air Quality

- 4.15 The significance criteria provided for the construction phase defines levels of risk rather than significance. Further, the significance criteria provided are not considered to be particularly relevant as it refers to 'London' as a threshold as part of the criteria. In addition, the significance of construction effects are not reported in the ES (for either application).
- 4.16 Consideration has not been given to the scenario that the Malinslee residential scheme is completed and operational while the ASDA is being constructed which would be the 'worst-case' in respects of air quality and therefore should have been assessed.
- 4.17 A reasonable assessment of air quality impacts related to traffic emissions from the completed development is provided (although reference should be made to the comments by PBA on traffic model/data). However, the assumptions / scenarios tested are questioned (refer to comments elsewhere in this note related to the construction programme, phasing of the developments and the TWC office relocation). As previously discussed there is no consideration of any other opening year other than 2014.
- 4.18 The air quality model used was not validated in accordance with best practice, which is a serious error. Suitable monitoring should have been completed to enable validation to be undertaken, and as a result of this omission the results should not be relied upon.

Ch 8. Noise

- 4.19 Further detail of the development, over and above that in the description of development section, is set out in this chapter, including that pertaining to the service yard and hours of operation. However, it should be noted that there are inconsistencies with respect to the height of the acoustic fence, both

3m and 4.5m being stated within this chapter. Paragraph 8.5.21 states 505 car parks are proposed which is inconsistent with other sections of the ES which state that 500 spaces are proposed.

- 4.20 It is unclear how both the monitoring locations and the receptor locations have been selected. There are inconsistencies in relation to the numbering on the plans and the chapter making this assessment difficult to understand, for example no location 3 is shown on the plans.
- 4.21 The significance criteria identified in the methodology are not used in the assessment. Therefore the significance of the impacts reported is not defined.
- 4.22 There is no assessment of construction impacts whatsoever. Such an assessment should include consideration of the scenario that Malinslee Link development is completed and occupied while ASDA is constructed (which would represent the worst-case scenario).
- 4.23 The calculations given for plant, car park activity and loading activity are not provided, which means that they cannot be checked for reasonableness. However, some of the results appear questionable. Further, the methodology for deriving these results is also questionable, as is the applicability of the results obtained from other sites to the assessment for the West Southwater development proposals. Therefore the impact significance identified for these noise sources is questionable.
- 4.24 As with the air quality assessment, the assumptions / scenarios tested are questioned. There is no consideration of any other opening year other than 2014.
- 4.25 It is noted that at paragraph 8.6.2 it is recommended that a condition is placed on Malinslee Link application in respect of noise attenuation. It is unclear how these applications are linked and if this is reasonable.

Ch 9. Ecology

- 4.26 The Phase 1 habitat plan is missing the relevant detail (i.e. the habitats are not shown). Notwithstanding this the chapter provides a reasonable assessment of the impacts. Adverse impacts are predicted at the site level, following mitigation. There is some question whether a breeding bird survey should have been completed given that the site supports suitable habitat for breeding birds; we believe that this should have been the case. Other surveys appear comprehensive.

Ch 10. Ground Conditions

- 4.27 No significance criteria have been provided for this chapter and the significance of impacts are not reported.
- 4.28 The scope of the assessment is insufficiently detailed. No detailed risk assessment has been completed and therefore it is not possible to say whether soils and materials are suitable for reused on the ASDA site. The ES has assumed that 100% of demolition and construction arising will be reused on site and that a cut and fill balance will be achieved (including the use of all of the demolition waste arisings). This assumption has also been applied for the traffic, air and noise assessments. It is noted that the Construction and Waste Statement, which does not form part of the ES, states that there will be a cut and fill balance with 11,000m³ of cut and 11,000m³ plus 6,000m³ of demolition waste to be used as fill. This assumption is unlikely to be reasonable given the risk for contamination and the uncertainty over the suitability of soils for reuse. With the above omissions, it is therefore not possible to determine if the 'worst-case' likely significant impacts arising from encountering contaminated materials has been assessed.
- 4.29 The instability of the Spout Mound is noted in the assessment and risks associated with landslide are reported.
- 4.30 There are numerous inaccuracies and omissions within the chapter, and a number of conflicts with other assessments, for example the increase in impermeable areas is reported as being beneficial, but the waste resources and flood risk chapter states that SuDS are proposed. Whilst both situations could indeed be possible, there is insufficient information in the ES to determine the mechanism for this and therefore associated environmental effects.

Ch 11. Socio-economic

- 4.31 No significance criteria have been set out and therefore it is difficult to see how any of the significance of the impacts were derived. The methodology is woefully lacking. For example, a simple calculation of the economic construction impacts has not been undertaken.
- 4.32 Sections / terminology in this assessment do not appear to relate to the subject site - 'City' is mentioned numerous times in the chapter, as is 'proximity to nearby ports'. Much of the text is overly subjective.
- 4.33 As previously stated, the loss of office accommodation from the site is not addressed. The ES only considers the replacement of office accommodation elsewhere in Telford Town Centre. However, no site has been identified and no planning application submitted for the replacement offices, therefore it is questioned if the relocation within the Town Centre can be relied upon. Effects on the existing ASDA and PFS need to be considered. As with other chapters, there is no consideration of a delayed opening of the new ASDA store and the implications that the existing store could cease to operate in 2014.
- 4.34 There is no assessment of the likely impact the development would have if no new supermarket retailer is prepared to invest in the town centre as a result of the Asda development securing consent.

Non-Technical Summary

- 4.35 This document is insufficient, and does not constitute a non-technical summary of the ES, by the nature of the use of technical language. Indeed it stretches to almost 30 pages, largely it is a direct copy of the conclusions from the main text. There are also examples of complex sentence structure and excessive sentence length (refer to paragraph 5.3 of the NTS).
- 4.36 Additionally the significance of impacts is provided in an annex, rather than within the document itself, and in a tabular form, which appears to be a direct copy of the main text of the ES, without suitable modification for the likely reader of the non technical summary.
- 4.37 In line with the main text, the description of the development is not sufficient to aid the understanding of the proposals.

Presentation

- 4.38 An ES should be a clear and logical document, minimising technical terms and provided with a full reference list, glossary and clear plans and figures. Given the ES attempts to consider two applications, without setting out the inter-relationship of these, or indeed providing a clear rationale and methodology it becomes a rather cumbersome document that is difficult to read.
- 4.39 The plans included are of a poor quality in general, with some significant omissions. Black and white copies provided where the technical information is illegible (such as figure 5.1 and 5.2). The redline boundary is not accurate on many drawings. Some plans are of such poor quality it is impossible to see what they are illustrating.

Objectivity

- 4.40 An ES should: be a balanced document providing an unbiased account of the potential environmental effects; provide a summary of consultee responses; and, be explicit in identifying limitations and difficulties. From the above comments it is clear to see that this ES falls far short of best practice in this respect.

Cumulative Impact

- 4.41 No explanation or justification is provided in relation to the approach to the cumulative assessment. As stated above the ES does consider the both the West Southwater and the Malinslee Link schemes. No other schemes are considered cumulatively, although it is stated that the traffic data does sufficiently cover this for the operational phase. It is considered best practice to include consented schemes as well as other reasonably foreseeable schemes. It is unclear why, in this case the Malinslee Link application was considered in combination with the West Southwater application, but no consideration was given to other planning applications in and around Telford Town Centre.

Malinslee Link

- 4.42 In addition to the above, there are a few key issues which have been identified with respect to some of the Malinslee Link site assessments. These are set out below. It should be noted however, given the absence of scheme information and the rationale for inclusion of this development in the EIA, this review is limited.

Ch 2. Site Description / Description of the Proposals / Alternatives

- 4.43 The description of the Malinslee Link proposals are grossly insufficient, indeed it is not clear what is being applied for and what the assessments have been based on. Further to this Figure 2.2 shows a layout for the residential development, however, it is unclear if this represents what is being applied for, and whether this is what has been tested in the EIA.
- 4.44 The description of the development fails to describe the minimum information required by The Town and Country Planning (General Development Procedure Order) (GDPO) for an outline application, namely:
- *'Use – the use or uses proposed for the development and any distinct development zones within the site identified.*
 - ***Amount of development** – the amount of development proposed for each use.*
 - ***Indicative layout** – an indicative layout with separate development zones proposed within the site boundary where appropriate.*
 - ***Scale parameters** – an indication of the upper and lower limits for height, width and length of each building within the site boundary.*
 - ***Indicative access points** – an area or areas in which the access point or points to the site will be situated.'*
- 4.45 For this reason, the outline application description is considered insufficient to form the basis of a robust environmental assessment.
- 4.46 No form of alternatives assessment has been undertaken for the Malinslee Link site. Given the numerous areas identified for housing in the local planning policy, it is considered reasonable that other sites may have been considered.

Ch 6. Landscape and Visual

- 4.47 It is unclear what parameter the assessment has been based on. It appears the assessment is based on the layout as given in Figure 2.2 of the ES. However, based on the information provided in the ES, the heights of buildings are unknown so it would be difficult to justify the findings of the assessment on this basis.

Ch 7. Air Quality

- 4.48 The potential sensitive receptors identified on the Malinslee Link site only account for the illustrated layout, not any other potential layout possible under an outline consent. We are unable to determine if this is adequate in the absence of information on the outline planning application.

Ch 8. Noise

- 4.49 In this chapter it is stated that the Malinslee Link development will have all bedroom windows facing inwards, not towards Southwater Way. It is unclear how this has been determined for an outline application. Indeed this would present the developers with a significant challenge, and it is not considered wholly reasonable.
- 4.50 As with the air quality assessment, the potential receptors in the Malinslee Link site only seem to cover a specific layout and we are unable to determine if this is adequate given the lack of information on this outline application.
- 4.51 It is unclear if the NEC assessment on the suitability of the Malinslee Link site for residential development considers the scenario that the ASDA is completed and operational. This would be considered the 'worst-case' for the operational phase and should have been tested in the EIA.

Ch 9. Ecology

- 4.52 It is difficult to determine whether sufficient mitigation can be provided on site, and indeed whether off site mitigation is deliverable. Without this mitigation impacts at a county level will be experienced with respect to invertebrate species. Limited biodiversity enhancements seem to be delivered, but this is somewhat contrary to the local planning policy which acknowledges the ecological value of this site and envisages that this area would significant biodiversity enhancements.

Ch 10. Ground Conditions

- 4.53 The scope of the assessment is inadequate. Some significant risks have been identified in this assessment; however no site investigation has been completed on the Malinslee Link site to quantify these risks (it is noted however that a site investigation has been undertaken of the West Southwater site). Whilst this is an outline application, given the known nature of the soils on site, the historical uses and the associated risks, it would have been prudent to complete some form of initial intrusive investigation to demonstrate the site is suitable for residential uses (and the proposed built structures).
- 4.54 The appendices providing the technical information to support this assessment are missing.
- 4.55 The ASDA application was tested only against commercial end use, and there seems to be only limited discussion about any form of residential use in the methodology.
- 4.56 The 'worst-case' scenario of the need to remove contaminated materials from site has not been set out or assessed. This would also have implications for the construction traffic predictions (and therefore the air quality and noise assessments).

Ch 11. Socio-economic

- 4.57 No consideration of the impacts due to the expected increase in population on services or community facilities such as schools, dentists or doctors is provided.



N A B A R R O

Via e-mail and post
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Planning Department
Development and Design
Telford & Wrekin Council
Derby House
PO Box 212
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TF3 4LB

For Attention of: Gareth Thomas

14 December 2009

Our ref: PH/MDE/T1784/00003

Dear Sirs

Town and Country Planning Act 1990: Proposed Asda Store at Land at West Southwater, Telford – Application made on behalf of Asda Stores Limited (LPA Ref. No. W2009/0915)

Introduction

As you are aware we act on behalf of Telford Trustee No. 1 Limited and Telford Trustee No. 2 Limited ("**the Trustees**"). We write, further to our letter of 11 December 2009, in connection with the above-mentioned planning application submitted to Telford and Wrekin Council ("**TWC**") by Asda Stores Limited.

1. OFFICERS' REPORT TO THE PLANS BOARD MEETING ON 16 DECEMBER 2009

- 1.1 The notice of Asda's planning application under Article 8 of the Town and Country Planning (General Development Procedure) Order 1995, which was published on 20 November 2009, confirmed that anyone who wished to make representations about the application should write to TWC by 11 December 2009. On 9 December 2009, **before the expiry of the required 21 day consultation period**, TWC published an officers' report to its Plans Board meeting on 16 December 2009 which recommends that Asda's planning application be granted planning permission.
- 1.2 The officers' report refers to the objections to the Asda planning application submitted by Drivers Jonas, on behalf of the Trustees, on 16 November 2009. This letter clearly reserved the Trustees' right to make further representations. Yet the report was written and published before these additional representations had been received. It is evident that other key responses, such as those from the Highway Agency, are also still outstanding.
- 1.3 When the Asda application was registered with TWC, TWC's planning officers indicated to Drivers Jonas that it would be reported to the Plans Board on 6 January 2010. Despite Drivers Jonas being in regular contact with planning officers, at no time since that indication

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was given did TWC inform the Trustees or their consultants that the committee date had been moved forward. The first the Trustees' knew of the revised committee date was publication of the officers' report and a press release issued by the TWC Chief Executive to that effect.

- 1.4 TWC was informed by Drivers Jonas on 13 November 2009 that a planning application was due to be submitted by the Trustees for the development of the Red Oak Car Park. Pre-application discussions took place between the Trustees and planning officers at TWC on 1 December 2009. The application was submitted on 11 December 2009 by the Trustees for the redevelopment of Red Oak Car Park as a supermarket-led mixed use scheme in the primary shopping area of Telford. Despite the knowledge held by TWC about this application no consideration is given to the Trustees' application in the officers' report

2. ADDITIONAL INFORMATION NOT MADE PUBLICLY AVAILABLE UNTIL AFTER THE PUBLICATION OF THE OFFICERS' REPORT

- 2.1 In addition to the report being prepared in advance of receipt of all consultation responses, the officers' report has made it clear that supplementary information had been submitted in support of the Asda application which had not been made publicly available. Significantly, this additional information included a letter dated 3 December 2009 from RPS, Asda's planning consultants responding specifically to the Trustees' letter of objection dated 16 November 2009.
- 2.2 The RPS letter was only made available to the Trustees on 10 December 2009 (i.e. after the report was written and published) and at no point has TWC sought a response from the Trustees. TWC's planning officers appear to accept the assertions of RPS in their report without question.
- 2.3 Critically the RPS letter relies on two illustrations to support Asda's argument that the Red Oak Car Park is not "available". These illustrations have not been provided to the Trustees and were not available on TWC's website. It is not clear whether these have been seen by members. What is certain is that members have been denied the Trustees' comments on these highly material assertions. The Trustees' comments – which cannot in the circumstances be made because of the absence of the illustrations – will themselves be highly material considerations which members will now not be able to take into account in their determination.
- 2.4 These issues also raise further doubt as to the procedural fairness of TWC's treatment of the Asda application and is further evidence of TWC having fast tracked the consideration of this application at the cost of consultation with key stakeholders.

3. REPRESENTATIONS ON THE OFFICERS' REPORT TO THE PLANS BOARD MEETING ON 16 DECEMBER 2009, THE RPS LETTER DATED 3 DECEMBER 2009 AND THE LETTER FROM TWC'S HEAD OF PROPERTY & DESIGN DATED 30 NOVEMBER 2009

- 3.1 We enclose a note which has been prepared by Drivers Jonas and Nabarro LLP which sets out a number of detailed representations on behalf of the Trustees in connection with the



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officers' report and the letter referred to above, which was provided to the Trustees on 10 December 2009.

3.2 It is clear from these representations that the officers' report proceeds on an entirely irrational and unjustified basis and fails to adequately address all of the material considerations which arise in this case and were referred to in Drivers Jonas' initial letter of 16 November 2009 and the further objections set out in our letter of 11 December 2009 and this letter.

3.3 Significantly, the officers' report fails adequately to address to the following concerns:

3.3.1 **Conflict with local and national planning policy** – Given the "town centres first" policy of PPS6, Asda has failed to provide **clear evidence** to demonstrate why sequentially preferable sites are not "*available, suitable and viable*". There are a variety of flaws in the arguments put forward by Asda, but the case boils down to a self-serving assertion that Asda would "block" its own opportunity to move to Red Oak Car Park. Other than PP6 the report fails to consider any other national planning policy considerations in relation to the proposals.

3.3.2 **Retail Impact** - That no proper assessment has been carried out of the implications for and impact on the town centre in the event that, as is likely to be the case, the effect of the grant of permission on the Civic Offices site is to stymie future investment from supermarket operators in respect of the options which clearly exist within the primary shopping area.

3.3.3 **Prematurity** – Although not overtly relying on Central Telford Area Action Plan ("CTAAP"), the Asda scheme effectively implements a major part of the strongly disputed CTAAP proposals. The application pre-determines the full and proper consideration by an Inspector of the retail policies in the CTAAP.

3.3.4 **Reliance on a retail study which should be afforded no weight** - The officers' report states that the applicant has utilised TWC's White Young Green borough-wide Retail Study to determine whether the additional floorspace would prejudice TWC's objective of securing the future health of the town centre. This study should be given no weight as it has been prepared as part of the evidence base of the CTAAP, which the Inspector has identified as being "*unsound*" at an exploratory meeting in November 2009. RPS should have supplied its own retail study.

3.3.5 **Design and Highways issues** – The Trustees' representations on design grounds have not been reported in the Committee Report and TWC's own highways officers have identified inadequacies in the Transport Assessments, concerns which are shared by the Highways Agency who may issue a direction to defer.

4. THE TRUSTEES' PLANNING APPLICATION FOR THE REDEVELOPMENT OF THE RED OAK CAR PARK

4.1 The Trustees submitted an outline application for the redevelopment of Red Oak Car Park as a supermarket-led, mixed use development on 11 December 2009. Drivers Jonas have requested in the letter accompanying the Trustees' planning application, that TWC determine both applications at the same committee in order that the implications of the Trustees'



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application in sequential test (and other policy) terms are fully and correctly addressed in the report to committee on Asda's planning application. The current report fails to do this.

- 4.2 In effect to grant planning permission for Asda's proposals at the Civic Offices site would be to reach a decision which would prevent the development of the Red Oak Car Park option and any such decision would, in effect, predetermine whether development could proceed on the Red Oak Car Park. Further, unless Asda can show that the Red Oak Car Park is not "available" for a supermarket, its own application must be refused. The consideration of the two are, therefore, inextricably linked and cannot rationally be considered in isolation without leaving out of account highly material considerations.
- 4.3 In the event that TWC decline to adopt this approach then the Trustees reserve the right to make this point in representations to the Secretary of State on the question of call-in and also in any subsequent judicial review proceedings.

5. CALL-IN

- 5.1 In the event that the Plans Board resolves to grant planning permission the Trustees will make a formal request to the Secretary of State that the Asda application be called-in for the Secretary of State's determination following a public inquiry before an independent Inspector.
- 5.2 This is a multi-million pound scheme on TWC's own land being recommended for planning permission and being "fast tracked" ahead of a sequentially preferable site in flat contradiction to the development plan and PPS6.

6. JUDICIAL REVIEW

- 6.1 In the event that there is a resolution to grant planning permission, the Secretary of State declines to call-in the Asda planning application and TWC subsequently issues planning permission to Asda then the Trustees will challenge the grant of planning permission by way of judicial review given their fundamental and serious concerns about the manner in which TWC has dealt with the application.

We would request that the contents of this letter and the accompanying document are reported in full to the members of the Plans Board meeting on 16 December 2009 in the event that TWC decides to continue with the consideration of the Asda application at that meeting.

Yours faithfully

NABARRO LLP

Enc.

- Note by Drivers Jonas/Nabarro LLP

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

**COMMENTS ON ADDITIONAL MATERIALS SUBMITTED ON BEHALF OF
ASDA STORES LIMITED IN CONNECTION WITH ITS PLANNING APPLICATION FOR THE
REDEVELOPMENT OF THE CIVIC OFFICES SITE AT WEST SOUTHWATER
(APPLICATION REFERENCE NO. W2009/0915) AND THE PLANNING OFFICERS'
REPORT TO THE PLANS BOARD MEETING OF TELFORD AND WREKIN COUNCIL
ON 16 DECEMBER 2009**

1. INTRODUCTION

- 1.1 These comments supplement the Trustees' initial objections to the Asda planning application as set out in Drivers Jonas' letter of 16 November 2009 and Nabarro LLP's letter of 11 December 2009. They comment on further information submitted on behalf of Asda and on the officers' report to the Plans Board meeting on 16 December 2009 ("**the Officers' Report**").
- 1.2 The Officers' Report relies extensively upon a letter from RPS dated 3 December 2009 which the Trustees had not seen until 9 December 2009. RPS's letter seeks to rebut the Trustees' initial representations and it is unacceptable that the Trustees were not appraised of its existence, let alone contents. The RPS letter is replete with erroneous assertions and false argument but appears to have been taken at face value. The assertions and also the arguments in RPS's letter have been adopted by TWC as their own, often down to the very wording. We therefore deal with the letter first as it underpins the Officers' Report.

2. LETTER FROM RPS TO TWC DATED 3 DECEMBER 2009

Lack of proper consultation

- 2.1 The existence of RPS's letter to Telford & Wrekin Council ("**TWC**") of 3 December 2009 only became apparent to the Trustees on 9 December 2009 when the Officers' Report was published. The illustrations of RPS upon which so much reliance is placed have still not been provided to the Trustees.
- 2.2 It is clear that this raises issues as to procedural fairness as, in effect, TWC's approach sought to deprive the Trustees of the ability to reply to RPS's comments. This is further evidence of TWC having fast tracked the consideration of Asda's application at the cost of proper consultation with key stakeholders and the public.
- 2.3 For the reasons set out below the RPS letter of 3 December 2009 is inaccurate in a number of key respects and entirely misleading in relation to some of the key material considerations which TWC must consider in its determination of the Asda planning application.

Introduction

- 2.4 RPS in their letter state that the Drivers Jonas letter of 16 November 2009 proceeds under the "*fundamental misconception*" that the Asda application is for a "*replacement*" supermarket.

- 2.5 The allegation that this represents a "*fundamental misconception*" is plainly inaccurate and wholly disingenuous given that the application form for the Asda planning application in response to Question 3 "*Description of the Proposal*" states in terms that the application is for a "*Replacement **Asda** Supermarket ...*" (our emphasis). The application form was completed by RPS and Mr. Waldren who is the signatory to RPS's letter of 3 December 2009 is stated at the agent.
- 2.6 The Drivers Jonas letter of 16 December 2009 was therefore completely accurate in this respect and carefully used the exact words used on Asda's planning application form. For RPS now to allege that this is a "*fundamental misconception*" therefore is mistaken unless Asda has also amended the description of development for which it is applied. There has been no public notification that that is the case.
- 2.7 If what RPS mean is that the practical consequence of the relocation of Asda to the Civic Offices site would be that the existing Asda unit would be reoccupied by a replacement supermarket operator, able to act as a northern anchor to the centre, then as previously pointed out in the Trustees' representations, there is no likelihood of this happening. The commercial reality is that alternative operators would not wish to take Asda's unit to trade in competition with a new Asda on the Civic Offices site which is an unconstrained edge-of-centre site with independent car parking. There has been no independent evidence submitted by Asda or RPS to support the suggestion that the existing Asda unit would be reoccupied, for example, by way of letters of intent or commitment from alternative operators.
- 2.8 In respect of the potential full reoccupation of the existing Asda unit, the Officers' Report to is also contradictory and inadequate in its analysis. With reference to RPS's assessment the report says that it "*has to assume that the existing Asda store within the Shopping Centre is re-occupied for it to be realistic in terms of impact on the town centre*" and proceeds to treat this as a given in reviewing the retail impact. Earlier in the report, however, it recognizes that there is an element of doubt by stating that there "*may also be the prospect of Asda's existing store at the shopping centre being reoccupied by another convenience operator*" (our emphasis). Even if TWC does not accept the reality of the position as presented by the Trustees' objections (that reoccupation by another convenience operator is highly unlikely) the fact that the report recognizes that there is an element of doubt as to this means that, in order to assess a potential "*worst case*" impact on the town centre, TWC and Asda should have carried out an assessment on the basis that no such replacement operator would be forthcoming.
- 2.9 The fact that RPS has not assessed this scenario means that the likely significant environmental effects of the proposed Asda development have not been fully assessed or properly taken into account.
- 2.10 Further, although erroneous an argument that the new Asda is "in addition" to the existing Asda and/or the Red Oak Car Park scheme does not conform with the "town centre first" policy that underpins the sequential test in PPS6. Unless Asda can demonstrate that there is no sequentially preferable site it cannot obtain planning permission for the proposed Civic Offices site. For the reasons set out below Asda is unable to demonstrate this key fact.

Sequential approach

- 2.11 Paragraph 3.19 of PPS6 states that, where it is argued, as Asda do, that otherwise sequentially preferable sites are not appropriate for the particular development proposed the applicant should provide "*clear evidence to demonstrate why such sites are not practicable alternatives*" in terms of availability, suitability and viability.
- 2.12 No such evidence has been provided by Asda, RPS or Marsh and Baxter Properties Limited. Notwithstanding this, our comments are set out below.
- 2.13 As explained in Drivers Jonas' letter of 16 December 2009, from the date that Asda decided to tender for the Civic Offices site in Autumn 2008 it must have realized that, in order to stand any prospect of satisfying the sequential approach, it would have to allege that the development of sequentially preferable options, including the Red Oak Car Park site, would be unviable.
- 2.14 Whilst TWC has to date refused to release details of the contract between Asda and TWC for the acquisition of the site, it can be assumed also that not to question the viability of more central options at this stage would also place Asda potentially in breach of contract with TWC in its capacity as landowner.
- 2.15 In these circumstances if TWC in its capacity as local planning authority were acting in a reasonable manner then, in order to carry out the thorough assessment using clear evidence in relation to the issue of viability as is required by PPS6 it would not merely rely on what only amount to assertions by Asda's commercial agents and it would have carried out an independent and thorough review of the viability arguments with input from the Trustees as well as Asda and its team with a view to reaching an independent and clear conclusion. This approach is required by PPS6 in respect of all applications which require the sequential approach to be applied. In this case where TWC is the landowner as well as the local planning authority (and payment to TWC) the need for TWC's decision-making process to be seen as transparent, open and comprehensive is heightened.
- 2.16 Against this background we note that the representations submitted by RPS and Marsh and Baxter Properties Limited have, in effect, been transposed without challenge, scrutiny or assessment into the Officers' Report. This is clearly inadequate and deeply regrettable. The fact that this has been done without even asking the Trustees to comment on those representations before the officers' recommendation was settled is also contrary to the interests of natural justice and fairness and raises significant concerns about there being an apparent bias in the approach adopted by the planning officers.
- 2.17 Against that background the Trustees strongly dispute the bulk of the information which has been submitted on the question of the sequential approach and in particular viability with the representations from RPS and Marsh and Baxter Properties Limited.
- 2.18 RPS refer to the Marsh and Baxter Properties Limited's letter of 1 December 2009 and state that there would be an impact of about 80% of trade during the construction of the Red Oak Car Park option. This is clearly a very significant over-estimate. The planning application submitted by the Trustees for the redevelopment of the Red Oak Car Park on 11 December 2009 demonstrates that its construction can be phased to minimize disruption to the existing Asda unit and that sufficient car parking would be available throughout the construction period for Asda's customers. The officers were aware at the time of writing their report that the Trustees were about to submit an application for the Red Oak car park and at no time did the officers seek information about the practicalities of developing a supermarket on the car park site. The officers have merely transposed, without any analysis, the reference to the

80% figure into the report to the Plans Board. This is another example of wholly erroneous assertions made by Asda's commercial agents being taken by TWC as being accurate evidence, without assessment or further consultation with the Trustees.

- 2.19 Marsh and Baxter Properties Limited's letter also refers to estimated construction costs for the Red Oak Car Park option. They refer to figures which TWC has not asked the Trustees to comment on despite the fact that clearly the Trustees would have a better indication of the likely build costs than Marsh and Baxter Properties Limited, and said that they "*cannot see the justification financially to invest this scale of money in a new store that does not have a rent that is higher than that of the passing rent on the old store*". No evidence has been submitted by Asda or assessed by TWC to support these assertions which the Trustees dispute.
- 2.20 In addition the reference to likely build costs also raises the question of how those build costs referred to by Marsh and Baxter Properties Limited compare to the acquisition and build costs for Asda in relation to the Civic Offices site. Without that information it is impossible to comment further but in the event that the acquisition and build costs for the Civic Offices site are higher (as the Trustees would expect) it again raises the question of what weight, if any, can be placed on Marsh and Baxter Properties Limited's representations. It is clear from the Trustees' planning application for the Red Oak Car Park that a store of equivalent size with equivalent car parking can be provided within the existing primary shopping area ("PSA") and the Trustees are satisfied that such a proposal is commercially viable.
- 2.21 Marsh and Baxter Properties Limited's letter of 1 December 2009 also makes the remarkable assertion that in any event Asda would seek to prevent development of the Red Oak Car Park until Asda's lease ends. Again this assertion is effectively reflected in the Officers' Report when it says that "*Taking the larger Red Oak car park site first, there appears to be a major constraint to the development of this site in that Asda would be able to block the early development at Red Oak*" (our emphasis). For TWC to adopt this approach is wholly unreasonable and in direct conflict with the approach recommended by the Government in respect of town centre development. In effect what TWC is doing is taking into account a threat made by a major food store operator that unless it is granted planning permission for, in the words of the planning application form, a "*replacement*" store at an unsustainable and sequentially inferior out-of-centre site, then it will not allow a development to take place within a site which is sequentially preferable and within an existing PSA in accordance with Government policy;
- 2.22 It would be perverse and irrational for TWC to reach a decision on this basis. In effect if this approach is adopted it would allow supermarket operators to circumvent Government policy by merely asserting that in the words of the Officers' Report they would "*block*" town centre development including sites otherwise available for themselves.
- 2.23 The truth of the matter is that had TWC not marketed the Civic Offices site and reached agreement with Asda as the selected operator, then Asda and the Trustees would have continued their negotiations and there would have been every prospect of a commercial agreement being reached which is acceptable to both parties.
- 2.24 Marsh and Baxter Properties Limited's letter of 1 December 2009 also makes an unsubstantiated and unjustified reference to a penalty in sales of about 15% when comparing the new proposals for the Red Oak Car Park and the existing Asda unit. The

Trustees dispute that figure and it also needs to be borne in mind that that assessment cannot have been carried out on the basis of the proposals which are now the subject of the Trustees' planning application for the Red Oak Car Park. As a result clearly no weight can legitimately be attached to those statements.

- 2.25 Marsh and Baxter Properties Limited's letter of 25 November 2009 makes no new substantive comments and all of the points raised have already been addressed in Drivers Jonas' objections of 16 November 2009. In particular, whilst Marsh and Baxter Properties Limited assert on behalf of Asda that there have been various board meetings and investment analysis carried out, no information or evidence has been provided as to the reports to, or decisions made by, those board meetings and again no weight can be legitimately applied to those representations by TWC without the type of thorough and independent assessment to which we refer above and which is currently lacking in the report to the Plans Board meeting on 16 December 2009.
- 2.26 The RPS Retail Impact Assessment highlights in Table 5 of Appendix 2 that the existing Asda store, as at 2007 had a turnover of £39.7m. Whilst it is not clear from the RPS study we assume this figure accounts only for the sale of convenience goods. RPS clarify that the existing store has a sales area of 4,274 sq m. RPS do not highlight the amount of floorspace dedicated to the sale of convenience goods, so we have assumed the company average figure used by Verdict of 56% - i.e. 2,393 sq m. This suggests a sales density of £16,590 per sq m. This figure is significantly higher (approximately 15%) than the average Asda company sales density which Verdict identify as £14,115 per sq m. RPS claim however, that the Asda store is trading 20% below benchmark figures, however, they have failed to provide any evidence to support this claim. While the discrepancy was noticed by officers, it has not been explored further or otherwise explained.
- 2.27 RPS states that Asda "welcomes" the development of the Red Oak Car Park for a food store providing its construction does not conflict with Asda's tenancy period for their existing store. TWC should, however, be under no illusions. There is no realistic prospect of the Red Oak Car Park option being occupied by an alternative supermarket operator or the existing Asda unit being reoccupied by such an operator in the event that planning permission is granted for the Asda application on the Civic Offices site. The position is that it is highly unlikely that this would happen and it is precisely for this reason that the Government's policy is not to allow development on unconstrained edge or out-of-centre sites when in-centre sites exist. TWC's approach on this issue is wholly irrational. Even if it did not accept the Trustees' clear representations that these development scenarios are highly unlikely in the event that Asda is granted permission at the Civic Offices site, it must, if acting reasonably, acknowledge that this is a potential outcome. In that event, it is a requirement for TWC to consider the potential impacts.
- 2.28 RPS also refers to the Ash Grey Car Park which is clearly, for the reasons set out in the Trustees' representations, available, suitable and viable for supermarket development. The Trustees have selected the Red Oak Car Park option for the purposes of making a planning application to TWC as this represents the best option but TWC should be aware that it is not the only which is available.
- 2.29 In relation to the Central Southwater site referred to in Drivers Jonas' letter of 16 November 2009, RPS make the remarkable assertion that the Civic Offices site is better located. In support of this it makes the assertion that the bridge link, which exists over the box road into the Central Southwater site, closes every evening. The simple answer to this is that this

need not be the case and that the bridge link could be open for a 24 hour period, for example in order to promote the night time economy within the shopping centre, which is TWC's stated policy to enhance and develop its night time economy.

- 2.30 In seeking to dismiss the Central Southwater site, RPS are reduced to having to make unjustifiable comments about Drivers Jonas being "*preoccupied*" with the nature of the existing linkages whereas the appropriate factor to consider is the nature of linkages that are proposed as part of the development. The fact is that the definition of "*Edge-of-centre*" at Table 2 of Annex A of PPS6 expressly refers "*existing*" pedestrian routes. RPS seek to discount these but the fact is that the Central Southwater site benefits from direct, convenient and safe existing pedestrian connections with the PSA, whereas the existing position in respect of the Civic Offices site is that barriers exist, for example the need to cross a major road or a car park. Indeed this is recognised in the Planning Statement prepared by RPS which states that the Civic Offices site is currently separated from the primary retail area of the town centre and that Malinsgate/Coach Central currently forms "*something of a barrier as pedestrian linkage across this road could be better*".
- 2.31 RPS in their letter refer to the provision of a large scale development to act as a western anchor to the Southwater area and refer to the "*regeneration plans*" for the Southwater area. No weight should be attached to these representations as the concept of a western retail anchor is only referred to in the Submission Draft of the Central Telford Area Action Plan ("**CTAAP**") and has been the subject of significant objection, not just from the Trustees, but other key stakeholders within the town centre. This reference is also in conflict with the statements later on in RPS's letter of 3 December 2009 that the proposals stand to be determined outside of CTAAP.

Retail Impact

- 2.32 It is important to confirm that, contrary to RPS letter, Drivers Jonas have absolutely not confused 'the additional store argument' which RPS refer to. In accordance with PPS6, it is absolutely correct that a Retail Impact Assessment is submitted by Asda in support of a planning application for retail development in an edge-of-centre location. However, we seek to highlight that the RPS Retail Impact Assessment does not recognise that the greatest impact that would accrue from this application being approved, would be that it would not be possible to attract another occupier to anchor the north of the town centre for the reasons set out above.
- 2.33 Asda indicates that it wishes to move out of the PSA for operational and car parking reasons and claim that the PSA cannot satisfy its requirements. Moreover, Asda claim that the current store hampers trading whereas the new store would actually attract trade from out of town stores. Quite apart from the current market in these circumstances, it is particularly unlikely that an alternative supermarket operator could be found to occupy the existing Asda unit in the event of Asda succeeding in its application for the Civic Offices site. RPS's assertion that the only "robust" way to proceed in the assessment of retail impact is to assume that a "*higher turnover occupier is in occupation of that unit*" is irrational.
- 2.34 As the local planning authority it is TWC's responsibility to assess retail impact on a reasonable basis taking into account reasonable assumptions as to the likely effects that the grant of planning permission on the Civic Offices would have. Asda has asserted that a replacement occupier would be willing to occupy that unit immediately upon its vacation by Asda in 2014 but that is clearly an unjustifiable assumption and ignores the reality that there

would be a significant impact on investor and occupier confidence in the existing shopping centre in those circumstances, which makes such re-occupation highly unlikely.

- 2.35 The RPS Retail Assessment assumes that the existing Asda unit is taken over by one of the big four operators (Sainsbury, Morrison, Tesco, Asda). Sainsbury's are located at Forge Retail Park only 500m from the site. Asda would not occupy two stores. It is the Trustees view that there is very limited likelihood in commercial terms of attracting a second major supermarket operator to Telford irrespective of the amount of available expenditure. It is the Trustees' view that the 'additional store argument' does not warrant detailed consideration. It is considered that no such operator would be available to anchor this part of the town centre.

Vacancies

- 2.36 RPS's representations on the question of vacancies are misleading and irreconcilable with the Government's clear policy guidance on assessing the health of existing centres.
- 2.37 RPS state that it is a "*very unusual premise*" to examine vacancy rates taking into account short term let retail floorspace. Paragraph 4.4 of Chapter 4 of PPS6 "Measuring Vitality and Viability: Health Checks", however, expressly states that retailer representation in terms of the types of retailer at a particular centre will be one of a number of key indicators of the health of a centre. Clearly the type of retailers who occupy premises on short term lets have a different commercial profile and strength to permanent occupiers. The very significant recent increase in the representation of short term occupiers at the centre is clearly a significant concern.
- 2.38 Paragraph 4.4 of PPS6 also recommends that local authorities should regularly collect information, preferably in co-operation with the private sector to measure the vitality and viability of town centres. TWC has not done this and the Officers' Report totally fails to deal with this issue and merely states that Asda have provided a "*useful health check*" which appears to have been accepted without any independent analysis or consultation with the Trustees. This again raises serious concerns about the impartiality of the approach adopted by TWC in its capacity as local planning authority in assessing Asda's proposal. It reveals a complete lack of scrutiny of the case advanced by Asda or any attempt by TWC to independently verify that information by having complied with the requirements of paragraph 4.4 of PPS6 to carry out regular information gathering on the vitality and viability of the town centre in co-operation with the private sector, which in this case would include the Trustees as the owner of the Shopping Centre.
- 2.39 Under this heading RPS's letter also refers to the "*potential vacancy*" of the existing Asda store and states that this will not occur until 2014. Again this is wholly at odds with the methodology adopted by RPS in the Retail Impact Assessment submitted with the Asda application and recognizes that there is the potential for a vacancy to exist with the existing unit. As the Trustees have stated this is a highly likely scenario and it is likely that that vacancy would continue certainly in terms of potential reoccupation by a supermarket operator in the medium to long-term. This is a significant omission from the Retail Impact Assessment submitted with the Asda application and reveals the inadequate assessment which has been carried out. It is clear from the statement, however, that even RPS concede that a vacancy of that unit is a potential outcome and the fact that TWC has not considered the application on that basis or required any assessment work of that scenario is a fundamental defect in its approach.

Quantitative need

- 2.40 It is the Trustees' view that the WYG Retail Study should not be considered a robust evidence base. Paragraph 3.10 of PPS6 states that '*A needs assessment prepared in support of a planning application should, wherever possible, be based on the assessment carried out for the development plan document, updated as required*'. The WYG Study does not provide the evidence base for a sound 'Development Plan Document'. On this basis we consider that in the absence of an up-to-date robust retail assessment, we would suggest that RPS should have undertaken a new independent retail assessment specific to the development in order to ensure that its validity was not brought into question in light of the concerns with regard to CTAAP.
- 2.41 The Trustees maintain their objection to the catchment area used to support the RPS retail assessment. The 10 and 15 minute drive time isochromes which RPS refer to have not been made available to the Trustees for comment, therefore we cannot comment on any correlation which RPS claim with their Primary Catchment Area. We would also like to clarify that the location of stores within the catchment area have not been properly identified. It is standard practice to identify the location of foodstores, so that firm judgements can be made upon where 'headroom' capacity identified should be re-apportioned and whether that would be realistic.
- 2.42 The Trustees maintain their objection to the extent of the amount of expenditure identified by WYG, as it has been formulated as the evidence base to a Development Plan Document which has been suspended by TWC following the Inspector's criticisms.
- 2.43 As discussed above, the RPS retail study identifies that the existing store is over-trading whereas Asda claim it to be under-trading by 20%. The RPS justification is that '*household shopper surveys can sometimes produce erroneous results and in this instance while the survey turnover does suggest a turnover that is above the company average level, Asda themselves have informed us that their store is in fact trading significantly below the implied levels*'. Whilst this discrepancy is considered by RPS to make no material difference to the capacity assessment, it clearly does. The exercise undertaken by RPS reduces the headroom capacity available.
- 2.44 The ambiguity raised in the Asda case also brings into question the validity of the results from the WYG Shopper Survey, upon which RPS' assessment is based. It is interesting to note that many stores are highlighted in RPS tables as trading well above benchmark turnover. If such an error has been identified as appropriate to the Asda, it raises concern as to the accuracy in the trading level (and perceived over-trading) of other stores. This is a key concern with regard to the qualitative need below.
- 2.45 The headroom capacity identified by RPS is solely based upon the overtrading of existing stores, however, there is no evidence submitted by Asda in the form of a health check of any of the existing stores in the catchment. No assessment has been presented that demonstrate that any of the stores suffer from factors that could be negative to the shoppers' experience.

Qualitative Need

- 2.46 The Description of Development submitted on the application forms by Asda clearly highlights that the application is for a 'replacement' foodstore. As stated above it is the Trustees view that should Asda be approved planning permission at Southwater, it would not

be possible to identify an operator to occupy the existing store and act as the northern anchor to the town centre. The 'in addition' argument which RPS refers to is unrealistic in the real world.

Impact

- 2.47 The diversion of £30m of convenience expenditure from the PSA of Telford town centre would occur as a direct result of granting permission for the Asda planning application. If the figures identified in Table 5 of the RPS study are correct the diversion would in fact be £39.7m, but either way it represents an enormous loss of trade. The fact that there is a quantitative need/capacity, which we argue against, should not be confused with the impact that a proposal can have upon a town centre. RPS seems to completely miss the point that in policy terms the application site is 'edge-of-centre' whereas the existing store is 'in-centre'. Asda has clearly stated that they would surrender their existing site, and, therefore, in the absence of subsequent operator for its existing store, all of the trade associated with their existing store would be taken out of the existing PSA.
- 2.48 The application site is physically separated from the PSA, and the proposals to improve its links to the PSA are not detailed in the RPS letter. In any event no proposals can alter the fact that in policy terms it is edge-of-centre location. The application site is distant from the closest entrance to the PSA, whereas the existing Asda store is actually physically constructed as part of the Shopping Centre. We fail to understand how this application to re-locate can therefore be seen as positive, particularly when the Trustees have identified that an alternative site is available for development within the PSA. It would move an anchor to an isolated location. With regard to linked trips, whilst some may occur, the location of the Civic Offices site certainly does not encourage linked trips, and cannot be seen to facilitate them in the way the existing store does, therefore, the evidence submitted by RPS with regard to linked trips in other towns has little weight. Of greater relevance would be evidence of the monetary impact that such a likely reduction on footfall would have on existing stores in Telford.
- 2.49 The proposed development would inevitably produce a re-alignment of Telford's retail centre of gravity towards an edge-of-centre location. The impact this would have on the town centre as a whole and in particular the northern part of the town centre would be considerable. This simply cannot be ignored.
- 2.50 The matter of impact upon town centres is fundamental to PPS6 and even more so to draft PPS4, where it is proposed to introduce an 'impact test' specifically to identify the impact of proposals upon town centre vitality and viability. Despite the commentary provided by RPS, the application is for a replacement foodstore which would result in a direct transfer of trade to an edge-of-centre location. The RPS assessment highlights that if the existing store was re-occupied (as assumed) by one of the 'big four operators' it would trade at £5m less than existing. This assertion provides further evidence that it would be highly unlikely that one of these operators would re-occupy a store that traded at less than the existing store. In reaching this conclusion, RPS accepts therefore that turnover of convenience expenditure within the PSA would indeed fall but fail to recognise that, in the likely event the existing store could not be re-occupied, the turnover of the convenient expenditure in the PSA would actually fall by in excess of £30m. The claim that the new store would 'effectively function as part of the centre' is erroneous and also does not address the impact that would occur to the PSA.

- 2.51 It seems to be the case that RPS base the entire justification for the development on the test of quantitative need. In the first instance we strongly question the quantitative need which has been identified. In the second instance there is a viable, available and suitable sequentially preferable site at Red Oak Car Park, and thirdly irrespective of all other matters the proposal would have a hugely negative impact upon the town centre. Retail need is not a pre-requisite for development unless all of the other tests set out in paragraph 3.4 of PPS6 can be addressed, where as here, there is a sequentially preferable site which is available it must be preferred if the "town centre first" policy of PPS6 is to be achieved.

Departure from Development Plan

- 2.52 RPS acknowledges that the proposed development is in conflict with the development plan.
- 2.53 RPS seeks to attach very significant weight to the regional spatial strategy and the WYG reports but neither of these documents are directly relevant to a proposal for a food store development on the edge-of-centre Civic Offices site. Both these documents have been produced to assess overall need. The RSS is a regional policy document which has limited application to the issues involved in respect of Asda's application. The WYG report was not produced to address and does not assess the impact on edge-of-centre sites. Indeed all WYG's work has proceeded on the basis that the preferred location for development will be within the existing PSA. Any extension to the PSA is envisaged only where retail cannot be accommodated in the existing PSA.
- 2.54 RPS's assertion is that even if current regional and local policy is disregarded Asda can rely on national policies with which, it is suggested, it fully complies. That assertion is fundamentally misconceived as it is difficult to envisage a proposed development which conflicts more directly with the Government's policies on development in town centres as contained in PPS6 and in the emerging PPS4.
- 2.55 In relation to the relocation of TWC's civic offices RPS express the view that Policy CS10 of the Core Strategy is not relevant. Reference is made to the information contained in the letter from the Estates Department of TWC to RPS of 30 November 2009 to which we refer later. At this stage we would merely add that there is no formal proposal accepted by TWC to relocate to the East Southwater site and that the potential environmental effects of the relocation site have not been assessed in the Environmental Assessment accompanying the Asda application, therefore, that assessment is deficient in terms of the way it addresses cumulative impact.
- 2.56 Whilst a planning application has been submitted for the East Southwater site that has not been determined and in any event that application is not before the Plans Board meeting on 16 December 2009. In addition there is no proposed restriction on occupation of the Asda replacement facilities on the Civic Offices site until the replacement facilities have been provided in any specific location, and if there were delays on the alternative site then clearly alternative temporary accommodation would need to be secured. Such accommodation could be within or outside Telford town centre and the complete absence of clarity in respect of this issue means that the Environmental Assessment submitted with Asda's application cannot assess those potential effects, their significance and any mitigation measures which may be necessary. Clearly if either in a temporary or longer terms scenario TWC's offices had to be relocated at an out-of-centre location that would compound and increase the impact of the proposed development on the town centre. For TWC, in its capacity as local

planning authority, to accept the assessment on the current basis in these circumstances is wholly unreasonable.

- 2.57 RPS's comments on the Exploratory Meeting into CTAAP are wholly misleading. Drivers Jonas attended the Exploratory Meeting and the contents of Drivers Jonas' letter of 16 November 2009 are wholly accurate. To attempt to use the Inspector's words to support the planning application is unwarranted.
- 2.58 At the time that TWC resolved to proceed with the Submission Draft of the CTAAP, Drivers Jonas made representations to TWC on the basis that TWC's approach to the submission draft was fundamentally flawed and that the CTAAP was unsound on a number of key criteria. TWC chose to reject those submissions and pressed ahead but in due course the Inspector has endorsed the Trustees' view that the document is unsound. It is highly unusual for Inspectors to reach such a conclusion and suspend the preparation of a development plan document in this manner. It only happens as a last resort where there are fundamental defects which must be addressed. A fundamental aspect of CTAAP which is objectionable to the Trustees is the proposal to extend the PSA of Telford to include the whole of the Southwater area. Whilst we do not wish to rehearse all the arguments on this issue which have been put, it flies in the face of Government guidance for the reasons set out in the Trustees' objections to the submission draft of CTAAP and the principle of retail development on the Southwater site will be a fundamental issue for determination in the context of CTAAP.
- 2.59 The reality is that at the Exploratory Meeting, the Inspector was far from impressed with the document and heavily criticised the lack of detailed analysis of the risks associated with the approach to CTAAP – clearly suggesting that the impact of the retail strategy required more assessment and examination before the Inspector was in a position to support it or an alternative strategy.
- 2.60 RPS notes that Asda's proposals on the Civic Offices site are in line with the ambitions of TWC as set out in CTAAP. Perhaps more accurately given the chronology in respect of CTAAP, it could be said that the ambitions of TWC as set out in CTAAP are in line with Asda's proposals on the Civic Offices site. For the reasons set out above, however, the only implication which can be drawn from this is that Asda's proposals coincide with ambitions which have been described as unsound by an independent Inspector.

Prematurity

- 2.61 The approach adopted in RPS's letter and reflected almost verbatim in the Officers' Report in relation to prematurity are wholly unsustainable.
- 2.62 For example, the Officers' Report says that the proposed development is "*not so significant that by dealing with the application now would seriously prejudice a particular policy provision or development proposal that would be covered in the CTAAP*". CTAAP proposes an extension of the PSA to cover the Civic Offices site and specifically refers to the potential for an anchor retail unit at West Southwater. The Trustees have objected to these proposed policies but the grant of planning permission for Asda would clearly circumvent and pre-empt decisions as to the appropriate scale and location of development within the town centre which all relevant Government guidance state should be determined through the planned system.

- 2.63 To state, as the officers' report to the Plans Board meeting does, that the plan making process should be ignored because of edge-of-centre development is something that would occur with or in the absence of CTAAP is wholly at odds with the Government's actual guidance on these issues.
- 2.64 RPS's assertion that CTAAP should be treated as being at the "*pre-submission*" stage for the purposes of the application of the Government's guidance on prematurity is also clearly absurd. As a matter of fact CTAAP is at the submission draft stage.

Loss of Council Offices

- 2.65 We have commented above on this issue and do not need to comment further on RPS's assertions.

3. LETTER FROM TELFORD AND WREKIN COUNCIL'S HEAD OF PROPERTY AND DESIGN TO RPS DATED 30 NOVEMBER 2009

- 3.1 In this letter TWC has provided RPS with information relating to the possible future location of the replacement facilities for the Civic Offices currently sited on the application site.
- 3.2 This letter refers to a site selection process undertaken by TWC for the replacement of its offices and notes that a recommendation is to be made to a Cabinet meeting in January 2010 for ratification. We assume that the report and papers for that meeting will be available in advance to the public but this has not been confirmed.
- 3.3 The information contained in this letter has not been circulated to the public or the Trustees and therefore provided information from TWC's Estates Department to RPS on a preferential basis. This adds to the serious concerns outlined elsewhere in the representations submitted on behalf of the Trustees that there is, or at the very least there is the appearance of, a conflict of interest between TWC's functions as local planning authority and as land owner as the information contained in that letter has been referred to within RPS's letter of 3 December 2009 and this information is referred to in the officers' report to the Plans Board meeting on 16 December 2009.
- 3.4 It is clear that TWC's letter to RPS of 30 November 2009 cannot pre-judge the deliberation of any Cabinet decision whether in January 2010 or thereafter in relation to the Civic Offices relocation. It is, therefore, clearly premature to treat the East Southwater site referred to within that letter as being endorsed by TWC in any formal sense as an appropriate location.
- 3.5 In addition the letter states that TWC owns the land upon which it intends to build the replacement Civic Offices and aims to have completed the building by December 2012. There is no information within the public domain as to whether or not that is a realistic programme and there appears to be no further investigation by TWC in its capacity as the local planning authority to examine or verify that information as being reliable.
- 3.6 Indeed all the indications are is that there is doubt as to that date as Asda has sought a five year planning permission and the Officers' Report proceeds on the basis that TWC would be willing to grant a planning permission which would have a four year lifetime. If planning permission were then, say, issued early in 2010 for the Asda proposal, Asda would be able to delay implementation until early 2014 with a store opening date in 2015.

- 3.7 As set out in the Trustees' objections to the Asda planning application, the implications of this that there would be a closure of the existing Asda store at the end of the current lease and then there would be a hiatus without any major food store offer within Telford town centre until opening of the new Asda in 2015. The potential impact of this on the town centre has not been assessed at all either by Asda or TWC and this is a major defect in TWC's approach to the assessment of Asda's application.
- 3.8 TWC's approach is also procedurally unfair in that the Trustees in their initial objections to the planning application submitted by Drivers Jonas on 16 November 2009 made specific reference to the uncertain nature of TWC's proposals for the relocation of its offices and there is a legitimate expectation on the Trustees' part that they should have been consulted on the contents of the letter sent by TWC to RPS on 30 November 2009.
- 3.9 The fact that TWC, in its capacity as land owner, has provided RPS with information on this issue on an exclusive basis is regrettable.

4. THE PLANNING OFFICERS' REPORT TO TWC'S PLANS BOARD MEETING ON 16 DECEMBER 2009

4.1 Publicity and consultation

- 4.1.1 Officers' Report states that the Asda application was received by TWC on 23 October 2009. It was advertised on TWC's weekly lists in the week ending 27 October 2009. At that time there was no evidence of the press notice which is required under Article 8 of the Town and Country Planning (General Development Procedure) Order 1995. An email was sent by Drivers Jonas to Gareth Thomas on 18 November 2009 requesting confirmation that the Article 8 notices had been published and details of where they were published. He confirmed on 19 November 2009 that the notices would be put in the Shropshire Star that day, although the notices were actually published on 20 November 2009.
- 4.1.2 The original deadline for consultation responses was 16 November 2009 based on the date publication in the weekly list, however, due to the late publication in a local newspaper, the deadline for comments was extended until 11 December 2009. It is evident that the Officers' Report has been produced in advance of the end of the consultation period, without providing stakeholders with a full opportunity to comment on the application.
- 4.1.3 The Officers' Report also states that 12 immediate neighbours were informed of the planning application. The Trustees, as owners of the shopping centre, were not directly consulted.
- 4.1.4 The Trustees submitted their initial objections to the application on 16 November 2009 and reserved the right to submit additional information at a later date. The Officers' Report has been produced without providing the Trustees, as key landowners and a significant stakeholder in the Town Centre, an opportunity to provide full comments on the application. The Trustees were not directly informed of the proposed date for consideration of the application by members and were not at any time asked for their further comments.
- 4.1.5 When the Asda application was first advertised, TWC's planning officers informed Drivers Jonas in a telephone conversation that the target date for the decision would be 16

January 2010, and indicated that the application was likely to be reported to the Plans Board on 6 January 2010. At no time since that date did TWC inform the Trustees that the committee date had been moved forward. The first the Trustees' knew of the revised committee date was publication of the Officers' Report and a press release issued to that effect.

- 4.1.6 Given the inevitable lead in time for the preparation of report to the Plans Boards (usually a minimum of 2-3 weeks) the Officers' Report has clearly been prepared prematurely, well before the consultation period had finished. It, therefore, by definition cannot have taken all comments into account. In addition, a telephone conversation with officers on 9 December 2009 suggested that many of the consultation responses had only recently been received. This strongly suggests that officers have not been afforded sufficient time to consider these responses.
- 4.1.7 There are some notable absences of comment including from the Highways Agency ("HA") and Advantage West Midlands. TWC has advised that these responses will be included as an addendum to the Officers' Report. It is extremely unusual practice, however, to report a major planning application to a decision-making committee in advance of receipt of key representations, especially when consultation period had not finished when the report was published. The fact that the reporting of the application is premature is evidenced by a comment in the Officers' Report at page 57 where it is stated that *"Your Highway officers have identified inadequacies in the TA lodged with the planning application; these concerns are shared by the Highways Agency who may issue a Direction to defer consideration before meeting of Plans Board this evening."*
- 4.1.8 Not resolving these highways issues prior to the reporting of the application is a serious matter. This is particularly significant given the application relies upon the findings from CTAAP in terms of the highways evidence base, and the policies and proposals contained within CTAAP carry no weight given the plan's recent suspension on the basis of the need for further extensive work required to be completed, including on highways matters. Members should have all the evidence in relation to highways matters before being able to consider this application, and until a formal response has been received from the HA the application should be deferred.
- 4.1.9 There are other statutory consultees who have not yet responded to the application. Below is a list of statutory consultees included in Appendix 7 to the TWC Statement of Community Involvement (May 2006) where, to date, no response has been commented on in the report, so that it must be assumed that no response has been received.
- **Advantage West Midlands**
 - **Commission for Architecture & the Built Environment (CABE)**
 - **English Partnerships (now known as Homes and Communities Agency)**
 - **Government Office West Midlands**
 - **Highways Agency**
 - **Police Architectural Liaison Officer**
 - **Police Crime Risk Officer**
 - **West Midlands Regional Assembly**
- 4.1.10 The reporting of the application in advance of receipt of comments from these statutory bodies is premature and the consideration of the application should be deferred until all

responses are received and the officers have had adequate time to consider and report on those responses.

4.2 Trustees' Objection

4.2.1 Pages 35/36 of the Officers' Report summarise the Trustees' objection, submitted to TWC on 16 November 2009.

4.2.2 On page 42 of the Officers' Report TWC states that the stance taken by the principal objectors to the scheme is an important consideration for TWC as they represent an important stakeholder in the economy of this town centre, however, it is evident having read the Officers' Report, that a number of important points raised by the Trustees' have not been fully considered by officers and, significantly, the Trustees' were given no opportunity to respond to the RPS letter, which was a specific response to their objections.

4.2.3 The importance of consultation with key stakeholders was emphasised by the Inspector at the Exploratory Meeting into CTAAP, where he advised TWC and the Trustees to work with each other with regard to the content of the CTAAP.

4.3 Planning Policy Background

4.3.1 The policy basis for Trustees' objections to the application is set out in the Trustees' letter dated 16 November 2009, however, the Trustees have the following comments on the policy analysis in the Officers' Report:

Wrekin Local Plan (1995 – 2006)

4.3.2 Page 38 of the Officers' Report recognises that the application represents a departure to the Development Plan. Indeed the Proposals Map for the adopted Wrekin Local Plan allocates the site for employment use. Policy TC2 specifically states that retail development should be limited to sites allocated on the Proposals Map ,which the application site is not. The Officers' Report makes reference to the Local Plan being out of date, inferring that such a departure is not a major issue. However, it is appropriate to point out that these policies were saved in 2007 and carry full section 38(6) Planning and Compulsory Purchase Act 2004 weight.

4.3.3 In this context page 41 of the Officers' Report states that strict adherence to Policy TC2 would not "*constitute a proportionate response to the significant growth proposed in the RSS*". This seems to suggest that the sites identified for retail development on the Proposals Map are not sufficient to meet the 50,000 sq m of new retail floorspace proposed in Telford to 2021 (or 70,000 to 2026) as set out in Policy PA11 of the West Midlands RSS Phase II Revision.

4.3.4 This is an incorrect assertion and appears to be based upon the CTAAP "evidence" base, i.e. the second WYG Retail Study ("**WYG2**"). TWC states that appropriate weight should be afforded to the WYG2 alongside PPS6 and the Wrekin Local Plan saved policies. This is a further attempt to justify departure from the saved policies of the adopted development plan. Both CTAAP and the WYG report are under challenge.

Core Strategy

4.3.5 TWC seek to remind members on page 41 of the Officers' Report that Policy CS4 acknowledges that the role of the Central Telford Area will be consolidated and enhanced as the hub of the service centres hierarchy by *inter alia* creating more shops. It is

suggested that the application would therefore accord with the Core Strategy. However, this is evidently not the case, as Policy CS4 of the Core Strategy is broad and deals with Central Telford area in one policy, rather than highlighting particular areas for development where in the Central Telford Area is appropriate for significant retail development is to be covered in an AAP. Currently there is no AAP nor a soundly emerging AAP to guide the application of CS4.

Central Telford Area Action Plan, and supporting evidence

- 4.3.6 Since the submission of the CTAAP the appointed Inspector has raised serious concerns about the Plan and has concluded that in its current state it is likely to found “unsound.” It is relevant to the Asda application that the Inspector raised concerns about the “*vagueness, imprecision and effectiveness*” of, for example, Town Centre proposals TC1 a, b and c.
- 4.3.7 Further the Inspector has raised a series of questions concerning TWC’s retail work. TWC responded that it would undertake additional work to demonstrate that the capacity figures can be supported, but to date the Trustees have seen no evidence of this work.
- 4.3.8 Question 39 of the Inspector’s Initial Questions requires evidence to demonstrate that the proposed retail growth can be accommodated on identified and allocated sites. TWC’s reply referred to the WYG Town Centre Retail Capacity Update (2009) which assessed the capacity of a range of sites to accommodate retail growth, and that this was “*informed and confirmed by pre-application discussions with development stakeholders in this area (Telford Trustees and Asda).*” Yet evidence produced by the Trustees in response to CTAAP clearly demonstrated that there was sufficient capacity to accommodate all the retail floorspace within the PSA, but it is evident that this has not been taken into account.
- 4.3.9 The CTAAP Examination has now been suspended for 6 months pending the completion of further work by TWC. In the Officers’ Report officers have agreed with the Trustees that CTAAP “*should not be afforded any weight given its current uncertain status*” (page 41).
- 4.3.10 Reference to retail need identified by WYG, CTAAP Policy CT2 and accommodating retail need within an extended PSA is, therefore, of no relevance to this planning application.
- 4.3.11 The Officers’ Report states that the Trustees’ position as regards CTAAP is “*inconsistent*” (page 41, paragraph 5) as their objection to the Asda application states that any no weight can be afforded to CTAAP but that determination of the application would be premature in the context of the emerging Area Action Plan. These comments from the Trustees are not in conflict. The Trustees are satisfied that the determination of the Asda application is premature, in advance of the full consideration of CTAAP and that the approval of the application would, in fact, be implementing proposed Policy TC1b, and, thus, the decision would pre-empt full and proper consideration of future retail policies by the Inspector. We comment on the prematurity argument further in our response to the RPS letter above.

National Retail Planning Policy

- 4.3.12 In the absence of any more up-to-date policies, the report states that it is appropriate for the application to be considered against Planning Policy Statement 6 (PPS6). The Trustees agree with TWC on this matter.

- 4.3.13 With regard to emerging National Planning Policy Guidance (PPS4), the Officers' Report states that there is no *"proposed change to the requirement for LPAs to assess the.....sequential approach to site selection....."* This is completely incorrect and misleading to members. Draft PPS4 places even greater emphasis on the 'Town Centres First' approach, and suggests the removal of 'needs test' as a consideration for development proposals. The Draft Statement places an emphasis upon the Sequential approach to site selection and the 'impact' development proposals would have upon existing town centres.
- 4.3.14 Policy EC19 (the consideration of sequential assessments for planning applications for town centre uses), Part 3 states that in considering sites in or on the edge of existing centres developers and operators have demonstrated flexibility about their proposed business model, such as *"the format of their development; more innovative site layouts and store configurations such as multi-storey developments with smaller footprints"* and *"car parking provision; reduced or reconfigured car parking areas"*.
- 4.3.15 In addition Part 6 of Policy EC19, applicants are required to have provided clear evidence to demonstrate why otherwise sequentially-preferable sites are not appropriate for the particular development proposed.
- 4.3.16 Policy EC20 (the impact assessment for planning applications for town centre uses not in accordance with the development plan) states that accessibility of the proposal should be considered, and the impact is on the town centre vitality and viability.
- 4.3.17 Policy EC21 (the consideration of planning applications for development for town centre uses not in a centre nor allocated in an up to date development plan) states that Councils should *"refuse planning permission where the applicant has not demonstrated compliance with the requirements of Policy EC19 (the sequential approach)"* (Policy EC21.1.1).
- 4.3.18 The Trustees consider the planning application is also in direct conflict with the following planning policies, which are not referred to in the Officers' Report:

Planning Policy Statement 1: Delivering Sustainable Development

- 4.3.19 In paragraphs 27 to 29 the Government sets out its general approach to delivering sustainable development. Objectives for local planning authorities' development plan include promoting the more efficient use of land through high density mixed use developments. The application site will not provide a high density of development, nor a genuine mix of uses appropriate to a Town Centre. The proposal is for an out of centre style single level retail box on stilts with a sea of car parking. The application fails to meet design criteria for a town centre site set out in PPS1 and fails to make an efficient sustainable use of the site. Extremely tenuous links are made to a residential application on adjacent land, however, these are two separate applications with no direct functional link and a mix of uses would not be delivered.
- 4.3.20 PPS1 sets out the requirements for development in terms of design. These include the need to: address the connections between people and places; integrate into the existing urban form and the natural and built environments; and be an integral part of the processes for ensuring successful, safe and inclusive towns. The application clearly fails on all these issues. It is of poor design (a basic retail box) which is physically separated by a 2m high proposed wall along the eastern boundary of the site and poorly integrated with the surrounding environment. Furthermore, there is a total lack of justification for the

design approach set out in the Design & Access Statement. It represents an alien development at odds with its surroundings.

- 4.3.21 The Officers' Report states that the scheme shows pedestrian friendly linkages across the Box Road, but the application, which is submitted in full, does not provide details of how this will be achieved. It is also noted that on page 58 of the Officers' Report, the details of this is not required as a condition, unless it is part of 'landscaping implementation'. It appears that TWC has no control over requiring the applicant to provide this link to the rest of the town centre, which is a fundamental justification for improving accessibility of a site which is physically separated from the existing PSA.

Planning Policy Statement: Planning and Climate Change- Supplement to Planning Policy Statement 1 (December 2007)

- 4.3.22 TWC must ensure that proposed development is consistent with the policies of this supplemental PPS (paragraph 39), and the majority of the information should be contained within the Design and Access Statement. This information, however, is evidently lacking from the application. Furthermore, there does not appear to be provision of a detailed Travel Plan in support of the application. The CTAAP Inspector drew attention to the lack of policies contained within CTAAP in relation to climate change and the need for TWC to take a clear stance in its Plan making processes. TWC's response was that it relies upon on developers to bring measures forward. No such measures are proposed by Asda in its application and no consideration is given by TWC to the requirements to meet the provisions of PPS1.

Planning Policy Guidance Note 13: Transport

- 4.3.23 Paragraph 21 notes that local authorities should seek to make maximum use of the most accessible sites, such as those in town centres and others, which are or will be close to major public transport interchanges and thereby reducing the dependency on the car.
- 4.3.24 Well designed traffic management measures can contribute towards planning objectives in a number of ways. They can reduce the impact of motorised traffic in certain areas and help improve the attractiveness of urban areas which should promote safe walking, cycling, and public transport use.
- 4.3.25 This development will encourage people to use their cars more than the existing location. This is explored in more detail later in the report.

Regional planning policy

- 4.3.26 The Officers' Report states that the emerging RSS states that the is proposed growth in households of 26,500 between 2006 and 2026 in Telford, however, as a result of a number of queries being raised to the RSS Phase II Revision, the appointed Panel has decided to prepare an addendum report. Much of this has no relevance to Telford, however, we would like to direct TWC's members and officers to the revised housing trajectory on Page 2 of the report. This clearly highlights that residential development will be back loaded. It is anticipated that only 775 dwellings per annum can be delivered in Telford up to 2011, and only 1,170 dwellings per annum for the next 5 year period to 2016. This results in less than 9,500 new homes by 2016, which is only 36% of the 20 year target. The housing delivery is heavily back loaded to the period 2016-2021 (8,000 homes) and even more so for 2021-2026 (8,775 homes).
- 4.3.27 This document represents the most relevant and up-to-date information available, and further undermines the proposals of TWC to frontload retail development. Furthermore,

the WYG Retail Assessment, which TWC seek to utilise in order to justify quantitative and qualitative need for the development does not take account of the slower than originally anticipated housing growth, and coupled with the overcooked estimated growth rates in comparison retail expenditure (to which we have already raised objection to CTAAP) seems to provide even further justification that the WYG Retail Assessment is not based on sound or robust population and expenditure analysis. This is further justification as to why the WYG Retail Study should not be given any weight for development control purposes.

4.4 Retail Planning Considerations

General Comments

- 4.4.1 To the extent that there is a qualitative need for a new foodstore to replace the existing facility in accordance with national, regional and local policy, this should be provided within the existing PSA.
- 4.4.2 TWC was informed by letter from Drivers Jonas dated 13 November 2009 that the Trustees proposed submitting a planning application for the development of the Red Oak car park. A consultation event took place on 25 November 2009 and a pre-application meeting was held on 1 December 2009. Although at the time of writing the Officers' Report no application had been made (it was submitted on 11 December 2009), TWC acknowledges in the Officers' Report that it *'might be facing proposals that may appear on the face of it to be competing directly for a slice of the retail capacity available in Telford'*.
- 4.4.3 Despite the knowledge held by TWC about the forthcoming Trustees' application, nowhere in the report is there any consideration of the Trustees' proposals for the Red Oak car park in determining the Asda planning application.
- 4.4.4 This is inherently inappropriate as it is recognised by TWC that it is 'competing' and, therefore, a material consideration that should be given due account. The issue is not one of need but the fact that the Trustees' application is proposed within the PSA on a sequentially preferable site in PPS6 terms, and TWC is thus wrong in the assertion that the Trustees are *'seeking a slice of the retail capacity available in Telford'*. This statement suggests the Trustees would consider both applications being approved, whereas in fact it is the Trustees' view that the Asda application should be refused, and that a major retail anchor should be retained in the PSA by approving the planning application on Red Oak Car Park.

Quantitative Need

- 4.4.5 On Page 43 of the Officers' Report TWC states that the applicant has utilised TWC's WYG Borough-wide Retail Study to determine whether the additional floorspace would prejudice TWC's objective of securing the future health of the town centre. Commentary is then provided on the expenditure capacity identified by WYG for convenience goods. In the first instance we re-iterate that TWC's WYG Retail Study should be given no weight. It has been prepared as part of the evidence base of the CTAAP, to which the Inspectorate have identified as being unsound at an exploratory meeting in November 2009.
- 4.4.6 The 'headroom capacity' identified by WYG is also purely based upon the 'overtrading of other stores against benchmark turnovers'. This represents a qualitative need as opposed to a quantitative need. Furthermore, some stores are naturally designed to trade at higher levels than others. Overtrading above benchmark turnover should not be seen as a

negative that requires development unless the overtrading is to such an extent that it is to the detriment of the customers shopping experience.

- 4.4.7 The evidence submitted by Asda does not undertake a health check of any of the existing stores in the catchment. As stated above in response to the RPS letter, no assessment has been presented that demonstrates that any of the stores suffer from factors that could be negative to the shoppers' experience. Without this evidence it is not sufficient to claim that any overtrading above company average turnovers should be directed to a new additional foodstore.
- 4.4.8 At paragraph 3.17 of their objections, the Trustees contest that the catchment area defined is not appropriate. This is directly linked to Paragraph 3.10 of PPS6. In response TWC state that a 'short sensitivity analysis has been undertaken comparing the outputs of a more appropriate 10-15 minute drive time, which shows 'reasonable' correlation. No explicit evidence has been provided to the Trustees to satisfy their concerns on this matter, and we request that further work is undertaken to demonstrate that this matter has been satisfied.
- 4.4.9 The applicant also assumes that all 'headroom capacity' should be directed to Telford as opposed to re-apportioned to other existing centres within the district. Apportioning all of the headroom capacity identified by WYG to Telford Town Centre is an absurd approach to take as it suggests that a significant number of people (particularly from the north and west) would indeed by-pass an existing Asda Store at Donnington and other large foodstores in order to travel further to a smaller store in Telford. This assumption cannot be deemed to be correct.

Qualitative Need

- 4.4.10 The evidence provided by the applicant with regard to qualitative need is confused and wholly unsatisfactory. The applicant claims that the store is under-trading for a number of reasons. Whereas TWC state on page 45 that *'This is at odds with the applicants own RIA and tables, which suggest that the store is over-trading'*. This matter was highlighted by the Trustees in paragraph 3.21 of their objection letter dated 16 November 2009. TWC claim that *'this has little effect on retail capacity'* yet it brings into question the validity of the evidence being presented, which in a case such as this, whereby a retail anchor to a town centre is being re-located to an edge-of-centre location, should be completely robust.
- 4.4.11 TWC is wrong in its assertion, that the Trustees 'seriously question the applicant's claim that Tesco Extra is overtrading by 70% and Donnington Wood by 100%'. The Trustees have simply requested that more robust evidence is presented to demonstrate this claim, particularly given it is information that the applicant should easily have to hand, whereas TWC appear not to fully question the validity of the information provided to them on this matter stating *'whether the figures are entirely accurate is open to conjecture, but your officers acknowledge that there is evidence of over-trading at both the out-of-centre stores'*. The appropriate stance to take would be to request further information and provide officers, members and the public with comfort that Asda's figures are correct, particularly given that it is based on WYG's evidence which cannot be given any weight at this stage.
- 4.4.12 As the application is contrary to policy and would be subject to a referral for call-in by the Secretary of State, therefore, any evidence should be robust and open to scrutiny. The Trustees are concerned that TWC does not have sufficient hard evidence to satisfy itself

of such significant levels of overtrading, and the approach of TWC in determining this application does not appear impartial. Furthermore, as previously stated in our representations, any available expenditure should be directed to the Town Centre sites, for example the Red Oak Car Park in the first instance, not to edge-of-centre or out-of-centre locations.

4.4.13 The fact that '*members will need to ask themselves whether the new store (proposed by Asda) will lead to qualitative improvements*' is one factor to be considered. This factor is secondary to the need to maintain/enhance town centre viability and adopt a 'town centre first' approach to development. In the context of development control, PPS6 requires applicants to demonstrate that the proposal would satisfy all 5 tests set out in Paragraph 3.4 of the Guidance. Furthermore, whilst in qualitative terms, providing customer choice is a consideration, it should certainly not override the "*town centres first*" approach, particularly where development of a out-of-centre site would have a detrimental impact upon an existing town centre and when there is evidence submitted in the form of a robust planning application (by the Trustees) to demonstrate that qualitative improvements can be met within the PSA.

4.4.14 The qualitative improvements listed on page 45 also seem to disregard linked trips associated with a town centre supermarket, and in particular disregard qualitative improvements for disabled persons. The existing store location (and indeed the Red Oak Car Park) offer a direct convenient link for disabled persons to the rest of the shopping centre at grade level facilitating linked trips. The Asda proposal to move the supermarket approximately 200m from an entrance to the shopping centre, which can only be accessed by crossing of a busy road will discourage many people from combining visits to the existing centre. This will specifically apply to disabled persons, particularly given that the proposed Asda is to be provided on stilts i.e. not at grade level. This cannot be deemed to represent a qualitative enhancement to the shopping experience of the physically impaired.

Need v Location

4.4.15 In any event whatever the need position the "town centre first" policy requires that development be directed to the town centre. Only if there are no sequentially preferable sites available can Asda hope to be given planning permission for the Civic Offices site.

Sequential Approach

4.4.16 On Page 46 TWC accepts that the PSA is defined as the land within the 'Box Road'. This is confirmed by the adopted Local Plan which allocates land within the Box Road for retail development. Work carried out by TWC in relation to the preparation of the CTAAP refers to land within the Box Road as the 'Existing PSA'.

4.4.17 On this basis, whilst it is agreed that PPS6 contains the most appropriate policy tests for considering retail planning applications, the Local Plan cannot be disregarded. It is accepted by Asda that the application site is an edge-of-centre site and therefore in accordance with paragraphs 3.13 – 3.19 of PPS6 a sequential test is required. As stated in paragraph 2.3 of the Trustees' objections, PPS6 specifically states that '*where it is argued that otherwise sequentially preferable sites are not appropriate for the particular development proposed, **applicants should provide clear evidence to demonstrate why such sites are not practicable alternatives in terms of availability, suitability and viability***'.

- 4.4.18 Paragraph 3.15 of PPS6 states that "*developers and operators should be able to demonstrate that in seeking to find a site in or on the edge of existing centres they have been flexible about their proposed business model*". These will include consideration of "*...the scale of their development; the format of their development; car parking provision; and the scope for disaggregation.*"
- 4.4.19 Paragraph 3.16 of PPS6 specifically states that purpose of the sequential test is '*to explore the possibility of enabling the development to fit onto more central sites by reducing the footprint of the proposal. In seeking to demonstrate flexibility under Paragraph 3.15 above, developers and operators should consider, in terms of scale: reducing the floorspace of the development; in terms of format: more innovative site layouts and store configurations such as multi-storey developments with smaller footprints; and, in terms of car parking: reduced or reconfigured car parking areas*'.
- 4.4.20 Requesting a minimum site area of 2.2 hectares as a pre-requisite for development does not represent a flexible approach. There are numerous examples of large supermarkets which can be accommodated on town centre sites smaller than 2.2 hectares in size. Furthermore TWC points out that the applicants have already compromised by 'incorporating undercroft car parking and travelators into the design of their store'. The applicants claim that it would be unreasonable to expect them to further reduce their minimum area requirement, which is considered '*reasonable*' by officers.

Red Oak Car Park

- 4.4.21 The Trustees maintain that the Red Oak Car Park is suitable, available and viable for development. The Trustees have submitted an outline application for mixed use development including a new supermarket, which can accommodate the specifics contained in Asda's application on a sequentially preferable site. The site is over 2.2 hectares; provides over 500 car parking spaces; and provides a sales floor of equivalent size (or larger) than that proposed by Asda at grade level with undercroft car parking which is linked by a travelator. Indeed the application highlights that a direct replica of the Asda store can indeed be accommodated within the PSA on a sequentially preferable site.
- 4.4.22 In the Officers' Report TWC has specifically stated that Red Oak Car Park is sequentially preferable.
- 4.4.23 We have set out in the response to the RPS letter the Trustees comments regarding the validity in planning terms of the "ability" of Asda to block the development of the Red Oak car park via the provisions of the lease it holds on the site.
- 4.4.24 It is also worth noting that TWC places great significance on delivery of a new store in Telford by 2014. Not only does it place 'need' over all other town centre issues, TWC claims that the sequentially preferable site (the Red Oak Car Park) cannot be delivered until after 2014. This is simply not the case. It is also worth noting, however, unless TWC is proposing to move to temporary accommodation, the Asda proposals for Southwater are subject to the securing of an alternative site for TWCs offices; securing planning permission for that development; building the replacement offices; relocating the offices; subsequent demolition of Malinslee House; and then redevelopment of the cleared site for a new foodstore. The delivery, therefore, of the site for a new foodstore is entirely dependent on a number of other subsequent events. Even if these were to accord with the proposed programme it is evident that a new foodstore could not be delivered until 2014.

- 4.4.25 Furthermore it is noted that the civic offices site is bound by a restrictive covenant in favour of the Homes and Communities Agency which restricts the use of the land for any other use than an office building. This restriction is not referred to in the RPS letter or the Officers' Report yet Asda and TWC's argument that the Red Oak Car Park will not be available until after 2014 rests on a covenant in favour of Asda.
- 4.4.26 It is evident that Asda is not anticipating delivering the foodstore on the Southwater site before 2014 given that it sought a five year implementation period to enable the sequence of events outlined above to be completed.
- 4.4.27 In contrast, Asda's lease for Red Oak Car Park expires in April 2014 and the replacement store for Asda could be delivered on the Red Oak car park in advance of that date.
- 4.4.28 Similarly, the Ash Grey Car Park could also accommodate a new foodstore (albeit compromised with multi-level car parking), yet TWC concludes that 'Realistically, there are few opportunities within the Box Road' (the PSA). This again seems to represent a one-sided view, based solely on Asda's submission and the RPS letter dated 3 December 2009, that provides no regard to the Trustees' proposal which is an appropriate solution that would avoid any conflict with national planning policy.
- 4.4.29 With regard to Central Southwater, TWC dismisses the existing retail boxes as unsuitable because the 'Range' is occupied and the car park is in use. Both these matters apply in equal measure to TWC Civic Offices site, which is occupied. It also discards the Paragraph 2.5(xxiii) of the Trustees' objections. In total Central Southwater, which benefits from better links to the PSA (and is therefore sequentially preferable) comprises two retail units of 1,780 sq m and over 3,500 sq m: one is vacant, whilst the other unit could be vacated at short notice (i.e. within a period of 6 months). Had TWC even asked the Trustees this one question on this simple point, TWC's report could have been accurate in this regard. On this basis this site cannot be dismissed on the basis of suitability or availability. No evidence is presented to suggest it is unviable.

Retail Impacts on the Town Centre

- 4.4.30 On Page 48 of the Officers' Report TWC states that the applicant has provided a useful health check of Telford. The applicant's health check suggests Telford is a thriving shopping centre with good indicators of vitality and viability.
- 4.4.31 Evidence submitted by the Trustees (i.e. the owners of the Shopping Centre) contradicts the applicant's health check. As stated at paragraph 3.11 of the Trustees objections, vacancies in the centre have increased from 2.2% to 14.4% in the past 2 years. A vacancy rate of 14% is above the national average and, therefore, highlights the impact of the recession upon Telford. TWC has not paid sufficient regard to the evidence provided by the Trustees. It is stated in the Officers' Report that *'your officers believe that there is a quantitative need for additional capacity to be provided in the convenience sector going forward and that arguments about the current economic climate do not alter the fact that we are planning for a period well beyond the present recession'*.
- 4.4.32 Need is only one factor: TWC has not paid sufficient regard to the impact of the proposal on a town centre that has already suffered as a result of the current recession. The approach adopted which seeks to deliver need (which in itself is based on a flawed and unsound evidence base (the WYG Study)) without full consideration of impact runs completely at odds with the Government's objectives for Town Centres as set out in PPG6.

- 4.4.33 As stated at paragraph 3.31 of the Trustees' objections, the Asda proposal would result in the removal of £30.1 million of convenience expenditure from the PSA and a further £13m of comparison goods expenditure, thus even the evidence presented by Asda, itself, clearly identifies that 71% of all existing convenience expenditure in Telford Town Centre would be removed from the PSA. Taken in isolation, this represents an enormous impact upon the Town Centre, before any consideration is given to linked trips, or investor confidence. TWC appear to have completely disregarded these potential impacts (which is based on relevant and up-to-date market information), on the assumption that the existing Asda unit would be re-occupied. TWC states on page 48 '*This assessment has to assume that the existing Asda store would be re-occupied for it to be realistic in terms of impact on the Town Centre*'.
- 4.4.34 We have commented on this in full in our response to the RPS letter, but in summary the Trustees' clear position is that the existing store is unlikely to be re-occupied by another operator. The Trustees' assertion is based upon their own discussions and market information, and nothing has been presented by the applicant to suggest this is not the case. The worst case scenario (i.e. Asda re-locate to Southwater and the existing store is not re-occupied) has not been assessed by the applicant. The most likely impact of this proposal is a direct trade draw of £43.1 million and several hundred jobs from a town centre to an edge-of-centre location.
- 4.4.35 Asda suggests that developing the Red Oak car park is not possible due to a loss of car parking and there would be an 80% reduction to Asda's trade. Not only does this rely on the missing illustrations referred to above but the existing store is also located in a highly sustainable town centre location and is also located adjacent to the Ash Grey Car Park which provides a further circa 400 spaces. The first phase of the Trustees' application would be to facilitate improved access to the existing Ash Grey Car Park prior to commencement of construction. Furthermore, the car parking strategy appended to the Transport Assessment submitted with the Trustees' application demonstrates a number of commitments to improve access to the other car parks within the town centre. It is difficult to understand how such a scenario could possibly result in an 80% reduction to Asda's trade.
- 4.4.36 In the Trustees' view the officers have not taken account of all considerations and have wrongly reached the conclusion that '*there is a compelling argument to suggest that in order to secure the best outcome for the town centre the local planning authority should support the relocation of Asda to a new purpose built store without disruption and then pave the way for the redevelopment of the Red Oak Car Park site and existing Asda*'. This suggests that a permanent detrimental impact upon the Town Centre is acceptable provided there is no short term impact upon Asda. This is completely contrary to the Government's objectives to promote town centres. The assertion that the '*alternative would slow down retail growth in the town centre*' is based solely upon the position of Asda. If it was to release its covenants the Red Oak Car Park could be delivered in similar timescales to the applicants proposals for Southwater.
- 4.4.37 To conclude that the proposal would not harm the vitality and viability of the town centre in terms of retail impact is inherently wrong. There are also sequentially preferable sites within the PSA which can accommodate Asda's requirements. Furthermore, this could be delivered in a similar timescale to the proposals for Southwater. The Trustees completely disagree with the officers' conclusion that the proposal accords with national and local planning policy in relation to retail planning considerations. It clearly does not.

4.5 Design

- 4.5.1 As noted in the Trustees' objections, the applicant's proposal does not engage with neighbouring sites or encourage future engagement as it includes a sea of car parking at level across the whole of the site with the store at least four metres in the air above half of it.
- 4.5.2 No ground level activities are provided at any edges of the site the only activity indicated is the centre door to the travelator, which is 60 m from the nearest boundary. The site analysis in the Design and Access Statement identifies the front two thirds of the south elevation as a location requiring active frontage, however, this aspiration is not carried forward by the scheme drawings which show a blank elevation completely void of any activity.
- 4.5.3 The building presents the land to the north west of the site with a long blank 7m tall elevation, within 5m distance of the existing job centre. This elevation is the only part of the building which directly relates to any edges of the site, but unfortunately this 75m long inactive edge is against an existing footpath, thereby creating a very hostile environment.
- 4.5.4 None of these concerns have been addressed in the Officers' Report, and it is even suggested that the application will seek to assist with providing a new 'high street' leading from the Telford International Centre leading to this site, although in relation to the retaining wall with a 2.5m level difference at key points it is stated that this is '*unfortunate*'.
- 4.5.5 The Officers' Report also states that there will be pedestrian routes across to the town centre which will sufficiently overcome the physical constraints of the site, however, although the application makes reference to "*pedestrian friendly crossings over the highway towards the House of Fraser and the Town Centre beyond*" this is not provided in any detail to demonstrate that this is achievable.
- 4.5.6 Paragraph 4.80 of CTAAP states that the downgrading of the Box Road is crucial in facilitating the delivery of CTAAP, Table 5 (Major Schemes) states that the downgrading on the Box Road will not start any earlier than 2015 or after completion of highway capacity improvements, therefore, the proposed extension to the PSA could not begin to be considered to be capable of being connected with the existing PSA until after 2016, which means that the extension is not in accordance with PPS6 and emerging PPS4.
- 4.5.7 In addition, the Inspector for the CTAAP expressed concern about the transport, requiring additional work on the transport matters which must be completed before the CTAAP.
- 4.5.8 Finally, the Officers' Report states that with suitable conditions requiring the submission of further details the development can be supported from a design point of view, however, as the application is in full, this information should have already been provided to demonstrate that a high level of design will be achieved.

Transport & Highways

- 4.5.9 On behalf of the Trustees, Peter Brett Associates ("**PBA**") has undertaken an extensive review of the application submitted by Asda for development of Southwater. In the first instance it should be noted that page 32 of the Officers' Report identifies that the Environmental Impact Assessment ("**EIA**") was accompanied by a Traffic Assessment and Outline Travel Plan. This is incorrect. The EIA was accompanied by a Transport Assessment and a Travel Plan Framework.

- 4.5.10 In accordance with PPS1 and the Department for Transport 'Good Practice Guidelines: Delivering Travel Plans through the Planning Process', A Full Travel Plan should have accompanied the EIA. The guidance specifically states that "*Full travel plans are appropriate for full planning applications where the proposed use and accessibility needs are known.*"
- 4.5.11 Page 34 of the Officers' Report states that as part of the section 106 agreement £720,000 will be contributed for major highways projects (in line with a plan led approach advocated in the CTAAP). It is not clear what the contributions are for. Furthermore, this makes reference to CTAAP, which as previously re-iterated several times by the Trustees and accepted by TWC, should not be given any weight.
- 4.5.12 The Officers' Report states that the Transport Assessment ("TA") has been produced using a different methodology to that currently being employed by the Local Highway Authority ("LHA"). The TA should be produced using the 'Guidance on Transport Assessments (2007)' issued by the Department for Communities and Local Government and the Department for Transport. Therefore this cannot be considered sufficient.
- 4.5.13 It is also stated that the LHA is adopting a plan led approach (through CTAAP) to determine the impact of the development on the local highway network using both a VISUM and VISSIM model to ascertain the impact of the development. Once again this makes reference to CTAAP, even though it is accepted that the CTAAP should be given no weight and has been suspended by the Inspectorate (with highways being one of the fundamental reasons for the suspension).
- 4.5.14 It is noted that TWC's own highways department has stated that the pedestrian crossing proposed at Coach/Malinsgate/Woodhouse is not satisfactory at this time. The LHA has suggested revisions that need to be made to the junction and therefore have not accepted that it operates adequately. This is fundamental to the applicant's rather tenuous proposals to improve accessibility to the site and improve links to the Town Centre. The Trustees fail to understand how conditional consent can be given to something that is known not to work. Until the information provided is satisfactory, the application should not be approved.
- 4.5.15 Reference is made in the Officers' Report that the site has a pedestrian entrance off Southwater Way which ties into the proposed realigned footway link to Malinslee. According to Figure 4 there is a newly proposed pedestrian entrance not a realigned footway. The details on this proposal are unclear, and have not been clarified by TWC. Once again access to this site (as it is separated from the town centre) is fundamental, and the application should not be approved without an acceptable access strategy.
- 4.5.16 Page 51 of the Officers' Report states that conditions for traffic and pedestrians will be enhanced by introducing a full traffic signal control that will be integrated with the existing House of Fraser car park traffic signals. In terms of what has been submitted integrating these signals does not appear to enhance conditions for traffic or pedestrians. The work submitted shows a vehicle queue regularly stretching back over the pedestrian crossing.
- 4.5.17 Page 42 of the Officers' Report states that the applicant's traffic modelling undertaken for the application represents the most up-to-date methodology available to TWC, however, it is unclear whether this accounts for the updated work which has recently been completed since this application has gone in. It is unclear if the modelling work is up-to-date or whether it has been checked. It has not been shown whether the development can be accommodated within the highway network. The mitigating highways and

transportation measures identified have not been seen, and this is yet another fundamental issue for this application which has not been clarified, therefore TWC's conclusions on page 59 that traffic movements generated by the development can be accommodated without detriment to the highway safety, cannot be relied upon.

- 4.5.18 With regard to cycling provision it is completely unclear from the application content, whether as required Asda has complied with BREEAM Standards.
- 4.5.19 With regard to servicing arrangements, the Officers' Report suggests that the proposals for service vehicles are sufficient, yet the auto-track layout shows service vehicles having to travel over the centre lining. Also minor changes proposed by the LHA do not appear to address this issue.
- 4.5.20 There are a number of procedural errors with regard to this application in highways terms. Indeed page 56 of the Officers' Report states that a plan led approach has been applied to planning contributions. This approach has also been applied to traffic impact which is incorrect.
- 4.5.21 It is noted that, due to inadequacies in the TA the HA may issue a 'Direction to defer' consideration before the meeting of Plans Board this evening.
- 4.5.22 Public Transport does not appear to be considered at all.

4.6 **Planning Obligations**

- 4.6.1 The report states that as TWC owns the site the avenue of a Section 106 obligation is "*not open to the Plans Board*" and that rather than enter into an agreement with itself "*commitments will be made on behalf of the Council as landowner to abide by the planning "obligations" and, should the land be transferred to make it a condition of that transfer that the new owner will have to enter into a Section 106 agreement to ensure that the obligations bind future owners*".
- 4.6.2 Our comments are as follows:
- (a) a payment of £720,000 is being proposed for unspecified "*major highway schemes*". It is therefore not clear what schemes are going to benefit from this payment or possible to assess whether their delivery is reasonably required by the proposed development and if so whether the payment is enough or excessive;
 - (b) where highway works are required in advance of the opening of the proposed development they should be the subject of planning conditions restricting the opening of the development until they have been completed;
 - (c) in the absence of any reasoned justification for the payment of £720,000 it is not possible to derive the weight that can properly be attached to that factor by members in reaching any decision;
 - (d) as TWC will be aware that extraneous benefits beyond those reasonably required should not be sought by local planning authorities through planning obligations;
 - (e) for these reasons the Officers' Report does not satisfy the appropriate tests to establish the legitimacy of such a contribution which is the absence of such justification gives the appearance of "*planning gain*" being sought for the general financial wellbeing of TWC to spend at its discretion on unspecified works which may or may not be necessary as a result of the development;
 - (f) the lack of detail also prejudices the public in responding to the application and is assessing what the cumulative impacts of the development will be. Unless the

schemes that this contribution is to be spent on are identified and subject to public consultation the full extent of the likely significant effects of the development on the environment cannot be established.

4.6.3 In addition full drafts of the heads of terms and the detailed provisions of the obligations must be made available for public comment by TWC.

4.7 **Proposed Reasons**

4.7.1 The Officers' Report to the Plans Board sets out at page 59 a set of purported reasons for the grant of any permission. The requirement to give reasons arises from Article 22(1) of the General Development Procedure Order 1995 (as amended).

4.7.2 The reasons contained in the request are not, however, adequate and do not comply with the requirements of Article 22(1). They are not stated clearly and precisely, are not full and do not specify all policies and proposals in the development plan which are relevant to the decision. In addition they do not summarize all of the substantial issues which have been raised by the application and consultation upon it.

4.7.3 In addition we would respectfully remind TWC of the need in this case to comply with the requirements for reasons pursuant to Regulation 21 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.

5. **CONCLUSIONS**

5.1 The documents referred to above at Sections 2 and 3 of this note and the manner in which they have been taken into account without proper scrutiny, assessment or evaluation by TWC's officers in preparing their the Officers' Report meeting is of serious concern. A detailed review of the representations identifies that there are inconsistencies in the approach adopted by Asda and its professional team in assessing the planning application and that unchecked assertions from Asda's commercial agents have been taken at face value without scrutiny by TWC's planning officers.

5.2 When read in the context of these representations and other matters the clear impression is that TWC is processing the Asda application on a fast track basis and there has been an unacceptable lack of proper public consultation on the application.

5.3 Key to the determination of the Asda application is that this is a proposal for major retail development in an edge of centre site where there remain sequentially preferable and available sites, not least the Red Oak Car Park. In accordance with PPS6, therefore, as well as the adopted local plan the application can only be refused by a local planning authority acting properly.

DRIVERS JONAS/NABARRO LLP
14 DECEMBER 2009



N A B A R R O

Via e-mail and post
gareth.thomas@telford.gov.uk

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For Attention of: Gareth Thomas

17 December 2009

Our ref: PH/MDE/T1784/00003

Dear Sirs

Town and Country Planning Act 1990: Proposed Asda Store at Land at West Southwater, Telford – Application made on behalf of Asda Stores Limited (LPA Ref. No. W2009/0915)

Drivers Jonas have forwarded to us a copy of your e-mail to Claire Morison of 16 December 2009.

In your e-mail you confirm that the Plans Board Chairman has decided to defer consideration of the Asda supermarket application until 6 January 2010 *"to allow the applicant an opportunity to respond to your late representations"*.

Our comments are as follows:

1. None of the representations that have been submitted on behalf of the Trustees in respect of the Asda application have been *"late"* as stated by your e-mail. The only representations submitted after the formal deadline for public comment on 11 December 2009 were those accompanying our letter to you of 14 December 2009 which commented upon supplementary information submitted in support of the Asda application (which was not made available to the Trustees or the public until 10 December 2009) and the officers' report to the Plans Board meeting itself (which was not published until 9 December 2009). In these circumstances your suggestion that the Trustees' representations were *"late"* is wholly unreasonable and raises further doubt as to impartiality of TWC's approach to the determination of the Asda application.
2. You have still not provided to the Trustees copies of Illustrations A and B attached to RPS's letter to TWC of 3 December 2009 although these have been specifically requested. As stated in our letter to you of 14 December 2009 the Trustees' representations on the illustrations will be highly material considerations which members will need to take into account in their determination of the Asda application. In order to avoid compounding the unreasonable manner in which public consultation on the Asda application has proceeded to date please would you send us copies of the illustrations by e-mail by return and provide your written confirmation that the Trustees will be given a reasonable period to review them with their professional team and provide comments to TWC. On the basis that those illustrations are sent to us today we will

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To: Planning Department
Date: 17 December 2009
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then be able to review with the Trustees' team how long it is likely to take to review those illustrations (clearly this is dependent upon what they show or say) and respond to you with a view to agreeing a timetable for the Trustees to produce further representations. The Trustees are likely to request a period of 21 days within which to produce such comments.

3. Please would you also provide your written confirmation of what steps are going to be taken to ensure that the Illustrations A and B are made available to the public for comment. We are concerned that TWC's approach to placing documentation relating to the Asda application on its website to date has been inadequate.
4. In your e-mail you have said that Asda would be allowed the opportunity to respond to the Trustees' latest representations. Please would you provide your written confirmation of when Asda has been asked to provide its comments by?
5. In the interests of procedural fairness and proper consultation please would you provide your written confirmation that we will be sent a set of any further representations which are submitted by Asda or its professional team by e-mail immediately that they are received by TWC and provided with a reasonable period for comment. Clearly it would be unacceptable if the Trustees are expected to respond to any further representations from Asda within a period which is shorter than the period which TWC affords Asda to respond to the representations submitted on behalf of the Trustees.
6. In your e-mail of 16 December 2009 you state that the Plans Board Chairman has agreed to defer consideration of the application until 6 January 2010. We understand that at the Plans Board meeting yesterday in announcing the deferral no reference was made to the application being reported back to the meeting on 6 January 2010 and the Plans Board Chairman stated that he hoped the matter would be brought back to the committee in January without specifying a date. Please would you provide your written confirmation as to whether the application will, in fact, be reported back to the Plans Board meeting on 6 January 2010.
7. Please would you provide your written confirmation of the deadline for publication of any Addendum Report to the Plans Board meeting on 6 January 2010 (or any subsequent meetings in January 2010).
8. Please will you confirm that when any Addendum Report to the Plans Board meeting on 6 January 2010 (or any subsequent meetings in January 2010) is published any further material submitted in respect of the Asda application will be placed on TWC's website and made publicly available. Given the failure of TWC to publish all submitted information (in particular Illustrations A and B submitted by RPS on 3 December 2009 as referred to above) in advance of the scheduled Plans Board meeting on 16 December 2009, we wish to have your specific assurance that this will not happen again.
9. Drivers Jonas' letter of 11 December 2009 submitting the Trustees' outline planning application for the redevelopment of the Red Oak Car Park within Telford town centre requested TWC's confirmation that the Trustees' planning application and Asda's supermarket application will be reported to the same planning committee meeting given that, in effect, a decision to grant planning permission for Asda's proposals on the Civic Offices site would be to reach a decision which would prevent the redevelopment of the Red Oak Car Park option and any such decision would, in effect, predetermine whether development could proceed on the Red Oak Car Park.



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Clearly TWC will not be in a position to consider the Trustees' planning application at the Plans Board meeting on 6 January 2010 or be in a position to fully report on the proposals which have been prepared by the Trustees and are the subject of their outline planning application. The existence and contents of the Trustees' outline planning application are, clearly, highly material considerations in the assessment of the Asda supermarket application given that the Trustees' proposals demonstrate that there is an available, suitable and viable option to accommodate the development now proposed by Asda on the Civic Offices site within the existing primary shopping area within Telford.

10. As a result we reiterate the request set out in Drivers Jonas' letter of 11 December 2009 and look forward to hearing from you by return.

Please would you provide us with your written response to points 2 to 9 (inclusive) above by close of business on Friday, 18 December 2009 to allow us to consider the position further with the Trustees.

Yours faithfully

Nabarro LLP

NABARRO LLP



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For Attention of: Gareth Thomas

22 December 2009

Our ref: PH/MDE/T1784/00003

Dear Sirs

Town and Country Planning Act 1990: Proposed Asda Store at Land at West Southwater, Telford – Application made on behalf of Asda Stores Limited (LPA Ref. No. W2009/0915) and outline application for residential development (LPA Ref. No. W2009/0945)

Thank you for your letter sent on 18 December 2009 in response to our letter of 17 December 2009. We note your letter was dated 16 December 2009 in error.

Our comments using your numbered paragraphs are as follows:

1. The representations submitted on the last day of the consultation period were by definition not late as they were within the consultation period. These included the Briefing Note prepared by Waterman dated December 2009. The date at the foot of the Briefing Note of 5 November 2009 was the date that the first draft of this note was prepared. Its final content was not settled until its submission on 11 December 2009. Again we would reiterate that Drivers Jonas' letter of 16 November 2009 made express reference to the fact that the Trustees reserved their right to comment in due course on additional matters, for example the approach adopted in the Environmental Statement once their review of the planning application had been completed. Given that Telford & Wrekin Council ("**TWC**") had identified 11 December 2009 as the date by which public comment on the planning application had to be submitted the Trustees, working with Waterman, programmed the completion of that review by the deadline set by TWC.

We note your comments regarding the impartiality of TWC as local planning authority and your reference to the deferral of the determination of the applications as evidence of the fairness of the determination process. We reject that assertion because the need to defer the determination clearly arose from the wholly unreasonable approach TWC had adopted in reporting the applications to the Plans Board meeting on 16 December 2009. For the reasons set out below it is also regrettable that it appears that similar criticisms are highly likely to arise given TWC's intention to report the applications to the Plans Board meeting on 6 January 2010.

2. We can confirm that we have now received the illustrations referred to in RPS's letter to TWC of 3 December 2009. We note that you have asked for our final representations on or before 4

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January 2010. We will review the illustrations with the Trustees' professional team and confirm separately whether we regard this as a reasonable deadline.

3. We note your comments on TWC's approach to correspondence submitted as part of the planning application not being made available on its website. This is highly unfortunate and contrasts with many local planning authorities where representations are put on websites. We note, however, that you have confirmed that you will forward to us RPS's response to your letter to RPS of 15 December 2009 as soon as it is received and, as confirmed at your response at numbered paragraph 5, will also forward to us any other relevant correspondence.
4. We note from your letter to RPS of 15 December 2009 that you have asked for their detailed response to the points raised in the Trustees' representations on or before 23 December 2009 and that these will be sent to us upon receipt. Please would you confirm that these are going to be e-mailed to us on or before 23 December 2009 upon receipt by TWC.
5. Noted.
6. Noted.
7. We are surprised to note that you are preparing to issue your report to the Plans Board meeting on 6 January 2010 on 28 December 2009 after you have received RPS's comments but before you receive the Trustees' comments. In addition we are not sure how you intend to fully review and independently assess RPS's response if that is received on 23 December 2009 and then publish a report on 28 December 2009 which is a Bank Holiday and also only one working day after the latest date for RPS's representations to be submitted. The programme you have set out also means that you will have settled your report without having been able to take into account the further representations from the Trustees which you have asked to be submitted on or before 4 January 2010. Again this reiterates the concern expressed in our letter of 14 December 2009 that the application is being fast tracked at the cost of consultation with key stakeholders.
8. Noted.
9. You have asked us to provide further explanation of why the Trustees' planning application and the Asda supermarket application should be reported to the same Plans Board meeting. The main reasons are as follows:
 - (a) the Trustees' planning application demonstrates a suitable, available and viable alternative to the Asda proposal on the Civic Offices site. As such it is highly relevant that it is taken into account in applying the sequential approach to the Asda proposals on the Civic Offices site;
 - (b) in the absence of such joint consideration the question of pre-determination arises because if planning permission is granted for Asda on the Civic Offices site then the position is that it is highly unlikely that an alternative supermarket operator will be prepared to invest in the Red Oak Car Park scheme or negotiate terms with the Trustees for re-occupation of the existing Asda unit within the primary shopping area or any extension or refurbishment of that unit. This would be the consequence of a decision to grant planning permission on the Civic Offices site. Again this is a highly material consideration.



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We understand that TWC will assess these applications against the transport work prepared as the evidence base for the Central Telford Area Action plan ("**CTAAP**"), including the VISSIM model. This is despite the fact that CTAAP has not yet been adopted, its consideration has been suspended and this information has not yet been made available for consultation, and, we understand, will not be available until 31 December 2009, which is after the proposed publication date of the report to the Plans Board. Please confirm this is correct and ensure that this information is provided to us as soon as it is published, or if it is already available, please provide copies.

Please would you provide us with your written response to point 4 above.

Yours faithfully

NABARRO LLP



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15 December 2009

Our ref: JGB/0943469/O8410024/JAR

Dear Sirs

Town & Country Planning Act 1990: Proposed Asda Store at Land at West Southwater, Telford - Application made on behalf of Asda Stores Limited (LPA Ref: W2009/0915)

We act for Asda Stores Limited ("Asda") in connection with the above-mentioned planning application submitted by our client to Telford & Wrekin Council ("Telford").

We have been provided, and reviewed, a copy of a Nabarro letter dated 11 December 2009 along with a Briefing Note by Waterman dated 5 November 2009 and a further letter from Nabarro dated 14 December 2009 along with a Comments Report prepared by Drivers Jonas. We understand that these documents have been provided on behalf of Telford Trustee No. 1 Limited and Telford Trustee No.2 Limited ("The Trustees").

Having reviewed the above documents, it is our firm view that there is nothing contained in these documents to provide a sound legal reason why the application should either be deferred or why Telford should not resolve to grant planning permission at its Plans Board Meeting on 16 December 2009.

Our view is that all of the points rehearsed in the four pieces of correspondence have been fully and comprehensively addressed in the Committee Report and Members will be able to make a decision on the application on the information contained in the Committee Report.

We therefore encourage Members to approve the application.

Yours faithfully

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e-mail

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22 December 2009

Our ref: JGB/0943469/08441758/JAR

Dear Sirs

Town & Country Planning Act 1990: Proposed Asda Store at Land at West Southwater, Telford - Application made on behalf of Asda Stores Limited (LPA Ref: W2009/0915)

We refer to your letter to RPS dated 15 December 2009.

As you are aware, we act for Asda Stores Limited ("Asda") in connection with the above-mentioned planning application submitted by our client to Telford & Wrekin Council ("Telford").

Asda has asked us to respond to your letter dated 15 December 2009 as follows:

- (i) We enclose a response to the points raised in the Waterman Briefing Note dated 5 November 2009.

With regard to the Nabarro letter dated 11 December 2009, we have the following comments:

- (a) Although we did not believe it was necessary, the application has been deferred to the Plans Board Meeting on 6 January.
- (b) There is no basis for Nabarro's assertion that the Officer's Report is deeply flawed and we refute the criticisms made about the availability of the Red Oak Car Park. We have reviewed the additional comments raised by Drivers Jonas and Nabarro on 14 December 2009. These comments provide no additional issues to those provided to Telford by RPS on 3 December 2009. In response to the Drivers Jonas letter, we therefore refer the council to the RPS letter dated 3 December 2009.

- (ii) As you will see from the enclosed response, we totally refute the assertion made by Waterman that the ES does not meet with the requirements of the EIA Regulations 1999.

All of the issues raised in your letter dated 15 December 2009 have been full addressed by Asda.

We therefore urge the Council to determine the application at the Plans Board Meeting on 6 January 2010 and resolve to grant planning permission for the application.

Yours faithfully

Osborne Clarke

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Rebuttal of Waterman's Briefing Note carried out on behalf of Hark Apollo Relating to the Environmental Statement

1. Introduction

- 1.1 This rebuttal note is submitted in response to the "Briefing Note 01 West Southwater and Malinslee Link Environment Review" ("the Briefing Note") prepared by Waterman. The Briefing Note is dated 5 November 2009 and was submitted to Telford and Wrekin Council ("Telford") on 14 December 2009. The Briefing Note is Waterman's review of the of the RPS Environmental Statement ("ES") for "Land at West Southwater and Malinslee Link, Telford" October 2009.
- 1.2 For ease of reference, this rebuttal note follows the same layout and references as the Briefing Note.
- 1.3 Waterman's suggestion that in a number of areas the ES is deficient as it does not comply with EIA Regulations is totally rejected. The ES is both clear and robust and fulfils all the requirements of the EIA Regulations. It is Important to remember that in order to comply with the EIA Regulations those issues in Schedule 4 Part 2 of the EIA Regulations and anything relevant in Schedule 4 Part 1 of the EIA Regulations must be addressed. All of these issues have been addressed in the ES submitted to Telford. Further, the scope of the ES was discussed and agreed with Telford at meetings and by emails prior to submission.

2. Compliance with the EIA Regulations

- 2.1 Waterman suggest there are a number of key failings of the ES regarding the West Southwater site. We respond to their criticism as follows:
- (i) We are satisfied that the assessment of alternatives considered, as set out within Chapter 1 are sufficient for meeting the purposes of the EIA Regulations. The assessment makes it clear that no sites within the town or district centres were considered suitable, viable and available. Notwithstanding this, the ES also provides an assessment of alternative site layout options which have been considered.
 - (ii) We are content with the description of development set out for both sites within the ES. It is sufficient for the purposes of the ES. In *R. v Rochdale MBC Ex p. Milne (No. 1)[1993]*, Justice Sullivan held that "...the description of development must be sufficient to enable the main effects which that development is likely to have on the environment to be identified and assessed, to enable the likely significant effects...to be described and to enable mitigation measures to be described..." The description within the ES which is set out in chapter 2 and in subsequent chapters where specific details of the proposed development are critical to a particular topic, is clearly sufficient for the purpose of identifying and describing impacts and mitigation.

In terms of the issues regarding construction and demolition phases, each ES chapter deals with this issue. It is therefore considered that the likely significant environmental impacts arising for the demolition and operational phases have been taken into account and addressed.

- (iii) The purpose of a Non Technical Summary (NTS) is to facilitate dissemination of the findings of the ES to the general public in such a way that it can be easily understood by the general public. We are satisfied that the NTS submitted with the ES readily meets this requirement and know of no member of the public who have raised this matter. The quotation that Waterman refer to in their note, which makes reference to attenuators and louvres, needs no technical knowledge to understand. Anyone with a reasonable vocabulary or access to a dictionary would be able to understand its meaning.
- (iv) Where difficulties have been encountered, they have been highlighted in the ES. Indeed, Waterman themselves recognise this in relation to Air Quality. In respect of the vacation of the existing ASDA premises, this is fully addressed in the retail assessment contained within the ES which assesses the impact of reoccupation or no reoccupation.
- (v) We are satisfied that appropriate technical data is included or referenced within the ES, as necessary. The use of quantitative and qualitative assessment techniques are entirely permissible in the production of ESs and in no way would the use of such techniques result in an ES being non-compliant with the Regulations. Indeed, Waterman do not go as far as to suggest that this is the case. In response to the Waterman comments on noise calculations, we have provided comprehensive base data used to predict the resultant noise levels for the various activities at each of the three receptor positions

2.2 All of the above points are valid for both the West Southwater and Malinslee Link. Furthermore, the assertion that the parameters that have been assessed for the outline application are clearly set out at paragraph 2.2.2 of the ES, which confirms that the application is made in outline with means of access, with all other matters reserved for subsequent approval.

3. **Other Matters**

Floor Space – Current Telford and Wrekin Offices

We respond to the comments in paragraphs 3.1 to 3.5 of the Briefing Note as follows:

The relocation of the Council Offices has been taken into account within the relevant chapters of the ES. It is self evident from the information set out in the ES that a clear assumption has been made that the Council Offices would have been relocated before 2014 so that the site can be developed. We do not state the floorspace of the existing offices on the site but we consider there is no need to do so in order to identify and describe likely significant environmental effects and associated mitigation. The change in land use is fully assessed and one does not need to state the precise square meterage of the building to do so. The ES makes the robust assumption that the Civic Offices will be relocated within the Southwater area and, indeed, it is our understanding that this will be the case. Our understanding from the site owners is that they will be able to provide vacant occupation in time to allow the proposed development to be available for use upon expiry of the existing ASDA lease.

In respect of the assertion made by Waterman that the relocation of the Civic Offices

forms part of a more substantial development, we do not consider this is the case for the purposes of the Regulations which seek to ensure that incremental development is not used as a means to frustrate the aims of the Regulations by avoiding undertaking an EIA. Clearly that is not the case here.

As set out above, assumption made in the ES regarding the relocation of the Civic Offices is based upon a firm understanding of the intentions of Telford in this regard. There is no suggestion that the functions currently contained within the Civic Centre will be lost and, indeed, this would be operationally extremely difficult to effect. As such, the relocation of the Civic Office jobs to another location can reasonably be relied upon and it is this, coupled with the fact that a new store to continue trade and the consequent retail employment and job security post 2014 that results in a moderate benefit.

Assessment of Separate Applications

We respond to the comments in paragraphs 3.6 to 3.8 of the Briefing Note as follows:

Waterman question why the two sites have been assessed together. This is however irrelevant in respect of compliance with the Regulations as there is nothing in the Regulations to prevent such an approach. Each chapter of the ES assesses the impact of the development of each site separately and then together to provide a cumulative assessment, thus providing robust conclusions of the likely significant environmental impacts. Accordingly, there is no lack of clarity which results from the combined approach taken.

Given that both scenarios have been tested separately it is therefore considered irrelevant which site is developed first as the impact will not differ, nor will the impact increase should for example the housing site be developed before ASDA as all relevant receptor points have been tested and suitable mitigation identified where necessary.

The EIA Regulations do not prescribe how an ES is undertaken or its structure. The point of an ES is to inform the local planning authority of likely significant environmental effects. The proposed development would raise no unusual or significant noise effects during construction and can be controlled by imposing a standard planning condition.

Cumulative Impacts/Assessment of the West Southwater and Malinslee Link Applications

We respond to the comments in paragraphs 3.9 to 3.14 of the Briefing Note as follows:

In response to the comments made at paragraph 3.9 of the Briefing Note, we have assessed the issue of potential continued vacancy of the existing ASDA store. As noted in the RPS letter of 3 December 2009, this scenario is fully set out in the RIA and is referenced in the Socio-Economic Chapter of the ES.

In response to the comments made at paragraph 3.10 of the Briefing Note, where details of the construction programme are relevant they have been provided in the ES. This enables the ES to describe likely significant construction phase impacts.

We refer the Council to the “Environmental Impact Assessment: A guide to good practice and procedures” (A consultation Paper June 2006) which states at para 124 that:

‘The effects to be considered cumulatively in an ES will be project specific and should be agreed with the LPA during the scoping stage (see Section 3). It is important that they are clearly identified in the ES, along with any assumptions made. In most cases, detailed consideration of the combined effects of the development proposed together with other developments will be limited to those others that are already begun or constructed or those that have not been commenced but have a valid planning permission’.

We would refer Telford to the second sentence of the above paragraph. There are no other significant projects that have begun or that have planning permission. Central Southwater, the relocation of the Civic Offices and the Trustees’ plans for Red Oak car park would not count. While only a consultation draft, this does at the very least confirm latest thinking on good practice and, importantly, demonstrates that such an approach would not be contrary to the EIA Regulations.

The mitigation proposed in respect of construction impacts would apply whether the construction of the West Southwater and Malinslee Link sites occurred at separate times or together. As a result of the mitigation the construction impacts are reduced below the point where they are considered to be significant, even cumulatively.

3.1 *Consideration of the 2016 Opening Year*

We respond to the comments in paragraphs 3.15 to 3.17 of the Briefing Note as follows:

The Briefing Note makes reference to a 2016 Opening Year for the development. This is incorrect. The ES Chapters explicitly make reference to 2014 being the year in which the current ASDA lease expires and the anticipated opening year of the new store.

4. **Commentary on ES Review**

West Southwater

Chapter 1. Introduction (and Methodology)

We respond to the comments in paragraphs 4.1 to 4.3 of the Briefing Note as follows:

Waterman notes that formal screening and scoping of EIA is not required by the Regulations. Indeed, the EIA Regulations specifically allow for ES to be submitted with planning applications at the discretion of the applicant. Accordingly, none of the points made at paragraph 4.1 of their note in any way demonstrate non compliance with the EIA Regulations.

Chapter 2. Site Description/Description of the Proposals/Alternatives

We respond to the comments in paragraphs 4.4 to 4.7 of the Briefing Note as

follows:

The issue of the description of development is dealt with above. In respect of the boundary of the sites, this is clearly identified in an appropriate fashion on Figure 2.1 given that the ES examines two sites together.

Where the detailed matters identified by Waterman at their paragraphs 4.5 and 4.6 were relevant to the identification and description of impacts and mitigation in respect of a particular topic, they have been noted and described. Accordingly, we are content that the ES is robust in this regard.

In respect of the assessment of alternatives, the EIA Regulations do not require that alternatives are studied but that “an outline” be given of those alternatives that have actually been studied. That is to say, if one has looked at alternatives, one should provide an outline. We are content that an appropriate outline has been provided both in section 2 of the ES and the retail assessment that forms part of the ES. Accordingly, we have complied with the regulatory requirements in this regard.

Chapter 3. Planning Policy

We disagree that the planning policy context chapter is subjective and consider that all of the most relevant policies have been noted. We note that Waterman accept that this chapter is not required by Regulation and assume that no significant point is being taken in this regard.

Chapter 4. Transport

We respond to the comments in paragraphs 4.4 to 4.7 of the Briefing Note as follows:

The ES travel chapter considers travel by all forms of transport, proportionately to their considered impact. The local sustainable transport provision is considered to be excellent in terms of both infrastructure and service provision, typical of a Town Centre location. As described in the ES Chapter, the improved pedestrian links between the site and the Town Centre will have a significant benefit for pedestrians and cyclists through an improved and safer environment. Local public transport provision is centred around the Telford Town Centre Bus Station which is located adjacent to the site, and the Telford Rail Station. It is not proposed to increase the number or frequency of bus or rail services and as such, there is no environment impact.

The impact of development traffic has been assigned a level of significance, however as the level of impact in all scenarios appraised is below the of 30% threshold during the assessed peak hours, the proposed development is not considered to have even a minor adverse impact. This is summarised in section 4.5.30 of the ES Chapter.

- 4.10 We query the reference to PBA in the Briefing Note. Any transportation concerns that have been raised have been addressed in the RPS letter (and enclosures) to Telford dated 3 December 2009. None of the information provided in this letter constitutes new information under the EIA Regulations.

While this included submission of the correct travel plan, we do not consider this comprises further information requiring submission under Regulation 19 of the EIA Regulations as it is not substantive in nature, is not required to complete the ES, nor to allow Telford to give proper consideration to the likely significant environment impacts. We refer Telford to draft condition 14 in the committee report.

- 4.11 It is anticipated that given the change in levels on the existing site that the ground preparations for the proposed development will include a very high proportion of cut & fill. This is not an unreasonable estimate. However, the ES chapter clearly states that should any material require removal from the site, it is estimated that such numbers will not exceed 10 HGV's per day.

Chapter 5. Flood Consequence and Drainage

- 4.12 As part of the ES chapter all likely significant effects of the proposed mitigation measures were investigated. At this stage all drainage details for the site would be preliminary and subject to EA, Telford and Severn Trent Water approval which is undertaken once planning permission for the site is granted. As part of the ES and FRA it was demonstrated that the drainage requirements for the site imposed by Telford and the EA (greenfield run-off rates and a reduction in flows from West Southwater by 50%) are physically achievable. Detailed calculations to support this were included and the options used to meet these drainage requirements outlined. Telford confirmed that they were satisfied with the principles outlined and detailed within the FRA (and subsequently used within the ES) prior to submission. The PFS was considered in conjunction with the West Southwater Site, oil interceptors have been proposed in mitigation to prevent the contamination of surface waters.

Chapter 6. Landscape and Visual

- 4.13 Viewpoints were identified following a desk top study of topography followed by assessment on the ground of all public viewpoints of the site within a 1.5km radius and the most appropriate to represent all viewpoint / receptor scenarios were selected. We are content that the viewpoints chosen are robust.
- 4.14 The minimum height of ASDA service yard fence required for security purposes is 3m and all of the acoustic fence facing Southwater Way is indeed 3m above external ground level (internal to the courtyard will be more as the service yard is cut into the topography). The noise assessment required that a minimum height of 172.9 AOD was achieved (due to accommodation above Severn Gorge PH) and that this level be maintained for the full length of the acoustic fence adjacent the footpath/cycleway. This meant that as the external ground level fell away towards the north the worst case scenario dictated that the fence height is 4.5m above existing ground level at its most northern extent.

Chapter 7. Air Quality

- 4.15 There are no established significance criteria set in terms of absolute impact for construction effects. An assessment has been undertaken using the highly

regarded London Best Practice Guide, which recommends determining the level of risk. The use of this guide was agreed with the relevant Environmental Health Officer at Telford at the outset. While the development is outside London, this document is widely accepted as a potential blue-print for assessing construction effects in all areas of the UK. The proposed development is deemed to be at 'high risk' of causing nuisance dust effects during construction. As such, the mitigation measures consistent with high risk have been presented within the chapter and should provide the most comprehensive set of measures and controls. As set out in the guide and the ES chapter, implementation of these mitigation measures should reduce the risk of impact to medium, or even low.

4.16 As set out above, the mitigation measures presented are those relating to a high risk of effects during construction and should provide the most comprehensive set of measures and controls. These mitigation measures would be applied throughout the construction period.

4.17 Construction effects are considered in the two responses above. In relation to operational effects, continually improving vehicle technologies mean that new vehicles produce lower emissions than older vehicles. As old vehicles are replaced, less polluting vehicles become an increasing proportion of the vehicles on the road. Any adverse effects associated with the proposed development are, therefore, likely to reduce in future years and the results of modelling in the earliest fully operational year, 2014, are considered to be conservative. This approach is reinforced by the view of the Highways Agency who state in their Design Manual for Roads and Bridges (DMRB) method that:

“The assessment should be carried out using traffic data for the “Do-Minimum” (without the scheme) and “Do-Something” (with the scheme) scenarios, for the opening year and possibly for a further future year.....For local air quality, this will be the opening year and possibly a later year if more stringent air quality criteria come into effect at a later date. The earlier years tend to be worst for local air quality as vehicle emissions are set to decrease in the future due to increasingly stringent vehicle emission legislation.”

4.18 To reiterate, air quality in the area is generally good and no Air Quality Management Areas have been designated. Telford has not found it necessary to undertake any detailed modelling for the purposes of fulfilling their Review and Assessment duties. Telford does not monitor air quality using automated monitors. However Telford does monitor NO₂ concentrations passively using diffusion tubes at three roadside locations, all outside the study area. The results at these locations have been reported in the ES chapter for the period from 2003 to 2006. The range of monitored NO₂ concentrations has been compared with the range of predicted NO₂ concentrations in the assessment of the operational effects. The chapter summarizes the results of this comparison stating that:

“This is consistently below the range of monitored concentrations at roadside locations in Telford of 15.3 to 17.0 µg.m-3. While there is some evidence to suggest that the model is under-estimating in the Telford area, roadside monitoring sites are likely to be located in areas where there may be

particular concerns. Therefore, the results of monitoring may be expected to exceed roadside concentrations in other locations. Also, all predicted concentrations are within 25% of the monitored concentrations suggesting that the model is performing well in this location.”

As set out in the ES Chapter:

“For the verification and adjustment of NO_x/NO₂ concentrations, LAQM.TG(09) recommends that the comparison involves a combination of continuous and diffusion monitoring, rather than a single continuous monitor. This is to ensure any adjustment factor derived is representative of all locations modelled and not unduly weighted towards the characteristics at a single site.”

Consequently, this would require the installation of a continuous monitor and passive/diffusion-tube monitoring at a broad spread of locations within the study area. A robust project specific monitoring survey would need to be undertaken over a period of no less than six months, potentially costing £10-20k.

The Institute of Environmental Management and Assessment provides guidelines for undertaking an EIA. The guideline set out principles for a balanced approach to the EIA. Relevant to this assessment is the need for the EIA to be:

“Cost effective – the process should achieve the objective of EIA within the limits of available information, time, resources and methodology.

Efficient – the process should impose the minimum cost burden in terms of time and financial on proponents and participants consistent with meeting accepted requirements and objectives of the EIA

Focused – the process should concentrate on significant environmental effects and key issues; i.e. the matters that need to be taken into account in making decisions.”

Specifically in relation to air quality, the National Society for Clean Air’s (NSCA) Development Control: Planning for Air Quality document states that:

“Where a development requires an air quality assessment this should be undertaken using an approach that is robust and appropriate for the scale of the likely impacts”.

With respect to model verification, the NSCA document places less importance on model verification where predicted concentrations are close to the objective: The maximum predicted annual-mean NO₂ concentration is 14.7 µg.m⁻³, less than 50% of the UK Air Quality Strategy objective for this pollutant of 40 µg.m⁻³.

In summary, a pragmatic approach to the air quality assessment has been adopted making use of all available data. We do not consider that it would be reasonable to expect the developer to undertake monitoring of existing air

quality to facilitate the verification of the modeled results. The scope of works for this Chapter was agreed with the relevant Environmental Health Officer at Telford, referenced in the chapter, who did not require any air quality monitoring to be undertaken. Given the fact that air quality in the area is good, to the extent that Telford does not consider continuous air quality monitoring is necessary, a project specific monitoring survey is also considered to be deviation from the key issues.

Chapter 8. Noise

- 4.19 The acoustic fence would be 4.5m high from the top of the retaining wall along the eastern boundary with the existing footpath linkage to provide an effective noise barrier to the upper accommodation above The Severn Gorge Public House. The acoustic fence would be 3.0 high along the south-eastern boundary with Southwater Way.

We note the comment relating to car park spaces and our paragraph should indicate 500 spaces. This results in no material change in our assessment and is not substantive in nature.

- 4.20 The “West Southwater” monitoring positions, shown in Figure 8.7, were selected to be representative of the nearest existing residential properties to the proposed site.

The “Malinslee Link” monitoring position, shown in Figure 8.7, was selected to be representative of the nearest proposed residential properties to the site. This location was also used for the PPG24 assessment. The identification of this monitoring location was described in 8.4.3 of our Noise Chapter.

The receptor positions were selected to be the nearest potentially sensitive locations and are detailed in 8.1.7 of our Noise Chapter.

- 4.21 The significant criteria given in the methodology section 8.3 clearly identifies the reasoning behind the selection of a suitable Standard/Guideline to be adopted for the various activities. We have also been in discussion with the Local Authority Environmental Health Officer and he has requested the target noise level to be adopted.

All the activities have been assessed against the underlying LA90T background noise level as required by BS4142:1997 and this results in a very robust assessment methodology.

- 4.22 A comments relating to the construction noise impact have been provided in 3.6 above.

- 4.23 As stated we have provided comprehensive base data used to predict the resultant noise levels for the various activities at each of the three receptor positions.

We do not accept that the results appear questionable or that the methodology for deriving these results is also questionable because we have adopted a very

robust assessment methodology based on an assessment for all activities against the lowest LA90T background noise level obtained over extended periods at all monitoring positions. As well as fixed plant, the use of BS4142:1997 has previously been held on planning appeal decisions to be applicable for the assessment of noise from lorry deliveries and car parking.

Where results are based on other sites, these are from typical ASDA stores, in all parts of the country, incorporating similar arrangements. The results for the lorry arrival, unloading/loading and departure have been taken from a newly opened store adopting a very similar arrangement and using the new warehouse docking arrangement. This store also uses the newest lorry types.

- 4.24 We do not accept that assumptions have been used. All assessments are appropriate to the proposed development backed up by extensive library data from other ASDA stores and with the use of proven standard calculation methodology.

We understand 2014 is the anticipated opening year of the new store and therefore no other date would be considered.

- 4.25 The Noise Exposure Category (NEC) was determined, by assessment, to be Category B. PPG24 states for Category B “*noise should be taken into account when determining planning applications and, where appropriate, conditions imposed to ensure an adequate level of protection against noise*”. We have therefore in accordance with PPG24 suggested suitable wording for a condition that would, in our opinion, ensure acceptable noise levels are maintained in the living areas.

Chapter 9. Ecology

- 4.26 *The Ecology Chapter of the ES fully describes the habitats on the site at section 9.4 and is completely robust.*

With regard to Waterman's comments on breeding birds - no breeding bird survey was requested by Telford. Moreover, the scoping report and existing records do not indicate that breeding birds would be a significant feature on either site. The fact that some habitats have potential to support breeding birds is, in practice, only likely to be an issue with regard to the legal protection afforded active bird nests and this is covered in the ecology chapter of the ES (para no. 9.7.26).

Chapter 10. Ground Conditions

- 4.27 The condition of the shallow soils and ground water at the proposed store site have been assessed against Generic Assessment Criteria which have been derived in line with Environment Agency guidance (Model Procedures for the Management of Contaminated Land- CLR11). Accordingly the significance or otherwise of concentrations of specific contaminants within the environment has been assessed appropriately.

- 4.28 A detailed quantitative risk assessment has not yet been carried out, however it has been recommended as the next phase of work required for the proposed store site. Carrying out assessment in this phased manner is entirely in keeping with Environment Agency guidance (CLR11). The Contaminants observed on site to date can readily be treated by well understood techniques which will not require removal of material from site. Therefore if the DQRA does indicate that some form of remediation is required, it is considered reasonable that this can be achieved with the proposed cut to fill balance. This approach is also consistent with ASDA's sustainable development policy.
- 4.29 This is a statement which requires no further comment.
- 4.30 We deny that there are numerous inaccuracies and omissions within the chapter. We concur with Waterman's comment that both situations are possible.

Chapter 11. Socio-economic

We respond to the comments in paragraphs 4.31 to 4.34 of the Briefing Note as follows:

The chapter clearly sets out the methodology used in the formulation of the chapter.. The baseline situation has been clearly set out, assumptions made about the potential impact of the development, and robust conclusions made.

Data sources are referenced within the chapter to evidence the information set out where applicable.

The loss of office accommodation has not been assessed within the chapter as the Council Offices will be relocated in order for the ASDA development to commence. Similarly, no account needs to be made to the current staff employed at the ASDA store as they will be relocated to the new store.

In response to Waterman's comments at paragraph 4.34 of the Briefing Note, we would refer Telford to our comments on paragraph 3.6 of the Briefing Note.

Non-Technical Summary

We respond to the comments in paragraphs 4.35 to 4.37 of the Briefing Note as follows:

As set out in section 2.1 (iii) of this response, we are satisfied that the NTS submitted with the ES readily meets the requirement of the EIA Regulations and we know of no member of the public who has suggested the opposite. The fact that some information is provided in an Annex does not render the document any less intelligible.

Presentation

We respond to the comments in paragraphs 4.38 to 4.39 of the Briefing Note as follows:

We do not agree that an ES should necessarily minimise the use of technical terms as the document is necessarily technical in nature. If technical terms are necessary to properly and fully describe the likely significant environmental effects and any consequent mitigation, then it is entirely appropriate that they should be used. Furthermore, we disagree that the plans are of poor quality and, indeed, if we had been approached for a copy of the ES we would have provided it on CD, thus ensuring the quality of any ‘copy’ was identical to that of the original.

Objectivity

We categorically refute that the ES is anything but an objective assessment of the likely significant environmental effects resulting from the development assessed. We are entirely happy that it complies with the EIA Regulations and is robust in this regard.

Cumulative Impact

Contrary to what is claimed in the Briefing Note, good practice guidance suggests that the combined effects of the development proposed should be assessed together with other developments that are already begun or constructed or that have not been commenced but have a valid planning permission. It is not the case that “other reasonably foreseeable schemes” should also be taken into account. Accordingly, we considered that the ES is particularly robust in assessing the cumulative impact of the West Southwater and Malinslee Link sites.

Malinslee Link

(a) *Chapter 2. Site Description/Description of the Proposals/Alternatives*

We respond to the comments in paragraphs 4.43 to 4.46 of the Briefing Note as follows:

As with the West Southwater site, the issue of the description of development is dealt with above. Furthermore, paragraph 2.2.3 of the ES makes it abundantly clear that the “proposed development of both sites is shown at Figure 2.2”. It is not correct therefore to assert that there is ambiguity of what development has been applied for, and whether this has been tested in the EIA.

In response to paragraph 4.44 – the use, amount, indicative layout, scale and access points are clearly stated in the planning application, to which the GPDO relates. As stated above, we also consider that the ES adequately describes the proposed development.

In respect of the assessment of alternatives, this has been dealt with above in the 'West Southwater' response. We are content that an appropriate outline has been provided in section 2 of the ES.

(b) *Chapter 6. Landscape and Visual*

4.47 The parameters were based upon the design parameters set out by the outline application for Malinslee Link. This is not a detailed application and "design / appearance" is a reserved matter. . The landscape and visual assessment for this Site has therefore been based upon these parameters.

(c) *Chapter 7. Air Quality*

4.48 The potential sensitive receptor is located on a representative position on the site and provides an appropriate basis to carry out the assessment. Telford will deal with any issue that arises by way of a standard planning condition.

(d) *Chapter 8. Noise*

4.49 We have been informed by the development architects that the scheme can be designed to provide inward facing bedroom windows. There are many developments throughout the country where this approach has been adopted.

4.50 The receptor position was representative of the nearest façade to Southwater Way.

4.51 We can confirm that the NEC assessment considers the suitability of the "Malinslee Link" site prior to the Asda being operational.

However, the increase traffic noise level on Southwater Way post ASDA development, based on peak traffic flow, show an increase of 3 dB. This would still lie within the NEC B category and would not amend our suggested condition wording.

(e) *Chapter 9. Ecology*

4.52 We have described the likely significant environmental effect and have put forward mitigation measures, to be dealt with by imposing a planning condition, to address these.

(f) *Chapter 10. Ground Conditions*

4.53 The scope of work was agreed with the Council at an early stage. It was agreed that detailed intrusive investigation of the Malinslee Link area would not be required and that a desk study and preliminary slope stability assessment would be adequate- these have been completed, with recommendations for further work. It is also noted that the staged approach is consistent with regulatory guidance.

4.54 The technical appendices to this chapter were extremely voluminous and accordingly were provided on a CD contained within a pocket bound into the ES (for paper copies of the ES) and as PDF files in the CD copies of the ES.

- 4.55 The West Southwater area of the development comprises a commercial end use, therefore the assessment is considered appropriate. Within this assessment it is assumed that residents are present adjoining the site boundary. The Malinslee Link area was not investigated as detailed above.
- 4.56 ASDA's corporate policy is to prevent disposal of materials to landfill. If following DQRA, localized remediation is required it is anticipated that this will be achieved by on site treatment. No further comment on Malinslee Link is possible in the absence of intrusive site investigation.
- (g) *Chapter 11. Socio-economic*
- 4.57 The impacts arising from the population increase in respect of the proposed development are discussed in paragraphs 11.6.1 – 11.6.5. The EIA process is required to assess the likely "significant" impacts of a development and, therefore, there will be some impacts that do not need to be discussed in detail in the ES. 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. The ES is robust in this regard.



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Via e-mail and post
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Planning Department
Development and Design
Telford & Wrekin Council
Derby House
PO Box 212
Telford
TF3 4LB

For Attention of: Gareth Thomas

4 January 2010

Our ref: PH/MDE/T1784/00003

Dear Sirs

Town and Country Planning Act 1990: Proposed Asda Store at Land at West Southwater, Telford – Application made on behalf of Asda Stores Limited (LPA Ref. No. W2009/0915) and outline application for residential development (LPA Ref. No. W2009/0945)

We write further to our letter of 22 December 2009 and in advance of the Plans Board meeting on 6 January 2010 which we understand is to consider the above-mentioned applications submitted by Asda Stores Limited ("**Asda**"). We also respond below to your letter of 31 December 2009.

1. PPS4: Planning for Sustainable Economic Growth

- 1.1 PPS4 was published on 29 December 2009 and was issued with Practice Guidance on need, impact and the sequential approach. We enclose a note on PPS4 and its implications for the Asda supermarket application which has been prepared by Drivers Jonas. The note raises fundamental issues which must be addressed by TWA in its capacity as the local planning authority.
- 1.2 As important Government policy on the development of town centres the new guidance is clearly a fundamental material consideration which needs to be taken into account in the determination of the Asda planning applications.
- 1.3 In particular TWC will need to take into account the new guidance at Policy EC17. This is of pivotal importance and requires that planning applications which fail either the sequential approach or the impact test be refused. This is a significant hardening of the Government's approach to the assessment of proposals which are outside existing town centres on edge-of-centre sites. Asda's supermarket planning application must be refused given that it is in clear and direct conflict with Policy EC17 and other policies and provisions in PPS4.
- 1.4 The enclosed note prepared by Drivers Jonas demonstrates that the Asda proposal fundamentally conflicts with the guidance in PPS4 and its associated Practice Guidance.

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- 1.5 We would also specifically refer TWC to the following provisions of the Practice Guide accompanying PPS4 which support the Trustees' representations to date that the Red Oak Car Park proposal represents a viable alternative to the Asda proposal on a sequentially preferable site:
- (a) *"the fact that a specific retailer or occupier is said to be unwilling to locate on a particular site is not necessarily evidence that it is unviable"* (paragraph 6.4.8 of the Practice Guide);
 - (b) *"Where alternative sites are being actively promoted for new development by a developer/retailer this is a reasonable indicator that the location is viable"* (paragraph 6.4.9 of the Practice Guide);
 - (c) *"Given the timescale for bringing forward some town centre schemes, and their vital importance to the continuing vitality and viability of town centres, it would be inappropriate to reject a more central opportunity as being currently unviable, without allowing a reasonable period of time to test whether a viable opportunity is likely to come forward"* (paragraph 6.50 of the Practice Guide).
- 1.6 Any failure by TWC to properly and objectively consider the new PPS4 would render any grant of permission to Asda unlawful such that it would be judicially reviewed by the Trustees.
- 2. Letter of 18 December 2009**
- 2.1 In your letter to us of 18 December 2009 (which was incorrectly dated 16 December 2009) at paragraph 7 you confirmed that you were seeking to prepare your report to the Plans Board meeting on 6 January 2010 *"for 28th December 2009"*.
- 2.2 The report to the Plans Board meeting on 6 January 2010 has now been published on Telford & Wrekin Council's ("**TWC**") website. We were, however, surprised and disappointed to note that its contents in respect of the Asda applications is, in all material respects, exactly the same as the report prepared for the Plans Board meeting on 16 December 2009 which deferred consideration of the applications.
- 2.3 As a result the published report to the Plans Board meeting on 6 January 2010 is wholly deficient. It fails to address any of the points made in the representations submitted by both ourselves and Drivers Jonas on and after 11 December 2009 in connection with the applications or even acknowledge their existence.
- 2.4 From your e-mail to Drivers Jonas of 30 December 2009 we understand that an Addendum Report is being prepared to the Plans Board meeting on 6 January 2010 and is to be made publically available this afternoon, at the earliest. We reserve the right to comment on the Addendum Report when it is published but would again express concern that a report is being prepared in advance of receipt of these further representations which we were given until 4 January 2010 to submit.



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3. Osborne Clarke's letter of 22 December 2009

- 3.1 On 22 December 2009, TWC provided Drivers Jonas with a copy of Osborne Clarke's letter of 22 December 2009 and the attached rebuttal note seeking to respond to the note prepared for the Trustees by Waterman and enclosed with our letter to you of 11 December 2009.
- 3.2 Osborne Clarke's letter responded to TWC's letter to RPS of 15 December 2009. TWC's letter to RPS of 15 December 2009 referred to our letters to TWC of 11 and 14 December 2009 (with enclosures) and asked for "*point by point*" responses from RPS on behalf of Asda.
- 3.3 We enclose a note that we have prepared with input from Waterman and the Trustees' team on the rebuttal note enclosed with Osborne Clarke's letter to TWC of 22 December 2009.
- 3.4 Osborne Clarke have responded to our letter of 14 December 2009 and the detailed note attached to it by merely stating that they have reviewed those documents and that they provide "*no additional issues*" to those commented upon by RPS in their letter to TWC of 3 December 2009. On that basis Osborne Clarke have referred TWC back to the contents of RPS's letter to TWC of 3 December 2009. As a result TWC must now reach its own independent view on the points raised and we would reiterate that our letter of 14 December 2009 to TWC and the detailed note which accompanied it identify a number of fundamental defects with the Asda supermarket application which, contrary to Osborne Clarke's assertion, do raise significant additional issues which TWC must address.

4. The Trustees' Planning Application for the Red Oak Car Park

- 4.1 On 22 December 2009, TWC registered the Trustees' outline planning application for a supermarket and mixed use development on the Red Oak Car Park site (LPA Ref: No. W2009/1074).
- 4.2 For the reasons set out in our letters of 14 and 22 December 2009 the Trustees' planning application and the Asda supermarket application should be reported to the same Plans Board meeting.

5. Illustrations A and B

- 5.1 You provided Drivers Jonas with Illustrations A and B as referred to in RPS's letter of 3 December 2009 on 17 December 2009 and your letter to us of 16 December 2009 asked for any further representations from the Trustees on these illustrations on or before 4 January 2010.
- 5.2 In respect of Illustrations A and B, RPS's letter asserts that the level of car parking loss and disruption would mean that the impact would be "*simply untenable*" if the Red Oak Car Park site were redeveloped to provide a supermarket.
- 5.3 The illustrations themselves are diagrammatic with little detail and do not purport to represent a detailed analysis of the potential for development.



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- 5.4 The Trustees' planning application, however, demonstrates that a suitable, available and viable option exists for the redevelopment of the Red Oak Car Park and Asda has acknowledged that in physical terms an option that complies with its design criteria exists at the Red Oak Car Park site (see paragraph 2.5(iii) of Drivers Jonas' letter to TWC of 16 November 2009).
- 5.5 The main assertion made by RPS is that the disruption caused to car parking would render the scheme unviable but this is clearly not the case. Our comments are as follows:
- (a) if the impacts were as great as Asda now suggest then they would have been apparent to Asda, as an experienced operator, from the outset and Asda would not have had lengthy discussions with the Trustees and signed off a scheme on the Red Oak Car Park as meeting Asda's design criteria. If such a scheme was fundamentally unacceptable it would have been academic for Asda to pursue those discussions;
 - (b) the RPS letter addresses car parking during the construction phase but does not provide an accurate or full assessment. The Trustees have, however, produced such an assessment and a car parking strategy to satisfactorily address impacts during the construction phases and this has been submitted with the Trustees' planning application and will need to be considered by TWC in its determination of the Asda supermarket application;
 - (c) the assessment submitted by the Trustees has been prepared by Peter Brett Associates and identifies the car parking currently used by Asda's customers and how sufficient spaces would be available in the construction and post-construction phases;
 - (d) RPS's letter does not provide this level of analysis and merely addresses the number of spaces lost on the Red Oak Car Park. It does not recognize the availability of other spaces within the Shopping Centre or the improved links to the Ash Grey Car Park proposed by the Trustees' application.
- 5.6 RPS's letter also attached a letter from Marsh and Baxter Properties Limited to RPS of 1 December 2009. Peter Brett Associates have reviewed the comments in that letter in light of Illustrations A and B and have the following further comments:
- (a) the letter suggests all movements for the parking will be catered for from one junction on Grange Central. As well as this junction, which we assume they have considered to be the current exit from Grange Central, two additional entrances are proposed, one from Lawn Central and one from Hollinsgate Roundabout. Two exit points are proposed by the Trustees, namely the current exit point and an additional exit point is also proposed located 70m to the south on Grange Central;
 - (b) the letter suggests that the servicing traffic is now mixing with customer access and egress. The use of the word "now" suggests that the service traffic at the moment does not mix with customer access and egress, which is incorrect. The existing service route accesses the service area for the current Asda via Ash Grey car park access and egress. This includes service vehicles having to reverse into the



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service area against the flow of a one way route. A true comparison of the servicing arrangements for servicing is as follows:

- (i) current servicing vehicles share 250m of roadscape with town centre users when accessing via Ash Grey, including having to reverse along this shared route. By comparison the proposed servicing arrangement will lead to 42m of roadscape shared with users at the proposed site;
- (ii) the proposed site has a full movement turning circle in a dedicated service area, unlike the current arrangement;
- (c) the new junction is commented on, stating that either a left-in left-out junction or an all movements junction will be provided. A left-in left-out junction would go against the one way routeing, and is therefore not possible and shows a lack of understanding of the junction.
- (d) it is stated that significant disruption would be caused to the store and public. As a junction already exists in this location, and there are alternative access and egress points proposed, it is expected that the works themselves would cause little disruption. The alternative access and egress points would allow continued operation of the car park.

5.7 In conclusion, it is clear that that knowledge of how the existing Asda operates, and the Trustees' proposed design, has not been considered either in RPS's or Marsh and Baxter Properties Limited's assessment.

5.8 It should be noted that the proposed Asda store also has servicing that shares the customer entrance, and, worse, service vehicles are shown in the application to require movements that overlap onto opposing lanes to access the service area. Therefore it can be concluded that the proposed Red Oak redevelopment has the most efficient and safe service vehicle arrangement.

6. Letter of 31 December 2009

6.1 We note the comments set out in your letter to us of 31 December 2009.

6.2 In respect of your numbered paragraph 1 for the reasons referred to in our letter of 17 December 2009 the Waterman report was not submitted "*late*". It was submitted on 11 December 2009 within the deadline for public consultation.

6.3 In respect of your numbered paragraph 2 our comments on Illustrations A and B are set out elsewhere in this letter.

6.4 In respect of your numbered paragraph 9:

- (a) the Asda proposal is a "*replacement*" (see description of development on the application form and paragraphs 2.4 to 2.10 of the detailed note accompanying our letter to TWC of 14 December 2009) and it is highly unlikely that Asda's existing



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store would be reoccupied by an operator such as Tesco/Morrison's for the reasons set out in the Trustees' representations to date;

- (b) the Trustees' application is clearly an important material consideration as it demonstrates an available, suitable and viable alternative within the town centre and must therefore be taken into account in applying the sequential approach set out in PPS4;
- (c) we would also refer you to the Trustees' earlier representations on why to determine the Asda application in advance of the Trustees' application would prejudice the proper consideration of the Trustees' application;
- (d) if your letter in any way suggests that the Trustees' application has been submitted in bad faith then that is rejected;
- (e) you appear to suggest that the Asda application is "*otherwise acceptable*" but that is a fundamental error as it is clear that the Asda proposal breaches numerous policy requirements (not least those now set out in PPS4) and should be refused permission.

6.5 On the highways modelling work our understanding is that it is not available and will not be so for public consultation until later this year. We would therefore reiterate our comments set out at paragraph 4.6 of the detailed note accompanying our letter to you of 14 December 2009.

We would request that the contents of this letter and the accompanying document are reported in full to the members of the Plans Board meeting on 6 January 2010, together with the other representations submitted on and after 11 December 2009 by ourselves and Drivers Jonas in connection with the Asda planning applications.

Yours faithfully

Nabarro LLP

NABARRO LLP

Enc:

- Note prepared by Drivers Jonas
- Note prepared by Nabarro LLP and Waterman

**Comments on Planning Application W2009/0915
following release of Planning Policy Statement 4
‘Planning for Sustainable Economic Development’ on 29
December 2009**

1. On 29th December 2009 the Government published Planning Policy Statement 4 (PPS4) ‘Planning for Sustainable Economic Growth’. PPS4 replaces the following National Planning Policy Guidance Notes/Statements:
 - *Planning Policy Guidance 4: Industrial, Commercial Development and Small Firms* (PPG4);
 - *Planning Policy Guidance 5: Simplified Planning Zones* (PPG5);
 - *Planning Policy Statement 6: Planning for Town Centres* (PPS6); and
 - The economic development sections of *Planning Policy Statement 7: Sustainable Development in Rural Areas* (PPS7).
2. The Report to Plans Board Committee of 6th January 2010 in respect to planning application W2009/0915, submitted by Asda Stores Ltd, makes no reference to PPS4. The references made to PPS6 and Draft PPS4 are no longer relevant to the planning application.
3. Within PPS4 the Government has made a number of revisions to its town centre policy, including the removal of the requirement for applicants to demonstrate that there is ‘need’ for development proposals that are in edge or out of centre locations and which are not supported by an up to date development plan. The Government’s approach also clearly differentiates between the role of need, impact and sequential site assessment in plan making, and the application of the sequential approach and impact tests in the development management process. The content of PPS4 must therefore be taken into account in determining planning application W2009/0915.
4. The Trustees have submitted detailed objections to planning application W2009/0915. The sequential approach to site selection and the likely ‘impact’ upon Telford Town Centre were key reasons which the Trustees highlighted in their objections dated 16th November 2009 and 14th December 2009. It is in the context highlighted above, that Policy EC17 of PPS4 is pivotal to the Asda planning application. Policy EC17, which is considered in further detail below, stresses that planning applications for main town centre 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 the applicant fails to demonstrate compliance with the requirements of the sequential approach; or where there is clear evidence that the proposal is likely to lead to significant adverse impacts on town centres.
5. It is considered that the introduction of PPS4 provides further policy basis for the Trustees objections, and thus areas which the applicant and the Council must address.
6. Paragraph 3 of PPS4 states that ‘the policies in the PPS are a material consideration which must be taken into account in development

management decisions, where relevant. The development management policies in the PPS can be applied directly by the decision maker when determining planning applications. For the purposes of the policies in the PPS, economic development includes development within the B Use Classes, public and community uses and main town centre uses’.

7. PPS4 further emphasises the ‘town centres first’ approach. The need to promote vitality and viability of town centres is stressed in paragraph 10, which sets out the Government’s objectives for Prosperous Economies. The Government wants:
 - New economic growth and development of main town centre uses to be focused in existing centres, with the aim of offering a wide range of services to communities in an attractive and safe environment and remedying deficiencies in provision in areas with poor access to facilities;
 - Competition between retailers and enhanced consumer choice through the provision of innovative and efficient shopping, leisure, tourism and local services in town centres, which allow genuine choice to meet the needs of the entire community (particularly socially excluded groups);
 - The historic, archaeological and architectural heritage of centres to be conserved and, where appropriate, enhanced to provide a sense of place and a focus for the community and for civic activity.

8. PPS4 sets out specific policies to be used by Local Authorities for development control purposes. Aside from specific policies relating to retail and town centre development, Policy EC10 sets out new criteria against which all planning applications for economic development should be assessed against. These include:
 - Whether the proposal has been planned over the lifetime of the development to limit carbon dioxide emissions, and minimise vulnerability and provide resilience to, climate change;
 - The accessibility of the proposal by a choice of means of transport including walking, cycling, public transport and the car, the effect on local traffic levels and congestion (especially to the trunk road network) after public transport and traffic management measures have been secured;
 - Whether the proposal secures a high quality and inclusive design which takes the opportunities available for improving the character and quality of the area and the way it functions;
 - The impact on economic and physical regeneration in the area including the impact on deprived areas and social inclusion objectives; and
 - The impact on local employment

9. This introduces new points new matters against which Local Authorities are required to assess planning applications against. However, the information submitted by the applicant is insufficient to demonstrate that the application would have a positive impact in terms of economic or physical regeneration. Only limited information has been submitted with regard to employment, and this relates solely to the proposal thus failing to consider the cumulative impact on employment within the wider town centre. The information submitted with regard to limiting carbon dioxide emissions and

minimising impact on climate change through sustainable construction techniques also appears to be insufficient to meet PPS4 requirements.

Sequential Assessment

10. Following on from guidance contained in PPS6, paragraph EC14.3 of PPS4 states that *'A sequential assessment (under Policy EC15) is required for planning applications for main town centres uses that are not in an existing centre and are not in accordance with an up to date development plan'*. This is clearly the case, as accepted by the Council in advertising the application as a departure from the adopted Wrekin Local Plan.
11. The Trustees objections to date have highlighted that in the context of paragraph 3.19 of PPS6 the applicant has failed to provide sufficient evidence that would highlight why sequentially preferable sites (namely Red Oak Car Park and Ash Grey Car Park) are not practicable alternatives to the proposed development in terms of 'availability', 'suitability' and 'viability'. However, PPS4 now places even greater emphasis on the sequential approach. Indeed Policy EC15 provides specific guidance for Local Authorities in considering sequential assessments. Local Authorities should:
 - Ensure that sites are assessed for their availability, suitability and viability;
 - Ensure that all in-centre options have been thoroughly assessed before less central sites are considered;
 - Ensure that where it has been demonstrated that there are no town centre sites to accommodate a proposed development, preference is given to edge of centre locations which are well connected to the centre by means of easy pedestrian access;
 - Ensure that in considering sites in or on the edge of existing centres, developers and operators have demonstrated flexibility in terms of:
 - i. Scale: Reducing the floorspace of the development
 - ii. Format: More innovative site layouts and store configurations such as multi-storey developments with smaller footprints;
 - iii. Car parking provision; reduced or reconfigured car parking areas; and
 - iv. The scope for disaggregating specific parts of a retail or leisure development
12. Paragraph EC15.2 states that Local Planning Authorities should take into account any genuine difficulties which the applicant can demonstrate are likely to occur in operating the proposed business model from a sequentially preferable site, for example where a retailer would be limited to selling a significantly reduced range of products. To date the applicant has failed to present any such evidence, indeed it is evident from the material submitted as part of the Trustees objections, that an identical Sales Area to that proposed, can comfortably be accommodated within the Red Oak Car Park.
13. PPS4 is accompanied by Best practice Guidance on need, impact and the sequential approach. In this regard paragraph 5.6 specifically states that *'the sequential approach forms a key policy consideration, and can in itself*

be a clear reason for refusal. As such it is critical that applicants carry out a thorough assessment to explore alternative options, and that if more central opportunities are rejected, it is for sound reasons which are clearly explained and justified. As the onus rests on the applicant to demonstrate compliance with sequential approach, failure to undertake such an assessment would constitute a reason for refusal’.

14. It is considered that the evidence submitted by the applicant to date is not thorough, and fails to provide sound reasons as to why either the Ash Grey Car Park or the Red Oak Car Park cannot accommodate the proposed development. As per the Trustees objections dated 14th December 2009, the assertions made by Marsh & Baxter Properties Limited are disputed.
15. As in the case of PPS6, the Best Practice Guidance requires applicants to specifically demonstrate flexibility in their business model when considering sites in, or on the edge, of existing centres as part of applying the sequential approach to town centre uses. Paragraph 6.33 states that *‘the decision by an individual retailer to promote a business model which cannot be accommodated in an existing centre will not justify discounting more central sites where they are available, suitable and viable’*. The applicants have failed to demonstrate flexibility in this regard, completely discounting sites of less than 2.2 Hectares and demanding a minimum of 500 car parking spaces adjacent to the store entrance.
16. The Best Practice Guide sets out detailed guidance on whether a site is ‘available’, ‘suitable’ or ‘viable’. Paragraph 6.38 states that *‘a site is considered available for development, when, on the best information available, there is confidence that there are no insurmountable legal or ownership problems, such as multiple ownerships, ransom strips, tenancies or operational requirements of landowners’*. This is evidently the case with regard to both the Ash Grey Car Park and the Red Oak Car Park, which are entirely owned by the Trustees. Indeed the only issue in this regard is that as per the Marsh & Baxter letter dated 1st December 2009 *‘Asda would be able to block the early (i.e. before 2014) development at Red Oak’*. This is not sufficient to render a site unavailable as it is the applicant themselves which is preventing the development of a sequentially preferable site.
17. Furthermore the Best Practice Guidance states that ‘any evidence of whether the owner(s) of the site appear willing to bring forward the site for development in question within a reasonable timescale’ is also a factor which the Local Authority need to take into account. In this instance the Trustees have submitted an outline planning application for development of a supermarket on the Red Oak Car Park, which can be tailored to the needs of a range of operators for a range of formats, including Asda. Therefore in the context of PPS4 evidence submitted by the applicant to date is insufficient to render either Red Oak Car Park or Ash Grey Car Park unavailable.
18. Paragraph 6.43 of the Best Practice Guidance sets out the following factors which are likely to be relevant when assessing whether a site offers a suitable location for development:
 - Policy restrictions – such as designations, protected areas, existing planning policy and corporate, or community strategy policy;
 - Physical problems or limitations – such as access, infrastructure, ground conditions, flood risk, hazardous risks, pollution or contamination;

- Potential impacts – including effects on landscape features and conservation.
 - The environmental conditions – which would be experienced by potential users of the proposal.
19. It should be noted that there are no policy restrictions to the development of the Red Oak Car Park or the Ash Grey Car Park. Both are allocated for retail development in the adopted Wrekin Local Plan. As demonstrated in the Trustees outline planning application submitted to Telford & Wrekin Council, the Red Oak Car Park is also not subject to physical or environmental constraints. It appears that the applicants reasoning behind declaring that Red Oak Car Park is not 'suitable' is based solely on assertions made by Marsh & Baxter. In the letter dated 1st December 2009 Marsh & Baxter suggest that the construction of Red Oak Car Park would represent an 80% impact upon Asda's existing store. However, this assertion is not supported by any evidence, and the planning application submitted by the Trustees for the Red Oak Car Park demonstrates that construction can be phased to minimise disruption to the existing Asda unit and that sufficient car parking would be available throughout the construction period for Asda's customers.
20. The applicants have not satisfactorily demonstrated that either the Ash Grey Car Park or the Red Oak Car Park are unsuitable to satisfactorily meet the need/demand their proposal is intended to serve. Therefore they are in conflict with Paragraph 6.45 of the Best Practice Guidance which specifically states that applicants should not reject sites based on self imposed requirements or preferences without demonstrating a serious attempt to overcome any identified constraints.
21. The applicants have stated that both the Red Oak Car Park and the Ash Grey Car Park sites are 'unviable'. However, in accordance with paragraph 6.48 of the Best Practice guide, the fact that a specific retailer or occupier is said to be unwilling to locate on a particular site is not necessarily evidence that it is unviable. The Trustees are actively seeking planning permission for a new supermarket on the Red Oak Car Park site and paragraph 6.49 of the best practice guidance states that *'where alternative sites are being actively promoted for new development by a developer/retailer, this is a reasonable indicator that the location is viable'*.
22. It is the Trustees view that the level of information submitted by Asda with regard to the viability of both Red Oak Car Park and Ash Grey Car Park is wholly insufficient to comply with the Best Practice Guidance which specifically states *'Given the timescale for bringing forward some town centre schemes, and their vital importance to the continuing vitality and viability of town centres, it would be inappropriate to reject a more central opportunity as being currently unviable, without allowing a reasonable period of time to test whether a viable opportunity is likely to come forward'*.
23. PPS4 and the supporting Best Practice Guidance makes it clear that Local Planning Authorities (LPA) should seek to make the best possible use of scarce town and city centre sites, promoting mixed use development wherever appropriate. Paragraph 5.7 of the Best Practice Guidance states that *'If the LPA proposes to refuse an application involving town centre uses on the basis of the sequential approach, it should be on the basis that it considers there is, or maybe, a reasonable prospect of a sequentially preferable opportunity coming forward which is likely to be capable of meeting the same requirements as the application is intended to meet'*. This is particularly important with regard to viability where in accordance

with Paragraph 6.37 the LPA needs to assess whether there is a reasonable prospect that development will occur on the site at a particular point in time. Again the importance of demonstrating the viability of alternatives depends in part on the nature of the need and the timescale over which it is to be met.

24. The application submitted by the Trustees surely demonstrates that there is a reasonable prospect that the Red Oak Car Park can be developed to accommodate the applicants requirements. The applicants propose an opening year of 2014, and the Trustees have demonstrated that the only obstruction to meeting the applicants requirements within an identical if not sooner timescale on the sequentially preferable Red Oak Car Park is the applicant themselves.
25. It is considered on this basis that the application cannot be considered to meet the requirements of PPS4 with regard to sequential assessment.

Impact

26. With the eradication of applicant's being required to demonstrate need, PPS4 places greater than PPS6 on the impact of proposals upon the vitality and viability of existing centres. In objections to date the Trustees have consistently argued that the applicants have failed to address the issue of impact, and it is considered that PPS4 further highlights weaknesses in the application submitted by Asda.
27. The key change to town centre policy remains the replacement of the current need and impact tests with an improved impact test which, supported by good practice guidance, will continue the strong focus on the town centre first policy. Indeed Policy EC16 sets out the new requirements for Impact Assessments, for development proposals which are not in centre or in accordance with an up-to-date development plan. Both clearly apply to the application, and therefore the application is to be assessed against the following impacts on centres:
 - a) 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;
 - b) the impact of the proposal on town centre vitality and viability ,including local consumer choice and the range and quality of the comparison and convenience retail offer
 - c) the impact of the proposal on allocated sites outside town centres being developed in accordance with the development plan
 - d) in the context of a retail or leisure proposal, the impact of the proposal on in-centre trade/turnover and on trade in the wider area, taking account of current and future consumer expenditure capacity in the catchment area up to five years from the time the application is made, and, where applicable, on the rural economy
 - e) if located in or on the edge of a town centre, whether the proposal is of an appropriate scale (in terms of gross floorspace) in relation to the size of the centre and its role in the hierarchy of centres
 - f) any locally important impacts on centres
28. The above tests generally follow those previously set out in paragraph 3.22 of PPS6. However, the accompanying Best Practice Guide provides further guidance on each of these.

29. The application submitted by Asda is for a 'replacement Asda supermarket' and therefore will result in the removal of a key anchor to Telford from an in-centre location to an edge of-centre location. It is inevitable that such a proposal will have an impact upon the turnover of existing retail operators in Telford. It will also have an impact on investor confidence and it is highly unlikely the Trustees will be able to attract new operators into the centre. However, despite ongoing objections to the application, the applicant has failed to provide evidence to the contrary.
30. Since purchase of the Town Centre from USS in 2007 the Trustees have sought to invest in the Town Centre and have presented a masterplan for comprehensive redevelopment of the Town Centre to Telford & Wrekin Council. The Council have generally supported the content of the Trustees proposals, and indeed the existing planning application for redevelopment of the Red Oak Car Park represents the next stage in the Trustees wider proposals for the town centre. In this regard paragraph 7.25 of the Best Practice Guidance states that *'where there is a clearly defined strategy to promote the expansion of a centre through new development, the potential impact on operator demand or investor confidence, and the risk to the development plan strategy are likely to be overriding concerns'*. The Best Practice Guide specifically states on Page 55 that *'Significant levels of trade diversion from the centre, or key sectors, can seriously undermine its vitality and viability resulting in reduced footfall, increased vacancies, a more 'down market' offer etc'*; and most specific to this application *'Loss of a key town centre use, or loss of demand from a prospective operator needed to reinforce the existing offer may be highly significant in some centres'*. Throughout their objections to the Asda application, the Trustees have explained that it will not be possible to attract a new anchor to the centre, whereas the applicants have continually sought to avoid the issue of impact on the assumption that an operator such as Tesco/Morrisons would operate from the existing store.
31. The Trustees strongly contest the assumption that an operator such as Tesco/Morrisons would re-occupy the existing store. Paragraph 2.27 of the Trustees objections dated 14th December 2009 emphasise the matter, and therefore it is evident that in isolation approximately £45m of trade will be diverted to an edge-of-centre location regardless of the impact on existing operators. With regard to impact on turnover/trade paragraph 7.30 of the Best Practice Guide states that *'it may be relevant to consider the effects of trade diversion, in terms of the possible consequences for increased vacancies and reduced footfall in other parts of the centre, and to consider mitigating factors as part of an overall strategy for the centre'*. At no point have Asda presented any information to highlight the likely impact on vacancies within the centre or footfall. The removal of such a key anchor would inevitably lead to a negative effect on both and there is certainly no evidence of mitigating factors within their application.
32. The applicants provide absolutely no evidence of the current and expected performance of existing retail operators within the centre, as a result of the proposal, or the turnover levels needed to maintain and enhance vitality and viability within Telford (as required by paragraph 7.31 of the Best Practice Guidance). Where, as in the case of Telford, particularly in the current market conditions, paragraph 7.32 of the Guidance states that *'where a centre is experiencing falling rents, high levels of vacancy and declining footfall, even modest levels of trade diversion can have significant adverse impacts'*.

33. Appendix D of the Best Practice Guidance provides specific guidance on how to quantify impact. Key to this is the need to undertake a comprehensive health check of town centres. It is the Trustees view that the retail assessment provided by RPS is lacking in this regard. Specifically with regard to retailer demand and representation (A4); Land values and the length of time key sites have remained undeveloped (A8); Pedestrian flows (footfall) measured by the numbers and movement of people on the streets, in different parts of the centre at different times of the day and evening (A9) and perhaps more importantly the proportion of vacant street level property (A6) is incorrect. Therefore the baseline position has not been properly quantified.
34. Section 5 is particularly pertinent to this planning application, as it considers the consequence of impact upon existing centres and facilities. Fundamental to this is the likely impact of new development upon the vitality and viability of existing centres. For example *'impact on existing turnover levels may have a key bearing on the ability to increase Zone A rents within the centre in order to make new investment viable, or may serve to dilute retailer demand, or redirect key retailer interest which is needed to underpin the viability of planned new investment'* (Paragraph D.35). Furthermore paragraph D.37 states that *'there may be cases where proposals are likely to lead to a disproportionate impact on a particular sector or part of a centre. An example may be where a proposal is likely to undermine the continued presence of a key anchor store, such as a department/ variety store or main foodstore anchor which could lead to a disproportionate knock on effect for the rest of the centre over time. In these circumstances it will be necessary to gain some understanding of the current viability of existing retailers, and in particular the current performance and intentions of key anchor stores in order to properly gauge the impact of new proposals.* In all cases the guidance clearly states (at Paragraph D.38) that it is important that the impacts are considered on the vitality and viability of the whole of a centre, not simply on individual facilities which may be similar to the proposed development. It is this evidence which the Trustees have consistently sought comfort from the applicant, but which has never been forthcoming.
35. It is in the context highlighted above, that Policy EC17 of PPS4 is most pertinent to the Asda planning application. Paragraph EC17.1 specifically states that Planning applications for main town centre 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:
- the applicant has not demonstrated compliance with the requirements of the sequential approach (policy EC15); or
 - there is clear evidence that the proposal is likely to lead to significant adverse impacts in terms of any one of impacts set out in policies EC10.2 and 16.1 (the impact assessment), taking account of the likely cumulative effect of recent permissions, developments under construction and completed developments.
36. In the context of PPS4 and the accompanying Best Practice Guidance it is considered that the application fails to demonstrate compliance with the sequential approach and would have significant adverse impacts on the vitality and viability of Telford town centre. In the context of PPS4 the application should be refused planning permission.



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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.

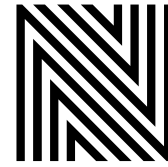
Lack of Technical Data (Paragraph 2(v) of Osborne Clarke's note)

- 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



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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.



- 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.



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.



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- 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.



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- 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



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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

**Comments on Planning Application W2009/0915
following release of Planning Policy Statement 4
'Planning for Sustainable Economic Development' on
29 December 2009**

1. On 29th December 2009 the Government published Planning Policy Statement 4 (PPS4) 'Planning for Sustainable Economic Growth'. PPS4 replaces the following National Planning Policy Guidance Notes/Statements:
 - *Planning Policy Guidance 4: Industrial, Commercial Development and Small Firms (PPG4);*
 - *Planning Policy Guidance 5: Simplified Planning Zones (PPG5);*
 - *Planning Policy Statement 6: Planning for Town Centres (PPS6);* and
 - *The economic development sections of Planning Policy Statement 7: Sustainable Development in Rural Areas (PPS7).*
2. The Report to Plans Board Committee of 6th January 2010 in respect to planning application W2009/0915, submitted by Asda Stores Ltd, makes no reference to PPS4. The references made to PPS6 and Draft PPS4 are no longer relevant to the planning application.
3. Within PPS4 the Government has made a number of revisions to its town centre policy, including the removal of the requirement for applicants to demonstrate that there is 'need' for development proposals that are in edge or out of centre locations and which are not supported by an up to date development plan. The Government's approach also clearly differentiates between the role of need, impact and sequential site assessment in plan making, and the application of the sequential approach and impact tests in the development management process. The content of PPS4 must therefore be taken into account in determining planning application W2009/0915.
4. The Trustees have submitted detailed objections to planning application W2009/0915. The sequential approach to site selection and the likely 'impact' upon Telford Town Centre were key reasons which the Trustees highlighted in their objections dated 16th November 2009 and 14th December 2009. It is in the context highlighted above, that Policy EC17 of PPS4 is pivotal to the Asda planning application. Policy EC17, which is considered in further detail below, stresses that planning applications for main town centre 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 the applicant fails to demonstrate compliance with the requirements of the sequential approach; or where there is clear evidence that the proposal is likely to lead to significant adverse impacts on town centres.
5. It is considered that the introduction of PPS4 provides further policy basis for the Trustees objections, and thus areas which the applicant and the Council must address.
6. Paragraph 3 of PPS4 states that 'the policies in the PPS are a material consideration which must be taken into account in development

management decisions, where relevant. The development management policies in the PPS can be applied directly by the decision maker when determining planning applications. For the purposes of the policies in the PPS, economic development includes development within the B Use Classes, public and community uses and main town centre uses’.

7. PPS4 further emphasises the ‘town centres first’ approach. The need to promote vitality and viability of town centres is stressed in paragraph 10, which sets out the Government’s objectives for Prosperous Economies. The Government wants:
 - New economic growth and development of main town centre uses to be focused in existing centres, with the aim of offering a wide range of services to communities in an attractive and safe environment and remedying deficiencies in provision in areas with poor access to facilities;
 - Competition between retailers and enhanced consumer choice through the provision of innovative and efficient shopping, leisure, tourism and local services in town centres, which allow genuine choice to meet the needs of the entire community (particularly socially excluded groups);
 - The historic, archaeological and architectural heritage of centres to be conserved and, where appropriate, enhanced to provide a sense of place and a focus for the community and for civic activity.

8. PPS4 sets out specific policies to be used by Local Authorities for development control purposes. Aside from specific policies relating to retail and town centre development, Policy EC10 sets out new criteria against which all planning applications for economic development should be assessed against. These include:
 - Whether the proposal has been planned over the lifetime of the development to limit carbon dioxide emissions, and minimise vulnerability and provide resilience to, climate change;
 - The accessibility of the proposal by a choice of means of transport including walking, cycling, public transport and the car, the effect on local traffic levels and congestion (especially to the trunk road network) after public transport and traffic management measures have been secured;
 - Whether the proposal secures a high quality and inclusive design which takes the opportunities available for improving the character and quality of the area and the way it functions;
 - The impact on economic and physical regeneration in the area including the impact on deprived areas and social inclusion objectives; and
 - The impact on local employment

9. This introduces new points new matters against which Local Authorities are required to assess planning applications against. However, the information submitted by the applicant is insufficient to demonstrate that the application would have a positive impact in terms of economic or physical regeneration. Only limited information has been submitted with regard to employment, and this relates solely to the proposal thus failing to consider the cumulative impact on employment within the wider town centre. The information submitted with regard to limiting carbon dioxide emissions and

minimising impact on climate change through sustainable construction techniques also appears to be insufficient to meet PPS4 requirements.

Sequential Assessment

10. Following on from guidance contained in PPS6, paragraph EC14.3 of PPS4 states that *'A sequential assessment (under Policy EC15) is required for planning applications for main town centres uses that are not in an existing centre and are not in accordance with an up to date development plan'*. This is clearly the case, as accepted by the Council in advertising the application as a departure from the adopted Wrekin Local Plan.
11. The Trustees objections to date have highlighted that in the context of paragraph 3.19 of PPS6 the applicant has failed to provide sufficient evidence that would highlight why sequentially preferable sites (namely Red Oak Car Park and Ash Grey Car Park) are not practicable alternatives to the proposed development in terms of 'availability', 'suitability' and 'viability'. However, PPS4 now places even greater emphasis on the sequential approach. Indeed Policy EC15 provides specific guidance for Local Authorities in considering sequential assessments. Local Authorities should:
 - Ensure that sites are assessed for their availability, suitability and viability;
 - Ensure that all in-centre options have been thoroughly assessed before less central sites are considered;
 - Ensure that where it has been demonstrated that there are no town centre sites to accommodate a proposed development, preference is given to edge of centre locations which are well connected to the centre by means of easy pedestrian access;
 - Ensure that in considering sites in or on the edge of existing centres, developers and operators have demonstrated flexibility in terms of:
 - i. Scale: Reducing the floorspace of the development
 - ii. Format: More innovative site layouts and store configurations such as multi-storey developments with smaller footprints;
 - iii. Car parking provision; reduced or reconfigured car parking areas; and
 - iv. The scope for disaggregating specific parts of a retail or leisure development
12. Paragraph EC15.2 states that Local Planning Authorities should take into account any genuine difficulties which the applicant can demonstrate are likely to occur in operating the proposed business model from a sequentially preferable site, for example where a retailer would be limited to selling a significantly reduced range of products. To date the applicant has failed to present any such evidence, indeed it is evident from the material submitted as part of the Trustees objections, that an identical Sales Area to that proposed, can comfortably be accommodated within the Red Oak Car Park.
13. PPS4 is accompanied by Best practice Guidance on need, impact and the sequential approach. In this regard paragraph 5.6 specifically states that *'the sequential approach forms a key policy consideration, and can in itself*

be a clear reason for refusal. As such it is critical that applicants carry out a thorough assessment to explore alternative options, and that if more central opportunities are rejected, it is for sound reasons which are clearly explained and justified. As the onus rests on the applicant to demonstrate compliance with sequential approach, failure to undertake such an assessment would constitute a reason for refusal'.

14. It is considered that the evidence submitted by the applicant to date is not thorough, and fails to provide sound reasons as to why either the Ash Grey Car Park or the Red Oak Car Park cannot accommodate the proposed development. As per the Trustees objections dated 14th December 2009, the assertions made by Marsh & Baxter Properties Limited are disputed.
15. As in the case of PPS6, the Best Practice Guidance requires applicants to specifically demonstrate flexibility in their business model when considering sites in, or on the edge, of existing centres as part of applying the sequential approach to town centre uses. Paragraph 6.33 states that *'the decision by an individual retailer to promote a business model which cannot be accommodated in an existing centre will not justify discounting more central sites where they are available, suitable and viable'*. The applicants have failed to demonstrate flexibility in this regard, completely discounting sites of less than 2.2 Hectares and demanding a minimum of 500 car parking spaces adjacent to the store entrance.
16. The Best Practice Guide sets out detailed guidance on whether a site is 'available', 'suitable' or 'viable'. Paragraph 6.38 states that *'a site is considered available for development, when, on the best information available, there is confidence that there are no insurmountable legal or ownership problems, such as multiple ownerships, ransom strips, tenancies or operational requirements of landowners'*. This is evidently the case with regard to both the Ash Grey Car Park and the Red Oak Car Park, which are entirely owned by the Trustees. Indeed the only issue in this regard is that as per the Marsh & Baxter letter dated 1st December 2009 *'Asda would be able to block the early (i.e. before 2014) development at Red Oak'*. This is not sufficient to render a site unavailable as it is the applicant themselves which is preventing the development of a sequentially preferable site.
17. Furthermore the Best Practice Guidance states that *'any evidence of whether the owner(s) of the site appear willing to bring forward the site for development in question within a reasonable timescale'* is also a factor which the Local Authority need to take into account. In this instance the Trustees have submitted an outline planning application for development of a supermarket on the Red Oak Car Park, which can be tailored to the needs of a range of operators for a range of formats, including Asda. Therefore in the context of PPS4 evidence submitted by the applicant to date is insufficient to render either Red Oak Car Park or Ash Grey Car Park unavailable.
18. Paragraph 6.43 of the Best Practice Guidance sets out the following factors which are likely to be relevant when assessing whether a site offers a suitable location for development:
 - Policy restrictions – such as designations, protected areas, existing planning policy and corporate, or community strategy policy;
 - Physical problems or limitations – such as access, infrastructure, ground conditions, flood risk, hazardous risks, pollution or contamination;

- Potential impacts – including effects on landscape features and conservation.
 - The environmental conditions – which would be experienced by potential users of the proposal.
19. It should be noted that there are no policy restrictions to the development of the Red Oak Car Park or the Ash Grey Car Park. Both are allocated for retail development in the adopted Wrekin Local Plan. As demonstrated in the Trustees outline planning application submitted to Telford & Wrekin Council, the Red Oak Car Park is also not subject to physical or environmental constraints. It appears that the applicants reasoning behind declaring that Red Oak Car Park is not 'suitable' is based solely on assertions made by Marsh & Baxter. In the letter dated 1st December 2009 Marsh & Baxter suggest that the construction of Red Oak Car Park would represent an 80% impact upon Asda's existing store. However, this assertion is not supported by any evidence, and the planning application submitted by the Trustees for the Red Oak Car Park demonstrates that construction can be phased to minimise disruption to the existing Asda unit and that sufficient car parking would be available throughout the construction period for Asda's customers.
20. The applicants have not satisfactorily demonstrated that either the Ash Grey Car Park or the Red Oak Car Park are unsuitable to satisfactorily meet the need/demand their proposal is intended to serve. Therefore they are in conflict with Paragraph 6.45 of the Best Practice Guidance which specifically states that applicants should not reject sites based on self imposed requirements or preferences without demonstrating a serious attempt to overcome any identified constraints.
21. The applicants have stated that both the Red Oak Car Park and the Ash Grey Car Park sites are 'unviable'. However, in accordance with paragraph 6.48 of the Best Practice guide, the fact that a specific retailer or occupier is said to be unwilling to locate on a particular site is not necessarily evidence that it is unviable. The Trustees are actively seeking planning permission for a new supermarket on the Red Oak Car Park site and paragraph 6.49 of the best practice guidance states that *'where alternative sites are being actively promoted for new development by a developer/retailer, this is a reasonable indicator that the location is viable'*.
22. It is the Trustees view that the level of information submitted by Asda with regard to the viability of both Red Oak Car Park and Ash Grey Car Park is wholly insufficient to comply with the Best Practice Guidance which specifically states *'Given the timescale for bringing forward some town centre schemes, and their vital importance to the continuing vitality and viability of town centres, it would be inappropriate to reject a more central opportunity as being currently unviable, without allowing a reasonable period of time to test whether a viable opportunity is likely to come forward'*.
23. PPS4 and the supporting Best Practice Guidance makes it clear that Local Planning Authorities (LPA) should seek to make the best possible use of scarce town and city centre sites, promoting mixed use development wherever appropriate. Paragraph 5.7 of the Best Practice Guidance states that *'If the LPA proposes to refuse an application involving town centre uses on the basis of the sequential approach, it should be on the basis that it considers there is, or maybe, a reasonable prospect of a sequentially preferable opportunity coming forward which is likely to be capable of meeting the same requirements as the application is intended to meet'*. This is particularly important with regard to viability where in accordance

with Paragraph 6.37 the LPA needs to assess whether there is a reasonable prospect that development will occur on the site at a particular point in time. Again the importance of demonstrating the viability of alternatives depends in part on the nature of the need and the timescale over which it is to be met.

24. The application submitted by the Trustees surely demonstrates that there is a reasonable prospect that the Red Oak Car Park can be developed to accommodate the applicants requirements. The applicants propose an opening year of 2014, and the Trustees have demonstrated that the only obstruction to meeting the applicants requirements within an identical if not sooner timescale on the sequentially preferable Red Oak Car Park is the applicant themselves.
25. It is considered on this basis that the application cannot be considered to meet the requirements of PPS4 with regard to sequential assessment.

Impact

26. With the eradication of applicant's being required to demonstrate need, PPS4 places greater than PPS6 on the impact of proposals upon the vitality and viability of existing centres. In objections to date the Trustees have consistently argued that the applicants have failed to address the issue of impact, and it is considered that PPS4 further highlights weaknesses in the application submitted by Asda.
27. The key change to town centre policy remains the replacement of the current need and impact tests with an improved impact test which, supported by good practice guidance, will continue the strong focus on the town centre first policy. Indeed Policy EC16 sets out the new requirements for Impact Assessments, for development proposals which are not in centre or in accordance with an up-to-date development plan. Both clearly apply to the application, and therefore the application is to be assessed against the following impacts on centres:
 - a) 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;
 - b) the impact of the proposal on town centre vitality and viability ,including local consumer choice and the range and quality of the comparison and convenience retail offer
 - c) the impact of the proposal on allocated sites outside town centres being developed in accordance with the development plan
 - d) in the context of a retail or leisure proposal, the impact of the proposal on in-centre trade/turnover and on trade in the wider area, taking account of current and future consumer expenditure capacity in the catchment area up to five years from the time the application is made, and, where applicable, on the rural economy
 - e) if located in or on the edge of a town centre, whether the proposal is of an appropriate scale (in terms of gross floorspace) in relation to the size of the centre and its role in the hierarchy of centres
 - f) any locally important impacts on centres
28. The above tests generally follow those previously set out in paragraph 3.22 of PPS6. However, the accompanying Best Practice Guide provides further guidance on each of these.

29. The application submitted by Asda is for a 'replacement Asda supermarket' and therefore will result in the removal of a key anchor to Telford from an in-centre location to an edge-of-centre location. It is inevitable that such a proposal will have an impact upon the turnover of existing retail operators in Telford. It will also have an impact on investor confidence and it is highly unlikely the Trustees will be able to attract new operators into the centre. However, despite ongoing objections to the application, the applicant has failed to provide evidence to the contrary.

30. Since purchase of the Town Centre from USS in 2007 the Trustees have sought to invest in the Town Centre and have presented a masterplan for comprehensive redevelopment of the Town Centre to Telford & Wrekin Council. The Council have generally supported the content of the Trustees proposals, and indeed the existing planning application for redevelopment of the Red Oak Car Park represents the next stage in the Trustees wider proposals for the town centre. In this regard paragraph 7.25 of the Best Practice Guidance states that *'where there is a clearly defined strategy to promote the expansion of a centre through new development, the potential impact on operator demand or investor confidence, and the risk to the development plan strategy are likely to be overriding concerns'*. The Best Practice Guide specifically states on Page 55 that *'Significant levels of trade diversion from the centre, or key sectors, can seriously undermine its vitality and viability resulting in reduced footfall, increased vacancies, a more 'down market' offer etc'*; and most specific to this application *'Loss of a key town centre use, or loss of demand from a prospective operator needed to reinforce the existing offer may be highly significant in some centres'*. Throughout their objections to the Asda application, the Trustees have explained that it will not be possible to attract a new anchor to the centre, whereas the applicants have continually sought to avoid the issue of impact on the assumption that an operator such as Tesco/Morrisons would operate from the existing store.

31. The Trustees strongly contest the assumption that an operator such as Tesco/Morrisons would re-occupy the existing store. Paragraph 2.27 of the Trustees objections dated 14th December 2009 emphasise the matter, and therefore it is evident that in isolation approximately £45m of trade will be diverted to an edge-of-centre location regardless of the impact on existing operators. With regard to impact on turnover/trade paragraph 7.30 of the Best Practice Guide states that *'it may be relevant to consider the effects of trade diversion, in terms of the possible consequences for increased vacancies and reduced footfall in other parts of the centre, and to consider mitigating factors as part of an overall strategy for the centre'*. At no point have Asda presented any information to highlight the likely impact on vacancies within the centre or footfall. The removal of such a key anchor would inevitably lead to a negative effect on both and there is certainly no evidence of mitigating factors within their application.

32. The applicants provide absolutely no evidence of the current and expected performance of existing retail operators within the centre, as a result of the proposal, or the turnover levels needed to maintain and enhance vitality and viability within Telford (as required by paragraph 7.31 of the Best Practice Guidance). Where, as in the case of Telford, particularly in the current market conditions, paragraph 7.32 of the Guidance states that *'where a centre is experiencing falling rents, high levels of vacancy and declining footfall, even modest levels of trade diversion can have significant adverse impacts'*.

33. Appendix D of the Best Practice Guidance provides specific guidance on how to quantify impact. Key to this is the need to undertake a comprehensive health check of town centres. It is the Trustees view that the retail assessment provided by RPS is lacking in this regard. Specifically with regard to retailer demand and representation (A4); Land values and the length of time key sites have remained undeveloped (A8); Pedestrian flows (footfall) measured by the numbers and movement of people on the streets, in different parts of the centre at different times of the day and evening (A9) and perhaps more importantly the proportion of vacant street level property (A6) is incorrect. Therefore the baseline position has not been properly quantified.
34. Section 5 is particularly pertinent to this planning application, as it considers the consequence of impact upon existing centres and facilities. Fundamental to this is the likely impact of new development upon the vitality and viability of existing centres. For example *'impact on existing turnover levels may have a key bearing on the ability to increase Zone A rents within the centre in order to make new investment viable, or may serve to dilute retailer demand, or redirect key retailer interest which is needed to underpin the viability of planned new investment'* (Paragraph D.35). Furthermore paragraph D.37 states that *'there may be cases where proposals are likely to lead to a disproportionate impact on a particular sector or part of a centre. An example may be where a proposal is likely to undermine the continued presence of a key anchor store, such as a department/ variety store or main foodstore anchor which could lead to a disproportionate knock on effect for the rest of the centre over time. In these circumstances it will be necessary to gain some understanding of the current viability of existing retailers, and in particular the current performance and intentions of key anchor stores in order to properly gauge the impact of new proposals.* In all cases the guidance clearly states (at Paragraph D.38) that it is important that the impacts are considered on the vitality and viability of the whole of a centre, not simply on individual facilities which may be similar to the proposed development. It is this evidence which the Trustees have consistently sought comfort from the applicant, but which has never been forthcoming.
35. It is in the context highlighted above, that Policy EC17 of PPS4 is most pertinent to the Asda planning application. Paragraph EC17.1 specifically states that Planning applications for main town centre 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:
- the applicant has not demonstrated compliance with the requirements of the sequential approach (policy EC15); or
 - there is clear evidence that the proposal is likely to lead to significant adverse impacts in terms of any one of impacts set out in policies EC10.2 and 16.1 (the impact assessment), taking account of the likely cumulative effect of recent permissions, developments under construction and completed developments.
36. In the context of PPS4 and the accompanying Best Practice Guidance it is considered that the application fails to demonstrate compliance with the sequential approach and would have significant adverse impacts on the vitality and viability of Telford town centre. In the context of PPS4 the application should be refused planning permission.



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Via e-mail and post
gareth.thomas@telford.gov.uk

Planning Department
Development and Design
Telford & Wrekin Council
Derby House
PO Box 212
Telford
TF3 4LB

For Attention of: Gareth Thomas

4 January 2010

Our ref: PH/MDE/T1784/00003

Dear Sirs

Town and Country Planning Act 1990: Proposed Asda Store at Land at West Southwater, Telford – Application made on behalf of Asda Stores Limited (LPA Ref. No. W2009/0915) and outline application for residential development (LPA Ref. No. W2009/0945)

We write further to our letter of 22 December 2009 and in advance of the Plans Board meeting on 6 January 2010 which we understand is to consider the above-mentioned applications submitted by Asda Stores Limited ("Asda"). We also respond below to your letter of 31 December 2009.

1. PPS4: Planning for Sustainable Economic Growth

- 1.1 PPS4 was published on 29 December 2009 and was issued with Practice Guidance on need, impact and the sequential approach. We enclose a note on PPS4 and its implications for the Asda supermarket application which has been prepared by Drivers Jonas. The note raises fundamental issues which must be addressed by TWA in its capacity as the local planning authority.
- 1.2 As important Government policy on the development of town centres the new guidance is clearly a fundamental material consideration which needs to be taken into account in the determination of the Asda planning applications.
- 1.3 In particular TWC will need to take into account the new guidance at Policy EC17. This is of pivotal importance and requires that planning applications which fail either the sequential approach or the impact test be refused. This is a significant hardening of the Government's approach to the assessment of proposals which are outside existing town centres on edge-of-centre sites. Asda's supermarket planning application must be refused given that it is in clear and direct conflict with Policy EC17 and other policies and provisions in PPS4.
- 1.4 The enclosed note prepared by Drivers Jonas demonstrates that the Asda proposal fundamentally conflicts with the guidance in PPS4 and its associated Practice Guidance.

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- 1.5 We would also specifically refer TWC to the following provisions of the Practice Guide accompanying PPS4 which support the Trustees' representations to date that the Red Oak Car Park proposal represents a viable alternative to the Asda proposal on a sequentially preferable site:
- (a) *"the fact that a specific retailer or occupier is said to be unwilling to locate on a particular site is not necessarily evidence that it is unviable"* (paragraph 6.4.8 of the Practice Guide);
 - (b) *"Where alternative sites are being actively promoted for new development by a developer/retailer this is a reasonable indicator that the location is viable"* (paragraph 6.4.9 of the Practice Guide);
 - (c) *"Given the timescale for bringing forward some town centre schemes, and their vital importance to the continuing vitality and viability of town centres, it would be inappropriate to reject a more central opportunity as being currently unviable, without allowing a reasonable period of time to test whether a viable opportunity is likely to come forward"* (paragraph 6.50 of the Practice Guide).
- 1.6 Any failure by TWC to properly and objectively consider the new PPS4 would render any grant of permission to Asda unlawful such that it would be judicially reviewed by the Trustees.
- 2. Letter of 18 December 2009**
- 2.1 In your letter to us of 18 December 2009 (which was incorrectly dated 16 December 2009) at paragraph 7 you confirmed that you were seeking to prepare your report to the Plans Board meeting on 6 January 2010 *"for 28th December 2009"*.
- 2.2 The report to the Plans Board meeting on 6 January 2010 has now been published on Telford & Wrekin Council's ("**TWC**") website. We were, however, surprised and disappointed to note that its contents in respect of the Asda applications is, in all material respects, exactly the same as the report prepared for the Plans Board meeting on 16 December 2009 which deferred consideration of the applications.
- 2.3 As a result the published report to the Plans Board meeting on 6 January 2010 is wholly deficient. It fails to address any of the points made in the representations submitted by both ourselves and Drivers Jonas on and after 11 December 2009 in connection with the applications or even acknowledge their existence.
- 2.4 From your e-mail to Drivers Jonas of 30 December 2009 we understand that an Addendum Report is being prepared to the Plans Board meeting on 6 January 2010 and is to be made publically available this afternoon, at the earliest. We reserve the right to comment on the Addendum Report when it is published but would again express concern that a report is being prepared in advance of receipt of these further representations which we were given until 4 January 2010 to submit.



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3. Osborne Clarke's letter of 22 December 2009

- 3.1 On 22 December 2009, TWC provided Drivers Jonas with a copy of Osborne Clarke's letter of 22 December 2009 and the attached rebuttal note seeking to respond to the note prepared for the Trustees by Waterman and enclosed with our letter to you of 11 December 2009.
- 3.2 Osborne Clarke's letter responded to TWC's letter to RPS of 15 December 2009. TWC's letter to RPS of 15 December 2009 referred to our letters to TWC of 11 and 14 December 2009 (with enclosures) and asked for "*point by point*" responses from RPS on behalf of Asda.
- 3.3 We enclose a note that we have prepared with input from Waterman and the Trustees' team on the rebuttal note enclosed with Osborne Clarke's letter to TWC of 22 December 2009.
- 3.4 Osborne Clarke have responded to our letter of 14 December 2009 and the detailed note attached to it by merely stating that they have reviewed those documents and that they provide "*no additional issues*" to those commented upon by RPS in their letter to TWC of 3 December 2009. On that basis Osborne Clarke have referred TWC back to the contents of RPS's letter to TWC of 3 December 2009. As a result TWC must now reach its own independent view on the points raised and we would reiterate that our letter of 14 December 2009 to TWC and the detailed note which accompanied it identify a number of fundamental defects with the Asda supermarket application which, contrary to Osborne Clarke's assertion, do raise significant additional issues which TWC must address.

4. The Trustees' Planning Application for the Red Oak Car Park

- 4.1 On 22 December 2009, TWC registered the Trustees' outline planning application for a supermarket and mixed use development on the Red Oak Car Park site (LPA Ref: No. W2009/1074).
- 4.2 For the reasons set out in our letters of 14 and 22 December 2009 the Trustees' planning application and the Asda supermarket application should be reported to the same Plans Board meeting.

5. Illustrations A and B

- 5.1 You provided Drivers Jonas with Illustrations A and B as referred to in RPS's letter of 3 December 2009 on 17 December 2009 and your letter to us of 16 December 2009 asked for any further representations from the Trustees on these illustrations on or before 4 January 2010.
- 5.2 In respect of Illustrations A and B, RPS's letter asserts that the level of car parking loss and disruption would mean that the impact would be "*simply untenable*" if the Red Oak Car Park site were redeveloped to provide a supermarket.
- 5.3 The illustrations themselves are diagrammatic with little detail and do not purport to represent a detailed analysis of the potential for development.



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- 5.4 The Trustees' planning application, however, demonstrates that a suitable, available and viable option exists for the redevelopment of the Red Oak Car Park and Asda has acknowledged that in physical terms an option that complies with its design criteria exists at the Red Oak Car Park site (see paragraph 2.5(iii) of Drivers Jonas' letter to TWC of 16 November 2009).
- 5.5 The main assertion made by RPS is that the disruption caused to car parking would render the scheme unviable but this is clearly not the case. Our comments are as follows:
- (a) if the impacts were as great as Asda now suggest then they would have been apparent to Asda, as an experienced operator, from the outset and Asda would not have had lengthy discussions with the Trustees and signed off a scheme on the Red Oak Car Park as meeting Asda's design criteria. If such a scheme was fundamentally unacceptable it would have been academic for Asda to pursue those discussions;
 - (b) the RPS letter addresses car parking during the construction phase but does not provide an accurate or full assessment. The Trustees have, however, produced such an assessment and a car parking strategy to satisfactorily address impacts during the construction phases and this has been submitted with the Trustees' planning application and will need to be considered by TWC in its determination of the Asda supermarket application;
 - (c) the assessment submitted by the Trustees has been prepared by Peter Brett Associates and identifies the car parking currently used by Asda's customers and how sufficient spaces would be available in the construction and post-construction phases;
 - (d) RPS's letter does not provide this level of analysis and merely addresses the number of spaces lost on the Red Oak Car Park. It does not recognize the availability of other spaces within the Shopping Centre or the improved links to the Ash Grey Car Park proposed by the Trustees' application.
- 5.6 RPS's letter also attached a letter from Marsh and Baxter Properties Limited to RPS of 1 December 2009. Peter Brett Associates have reviewed the comments in that letter in light of Illustrations A and B and have the following further comments:
- (a) the letter suggests all movements for the parking will be catered for from one junction on Grange Central. As well as this junction, which we assume they have considered to be the current exit from Grange Central, two additional entrances are proposed, one from Lawn Central and one from Hollingsgate Roundabout. Two exit points are proposed by the Trustees, namely the current exit point and an additional exit point is also proposed located 70m to the south on Grange Central;
 - (b) the letter suggests that the servicing traffic is now mixing with customer access and egress. The use of the word "now" suggests that the service traffic at the moment does not mix with customer access and egress, which is incorrect. The existing service route accesses the service area for the current Asda via Ash Grey car park access and egress. This includes service vehicles having to reverse into the



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service area against the flow of a one way route. A true comparison of the servicing arrangements for servicing is as follows:

- (i) current servicing vehicles share 250m of roadspace with town centre users when accessing via Ash Grey, including having to reverse along this shared route. By comparison the proposed servicing arrangement will lead to 42m of roadspace shared with users at the proposed site;
 - (ii) the proposed site has a full movement turning circle in a dedicated service area, unlike the current arrangement;
 - (c) the new junction is commented on, stating that either a left-in left-out junction or an all movements junction will be provided. A left-in left-out junction would go against the one way routeing, and is therefore not possible and shows a lack of understanding of the junction.
 - (d) it is stated that significant disruption would be caused to the store and public. As a junction already exists in this location, and there are alternative access and egress points proposed, it is expected that the works themselves would cause little disruption. The alternative access and egress points would allow continued operation of the car park.
- 5.7 In conclusion, it is clear that that knowledge of how the existing Asda operates, and the Trustees' proposed design, has not been considered either in RPS's or Marsh and Baxter Properties Limited's assessment.
- 5.8 It should be noted that the proposed Asda store also has servicing that shares the customer entrance, and, worse, service vehicles are shown in the application to require movements that overlap onto opposing lanes to access the service area. Therefore it can be concluded that the proposed Red Oak redevelopment has the most efficient and safe service vehicle arrangement.
6. **Letter of 31 December 2009**
- 6.1 We note the comments set out in your letter to us of 31 December 2009.
- 6.2 In respect of your numbered paragraph 1 for the reasons referred to in our letter of 17 December 2009 the Waterman report was not submitted "late". It was submitted on 11 December 2009 within the deadline for public consultation.
- 6.3 In respect of your numbered paragraph 2 our comments on Illustrations A and B are set out elsewhere in this letter.
- 6.4 In respect of your numbered paragraph 9:
- (a) the Asda proposal is a "replacement" (see description of development on the application form and paragraphs 2.4 to 2.10 of the detailed note accompanying our letter to TWC of 14 December 2009) and it is highly unlikely that Asda's existing



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store would be reoccupied by an operator such as Tesco/Morrison's for the reasons set out in the Trustees' representations to date;

- (b) the Trustees' application is clearly an important material consideration as it demonstrates an available, suitable and viable alternative within the town centre and must therefore be taken into account in applying the sequential approach set out in PPS4;
- (c) we would also refer you to the Trustees' earlier representations on why to determine the Asda application in advance of the Trustees' application would prejudice the proper consideration of the Trustees' application;
- (d) if your letter in any way suggests that the Trustees' application has been submitted in bad faith then that is rejected;
- (e) you appear to suggest that the Asda application is "*otherwise acceptable*" but that is a fundamental error as it is clear that the Asda proposal breaches numerous policy requirements (not least those now set out in PPS4) and should be refused permission.

6.5 On the highways modelling work our understanding is that it is not available and will not be so for public consultation until later this year. We would therefore reiterate our comments set out at paragraph 4.6 of the detailed note accompanying our letter to you of 14 December 2009.

We would request that the contents of this letter and the accompanying document are reported in full to the members of the Plans Board meeting on 6 January 2010, together with the other representations submitted on and after 11 December 2009 by ourselves and Drivers Jonas in connection with the Asda planning applications.

Yours faithfully

Nabarro LLP

NABARRO LLP

Enc:

- Note prepared by Drivers Jonas
- Note prepared by Nabarro LLP and Waterman