



Ministry of Housing,  
Communities &  
Local Government

Our ref: APP/P0119/V/17/3170627

James Fennell/Jenny Hill  
Lichfields  
14 Regents Wharf  
All Saints Street  
London  
N1 9RL

1 October 2018

Dear Sir/Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77  
APPLICATION MADE BY CRIBBS MALL NOMINEE (1) LTD, CRIBBS MALL NOMINEE  
(2) LTD, BAYLIS ESTATES LTD AND JOHN BAYLIS LTD  
THE MALL, CRIBBS CAUSEWAY, PATCHWAY, SOUTH GLOUCESTERSHIRE BS34  
5DG  
APPLICATION REF: PT14/4894/O**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Christina Downes BSc DipTP MRTPI, who held a public local inquiry between 5-27 September 2017 and closed in writing on 14 February 2018 into your client's application for outline planning permission for alterations and extension of The Mall including the erection of new buildings for uses within Use Classes A1-A5 (shops. Financial & professional services, restaurants & cafes, drinking establishments and hot food takeaway), D1 (non-residential institutions) and D2 (assembly & leisure), C1 (hotel), C3 (dwellings comprising apartments), provision of a new multi-storey car park and alteration to existing entrances. Erection of new bus station including uses within Use Classes A1-A5. Provision of new public realm, including public space and landscaped areas. Provision of new roads and pedestrian routes and cycle ways, including a new pedestrian bridge over Merlin Road and other ancillary works and operations. Temporary works including temporary bus station comprising works to existing surface car parking areas and temporary contractor and car parking compounds and assorted facilities, in accordance with application ref: PT14/4894/O, dated 22 December 2014.
2. On 1 March 2017, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your client's application be referred to him instead of being dealt with by the local planning authority.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that planning permission be refused.

4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with her recommendation. He has decided to refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

### **Environmental Statement**

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and the environmental information submitted before the inquiry opened. Having taken account of the Inspector's comments at IR5, the Secretary of State is satisfied that the Environmental Statement and other additional information provided complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

### **Procedural matters**

6. The Secretary of State notes at IR6-8 that the inquiry was held in a remote location that was not well served by public transport. For the reasons given at IR6-8, the Secretary of State agrees with the Inspector that in the circumstances and on balance he does not consider that anyone was unacceptably prejudiced or unable to participate if they had wished to do so, and that in terms of the inquiry room, he does not consider that wheelchair users or those with impaired mobility were disadvantaged in this case. For the reasons given at IR9-10, the Secretary of State agrees with the Inspector that it was not necessary for further oral evidence to be heard on the issue of further transport modelling, or on the resolution of Bristol City Council's Development Control Committee to grant outline planning permission for development proposals at Callowhill Court on 10 January 2018.

### **Matters arising since the close of the inquiry**

7. Following the final sitting day of the inquiry, South Gloucestershire Council (SGC) published a consultation document on the emerging South Gloucestershire Local Plan 2018-2036 which was open to consultation between 5 February and 30 April 2018. At the time of writing her report, the Inspector considered the earlier consultation document titled 'New South Gloucestershire Local Plan 2018-2036 Prospectus' dated January 2017. Having given careful consideration to the consultation document published in February 2018, the Secretary of State is satisfied that it does not raise any new issues that would require a reference back to parties.
8. Following the final sitting day of the inquiry, the emerging West of England Joint Spatial Plan Publication Document was published in November 2017 and submitted to the Secretary of State on 13 April 2018. At the time of writing her report, the Inspector considered the document titled 'West of England Joint Spatial Plan – Towards the Emerging Spatial Strategy Document', published in November 2016. Having given careful consideration to the consultation document published in November 2017, the Secretary of State is satisfied that it does not raise any new issues that would require a reference back to parties.
9. On 31 July 2018, the Secretary of State wrote to the main parties to afford them an opportunity to comment on the implications, if any, of the revised National Planning Policy Framework, which was published on 24 July 2018, and on the grant of outline planning permission for the Callowhill Court proposal in Bristol, together with associated S106

Agreement. A list of representations received in response to this letter is at Annex A. These representations were circulated to the main parties on 22 August 2018. The Secretary of State has carefully considered all the representations received. Copies of these representations may be obtained on written request to the address at the foot of the first page of this letter.

10. A list of representations which have been received by email following the final sitting day of the inquiry is also at Annex A of this letter. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

### **Policy and statutory considerations**

11. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
12. In this case the development plan consists of the South Gloucestershire Local Plan Core Strategy 2006-2027, adopted in 2013 and the South Gloucestershire Local Plan Policies, Sites and Places Plan (PSP Plan), adopted on 8 November 2017. Since the close of the inquiry, the saved policies of the South Gloucestershire Local Plan were superseded when the PSP Plan was adopted. Although this happened after the close of the inquiry, all parties were aware of the situation and presented their evidence accordingly (IR18). The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR22-28.
13. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Bristol Core Strategy, adopted in 2011 and the Bristol Central Area Plan, adopted in 2015. The Secretary of State considers that the material considerations of most relevance to this case are those set out at IR29-33. The revised National Planning Policy Framework was published on 24 July 2018, and unless otherwise specified, any references to the Framework in this letter are to the revised Framework.

### *Emerging plans*

14. The emerging plan comprises a new local plan for South Gloucestershire which is intended to cover the period 2018-2036. The emerging West of England Joint Spatial Plan is being produced by South Gloucestershire Council, Bristol City Council, North Somerset Council and Bath and North East Somerset Council.
15. Paragraph 48 of the revised Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework.
16. Taking into account the three limbs above, both emerging plans are at a very early stage and as such can only be afforded little weight.

## Main issues

### *Consideration one: planning policy context and approach to decision making*

17. The Secretary of State notes the retail policy context set out by the Inspector at IR554-559, and agrees in particular that: there is no dispute that the whole of the Cribbs Causeway area, including The Mall, is out-of-centre for planning policy purposes; the development plan is not silent on the issue of the distribution of retail floorspace in South Gloucestershire after 2021; and that paragraph 7.58 of the PSP Plan makes clear that until there is a new local plan, proposals to meet retail need post 2021 will be considered against the sequential and impact test requirements in national policy.
18. For the reasons given at IR560-561, the Secretary of State agrees with the Inspector at IR561 that, bearing in mind Framework paragraph 86, the hotel would not need to be included in the sequential test. The Secretary of State notes at IR562 that the Council can only demonstrate a 4.54 year supply of deliverable housing land and agrees with the Inspector that it is improbable that the application proposals would contribute to reducing this deficit. For the reasons given at IR563-564, the Secretary of State agrees with the approach to decision making set out by the Inspector.

### *Consideration two: whether there are sequentially preferable sites on which the main town centre uses could be accommodated, bearing in mind the need to demonstrate flexibility*

19. The Secretary of State has given careful consideration to the Inspector's analysis at IR565-571. For the reasons given at IR571, the Secretary of State agrees with the Inspector that in terms of the sequential test, what would be reasonable and appropriate will depend on the particular circumstances of the sequential site and the proposals that it is being expected to accommodate. For the reasons given at IR572-574 the Secretary of State agrees with the Inspector at IR574 that there is insufficient justification for the application proposals being excluded from undertaking the sequential test.
20. For the reasons given at IR575-578, the Secretary of State agrees with the Inspector at IR578 that the sequential test carried out by the Applicants did not identify any suitable sites that were available within the catchment area of The Mall. He further agrees that the only potential sequential contender is Callowhill Court in Bristol city centre, which was put forward by Bristol City Council (BCC) and Bristol Alliance Limited Partnership (BALP). For the reasons given at IR579-580, the Secretary of State agrees with the Inspector at IR580 that overall, in terms of size, the Callowhill Court application site would seem of sufficient size to accommodate the relevant parts of a broadly similar development proposal.
21. For the reasons given at IR581, the Secretary of State agrees with the Inspector that there is no requirement to consider the Callowhill site net of existing floorspace. For the reasons given at IR581-582, the Secretary of State agrees with the Inspector at IR582 that what distinguishes the sequential site at Callowhill Court from most other parts of the city centre is that the majority of the land is allocated for major retail-led redevelopment and there is a resolution to grant outline planning permission (which has since been granted, and formed part of the reference back to parties exercise described in paragraph 9 above).
22. The Secretary of State has given careful consideration to the Inspector's analysis of viability at IR583-589. The Secretary of State agrees that paragraph 24 of the old Framework (now paragraph 86) does not include viability as a consideration when

applying the sequential test in decision making. The Secretary of State has taken into account the Inspector's summary of evidence at IR584-589. He recognises that Hammerson is a very experienced, well-resourced and reputable developer who has been responsible for delivering many city centre developments (IR586). However, the Secretary of State has had regard to the inability of other parties to test this evidence (IR588). The Secretary of State has had regard to the precepts of procedural fairness which include the need for parties to be given the opportunity to test material evidence which forms the basis for conclusions leading to a decision. The Secretary of State therefore disagrees with the Inspector at IR588 that Hammerson's evidence on viability should be given substantial weight, and he has not taken this evidence into account in reaching his decision.

23. For the reasons given at IR590, the Secretary of State agrees with the Inspector that even if the build zone was reduced as asserted by South Gloucestershire Council, a broadly similar quantum of retail and leisure uses could still be accommodated on the site. He also agrees that there is no evidence that the Callowhill Court planning application was made as an artificial construct that was intended as a spoiler to the proposed extension to The Mall, or that the site is intended to be sold or that the application was submitted to assist in the negotiations with Bristol City Council to consolidate the head lease.
24. The Secretary of State has given careful consideration to the Inspector's analysis at IR592-602. He has paid particular attention to revised Framework paragraph 86, which makes clear that the sequential test should consider whether sites are expected to become available within a reasonable period. For the reasons given at IR592-601, the Secretary of State agrees with the Inspector at IR601 that a realistic expectation is that the cleared site would be available by mid to late 2021. For the reasons given at IR602, and in paragraph 86 of the revised Framework, he further agrees with the Inspector that reasonable flexibility should be applied when considering the availability of sequential alternatives.
25. For the reasons given at IR603, the Secretary of State agrees with the Inspector that whilst out-of-centre retail development is not prevented, a sequential test approach is applied whereby suitable sites that are available in town centres are the first port of call. He further agrees that although there may be market or locational requirements that mean a proposal can only be located on the out-of-centre site, this does not apply in this case.
26. For the reasons given at IR592-602, the Secretary of State agrees with the Inspector at IR601 that there is a realistic expectation that a cleared Callowhill Court site would be available by mid to late 2021, and he finds this consistent with revised Framework paragraph 86 regarding sites being expected to become available within a reasonable period.
27. The Secretary of State agrees with the Inspector that the only sequential alternative site is Callowhill Court in Bristol city centre. He has found that site to be suitable in terms of accommodating the relevant parts of a broadly similar development proposal, and that a broadly similar quantum of retail and leisure uses could still be accommodated on the site, even when recognising its constraints. He has not taken account of Hammerson's evidence on viability, as that was not able to be tested at inquiry. He has however, taken account of the subsequent grant of outline planning permission for the Callowhill Court development, and agrees with the Inspector's conclusions on the work undertaken to date in dealing with land interests, and the work remaining to be done. For the reasons

given at IR605, the Secretary of State further agrees that it is clear that the Callowhill Court scheme would proceed on a phased basis and there is no reason to believe that the first phase would not be much sooner than the seven year period suggested by the Applicants having regard to conditions.

28. Overall, for the reasons given above, the Secretary of State finds the Callowhill Court site to be both suitable and available. He therefore agrees with the Inspector that the application proposals would fail the sequential test, contrary to the provisions of policy CS14 in the CS, policy PSP31 in the PSP Plan and paragraphs 86 and 90 of the revised Framework.

*Consideration three: the impact of the application proposals on the vitality, viability and investment in town and city centres*

29. The Secretary of State has given careful consideration to the Inspector's analysis at IR607-611. He has further considered the Inspector's assessment of the retail impact on centres in the catchment set out at IR612-624. For the reasons given at IR615-624, the Secretary of State agrees with the Inspector's assessment of the vitality and viability of Bradley Stoke, Filton, Downend, Staple Hill, Kingswood, Patchway, Weston-super-Mare, Bath city centre, Keynsham, Newport city centre, Yate, Thornbury and Swindon, and with her conclusions on the impact of the application proposals on their vitality and viability, and on planned investments in those centres.

30. For the reasons given at IR625-635, the Secretary of State agrees with the Inspector at IR635 that Bristol city centre overall is a vital and viable shopping centre as recorded by all main parties at the inquiry and noted in the Bristol City Centre Retail Study (BCCRS). He further agrees with the Inspector's conclusion that although he would not classify the city centre as weak or failing, he considers that it is likely to be vulnerable if there were to be a significant loss of turnover or investment potential as a result of the application proposals.

31. The Secretary of State notes the Inspector's analysis at IR636. For the reasons given at IR637-638 the Secretary of State agrees with the Inspector at IR638 that by the time a mature trading pattern had been established, the net effect of internal impact would have largely dissipated. For the reasons given at IR639, he shares the Inspector's preference at IR640 for BCC's lower assessment of trade draw from other retail outlets in the wider Cribbs Causeway. For the reasons given at IR641-644, the Secretary of State agrees with the Inspector's conclusions at IR645-646 that the Joint Retail Assessment (JRA), with the adjustments summarised in IR645, provides the most credible assessment of the impact that would be experienced by Bristol city centre in 2024.

32. The Secretary of State has given careful consideration to the Inspector's analysis at IR647-655. For the reasons given at IR647, he agrees with the Inspector on solus impact, and on the test in Paragraph 90 of the revised Framework. He further agrees at IR649 that Bristol is vital and viable as a regional city centre with a diverse offer but also has vulnerabilities in terms of its shopping function and reliance on Cabot Circus. Based on the Inspector's analysis at IR650-652, and for the reasons given at IR653, the Secretary of State agrees with the Inspector that while in the circumstances a dual representation condition would be justified, it would not necessarily be fully effective in protecting the centre. The Secretary of State agrees with the Inspector's reservations in this regard. For the reasons given at IR650-655, the Secretary of State agrees with the Inspector at IR655 that a 6.4% solus comparison goods impact would be likely to result in a significant adverse impact on the vitality and viability of Bristol city centre.

33. The Secretary of State notes the Inspector's analysis and summary at IR656-659 of BALP's evidence that the Callowhill Court scheme would be viable and deliverable. In relation to the sequential test, he has already determined at paragraph 22 of this decision letter that he has not taken this evidence into consideration, given that it was not tested at the Inquiry.
34. The Secretary of State considers that the question of whether the proposal at Callowhill Court can be considered a planned investment is separate from a detailed assessment of untested evidence regarding the viability of the proposal. He has taken into account the following evidence:
- a. the majority of the application site is allocated for major retail-led mixed use development, supported by an evidence base provided by the Bristol City Centre Retail Study;
  - b. BALP have submitted an outline planning application, and planning permission for the proposal was granted on 19 July 2018, following the completion of a s106 agreement.
  - c. BALP have acquired the long leasehold interest on two of the properties needed for the redevelopment that were outside their control, and have negotiated with BCC to consolidate the headlease on the existing estate at a cost of £4m; and
  - d. BCC has resolved in principle to make a CPO if it is needed.
35. For the reasons given in paragraph 34 above, the Secretary of State considers that the Callowhill Court scheme can reasonably be considered to be an investment and planned. As such, he agrees with the Inspector in IR665, that it is therefore necessary to consider whether the application proposals would have a significant adverse impact on it.
36. For the reasons given at IR666, the Secretary of State agrees with the Inspector that the growth in comparison goods turnover in Bristol city centre would be unlikely to be sufficient to support the Callowhill Court scheme if the application proposals proceed. For the reasons given at IR667, the Secretary of State agrees that the two developments with many similar features would undoubtedly compete for potential tenants.
37. For the reasons given at IR666-668, the Secretary of State agrees with the Inspector's conclusion at IR668 that there would be a significant adverse impact on the planned investment. He further agrees that granting planning permission for the application proposals would therefore be likely to frustrate a city centre investment that is supported by the development plan.

*Consideration four: housing land supply and the contribution that the proposals would make to the market and affordable housing needs of the area*

38. For the reasons given at IR669-671, the Secretary of State agrees with the Inspector at IR670 that SGC cannot demonstrate a five-year housing land supply at the present time but this is of limited relevance because there is no dispute that this part of the project would be likely to come forward in a later phase of the development. He further agrees with the Inspector at IR670 that the provision of homes is a benefit that would ensue from the application proposals. He further agrees at IR671 that the affordable housing provision would be a significant benefit of the application proposals. However, given the

timing of delivery set out above, the Secretary of State considers that the provision of housing and affordable housing carries moderate weight in the planning balance of this case.

*Consideration five: whether the proposals would give rise to unacceptable highway impacts*

39. The Secretary of State notes the Inspector's analysis at IR672-676 and agrees with the Inspector on the matters to be taken into account when considering the impact of the application on highways. The Secretary of State has given careful consideration to the Inspector's analysis of transport modelling and results at IR677-687 and her conclusions at IR688-691. For the reasons given, the Secretary of State agrees with the Inspector's approach at IR688. He further agrees at IR689, for the reasons given, that there is no evidence that the proposals would have implications for road safety. He further agrees at IR691, for the reasons given, that while there would be an adverse impact on the queuing along the northbound section of Henbury Road, which would get worse as a result of the development, overall and in respect of other links, he agrees with the Inspector that the A4018 corridor would not be significantly affected by the traffic generated by the proposed development, and that the residual cumulative effects would not be severe.

*Consideration six: whether the proposals would be in a sustainable location that would be accessible by means of travel other than the car*

40. The Secretary of State notes the Inspector's analysis at IR692-695. He has, for reasons given earlier in this decision letter, concluded that the case for Callowhill Court being a sequentially preferable site has been made. He therefore agrees with the Inspector in IR694 that the accessibility credentials of The Mall should be considered with a sequentially preferable site in mind. He has therefore considered the proposals bearing in mind the nature and location of the site, in line with paragraphs 32 and 34 of the old Framework (matters now contained in paragraphs 103, 108 and 111 of the revised Framework).

41. The Secretary of State has given careful consideration to the Inspector's analysis at IR696-708. For the reasons given, the Secretary of State agrees with the Inspector at IR710 that he is satisfied that the Applicants have taken up the opportunities available for sustainable transport modes. However, given his conclusions on the sequential test, he agrees with the Inspector in being unable to conclude that the proposals would minimise the need to travel and maximise the use of sustainable modes, because there would be a more accessible alternative. The application proposals would therefore be contrary to national and local planning policy in this respect.

*Consideration seven: whether any conditions and planning obligations are necessary to make the development acceptable*

42. For the reasons given at IR713, the Secretary of State agrees with the Inspector at IR714 that the conditions are reasonable, necessary and otherwise comply with Paragraph 55 of the revised Framework and the provisions of the PG. The Secretary of State has given careful consideration to the Inspector's analysis at IR715-718. For the reasons given at IR719-725, the Secretary of State agrees with the Inspector's conclusion on the obligations relating to transport, affordable housing and open space that they comply with Regulation 122 and can therefore be taken into account in any grant of planning permission.

*Consideration eight: other matters*

43. For the reasons given at IR726-728, the Secretary of State agrees with the Inspector's conclusion on air quality and climate change at IR728 that the proposals would not conflict with policies CS9 or PSP21.

*Consideration nine: overall conclusions and planning balance to determine whether the proposals would be a sustainable form of development*

44. The Secretary of State has given careful consideration to the Inspector's analysis at IR729-733. For the reasons given, the Secretary of State agrees with the Inspector at IR732 that benefits of the proposals include the provision of housing and affordable housing, to which he attaches moderate weight. He further agrees that benefits include employment opportunities, to which he attaches moderate weight. He further agrees that there would be transport benefits, to which he attaches moderate weight.

**Planning conditions**

45. The Secretary of State has given consideration to the Inspector's analysis at IR523-545, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for refusing planning permission.

**Planning obligations**

46. Having had regard to the Inspector's analysis at IR546-552 and IR715-725, the planning obligation dated 9 October 2017, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR546-552 and IR715-725 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework. However, the Secretary of State does not consider that the obligation overcomes his reasons for refusing planning permission.

**Planning balance and overall conclusion**

47. For the reasons given above, the Secretary of State considers that the application is not in accordance with policies CS14 and PSP31 of the development plan, and is not in accordance with the development plan overall. He notes that while the Council cannot demonstrate a five year land supply, and housing forms an element of this proposal, this is primarily a retail-led development and overall there was no suggestion from any party that relevant policies relating to the proposed development overall are out-of-date. He also notes that the proposed phasing of the proposal would mean that the housing element would be unlikely to contribute towards improving the five year land supply position.

48. He has therefore gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

49. The Secretary of State has concluded that the case for Callowhill Court being a sequentially preferable site has been made. He has also found that the proposal is likely

to have a significant adverse impact on planned private investment and the vitality and viability of Bristol city centre. The Secretary of State considers that this harm carries significant weight. Paragraph 90 of the revised Framework is unequivocal that in either situation, planning permission should be refused. He has also concluded that the application proposals would be contrary to national and local planning policy in respect of being in a sustainable location that would be accessible by means of travel other than the car.

50. The Secretary of State considers that the provision of housing and affordable housing carries moderate weight in favour of the proposal. He also considers that the economic benefits and the transport benefits each carry moderate weight.
51. The Secretary of State considers that there are no material considerations which indicate that the application should be determined other than in accordance with the development plan.
52. The Secretary of State therefore concludes that planning permission should be refused.

### **Formal decision**

53. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby refuses planning permission for alterations and extension of The Mall including the erection of new buildings for uses within Use Classes A1-A5 (shops, Financial & professional services, restaurants & cafes, drinking establishments and hot food takeaway), D1 (non-residential institutions) and D2 (assembly & leisure), C1 (hotel), C3 (dwellings comprising apartments), provision of a new multi-storey car park and alteration to existing entrances. Erection of new bus station including uses within Use Classes A1-A5. Provision of new public realm, including public space and landscaped areas. Provision of new roads and pedestrian routes and cycle ways, including a new pedestrian bridge over Merlin Road and other ancillary works and operations. Temporary works including temporary bus station comprising works to existing surface car parking areas and temporary contractor and car parking compounds and assorted facilities, in accordance with application ref: PT14/4894/O, dated 22 December 2014.

### **Right to challenge the decision**

54. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
55. A copy of this letter has been sent to South Gloucestershire Council, Bristol City Council, Bristol Alliance Ltd Partnership, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Andrew Lynch*

Authorised by the Secretary of State to sign in that behalf

## Annex A Schedule of representations

### Representations received in response to the Secretary of State's letter of 31 July 2018

<b>Party</b>	<b>Date</b>
Bristol Alliance Limited Partnership	2 August 2018; 30 August 2018
B Cash	18 August 2018
K Cannell	18 August 2018
South Gloucestershire Council	21 August 2018; 28 August 2018
Bristol City Council	21 August 2018; 30 August 2018
Lichfields	21 August 2018; 30 August 2018
C Biggs	23 August 2018

### General Representations received after the final sitting day of the inquiry

<b>Party</b>	<b>Date</b>
P Kingston	6 January 2018
B Day	8 January 2018
F Radford	8 January 2018
B Cash	9 January 2018
Eversheds Sutherland (on behalf of Bristol Alliance Limited Partnership)	25 July 2018
R Dixon	24 August 2018



# **Report to the Secretary of State for Housing, Communities and Local Government**

**by Christina Downes BSc DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Date: 30 April 2018**

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**TOWN AND COUNTRY PLANNING Act 1990**

**SOUTH GLOUCESTERSHIRE COUNCIL**

**Application made by**

**CRIBBS MALL NOMINEE (1) LTD, CRIBBS MALL NOMINEE (2) LTD, BAYLIS  
ESTATES LTD AND JOHN BAYLIS LTD**

Inquiry held on 5-8, 12-15, 19-22, 25-27 September 2017  
Site visits held on 1 September 2017 and 21 March 2018

The Mall, Cribbs Causeway, Patchway, South Gloucestershire BS34 5DG

File Ref: APP/P0119/V/17/3170627

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## **ABBREVIATIONS LIST**

<b>Term</b>	<b>Acronym</b>
Bristol Alliance Limited Partnership	BALP
Bristol Central Area Plan (2015)	BCAP
Bristol City Centre Retail Study	BCCRS
Bristol City Council	BCC
Bristol Development Framework Core Strategy	BCS
Community Infrastructure Levy	CIL
Compulsory purchase order	CPO
Consolidated Environmental Statement (July 2017)	the ES
Cribbs Mall Nominee (1) Ltd, Cribbs Mall Nominee (2) Ltd, Baylis Estates Ltd and John Baylis Ltd	the Applicants
Cribbs Patchway New Neighbourhood	CPNN
Cribbs Patchway New Neighbourhood Development Framework Supplementary Planning Document (March 2014)	CPNN SPD
Design and Access Statement	DAS
Joint Retail Assessment by the Applicants and South Gloucestershire Council (August 2017)	JRA
National Planning Policy Framework	the Framework
Planning Obligation by Agreement	the S106 Agreement
Planning Policy Statement 4	PPS 4
Planning Practice Guidance	PG
Real Estate Investment Trust	REIT
South Gloucestershire Council	SGC
South Gloucestershire Local Plan: Core Strategy	CS
South Gloucestershire Local Plan: Policies, Sites and Places Plan	PSP Plan

**File Ref: APP/P0119/V/17/3170627**

**The Mall, Cribbs Causeway, Patchway, South Gloucestershire BS34 5DG**

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 1 March 2017.
- The application is made by Cribbs Mall Nominee (1) Ltd, Cribbs Mall Nominee (2) Ltd, Baylis Estates Ltd and John Baylis Ltd to South Gloucestershire Council.
- The application Ref PT14/4894/O is dated 22 December 2014.
- The development proposed is alterations and extension of The Mall including the erection of new buildings for uses within Use Classes A1-A5 (shops. Financial & professional services, restaurants & cafes, drinking establishments and hot food takeaway), D1 (non-residential institutions) and D2 (assembly & leisure), C1 (hotel), C3 (dwellings comprising apartments), provision of a new multi-storey car park and alteration to existing entrances. Erection of new bus station including uses within Use Classes A1-A5. Provision of new public realm, including public space and landscaped areas. Provision of new roads and pedestrian routes and cycle ways, including a new pedestrian bridge over Merlin Road and other ancillary works and operations. Temporary works including temporary bus station comprising works to existing surface car parking areas and temporary contractor and car parking compounds and assorted facilities.
- The reason given for making the direction was that it raised issues of the type that are referred to in the policy for calling in planning applications.
- On the information available at the time of making the direction, the following were the matters on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the application:
  - i) Its consistency with the development plan, including the emerging local plan, for the area;
  - ii) Its consistency with policies in the National Planning Policy Framework, in particular those set out in Section 2, Ensuring the Vitality of Town Centres, including the requirements set out in paragraph 24, to apply a sequential test and paragraph 26, to undertake an impact assessment; and
  - iii) Any other matters the Inspector considers relevant.

**Summary of Recommendation: That planning permission be refused.**

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**PROCEDURAL MATTERS**

1. The inquiry was closed in writing on 14 February 2018 (*Document INQ 85*).
2. The planning application was made in outline form with all matters reserved for subsequent consideration.
3. Bristol City Council (BCC) and the Bristol Alliance Limited Partnership (BALP) were granted Rule 6 status and played a full part in the inquiry process.
4. I carried out two unaccompanied site visits to The Mall and its surrounding area, including the retail area of Cribbs Causeway, the settlement of Patchway, the residential area of Charlton Hayes, which is currently being constructed and the area that will become the new Cribbs Patchway New Neighbourhood (CPNN). I also experienced the traffic conditions around The Mall and along the A4018 during the evening peak. I have visited Bristol city centre on several occasions and other town and district centres, including Thornbury, Weston-super-Mare, Patchway, Kingswood and Keynsham.
5. There is no dispute that the application proposals are Environmental Impact Development. An Environmental Statement was submitted in December 2014 and further supplementary statements were submitted in October 2015 and September 2016. At the Pre-Inquiry Meeting I requested that the material,

which was in several different documents, be consolidated. The consolidated Environmental Statement was produced in July 2017 although the technical appendices remain in their original format. A useful briefing note has been produced, which explains the process. In this report I shall only refer to the Consolidated Environmental Statement (the ES) although the appendices will be referenced separately (**Document CD A16/A-CD A16/C**).

6. The inquiry was held at Eastwood Park, Falfield. This was not ideal as it was some distance from the application site and in a remote location that was not well served by public transport. I was told by South Gloucestershire Council (SGC) that this was a venue that was used for its larger inquiries. However, there were complaints from several third parties that there were people who wished to participate but were unable to do so. Most of the people concerned were interested in transport and highways issues and this was to be dealt with as a discrete topic towards the end of the inquiry. SGC therefore contacted those concerned with a view to providing bus transport to the inquiry at the time the relevant evidence was to be heard. I was told that there was no interest in the bus transport offered. There was also no enthusiasm for my offer of an evening meeting to hear local views at a more convenient location.
7. It is acknowledged that the location of the venue did not accord with Planning Inspectorate guidance in terms of its convenience or accessibility. However, a number of people did attend even though they had to use private transport. It seemed to me unlikely that a suitable alternative location could have been found at short notice for the duration of the inquiry. The alternative would have been to postpone the inquiry but such a course of action would have inevitably resulted in considerable delay. There would have been costs implications, not least to the public purse. I was always flexible at the inquiry itself in terms of when I heard third parties and, indeed, two participants gave evidence on the final day immediately preceding closing submissions. In the circumstances and on balance I do not consider that anyone was unacceptably prejudiced or unable to participate if they had wished to do so.
8. There was also a complaint that the inquiry room was inaccessible for those with disabilities. The main access was by means of steps but there was a ramp up to a side door and so I do not consider that wheelchair users or those with impaired mobility were disadvantaged in this case.
9. BCC submitted a rebuttal highways proof of evidence that included additional evidence about the effect of traffic generation on the A4018 corridor. This included further runs using the VISSIM microsimulation model, which is jointly owned by BCC and SGC. In order to respond to this evidence the Applicants requested access to the VISSIM model to demonstrate the effect of the proposed development. As the rebuttal evidence was only received shortly before the start of the inquiry there was insufficient time to undertake this work. In the circumstances I agreed that I would adjourn the inquiry after its final sitting day so that the matter could be dealt with in writing in accordance with an agreed timetable. This also allowed for a period of public consultation. I was requested by Bristol & South West, Friends of Suburban Bristol Railways and Transport for Greater Bristol that a further sitting day should be convened to hear transport issues. However, the issue of sustainable transport had already been discussed at the inquiry in September 2017 and I heard the views of those who attended. Further representations were only invited on the

narrow issue of the further transport modelling and I determined that it would not be necessary for further oral evidence to be heard on that (**Documents POE 43, paragraph 3.9.18; INQ 1; INQ 14; INQ 63; INQ 67; INQ 70**).

10. On 10 January 2018, the Development Control Committee of BCC resolved to grant outline planning permission for the mixed-use development proposals at Callowhill Court in Bristol city centre. I asked the main parties to submit any further representations that they wished to make on the matter and it was agreed that the timetable would follow that relating to the transport modelling referred to above. This allowed for the Applicants to have the final say, having seen the representations of the other main parties. I am satisfied from the responses received in relation to these matters that there was no need to hear further oral evidence and I therefore closed the inquiry in writing thereafter (**Documents INQ 67; INQ 70**).
11. A Planning Obligation by Agreement (S106 Agreement) was submitted and discussed at the Inquiry. The fully executed version was dated 9 October 2017 and submitted shortly after the final sitting day of the inquiry. The terms of the S106 Agreement are considered later in the report (**Document INQ 51**).

## **THE SITE AND SURROUNDINGS**

12. There are descriptions of the site and its surrounding area in the statement of common ground on planning matters and the planning and retail statement. There are some useful aerial photographs and maps in various places, including the Design and Access Statement (DAS) and highway evidence. A compendium of the application plans was provided and, amongst other things, this shows the extent of the application site relative to The Mall and the surrounding retail and commercial areas (**Documents CD A5, section 2; CD A6, pages 2, 13; INQ 22, section 2; INQ 42; POE 11, figures 1, 2; Plan B, page 1**).
13. The Mall is a large out-of-town shopping centre about 8km to the north of Bristol city centre within the western part of the Bristol North Fringe. It includes about 145 shops, services and food and beverage outlets served by a single linear concourse on two levels. It is a predominantly 2 storey building with a shallow "U" shaped footprint and it stands in an elevated position when viewed from the south. The Mall is part of the out-of-town shopping area of Cribbs Causeway, which also includes a retail park of large format warehouses, a Morrisons and an ASDA superstore. To the south of this is a large distribution centre, car showrooms and The Venue, which is a leisure area of restaurants, a multi-screen cinema and bowling centre. To the north is the Patchway Trading Estate and beyond that the residential community of Patchway.
14. The Cribbs Causeway area is immediately to the south of junction 17 of the M5 motorway. There is a complex system of roads and roundabouts that serve the various retail and commercial areas. The A4018 runs in a southerly direction towards Bristol and crosses the boundary between Bristol City and South Gloucestershire District at the Henbury branch railway line. This area, which lies immediately to the south of the former Filton airfield, includes the residential communities of Brentry, Southmead and Filton.
15. The main access points to The Mall are from Merlin Road to its south and Highwood Road to its east. The roundabouts provide access to its large surface car parks, which include some 6,670 parking spaces and lie to the south and

north east of the building. There is another access from Jupiter Road to the north, which serves the existing bus terminus. Although much of the area surrounding The Mall is hard surfaced, the various parking zones are subdivided by tree planting. There are green swathes around the main entrances to the site and a formal landscaped area and water feature leads up to the main arched entrance to the building.

16. To the east of Highwood Road a new residential area known as Charlton Hayes is under construction. Beyond this is the A38 which runs north to join the M5 motorway at junction 16 shortly before its interchange with the M4 motorway. To the east of the A38 are the residential communities of Little Stoke and Bradley Stoke.

## RELEVANT PLANNING POLICY

17. The development plan includes the **South Gloucestershire Local Plan Core Strategy 2006-2027** adopted in 2013 and the **South Gloucestershire Local Plan Policies, Sites and Places Plan** (PSP Plan) adopted on 8 November 2017.
18. It should be noted that the saved policies of the South Gloucestershire Local Plan were superseded when the PSP Plan was adopted. Although this happened after the inquiry had been adjourned all parties were aware of the situation and presented their evidence accordingly.
19. The Bristol Core Strategy, adopted in 2011 and the Bristol Central Area Plan, adopted in 2015 are not part of the development plan for the purposes of section 38(6) of the Planning and Compulsory Purchase Act 2004 in the determination of this application. They are however material considerations and will also be addressed in this section of the report.
20. A new local plan for South Gloucestershire is intended to cover the period 2018-2036. At present it is at a very early stage and submission of the plan for examination is not anticipated before late 2018. The West of England Joint Spatial Plan is being produced by SGC, BCC, North Somerset Council and Bath and North East Somerset Council. This will be a sub-regional plan to address housing, employment and infrastructure issues and is anticipated to reach submission stage in 2018 (**Documents CD F3; CD F5**).
21. Whilst I have taken all relevant policies and guidance into account in this report, I have set out below those that I consider to be most pertinent to this case.

## SOUTH GLOUCESTERSHIRE CORE STRATEGY (CS) (**Document CD D3**)

22. **POLICY CS5** refers to the location of development and that most new development will take place on the northern and eastern fringes of Bristol. Reference is made to the new neighbourhood at Cribbs/ Patchway. The supporting text indicates that these are places where essential infrastructure is in place or planned and that a package of public transport measures will reduce the need to travel and commute. **POLICY CS6** concerns infrastructure and developer contributions. These are required to directly mitigate site specific impacts as well as to mitigate the impacts on existing communities.
23. **POLICY CS7** relates to strategic transport infrastructure. It includes a number

of key projects, one of which is the Cribbs/ Patchway New Neighbourhoods Package. Supporting text refers to increasing bus service frequency; new and improved strategic pedestrian and cyclist routes; new passenger stations; and the introduction of passenger services on the Henbury Loop, amongst other things. **POLICY CS8** seeks to improve accessibility. Proposals that are significant travel generators will be more favourably considered if they are located near to existing and proposed public transport infrastructure and existing facilities and services. Car dependant development or that promoting unsustainable travel behaviour will not be supported. Proposals will seek to reduce emissions and travel demand by promoting and providing sustainable travel options.

24. **POLICY CS14** concerns town centres and retail proposals and seeks to protect and enhance the vitality and viability of the centres. The role and function of each town and district centre in the hierarchy is identified and Cribbs Causeway/ The Mall are listed as being out-of-centre where proposals will need to satisfy the sequential test. New investment in main town centre uses is to be directed into the centres reflecting their scale and function, including making provision for 34,000 m<sup>2</sup> comparison goods floorspace by 2026. The distribution of this floorspace is left to the PSP Plan or replacement local plan. There are 6 provisions as to how the policy objectives are to be achieved, including applying the sequential approach and requiring impact assessments.
25. **POLICY CS18** seeks 35% on-site affordable housing, subject to viability. The supporting text provides evidence of the high level of affordable housing need in the West of England. The main source is expected to be through the provision of market housing. **POLICY CS26** relates to the CPNN where provision is to be made for about 5,700 dwellings, employment land and a greater diversity of commercial uses, including additional retail, supporting infrastructure and facilities. Criterion 7 refers to the scope for hotels, amongst other things. The policy sees this as a major focus for redevelopment and regeneration that will be comprehensively planned and fully integrated. Delivery is anticipated through a supplementary planning document. The policy includes 19 criteria relating to the expectations for the delivery of the new neighbourhood. Figure 6 on page 123 of the CS is an illustrative framework diagram for the CPNN. It shows the various housing areas and how The Mall and Cribbs Causeway relate to them.

### **SOUTH GLOUCESTERSHIRE POLICIES, SITES AND PLACES PLAN (PSP Plan) (Document CD D5)**

26. **POLICY PSP11** concerns transport impact management for development proposals that generate a demand for travel. The policy includes a provision that such development will be acceptable where it would not generate traffic that would create or contribute to severe congestion; severely impact on the amenities of communities surrounding access routes; have an unacceptable effect on highway safety; harm environmentally sensitive areas.
27. **POLICY PSP31** indicates that main town centre uses will be directed to the specified town and district centres. It identifies 16,000 m<sup>2</sup> of additional comparison goods floorspace within various town and district centres. Proposals on out-of-centre sites will only be acceptable if the sequential test is passed, the location will be accessible on foot, cycle or by public transport and

alternative formats have been considered. Also, when considered with recently completed, permitted and allocated development within the catchment served there should be no unacceptable impact on investment or the vitality and viability of existing centres. There are general assessment criteria, including that the proposal should not give rise to unacceptable levels of traffic.

28. Supporting text in **PARAGRAPH 7.58** sets out the identified need for comparison goods floorspace. It indicates 18,000 m<sup>2</sup> by 2021 and a possible 16,000 m<sup>2</sup> by 2026/7. It comments that needs in the later period are more uncertain and that a revised figure will be established as part of the new local plan scheduled for adoption in 2019. In the meantime any proposal to address need after 2021 is to be considered against the strategy within policy PSP31 and national policy relating to sequential and impact test requirements.

## **SUPPLEMENTARY PLANNING DOCUMENTS**

### **CRIBBS PATCHWAY NEW NEIGHBOURHOOD DEVELOPMENT FRAMEWORK SUPPLEMENTARY PLANNING DOCUMENT (CPNN SPD) (*Document CD E1*)**

29. This was adopted in 2014 in order to set out how the strategic requirements in policy CS26 will be delivered. Cribbs Causeway is within the CPNN area and the community infrastructure diagram shows a number of proposed local centres with a variety of functions. The Mall is described as an existing out-of-town shopping centre.

## **BRISTOL CITY COUNCIL DEVELOPMENT PLAN DOCUMENTS**

### **BRISTOL CORE STRATEGY (*Document CD L2*)**

30. **POLICY BCS2** relates to Bristol city centre with the aim to promote and strengthen its regional role for a mix of uses, including retail. Various development opportunities are identified, including the more efficient use of land and a greater mix of uses in several areas including Broadmead. High density mixed use development is encouraged throughout the city centre. Design is expected to be to the highest standard in terms of appearance, sustainability and the conservation of heritage assets, amongst other things.

### **BRISTOL CENTRAL AREA PLAN (BCAP) (*Document CD G4*)**

31. **POLICY BCAP36** relates to the Bristol Shopping Quarter, which is identified on the aerial photograph on page 89 of the plan. The policy seeks to strengthen and diversify the shopping quarter with a wider range of uses including cafes, restaurants, pubs and bars within the shopping areas. Retail growth is centred on the primary shopping area, which includes The Horsefair, Broadmead and Penn Street as shown on the accompanying Policies Map. The policy allocates The Horsefair/ Callowhill Court site for major retail-led mixed use redevelopment. The extent of the allocation (KS02) is also shown on the Policies Map.

## **NATIONAL PLANNING POLICY (*Document CD C1*)**

32. The National Planning Policy Framework (the Framework) establishes that the presumption in favour of sustainable development is a golden thread running through plan making and decision taking. It sets out the economic, social and environmental dimensions to sustainability, which gives rise to the need for the planning system to perform a number of inter-related roles. Of particular

relevance in this case are section 2, which seeks to ensure the vitality of town centres and section 4, which concerns the promotion of sustainable transport.

## **NATIONAL PLANNING GUIDANCE**

33. The Planning Practice Guidance (PG) is a web-based resource and provides further relevant advice in respect of the above matters. The guidance relevant to retail matters is at **Document INQ 13**.

## **RELEVANT PLANNING HISTORY**

34. There were various planning permissions relating to the development of a regional shopping centre at Cribbs Causeway in the early to mid 1990's. The Mall was eventually constructed in the late 1990's and opened in 1998. Since then there have been a number of other planning permissions for various alterations, including an extant permission to increase the floorspace of John Lewis by about 800 m<sup>2</sup> (gross).
35. Outline planning permission was granted in 2015 for development at the ASDA site to provide about 14,500 m of new shopping, leisure, food and beverage uses. This has not yet been implemented.
36. The council are minded to grant planning permission for a new development south of Merlin Road, which is known as Site 20. This would provide various leisure uses including indoor ski and sky diving venues and an indoor ice rink. There would also be a retail store, hotel, restaurant and car showroom. The application is in hybrid form and the Secretary of State declined to call it in.
37. The CPNN is identified as a new residential neighbourhood of some 5,700 dwellings and other facilities. Various planning applications have been made and the planning history is set out in the statement of common ground on planning matters (**Document INQ 29, paragraph 3.4**)

## **THE PROPOSALS**

38. The main elements of the scheme are shown in the plans booklet (**Document Plan 2, page 3**):
- 38.1 The main retail arcade (Block E) would be the largest element of the scheme. It would adjoin and incorporate the main entrance and run alongside the southern wing of the existing building. It would rise to a maximum height of some 103.5 m AOD and include retail, food and beverage uses and some leisure space (**Document CD A6, pages 50-51**).
- 38.2 The north-western side of the new arcade would border the new public space that would provide an open events plaza (Block B). Its south-western side would link into the new anchor store (Block D). On the southern side would be a hotel (Block G) and a new multi-storey car park containing up to 1,500 car parking spaces (Block H) (**Document CD A6, pages 46, 54-55, 60, 66-69**).
- 38.3 A new bus station is proposed to replace the existing terminus on the northern side of the existing Mall with which it would link. This would include canopied bus parking bays and a modern covered waiting lounge with customer facilities and kiosks selling convenience goods and refreshments (Block A) (**Document A6, pages 43-45**).

- 38.4 The residential area would be in the south-western corner of the site where currently there is a landscaped area that slopes down to an underpass beneath Merlin Road. The illustrative drawings show two main apartment blocks of up to 150 dwellings perhaps with small commercial units at ground floor level (**Document CD A6, pages 56-59**).
39. At present there are 6,670 car parking spaces with 400 temporary spaces available in a car parking area off Jupiter Road. The number is not proposed to be increased and those lost to development would be replaced in the new multi storey car park. There would be 7 new and enhanced pedestrian and cycle linkages from the extended Mall to the surrounding area. These would connect to existing and proposed residential areas such as Patchway and Charlton Hayes as well as the retail parks and other commercial areas to the north and west. A new pedestrian and cycle bridge is proposed over Merlin Road to connect to the new neighbourhood at the former Filton Airfield to the south (**Documents CD A6, pages 64-65; POE 10, paragraph 4.10-4.11**).
40. The planning statement of common ground provides details of the floor areas assigned to each of the main uses. The Class A1 retail floorspace would mainly be in blocks C and E and would total 32,250 m<sup>2</sup>. The other A class uses, including restaurants, cafes, beverage outlets and takeaways would occupy up to 8,980 m<sup>2</sup> (**Document INQ 29, paragraph 4.5**).

## THE CASE FOR THE APPLICANTS

*The Applicants' case is fully set out in its evidence, including its opening and closing submissions (**Documents INQ 63A and 63B**) and its supplementary submission on transport (**Documents INQ 69; INQ 83**) and Callowhill Court (**Document INQ 84**).*

*The main points are:*

## INTRODUCTION

41. The proposed development is a mixed use scheme largely comprising retail and food and beverage uses. It also includes a hotel and 150 new homes, a new bus station, an events plaza and new and enhanced pedestrian and cycle links. Although the proposed retail development has proven controversial, it is important to note that there is no objection to large parts of the scheme.
42. The development plan and the Framework establish three key tests. These are the sequential test, the retail impact test and the test of severe residual transport impacts. If any of these are failed then planning permission should be refused. There is no argument made that the benefits of the scheme would outweigh the failure to pass any of these tests. Conversely if the three key tests are passed then there is no basis in the development plan or the Framework or anywhere else that would constitute a material consideration that should lead to a refusal. Instead the benefits of the proposals, such as many new jobs, new homes, a much-improved environment at The Mall, better linkages, and a new bus station all point in favour of granting permission without delay. A number of the infrastructure proposals including new public realm, a new pedestrian/ cycle bridge and a new bus station would be very substantial amounting in total to some £22.5m of cost. There is no evidence of any proposal other than this that would realise these benefits (**Documents POE 15, paragraphs 6.45, 8.9-8.12; INQ 53**).
43. The proposals would be in overall accordance with the development plan and

in the absence of material considerations indicating otherwise, permission should be granted without delay. Policy CS14 in the CS explains that main town centre uses will be directed into the town and district centres listed in the policy. This is to be achieved by applying the sequential approach and the impact test. If these tests are passed then so too is the policy. However, BCC and BALP suggest that even if the tests are passed the policy is breached nonetheless. This is a circular argument and an unlawful interpretation of the policy. Similar arguments are made in relation to policy PSP31 in the PSP Plan although it is silent as to how the 16,000 m<sup>2</sup> of comparison goods need between 2021 and 2026 is to be distributed. This has a specific section on out-of-centre development, which includes the sequential test. If such development passes the part of the policy which is directly related to it then it is obvious that the policy is complied with and not breached. (**Documents POE 2, paragraph 3.34; POE15, section 4**).

44. The PG states that compliance with the sequential and impact tests does not guarantee permission will be granted and that local planning authorities will have to consider all material considerations in reaching a decision. There is nothing in the Framework or the PG or anywhere else to support the argument made by BCC that an application that passes the sequential and impact tests could or should be refused because of impacts that are less than significant or because a site might possibly become available later on in the development period (**Document INQ 13, paragraph 26-010**).

## **RETAIL ISSUES**

### **THE SEQUENTIAL TEST**

45. This is part of the town centre first approach but it is wrong to characterise it as a town centre only approach. The test is very simple with a sequence of town centre sites before edge-of-centre sites before out-of-centre sites. However, if there aren't suitable and available in or edge-of-centre sites then the sequential test provides for out-of-centre development. Policy CS14 writes the sequential test into the development plan. If it is passed then there is accordance with the CS.
46. The PG recognises that certain main town centre uses have particular market and locational requirements and can only be accommodated in specific locations. In this case the proposed extension to The Mall would provide better service to existing and future customers and address operator demands. Other sites would not meet the commercial rationale or serve the intended catchment and so development on them could not sensibly be described as the same broad type of development (**Documents POE 2, paragraphs 4.5-4.6, 4.21-4.26; POE 3, appendix 1, paragraphs 19-20; POE 4, paragraphs 1.15-1.16**).
47. Nevertheless, a thorough search was undertaken for suitable and available sequentially preferable sites with a minimum site area of 2.2 ha. All designated centres in South Gloucestershire and Bristol City were considered as well as the main centres in the study area. It was concluded that there were none and that the sequential test was passed. SGC fully supports that conclusion. BCC and BALP contend that the Callowhill Court site in Bristol City Centre is suitable and available, but they do not suggest that any other sites are. It follows that the only contender as a sequentially preferable site is Callowhill Court (**Documents POE 2, paragraphs 4.42-4.127; POE 3, Appendix 4**).
48. The Callowhill Court site, which is owned by BALP, is suitable in principle for

redevelopment for a retail-led scheme because it is an allocated site and has dozens of shops on it now. There is no planning merits case made about the site or BALP's outline planning application for its redevelopment. Instead the key points are that:

- 48.1 The redevelopment of the Callowhill Court site is not viable given the value of BALP's existing asset and therefore the site is not *suitable*.
- 48.2 So much remains to be done in order to bring forward the Callowhill Court site that it is unlikely to be available in a similar time period to the proposed development at The Mall. Accordingly it is not *available*.

## **Suitability**

### *Accommodating the broad type of development proposed without disaggregation*

- 49. The meaning of the sequential test is a matter of law whereas its application is a matter of planning judgment. An appropriate distillation of the legal principles established by the courts is that whilst a sequentially preferable site need not be capable of accommodating exactly the same as what is proposed it must still be capable of accommodating development which is recognisably closely similar to what is proposed. Although these words have proven controversial at the inquiry they do not have to be relied upon in the circumstances of this case. The essential point that suitability is to be assessed by reference to the development proposed is clear from the case law, most recently in *Aldergate Properties*<sup>1</sup>. Here it was held that "suitable" and "available" generally mean for the broad type of development proposed in the application by approximate size, type, and range of goods. It incorporates the requirement for flexibility and the area and sites covered by the sequential test search should not vary from applicant to applicant according to their identity, but from application to application based on their content (**Documents POE 3, appendix 1; CD N6**).
- 50. It is unsurprising that the courts have interpreted the Framework in this way. The focus in *Aldergate Properties* reflects the text of paragraph 24. This makes good the very simple point that what the sequential test seeks is to see whether what is proposed can be accommodated on a town centre site. This was accepted by the Secretary of State in the Rushden Lakes decision. The question in this case is whether the Callowhill Court site is suitable and available for the broad type of development proposed in the application. There is no longer any requirement for disaggregation in current national policy or guidance as was made clear in the Rushden Lakes decision. BCC's approach of splitting the proposed retail and food and beverage floorspace over a number of unspecified sites or vacant premises is wrong in principle and inconsistent with case law (**Document CD N1, paragraph 15 DL, paragraphs 8.46, 8.74 IR**).
- 51. A site area of 2.2 hectares was taken as the minimum site area required to accommodate the broad type of development proposed. That shows considerable flexibility in terms of format and scale because it excludes the hotel and residential components of the scheme and it assumes retail and leisure development over 3 levels, with no car parking. This is very different from the proposals and certainly satisfies the *Aldergate Properties* formulation

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<sup>1</sup> *Aldergate Properties Ltd v Mansfield District Council and Regal Sherwood Oaks Ltd* [2016] EWHC 1670 (Admin).

of the sequential test and in fact it goes well beyond it. In terms of size the Callowhill Court site would appear to be suitable (**Document POE 2, paragraphs 4.45-4.56**).

52. However, the Callowhill Court site currently accommodates a large amount of retail development, which is almost fully let<sup>2</sup>. Logically one should look to see whether the Callowhill Court site is large enough to accommodate the replacement of this existing floorspace and provide an uplift in floorspace approximately similar to the application proposals. Whether Callowhill Court could accommodate a development with a sufficiently large net uplift in retail floorspace is debatable. BALP's written evidence was that there would be a 57,411 m<sup>2</sup> net uplift compared with the Mall Extension of 56,550 m<sup>2</sup>. However, this was subsequently revised in oral evidence to a figure of 56,242 m<sup>2</sup> and then the net uplift reduced further to 54,153 m<sup>2</sup> (**Document POE 46, table on page 8; INQ 32**)<sup>3</sup>.
53. The figure of 54,153 m<sup>2</sup> includes some of the existing upper floorspace at Callowhill Court that is used for ancillary purposes such as storage, staff facilities and the like and cannot properly be said to be unusable space. It is considered that 34,500 m<sup>2</sup> would be a realistic amount of floorspace that would need to be re-provided on the assumption that only half is being used for ancillary retail purposes. It would result in a net uplift for the Callowhill Court proposal of about 47,000 m<sup>2</sup>, which would be about 9,550 m<sup>2</sup> less than the proposed extension to The Mall. On this approach, the Callowhill Court site would not be suitable because only about 83% of the proposed development could be accommodated and this would not be approximately the same (**Document INQ 32**).

*Whether financial viability is a necessary requirement*

54. In order to be suitable, a sequentially preferable site needs to be financially viable for the development in question. This is accepted by BALP<sup>4</sup>. If the Secretary of State is satisfied on the evidence that the redevelopment of Callowhill Court is not financially viable then it necessarily follows that the site is not suitable. The Board of BALP has decided that the Callowhill Court scheme would be viable. However, no details of the basis of BALP's appraisal were disclosed and so it was impossible to interrogate or even to understand how this conclusion had been reached<sup>5</sup>. Furthermore, the Board's view that the scheme is viable is at most an interim position. It is by no means final and it is a long way off being so. The Board will reappraise viability at each "milestone" of the project so as to decide whether to release funds to pay for each stage if and when it comes. All that the Board had decided to do so far is to fund the re-gearing of the head-lease, the making of an outline planning application and the acquisition of two properties. There will be several milestones to pass until

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<sup>2</sup> Mr Dobson explained in evidence-in-chief that the current vacancy rate is about 3% as a percentage of estimated rental value as against an optimum vacancy rate of 2%.

<sup>3</sup> The figure was reduced in evidence-in-chief to 56,242 m<sup>2</sup> to account for the old British Home Stores building being retained.

<sup>4</sup> Mr Peters agreed with this proposition in cross-examination by Mr Katkowski.

<sup>5</sup> In cross-examination by Mr Katkowski, Mr Dobson confirmed the Board's position but said that details of the internal appraisals could not be revealed to a competitor due to their commercial sensitivity.

the point of no return when a final decision will be made on viability<sup>6</sup> (**Document POE 46, paragraphs 7.6, 7.8**).

55. In any event the planning evidence put forward by BALP does not rely on the Board's appraisal but rather puts forward a residual viability appraisal because it is said to be transparent. It is not necessary to consider whether the build costs and rental values are reasonable because, even if every aspect of this viability appraisal is accepted, it is clear that the Callowhill Court scheme would not be financially viable by some considerable margin. This is because the land value of £67.5m<sup>7</sup> is nearly £50m less than the value of BALP's existing asset, which is worth £115.85m. This is the only valuation of the existing asset and there is no evidence to contradict or undermine it. BALP refused to reveal what it considers the value of the existing asset to be and it was not disclosed for the purposes of the residual appraisal. This means that the land value in the latter exercise could not be benchmarked to produce a meaningful appraisal. The Callowhill Court site is not suitable because its redevelopment is not viable given the value of the existing asset (**Documents POE 8, paragraphs 2.9, 2.10; POE 54, paragraph 8.51; POE 56, paragraph 1.17**).

### Availability

56. The approach has been to consider whether development of the Callowhill Court site would be likely to be delivered in a similar time period to the proposed development at The Mall. That would mean that the site should be available by summer 2020, there or thereabouts. It was not restricted to precisely the same date. BCC disagreed with this approach and relied on the *Lionbrook* High Court judgement<sup>8</sup> as a guide to what is a suitable period for judging availability. However, current national policy is contained in paragraph 24 of the Framework and this simply says that a site must be available and is framed in the present tense. The PG puts it in similar terms. There is no basis at all to conclude that whether the site is available should be judged by reference to any longer time period than that (**Documents CD N7, paragraph 171; POE 31, paragraph 2.10; INQ 8, paragraph 6.37; INQ 13, paragraph 008**).
57. There is thus no basis for the BCC proposition that Callowhill Court is available for the purposes of paragraph 24 of the Framework if it is likely to become available by the end of the development plan period in 2026 to meet the identified need. Reliance on the *Lionbrook* judgement is misplaced because:
- 57.1 It was considering the now cancelled *Planning Policy Statement 4 Practice Guidance*, which did refer to need as a relevant consideration. There is no such reference to need in either the Framework or PG (**Document INQ 8, paragraph 6.37**).
- 57.2 It is important to understand the facts of *Lionbrook* to see the context in which need was relevant. The 5 year period over which availability was

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<sup>6</sup> These points were agreed by Mr Dobson in cross-examination by Mr Katkowski.

<sup>7</sup> The £67.5m in Mr Prentice's appraisal relates to the whole Callowhill Court site, including land outside BALP's ownership, which is needed for the Callowhill Court scheme. Mr Hardman values this additional land at circa £5m. Also Mr Prentice's figure does not take account of the £4m payment made to Bristol City Council in June 2017 for the new head lease (**Documents POE 6, paragraph 3.28; POE 8, paragraph 2.9; INQ 21**).

<sup>8</sup> *CBRE Lionbrook (General Partners Limited v Rugby Borough Council and Hammerson (Rugby) Ltd* [2014] EWHC 646 (Admin).

considered was the time in which Hammerson's proposed out-of-centre development would stem expenditure leakage outside Rugby. The council had concluded that the various town centre sites were not available because they could not do that job sooner. That approach was held to be sufficiently flexible to be a reasonable timeframe in which to judge availability and did not mean that the council was ignoring or abandoning its allocations in the development plan (**Document CD N6, paragraph 173**).

58. There is therefore nothing in *Lionbrook* to say that out-of-centre development should be turned away or put on hold to allow in-centre needs to be met at some point in the future. In fact the opposite is true. The concept of availability was still judged by reference to the out-of-centre scheme's time frame to claw back expenditure. It is thus entirely reasonable to consider availability by reference to a similar timeframe to the intended start of construction of the application development.
59. Paragraph 7.58 of the PSP Plan refers to the identified need for comparison floorspace. In relation to plan making paragraph 23 of the Framework does refer to need in relation to the sequential approach. However, paragraph 24 does not do so in relation to decision taking. This is reflected in policy PSP31 where need is not a consideration in the application of the sequential test.
60. The suggestion by BCC that additional time should be added to the projected timescale to cater for the prospect of a legal challenge to the Secretary of State's decision on The Mall would apply at least as much to the Callowhill Court application proposal. The sensible approach would be to assume that there will be no legal error in either this decision or that relating to Callowhill Court and so not add time on in either case.
61. BALP has a formidable "to do" list in order to bring forward the Callowhill Court site for redevelopment. Indeed all of the things that need to be done lie outside its control:

*Planning permission*

- 61.1 Even though the Planning Committee has now resolved to grant outline planning permission, this will not be issued until the S106 Agreement has been completed. It is therefore only a small step forward (**Document INQ 84**).
- 61.2 Even when outline permission is granted it is only the first stage of the process. BCC's Design Officer advised that there are major design challenges to be overcome before BALP can obtain reserved matters approval. In particular, his concerns about the impact on the Podium are "unlikely to be resolvable". He clearly does not consider reliance can be placed on the illustrative scheme. Historic England's letters demonstrate that the impact on heritage assets represents a significant constraint. It requires a detailed assessment of the effect of the proposals on the settings of a number of Grade I, II\* and II listed buildings. This fundamental issue has been put off to the reserved matters stage. A tall buildings assessment and a daylight and sunlight assessment will also be required in order to progress reserved matters applications (**Documents INQ 5, paragraph 10.61; INQ 18, page 4; Document INQ 19**).
- 61.3 It is therefore clear that there is a large amount of fundamental work

left in order to produce an acceptable reserved matters submission. Doubtless most if not all of that work would be done concurrently rather than consecutively as many of the impacts that need to be assessed are interrelated. However, it is obvious that considerable time will be required in order to resolve these detailed matters. This lengthy part of the process would not start until outline planning permission is granted. There will also need to be a S106 Agreement and there is not a travelling draft of this yet<sup>9</sup>. The issuing of outline planning permission, reserved matters approvals and the discharging of conditions and their timing are entirely outside the control of BALP.

*Development Agreement and back-to-back indemnity*

61.4 One of BCC's pre-conditions for making a compulsory purchase order (CPO) is that BALP enter into a development agreement and back-to-back compensation and costs indemnity. The development agreement would not be concluded until after the grant of outline planning permission as it would refer to the terms of any such permission. There is no travelling draft of the development agreement and indemnity and once again work and time will be required to draft, negotiate and agree these documents<sup>10</sup>. The completion of these tasks and their timing lie outside the control of BALP. This is a stage in between the issuing of the outline planning permission and the making of the CPO. The making of the CPO is only the beginning of the formal CPO process.

*Public procurement*

61.5 The issue is whether BCC would have to undertake a competitive procurement process under the *Public Contracts Regulations 2015* before it could enter into a development agreement with BALP for the redevelopment of Callowhill Court. Such a procedure would add a lengthy amount of time before the development agreement could be entered into and a CPO made. BALP produced a legal note to show that the development agreement would be structured in such a way that a procurement process would be unnecessary. However, this would mean that BALP would have no legally binding obligation to build the scheme (**Document INQ 31**).

61.6 This is the opposite intention to that given in BALP's oral evidence where it was agreed that the development agreement would contain an obligation to build upon satisfaction of the pre-conditions, which would trigger the need for a procurement exercise<sup>11</sup>. The fact that the legal note indicates the opposite intention shows that BALP's consideration of this part of the process is at an early formative stage. Also, taking

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<sup>9</sup> Inspector's Note: This was the position when the inquiry was adjourned in September 2017. It is not known what the position is at the time of writing.

<sup>10</sup> In cross-examination by Mr Katkowski, Mr Dobson said that BALP would not enter into the development agreement until after outline planning permission had been granted. He said that he could not recall any cases where Hammerson had signed a development agreement before the grant of planning permission. Mr Dobson agreed that no draft of these documents had yet been produced.

<sup>11</sup> This point was agreed by Mr Dobson in cross-examination by Mr Katkowski before the legal note at **Document INQ 31** was produced at the inquiry.

BALP's current intention at face value there would be no obligation upon them to build the scheme.

*Site assembly*

- 61.7 BALP does not control a significant number of the leasehold interests in the Callowhill Court site. Of the 80 properties within its ownership there are 26 occupied units that do not have a break clause and have a lease continuing beyond 2020. A third of the leases are within the protection afforded by the Landlord and Tenant Act 1954. Consequently a good deal of the site remains to be assembled and doing so is not within the control of BALP. Considerable time will be required to complete assembly of the site (**Document INQ 25A**).
- 61.8 BALP contend that it would be able to reach agreement with its tenants and yet it has not actually done anything to start the process with them. It has not made any offers to its lessees let alone circulated draft heads of terms to any of them.
- 61.9 There are also 10 properties in the development site that are outside BALP's ownership. Therefore of the 90 properties that BALP needs for the scheme there are 36 where deals will need to be done. All this will take time and is outside BALP's control. It cannot simply jump to a CPO to unlock the position but rather will have to take time to try to negotiate with the tenants concerned first. BCC has resolved that CPO powers will only be used if terms cannot be agreed with the various leasehold interests and there have been sufficient negotiations to try to do so (**Documents INQ 25A; POE 40, paragraph R17 and appendix R1, page 1**).

*CPO*

- 61.10 With 36 interests beyond BALP's control a CPO would most likely be required. However, BCC's Cabinet have only resolved in principle to use CPO powers if it is necessary to do so and if BCC's pre-conditions are satisfied. A further Cabinet decision would be required before BCC could actually make a CPO and this is only the beginning of the CPO process (**Document POE 40, appendix R1**).
- 61.11 The pre-conditions for making a CPO have not yet been drawn up. They will include BALP entering into a development agreement with BCC together with a back-to-back indemnity, although as yet there is no travelling draft. In any event those documents will not be settled unless and until outline planning permission is granted. Also BALP must show that it has tried sufficiently and failed to negotiate the acquisition of the outstanding interests by agreement before resorting to a CPO. None of these pre-conditions have been met and their completion is not within the control of BALP. They will all need time, and these are all before the formal CPO process can even begin.
- 61.12 Confirmation of a CPO by the Secretary of State is not a foregone conclusion. BALP's assumption that some 2 years should be allowed for the CPO process from the BCC making an order to the Secretary of State confirming it is reasonable. However, before the CPO is made the pre-conditions must be discharged, which is likely to take a considerable period of time and is not within the control of BALP. The making and confirmation of a CPO does not actually give the acquiring authority

possession of the order land. It is necessary to vest the land and the law allows up to 3 years for this if the speedier route of making a general vesting declaration is used (**Document POE 56, paragraph 1.55**).

- 61.13 Highways and other orders will also be required. Unless BALP can negotiate deals with the owners of the buildings outside the site whose rights of light would be infringed, BCC will have to exercise statutory powers to deal with this. None of these processes have started and none are within the control of the BALP.
62. The outline planning permission will include a condition allowing phased approval of reserved matters over a 7 year time period. This contrasts with the application proposals at The Mall where a 3 year period is proposed. It runs entirely counter to the notion that BALP intends to crack on with the redevelopment of Callowhill Court (**Document INQ 84**).
63. It is entirely uncertain when, if ever, all these things will be done in order to bring the Callowhill Court site forward for development. None of them are in the control of BALP and the timescale for their completion is speculative. A similar situation in the Tollgate Village decision was sufficient for the Secretary of State to conclude that the sequentially preferable site was not available. It is unlikely that all these tasks will be successfully completed by some time in 2020 so that the site will be available in a similar time frame to the proposed extension to The Mall. As a matter of planning judgment the Callowhill Court site is not available in terms of paragraph 24 of the Framework. The sequential test is thus passed (**Document INQ 45, paragraphs 13-16 DL, 12.3.26- 12.3.28 IR**).
64. The hotel element of the proposals is not subject to the sequential test because Paragraph 24 of the Framework is expressed to apply only to proposals not in accordance with an up to date local plan. Policy CS26 in the CS allocates hotels at the CPNN and that area includes The Mall. Although Policy CS26 refers to the CPNN SPD, the text of the latter makes no reference to hotels and the community infrastructure diagram is patently illustrative. There is no trace of the development plan or CPNN SPD saying that the hotels that SGC aspires to being located in the CPNN should be located in Bristol city centre instead. The hotel accords with policy CS26 in the CS and so is acceptable in principle at The Mall (**Document CD E1, pages 40-41**).

## **THE RETAIL IMPACT TESTS**

65. The Joint Retail Assessment (JRA) contains an exhaustive and comprehensive impact assessment of all relevant centres although BCC and BALP only dispute the impact on Bristol city centre. If they are correct that the impact would be higher than the JRA shows then the impact on the other centres would necessarily be lower than the JRA shows. The evidence concludes that there would be no significant adverse impact on existing, committed or planned investment or the vitality and viability of any of the centres in question, including Bristol city centre (**Documents POE 2 paragraphs 7.66-10.113, 12.8-12.13; POE 31, Tables 3.1 and 4.1; POE 32, appendices 4 and 5**).
66. There is no percentage figure that provides the threshold for a significant adverse impact as is made clear by the Secretary of State in the Scotch Corner and Tollgate Village decisions. Instead, a more rounded assessment is required which necessarily involves forming a judgment on the underlying strength or otherwise of the centre in question. The stronger the centre, the more able it is to withstand loss of trade. In the Rushden Lakes decision it was relevant to

consider whether in the future the centre would trade at a higher overall turnover than currently even though it would have lost trade to the proposed development (**Documents CD N2, paragraph 11.21; INQ 45, paragraph 12.4.7 IR; CD N1 paragraphs 24-25 DL, 8.86-8.87 IR**).

67. It is wrong to seek to rely upon statements made in old, long cancelled, guidance about the impact of out of centre regional shopping developments on town centres. Neither the Framework nor the PG contains such statements and decision makers should simply apply the impact tests as they currently stand.

### **Impact on planned investment**

68. It is said that the application proposals would be likely to have a significant adverse impact on BALP's planned investment at Callowhill Court. However, the important preliminary point is whether it is appropriate to describe Callowhill Court as a "planned investment". If the Secretary of State accepts that the redevelopment of Callowhill Court is not viable then there would be no investment for the application proposals to impact upon and the issue of planned investment does not arise for consideration. Exactly this point was made in the Tollgate Village decision and the same conclusion should be reached here (**Document INQ 45, paragraph 18 DL, 12.4.33 IR**).
69. BALP sought to draw an analogy between Bristol and Hammerson's failed attempts to bring forward city centre development in Sheffield. However, the crux of the difficulty there was not the presence of the out-of-centre Meadowhall shopping centre. Rather it was the presence of an existing John Lewis store in the centre of the proposed development site separating the premium shopping areas. Although a scheme had been devised that could accommodate John Lewis, Hammerson has not been able to agree terms. The challenges in Sheffield city centre are exacerbated by the topography and the large number of historic buildings, which make it difficult to develop a sizeable shopping centre. This example therefore has no relevance to the present case. If the Callowhill Court scheme does not come to fruition that will be because it is unviable in its own right, not because of the proposed extension to The Mall.
70. If, contrary to the above points, it is concluded that the redevelopment of Callowhill Court would be viable then the issue would be whether it could be categorised as a planned investment in terms of paragraph 26 of the Framework. If so, the test in paragraph 27 is whether the application proposals would have a significant adverse impact on it. The Secretary of State in both the Scotch Corner and Tollgate Village decisions has explained that to be considered as planned investment a project has to be at "a very advanced stage". The Secretary of State should follow his established approach either in terms of what planned investment means or, failing that, as a decisive indicator when it comes to making a planning judgment as to whether BALP's potential investment is planned or not. In either case what BALP has in mind is not planned investment (**Documents CD N2, paragraphs 13 DL and 11.16 IR; INQ 45, paragraphs 18 DL, 12.4.36 IR**).
71. The Callowhill Court project is much nearer to the inchoate than the very advanced. This is not so much about timing but rather it is task driven in the sense that BALP has so much still to do before it can invest in the delivery of the redevelopment scheme. To date BALP has re-gearred the head lease and bought in two properties, both of which are good in terms of asset management in any event. The resolution of BCC to grant outline planning

permission has not changed the position that there is still much to do (**Document INQ 84**).

72. However, the outstanding matters already referred to on BALP's "to do" list in relation to the sequential test are not peripheral. They are matters of real substance and considerable work and money will be required to deal with them. The Board has not resolved to spend money on any of them, apart from the outline planning application and presumably the S106 Agreement. This in itself is a very good gauge of how un-advanced the investment is. There are also other stages that stand between the present position and the point of no return. These include getting sufficient pre-lets to satisfy the Board that it should proceed; obtaining a satisfactory tender for the building contract; and a decision by the Board that its investment criteria have been met sufficiently for it to decide to build the scheme. This will be the point of no return. These milestones are some way off and the Board has not resolved to invest in the work that will be required in order to achieve them.
73. BALP's investment in the Callowhill Court project is not at an advanced let alone very advanced stage. It cannot therefore be properly described as planned investment for the purposes of paragraphs 26 and 27 of the Framework. In these circumstances, the fact that the Board has resolved that if the proposed extension to The Mall is permitted it would halt work on the Callowhill Court project is beside the point. A decision not to progress with something that is not judged to be planned investment does not constitute the type of impact that the Framework seeks to guard against.
74. If the wholesale redevelopment of Callowhill Court does not come forward, BALP would continue to successfully manage its asset. This is currently almost entirely let, has a high annual footfall and is well situated in the city centre. There is a good record of beneficial refurbishment as illustrated by the recent lettings to TK Maxx, Metrobank and Itsu. BALP could use the existing grid framework and either double up or extend units in order to create larger shops. Clarks, Sports Direct and Superdrug are already trading from such extended units. As well as refurbishing the existing fabric of Callowhill Court, Hammerson could relocate retailers into the refurbished premises in order to re-profile the area. This happened in Birmingham when Apple moved from the Bullring to the old Waterstones unit in New Street and acted as the catalyst to revitalise that area. Along with public realm improvements a good future for Callowhill Court would be ensured. The impact test on planned investment is passed (**Document POE, paragraph 4.6**).

### **Impact on vitality and viability**

#### *Health of Bristol city centre*

75. The city centre is strong, healthy, vital and viable as can be seen by observation from walking round the centre and as is shown by various indicators. Any suggestion that the centre is weak and vulnerable is misplaced.
  - 75.1 Bristol is very highly ranked in the two main retail indices. It is 12th in the Venuescore ranking out of approximately 374 major centres and 10th in the Promis index out of approximately 200. This indicates that it has a broad range of national and international retailers, together with a wide range of cultural and leisure attractions. Bristol is rated one of the very best centres in Great Britain. If it was weak it would be way down the rankings. As well as comparison shopping it has a broad range of

civic, cultural and tourist functions and attractions. It can draw on a large student population as well as residents and the many people who work in the city too. All these add to the strength of the city centre, which has much more to offer than The Mall. This does not compare in scale or stature as is shown by its Venuescore ranking of 125. The Mall does not have similar facilities or an evening economy such as can be found in the city centre (**Documents CD L10, page 11; POE 2, Table 4.1; INQ 56**).

- 75.2 There is an extremely high footfall of 650,000 per week, or some 33,800,000 per year. The city centre's key anchor stores of Harvey Nichols, House of Fraser, Debenhams, Marks & Spencer and Primark, are evenly spread across the retail core and generate strong pedestrian flows. Cabot Circus has some 17.5 million visitors per year (**Documents CD K2/F, paragraph 2.5; POE 3, appendix 3, paragraph 3.13.2**).
- 75.3 The retail core is anchored by Cabot Circus, which provides modern and attractive shop units. It is an excellent scheme and provides a strong heart to the city centre. This redevelopment provided opportunities for new entrants to the city centre, as well as allowing House of Fraser to relocate from the old John Lewis store and Primark to take its place. Cabot Circus has a first class line up of retailers that any city centre would be proud to have (**Document POE 3, appendix 3, section 3.13**).
- 75.4 Bristol has a large student population and major retailers see the city centre as particularly important in terms of this market. New brands orientated to younger people have located in the city centre. For example, Pull & Bear opened its first UK stores in Cabot Circus and Brighton and, following their success, has now opened stores in the Trafford Centre, Oxford Street and Westfield Stratford. Similarly, H&M opened its first Monki store outside London in Cabot Circus due to the particularly strong student/youth market.
- 75.5 The city centre has a strong premium fashion offer. H&M has recently opened its premium brand COS in Quakers Friars to be close to Harvey Nichols and Victoria's Secret had recently opened in Cabot Circus. These shops would not risk their brand if Bristol was not perceived as a strong centre. LK Bennett and Kurt Geiger have recently opened large concessions which they would not do unless they believed that their core customers shopped in Bristol city centre. There is a similar trend evident in the food and beverage sector with the recent arrival of Côte Brasserie, Handmade Burger and Itsu. The range and diversity of shops means that the city centre provides something for everyone.
- 75.6 Historically vacancy rates in the city centre have been higher than the national average although in Cabot Circus they are very low. BALP show a 3.2% vacancy rate as a percentage of estimated rental value. This should be seen in the context that they seek to achieve a 2% vacancy rate in order to allow good management of the estate and allow existing tenants to relocate and new ones to be introduced. Many landlords prefer a 5% vacancy rate for those purposes and again this shows just how strong this part of the city centre is. Since the lettings to TKMaxx and Metrobank the vacancy rate at Callowhill Court is only 3%. This is a powerful indication of the strength of the city centre. In the wider city centre there are some vacancies in The Galleries but this is simply the

result of Cabot Circus having changed the retail centre of gravity. The Galleries is more focused now on the affordable brands and shops, which adds to the diversity of offer in the city centre. BCC is now developing a project to bring vacant properties back into active use (**Documents POE 46, table on page 6; POE 39, appendix 5, pages 7-8**).

- 75.7 The city centre is shown to have rental yields of 5.25% in 2017 and sits comfortably among its peers as the premium city in the south west. Those centres showing better yields and more improvement over time are not comparable because they are higher in the Venuescore ranking and it is not surprising that they outperform Bristol in this regard. Despite having far smaller populations, the zone A rents are much higher in Nottingham and Cardiff. Again this is not a fair comparison, not least because Bristol is much lower in the rankings than these towns too. Also, the main shopping streets in Nottingham and Cardiff are far more prime than Broadmead<sup>12</sup>. In any event the yield tables are generic. In terms of hard evidence, BALP indicate a yield of 5.15% for Cabot Circus and a blended yield of 6.32% for Callowhill Court. In the viability appraisals it was agreed that a yield of 5% would be appropriate. Bristol has a worse yield than places like Manchester but that does not mean it is weak. It is strong although not as strong as the higher ranked centres (**Documents POE 3, appendix 3, tables 4, 6; POE 6, table 3.4; POE 46, table on page 7; POE 51, appendix 1**).
- 75.8 It is misleading to compare the higher zone A rents at The Mall with those in the city centre. The zone A rent of £305 per ft<sup>2</sup> for the Mall quoted in the Bristol City Centre Retail Study (BCCRS) was inaccurate because the leases were turnover leases<sup>13</sup>. Consequently £244 per m<sup>2</sup> would be the appropriate comparator. The different grid sizes (shop frontage widths) at the Mall and in the city centre affect the rents. Malls generally have higher zone A rents because they are a closed market with a limited number of units. In any event, higher zone A rents at The Mall do not indicate that the city centre is in poor health. They are an indicator for identifying where within any given shopping area the prime property is situated. Comparison of zone A rents between different shopping centres is meaningless (**Document CD G6, paragraph 2.9.6**).
- 75.9 In 2014 Land Securities' 50% interest in BALP was acquired by AXA Investment Managers for £267.8m. The yield of 6.25% was relatively high. However, the asset being sold was a 50% passive share in BALP rather than 100% ownership with management rights, which would result in a better premium. Additionally, this was a blended yield for the prime Cabot Circus and the less prime Callowhill Court, which then comprised of 26 separate leasehold interests. The yield from this sale should therefore not be relied upon as any form of indicator for the

<sup>12</sup> Inspector's Note: The Venuescore rankings are: Manchester (1); Glasgow (2); Birmingham (4); Liverpool (5); Cardiff (6); Brighton (7); Nottingham (8); Newcastle (10); Bristol (12). It should be noted that in some of the evidence Bristol is referred to as 13<sup>th</sup> in the ranking but the 2017 Venuescore Rankings clearly shows it as 12<sup>th</sup> (**Document CD L10**).

<sup>13</sup> With a turnover rent the tenants pay either 80% of the base rent or a fixed percentage of their turnover, whichever is the greater. In this case the appropriate rent would therefore be 80% of £305 = £244 per m<sup>2</sup>.

strength of the city centre (**Documents POE 3, paragraph 3.23 and appendix 10; POE 46, paragraphs 3.1, 3.5, 3.10**).

- 75.10 An investment of £267.8m in the city centre by AXA at a time when the Applicants' aspirations to expand The Mall were already well-known is a sign of confidence and faith in the city centre. This is further demonstrated by the recent lettings of the former BHS building to TKMaxx & Metrobank. There is every confidence that new shops in a redevelopment of Callowhill Court would let well<sup>14</sup>. A healthy demand from retailers for the city centre does not indicate a struggling centre.
- 75.11 The JRA considers that the average turnover of the city centre is £7,689 per m<sup>2</sup>, whereas BCC put it at £6,051 per m<sup>2</sup>. This is considerably greater than company average benchmarks which average £4,205 per m<sup>2</sup>. The JRA turnover figure is credible given that the city centre has 9 of the 10 highest turnover brands. However, even BCC's turnover figure indicates that the city centre is robust and doing well. If it is correct that there are a number of independents in the city centre with a lower floorspace turnover than the multiples, then it would show even more vividly how well the city centre is doing given that the average turnover is derived from the national multiples (**Documents POE 32, appendix 2, table 23, INQ 6, table 4**).
- 75.12 The BCCRS recognises the relative health, importance and attractiveness of Bristol city centre. It comments that the city centre out-performs all principal competing centres with the exception of Cardiff. However, although Cardiff is a larger centre and attracts more comparison retail expenditure, Bristol has more major retailers. The BCCRS states that the city centre is holding its own against competition from The Mall. Statements such as these are wholly consistent with the city centre being strong and healthy.

#### *Internal impact*

76. Paragraph 26 of the Framework is concerned with the impact of the proposal and paragraph 27 with whether that impact would be likely to be significant adverse. This means the solus impact of what is proposed either passes or fails the test.
77. The main reason for the difference in the impact assessments relates to internal impact, which in essence is whether the new shops proposed at The Mall would take trade from the existing shops there. The JRA considers that some of the money spent in the proposed extension would be money that would otherwise have been spent in the existing Mall. Internal impact is a well-established principle in retail planning and an allowance of £36.53m has been made for it in the JRA. BCC does not make any allowance at all (**Documents POE 4, paragraphs 1.43-1.44; POE 32, appendix 2, table 19; INQ 46**).
78. Of course the overall turnover of the extended Mall would be considerably greater in net terms in the design year than it would be without the proposed

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<sup>14</sup> Mr Dobson confirmed in cross-examination by Mr Katkowski that the target list of tenants for a redeveloped Callowhill Court would be similar to those in appendix 15 to Mr Acton's evidence (**Document POE 3, appendix 3**). He also confirmed in evidence-in-chief that he would aim for a 95% occupancy target on the opening of the scheme.

extension. The PG recognises that like competes with like so the proposed extension would be most likely to compete with its existing neighbour on its doorstep. The phenomenon of internal impact reflects reality because customers would inevitably differentiate between the existing shops and the new ones. It is an obvious practical point that existing Mall shoppers would be drawn to the new offer in the extended Mall over that of the existing shops. The JRA sees internal impact as relatively temporary. It would be present in the design year assessment of 2024, which represents the first year or two of trading but would have dissipated by the horizon year of 2027, which the JRA also assesses (**Document POE 4, paragraph 1.45, 1.47**)

79. The JRA considers that the proposed extension would draw £16.16m from the wider Cribbs Causeway area but the BCC assessment halves this to £8.08m on the basis that there is considered to be an overlap in the type of goods sold at both locations. Yet there is a refusal to acknowledge that any trade would be taken from shops in the existing Mall by the new shops trading in similar ranges of goods. If BCC is wrong about internal impact then the effect would reduce its impact from 11.9% to about 7% (**Documents POE 4, paragraphs 1.49-1.50; POE 32, appendix 2, table 19; INQ 46**).
80. Even if the Secretary of State were to conclude that there would be little or no internal impact at the Mall, that does not mean that BCC is correct to take all of the money in question from the city centre. This does not reflect the expenditure patterns identified by the household surveys which show that Bristol city centre is not the dominant attraction in all the study area zones. BCC has not assessed the impact on any other centres so it cannot be judged how much impact there would be on other major centres such as Bath (**Document POE 4, paragraph 1.48**).

#### *Turnover of Bristol city centre and the household surveys*

81. In the BCC assessment the turnover of the city centre is lower than in the JRA, which means that the impact would be higher. In order to determine which turnover figure is to be preferred it is necessary to consider the robustness of the household surveys from which the main inputs are derived. These inputs relate to the city centre's market share, the study area to which it was applied and the inflow from beyond the study area (**Document INQ 6, table 4**).
82. The JRA approach is to be preferred in relation to each of these inputs for the following reasons (**Document POE 4, paragraphs 1.26-1.34**):
- 82.1 The JRA household survey<sup>15</sup> asked more refined questions and so was more accurate. As well as asking where people mainly did their shopping it also asked where else people shopped. That second question better enabled an understanding of shopping patterns. By contrast the BCCRS household survey<sup>16</sup> asked solely where people mostly shopped. This was treated as the only destination where they shopped (**Document POE 33**).
- 82.2 The JRA household survey included two additional zones as a direct result of the responses of surveyed shoppers at The Mall. The results of the household survey confirmed that it was correct to include zones 13

<sup>15</sup> The JRA household survey was undertaken by NEMS in 2014 (**Document POE 33**).

<sup>16</sup> The BCCRS household survey was undertaken by DTZ in 2013 (**Document CD G6, appendix A**).

and 14. The percentage of people in these zones who shopped in Bristol city centre was 2.81% in zone 13 and 2.35% in zone 14. Both of those results are higher than the percentage number of people in zone 12 who shop in Bristol city centre. In monetary terms that represents £12.54m from zone 13 and £10.91m from zone 14 (£23.5m in total) (**Document POE 32, appendix 1**).

- 82.3 The JRA's figure for inflow is more convincing. BCC's inflow figure included the substantial amount of money from zones 13 and 14. The assumption of a further 2.5% (£21.25m) inflow from beyond zone 14 is conservative because of the sheer amount of money available beyond zone 14 (£5.5 billion) and the fact that Bristol city centre has a strong draw. As a sense check the figure for inflow was a de minimis amount as part of the city centre's turnover (0.4%).
- 82.4 The JRA survey targeted the main shopper in each household and thereby delivered more accurate results. By contrast the BCC survey targeted set quotas of individuals by age group irrespective of whether they actually were the main shopper in their household.
- 82.5 The JRA survey was undertaken in 2014 and the BCC survey in 2012. The more recent data is more reliable, especially as the UK was coming out of recession in 2012 and therefore there would have been changes in shopping patterns by 2014.
- 82.6 The JRA survey had a 13% greater sample size than the BCC survey in zones 1-12 (1,692 interviews compared to 1,500).
83. However, it is important not to get too bound up with the surveys as BCC recognised that they need judgmental adjustments. In its retail assessment, BCC has reduced the turnover of the city centre derived from the survey by some 5% and of The Mall by over half. The two household surveys asked essentially the same question about overwhelmingly the same categories of goods. Additionally, both household surveys took a similar approach to weighting the answers to derive the market shares (**Documents POE 24, paragraph 5.8; POE 31, paragraphs 2.37-2.39**).

#### *Significance of impacts*

84. The JRA assesses the impact of the application proposals in the agreed design year of 2024 upon the comparison goods turnover of the city centre as 4.4% (£45.72m). BCC's assessment is 11.9% (£95.31m)<sup>17</sup>. The city centre is sufficiently robust even to withstand the higher level of impact contended by BCC. If that is correct then it doesn't much matter whose assessment of the figures is more likely to turn out to reflect reality (**Documents POE 36, appendix F, table 29; POE 32, appendix 2, table 19; INQ 6, table 6**).
85. In order for the impact on Bristol city centre to be significant adverse, convincing evidence of tangible impacts that would harm its retail health in a noticeable way would be expected. There was no evidence that any shop would be likely to close and not be re-occupied by another town centre use as a result of competition from the proposed Mall extension. A similar conclusion

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<sup>17</sup> This was reduced in Mr Baldock's rebuttal evidence to an impact of 11.3% (91.96m) (**Document POE 37, table on page 6**).

was reached in the Tollgate Village appeal decision. Not a single Bristol city centre retailer has said that they would close as a result of the proposed Mall extension. On the contrary, the evidence from actual retailers is to the opposite effect (**Documents INQ 45, paragraphs 17 DL, 12.4.18 IR; POE 3 pages 100-103; POE 5, paragraph 3.3**):

- 85.1 Next has eight stores within 13 miles of Cribbs Causeway in order to satisfy the needs of its customers. It wishes to have a larger store at The Mall and it supports the application proposals. Next has no intention of closing its store in the city centre, and it has recently opened a store in Yate town centre in full knowledge of the proposed Mall extension.
  - 85.2 Primark has a long-standing requirement for a store at The Mall of about 4,650-5,570 m<sup>2</sup> GIA. It supports the application scheme but confirms that its city centre store remains very important. It has a huge business in the city centre serving, amongst others, the large student population. For good commercial reasons Primark will retain its city centre store.
  - 85.3 Twelve tenants in Callowhill Court are already represented at The Mall and another is also represented in the wider Cribbs Causeway retail parks. Two further Callowhill Court tenants are looking to gain an additional store at The Mall (Simply Be (ladies' fashion) and Currency Exchange). The other 75 tenants would not look for representation at The Mall because it does not fit their customer profile and the rents would not be affordable either.
  - 85.4 Debenhams is on a lease that runs until 2056 with no break clause. Similarly, House of Fraser is on a lease of at least 25 years. Neither has said it has any intention of leaving the city centre.
  - 85.5 Fenwick has a long-standing requirement for a department store at The Mall of about 11,150-14,000 m<sup>2</sup>. There is no prospect of Fenwick opening in the city centre if it does not go to The Mall. It considers that the city centre is over supplied with competitor stores, including Debenhams and House of Fraser and so is not seen as a viable location. The position is different at The Mall because one of the anchors is Marks and Spencer, which does not compete so directly with Fenwick.
86. The Mall Extension would not be reliant on poaching retailers from the city centre. There would continue to be significant dual representation where retailers trade from both locations. The evidence for this is overwhelming (**Documents POE 3, appendix 3, pages 92-94, 105-108; POE 5, paragraphs 4.3-4.4**):
- 86.1 Some 72% of the existing tenants in The Mall are also represented in the city centre. Retailers clearly see the city centre and The Mall as two complementary markets each with its own particular attractions. Retailers would not be trading from both locations in such large numbers unless it was good business and there was money to be made.
  - 86.2 Dual representation is not confined to smaller retailers such as Boots. It is also common amongst larger retailers such as JD Sports, Zara, H&M and River Island who trade from units of about 1,400-2,800 m<sup>2</sup>.
  - 86.3 The proposition that dual representation would reduce in the future due to the trend of polarisation where retailers want fewer larger stores is unsupported by the evidence. Leading retailers have a large number of stores and it is not credible that they would reduce their representation

to a handful of regional stores nationwide<sup>18</sup>. Even if some retailers did move towards having fewer larger stores the beneficiaries of such polarisation would be the key shopping centres such as Bristol city centre and The Mall. Each is such a strong trading location that there is no realistic prospect of a significant shift away from dual representation. If polarisation increases in the future it will be the smaller, less powerful, centres that will lose out, not a powerhouse like Bristol city centre.

- 86.4 BALP's evidence does not demonstrate that dual representation between the city centre and The Mall will reduce significantly or at all. The data shows that the number of department stores has not declined whilst the amount of selling space has risen by 4.2%. The number of variety stores, such as Marks and Spencer, has risen by nearly 19% and their amount of selling space has risen by over 20%. Luxury retailing has seen increases in both the number of outlets and the amount of selling space (**Document POE 52, appendix 2**).
- 86.5 The information from Jones Lang LaSalle Ltd does not present a full picture and is not a proper basis for concluding that retailers will move away from dual representation. Apple has been discussing a larger store with both BALP and the Applicants but has not expressed any intention to choose between the city centre and The Mall. Rather they are seeking larger stores in both locations. No general trend can be extrapolated from the example of Build a Bear, which is restructuring across the country and whose market is better represented by The Mall. Similarly Gap is closing a number of its stores due to national trading difficulties (**Document POE 51, appendix 5**).
- 86.6 If it is considered necessary a dual representation condition along the lines concluded to be lawful and enforceable by the Court of Appeal in *Skelmersdale*<sup>19</sup> and imposed by the Secretary of State in the Scotch Corner and Tollgate Village decisions could be imposed. Such a condition would not address every concern about retail impact but it would provide some support for the town centre. It would address the argument that the application proposals would be able to poach retailers from the city centre without any sanction. It would ensure that a retailer could not move to the proposed extension to The Mall and shut up shop in the city centre (**Documents CD N2, page 19; INQ 38; INQ 39; INQ 45, page 15 DL, paragraph 12.4.15 IR**).
87. When The Mall first opened in 1998 John Lewis moved from the city centre because the store did not meet its needs. There was no evidence to substantiate BALP's assertion that many other retailers followed suit at this time leaving the city centre desolate. The reality was quite different and the August 2001 GOAD plan<sup>20</sup> shows that of the 332 units in the Bristol retail core there were only 31 vacancies (9%), of which a sizeable proportion were

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<sup>18</sup> In evidence-in-chief Mr Acton said that John Lewis has about 65 stores, Apple has about 70 stores, Debenhams has about 165 stores and Next has about 500 stores. Next, H&M and Zara have increased their number of stores.

<sup>19</sup> *Skelmersdale Limited Partnership v West Lancashire Borough Council and St Modwen Developments (Skelmersdale) Ltd* [2016] EWCA Civ 1260

<sup>20</sup> This information was provided by Mr Acton in evidence-in chief and the area included all three levels of The Galleries, not just the ground floor level.

confined to one small part of The Galleries. The former John Lewis premises were occupied first by House of Fraser and then by Primark when House of Fraser moved to a new store in Cabot Circus. The quality of the shops occupying the city centre in 2001 was consistent with those in the market at that time.

88. In the Rushden Lakes call-in decision it was concluded that the retail impacts would not be significantly adverse because the centres' turnover in the future year of assessment would either be higher than in the base year, or similar. The same approach was applied in the Tollgate Village decision. That is a very simple and straightforward test to apply, and it makes complete sense. In this case the assessment of BCC shows that the turnover of Bristol city centre would increase by just over £35m or 5.2% between the base year (2016) and the design year (2024). So even on BCC's figures the impact of the proposed extension to The Mall on Bristol city centre would be more than offset by growth in turnover. In the JRA the position is even clearer and the turnover is shown to increase between the base and design years by £135.73m or 16%. This is another strong indication that the impact of the application would not be significantly adverse. (*Documents CD N1, paragraphs 24-25 DL and 8.86-8,87 IR; INQ 6, table 4; INQ 45, paragraph 12.4.6 IR*).
89. The application is therefore not likely to have significant adverse impact on the city centre's vitality and viability and so the test in paragraphs 26 and 27 of the Framework is passed.

## **OTHER MATTERS**

90. Reference has been made by BCC and BALP to a recent appeal decision concerning retail development at Kingswood, Hull. This is inconsistent with court cases, which must be followed as a matter of law. It is also at odds with the Secretary of State decisions at Rushden Lakes and Scotch Corner. These should be followed not only because they take the correct approach but also to uphold consistency. The correct application of the sequential test is set out in paragraphs 49-63 above (*Document INQ 84*).
91. With regards to the Hull Inspector's comments about the impact tests the correct approach is that adopted by the Secretary of State in the Scotch Corner and Tollgate Village decisions. That is that a planned investment should be at a very advanced stage. The Hull Inspector's concern about the effectiveness of the dual representation condition does not accord with the Court of Appeal's decision in *Skelmersdale* or the Secretary of State's decisions in Scotch Corner and Tollgate Village where a condition of this nature was imposed (*Document INQ 84*).

## **TRANSPORT ISSUES**

### **RELEVANT POLICY**

92. Paragraph 32 is the most relevant part of the section of the Framework dealing with the promotion of sustainable transport. A consideration of the opportunities for sustainable transport should be in the context of the nature and location of the site. There can therefore be no absolute standard. Paragraph 34 provides that developments generating significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised. However, this is qualified by the need to take account of other Framework policies, particularly in rural areas. Paragraph

- 34 requires these matters to be considered within the context of location and again there can be no absolute standard.
93. In the case of retail development the other policies referred to in paragraph 34 would include the sequential test in paragraphs 24 and 27, which allow retail development in out-of-town locations where the test is satisfied. Necessarily such locations would not minimise the need to travel and maximise the use of sustainable transport modes in the same way that a town centre or edge-of-centre site would be able to do. If the Framework had meant to debar out-of-centre locations on this basis it would have said so explicitly, but it does not.
94. If it is accepted that the Callowhill Court site is not sequentially preferable then there is no separate and additional policy basis for refusal on the grounds that the Mall is not as accessible as a town centre site. The Secretary of State has agreed with the above summary of Framework policy in three major retail decisions, Rushden Lakes, Scotch Corner and Tollgate Village (**Documents CD N1, paragraphs 26 DL and 8.88-8.91 IR; CD N2, paragraphs 20-21 DL and 11.39-11.40 IR; INQ 45, paragraphs 20 DL, 12.6.1-12.6.10 IR**).
95. There is no policy test in the Framework that car dominated proposals should be refused. Nor is there any basis for a free-standing test of sustainability. If a proposal passes the explicit tests in paragraphs 32 and 34 then in transport terms it is sustainable. The Framework encourages decision-makers to look for solutions rather than problems. BCC adopted a critical stance but when pressed for solutions conceded that no additional Regulation 122 compliant opportunities were being suggested for the Applicants to take up<sup>21</sup>.
96. There is no local plan policy that would justify a refusal of planning permission if the policy tests in the Framework are passed. The proposals comply with policy CS8 in the CS, which does not set out a different or additional test to the Framework. Reliance on BCC policies are misplaced as they are not part of the development plan for the area in which the application site is situated. BCC's transport objections largely concern issues that would have absolutely no impact on its administrative area. The local highway authority (SGC) and the strategic highway authority (Highways England) agree that the proposals accord with all relevant local and national transport policies and neither object to them. The Secretary of State can place significant weight on the agreement that has been reached with the relevant highway authorities. (**Document INQ 40, paragraphs 8.1-8.3**).

## HIGHWAY IMPACTS

97. BCC's objection is now confined to the southbound carriageway of the A4018. It is agreed that any impacts on the A38 and the B4056 would not justify the refusal of planning permission<sup>22</sup>. It is also agreed that all of the VISSIM modelling work carried out to date should be disregarded, with the exception of the 2016 baseline validated VISSIM modelling (**Document INQ 41**).
98. BCC agreed that the existing highway conditions on the A4018 corridor are not

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<sup>21</sup> In cross-examination by Mr Moules, Mr Fallon could not identify any further opportunities for necessary improvements to sustainable transport modes in relation to the application proposals.

<sup>22</sup> Mr Fallon agreed in cross-examination by Mr Moules that there would be an impact on the A38 and B4056 but that this would not be sufficient to warrant refusal of planning permission.

unique or unusual for an arterial route into a city centre<sup>23</sup>. The congestion is in the form of a rolling queue and BCC's own observed traffic flows only show a small delay in journey times between Station Road and Crow Lane in the weekday PM peak period. Nor is there an existing highway safety issue. The accidents highlighted by BCC were at random times, they were not directly correlated with peak periods or rat running and many were due to pedestrian or driver error (**Document POE 13 2.7-2.14, 2.18-2.19**).

99. The relevant policy test in Paragraph 32 of the Framework is whether the residual cumulative effects of the development would be severe. BCC agreed that this means very great<sup>24</sup>. In the Tollgate Village appeal decision the Secretary of State considered that the test was a very high bar. There is no dispute that when assessing the VISSIM modelling professional judgment is required to determine whether the proposals make a material and severe difference (**Document INQ 45, paragraph 12.7.1 IR**).
100. BCC is concerned that the agreed modelling is likely to underestimate highway impacts because it does not factor in the removal of the Severn Bridge tolls. However, there has been no assessment of the effect of removing the tolls. In any event additional traffic is highly unlikely to use the A4018 corridor so the impact would not be material.
101. Although BCC's VISSIM modelling can now be disregarded it contained some fundamental flaws, which call into question the reliability of its judgments on highway impact generally. First, in the initial modelling there was no disaggregation of the impact of the application proposals from the impact of all existing and committed development. It was therefore useless for assessing the impact of the proposals on highway conditions. In the subsequent modelling all of the traffic generated by the application proposals to the A4018 corridor was added rather than using the GBATS3 model to assign the traffic in a more realistic manner. This overstated the impacts. The outputs of the VISSIM modelling were misinterpreted because queue lengths were confused with numbers of vehicles. Consequently queue lengths 6.5 times longer than the modelling actually showed were predicted (**Documents INQ 1; POE43, paragraph 3.9.32**).
102. BCC's refusal to share its VISSIM model with the applicants, and its unfair presentation of VISSIM modelling for the first time in its rebuttal evidence led to part of the transport evidence being adjourned. BCC released its VISSIM model and the parties signed up to undertake modelling work on an agreed basis in order to isolate the traffic impact of the proposed development on the A4018 corridor. The parties met to discuss the modelling work and even appointed independent microsimulation modelling experts: Arcadis, on behalf of the applicants and CH2M, jointly on behalf of SGC and BCC. The co-operation continued, the work was done and both independent microsimulation modelling experts signed it off as being technically robust. However, when the actual modelling results came BCC did not like them because they

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<sup>23</sup> This was agreed by Mr Fallon in cross-examination by Mr Moules although he added that such congestion was still not a good thing.

<sup>24</sup> In cross-examination by Mr Moules, Mr Fallon agreed that although the term severe is not defined in the Framework it was reasonable to adopt the Oxford Dictionary definition of "very great".

demonstrated that it had no highway impact case. Rather than welcome the reassurance that the application proposals would have only a minimal impact on the A4018 corridor, BCC has reneged on the joint modelling and criticised the agreed methodology. Its opinions are not even shared by its own independent microsimulation modelling experts (*Documents INQ 41*).

103. It is disappointing that BCC should behave in this way. Its interpretation of the modelling results should be approached with caution given the admitted errors in its interpretation of its earlier flawed modelling work. BCC's highway witness gave the strong impression of someone determined to find fault with the proposals. That has been borne out by BCC's jettisoning of both the joint modelling and its own independent experts' advice because it finds the results unpalatable. This lack of objectivity is underscored by the fact that in other planning applications, notably the Callowhill Court application, BCC has endorsed traffic modelling underpinned by the principle of 'capacity constraint' that it now rejects.

### **The VISSIM modelling results**

104. These show that the proposed development would result in minimal change to the overall network performance in 2031. Journey times would be subject to localised changes, but across the length of the A4018 corridor the change would be minor. There would be increases in queues at a small number of junctions, but these would not be significant and could be accommodated.
105. The interpretation of the modelling results was agreed by SGC and the independent modelling experts instructed by SGC and BCC (*Documents INQ 69B, paragraphs 3.29, 4.4, 4.7, 4.8, 4.11-4.26; INQ 73, paragraphs 4.2.1-4.2.6, appendix A*). They show that during the 1700-1800 peak hour:
- 105.1 The proposed development would result in a net increase in traffic of 126 vehicles across the A4018 corridor.
  - 105.2 There would be no increase in delay and no reduction in mean speed across the network as a result of the proposed development.
  - 105.3 There would be an insignificant 0.4% increase in total travel distance and a 0.3% increase in journeys completed.
  - 105.4 There would be an increase of 18 seconds (or 2.3%) in northbound journey times.
  - 105.5 There would be a decrease of 33 seconds (or 2.6%) in southbound journey times.
  - 105.6 There would be marginal or minor changes in maximum queue length across the majority of junction arms, with increases or decreases of 10 vehicles or fewer.
  - 105.7 In the few instances where queue lengths would be longer, the maximum queue lengths would be short-lived or have minimal impact on overall journey times such that the changes to maximum queue length would not be significant.

### **Assessment of the impact on the A4018 corridor**

106. In line with paragraph 32 of the Framework, planning permission should only be refused on transport grounds where the residual cumulative impacts of the

proposed development are severe. BCC agreed that this test sets a very high bar<sup>25</sup>. BCC relies on Policy PSP11 of the recently adopted PSP Plan. However, this policy does not impose a stricter test than paragraph 32. Indeed it could not do so consistent with the requirements of soundness.

107. All transport witnesses agreed that when assessing the VISSIM modelling, there is no "magic number" that might indicate a severe impact. Instead, professional judgment is required to determine whether the proposal makes a material and severe difference. BCC agreed that it was necessary to judge the following factors together "in the round"<sup>26</sup>:

107.1 Queue lengths;

107.2 Journey times;

107.3 Overall network performance (i.e. delays and speeds across the highway network);

107.4 Interaction of junctions;

107.5 Road safety;

107.6 The geographical spread of any impacts;

107.7 The extent/number of road users affected by any impacts;

107.8 The duration of any impacts;

107.9 The frequency with which any impacts might occur;

107.10 The efficiency of the network and the potential to introduce simple mitigation.

108. In terms of the first three factors, the modelling shows that there would not be significant impacts in terms of queue lengths, journey times or overall network performance. That alone is a powerful indicator that the proposals comfortably pass the tests in paragraph 32 of the Framework and policy PSP11. In terms of factors four and five, the queue length data shows that the proposed development would not create issues regarding junction interaction and would not result in any road safety impacts. In terms of factors six to eight, any impacts would be short-lived, minor and localised therefore they would not be significant in terms of geographical scope, duration or the number of road users potentially affected (**Document INQ 69B, paragraphs 4.3-4.32**).

109. In terms of factor nine, it is important to appreciate that the VISSIM modelling considers the 85th percentile trading week, which is only likely to be reached or exceeded for 8-10 weeks of the year (most likely around the Christmas trading period). Additionally, the modelling takes no account of the reduction in traffic flows that will be delivered through implementation of the Travel Plan (which targets a 5% reduction in car driver trips from both the existing Mall and the extension). The traffic flows modelled are therefore a worst case assessment which will not be realised in practice for the vast majority (85%) of the time. In terms of factor ten, the minor effects identified will balance themselves out across the A4018 corridor and the network as a whole will continue to perform in the same manner with or without the proposed

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<sup>25</sup> This point was agreed by Mr Fallon in cross-examination by Mr Moules.

<sup>26</sup> These points were agreed by Mr Fallon in cross-examination by Mr Moules.

development (**Document INQ 69B, paragraphs 4.33-4.34**).

110. The highway impact of the proposed development would not be significant, and certainly could not be considered to be severe. The proposals comply fully with paragraph 32 of the Framework and Policy PSP11 of the PSP Plan.

### **Response to BCC's criticisms of the modelling**

111. At the outset it is important to appreciate the nature of BCC's concern regarding the A4018 corridor. Its case is that the GBATS3 strategic model shows that the A4018 corridor would become gridlocked by 2031 and thus the addition of a low number of additional vehicles from the proposed development would inevitably make the situation worse. The concern is therefore based on the predicted background traffic growth rather than the impact of the proposed development. These criticisms are misplaced for the following reasons:

#### *Inconsistency*

- 111.1 BCC's criticisms of the agreed joint modelling work are inconsistent with its assessment of the highway impacts of other planning applications, including Callowhill Court. When assessing the highway impacts of this and the other proposals along the A4018 corridor in the Cribbs Patchway area, BCC has used the GBATS3 strategic model and accepted the modelling results based on the principle of capacity constraint. The fact that the Applicants have been required to manually reduce traffic flows to accurately replicate capacity constraint should not be grounds to renege on this agreed principle. This is because the GBATS3 model overestimates traffic capacity along the A4018 corridor and 'capacity constraint' within the model has not been accurately represented.
- 111.2 Where part of the highway network is approaching or has reached capacity constraint, human behaviour means that traffic will not simply gridlock. Instead, drivers will alter their behaviour and the traffic will be redistributed. GBATS3 does not adequately reflect this for the future baseline scenario and so a manual reduction of traffic flows is required.
- 111.3 The manual reduction of traffic flows in the joint modelling work in this case is consistent with BCC's acceptance of capacity constrained modelling on other applications and is not therefore inappropriate.

#### *Independent confirmation of robustness:*

- 111.4 The methodology for the agreed joint modelling has been approved by the two independent expert modelling consultants instructed by the applicants, SGC and BCC. Indeed, the modelling work incorporates all the refinements suggested by SGC's and BCC's experts, CH2M (**Document INQ 69B, section 3**).
- 111.5 In particular, CH2M has confirmed that the limitations in the process of transferring traffic from a strategic macro-level model to a local-level model are commonplace. CH2M is satisfied that the results are as robust as possible. BCC does not suggest an alternative methodology for assessing the impact of the proposal on the A4018 corridor. The joint modelling is therefore the best and only evidence before the inquiry.

#### *Justification:*

- 111.6 Forecasting baseline traffic conditions in 15-20 years' time can never be

an exact science. Professional judgment will always form an essential part of interpreting the results and drawing appropriate conclusions. Here, the judgment of the professional witnesses acting on behalf of the Applicants and SGC, the independent modelling consultants Arcadis and CH2M and BCC in relation to other applications, is that traffic modelling based on capacity constraint is appropriate to reflect driver behaviour in the real world. A particular degree of manual reduction of traffic flows is justified in this case. The traffic flows were reduced gradually and only by an amount sufficient to unlock the VISSIM model.

111.7 The 25% reduction in traffic flows is a sensible one given the likelihood that human behaviour would result in:

- traffic re-routing;
- peak-spreading i.e. drivers making their journeys at different times;
- car users switching mode of transport;
- drivers choosing an alternative destination with a shorter journey time;
- drivers making fewer trips or making more linked trips.

112. BCC largely ignores the detailed explanations for the manual traffic reduction. This explains why the Secretary of State can have confidence that the modelling methodology is robust and the manual traffic reductions are realistic (**Document INQ 77, paragraphs 4.5-4.15**).

113. The joint modelling work is the only assessment of the proposal's impact on the A4018 corridor before the inquiry. It has been endorsed by the independent modelling experts and it is based on the capacity constraint principle that BCC itself routinely accepts. It is highly robust and shows the worst case scenario excluding consideration of mitigation such as the Travel Plan. Even then, the highway impacts would be minimal and certainly nowhere near being severe. The tests in paragraph 32 of the Framework and policy PSP11 of the PSP Plan would be comfortably passed.

### **WHETHER THE SITE IS SUSTAINABLY LOCATED**

114. Comparison of the accessibility of The Mall and Bristol city centre is beside the point. The acid test is whether the proposal, given the nature and location of the site, have taken up all reasonable and practicable opportunities for sustainable transport modes. Although BCC criticised the footpaths, cycleways and buses it agreed that all such opportunities had been taken up. The first bullet point of paragraph 32 of the Framework is therefore complied with.

### **Proposed improvements for pedestrians and cyclists**

115. Currently the Filton airfield site is a barrier to access from The Mall and the wider Cribbs Causeway to destinations to the south. New and improved pedestrian and cycle links are proposed, which would allow access to and from The Mall from all points of the compass. In particular a new link to the airfield would be created by building a £6.89m pedestrian and cycle bridge over Merlin Road. This would improve connectivity to the south considerably. SGC would be required to approve the detailed design and landscaping of the new and improved routes at the reserved matters stage. It would be able to ensure that safe and high-quality links come forward. (**Documents CD A6, pages 61-65; POE**

**10, paragraphs 5.5-6; POE 11, appendix D).**

116. The future population within a 2km walking catchment of The Mall will quadruple to 21,593 and an additional 62,500 people are expected to live within an 8km cycle ride. The new proposed footpath and cycle links would be especially beneficial for the 6,000 plus new residents on the airfield site. There is no reason to think that this and the Charlton Hayes site to the east will not be built out with high quality pedestrian and cycle links through them and therefore these areas will become integrated with The Mall. The proposals would provide for pedestrian and cycle access for potential customers and employees in the local area as far as it is able to do so given the nature and location of the site (**Document POE 11, appendices A and B**).

**Proposed improvements for bus users**

117. The Mall is currently served by 18 bus routes and 37 peak hour services. The bus catchment correlates with the areas where most Mall shoppers originate from. Indeed the number, frequency and range of bus services is much greater than one would expect at an out-of-town shopping centre<sup>27</sup>. However, a significant disincentive to bus travel is the lack of any proper bus station. The proposals address that deficiency by providing a high quality new bus station with customer facilities and an enclosed route from The Mall directly to the buses protecting shoppers and their shopping from the elements. This is a significant benefit and it is bound to make bus travel a more attractive option (**Documents CD 83, pages 43 and 45; POE 10, paragraphs 3.19, 5.8-5.10**).
118. Condition 26 requires updated baseline travel surveys to be carried out prior to occupation, which is likely to be around 2022. Those updated surveys would be shared with the highway authorities and bus operators. If in the future there is a sizeable pull of shoppers from a location not served by public transport, the updated surveys could also be used to see whether a commercially viable bus service could be instituted. The updated surveys could also be used to consider potential changes to the bus network to reflect population changes and see whether there would be more appropriate routing and frequencies of services (**Document POE 13, paragraph 2.56**).
119. The proposals would not rely on wider public transport improvements to be acceptable. These include the MetroBus, the MetroBus extension and the North Filton & Henbury railway stations on the Henbury line. The MetroBus will provide a service from Bristol Parkway to the Mall every 20 minutes and this will be 10 minutes quicker than the current bus journey. The MetroBus journey time to The Mall from the new North Filton station will be only 5 minutes and there will be a half hourly bus to meet the hourly trains. The MetroBus will provide a very high standard of connectivity. Those wider improvements are recognised as opportunities but the application proposals would support them by providing infrastructure at the bus station for the MetroBus. There would also be a financial contribution for sustainable transport measures that could be used to fund a potential rail shuttle bus during the Christmas period (**Documents POE 26, paragraphs 5.3.11-5.3.19 and 5.4.4-5.4.7; INQ 51, pages 13-14**).

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<sup>27</sup> Mr McNeill said in evidence-in-chief that the number, range and frequency of services at The Mall is greater than would be expected at an out-of-town shopping centre and that there was a very good service. Mr Redgewell said that there was a reasonably good bus service from north Bristol and that The Mall's management is proactive in encouraging bus travel.

## Travel Plan

120. A comprehensive Framework Travel Plan is proposed to promote sustainable travel as much as reasonably practicable given the nature and location of the site. A target of a 5% reduction in staff and customer car driver trips is appropriate to ensure an increase in sustainable travel modes because car sharing is defined in the Framework's glossary as a sustainable travel mode. The Travel Plan would apply to the whole site and a 5% reduction in car driver trips would be equivalent to an 18.6% reduction in PM peak traffic generated by the proposed extension (**Documents POE 10, paragraphs 5.12-5.27; POE 13, paragraphs 2.42-2.56**).
121. The planning conditions could include a requirement for interim mode share targets if considered necessary. In any event, targets for each mode would be specified once the updated baseline surveys have been carried out. The Mall management would enforce the staff parking permit requirement and the upgraded Automatic Number Plate Recognition system would facilitate this. It is not necessary to charge for parking and in the Tollgate Village appeal decision, the Secretary of State decided that requiring such charges would be an unjustified control and inconsistent with the test for conditions in Regulation 122 in the Community Infrastructure Levy (CIL) Regulations (**Documents POE 10, paragraphs 4.12-4.13; INQ 45, paragraphs 20 DL, 12.6.8 IR**).
122. The Travel Plan period would be extended to 10 years. The Travel Plan Deposit is a sum of £450,000 for sustainable transport measures. These would be in addition to the embedded infrastructure costs, including the new bus station (£7.56m), the pedestrian and cycle bridge over Merlin Road (£6.89m) and public realm improvements, including connectivity links (£8.06m) (**Documents INQ 51, pages 11, 13-14; INQ 53**).

## OTHER MATTERS

123. The proposals would include 150 dwellings, 35% of which would be affordable units and policy compliant. SGC's most recent 2016 Annual Monitoring Report shows that the Council has a 4.54 year housing land supply. In those circumstances moderate weight should be given to the benefits of the housing element of the proposals because it would be unlikely to come forward within the 5 year period (**POE 15, paragraphs 4.17-4.28; POE 30, paragraphs 3.26-3.33**).
124. Paragraph 6 of the Framework indicates that the policies in paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development means in practice. There is no separate and additional policy test of sustainability. The proposals would be a sustainable form of development because they pass the sequential, retail impact and transport impact tests and are consistent with all other relevant Framework policy.

## THE CASE FOR SOUTH GLOUCESTERSHIRE COUNCIL

*SGC's case is fully set out in its evidence, including its opening and closing submissions (**Documents INQ 64A and 64B**) and its supplementary submission on transport (**Document INQ 81**) and Callowhill Court (**Document INQ 82**).*

*The main points are:*

## INTRODUCTION

125. Following careful consideration of this application and the objections to it, and

having taken advice from independent retail experts, it was concluded that the proposals would satisfy the sequential and retail impact tests and would in all other respects be in accordance with the Framework and the development plan. The Planning Committee resolved on 3 November 2016 that it was minded to grant outline planning permission, subject to the Secretary of State not calling it in (**Document B7**).

## **RETAIL ISSUES**

### **THE SEQUENTIAL TEST**

126. The correct interpretation of the sequential test, as a policy statement, is a matter of law. The *Tesco v Dundee* Supreme Court judgement<sup>28</sup> made clear that it must be interpreted objectively in accordance with the language used, read in its proper context. Both the words of the policy and its supporting guidance have changed since the introduction of the Framework and the PG. This is an important factor that needs to be borne in mind when considering decisions and judgments which were concerned with earlier iterations of the policy or guidance (**Document CD N3, paragraph 18**).

### **The legal and policy context**

#### *Suitability*

127. In order to demonstrate that a sequentially preferable site exists, paragraph 24 of the Framework requires that a site must be both suitable and available. Although *Tesco v Dundee* was concerned with Scottish policy, it provides a helpful starting point, which has been relied upon in a number of decisions. This is whether an alternative site is suitable for the proposed development and not whether the proposed development can be altered or reduced to fit on an alternative site (**Document CD N3, paragraph 29**).
128. In *Aldergate Properties* it was held that in the context of paragraph 24, "suitable" and "available" generally means for the broad type of development proposed in the application by approximate size, type, and range of goods. This formulation of the test incorporates the requirement to demonstrate flexibility on the issue of format and scale. However, the focus remains on finding a suitable site that can accommodate the broad type of development that is proposed by the Applicants. This could plainly not be satisfied by disaggregating the proposal across a whole host of different sized unidentified sites, in unidentified locations (**Document CD N6, paragraph 35**).
129. Unlike policy EC15 of *Planning Policy Statement 4* (PPS 4), paragraph 24 makes no reference to disaggregating different parts of a retail or leisure development onto sequentially preferable sites. Nor does the PG suggest that such an approach should be followed. The previous PPS 4 Practice Guidance referred to the contribution of more central sites either individually or collectively. In contrast the PG does not make any reference to a collective contribution and reflects the different approach that national policy now takes to this issue (**Documents INQ 7; INQ 8, paragraph 6.42; INQ 13. Paragraph 2b-010**).
130. Consistency in decision-making is an important principle in the determination of planning decisions. The Secretary of State in the Rushden Lakes, Scotch Corner and Honiton Road decisions found that the requirement to demonstrate

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<sup>28</sup> *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13.

flexibility does not require the applicant to disaggregate the scheme (**Documents CD N1, paragraphs 16 DL, 8.47 and 8.51 IR; CD N2, paragraphs 11 DL, 11.7 IR; CD N4, paragraphs 18 DL, 11.32 IR**).

131. The Inspector in the Tollgate Village appeal appeared to acknowledge that a disaggregated approach might be permissible. However, he wrongly relied upon the consideration of sub-division in *Tesco v Dundee*, which was set against a different policy context that expressly required consideration of that matter. In any event the Inspector went on to reject this approach because, like the present case, there was no evidence about the availability and viability of other sites scattered in and on the edge of the town centre. It is notable that, unlike the Rushden Lakes decision, the Secretary of State did not endorse the Inspector's analysis of whether it was permissible to disaggregate the proposals when applying the sequential test (**Documents INQ 45, paragraphs 12.3.10-12.3.11, 12.3.22; CD N3, paragraphs 6, 28**).

#### *Availability*

132. The wording of paragraph 24 is written in the present tense as was recognised in the Rushden Lakes decision. This represents a departure from the previous guidance, which suggested that it may be appropriate to assess availability over three to five years, or possibly a longer time period. This change in approach was also expressly recognised in the Tollgate Village decision (**Documents CD N1 paragraph 8.55 IR; INQ 8, paragraph 6.39; INQ 45, paragraphs 12.3.18-12.3.19**).
133. BCC suggested that *Lionbrook* provides authority for the proposition that the appropriate timescale for the application of the sequential test was always a matter of judgement for the council. However, that decision was based upon now cancelled guidance and it also relies upon issues of need, which no longer form any part of the sequential test in decision making. The judgment indicates that the question of availability is a matter of planning judgement. However, that does not mean that the ordinary meaning of the word can be taken as whatever a party wants it to mean on the particular facts of their case (**Document CD N7, paragraph 171**).
134. Ultimately the sequential test has to be applied with a degree of common sense. The fact that a site may become available at some later point in the plan period does not mean that it will be available for the application proposals, which is the whole purpose of carrying out the test in the first place. It is thus appropriate to ask whether a sequentially preferable site is available to accommodate the application proposals within a similar timeframe. This is consistent with the approach adopted in the Honiton Road decision (**Document CD N4, paragraphs 18 DL, 11.38-11.40 IR**).

#### *Relevance of need*

135. There is no longer a requirement to consider need for a proposal as part of the sequential test in decision making. This test was withdrawn when *Planning Policy Statement 4* replaced *Planning Policy Statement 6* and it was not reintroduced when the NPPF was published. This was confirmed in the *Warners*

*Retail Court of Appeal judgement*<sup>29</sup> (**Document CD N5, paragraphs 27-29**).

## **Suitability**

### *Site requirements*

136. The requirement is that the applicant must demonstrate that there are no sequentially preferable sites to accommodate a broadly comparable proposal allowing for flexibility in scale and format, in a similar timeframe. The only site that has been presented as a potentially sequentially preferable site is Callowhill Court in Bristol city centre. A comprehensive search of the primary zones within the catchment area has been undertaken and this has revealed no other sequentially suitable sites. There has been no material challenge to this search or its outcome or any identification of any other potentially suitable site (**Document POE 18, sections 7, 8**).
137. BCC has suggested that it would be appropriate to disperse the application proposal to an undefined number of unidentified sites in order to accommodate an unidentified amount of floor space over numerous centres throughout the catchment. Such an approach is incorrect and unlawful as it would allow for continuous disaggregation of a scheme to something that is wholly unknown and wholly unrecognisable. It would be impossible to ever pass such a test (**Document POE 38, paragraphs 5.15-5.17**).

### *Whether Callowhill Court is a broadly comparable site*

138. In considering whether the Callowhill Court site is broadly comparable it is agreed by all the main parties apart from BCC that it is appropriate to replace the existing usable floor space before considering whether what is then proposed is broadly comparable to the proposed Mall extension. It would make a nonsense of the sequential test if, in seeking to accommodate an out-of-centre proposal, one could simply point to an existing and occupied shopping centre.
139. The amount of existing floorspace that would need to be replaced would be 24,500 m<sup>2</sup>, which was taken from the DAS accompanying the planning application for the proposed redevelopment of Callowhill Court. At the start of the inquiry BALP's evidence demonstrated that the current usable floor space at the site was 24,089 m<sup>2</sup>. It was the remainder of the floor space proposed at Callowhill Court (57,411 m<sup>2</sup>) that needed to be compared with the proposals at The Mall (56,550 m<sup>2</sup>). The Callowhill Court floor space (57,411 m<sup>2</sup>) included the retail and leisure uses proposed at the Mall and provision for 1,000 car parking spaces but not the hotel. On this point, at least, it appeared that the two proposals in terms of their floor space were broadly comparable (**Document POE 46, table on page 8**).
140. The build zone of the Callowhill Court site, which excludes highway land, is 3.18 ha. In order to accommodate the floor space proposed at The Mall together with provision for 1,000 spaces for car parking, a site of 3.2 ha would be required. However, in order to re-provide the existing floor space it would be necessary to increase the site area to 4 ha (**Document POE 18, paragraphs 6.77-6.78**).

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<sup>29</sup> *Warners Retail (Moreton) Limited v Cotswold District Council* [2014] EWHC 2504 (Admin) and [2016] EWCA Civ 606.

141. It became clear from BALP's evidence to the inquiry that the existing floor space figure of 24,500 m<sup>2</sup> did not include that being used for backhouse and ancillary retail purposes on the upper floors. The final position of BALP appears to be that there is usable floor space area of 26,987 m<sup>2</sup>. This means that on BALP's figures, the comparison floor space figure between Callowhill Court and the proposed Mall extension would be 54,513 m<sup>2</sup> and 56,550 m<sup>2</sup> respectively. This would be a difference of some 2,000 m<sup>2</sup> which is material and casts significant doubt as to whether the sites are in fact broadly comparable in floor space terms. Moreover, it is clear that the 26,987 m<sup>2</sup> figure excludes the upper floor areas that are being used, albeit inefficiently, for ancillary retail purposes. The amount of existing floor space that needs to be re-provided is in all likelihood much higher. Any such increase would further exacerbate the existing differential between the new floor space and that proposed at The Mall and render the Callowhill Court site even less comparable (**Document INQ 32**).

*Whether Callowhill Court is suitable for a broadly comparable scheme*

142. The revised parameter plans on which BCC's resolution to grant planning permission were based shows an evening out of development height across the site. However, all of the maximum building heights on the new plans need to be reduced by about 10m to take account of the 10m average datum level, which was not indicated on the application plans. The build zone would be reduced by more than 25%, which would inevitably result in a significant reduction in the maximum floorspace that could be accommodated. In addition retail development has been removed to accommodate a new internal route from Bond Street and the removal of the developed area in the north-west corner. It cannot therefore be said that the proposed development would be broadly comparable to the application proposals (**Documents CD K2F, pages 100-101; INQ 80, appendix 1, plan 12; INQ 82A, paragraphs 8-14; INQ 82B**).
143. Notwithstanding the reduction in height shown on the revised parameter plans, there would still be buildings over 27m in height and these would require an assessment under BCC's *Tall Buildings Supplementary Planning Document*. The planning application does not contain such an assessment contrary to the provisions of that guidance. A daylight and sunlight assessment has now been undertaken. However, this shows that there would be a small number of acute daylight impacts and significant sunlight impacts. This will have to be addressed at detailed stage if it can be. There is no consideration as to whether listed buildings are more sensitive to loss of light despite not being in residential use (**Documents POE 18, 6.89-6.115; POE 19, appendices 6, 9; INQ 4; INQ 9; INQ 75, paragraphs 10.118-10.12; INQ 80, appendix 1; INQ82A, paragraphs 15-17**).
144. There are many Grade I and II\* listed buildings and several conservation areas in close proximity to the site. Historic England raised concerns and has pointed out the difficulty in assessing the level of harm given the overall lack of detail. BCC's own Urban Design Team Manager has indicated that he considers the proposals need to be properly tested before they can be considered acceptable and should only be regarded as broad parameters at this stage. A revised heritage statement has now been submitted and Historic England has removed its objection. However, it remains concerned that the proposals are being dealt with in outline form, making it difficult to assess the true impacts of the effect of the scale and mass on the many surrounding designated heritage assets. A comprehensive heritage assessment will still be needed at reserved matters

stage, which will inevitably delay the grant of a full implementable permission (**Documents POE 18, paragraphs 6.116-6.129; POE 19, appendix 8; INQ 18; INQ 19; INQ 75, paragraphs 10.88-10.102; INQ 82A, paragraphs 18-19**).

145. The planning committee in September 2017 considered the car park access and car parking proposals to be unacceptable. The revised proposals show a further reduction to 380 spaces. Whilst the outline scheme is now considered acceptable to BCC it will be subject to numerous planning conditions. It will take substantial time to resolve all of the issues raised, many of which relate to matters to be secured through the S106 Agreement. Furthermore, the council's transport team indicated that a single reserved matters application will be required for the whole site. This will take considerable time to work up and agree. The air quality assessment indicates positive and negative effects within the Air Quality Management Area. There is potential to create a canyon effect down Bond Street, which may be significant for air quality. Whilst the council believe this could be addressed by a careful consideration of scale and mass in this location this may need to be further reduced in order to reach a satisfactory outcome (**Document INQ 75, paragraphs 10.19-10.21; 10.110-10.117; INQ 82A, paragraphs 20-23**).
146. Whilst it is the site that is relevant in assessing the sequential test, the proposed scheme provides a very good way of testing its suitability. As matters currently stand Callowhill Court would not be a suitable site for a development that would be broadly comparable to the proposed extension to The Mall. Even allowing for flexibility in terms of scale and format, it cannot reasonably be concluded that the site could acceptably accommodate the re-provision of the existing Callowhill Court floor space and the additional floor space proposed at The Mall.

#### *Viability*

147. It was accepted by BCC and BALP that if the Callowhill Court site is not viable for a broadly similar proposal to that proposed at The Mall, it would not be a suitable alternative for the purposes of the sequential test<sup>30</sup>. The only valuation of the existing Callowhill Court asset is that provided by the Applicants at around £115m. Even on BALP's own viability evidence, which suggests the proposal to be worth about £67m, the existing value is worth significantly more than it would be after many hundreds of millions of pounds have been spent on its redevelopment. On the available evidence the proposed redevelopment scheme would not represent a viable development opportunity. It is therefore not a suitable sequential site (**Document POE 8, paragraph 2.10**).
148. In these circumstances, it is perhaps unsurprising that BALP sought to distance itself from its own viability evidence preferring instead to rely on an internal and unpublished assessment that indicated the proposed scheme was in fact viable<sup>31</sup>. This untested assertion, that could not be tested or scrutinised,

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<sup>30</sup> In cross-examination Mr Katkowski asked if a development proposal was not viable on a sequentially preferable site whether the test would be passed. Mr Wilks agreed that it would not. Mr Baldock said that if the development proposal could not become viable in a reasonable time scale it would not.

<sup>31</sup> Mr Dobson explained in evidence-in-chief that he would ignore both the residual appraisals of Mr Prentice and Mr Hardman as he had his own internal viability appraisals, which were confidential and couldn't be revealed to a competitor.

should not be given any weight in the determination of this application. The only conclusion that can be reached in the light of the evidence produced is that the site is not viable to accommodate a broadly comparable scheme to that proposed at The Mall and is therefore not suitable.

### **Availability**

149. BCC does not agree that the Callowhill Court site must be available for development within a similar timeframe to the application proposal at The Mall. It sought to suggest that an appropriate timescale would be 2026, which is the end date for BCAP<sup>32</sup>. This approach is directly at odds with the Rushden Lakes decision. Furthermore, BCC's approach to availability was also erroneously predicated on whether there was a need for the development, which the Court of Appeal in *Warners Retail* has held is no longer relevant to the application of the sequential test. BCC's approach to availability should therefore be disregarded (**Documents CD N1, paragraph 8.55 IR; CD N5, paragraphs 27-29**).
150. It is agreed that the design year for the Mall extension is 2024. This means that, allowing for the construction period, start on site needs to commence in the summer of 2020. It is therefore necessary to consider whether the Callowhill Court site would be available, with an implementable planning permission and vacant possession within this timeframe (**Documents INQ 30, paragraph 2.4; POE 18, paragraph 5.26**).
151. It is clear on any reasonable analysis that the Callowhill Court site will not be available in the summer of 2020 for the following reasons:
  - 151.1 It is highly unlikely that an implementable planning permission will be achieved within a timeframe that would allow commencement on site in the summer of 2020. It would seem unlikely that the complex S106 Agreement would be completed to allow outline planning permission to be granted on 16 February 2018 as BALP contends. In any event, this would still be little more than an endorsement of the principle for the redevelopment of the site for retail uses in accordance with the development plan allocation. There would remain a considerable amount of work to be undertaken and the Minutes of 10 January 2018 indicate that all reserved matters would need to go back to the Planning Committee for approval. The real question to ask is whether the site is suitable and available for the development in question. In any event BALP itself recognises that it would need up to seven years to achieve that. This alone would take the timetable to 2024 and potentially beyond (**Document 79A, paragraph 20**).
  - 151.2 The consolidation of the head lease was negotiated some time ago. In order to carry out Major Works, BALP are required to submit a Qualifying Scheme to BCC for approval. Whilst discussions may be underway agreement has not even been reached on what information will be required.
  - 151.3 There are a number of long leaseholders on the site and numerous occupational leaseholders whose leases expire beyond 2020 with no

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<sup>32</sup> Mr Chapman said in evidence-in-chief that the BCCRS indicated that the development of Callowhill Court would be in the medium-long term and so the end date of BCAP (2026) would be a reasonable time for the site to come forward.

break clause. No update has been provided by BALP as to whether negotiations are now underway and it is therefore clear that these have not yet commenced. Unless successful negotiations can be achieved with these leaseholders a CPO will be necessary to achieve vacant possession of the site<sup>33</sup>. Whilst BCC has resolved in principle to make a CPO this will be subject to a number of pre-conditions, which need to be satisfied before that can be done. These will include a requirement to obtain planning permission and to put a development and indemnity agreement in place. Little real progress has been made on the latter and final heads of terms have still not been agreed. Once a CPO has been made it will need to be confirmed. This is likely to take at least a further 18 months to two years. The acquisition process will also need to include the conversion of the existing rights to light enjoyed by numerous surrounding properties from injunctive to compensatory rights and the statutory processes that this entails (**Document POE 19, appendix 9, paragraph 6.4**).

- 151.4 BALP will need to ensure that there is a detailed scheme that is suitable for the market. This will require that the threshold of 40% of pre-lets is achieved; that there is a satisfactory tender process to build the scheme and finally a decision by the BALP Board to go unconditional.
152. It is simply unrealistic to conclude that all of this can be achieved in less than three years, or indeed anything close to that. The only reasonable conclusion is that the Callowhill Court site is neither suitable nor available and the application for the proposed extension to The Mall passes the sequential test.

### **THE RETAIL IMPACT TESTS**

153. The consistent advice from SGC's appointed independent retail experts was that the proposal would not have an adverse impact on any town centre, including Bristol city centre.

### **Impact on planned investment**

154. The only possible candidate put forward by BALP and BCC is Callowhill Court but this is patently not planned investment. The PG provides guidance on key considerations that need to be taken into account in determining whether or not a potential investment is or is not planned, and if it is, the impact upon it. The policy status and the progress made in realising the investment are two such considerations. If a proposal is planned investment the extent to which it will be undermined by the proposal is a consideration that needs to be factored in (**Document INQ 13, paragraph 2b-016**).
155. The Secretary of State has considered what constitutes planned investment in the recent Scotch Corner and Tollgate Village decisions. These indicate that to constitute planned investment a proposal needs to be at a very advanced stage to becoming committed investment. This makes sense because otherwise it is not possible to assess in any meaningful way any likely impact upon it from the out-of-centre proposal. (**Documents CD N2, paragraphs 13 DL, 11.16 IR; INQ 45, paragraphs 18 DL, 12.4.36 IR**):

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<sup>33</sup> Mr Dobson in cross-examination by Mr Katkowski said that about 32% of leases expired after 2020 and did not have break clauses. He was confident that deals would be done in negotiation but said it was likely that a CPO would still be necessary.

156. The Callowhill Court proposals are not yet at an advanced stage, if they ever will be, let alone at a very advanced stage for the following reasons:
- 156.1 Most of the site comprises an allocation under policy BCAP36 but this does no more than provide in-principle support for the redevelopment of the site for an unquantified amount of floor space (**Document CD G4**).
  - 156.2 BALP agreed that the re-gearing of the head lease makes commercial sense with or without the site's redevelopment. However, this does not give control to BALP as a long leaseholder over the entirety of the site because parts of the site remain outside BALP'S control. This is a matter that remains outstanding and needs to be addressed (**Document POE 47, appendix 2**).
  - 156.3 The outline planning application does little more than seek to confirm the principle of the acceptability of the redevelopment of the site for retail uses. It does not move matters on materially from most of the site's allocation in the development plan. All significant and detailed matters which will determine the true nature of the proposal are to be subsequently addressed. Even seeking confirmation of an in-principle approval has proved problematic.
  - 156.4 The BALP Board has granted approval to fund the planning processes but subsequent Board approvals are necessary beyond that (**Document POE 46, paragraph 7.8**).
157. There is therefore still much to do as demonstrated by the "to do" list, which is long indeed, and contains the following:
- 157.1 The outline planning permission has already been significantly delayed. BALP originally anticipated a grant in Spring 2017. The application is clearly not properly worked up and has been made prematurely. Even though BCC has now resolved to grant outline planning permission, this is subject to the completion of the S106 Agreement (**Document POE 19, appendix 10, page 3**).
  - 157.2 Following the grant of the outline planning permission, detailed approvals will be required. All of the fundamental details of the proposal have been left over to this later stage, including the need for tall buildings and detailed heritage assessments. Highways and other orders will also need to be obtained. It is wholly unclear when an implementable consent will be achieved and BALP themselves cannot know given their request for a 7 year resolution period for the detailed matters.
  - 157.3 Vacant possession will be need to be achieved. Prior to this, a Development Agreement and an Indemnity Agreement will need to be negotiated by BALP with BCC. BCC has made it clear that no CPO will be made before this is achieved.
  - 157.4 Negotiation will need to be undertaken on dozens of outstanding leasehold interests and the need to undertake sufficient negotiations is also a pre-condition to the making of a CPO by BCC (**Document POE 40, appendix R1, page 1**).
  - 157.5 The CPO process will take time and involves uncertainty as detailed in paragraph 151.3 above.

157.6 BALP Board approval will be necessary at each stage of the process.

157.7 Even assuming all this is achieved, tenders and construction contracts will need to be obtained and negotiated before start on site can commence and before the proposal goes unconditional and constitutes committed investment.

158. The only reasonable conclusion that can be reached is that the time required for the realisation of these proposals into a committed investment is as yet unknown and whether they will be realised is highly uncertain. What is clear is that the proposals are not at a very advanced stage and cannot reasonably be regarded as planned investment.

159. The latest representations from BALP indicate that Hammerson and INTU will continue to progress matters in their own best interests for the time being, but only until such time as a deal is concluded. This casts further doubt about whether the Callowhill Court proposals will be further progressed (**Document INQ 80, paragraph 6**).

### **Impact on vitality and viability**

160. Even if Callowhill Court were properly to be regarded as planned investment, the application proposals would not have a significant adverse impact upon it. The JRA demonstrates that even with the proposed extension to The Mall, there would be ample available expenditure in the city centre to accommodate the Callowhill Court proposals. This shows that with both developments in place, the expenditure in the city centre in 2024 will be £1,084m. This is higher than the expenditure in the city centre in the base year of 2016 (£850.2m) and higher than the expenditure in the city centre with the proposed extension alone in 2024 (£985.94m). In 2027, with Callowhill Court and the Mall extension, the expenditure in the city centre will be £1,216.63m<sup>34</sup> (**Document POE 32, appendix 2, table 22**).

161. BALP argue that there would be an adverse impact on Callowhill Court because it has said that it would not be progressed if the application proposals are granted planning permission. The BALP Board has resolved that in such circumstances work would cease on the city centre development and no further funding would be committed to the project. However, this evidence has no evidential base to support it and is also contrary to BALP's own viability evidence (**Document POE 46, paragraph 8.4; INQ 11**).

162. If weight is given to BALP's assertions then it would allow for the circumnavigation of the retail impact test set out in the Framework and the development plan. This is predicated on the undertaking of assessments to objectively analyse the retail impact of an out-of-centre proposal. The test serves no useful purpose if all that a commercial competitor has to do is to state that it will not continue with a project if permission for an out-of-centre proposal is given, irrespective of whether there would actually be a significant and adverse retail impact upon the project.

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<sup>34</sup> The city centre expenditure in 2024 with both developments is derived from table 22, column E plus Callowhill Court turnover (£923.59m+£160.54m=£1,084.13m). The 2027 figure with both developments is worked out in the same way using column H (£1,036.46m+£180.17m=£1,216.63m).

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*Dual representation*

163. BALP suggested that in the future retail operators would seek representation either at the extended Mall or in Bristol city centre. However, it is not disputed that there is a very high level of dual representation of retailers at both locations at present. This demonstrates that the same retailers are content to trade in both places because they can make profits from shoppers who go there. The reality is that The Mall and the city centre have very different markets, even though there is a considerable degree of overlap in their core catchment areas. For example, the city centre is more popular with students whilst the Mall tends to be more popular with young families.
164. BALP accepted that main high street retailers would continue to want representation at both locations but suggested a trend for some existing or new retailers to only want representation in one location. The only real evidence to support this proposition was a letter from Jones Lang LaSalle Ltd. No actual retailer had written to state that this is what they would actually do. Indeed if this were the case it would result in an unrealistic concentration of major retailers in a single regional location across the country. It is inconceivable that national retailers would, in the future, only seek single representation in each region. Indeed, the practical effect of this would be to significantly reduce the number of existing stores and the closure of profitable trading floor space (**Document POE 51, appendix 5**).
165. There will plainly be circumstances in which particular retailers might, for operator-specific reasons, not seek joint representation within the region. However, there is no real evidence that this is part of a wider trend. The Mall and the city centre both have high levels of footfall and generate sales densities well above the national average and benchmark levels. In those circumstances, it is hardly surprising that many retailers will want to be present in both locations. In the circumstances it is unlikely that the application proposals would have any significant impact on BALP's ability to secure the necessary pre-lets in order to proceed with the Callowhill Court development. Furthermore, if there are any concerns that the proposals would encourage existing city centre retailers to jump ship, this can be overcome by the imposition of the dual representation planning condition (**Documents POE 3, pages 92-98; POE 32, table 23, INQ 29**).

*Health of the city centre*

166. The evidence provided by the Applicants indicates that Bristol city centre is vital and viable and it is in this context that any impact from the Mall extension must be considered (see paragraph 75 above). A comprehensive health check of the city centre was undertaken in the JRA in accordance with the indicators contained in the PG. There is a specific assessment for Broadmead and Cabot Circus. The city centre performs well against the indicators. The vacancy rate, whilst above the national average, is improving and needs to be seen in the context that some of the fringe vacant units are unlikely to be occupied for retail use. This was recognised in the BCCRS. The base year sales density for the city centre exceeds the benchmark of £5,000 per m<sup>2</sup> on either the JRA's figures (£7,650 per m<sup>2</sup>) or BCC's figures (£6,050 per m<sup>2</sup>) (**Documents POE 32, appendix 4, pages 83-96; INQ 13, paragraph 2b-005; CD G6, paragraph 4.34**).
167. The BCCRS states that the high and consistent rankings of the city centre indicate its relative health, importance and attractiveness. Also that it

outperforms the majority of principal competing centres and comprises more major retailers, which demonstrates its overall health and performance. It performs particularly well in terms of attracting catchment area expenditure of clothing and footwear. This indicates a strong catchment retention figure and no obvious deficiency owing to the diverse mix of such shops and stores, including a critical mass of multiple fashion retailers. BCC agreed that there was nothing in the BCCRS to indicate that the city centre was not vital and viable. It also agreed that this is as true today as it was in 2013<sup>35</sup>. BALP's own Retail Statement in support of the Callowhill Court planning application concluded that overall the Bristol Shopping Quarter is vital and viable, albeit that some areas perform better than others (**Documents CD G6, paragraphs 2.10, 2.23, 5.21; CD K2/B, paragraph 64**).

#### *Assessment of retail impact on designated centres*

168. The JRA provides the only available evidence that comprehensively models the impact of the proposed development across the catchment area. BCC agreed that it appropriately follows the step-by-step approach in the PG<sup>36</sup>. The BCC retail impact assessment only focuses on the likely trade diversion from Bristol city centre as a result of the proposed development. It fails to consider expenditure distribution and shopping patterns across the wider study area. This makes it impossible to understand the real world implications of BCC's predictions in the context of the wider catchment area (**Document INQ 13, 2b-017**).
169. The JRA indicates a comparison goods turnover for Bristol city centre in the base year of 2016 of £850m. BCC considers that it is £669m. This is made up of three components: the market share, derived from the household survey; the study area zones to which the market share is applied; and the inflow assumptions (**Document INQ 6, table 2**).
170. Both assessments are based upon different household surveys. The JRA is based upon a NEMS household survey carried out in 2014, whereas BCC's work is based upon the 2013 DTZ survey that informed the BCCRS. There is a considerable degree of similarity between both surveys, which both asked very similar questions. Nevertheless, NEMS is a reputable company in the retail world and it is estimated that about 80% of the retail evidence base for local plans across the country is derived from surveys that it carries out. The reasons why the NEMS survey is more robust and should be preferred have been given in paragraph 82 above. It should be noted that both surveys have had to be weighted for age and other factors. This is therefore not a factor that should undermine the validity of the NEMS survey. Indeed, the DTZ survey includes a 5% adjustment for Bristol city centre and a 55% adjustment for the Mall (**Documents POE 4, paragraphs 1.29, 1.31; POE 24, paragraphs 5.8-5.10**).
171. There is no reason to think that the turnover of Bristol city centre predicted in the JRA is unrealistically high. Although it would provide an average sales density of £7,650 per m<sup>2</sup>, which is above the national average of £4,205 per m<sup>2</sup>, this is not surprising for a regional shopping centre ranked 12th in the Venuescore Rankings. Indeed, as is commensurate with its position in the retail hierarchy, the city centre contains a high proportion of national retailers

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<sup>35</sup> Mr Baldock agreed these points in cross-examination by Mr Katkowski.

<sup>36</sup> Mr Baldock agreed that it followed the PG approach in cross-examination by Mr Katkowski.

with high sales densities. Furthermore, when the BCCRS projected sales densities of some £7,500 per m<sup>2</sup> for 2021, there was no suggestion that this was considered to be unrealistically high for the city centre (**Documents CD L10, page 11; POE 22, paragraph 11.5, bullet 4; POE 32, table 23; CD G6, appendix C, table 13**).

172. The difference between the turnover of the city centre predicted by both surveys may appear to be quite considerable. However, when it is properly factored into the assessments, it only makes a difference of 1-2% to the predicted impact.

#### *Internal impact*

173. The single biggest difference between the parties is on the issue of whether, in the short term, there would be an internal impact on the existing shops at The Mall as a result of the proposed extension. This accounts for some £36.53m of the agreed £169m trade diversion to the proposed development. The concept of internal impact is uncontroversial and widely accepted. That is hardly surprising given that, in the real world, it is patently obvious that if an existing shopping centre is extended there will be a dispersal of trade across both the new and existing units. That accords with the notion in the PG that like competes with like (**Documents POE 32, appendix 2, table 19; POE 4, paragraphs 1.42-1.44; POE 24, paragraphs 5.23**).
174. The JRA does not predict a net drop in expenditure at The Mall but rather a total increase of some £132m by 2024. Of that considerable increase in expenditure, some will go to the existing retailers and some will go to the new retailers. The internal impact figure represents an adjustment across the Mall to reflect the fact that some shoppers will go to the Mall but still only buy one shirt or one beef burger from a greater choice of shops. There will inevitably be some winners and some losers. For example existing fashion retailers might expect to see an initial drop in turnover. However, any negative impact on the existing shops would only be short-lived. A drop in turnover by the design year of 2024 will have been compensated for by further growth in expenditure by the horizon year of 2027. Retailers are likely to take a long term view and support expansion that provides better facilities and maintains The Mall's position in the retail hierarchy (**Document POE 32, appendix 3, table 19**).

#### *Other differences between the retail assessments*

175. The JRA shows a trade diversion of some £16m from the other retail parks and stores in the Cribbs Causeway area. Unlike in the case of internal impact, BCC's assessment does not reject this level of trade diversion in its entirety. Instead, it re-distributes some £8.08m of this to diversion from the city centre. The justification for this approach is said to be because many of the retail warehouses sell bulky goods that are not widely sold from existing or proposed shops at The Mall. However, there is a considerable degree of overlap between the range of goods on offer at The Mall and those which are available at the retail warehouses. It is therefore perfectly reasonable to assume that some trade draw away from these warehouses would occur. BCC also seeks to reduce the predicted trade diversion from the other centres and shops within zone 1 by 50% (£1.64m) and re-allocate it to the diversion from Bristol city centre (**Documents INQ 3; INQ 6, table 6**).
176. Even if BCC is correct in its trade diversion figures it is not appropriate to

simply add this onto the trade diversion figures for the city centre because it takes no account of trading patterns across the wider catchment area. If the correct approach is adopted to the redistribution of the £36.5m internal impact figure and half of the diversion from the retail warehouses (£8.08m), the output would result in a 2% increase in the solus impact on the city centre from 4.4% to 6.4%. In terms of the trade diversion from other centres, there would be no material difference to the overall outcome (**Document POE 4, appendix 1**).

177. BCC suggests that it would also be appropriate to model an increased turnover at The Mall of around 5% to reflect the increase in attraction provided by the critical mass of additional shops. There is no basis for this arbitrary uplift, which results in a further £25.4m diversion from the city centre to the Mall. The Mall is already an established regional shopping centre with a large catchment area and is unlikely to disproportionately increase its attraction as a result of the creation of the proposed additional floorspace. The additional £132m in expenditure that would arise as a result of the proposed extension would be made up of existing shoppers who decide to spend more as a result of the additional shops or new customers who did not previously visit the Mall but would be attracted to the larger shopping centre. Accordingly, the JRA already accounts for and accommodates the increase in expenditure that would result from the extension (**Documents POE 24, paragraph 5.17; INQ 6, table 6**).

#### *Significance of the impact*

178. It is agreed that when determining the significance of any retail impact there is no magic number or threshold. The question will depend on the facts of the case and, in particular, the strength of any centres which the proposal would be likely to have an impact on. A good example is the Tollgate Village decision where an impact of 14% was not considered significant adverse due to the good health of the town centre (**Documents N2, paragraphs 11.21-11.22 IR; INQ 45, paragraph 12.4.25 IR**).
179. BCC provides the only alternative assessment of the impact that the application proposals would have on the designated centres. This only considers the comparison goods impact on Bristol city centre. There is no alternative assessment of the impacts on other centres or on other main town centre uses, such as food and beverage. Accordingly, the assessment in the JRA that there would be no significantly adverse impacts on any other designated centres or other main town centre uses is commended to the Secretary of State as unchallenged evidence (**Document INQ 68 B**).
180. The JRA concludes that the proposed extension to The Mall would give rise to a £45.71m impact in the design year of 2024, which would equate to a 4.4% solus impact on post commitment sales and a 6.9% cumulative impact. As the sensitivity analysis demonstrates, if the entirety of the internal impact and half the retail warehouses trade diversion is re-distributed throughout the catchment area, the solus impact would only increase to 6.4% with a cumulative impact of 8.8%. On either basis, this would not amount to a significant adverse impact, especially given the health of Bristol city centre and the other attractions that it has to offer (**Documents INQ 6, table 6; POE 4, appendix 1**).
181. A critical measure of whether a proposal would have a significant adverse impact on a designated centre is whether the turnover of that centre would be

higher in the design year with the out-of-centre proposal in place than it is in the base year. This approach was adopted by the Secretary of State in the Rushden Lakes decision. In the present case, the JRA indicates that the city centre will experience a growth in expenditure of 16% from £850m in 2016 to £986m in 2024. Furthermore, even if every single one of BCC's corrections are made to the JRA, there would still be a growth in expenditure in Bristol city centre of 5.2% from £669m in 2016 to £704m in 2024. This is not consistent with a significant adverse impact (**Documents CD N1, paragraphs 24 DL, 8.86 IR; POE 36, appendix F, table 22**).

## OTHER MATTERS

182. With regards to the recent Kingswood, Hull appeal decision, the main reason for favouring a disaggregated approach related to the wording of a recently adopted policy. There were also two allocated city centre sites. Neither applies in the present case and disaggregation would not be appropriate. The Hull Inspector indicated that when viability is considered in the context of the sequential test for decision-making the question is whether there is a reasonable prospect that a site could be delivered. It was accepted by BCC that an unviable site could not represent a sequentially preferable alternative<sup>37</sup>. There is no reasonable prospect of delivery in the present case on the viability evidence (**Documents INQ 79B, paragraphs 52, 53, 56, 65, 67, 72; INQ 82A**).
183. The only evidence on the existing value of Callowhill Court is that of the Applicants, which shows that it is so high that any complete redevelopment would be completely unviable. In terms of planned investment the Hull Inspector did not indicate that policy support, landowner support and an intention to implement a proposal would necessarily be sufficient to constitute planned investment. He emphasised that much would depend on local facts and circumstances. In the present case the planned investment must be sufficiently advanced to assess any impact on it. This stage has not been reached (**Document INQ 79B, paragraphs 126, 128**).

## TRANSPORT ISSUES

### HIGHWAY IMPACTS

184. Subject to appropriate mitigation secured through the section 106 agreement, the proposed development would not give rise to unacceptable highways impacts on either the local or strategic highway networks. SGC, as Highway Authority, is also satisfied that safe and convenient access can be secured to the site. The only remaining highways objection is raised by BCC who maintains that there would be an unacceptable impact on its network. However, the scope of this objection now only relates to the A4018 corridor during the weekday PM peak. Furthermore, the scope of this objection is confined to the impact on the southbound carriageway of the A4018<sup>38</sup> (**Documents INQ 40, paragraphs 1.6, 3.1; INQ 41, paragraph 5**).
185. The approach and inputs to the additional VISSIM modelling of the A4018 corridor is agreed by all parties. The predicted traffic generation of the

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<sup>37</sup> This point was accepted by Mr Baldock in cross-examination.

<sup>38</sup> This was confirmed by Mr Fallon in cross-examination by Mr Moules.

proposed development has also been agreed by all parties. It has been collected from primary data regarding existing trips and then increased in line with the anticipated retail trade draw. Unusually, the modelling has been undertaken on the 85<sup>th</sup> percentile. In other words, it represents the worst 15% of traffic levels generated by The Mall in any given year. In addition to this, the forecasts do not make any allowances for the modal shift anticipated as a result of the Travel Plan. Accordingly, it can be regarded as generating very robust traffic forecasts for the proposed development. (**Documents INQ 40, paragraph 4.1 iv) v); INQ 41**).

186. The VISSIM modelling compares the position with and without development in 2031 (**Document INQ 41, paragraph 10**). It is agreed that this comparison forms the basis for the assessment of highways impact on the A4018 corridor.

Nevertheless, there are a number of points to make about the existing baseline as follows:

186.1 The data collected by BCC's queue surveys on a number of days is not entirely neutral, and therefore needs to be treated with a degree of caution. For example, the Friday survey showing the most significant queue levels was done on a day when the M5 had been closed down to one lane. This is likely to have resulted in a significant re-routing of traffic, especially from those leaving employment sites in the wider Cribbs Patchway area who would usually take the M5. Accordingly, little weight can be placed on the survey results as it did not represent a typical Friday. Similarly, the Thursday survey was undertaken on the week before the summer half term, which is likely to have resulted in an increased number of trips on this day (**Documents POE 28, paragraphs 4.3.2, 4.3.7, appendix C; POE 42, appendix 6.8**).

186.2 In any event all that the queue surveys show is typical levels of congestion that would be expected on any urban arterial route during peak hours. Indeed, in many cases, the rolling queues that could be observed did not even match BCC's own definition of a queue. This required the traffic to be travelling at walking pace (3 mph) or slower. Furthermore, it is clear that the extent of any queuing that is apparent is further exacerbated by the presence of a number of pelican crossings along the route. Whilst these crossings are an established feature of this highway corridor through a residential area, their impact on congestion simply reflects the balance that needs to be struck between traffic and pedestrians in urban environments (**Documents POE 28, paragraph 4.3.3; POE 42, appendix 6.8, page 160**).

186.3 Stepping back from the debate over whether the existing congestion amounts to a queue or a rolling queue of slow moving traffic, it is also instructive to compare the impact that this level of observed congestion currently has on southbound journey times when set against the northbound journey times. The agreed VISSIM validation results demonstrate that the observed southbound journey times along this 4.6km route in the PM peak were only one and a half minutes slower than the north bound journey times for free moving traffic. The position is therefore very different to that observed in the Broughton Cross appeal decision where the Inspector noted that a 1.6km journey took in excess of 20 minutes. This helps to put the level of impact caused by any congestion into context (**Documents POE 41, table 6.5; POE 42; appendix**

**8.4, paragraph 11).**

186.4 BCC was concerned that the congestion along the A4018 encourages rat-running at various locations along the corridor and contributes to observed accident clusters at a number of the junctions. However, these alternative routes are circuitous and slow and therefore unlikely to be attractive to drivers seeking to avoid congestion along the A4018. In any event, the accident data shows that there is no correlation between the recorded accidents and rat-running to avoid peak hour congestion. Even if increased queues were to arise as a result of the application proposals, the time-saving dis-benefits of these alternative routes and the apparent lack of any correlation with accidents means that it is unlikely that the position would change (**Documents POE 13, 2.15-2.19; POE 28, paragraphs 4.3.5-4.3.6, appendix B; POE 41, paragraph 6.5.6-6.5.10**).

186.5 BCC was unable to provide a view on whether the recently announced removal of the Severn Bridge tolls would have any material impact on the A4018 corridor<sup>39</sup>. Any impact on this road would be very limited or negligible. It is the strategic road network that will be most affected by the removal of the Severn Bridge tolls. Highways England has raised no concerns about any changes that may occur as a result of the removal of these tolls (**Document POE 28, paragraph 4.5.2, appendix A**).

**Additional VISSIM modelling exercise**

187. It was confirmed at the inquiry that BCC's only outstanding objection to the potential highways impacts of the development concerned impacts on the A4018 corridor during the weekday PM peak, and BCC agreed that any other effects would not be significant. The scope of the further work to be undertaken to model the impacts on the A4018 was set out in a note agreed by all parties. In particular, it was agreed that the parties would appoint two independent expert modelling consultants to agree the technical parameters to be included within the VISSIM modelling. Also that the further VISSIM modelling work would supersede the traffic modelling undertaken by the applicants and BCC in the earlier submitted evidence, with the exception of the 2016 Baseline validated VISSIM model (**Documents INQ 41, paragraphs 4, 11; INQ 65, paragraph 104**).

188. The Applicants appointed Arcadis to carry out the additional VISSIM modelling. SGC and BCC jointly instructed CH2M to agree the technical parameters of the work with Arcadis and provide an independent and impartial review of the modelling to ensure that it was technically robust. Following receipt of the output from the agreed VISSIM modelling exercise BCC has now sought to reject and undermine that agreed methodology. It is disappointing that despite the considerable steps taken by all parties to ensure that disagreement over the technical parameters of the modelling exercise could be avoided in order to assist the inquiry, BCC now seeks to distance itself from the agreed methodology because it has produced results that are inconvenient for BCC. In any event the approach adopted by BCC indicates the weakness in its case on this issue. Despite all of the criticisms now raised by BCC, it has supported the GBATS3 modelling, albeit only to 2021, to identify an acceptable impact.

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<sup>39</sup> Mr Fallon in cross-examination by Mr Greaves said that at this stage he was unable to say whether or not the removal of the tolls would materially impact on the A4018.

**(Documents POE 28, paragraph 4.2.5; INQ 72, section 3; INQ 73, appendix A; INQ 78, paragraphs 2.19-2.72).**

189. Notwithstanding the criticisms now being raised by BCC the methodology for the VISSIM modelling undertaken by Arcadis in agreement with CH2M is robust and should be relied upon when assessing the impact of the proposed development on the A4018 corridor for the following reasons:
- 189.1 The methodology has been agreed by the two independent expert modelling consultants instructed by the Applicants, SGC and BCC.
- 189.2 BCC's own modelling consultant, CH2M, proposed the methodological approach regarding the reduction of traffic flows within the model, which BCC now takes issue with. CH2M has considerable experience in relaying outputs from strategic SATURN models to microsimulations, such as the VISSIM model. It has advised that it is common for the assigning of flows from a strategic model into a more detailed microsimulation model to result in a gridlocked microsimulation model that cannot be used for any meaningful assessment. It confirmed that the need to artificially reduce traffic flows is now commonplace when passing flows from high-level strategic planning tools such as GBATS3 to more detailed simulation based models. CH2M has utilised the same approach, with greater reductions of up to 30%, in recent work carried out for Highways England (**Documents INQ 72, appendix B, page 2; INQ 73, appendix A, paragraph 2.2.1**).
- 189.3 CH2M carried out an independent and impartial review of the transport modelling on behalf of BCC and SGC. As a result it has confirmed that confidence can be had that the models and the assumptions which have gone into them are as robust as possible given the differences between the two modelling platforms (**Document INQ 73, appendix A, paragraph 4.2**).
- 189.4 Consistency of approach is an important consideration. CH2M has already produced a separate reference case model for the A4018 corridor that adopts a similar approach when assigning flows from GBATS4. This model, which applies a similar methodology when assigning flows, has already been used and relied upon by BCC when assessing the impacts of other development proposals on this part of the road network.
190. It is important to note that BCC has not suggested an alternative way in which to model and assess the impacts of the development on the A4018 corridor, let alone carried out such an exercise. Accordingly, the best and only evidence before the inquiry is the output from the VISSIM modelling undertaken by Arcadis, which has been endorsed by all parties other than BCC.

### **Assessment of impacts**

191. Paragraph 32 of the Framework confirms that development should only be refused on transport grounds where the residual cumulative impacts of that development are severe. BCC agreed that this test sets a very high bar<sup>40</sup>. Policy PSP11 of the PSP Plan is consistent with paragraph 32 and does not impose a stricter test.

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<sup>40</sup> This point was agreed by Mr Fallon in cross-examination by Mr Moules.

192. The output from the VISSIM modelling confirms that the development would not have a significant impact on the A4018 corridor. In summary, it predicts the following impacts in the 2031 "development case" scenario when compared against the 2031 "reference case" scenario:
- 192.1 An 18 second increase in total northbound journey times and a 33 second decrease in total southbound journey times.
- 192.2 Some increases in queue lengths, in particular on the southbound A4018 approach to Lysander Road, the southbound A4018 approach to the Henbury Road crossroads, the northbound Henbury Road approach to the Henbury Road crossroads, and the northbound A4018 approach to the Stoke Lane crossroads. However, these are maximum queue lengths, which are anticipated to be either short-lived or have very limited effects on overall journey times.
- 192.3 Minimal impact on overall network performance, with no change to average vehicle delay and speed, and only minor increases in the number of journeys and total distance travelled.
193. After carrying out an independent and impartial review of the VISSIM modelling work undertaken by the applicants, CH2M has confirmed that, in their opinion, the evidence demonstrates that the impact of the proposed development on the A4018 corridor is likely to be minimal. It is also important to recall that the traffic forecasts for the development, which have fed into the modelling exercise, have been undertaken on the basis of the 85th percentile trading week. Also there has been no allowance for modal shift anticipated as a result of the Travel Plan. The forecasts can therefore be regarded as very robust (**Documents INQ 73, section 4 and appendix A, paragraph 4.3; INQ 77, paragraph 4.5.1**).
194. BCC's conclusion that the residual cumulative impacts would be severe is based upon rejecting the modelling methodology, which cannot be justified for the above reasons. Even then, BCC's principal concern essentially relates to the impact of forecast baseline traffic growth unrelated to the development, which it is said would result in gridlock that would inevitably be made worse by the proposed development. However, that baseline traffic growth is predicted by GBATS3, which is itself a capacity constraint model and which BCC has signed up to, and accepts in respect of the Callowhill Court permission it recently resolved to grant permission for. If the capacity of some links has been overestimated by GBATS3, additional traffic will simply be redistributed at an earlier stage and before capacity is reached. Examples of the factors which would contribute towards redistribution include route choice; time period choice; sub mode choice; main mode choice; destination choice; and frequency choice (**Documents INQ 77, paragraphs 4.15, 4.19-4.20 and appendix A**).
195. When considering the likely impacts of the proposed development on the A4018 within the PM peak two important factors need to be borne in mind. The first is that the concern is about the impact of the development proposed. The second is that unlike housing development, trips generated by the proposed development relate to far more flexible leisure and shopping activities. In reality, if future background traffic growth along the A4018 were to result in gridlock during the PM peak, it is highly unlikely that shoppers going to or from The Mall would use this route during these times. Instead, they would be likely to seek alternative routes, alternative times, or alternative destinations. The

concerns of BCC about queuing traffic on side roads and unanticipated impacts on Westbury-on-Trym would not give rise to a severe cumulative impact or conflict with Policy PSP11 (**Document INQ 77, paragraphs 4.36-4.49, 4.52-4.59**).

196. The additional VISSIM modelling work has been carried out within the technical parameters agreed by all parties, and independently reviewed by an impartial expert modelling consultant who considers that it is as robust as possible. BCC's rejection of this methodology is inconsistent with the approach that it has taken to the assessment of the highway impacts of other development in the area, including Callowhill Court. It unfairly singles out and penalises the Applicants simply because BCC objects to the development proposed.
197. The output from the modelling confirms that the proposed development would only give rise to minimal impacts on the A4018 corridor in the PM Peak. These impacts would be nowhere near severe and would fall a long way short of the very high threshold that must be met in order to refuse planning permission for a development on transportation grounds. Accordingly, the tests in paragraph 32 of the NPPF and PSP11 would be passed.

### **WHETHER THE SITE IS SUSTAINABLY LOCATED**

198. BCC has adopted a flawed approach because it has sought to compare the sustainability and accessibility of the Mall with Bristol city centre. There is no policy requirement for an out-of-centre location to benefit from equivalent accessibility to a city centre site. The sustainable benefits of town centre locations are already factored into national policy by the requirement to undertake the sequential test when considering applications for town centre uses. Indeed, national policy expressly recognises that opportunities to maximise sustainable transport will vary from urban to rural areas. The Secretary of State agreed with the Inspector in the Rushden Lakes decision who commented that paragraph 34 of the Framework only looks to achieve what is practicable in the particular circumstances of the site and its location (**Document N1, paragraphs 26 DL, 8.90 IR**).
199. The acid test set out in national policy is whether the applicants have taken up the opportunities to maximise sustainable modes of transport, bearing in mind the nature and location of the site. There is no further test inherent to the Framework that needs to be overcome.
200. Policy CS8 of the CS gives priority to providing the users of new development with a range of travel options other than the private car. It sets out a number of principles that will be applied in the determination of applications, including locating development in accessible locations and the provision and promotion of sustainable travel options. The policy also states that developments that are car dependent or encourage unsustainable travel behaviour will not be supported. However, this needs to be read in the context of the rest of the policy and national policy. A car dependent proposal would be where there was virtually no opportunity for travel by non-car modes. The policy should not be interpreted as creating a test requiring the refusal of car dominated proposals. The Tollgate Village Inspector noted that such a test would be inconsistent with the Framework (**Document INQ 45, paragraphs 20 DL, 12.6.4 IR**).

### **Bus and rail travel**

201. The proposed development is located near to existing and proposed public transport infrastructure and would provide users of the new development with

a range of travel options other than the private car. Indeed, the site is located within one of the most sustainable locations within South Gloucestershire, identified by Policy CS5 in the CS as a focus for most new development. It is agreed that The Mall is currently accessible by bus across a wide area of Bristol and South Gloucestershire. The level of existing accessibility, which is clearly indicated by the plans and timetables provided in the evidence, is much greater than would be expected in an out-of-centre location (**Documents INQ 40, paragraph 5.1 ii); POE 26, paragraphs 5.38-5.3.10; POE 11, appendix C**).

202. The reliability, journey times and frequency of bus travel to The Mall is currently recognised as a limitation to increased patronage. However, this is due to be dramatically increased prior to the completion of the development through the introduction of MetroBus in Autumn 2017 and the MetroBus extension in 2021. This will deliver an additional five high quality services to the Mall per hour, along with a host of priority measures that will improve journey times and reliability for both these and existing services. The Atkins table which BCC has relied upon only models journey times from five locations to the Mall. Nevertheless, all but one of the five journeys that have been modelled are forecast to benefit from journey time savings during the PM peak, and many of those see considerable further improvements during the AM peak and inter-peak periods. Moreover, none of the Atkins forecasts take into account the further benefits that will result from the shortcut provided by the MetroBus extension (**Documents CD F1, paragraphs 5.39-5.42; POE 26, paragraphs 5.11-5.13; INQ 40, paragraphs 3.5, 5.1 ii); POE 44, appendix 3.5**).
203. The proposal would include the provision of a brand new bus station. This would be of an equivalent standard to those only usually found in city centres. Existing issues regarding bus routing and journey times are already being addressed by the provision of MetroBus and the introduction of various priority measures. Unlike many out-of-centre locations The Mall does not need significant improvements beyond what is already going to happen. The application proposals therefore focus on what is required to make bus travel more attractive. The new bus station would provide an exemplar facility that would act as a gateway to The Mall via sustainable modes of travel. Not only would this benefit existing customers and staff by serving the highest current non-car mode share of travel to The Mall, it would also serve and benefit the wider Cribbs Causeway area and those who may use the interchange when changing buses. Furthermore, it would capitalise on other improvements in accessibility due to be delivered by MetroBus, acting as a state of the art terminus for these new services and the rail stations that they will link to (**Document POE 26, paragraphs 5.3.1-5.3.7**).
204. The Mall currently only has limited accessibility by rail. However, it is agreed that the position will be improved by the MetroWest programme. This plans to re-introduce hourly rail services on the Henbury Loop to serve new stations at Filton North and Henbury by 2021, which will be within walking distance of the site. Rail accessibility will also benefit from the MetroBus extension, which will provide a direct rapid transit link along a predominantly dedicated route to The Mall in less than 20 minutes from Bristol Parkway and 5 minutes from Filton North. This will provide a "very high standard of connectivity" to these stations (**Document INQ 40, paragraph 5.40**).

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## Walking and cycling

205. It is agreed that the site is currently accessible by walking and cycling from the adjacent residential, commercial and employment areas. Also, that the quality of the links does not maximise use of these modes or encourage future growth in their modal share. However, the site falls within an area that is due to be transformed by development over the next few years. The existing 2km walking catchment of The Mall is expected to nearly quadruple to some 21,593 people. Also, the population of the 8km cycle catchment is forecast to increase by some 62,500 people to nearly 240,000 people. Despite this BCC maintains that the site will continue to be surrounded by a hostile environment that will continue to favour the requirements of motor traffic. This position is directly contrary to the stated intention and policy objectives for the area, including policies CS25 and CS26 in the CS. These seek to significantly improve the pedestrian and cycle network by providing convenient and safe routes that will break down the barriers of major roads. A number of improvements have been made to crossings within the area and this will continue in accordance with the stated policy position. The CPNN is due to be delivered in accordance with Manual for Streets, which focuses on the creation of "place" and the provision of permeable networks (**Documents INQ 40, paragraphs 5.1 i), 5.4; POE 11, appendices A, B; CD E1, page 23**).
206. When considering the sustainability of the location it does not matter whether many of these changes will go ahead anyway. The critical point is that, as a result of them, the proposals would be in an accessible location. This will be well served by public transport and will provide a range of travel options other than the private car, therefore satisfying the requirements of policy CS8 in the CS and policy PSP31 in the PSP Plan. Similarly, it is irrelevant that the site may not be as accessible as Bristol city centre. The Applicants have taken up the opportunities to maximise sustainable transport modes. BCC was unable to suggest any CIL compliant opportunity that had not been taken.
207. The inward looking 90's shopping mall is isolated from the surrounding area by large swathes of surface level car parking. The seven proposed new and enhanced pedestrian and cycle links would assist in its transformation to a development that embraces and integrates with the wider CPNN. This would be a considerable improvement. The most significant would be link 5, which includes the provision of a £6.89m pedestrian and cycle bridge over Merlin Road. This would create a major pedestrianised link with the existing airfield land to the south that it due to be developed for over 2,600 houses. It would be a significant benefit to the CPNN area and the wider north Bristol fringe located further to the south of the airfield (**Documents CD A6, page 37; POE 26, paragraphs 5.2.1-5.2.7; INQ 53**).
208. The proposed development would also provide 260 additional cycle parking spaces, increasing the existing provision by more than 700% to some 300 spaces. These additional spaces would provide the opportunity for a significant uplift in the cycle mode share. Although the provision technically falls below the standards set in the PSP Plan, a prescriptive application of these standards can result in disproportionate requirements for large developments that would result in an inefficient use of land. To put the amount of cycle provision in context, the whole of Broadmead (including Cabot Circus) currently has a total of 408 cycle spaces. Furthermore, should the additional provision turn out to be insufficient as a result of a considerable increase in the cycle modal shift,

there is the opportunity to review and increase the level of provision through the Travel Plan (**Document POE 26, paragraphs 5.2.8-5.2.9**).

### **The Travel Plan**

209. The development would be accompanied by a Travel Plan, in accordance with paragraph 36 of the Framework. This would upgrade and formalise the existing voluntary travel plan that was introduced at The Mall in 2012. The Travel Plan would seek to achieve a 5% reduction in car driver trips and a 5% increase in non-car driver trips in the period following completion of the development. The key target relates to a reduction in car trips to the Mall. Given the length of period prior to completion of the development, and the significant changes that are anticipated in the immediate vicinity of the site during that period, it was not considered necessary for the Travel Plan to include specific non-car mode share targets at this stage. However, interim targets could be included if the lack of targets remained a concern. It is important to note that the Travel Plan targets would cover the entire development, including the existing development, which is not currently subject to any formal targets or restrictions (**Documents CD H2; POE 13, paragraph 2.43**).
210. The Travel Plan includes a £250,000 sustainable travel fund and a further £200,000 contingency fund which would be made available if the development failed to meet the mode share targets. The allocation of this funding would be decided by the Transport Review Group, which would include members from SGC and BCC, following consideration of customer and staff travel surveys. It could be used support a number of measures, including improved bus services, Christmas shuttle buses to the station, and further pedestrian and cycling enhancements in and around the site. In addition to this, the Travel Plan would also secure an extension of the bus travel subsidies that existing staff currently benefit from. The Travel Plan would capitalise on the other measures provided by the development by actively promoting sustainable modes of travel to The Mall. This would again assist in improving awareness of existing staff and customers. It would also provide the opportunity to raise awareness of the sustainable travel improvements that would be brought forward as part of the development and in the immediate vicinity of the site.
211. It is patently clear that the requirements and objectives of paragraphs 32 and 34 of the Framework have been met in that the Applicants have maximised the opportunities for sustainable modes of transport having regard to the nature and location of the site.

### **COMPLIANCE WITH THE DEVELOPMENT PLAN**

212. The critical relevant policies are CS14 in the CS and PSP31 in the PSP Plan. There was much discussion about the meaning of both these policies but they are both perfectly clear on their face and straightforward to apply. In applying policy CS14 to the proposed extension at The Mall it is agreed that the reference to town and district centres is to those referred to in the table in the first part of the policy, namely the town and district centres in South Gloucestershire. It is also agreed that the application proposals could not be accommodated in any of those town or district centres (**Document CD D3, pages 80-81; CD D5, pages 104-107**).
213. In these circumstances the policy requires a sequential approach to be applied and a retail impact assessment to be undertaken. It is agreed that these tests

should be undertaken in terms of The Mall's catchment area and should not be confined to a consideration of the centres within South Gloucestershire. If there are no sequentially preferable sites within that catchment area and no significant adverse retail impact upon protected centres, then policy CS14 would be satisfied and the proposals would be compliant with it. The same requirements are contained in policy PSP31.

214. Policies CS14 and PSP31 are consistent with, and therefore reflective of, the Framework. This seeks to direct town centre uses firstly to the town centres, followed by edge-of-centre locations, and finally out-of-centre locations. This is achieved through the application of the sequential test. Therefore, if the sequential and retail impact tests are satisfied, the proposals' out-of-centre location is not a reason to refuse it.
215. It has been suggested that even if the two policy tests are satisfied, due to the Mall's out-of-centre status it is somehow still contrary to these policies. This would mean that these policies would create an embargo against out-of-centre locations. This would be contrary to national policy set out in the Framework. It would also mean that those parts of the policy that require the sequential and retail impact tests to be satisfied would serve no useful purpose. It would create a town centre only and not a town centre first approach. Any such interpretation would be unlawful and should be rejected.
216. Much was made by BALP and BCC of the rejection by the CS Inspector of a suggested main modification to include a further 35,000 m<sup>2</sup> of retail floor space at The Mall and to change its status to a town centre or emergent town centre. However, this is of no consequence because the conclusion of the examination process is the adopted CS, which has a specific policy on how out-of-centre locations should be considered. It is therefore policy CS14 that is relevant for the determination of this application not the CS Inspector's report. Indeed it would only be permissible to have regard to that report as extrinsic material if the policy was in some way unclear, which it is not. It is also clear that the CS Inspector did not consider that he had sufficient information to judge the likely impact of such a proposal on other centres. It is therefore not surprising that he declined to accept those suggested changes and, instead, endorsed policy CS14, which determines how out-of-centre locations should be considered (**Document CD D4, paragraph 177**).
217. The application proposals would clearly be compliant with the relevant tests in policy CS14 in the CS and policy PSP31 in the PSP Plan. The proposals would also be in accordance with the other relevant policies in the development plan, including policies CS5, CS8 and CS26 in the CS. They would provide a significant opportunity for sustainable travel and to integrate The Mall with the new residential communities that are proposed as part of the CPNN. The proposals are therefore compliant with the development plan. In accordance with paragraph 14 of the Framework the application proposals should be granted planning permission without delay. Even if a conclusion were to be drawn that the development plan is silent on retail matters or relevant policies are out-of-date, paragraph 14 merely takes the decision-maker back to the application of the restrictive policies in paragraphs 24, 26 and 27 of the Framework. If the tests in those paragraphs are satisfied, then permission should be granted applying the tilted balance. The reality is that whichever way one approaches paragraph 14, planning permission should be granted.
218. It has been suggested by BALP and BCC that even if the sequential and retail

impact tests are satisfied, considerations relating to these tests nevertheless come back in as material considerations under section 38(6). These include the plan period of BCAP, which runs to 2026 and allocates the Callowhill Court site for redevelopment for retail uses within that time period; the retail impact of the proposal on Bristol city centre even if it is less than significant; the fact that there is no demonstrable need for the proposal. None of these matters can properly be regarded as independent material considerations. The first two seek to resurrect matters relating to the sequential and retail impact tests that have already been assessed in a manner that is compliant with development plan policy and the Framework. On the third matter, the absence of a need for an out-of-centre proposal is not identified as a reason for refusal anywhere in the Framework or development plan policy. Accordingly, even if these matters are to be considered as material considerations then, for the reasons given, they can clearly carry no weight in the present case.

219. There are benefits that would flow from the proposal. However, if the sequential, retail and highway impacts tests are not satisfied it is not suggested that they would outweigh that failure. Conversely if the tests are satisfied there would only be benefits that would then flow from the proposals in terms of the provision of significant walking, cycling and public transport infrastructure, socio-economic benefits in terms of the provision of jobs, houses, both market and affordable, and all the associated benefits that flow from that.

## **THE CASE FOR BRISTOL CITY COUNCIL**

*BCC's case is fully set out in its evidence, including its closing submissions (**Document INQ 65**) and its supplementary submission on transport (**Document INQ 78**) and Callowhill Court (**Document INQ 79**).*

*The main points are:*

### **INTRODUCTION**

220. If the Government is serious about the town centre first policy, which is to ensure the vitality of town centres, this application must be refused. There cannot be a more textbook example of a council doing positive town centre planning than BCC. There is no town centre developer more experienced, resourced or competent than Hammerson and BALP, who also have a long term commitment to Bristol. If this application is granted it would send a message to all involved in town centre retailing that the Government is not committed to it.
221. The proposals would also undermine the BCC development plan, which seeks to implement Government policy with important town centre allocations. They would locate a major generator of traffic movement in a place where, in practice, the use of sustainable modes would be minimal. Furthermore, they may have a severe residual effect on Bristol's roads with the extra car borne traffic trying to find a way through the congested highway network.

## **PLANNING POLICY CONTEXT**

### **THE SGC POLICY CONTEXT**

222. The Mall was permitted under an entirely different planning regime. National policy since the mid-1990s has made it plain that regional shopping centres

can severely harm the nearest major centre. The locational strategy of the CS specifically requires new investment in main town centre uses to be directed into the town and district centres. This is a massive out-of-centre proposal for retail and leisure uses where there is no current or emerging policy that allocates retail here. The proposed development would be contrary to the development plan and was advertised as a departure from it. It fails the impact and sequential tests and, in such circumstances, there is no dispute that planning permission should be refused. No party has argued that there are material considerations sufficient to outweigh the development plan in the event of conflict with the sequential and impact tests (**Document POE 38, paragraphs 3.11-3.20**).

223. The CS Inspector insisted on making policy CS14 compliant with Government policy. SGC was intent on promoting a 35,000 m<sup>2</sup> extension to The Mall in its CS. The Inspector considered that this would be at odds with the Framework, which in pursuing sustainability principles promotes a town centre first approach. SGC cannot now claim that such an extension would be compatible with the development plan when the Inspector deleted it from the CS (**Documents CD D4, paragraphs 174, 180; INQ 60**).
224. Policy CS14 directs new investment into the town and district centres first. It expressly states that Cribbs Causeway and The Mall are out-of-centre. It seeks to make provision for 34,000 m<sup>2</sup> net of new comparison floorspace by 2026. The proposals would greatly exceed that because over 31,000 m<sup>2</sup> has already been planned under policy PSP31 of the PSP Plan or committed through planning permissions already granted. In addition, it does not satisfy the strategy that seeks to carefully control out-of-centre development (**Documents CD D5 pages 104-107; POE 32, appendix 2, table 11; POE 38, paragraphs 4.19-4.21**).
225. Policy CS14 seeks to distribute future retail floorspace through a development plan. This was a change expressly recommended by the CS Inspector. In the interim Paragraph 9.26 indicates that further out-of-centre floorspace at Cribbs Causeway will be considered under the provisions of the Framework. This would be a material consideration having decided it is contrary to the development plan. This interpretation is the most appropriate because if the Applicants are correct it would make a plan that specifically rejected 35,000m<sup>2</sup> of floorspace at examination more permissive than government policy. Paragraph 9.26 is clear that it is applying the impact test in government policy at The Mall rather than the impact test in policy CS14, which is different.
226. In addition, a development that would take £95.31m of turnover from Bristol city centre where shopping habits are sustainable to The Mall where sustainable travel behaviour is not promoted, would be contrary to policy CS8 of the CS (**Documents POE36, appendix F, table 29; POE 41, table 9.1**).
227. Policy PSP31 and paragraph 7.58 of the supporting text makes plain that any proposals to meet retail need after 2021 should not just look at the sequential and impact tests but rather the strategy for retail development and whether they would be in proportion to the role and function of the location. The application proposals perform badly against these considerations and do not accord with the strategy of directing retail uses to town and district centres. Paragraph 9.24 of the CS explains the strategy that carefully controls further out-of-centre development. The proposals are vastly more than will be needed post 2021 and are out of proportion with the function of this out-of-centre location. The evidence of SGC at the CS examination was that this level of

floorspace would only be consistent with the role if the Cribbs Causeway area were to function as a genuine town centre (**Document CD D4, paragraph 177**).

228. Even if the application proposals comply with the policy on the impact and sequential tests they would:
- 228.1 Greatly exceed the need for comparison goods floorspace after 2021, which can and must be taken into account under paragraph 7.58 of the PSP Plan and policy CS14 of the CS.
  - 228.2 Be contrary to the first paragraph of policy PSP31 and the strategy as amplified in paragraph 9.24 of the CS.
  - 228.3 Not be in proportion with the role and function of the location of Cribbs Causeway to put this scale of town centre development at an out-of-centre location, which is at the absolute base of the sequential test and evidently the last resort for putting main town centre uses.
229. Other material considerations cannot possibly outweigh a breach of the impact and sequential tests and the Applicants accepted that. If though the development passes those tests it is necessary to consider other material considerations. Paragraph 10 of the PG expressly says that other material considerations should be taken into account even if the PG is complied with.
230. In *Warners Retail*, the Court of Appeal established that the need for additional shopping facilities is not immaterial. Thus here the fact that there is over 31,000m<sup>2</sup> permitted and allocated out of at most a need of 34,000 m<sup>2</sup> is clearly material. It is also material that any need there may be is uncertain and if anything it has reduced because of the development that has been permitted. The BCCRS population and expenditure data is now out of date and the lower forecasts agreed in the retail statement of common ground are to be used. Essentially there is a possible need for a further 3,000m<sup>2</sup> comparison goods floorspace up to 2026 but there is no certainty that there is any further need at all (**Document POE 37, paragraph 7**).

## **THE BCC POLICY CONTEXT**

231. In contrast to SGC's policies, BCC's policies have done exactly what the Government advises of compiling a needs assessment and then allocating sufficient sites in the city and other centres. Those policies went through examination and were supported by the examining Inspector. They are consistent with national policy and provide a textbook example of positive planning by BCC. Applications have now been put in by BALP, which is a joint venture that includes the FTSE 100 company Hammerson. BALP have categorically said that if the proposals to extend The Mall are permitted this vital town centre development will be stopped in its tracks. It is agreed that the BCAP and Bristol Development Framework Core Strategy (BCS) are relevant material considerations. The application proposals would frustrate the fulfilment of BCC policy and would be contrary to the public interest (**Documents CD G4; CD L2; POE 46, paragraph 8.4; INQ 11; INQ 29, paragraph 5.20**).
232. Thus even if the development does pass the sequential and impact tests there are some very real material considerations that could outweigh the benefits:
- 232.1 The Secretary of State may take the view that the retail impact would fall just below what is considered to be "significant". However, that does not mean that it should be ignored in the overall balance. It may be a

case where one would want to refuse permission if there was no need and waiting would help Bristol city centre and other town centres in South Gloucestershire centre pick up some more comparison retail.

232.2 The Secretary of State may not agree with the Applicants' interpretation of the sequential test and conclude that it would not be passed because the BCAP site would take one year longer than the application site to come forward. This would have an adverse impact on the BCAP policies and prevent them from being fulfilled. It was agreed that this would be contrary to the public interest<sup>41</sup>. The BCAP site coming forward at any time before 2026 would be a massive benefit to Bristol.

## **RETAIL ISSUES**

### **THE SEQUENTIAL TEST**

233. Callowhill Court is an allocated town centre site where the Planning Committee has resolved to grant outline planning permission for a retail-led development. It is being promoted by BALP which is a joint venture between AXA and Hammerson. It is difficult to imagine a developer with more expertise or financial resource (**Document INQ 79A, paragraph 1.5**).
234. It is important when approaching the sequential test not to interpret it in a way that frustrates its purpose. National policy is seeking to ensure the vitality of town centres by promoting competitive town centres and supporting their growth. It is committed to a town centre first approach as confirmed by the Planning Update newsletter. The PG sets out the purpose of the sequential test as supporting the viability and vitality of town centres by placing existing town centres foremost in both plan-making and decision taking. Paragraph 24 of the Framework tells decision makers to "require" applications for town centre uses to be located in town centres. When interpreting a policy one should not lose sight of the planning implications of such an interpretation, bearing in mind its purpose. These were points made in the *Aldergate Properties* judgement<sup>42</sup> (**Documents CD L9; CD N6, paragraph 37, 48; INQ 13, paragraph 2b-008**).
235. In respect of the application of the policy the questions of whether a site is suitable and available are matters of planning judgment. This was recognised in *Lionbrook* and *Warners Retail*. Similarly in respect of the flexibility required, *Warners Retail* makes plain that this is also a question of planning judgment, depending on the circumstances of the case. The PG makes it plain that it is for the Applicants to demonstrate compliance with the sequential test (**Documents CD N7, paragraph 171; CD N5, paragraph 30; INQ 13, paragraph 2b-010**).

### **Particular market and locational requirements**

236. The PG recognises that certain main town centre uses may have particular market and locational requirements. However, the Government has clearly tried to warn against such arguments undermining the test by requiring robust justification. The Applicants are alone in their insistence that Bristol town

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<sup>41</sup> Mr Fennell agreed in cross-examination by Mr Ground that the purpose of policies was to get them fulfilled. He also agreed that the policy position in Bristol was relevant in informing sequential test and retail impact issues.

<sup>42</sup> *Aldergate Properties Ltd v Mansfield District Council and Regal Sherwood Oaks Ltd* [2016] EWHC 1670 (Admin).

centre is not a suitable location for their proposals. The focus is not on the operator requirements of The Mall but on whether the proposed town centre uses can be located in the city centre and still serve the catchment area. It stands to reason that town centre uses can generally be put in town centres where the Government wants them (**Document INQ 13, paragraph 2b-011**).

237. Bristol city centre is only about 8 km away from Cribbs Causeway and its core catchment is almost identical to The Mall. The city centre is therefore just as able to serve The Mall's core catchment area as the proposed extension would be. The idea that somehow the city centre cannot serve the catchment area of which it is at the centre is absurd. SGC has not tried to defend this argument and considered that it would only apply to sites at peripheral locations in the catchment (**Documents POE 18, paragraphs 5.11-5.13; POE 32, appendix 1; POE 35, paragraphs 4.3-4.44; POE 37, paragraph 11**).
238. The Applicants also contend that the sequential test is not applicable because the proposed development is designed to meet the needs of customers of The Mall. Such an argument is self-serving and could be repeated at any out-of-town site. This is explained in the Aldergate Properties judgement where the relevance of the individual commercial interests of the applicant was considered against the positive requirement to locate retail investment in the town centre first rather than elsewhere. The judgement also warned of the care that must be taken when applying the sequential test to extension proposals (**Documents POE 18, paragraph 5.6; CD N6, paragraphs 37-39, 43**).
239. No robust justification has been given to explain why there is a market and locational requirement to prevent the retail, food and beverage uses from going in the city centre exactly where the Government wants them. The fact that some operators may find it convenient to be in the out-of-centre location is not a reason in the public interest to obviate the sequential test.

### **Suitability**

240. This question was considered in *Aldergate Properties* where it was explained that "suitable" and "available" generally mean for the broad type of development that is being proposed in the application by approximate size, type, and range of goods. This incorporates the requirement for flexibility in paragraph 24 of the Framework and generally excludes the identity and personal or corporate attitudes of an individual retailer. The area and sites covered by the sequential test search should not vary from applicant to applicant according to their identity, but from application to application based on their content. What needs to be tested is whether a town centre site is suitable for the approximate size type and range of goods. It is clear from paragraph 24 that it is the site that must be suitable not any particular application proposal (**Document CD N6, paragraph 35**).
241. Flexibility is a matter of planning judgment. Paragraph 24 indicates that issues such as format and scale should be demonstrated flexibly. These words indicate that other issues may be considered. One such matter that falls to be considered as part of the question of flexibility is the question of whether there is scope to disaggregate a particular scheme. There is no support in case law or policy for the view that the separation of uses is not permissible in an appropriate case. This was correctly recognised by the Inspector in the Tollgate Village appeal decision who correctly concluded that sub-division was justified in the circumstances of that case (**Document INQ 45, paragraphs 12.3.9-**

**12.3.11).**

242. Presumably if the Secretary of State had thought that the views expressed by his Inspector in Tollgate Village were inconsistent with his understanding of the policy and his view expressed in Rushden Lakes, he would have said so. In fact, the approach the Inspector took in Tollgate Village on this issue plainly accorded with the view expressed in *Warners Retail* by the Court of Appeal. This reiterated that issues of format and scale depend on the facts and circumstances of the particular case and that flexibility in the sequential test is a question of planning judgment (***Documents CD N1, paragraphs 16 DL, 8.51 IR; CD N5, paragraphs 30, 33***).
243. The Applicants' suggestion that there should never be disaggregation or separation as part of the sequential test is incorrect and is not a legal principle. Indeed a recent appeal decision relating to retail development at Kingswood, Hull concluded that the proposed development could be subdivided so that half the floorspace would be accommodated on one city centre site and the other half of the floorspace on another. The law is not prescriptive about flexibility, which is a matter of planning judgment (***Document POE 3, appendix 1; INQ 79B, paragraph 57***).

***Suitability in terms of size of the site***

244. The Applicants accepted that on the facts of this case the correct way to apply the sequential test was to only look for a town centre site that could accommodate the retail, food and beverage elements of the application proposals along with the car park. The residential, hotel and events space have been separated off.
245. The extent of the Callowhill Court site is 3.48 ha. The Applicants have sought to accommodate a gross floor area of 66,000 m<sup>2</sup>, which includes circulation and service space over 3 floors. They conclude that a site of 2.2 ha would be required or 3.2 ha if a 1,000 space car park was included. However, the application proposals were changed to reduce the number of spaces to 380, which on the same basis would require less than 0.5 ha. In reality the car park originally proposed in the planning application was over 9 stories above Bond Street. However, even if it was over fewer floors it could not possibly need anything like 0.5 ha (***Documents POE 2, paragraphs 4.45-4.46; CD K2/F, page 131; INQ 5, paragraph 3.1***).
246. It is clearly correct to be flexible about car parking in the town centre and not insist on precisely the same levels as the Applicants propose out-of-centre. In the Honiton Road appeal decision the Secretary of State concluded that it would be unreasonable to insist on the same requirement for parking and access in a town centre. Thus the most space that could possibly be needed for the proposal would be 2.7 hectares. On a site of 3.48 ha that could easily be accommodated (***Document CD N4, paragraphs 18 DL, 11.33 IR***).
247. It is claimed by the Applicants that the existing floorspace in Callowhill Court needs to be re-provided even though it is clearly inefficient and no longer serving its purposes at all well. The application proposes clearing almost all the site apart from the old British Home Stores building, which is only about 6,000 m<sup>2</sup>. It is clearly the view of one of the foremost retailer developers in the country, Hammerson, that the site should be comprehensively redeveloped. The BCAP and policy BCAP36 also clearly envisage the redevelopment and

demolition of the underused buildings on the Callowhill Court site.

248. It is therefore absurd to suggest that this allocated site, where there is a resolution to grant outline planning application for complete redevelopment, is similar in sequential terms to any area of operating shops. A normal group of shops in a town centre is not allocated for comprehensive redevelopment in a policy that recognises that it is underused. Nor does it have a planning application at an advanced stage seeking comprehensive redevelopment. Many such high streets would not be available and would not have to be eliminated by being found to be unsuitable. Requiring the old to be re-provided is contrary to what was said should be done in *Tesco v Dundee*. There the Supreme Court said that the natural reading of the policies in question was that the word suitable referred to the suitability of sites for the proposed development. The Supreme Court did not state that the town centre site needs to be suitable not just for the proposed development but any underused old buildings that currently are on site even though no-one thinks they should be kept (**Document CD N3, paragraph 25**).
249. The application proposals include 35,250 m<sup>2</sup> A1 uses and 8,980 m<sup>2</sup> A2-A5 uses. There would also be some leisure use in Block E. This would result in a total of 44,230 m<sup>2</sup> and a part of the 7,620 m<sup>2</sup> leisure uses. At most about 50,000 m<sup>2</sup> needs to be accommodated. On the Callowhill Court site the total potential floorspace within the parameter plans is 98,400 m<sup>2</sup> and the total retail, catering and leisure space in the planning application is 74,000 m<sup>2</sup>. Thus it is clearly big enough to accommodate the approximate size of the proposed development after showing flexibility. The existing usable floorspace is about 27,000 m<sup>2</sup> and, although it is the wrong approach, this could also be included. If the wider envelope of 98,400 m<sup>2</sup> were also used all of the existing floorspace could be included. However, it cannot possibly be correct that for a redevelopment site to be suitable it has to accommodate all the proposed floorspace, all of the usable retail floorspace and space that is only usable for ancillary storage (**Documents INQ 29, paragraph 4.5; INQ 32**).
250. The city centre site is clearly suitable for the broad type of development which is proposed by approximate size.

### ***Suitability in terms of deliverability***

251. The Applicants contend that the Callowhill Court site is not viable. The Framework now only refers to viability in the sequential test at plan making stage. It clearly envisages that at this stage it may be easier to get an out-of-centre site allocated and that the viability of the town centre site should be tested through that process. In decision taking the test that the town centre site has to be viable is not expressly there. It was included in the former PPS 4 at paragraph EC15.1 and explained in the accompanying practice guidance. This indicated that where alternative sites are being actively promoted for new development by a developer or retailer that is a reasonable indicator that the location is viable. It also indicated that detailed viability appraisals of alternative sites would rarely be necessary. Also that that a reasonable period of time should be allowed to test viability given that town centre schemes take time to bring forward (**Documents INQ 7; INQ 8, paragraph 6.49-6.50**).
252. There is not an express viability test any more. However, as the PPS 4 practice guidance was not cancelled when the Framework came out, its approach was clearly thought to be consistent with national policy. It is therefore perfectly

sensible, as a matter of judgment, to follow this kind of approach. It is difficult to see when the PG came out reiterating the importance of town centres that the Government wanted to prevent town centre sites being prioritized by the sequential test unless they could pass a stringent viability test.

253. At the plan making stage the examining Inspector found that the allocated Callowhill Court site in the BCAP was sound. The PG advises that soundness includes being effective, which embraces being deliverable. The evidence of deliverability is clearly sufficient at this stage as a matter of judgment for the site to be considered suitable. Hammerson is perhaps the most distinguished and most robust town centre developer. BALP is promoting the outline scheme and spending real money on the submission of a planning application and the merging of leases. It has said categorically in evidence that it will build the scheme provided the proposed extension to The Mall does not get planning permission. This would clearly have passed the viability test in the old PPS 4 Practice Guidance. BALP understandably said its internal models for assessing viability could not be revealed to a competitor. However, it confirmed that the internal appraisal showed an acceptable level of profit<sup>43</sup>. It is inconceivable that this would not have taken account of the cost of the new development
254. The only assistance any of the Secretary of State decisions give on the way viability should be looked at as part of suitability is in Rushden Lakes. Here the Inspector said that it necessarily includes consideration of deliverability/viability. However, what the planning system is really concerned about, as stated in the old PPS 4 Practice Guidance, is whether development is likely to come forward (**Document CD N1, paragraph 8.54**).
255. The Applicants' viability evidence cannot determine whether BALP will bring its development scheme forward. It is looking at it from the point of view of a trader developer and is of course external to the project. BCC has a good track record of supporting regeneration projects as is shown by its role in supporting the development of Cabot Circus using CPO powers as needed. The Callowhill Court proposal is being promoted by a very reputable and experienced developer with one of the partners in the FTSE 100 and one of the foremost retailer developers in the UK. Hammerson has a long term commitment to Bristol. Its Director of Retail Development has a long track record of successful projects. As well as Cabot Circus these include The Bullring in Birmingham, Highcross in Leicester, West Quay in Southampton and Victoria Gate in Leeds. He is currently working on Brent Cross, Whitgift in Croydon as well as Callowhill Court (**Documents POE 46, paragraph 1.4; POE 47, appendix 1**).
256. BALP gave compelling evidence of its commitment to bring forward the scheme, which should be sufficient to pass the test of viability. This should not be interpreted in such a strict way that it excludes town centre developments that are likely to proceed just because of the way that BALP have undertaken the assessment. It is a very different exercise from an assessment of viability for affordable housing where the system needs to be the same for all landowners. Here one wants town centre sites to be protected if they are likely

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<sup>43</sup> I asked Mr Dobson whether the internal appraisal showed that the existing value of BALP's asset would be well exceeded by the value of the new development. He confirmed that it would be well exceeded to get the required level of profit.

to be able to be deliverable and the policy would be defeated if one ignored sites that would be delivered by companies with a different internal model.

### **Availability**

257. The Callowhill Court site is available. It is allocated for development in the development plan, has a resolution to grant outline permission and a resolution in principle to use CPO powers for the remaining land acquisition. The Planning Committee made it plain in its resolution that it strongly supported the redevelopment of the site.
258. The sequential test should not be interpreted as requiring a town centre site to be available only if the bulldozers are able to go in on the same day as the out-of-centre site. If it is intended to support town centres first such a reading of the policy cannot possibly be justified. How availability is applied to the facts of a case is not a question of law. In *Lionbrook*, Lord Justice Lindblom made clear that this is a matter of planning judgment. Even though at this time the PPS 4 Practice Guidance was still extant, that does not mean he was wrong to decide that the appropriate timescale was for the decision maker to judge. In that regard Lord Justice Lindblom clearly endorsed the council in its judgement of that period, having regard to need. Also, he was clearly aware that Paragraph 24 of the Framework uses the present tense. The appropriate timescale is still not dictated by any relevant policy or guidance so *Lionbrook* is as true today as it was then (**Document CD N7, paragraphs 164, 171, 172**).
259. Although the express need test is no longer part of the sequential test that does not mean that what Lord Justice Lindblom said in *Lionbrook* is no longer the law. In *Warners Retail* he specifically endorsed his judgment in *Lionbrook* and it is clear that both were at the same policy stage. He confirmed in *Warners Retail* that need may still be relevant and warned against the sequential test being used in a way that would be likely to become a self-fulfilling activity divorced from the public interest (**Document N5, paragraphs 10, 31, 32, 39**).
260. Availability is a normal word in the English language and the Courts have deprecated giving ordinary words a spurious precision as is clear from the *Monopolies and Mergers Commission* judgement in the House of Lords<sup>44</sup>. In the Oxford online dictionary the example of community health services available to Londoners is used. Quite clearly available in terms of health services might not be immediately available but one may have to wait one's turn depending on need. Here the absence of any need or certainly any urgency means that it would be folly not to protect the town centre even if the site were thought likely to come forward slightly later<sup>45</sup>.
261. As already noted the absence of need is revealed in paragraph 7.58 of the PSP Plan. There is no need for a further 35,000m<sup>2</sup> of A1 retail space and so no hurry to permit it. As a matter of judgment the time frame for considering availability in this case where there is no urgent need should be longer. It would be too narrow an interpretation to say that there was a race between

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<sup>44</sup> *R v Monopolies and Mergers Commission and Another ex parte South Yorkshire Transport Ltd and Another* 1992. This House of Lords judgement is attached to Mr Ground's closing submission and the relevant section is on page 29 at paragraph C (**Document INQ 65**).

<sup>45</sup> The Oxford online dictionary definition of "available" is attached to Mr Ground's closing submission (**Document INQ 65**).

the out-of-centre and the town centre sites. It should not be said that if the town centre site was not there or thereabouts it should no longer have the protection of the sequential test. That would defeat the purpose of it.

262. In this case the reality is that the application proposals are not certain to come forward in exactly the time frame predicted. The Secretary of State's decision will not be made by February 2018 as initially anticipated and a legal challenge to that decision, could take a further 1-1.5 years, especially if it went to the Court of Appeal. There could well be 3 years beyond the 2023 completion date anticipated (**Document POE 18, paragraph 5.26**). The evidence is that the Callowhill Court scheme is available within an appropriate timescale for the following reasons:

262.1 It is predominantly on an allocated site.

262.2 It has been submitted by a major retail investor with a strong commitment to Bristol and a good track record of delivery.

262.3 There is a wide measure of council support for the outline application.

262.4 The council has resolved to grant outline planning permission subject to the completion of a S106 Agreement, which is being negotiated at present (**Document INQ 75**).

262.5 BALP has spent £4m merging the leases, which was completed in June 2017. At this time BALP sought confirmation from the council as landowner that it supported a Major Works project being carried out at Callowhill Court. The lease provided this confirmation and sets out the main structure and process that BALP will follow for a Major Works project. The details of these works are being discussed between BALP and BCC at present (**Documents POE 38, paragraph 5.25; POE 39, appendix 3; INQ 79A, paragraphs 1.1-1.7**).

262.6 It has the benefit of a CPO resolution in principle.

263. BALP's evidence was that the development could commence by 2020 with a target opening date of 2022/3<sup>46</sup>. To say that such a site is not available in circumstances where there is no need for the retail development at Cribbs Causeway and so no hurry, would be to entirely undermine the sequential test. It should not be viewed as a race between the town centre site and the out-of-centre site. A more nuanced consideration of the timeframe of availability is required bearing in mind that this site will be available within a reasonable timeframe. The evidence shows that the sequential test is failed and in accordance with policy CS14 and the Framework, planning permission should be refused (**Document POE 46, paragraph 6.9**).

## THE RETAIL IMPACT TESTS

### Overview

264. It is obvious that there would be a significant adverse impact on Bristol city centre. The PG makes clear that retail uses tend to compete with their most comparable competitive facilities. The Applicants agree that the city centre and

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<sup>46</sup> Mr Dobson confirmed in cross-examination by Mr Katkowski that he was still confident on meeting the anticipated timescales even though the Planning Committee did not grant outline planning permission at its meeting on 6 September 2017.

The Mall/ Cribbs Causeway are the only remotely comparable centres in Bristol and South Gloucestershire. They are about 8 km apart in a vast catchment area. The Mall proposal would draw a large proportion of its new turnover from the closest comparable competitive facility. Thus the analysis shows that £95.31m out of £168.99m or 56% of expenditure in 2024 would come from the city centre. The 27% draw proffered by the Applicants seems implausible (**Documents POE 2, paragraph 4.72; INQ 29, paragraph 2.1; POE 32, appendix 2, table 19; POE 36, appendix F, table 29**).

265. It is obvious that there would be a big impact from a massive extension to The Mall from the consideration that has been given to this previously in planning policy. The proposals would increase existing floorspace by about 56,550 m<sup>2</sup>. The old Planning Policy Guidance 6 made special reference to the deleterious effect of new regional shopping centres with more than 50,000 m<sup>2</sup> floorspace on the nearest major centres. The proposed extension would be bigger than a whole new regional centre of 50,000 m<sup>2</sup> by itself. In this case there is only one comparable centre. Thus the impact from the experience of the Government is likely to be severely harmful. The Secretary of State rejected a strategic expansion of Cribbs Causeway in the Regional Strategy (**Documents INQ 29, paragraph 4.5; POE 38, paragraphs 3.13, 3.24**).
266. Paragraph 26 of the Framework requires an impact assessment for retail developments over 2,500 m<sup>2</sup> unless there is a locally set threshold. Policy PSP31 requires an impact assessment for all retail proposals larger than 350 m<sup>2</sup> outside the primary shopping areas. This is no doubt because a lower threshold is justified in South Gloucestershire. It is clear that a proposed development over 150 times bigger than this would have a significant impact on the closest comparable centre in Bristol.

### **Health of Bristol City Centre**

267. The PG advises that where there are high levels of vacancy and limited retailer demand even very modest trade diversion from a development may lead to a significant adverse impact. Even the Applicants' assessed impacts, which are clearly too low, would have a significant adverse impact on the city centre.

### **Diversity of uses**

268. The health check undertaken by the Applicants and SGC in the JRA is merely descriptive. In fact it shows that the level of comparison retailing has gone down from the 53.4% of units recorded in the 2012 BCCRS to the 46% of units recorded in the 2017 JRA health check. This is hardly a demonstration of the health of the centre for comparison retailing (**Documents CD G6, page 15, figure 4; POE 32, appendix 4, page 83**).

### **Vacant street level property.**

269. This should be considered as a snapshot in time. Updating for extra properties that are predicted to be occupied in the future would force speculation as to what would become vacant. In all measures Bristol was worse than the national average. In 2016 14% of units were vacant in the city centre compared with the national average of 11.13% at that time. In Broadmead, which is the retail heart of the city centre, it was 17.7%. This is particularly poor when compared with the closest competitor of The Mall at 5%. Vacancy rates are particularly poor for the south-west region, which generally had a lower vacancy rate than elsewhere (**Document POE 35, paragraphs 7.15-7.16; POE**

**36, appendix A, table 1).**

270. The JRA indicates that in 2017 there were 16% vacant units in Bristol city centre by comparison with a national average of 9.4%. This still shows vacancy rates are well above the national average. The Applicants claimed that the vacancy levels were not as high as in some places but were unspecific as to whether this was in a city that by its population and prosperity should be performing very well. The figures given by BALP related to estimated rental value and cannot be compared with national averages in the same way. However, it would be wrong to change the vacancy rate at Callowhill Court figure to reflect a future letting to TK Maxx and Metrobank because that reflects a future point in time. If these figures are to be used the amount of unusable space should be brought into play as well (**Documents POE 32, appendix 4, page 83; POE 46, table at paragraph 6**).
271. The reality is that vacancy rates were nearly double the national average and indicate that Bristol city centre is vulnerable to potential loss of trade. The much lower vacancy rates of The Mall further underlines the relative vulnerability of the city centre to increased competition from The Mall and the Cribbs Causeway area generally (**Document POE 35, paragraphs 7.15-7.16**).

**Commercial yields**

272. The yields for Bristol were the worst of the comparator regional cities, which indicates the relative weakness of the centre. Although these cities may have higher Venuescore positions than Bristol, there is no evidence that such scores are proportional to yields or rents. The Mall has a very low Venuescore position but very high rents (**Documents CD L10, page 11; POE 3, appendix 3, table 6**).
273. Bristol is in the top 10 PROMIS centres with a primary catchment of 968,000 people. It ranked alongside Cardiff and Nottingham in the CACI retail footprint comparisons. However, the Venuescore conurbation population is shown to be much higher than those two cities. There is no reason why Bristol should not be seeking to compare itself with those kind of centres<sup>47</sup>. Cardiff and Nottingham both have better yields than Bristol (**Documents POE 3, appendix 3, paragraphs 3.2-3.3 & table 6; CD L10, page 18**).
274. The actual transaction from the sale of Cabot Circus was at a yield of 6.25% in 2014. This is perhaps most relevant because it is market-based evidence that the PG advises should be used where possible. Had the yield been the same level as Cardiff of 5.25% quoted for June 2014, the price paid would have been around £60m higher. The sale by Land Securities to AXA was a sale by a long term investor and it took 12 months to get the deal done. The evidence given by BALP indicated that AXA paid a cheap price for the holding<sup>48</sup> (**Documents POE 3, appendix 3, paragraph 3.23 & appendix 10**).
275. BALP's evidence on yields reveals the difference between Cabot Circus (5.15%) and Callowhill Court (6.32% blended). This shows that the un-regenerated part of the city centre, which should be prime space, is performing poorly. The Applicants' viability assessment assumed an existing yield of 7% for Callowhill Court and agreed that it would be 5% following redevelopment. This reveals that this part of the city centre is very much in need of regeneration, which

<sup>47</sup> This was agreed by Mr Acton in cross-examination by Mr Ground.

<sup>48</sup> This was information provided by Mr Dobson in evidence-in-chief.

would have a positive effect on yields (**Documents POE 6, paragraph 3.27; POE 7, appendix 5; POE 46, table at paragraph 6.3**).

### **Retailer representation**

276. The list of published retailer requirements for Bristol city centre in the JRA is all small shops. This shows weakness and vulnerability to the threat of the extended Mall. The Applicants' requirements list also did not include any medium sized units. Wilkinsons and Superdrug may occupy medium sized units but they serve the discount end of the market. Even though major retailers do not publish their requirements there is not very much cause for optimism for retailers that want to go into un-regenerated space. It is a completely different point that BALP is confident that it will be able to fill the new floorspace at Callowhill Court because that floorspace will only materialise if the proposed extension to The Mall does not go ahead (**Documents POE 2, paragraph 7.4; POE 3, page 47, table 2; POE 32, appendix 4, page 83**).

### **Commercial rents**

277. Rental values in Bristol were the lowest of the peer group centres, which showed relatively poor performance and the need for regeneration. Given the significant national economic growth and growth in retail sales the statement in the JRA that rents are now stable indicates relatively poor rental performance. Cardiff and Nottingham are comparable centres but have significantly higher rents and rental growth. Indeed Cardiff, which competes with Bristol City Centre to some degree, could potentially compete more strongly once tolls on the Severn Crossing are removed. Apart from Brighton, the rental growth in Bristol between 2013 and 2017 has been the lowest of the comparable centres. The position for shopping centres is the same with much lower rents in Broadmead/ Cabot Circus than St Davids in Cardiff or the Victoria Centre in Nottingham. This shows that rents are languishing by comparison with comparable centres. (**Documents POE 3, appendix 3, tables 4 & 5; POE 37, paragraph 9, bullet 2**).

278. The Applicants contend that the recent rentals of the former BHS store to TK Maxx and Metrobank were a positive indication of the health of the city centre. Their evidence was that the TK Maxx unit rented at £525,000 and the Metro Bank unit at £550,000<sup>49</sup>. However when this is put into the context of the size of the unit it is apparent that this is a disappointing rent at an overall rate of £10 per ft<sup>2</sup> and £18.48 per ft<sup>2</sup> respectively. This compares very unfavourably with the rents that would be achieved when the Callowhill Court development is finished. Thus this actual transaction was not really positive when looked at properly and served to reinforce the position that Callowhill Court needs to be redeveloped (**Documents POE 51, appendix 4, page 21**).

279. The Applicants did not give any indication of the rents at The Mall even though it is the closest comparator centre to Bristol city centre. It is surely because such information would make it obvious that The Mall is a very real threat to the future prosperity of the city centre. Also, that the city centre is relatively

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<sup>49</sup> Mr Acton said in evidence-in-chief that the rents actually achieved at the TK Maxx unit and the Metrobank unit were lower than the rents used in Mr Prentice's viability assessment. These are units 0.26 and 0.29 and the relevant document is **Document 51, appendix 4, page 21**.

weak by comparison with its closest comparable centre. The BCCRS (2013) gave the comparable prime Zone A rents as £200 per ft<sup>2</sup> in the city centre as compared to £305 per ft<sup>2</sup> at The Mall. The rents were thus 50% higher at The Mall. The applicants pointed out that at The Mall there were turnover leases. The base rents were 80% (£244 per ft<sup>2</sup>) and if more were achieved as a result of higher turnover the turnover rent would be paid. This happened in 15-20% of cases and would take it back to £305 per ft<sup>2</sup> or thereabouts. When this is compared with the city centre rents of £175 per ft<sup>2</sup> at Cabot Circus or £40-£125 per ft<sup>2</sup> at Callowhill Court, the rents are significantly higher at The Mall. This shows that the retailer demand is lower in the city centre and that The Mall is the main threat to the future prosperity of Bristol city centre (**Documents CD G6, paragraphs 2.9(6), 2.24; POE 46, paragraph 6.3 table**).

### **Pedestrian Flows**

280. The tailing off of pedestrian flows in the secondary and tertiary locations again indicates the need for regeneration (**Document POE 32, page 83**).

### **Environmental Quality**

281. There is some need of improvement due to the age of units in The Galleries and Broadmead (**Document POE 32, page 84**).

### **Conclusions**

282. Parts of the city centre are performing well where there are higher pedestrian flows. However, it cannot be concluded overall that it is conspicuously vital and viable. Parts are in need of regeneration and it is vulnerable to the proposal for a massive increase in floorspace at The Mall. The BCCRS reached a similar conclusion when read fully (**Document CD G6, paragraphs 2.24, 9.3 [bullets 3, 5, 7], 9.4-9.6, 11.1 [stage 1: bullets 5, 6], [stage 2: bullet 1]**).

### **Whether there would be a significant adverse impact**

283. The PG indicates that in areas where there are high levels of vacancy and limited retailer demand, for example, even very modest trade diversion from a new development may lead to significant adverse impact. In the city centre there are clearly high levels of vacancy. Bearing in mind the rental values in particular there is limited retailer demand, especially in the un-regenerated parts. Having considered the Applicants' evidence on yields and all of the health check matters, a modest diversion of trade would in this case lead to significant adverse impact. This would occur even if the Applicants' lower impact figure is accepted (**Document INQ 13, paragraph 2b-017**).

284. The PG indicates that the design year should be selected for impact testing and that this represents the year the scheme has achieved a mature trading pattern. It says this is usually the second full calendar year after opening. However, the Framework says that for major schemes it may be longer if the full impact will not be realised within five years. It has been agreed that the design year will be 2024 but the Applicants suggested a horizon year of 2027. No-one has suggested that this is a case where the full impact will not be realised in five years or at the design year. The purpose of looking 10 years ahead is if the full impacts have not been realised. It is not to make the test easier to pass because there will be growth that will make the impact less. This is not an appropriate case for assessing impact further ahead than the design year and any impacts at the horizon year are not supported by the Framework

or PG and should be ignored (*Documents INQ 13, paragraph 2b-017; INQ 30, paragraph 2.4; POE 35, paragraph 6.4*).

***The main differences in the impact assessments***

285. The trade draw from the city centre would be £95.31m resulting in an impact of 11.9%. The Applicants' assessment is a trade draw of £45.72m with an impact of 4.4%. The Framework says that it is the impact of the proposal on town centre vitality and viability that should be looked at. However, that does not mean that the effect of commitments should be ignored. They will have an adverse impact on the health of the centre before the impact of the application proposals is factored in. Thus the town centre will be more fragile and vulnerable than it would have been otherwise. The cumulative impact would be 16.2%. The Applicants say it would be 6.9% (*Documents POE 32, appendix 2, table 19; POE 36, appendix F, table 19*).

*Internal impact.*

286. It is not accepted that the net trade of the existing shops in The Mall would be reduced as a result of the proposed development. This is the principal artifice by which the Applicants reduce the impact on the city centre. The diversion from the existing shops is shown to be £36.53 m, which is a net position. It was that net diversion that is considered to be an artifice that would not exist. It is not accepted that the tills of the existing Mall shops would do less well after a £300m+ investment to improve The Mall for the shopper. Of course there may be people who would previously have gone to an existing store who go to the proposed new extension instead. However, this would be more than outweighed by the extra people and extra dwell time and expenditure there would be in the centre once the mature trading pattern had become established in the design year. (*Documents POE 32, appendix 2, table 19; POE 35, paragraph 5.7*).

287. It was absurd to assume that the turnover of the existing shops would go down by 7.2%, in fact the reverse would occur. The proposed development would get its expenditure from existing Mall customers spending more, wholly new customers and Mall customers choosing to spend in the new extension. The first two of these would outweigh the third and therefore there would be no internal impact. The Applicants tried to imply that BCC had accepted some internal impact due to the adoption of a lower sales turnover for the application scheme in its assessment. In fact the reason for this was that an earlier figure had been used in the modelling rather than the higher one in the JRA. If the higher figure had been used, the impact on the city centre would have been slightly higher (*Documents POE 4, paragraph 1.42; INQ 46*).

288. BALP is an experienced developer who confirmed that Callowhill Court would increase the attraction of Cabot Circus and the city centre to both shoppers and diners. It would also enhance the value of BALP's existing holding in Cabot Circus. This was confirmed by extensions being delivered to shopping centres such as Westfield. This would not be happening if it was thought that it would have a negative effect on existing operators. The same would apply to the effect of the proposed extension to the existing Mall. The extended Mall would be likely to be substantially more attractive to shoppers (*Documents POE 37, paragraph 5; POE 46, paragraph 7.7; POE 48, paragraph 3.5; POE 50, paragraph 4.11*).

289. The Applicants agreed<sup>50</sup> that there would only be about three high value retailers in The Mall who would be likely to experience a drop in turnover of over 7% as a result of the proposed extension. Some may have turnover that goes up and some would stay the same. John Lewis has a loyal customer following and so would probably stay about the same. Such a substantial investment in The Mall would be likely to result in further upgrades. The evidence was that the turnover of existing stores would increase when a mature trading pattern had been established for a number of reasons. There would be an increase in the food and beverage offer, which would increase customer dwell times and hence raise the turnover of existing stores. There would also be an improved shopping experience thereby attracting more customers. The Applicants hoped and expected that the turnover of existing stores would go up by the design year hence providing justification for the investment. This is compelling evidence from a witness with real experience and knowledge of the effects of various changes on rents which are often linked to turnover and deserves real weight. It showed that turnover would go up in the existing Mall and the concept of internal impact does not exist (**Document POE 3, appendix 2, paragraphs 4.5-4.7 & pages 92-94**).
290. In the Tollgate Village appeal M&G Real Estate, who are effectively one of the joint owners and operators of The Mall, disputed the concept of internal impact and described it as incorrect. They pointed out that British Land, who owned a significant amount of the existing floorspace, supported the proposal. This they said suggested that it would have a positive rather than a negative effect on their turnover. It is even more the case at The Mall where the Applicants own all of the existing floorspace and would not want turnovers and rents to go down. In addition, it is highly unlikely that John Lewis would be supporting the application if it thought its own turnover would go down at the design year (**Document INQ 45, paragraph 7.46; POE 35, paragraph 5.13**).
291. It is reasonable that the turnover assigned to internal impact in the JRA would in fact all be taken from Bristol city centre. It would not be spread around other shops and centres in zone 1 as the Applicants' sensitivity assessment seeks to do. This is because Bristol city centre is the most comparative competitor centre and therefore the turnover would be lost from here rather than from anywhere else (**Document POE 4, paragraph 1.51 & appendix 1**).

*Effect of the retail warehouses at Cribbs Causeway*

292. The JRA assumes a trade diversion of £16.16m from the existing retail warehouses. This would amount to 10% of the new turnover. However, these units mostly sell bulky goods and there is thus not strong competition with the existing Mall. Clothing is one of the specialities of The Mall but this tends to be the higher end fashion retailers and these are on the target list. It is unlikely that much trade would be drawn from Wickes and B&Q who sell protective clothing or the discounters or specialist outlets such as TK Maxx, Mothercare and Asda. Indeed the aim of the Applicants' project brief is the introduction of new national and international tenants with an emphasis on fashion, footwear and accessories (**Documents POE 2, paragraph 4.25; POE 3, appendix 3, pages 91-98; POE 32, appendix B, table 19; POE 35, paragraphs 5.16-5.17; INQ 3**).

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<sup>50</sup> These were points made by Mr Acton in cross-examination by Mr Ground. Mr Acton's qualifications and experience are at **Document POE 3, appendix 2, section 2**.

293. It is therefore highly unlikely that the application proposals would draw 10% of its trade from the retail warehouses as the JRA assumed. A trade draw of half this amount (£8.08m) would be much more realistic.

*Exaggeration of the size of Bristol city centre's turnover.*

294. The turnover figures for 2016, 2021 and 2024 are £669m, £756m and £841m respectively. The equivalent figures in the JRA are £850.21m, £952.60m and £1,058.84m (**Documents POE 36, appendix F, table 8; POE 32, appendix 2, table 19**).

295. The sales density in the JRA for the city centre in 2016 is £7,650 per m<sup>2</sup>. This is vastly more than most of the national company averages in the JRA. The weighted benchmark company average sales density in that list of multiple retailers is £4,205 per m<sup>2</sup>. If VAT were included this would be about £5,000 per m<sup>2</sup>. Nine of the top ten retailers with the highest turnover densities are in the city centre. However, of the 311 or so comparison goods outlets, a large proportion are independent shops, especially in the secondary locations such as Victoria Street, Cannon's Marsh, Christmas Steps, Stokes Croft and Old Market. Independent shops have lower sales densities. BCC's retail assessment was prepared before the JRA was available. However, having now considered the information that it gives on sales densities it is likely that the sales density adopted in the BCC retail assessment of £6,051 per m<sup>2</sup> is too high (**Documents POE 22, paragraph 11.5; POE32, appendix 2 table 23; POE 36, appendix A, table 1 & appendix F, table 8; POE 37, paragraph 3**).

296. The Applicants indicated that BALP know the turnovers of Cabot Circus shops because they have turnover rents there. Its actions and intentions in saying that it would not go ahead with the Callowhill Court redevelopment if the application proposals get planning permission is entirely consistent with the analysis of BCC who show that there is not sufficient expenditure for both developments. Thus the actions of those that have real data on the city centre's turnovers support its evidence and conclusions. BALP's presence at the inquiry confirmed that the impact would be significant (**Document POE 35, paragraphs 7.10-7.14**).

***The retail models and household surveys***

297. It does not make much difference to the outcome whose model is used. If the three differences referred to above are taken into account using the JRA figures and the RECAP model the solus impact in 2024 would be 11.3% and the cumulative impact would be 14.2%. This is not very different from the initial output of 11.9% and 16.2% (**Document POE 37, paragraphs 12-13**).

298. However, the RECAP model based on the DTZ household survey was preferable for the following reasons:

298.1 The results, assessments and judgments used resulted in a much more realistic figure for the turnover of Bristol city centre when benchmark densities are considered. The material on rents and yields and vacancies confirms that the city centre cannot possibly be trading at 50% more than it would if it were all multiples.

298.2 It asked broadly the right number of people in the different age categories. The NEMS survey was a random sample and only asked 6.4% of people in the age group 18-34 and had to apply a weighting of more than three times to their answers. This clear failing could not be explained by the fact that the NEMS survey was limited to the person

who is the main shopper in each household. There are not only 6.4% of main shoppers in this age group. Nor can it be said that DTZ also had to weight their survey and so it is the same. It is very different to interview 16.7% in this group as DTZ did and only have to apply a small amount of weight. If one looks at real numbers NEMS only interviewed 11 people in the age group from zone 8 and 4 people from zone 9. They may therefore have missed anyone who uses a smaller centre and this would not be corrected by trebling the answers (**Documents POE 4, table 1.2; POE 33, page 230**).

- 298.3 When the household was asked where it mainly shops for clothing and footwear the only option was Cribbs Causeway. Respondents were thus unable to specify The Mall in their answers (**Document POE 33, page 38**).
299. The DTZ household survey is to be preferred to the NEMS survey for the following reasons:
- 299.1 The DTZ survey is older but there has been no significant change in shopping patterns. The only change that was predicted was for the Severn bridge tolls being abolished. An adjustment to market shares was made to reflect this. The JRA did not make such an adjustment (**Document POE 35, paragraph 6.5; POE 36, appendix F, page 1**).
- 299.2 The NEMS survey has two extra zones but an allowance has been made for this in BCC's retail assessment through inflow. This was a net figure as there would also be people going out of the catchment to the large surrounding towns. Also, some people from Bristol go on holiday or away and buy comparison goods there.
- 299.3 The NEMS survey interviewed 1,692 people, which was not that much more than the DTZ survey, which interviewed 1,500 people.
- 299.4 The two questions asked in the NEMS survey about where people shopped did not make the results more reliable than the single question asked in the DTZ survey. In fact, asking about primary and secondary shopping locations just led to another layer of uncertainty and inaccuracy (**Document POE 37, paragraph 4**).
- 299.5 Questions 22 and 23 in the NEMS survey referred to gifts. However, this is not a recognised class of goods in terms of expenditure data and has no proper definition.
300. The RECAP model was used and relied upon in the BCCRS. The Inspector in examining the BCAP clearly considered it satisfactory. It is perfectly robust and in many important ways preferable to the JRA. The results of BCC's assessment have superior judgments and should be followed.

### **Conclusions on retail impact**

#### *Impact on vitality and viability of Bristol city centre*

301. For all the above reasons there would be no net internal impact. There would also be a lower level of expenditure diversion from the Cribbs Causeway warehouses and the highly peripheral local shops in zone 1 in Bristol than is assumed in the JRA. Furthermore, the turnover of Bristol city centre would be lower than assumed by the Applicants. There would be a solus impact of 11.9% and a cumulative impact of 16.2% with a trade diversion of £95.31m at least (**Document POE 36, appendix F, table 29**).

302. In reality the market share of the existing Mall would increase as a result of the new investment from the application proposals. In effect the extended integrated Mall would become more attractive than the sum of its parts. Furthermore, the BCC assessment underestimated the turnover of the existing Mall by about £5m (**Documents POE 37, paragraphs 14-15; INQ 46**).
303. The £95m expenditure lost from Bristol city centre to the proposed extension to The Mall would be significant for the following reasons:
- 303.1 The impact of the committed developments and the proposed extension to the Mall would mean that there would only be an increase of expenditure of about £35m between 2016 and 2024. This would be insufficient to support the re-occupation of the vacant prime comparison goods floorspace and city centre commitments by 2021, which would require expenditure of about £63m (**Documents POE 35, paragraph 7.17; POE 36, appendix F, tables 7, 22**).
- 303.2 If none of the vacant floorspace was re-occupied and none of the committed developments were implemented, the turnover of the occupied floorspace would increase at only about 0.65% per annum, which would be much lower than Experian forecast growth in sales densities nationally rising to over 3.7% after 2019. This would mean that the city centre would experience significant relative decline in comparison with the rest of the UK and vacancy rates would perpetuate (**Document POE 35, paragraph 7.17-7.19**).
- 303.3 The forecast growth in expenditure between 2016 and 2024 is 5.2%. However, in that period the growth in expenditure per capita is expected to rise by about 17% and the number of shoppers in the city centre would fall significantly by about 10%. This would severely impact vitality and viability and inevitably result in a rise in shop vacancy. Even if the figures in the JRA were used, the growth would be under 1% per annum if the vacant units were re-occupied and the commitments implemented (**Documents POE 32, appendix 2, table 19; POE 35, paragraphs 7.17, 7.20**).
304. There is no statement of government policy that a small monetary increase in a centre's turnover will mean that there is not a significant adverse impact as the Applicants accepted<sup>51</sup>. In the Rushden Lakes decision it was clear that rising turnover was one factor to be taken into account and not a test. In Tollgate Village, the increases in turnover were predicted to be about £55m by the council and between £99m and £105m by the appellant. On either set of figures that was vastly more than the £35m in the present case (**Documents CD N1, paragraph 8.86 IR; INQ 45, paragraph 12.4.6**).
305. The large loss of £95.31m from the city centre, which would only leave £35m expenditure growth over 8 years would clearly result in a significant adverse impact on a centre that is already vulnerable and not conspicuously vital and viable. This should come as no surprise because the Government said in Planning Policy Guidance 6 that large regional shopping centres have a substantial impact over a wide area and severely harm the nearest major centres. The Secretary of State rejected the expansion at Cribbs Causeway in the Regional Spatial Strategy for the South West and the Inspector rejected a

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<sup>51</sup> Mr Wilks agreed this in cross-examination by Mr Ground.

35,000m<sup>2</sup> expansion in the examination of the CS (**Document POE 38, paragraphs 3.13, 3.24, 3.30-3.33**).

#### *Dual representation*

306. The proposed condition relating to dual representation would not be effective. It is not a panacea to try to keep reluctant retailers in the city centre who really want to go elsewhere. The better solution is not to permit out-of-centre space and encourage town centre regeneration. The Secretary of State was clear in the Tollgate Village decision that such a condition would not fully tackle the underlying problem. It would not address new shops that were looking to go to either The Mall or the city centre. Also, it would only provide protection for a limited period (**Documents INQ 39; INQ 45, paragraphs 17 DL & 12.4.15 IR**).
307. Enforceability would be particularly difficult in this case. When it was considered in *Skelmersdale*<sup>52</sup>, the Court of Appeal did not have the difficulty of one local planning authority having to require another to enter into a legal agreement because it could be done by a negative condition. In the Scotch Corner decision the Secretary of State had no submission by the town centre authority on enforceability and did not consider the point expressly. The PG indicates that it is only appropriate in exceptional circumstances to have a condition requiring a legal agreement to be entered into with the same authority. It would therefore be surprising if it were thought to be easily or readily enforceable to require such a condition to be entered into with a different authority. SGC would have to reach the view that it was expedient to enforce such a condition and its primary concern is not usually the interests of BCC (**Documents CD N2, paragraphs 7.1-7.36, 10.4 IR; INQ 38, paragraph 21**).
308. Even if a legal agreement could be secured that would leave BCC trying to force retailers to carry on trading. If they did not wish to do so that would be an invidious task. Thus such a condition would be necessary but would not be sufficient or a panacea. It would be more appropriate to refuse the scheme. The enforceability in the present circumstances would give rise to great and complicated considerations.

#### *Impact on planned investment*

309. Callowhill Court is an allocated site that has been brought forward in accordance with Government policy through the plan making process following a retail study. There is an outline application with strong officer and committee support and a CPO is supported in principle to assist delivery. There are matters that need to be concluded but BALP is still confident that outline planning permission will be obtained shortly. The scheme is being promoted by very competent and well-resourced experienced developers with a real commitment and interest in the city centre. They say categorically and unequivocally that if the application proposals are granted permission the Callowhill Court redevelopment would not go ahead. This is a further reason that the impact test is failed.
310. The shopping quarter needs investment to flourish and the evidence shows that with the proposed extension to The Mall that would not happen. There is no dispute that retail investment is necessary for centres to flourish. Without it

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<sup>52</sup> *Skelmersdale Limited Partnership v West Lancashire Borough Council and St Modwen Developments (Skelmersdale) Ltd* [2016] EWCA Civ 1260

the city centre would be left to decline. The Applicants' own evidence shows Bristol city centre to be vulnerable. The out-of-centre Mall, which is bottom of the hierarchy, would be prospering at the expense of the city centre. This is in stark contrast to all that Government policy has sought to achieve.

## **TRANSPORT ISSUES**

### **HIGHWAY IMPACTS**

311. Central to consideration of this issue is the forecast traffic impact of the proposed expansion to The Mall on the A4018 corridor. The A4018 runs from junction 17 of the M5 in a south-westerly direction, passing the site to its west and on towards Westbury-on-Trym and Bristol city centre. The administrative boundary of BCC and SGC intersects the A4018 corridor at the point that the road crosses the Henbury railway line, some 2.5km south of The Mall (**Document INQ 42**).
312. There has been agreement on the most appropriate way to model the impacts of the proposal on the A4018 corridor. This is an issue of considerable importance to BCC and its residents. SGC recognise that the A4018 corridor is operating close to capacity<sup>53</sup>. This is consistent with why the VISSIM microsimulation model was chosen in the first place. The validation report recognises it as the most suitable tool to replicate baseline traffic conditions. This is due to its superior ability to model complex networks and traffic interactions, especially in congested conditions (**Document CD H3, paragraph 2.1**).
313. Rat running is directly related to levels of congestion and delay experienced in a locality<sup>54</sup>. The more congestion there is on a network the more likely it is that drivers will take greater risks due to increasing frustration and this may have implications for the safety of all road users. SGC recognise that congestion is a significant issue particularly in the North Fringe of Bristol. It has detrimental effects on the economy, the local environment, public health and the effective operation of the public transport system. It must be viewed in the context of already increasing levels of congestion and higher than average levels of car ownership (**Documents CD D3, paragraphs 2.7, 3.19; CD D5, paragraph 5.30**).
314. The main parties have worked together, after initial and unsatisfactory individual efforts, to model the impacts of the application proposals on the A4018 corridor. The scope and detailed technical inputs to the further VISSIM modelling have been agreed by all parties. On 24 November 2017 the Applicant produced a written report on the results of the A4018 microsimulation traffic modelling exercise (**Documents POE 41, sections 4, 5; INQ 14; INQ 41; INQ 69B**).

### **Policy context**

315. The Framework is clear at paragraph 32 that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. Policy PSP11 in the PSP Plan is consistent with national policy, which addresses transport impact management. This policy is engaged in this case as it involves a development that would generate

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<sup>53</sup> This was confirmed by Mr McNeill in cross-examination by Mr du Feu.

<sup>54</sup> This was explained by Mr McCartney in examination-in-chief.

a demand for travel. One of the policy provisions is that it should not generate traffic that would create or contribute to severe congestion. The word "create" must be intended to cover circumstances where the development of itself creates severe congestion. In contrast the word "contribute" must be intended to cover circumstances where there is already severe congestion and the development in question will add to that severe congestion (*Document INQ 72, paragraphs 2.1-2.7*).

316. There is no dispute that the proposed development would generate extra vehicle movements. These extra movements would contribute to existing congestion. The question must therefore be whether the congestion that it contributes would be severe. If that were the case, the proposals would fail to comply with policy PSP11. The applicants did not disagree with this analysis. The dispute is therefore whether the development would contribute to severe congestion. For the reasons set out hereafter the development fails this policy test as it would contribute to severe forecast congestion.

### **Current conditions on the A4018 corridor**

317. SGC confirmed that the A4018 corridor is currently operating close to capacity<sup>55</sup>. It was also the view of members of the public and other frequent users of the road and is demonstrated by the queue surveys of the peak hour conditions on that corridor. The current stop-start conditions with traffic often at walking pace or less is not acceptable. The applicants play down concerns in respect of the current conditions on the A4018 on the basis that they are not unusual on arterial routes into a city centre. It is quite true that many other roads also suffer from significant congestion, but that rather misses the point. Given the impact such conditions have in terms of air quality, delay to journey times and public transport reliability, significant congestion is not acceptable (*Documents POE 41, paragraphs 6.4.12-6.4.23; POE 42, appendices 6.8, 6.9*).
318. Any worsening of this would be a cause for concern. Increased congestion leads to worsening impacts upon public health including not only increased emissions, but also the reduction in the attractiveness of active travel modes, including walking, cycling and public transport. Congestion also has potentially harmful impacts upon growth (*Document INQ 72, paragraphs 3.5.8, 3.6.1-3.6.11*).

### **Future conditions on the A4018 corridor**

319. Traffic conditions will worsen on the A4018 corridor, whether the proposed development at The Mall is built or not. Forecast growth makes that close to inevitable for example, the 5,700 homes planned at the CPNN. To assess the extent of the worsening traffic conditions on the A4018 corridor it is important to make a comparison between current observed conditions and the forecast conditions without The Mall expansion at 2031.
320. The A4018 corridor cannot accommodate the growth forecast by the GBATS3 modelling to occur by 2031. The model becomes gridlocked. This is a clear indication of the severity of the worsening traffic conditions in the area likely to be faced by 2031, even without the Mall expansion. If the A4018 corridor cannot even accommodate forecast growth, it will not be able to accommodate all of the additional 343 trips during the PM peak hour traffic that would be generated by the Mall expansion on the Bristol section of the A4018

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<sup>55</sup> This was stated several times by Mr McNeill in cross-examination by Mr Du Feu.

*(Documents INQ 69B, paragraph 3.17; INQ 72, paragraph 3.3.4).*

321. The modelling highlights the obvious fragility of the A4018 corridor, its susceptibility to gridlock by 2031 and the increase in journey times, queue lengths and consequent delays that are likely to occur. If it is accepted that congestion in 2031 would be severe then the additional traffic from the proposed development would be adding to that congestion and would thus fail the policy test. The impact of any expansion to The Mall must be assessed on top of forecast growth.

### **The fundamental flaw in the VISSM approach**

322. The fundamental problem with the approach taken is that the VISSIM modellers have worked out (by trial and error) how much traffic the modelled A4018 corridor can theoretically accommodate and worked backwards from there. They have simply reduced the baseline traffic from the GBATS3 2031 traffic flows to a level where the model does not gridlock. The justification given for such a reduction is to isolate the effects of the proposed development. However, if the road is already full, it cannot accommodate the traffic forecast to be generated by the proposed development, which would thus be contributing to the already severe congestion (*Document INQ 72, paragraphs 3.3.3-3.3.12*).
323. The approach has led to the need to apply a 25% reduction to the traffic forecast to occur in 2031. There is no credible justification for such a significant reduction in this case. Such a substantial variation would plainly require a robust explanation which is entirely lacking. The approach seeks to make the model function, rather than to accurately assess forecast growth (*Document INQ 72, paragraph 3.4.1-3.4.5*).
324. Concerns were raised about reducing the forecast baseline traffic on the A4018 corridor at a meeting on 12 October 2017. Specifically such a reduction was not considered to be justified in the absence of any planned physical intervention on the A4018 corridor; a change in demand patterns such as a modal shift to sustainable modes; a major sustainable transport intervention; peak spreading, or rerouting. In respect of the last two possibilities it was explained that if impacts were displaced elsewhere these needed to be understood (*Document INQ 72, paragraphs 3.3.1-3.3.2, 3.5.2*).
325. The applicant recognises these possibilities. There is though no answer to what will happen to this 25% other than it might be an unspecified combination of the above. The applicant has presumed severe congestion will not occur on the basis that it will be displaced but has failed to explain where the additional traffic will instead go and what the impacts of that would be. The agreement that the effects of the proposed development beyond the A4018 corridor are not significant is acknowledged. However, the context in which it was made must be recognised. It was expressly in the context of modelling and analysis being based on GBATS3 traffic flows (*Documents INQ 41, paragraph 5; INQ 77, paragraph 4.20*).
326. The GBATS3 model forecasts 343 additional trips from the proposed extension to The Mall would use the A4018 corridor. However, the VISSIM model now only allocates 126 trips along this route. 217 trips have therefore been rerouted without explanation, justification or adequate assessment of their potential impacts. It is entirely correct to query where the 25% of traffic flows

forecast in the GBATS3 model but displaced in the 2031 reference case and the 217 journeys generated by the development which are not now forecast to route down the A4018 in the development case would go. The potentially significant and wider ramifications of such an approach should be recognised and it highlights the problem in applying such a reduction without any broader justification or thought (**Document INQ 72, paragraphs 4.3.1-4.3.4**).

327. It will be readily apparent to anyone who stops to think that applying this approach does not ensure that the 2031 reference case accurately represents the future conditions of the local highway network. Instead it means that almost any development would be found to, theoretically, be capable of being accommodated on any given stretch of road were a sufficient reduction factor applied to the baseline traffic. The reduction factor applied to a baseline would simply be one that allowed for sufficient additional traffic to be added to the network before it locked up. The development traffic is given primacy over the forecast conditions which are artificially reduced simply so the development traffic can be accommodated on the A4018 corridor.
328. The justification given would always be some unspecified combination of the factors identified above. The presumption would be that the traffic that could not be accommodated would be displaced, and the road would continue to function at an acceptable level. As any road user will know, this is not always the case. The reduction necessary here was 25%, which is a substantial amount. However, it could have been 50% or even 75% if that was necessary for the modellers to ensure that the model was able to isolate the impact of the development traffic rather than seeking to establish whether the A4018 corridor suffers from severe congestion in the 2031 reference case.
329. Unfortunately such an approach fails to provide a reliable 2031 reference case model from which to assess the impacts of the development. The need to adopt such an approach tells us that the highway network cannot accommodate the growth that is already planned in the area, let alone the additional impact of the development traffic. It points to the conclusion that congestion will be severe by 2031 and that any additional traffic generated by the development will only contribute to that.
330. In addition to this matter there have been adjustments made to the VISSIM model in order to reallocate and store excess queuing traffic from the A4018 onto artificially extended side roads. This has the effect of making the modelled A4018 operate more efficiently than is likely to be the case. However, it ignores reality. It also demonstrates impacts unanticipated by previous modelling such as those relating to Westbury-on-Trym (**Document INQ 72, paragraph 4.4.1-4.4.15**).
331. The A4018 corridor is unlikely to be able to accommodate forecast growth by 2031 and will thus suffer from severe congestion. The traffic generated by the proposed expansion to The Mall would contribute or add to that congestion. Without a very significant and artificial reduction to the 2031 baseline, the development traffic cannot be accommodated on the A4018 corridor. The expansion therefore fails the policy test set out in PSP11 of the PSP Plan.

## **WHETHER THE SITE IS SUSTAINABLY LOCATED**

### **The policy context**

332. Permitting this development would have repercussions for the transport

network beyond SGC's administrative boundaries. This is because of the proximity of the site to the boundary with BCC and the significant amount of trade the extension would draw from its administrative area. However successful the measures to encourage sustainable modes of transport may be, the development would ultimately result in an increase in traffic movements on BCC's highway network. This may have implications in terms of congestion, safety and the operation of public transport within BCC's administrative area. It is therefore of direct concern to BCC that the proposals comply with those parts of the Framework that seek to promote sustainable transport.

333. The development fails to take up opportunities for sustainable transport modes, even taking into account its nature and location. The Travel Plan, proposals to refurbish the existing bus station and improve local linkages would be welcome. However, they would be unlikely to result in any significant modal shift towards sustainable transport. Improvements required to mitigate some of the impacts of the proposals should not be treated as benefits.
334. Paragraph 17 of the Framework emphasises that planning should focus significant development in places that are, or can be made, sustainable. This recognises that some locations cannot be made sustainable. It is recognised that the definition of sustainable modes of transport is broad but there is a clear preference expressed in paragraph 17 for access by public transport, walking and cycling. Paragraph 29 highlights that the balance should be in favour of sustainable transport modes that allow a real choice in travel options. This requires that those modes are sufficiently and comparatively attractive.
335. Paragraph 32 of the Framework requires the decision maker to take account of whether the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site. Paragraph 34 requires that developments generating significant movement should be located where sustainable transport modes can be maximised taking account of other policies, especially those relating to rural areas. It follows that what measures are necessary and reasonable will vary from site to site depending upon its nature and location. If there are features of a development or site which discourages the use of sustainable modes of transport it will be necessary to address those features, so far as is practicable, to ensure sustainable transport modes can be maximised and that people have a real choice about how they travel. Policy CS8 in the CS has similar aims and objectives.

### **The nature and location of the site**

336. The Mall is located on the northern edge of the Bristol urban area and to the south of the M5 Motorway, between the radial routes of the A4018 to its west and the A38 to its east. The A4018 meets the M5 at junction 17, whilst the A38 meets the M5 at junction 16. Consistent with its location on the strategic highway network, 90% of visitors come by private motor vehicle. This compares with Bristol city centre locations where fewer than half choose to travel by car. Consistent with this, the percentage of those who use the bus or walk to The Mall is far lower than is the case with the city centre. The excellent accessibility of the city centre by public transport, cycling and walking is in stark contrast with the position at the Mall. This, as much as anything else, emphasises the need to apply the town centre first policies in the Framework with sufficient flexibility to ensure that the use of sustainable transport is promoted through decision taking. Every time you direct a journey away from

the town centre it is likely to be less sustainable (**Documents POE 2, paragraph 7.6; POE 41, table 9.1**).

## **Parking**

337. No change is proposed to the amount of parking spaces at The Mall. The Applicants and SGC agree that the 7,070 spaces<sup>56</sup> provided would be sufficient to accommodate the anticipated increase in demand. This conclusion is reached without there being any material change to the current modal shares. This is therefore not an indication of the sustainability of the application proposals but rather a result of the current over supply (**Documents POE 26, paragraphs 6.4.3-6.5.4; INQ 40, paragraphs 3.8-3.9**).
338. There is no restraint by way of charge or restriction planned for car parking for shoppers. This would remain free of charge and the abundance of free spaces is a significant attraction for visitors to the Cribbs Causeway area. Indeed approximately 30% of respondents to a survey about what visitors liked most about it for shopping and services was the ease of parking there. The Mall's website extolls the "joy" of the 7,070 free car parking spaces. Access to The Mall by private car would be enhanced as is made clear in the DAS. This highlights the complete failure of the application proposals to address the abundant availability of free parking which acts as a significant disincentive for visitors to the Mall to use modes of transport other than the car (**Documents CD A6, page 42; POE 33, pages 93, 209; POE 44, appendix 2.1**).
339. The availability of car parking has a major influence on the choice of travel. Furthermore, levels of parking can be more significant than levels of public transport in determining modal choice. However, the proposals do nothing to address this issue in order to seek to influence choice of means of transport. The CS indicates that parking remains an important part of demand management. By reason of its very nature and location on the strategic highway network, the site is likely to encourage people to access it by car. No reason was given as to why measures to curb the attractiveness and ease of parking have not been incorporated into the development proposals. The lack of such measures highlights the development's failure to adopt reasonable measures to maximise the use of sustainable transport modes (**Document CD D3, paragraph 7.22**).

## **Walking and Cycling**

340. Although there would be improvements to the walking and cycling links to the surrounding area, these are unlikely to result in any significant modal shift. The measures would not be able to overcome the inhospitable and unwelcoming highway environment which surrounds the site. Furthermore, they would be overshadowed by the complete lack of disincentive to access by private car. In any event, SGC said that it could not envisage circumstances in which, if the extension were refused, The Mall would not seek to connect to the new development that will be taking place to the south in some way<sup>57</sup>. Indeed, it will presumably seek to fulfil the third criterion in policy CS26 of the CS, even in the absence of this scheme.

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<sup>56</sup> Inspector's Note: This comprises 6,670 parking spaces around The Mall and a further 400 spaces at the Jupiter Road car park, which is used in busy periods.

<sup>57</sup> This point was made by Mr Roberts in answer to my question.

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## Public Transport

341. It is common ground that the routing, journey time and extent of coverage of existing bus services result in a low level of use. It is also recognised that the connectivity and frequency of some routes does not maximise use of this mode or encourage future growth in its modal share. The Applicants do not propose to do anything to address these important issues in respect of any existing route. This is key to making public transport convenient. (*Documents POE 10, tables 7.53, 7.54; INQ 40, paragraphs 3.5, 5.1(ii)*).
342. The Applicants rely heavily on the introduction of the MetroBus route from Hengrove to the North Fringe later in 2017. This may marginally improve accessibility to The Mall but it is only one route and is not a panacea for the failings identified above. Furthermore, MetroBus will happen with or without the proposed expansion. The other proposed changes to infrastructure in the surrounding area, such as the Metrobus extension, are intended to come forward through the CS and are not reliant on the application scheme being permitted. They are far from certain and the Applicants indicated that the Mall was not reliant on external measures to demonstrate its accessibility by means other than car<sup>58</sup> (*Document POE 27, appendix D*).
343. The proposals to enhance the bus station would mainly benefit the users of The Mall, for example by being able to avoid inclement weather. However, the benefit would be limited because it would only address the environment at one end of the public transport user's journey. Residual benefits to nearby parts of Cribbs Causeway would be likely to be limited. The Applicants accepted that the bus station would be unlikely to materially benefit any of the new housing in the CPNN. This is because it is likely to be served by closer bus stops provided as part of those developments.
344. There is no robust evidence to support the notion that an improved bus station would lead to a significant modal shift towards bus use. The Applicants accepted that the effect of providing a new bus station could not be accurately forecast but rather was intuitive. There is no data to substantiate a 5% increase in bus trips following the bus station improvements at the MetroCentre in Gateshead, which should be viewed as no more than a guide. The example of Mansfield is not comparable to the proposed bus station at The Mall. It concerned the redevelopment of a public transport interchange where the bus station was directly linked in to the railway station and was within walking distance of the town centre. It addressed operational and personal safety issues at the old bus station and was combined with an increase in operating hours (*Documents CD A13, paragraph 2.10; CD A19, appendix 2, paragraphs 4.16-4.17; POE 26, paragraphs 5.3.6-5.3.7; POE 27, appendix B*).
345. There is thus little evidence that the new bus station would improve levels of bus patronage and the benefits of such measures are far from certain. Just because it would be an expensive facility does not mean it would achieve any significant modal shift.

## Travel Plan

346. As the development would generate significant amounts of movement, paragraph 36 of the Framework indicates that it should provide a Travel Plan.

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<sup>58</sup> This point was made by Mr McCartney in cross-examination by Mr du Feu.

The Framework defines this as a long-term management strategy. The PG advises that monitoring requirements should only cease when there is sufficient evidence for all parties to be sure that the travel patterns of the development are in line with the objectives of the Travel Plan. This includes meeting the agreed targets over a consistent period of time. The proposed Travel Plan fails to meet these expectations.

347. The contents and detail of the Travel Plan have become increasingly vague. The revised mode share targets now seem to be only provisional and potentially subject to change. The Applicants said it was premature to confirm what the eventual targets might be. This creates a significant degree of uncertainty and even if the provisional targets remain the eventual targets, and were met in full, the development would still result in a significant increase in car driver trips. The Applicants were dismissive of the idea of introducing mode share targets for specific modes such as walking, cycling and public transport although it remains to be seen whether that would now be done. Car sharing may be listed as a sustainable transport mode in the glossary to the Framework. However, there is a clear preference for walking, cycling and public transport as a core land use planning principle underpinning decision taking. The Travel Plan would fail to achieve this. (**Document POE 13, paragraph 2.43 & table 2.2**).
348. The S106 Agreement only provides £450,000 towards sustainable travel measures being introduced through the Travel Plan. This is made up of an initial £250,000 and only in the event that targets are not, or will not be, met would the additional £200,000 be made available. This expenditure would be administered by the Transport Review Group and if the money has not been spent by the end of the monitoring period it would be returned to the developer. The Applicants agreed to increase this from 5 to 10 years. However, they do not expect there to be any money left in the fund by that stage, and do not propose any commensurate increase in the pot of money available. It may therefore prove to be a hollow gesture if the Transport Review Group has no money left in the pot to implement sustainable transport measures or if the £100,000 sum for the monitoring and administration of the Travel Plan has already been used up (**Document INQ 51, schedule 1**).
349. There would be a number of additional measures that may be provided through the Travel Plan but the Applicants agreed that the fund was not sufficient to be able to provide for them all. It was also unclear why, as identified opportunities for sustainable transport modes, they had not been taken up at the outset of the development. The Travel Plan might be able to pay for a single bus but its route would have to be quite short and it would not be very frequent or reliable. If that were done, there would be little if anything left to spend on other measures. (**Documents POE 10, paragraph 5.24; POE 41, paragraph 9.4.7; POE 43, paragraph 3.8.2**).
350. The lack of certainty of the mode share targets combined with the limited funding and timeframe for the Travel Plan demonstrate a lack of ambition by the Applicants to address the development's reliance on car based travel.
351. For all of the above reasons, the proposals would not take up the opportunities for sustainable transport modes, even taking into account the location and nature of the site. Permitting development of this nature in this location would not be to locate development where the need to travel would be minimised and the use of sustainable transport modes would be maximised.

## WHETHER THE PROPOSAL WOULD BE SUSTAINABLE DEVELOPMENT

352. There could not be a much less sustainable form of development than this. When asked to be plain speaking while introducing the Framework to Parliament Greg Clark said:

*"In practice the policies outlined in the National Policy Planning Framework will determine, in each case, what is and is not sustainable. For example, it is not sustainable to have a shopping development outside the town centre and it is not sustainable to build in the green belt"*

The proposed development would conflict with all of the tests in section 2, which seeks to ensuring the vitality and viability of town centres. It would fail the sequential test and the impact test in all ways. It would clearly be unsustainable (**Document INQ 44, page 9**).

353. Section 2 of the Framework is within part of the document that paragraph 6 refers to as defining sustainability. Paragraph 7 refers to the three dimensions to sustainable development. In economic terms the proposals would be disadvantageous by taking trade and jobs from other centres. Thus all the alleged benefits would be moved from where the Government wants retail and town centre uses to be to where it does not. In social terms the town centre first policy helps to support strong, vibrant and healthy communities. It also helps to create accessible local services and supports social and cultural well-being. By moving all these trips to the out-of-centre Mall the proposals would be contrary to this social role of the town centre.

354. In terms of the environmental role it would be a massive disadvantage to move a large number of shopping trips from the city centre where a high proportion can be undertaken by sustainable modes. Conversely the principle appeal of The Mall to its customers is its 7,070 space free car park. Almost no-one walks or cycles and the proposed changes would not make it remotely akin to the city centre. Very few people take the bus now or would do so if the proposals were to go ahead. The Travel Plan would make little or no difference to this. It would be a development that would promote unsustainable travel behaviour, contrary to policy CS8 in the CS. This is a material consideration that weighs against the proposals in the planning balance as well as contributing to their breaching the development plan read as a whole.

## THE CASE FOR BRISTOL ALLIANCE LTD PARTNERSHIP

*BALP's case is fully set out in its evidence, including its opening and closing submissions (**Documents INQ 66A and INQ 66B**) and its supplementary submission on Callowhill Court (**Document INQ 80**).*

*The main points are:*

355. It is important to bear in mind both the scale and nature of the application proposals, which involve the development of up to 56,550 m<sup>2</sup> of main town centre uses in an out-of-centre location. At the plan making stage the CS Inspector rejecting a proposed allocation for 35,000 m<sup>2</sup> comparison goods floorspace at The Mall. He described it as being odds with the Framework, which in pursuing sustainability principles promotes a town centre first approach aimed at promoting and safeguarding traditional centres. The proposals have no support in development plan policy (**Document CD D4, paragraphs 173-184**).

356. The importance of the policy objective of promoting traditional centres is reflected in the strong wording of paragraph 27 of the Framework. This states that planning permission should be refused where an application fails to satisfy the sequential test or is likely to have a significant adverse impact on one or more of the factors identified in paragraph 26. The strength of the policy is further enhanced by the PG, which says that it is for an applicant to demonstrate compliance with the sequential test. The advice also says that compliance with the sequential and impact tests does not guarantee that permission would be granted. Local planning authorities need to consider all material considerations in reaching a decision (**Document INQ 13, paragraph 2b-010**).
357. The Applicants have placed much emphasis on previous decisions made by the Secretary of State on proposals for main town centre uses in out-of-centre locations. It is accepted that those decisions are material and it is important to ensure consistency in decision making<sup>59</sup>. However, statements applicable to the facts of one case cannot necessarily be translated into statements of general principle or used to add a gloss to published planning policy. The Secretary of State should be mindful of that danger and make the decision on this application on its merits and applying his policy and that of SGC.
358. The application proposal would be the very antithesis of the sustainable development that planning policy seeks to promote and facilitate. It would be a very large scale extension to an existing out-of-centre shopping mall in an unsustainable location. There are very few of the attributes of a centre, such as good transport connections, cultural and civic facilities or a night time economy.
359. In addition, if planning permission was granted work on a very important city centre investment at Callowhill Court would cease. This is being promoted by one of the UK's largest investors in town and city centres, and is located in a major centre ranked 12th in the UK. It may be said that the town centre first policy has not come under such a serious challenge before. It is a clear case where a decision to grant planning permission would have a very serious adverse impact on a planned investment. There would also be the serious risk that no major city centre investor would be able to rely upon the Secretary of State's statements that he will follow a town centre first policy (**Document CD L10, page 11**).

## **PLANNING POLICY CONTEXT AND APPROACH TO DECISION MAKING**

360. The development plan comprises the CS and the PSP Plan. Neither of these plans identifies the application site as being in a town centre. Whether as the Applicants contend the application site is identified as being suitable for hotel use under policy CS26 as part of the CPNN, it is clear that it is not allocated for main town centre uses, let alone over 50,000 m<sup>2</sup> of such uses (**Document POE 2, paragraphs 3.21, 4.3**).

## **POLICIES CS 14 AND PSP 31**

361. Policy CS14 of the CS and policy PSP31 of the PSP Plan seeks to ensure that new investment in main town centre uses is directed into the town and district

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<sup>59</sup> As established in *North Wiltshire District Council v Secretary of State for the Environment and Clover* (1993) 65 P&CR 137.

centres. Clearly the application scheme would not achieve this objective. However, the Applicants argue that criterion 4 of policy CS14 makes provision to allow for circumstances in which that objective cannot be met. Such a construction is not consistent with the fact that the criteria are set out as the means of achieving the objective (**Documents CD D3, pages 80-81**).

362. Paragraph 7.58 of the PSP Plan indicates that a revised retail need figure will be established for the period after 2021 through a new local plan. In the interim any additional proposals to meet such retail need will be considered against the strategy for retail development and investment for centres and national policy related to sequential and impact test requirements. The Applicants agreed<sup>60</sup> that the strategy being referred to is set out within policy PSP31 and is not limited to the application of the sequential and impact tests. Also that the requirement is that proposals such as the current application should be considered against the strategy and against the impact and sequential test requirements contained in the Framework (**Document CD D5, pages 104-107**).
363. The strategy in policy PSP31 is that development proposals for main town centre uses will be directed to town and district centres, identified on the Policies Map. It is relevant to note that the word 'primarily' was deleted from the draft policy. It was agreed that the application proposals would not fulfil that element of the strategy<sup>61</sup>. The policy must be considered as a whole but the failure to fulfil its main thrust, which is to direct proposals for main town centre uses to identified centres in the district, is a significant conflict with the strategy set out in policy PSP31.
364. The proposal is contrary to policy CS14 and to PSP31, primarily because it fails to achieve the objectives set out in CS14, and the strategy set out in PSP 31. Alternatively, if that argument is rejected, the proposal is contrary to the policies because it fails to satisfy the sequential and impact tests.

#### **WHETHER THE DEVELOPMENT PLAN IS SILENT OR OUT OF DATE**

365. The Applicants argue that the development plan is silent because it does not allocate sufficient sites to meet the full requirement of 34,000 m<sup>2</sup> of comparison goods floorspace by 2026. They also refer to the fact that the policy does not make provision for wider regional needs even though they fail to quantify what such needs may be. Policy CS14 is clear that the distribution of this floorspace will be through the PSP Plan or a review of the CS or new local plan. That was an approach endorsed by the CS Inspector who advocated that the matter should be addressed in that way (**Documents CD D4, paragraph 183; POE 2, paragraphs 3.14-3.19; POE 15, paragraph 4.132**).
366. Paragraph 7.58 of the PSP Plan indicates that a revised retail need figure for the period after 2021 will be established and confirmed as part of the new *Local Plan for South Gloucestershire*, which is scheduled for adoption in 2019. SGC does not take the same view as the Applicants and correctly does not consider that the plan is silent. There is specific provision for addressing the need arising after 2021, namely in a later plan. That is the case in relation to both local and regional need as is so stated in paragraph 7.58 of the PSP Plan.

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<sup>60</sup> These points were agreed by Mr Roberts in cross-examination by Mr Cameron.

<sup>61</sup> That point was agreed by Mr Roberts in cross-examination by Mr Cameron.

In any event as a result of recent planning permissions there is little further provision to be made to meet the identified South Gloucestershire need to 2026 (**Documents POE 30, paragraphs 2.49, 5.2; POE 56, paragraph 1.7**).

367. Even if the development plan was considered to be silent, it would make no difference in this case. The relevance of the plan being silent is to engage the second bullet point under decision making in paragraph 14 of the Framework. The sequential and impact tests are specific policies in the Framework that indicate that development should be restricted.
368. SGC is unable to demonstrate a five-year supply of deliverable housing sites. As a result relevant policies relating to the supply of housing are deemed to be out-of-date. However, housing is a small component and the approach to be taken to paragraph 14 of the Framework when determining the application should be not governed by the housing land supply position (**Document POE 30, paragraph 5.2**).

## **RETAIL ISSUES**

### **THE SEQUENTIAL TEST**

#### **The approach**

369. The relevant policy is found in paragraph 24 of the Framework. The meaning of "suitable" and "available" is a matter of law. The Applicants consider that whilst a sequentially preferable site need not be capable of accommodating exactly the same development as being proposed it must still be able to accommodate development that is closely similar. However, that is not consistent with the interpretation of paragraph 24 arrived at by the High Court in *Aldergate Properties*. Here, suitable and available was held to mean for the broad type of development that is being proposed by approximate size, type, and range of goods. That is different to asking whether a site could accommodate a scheme that is closely similar. The Secretary of State in his Tollgate Village decision considered whether a site was closely similar. However, it is the courts that determine the meaning of the words used in a policy and have done so in relation to paragraph 24 of the Framework in *Aldergate Properties* (**Documents CD N6, paragraph 35; POE 3, appendix 1; INQ 45, paragraph 13 DL**).

#### *Viability*

370. In contrast to the plan making stage referred to in paragraph 23 of the Framework, viability is not stated to be a consideration in the determination of planning applications. That omission is significant given that the Secretary of State's previous policy had required consideration to be given to this matter. Even then though the advice indicated that it would rarely be necessary to carry out a detailed viability appraisal. Where a site was being actively promoted for new development by a developer or retailer that is to be taken as a reasonable indicator that the location is viable. If viability is to be considered that approach holds good (**Document INQ 8, paragraphs 6.37, 6.49, 6.50**).
371. As viability is omitted from the policy test, it is not a primary consideration and can only be relevant insofar as it relates to availability or suitability. The Inspector in Rushden Lakes considered that suitability and availability necessarily includes consideration of deliverability/viability implying that viability was relevant insofar as it goes to the issue of whether a scheme is likely to be delivered (**Document CD N1, paragraph 8.54 IR**).

### *Availability*

372. In *Lionbrook* it was established that the appropriate timescale for the application of the sequential test is a matter of judgment for the decision maker. In the *Rushden Lakes* decision the Secretary of State concluded that available in terms of paragraph 24 of the Framework means currently available. That was a finding in relation to that case and cannot be taken to depart from the principle that judgement must be exercised by the decision maker (**Documents CD N1, N1 paragraphs 17 DL, 8.55 IR; CD N7, paragraph 171**).
373. If town centre and out-of-centre applications had to be available within precisely the same timescale all that would be necessary to comply with the sequential test would be for the out-of-centre application to be made first. Such an approach would defeat the object of the policy as town centre sites are likely to involve more complex issues and take longer to bring forward.

### *Suitability*

374. It is the suitability of the site that is to be considered, not whether a particular planning application is likely to result in the grant of planning permission. The policy in paragraph 24 of the Framework is not prescriptive. *Warners Retail* established that the bounds to set upon the applicant's preference and intentions as to format and scale will depend on the facts and circumstances of the case (**Document CD N5, paragraph 30**).

### **Application of the approach to the facts of this case**

375. The issue to be considered is whether a particular site is suitable and available not whether a particular scheme is likely to be acceptable or proceed within a particular timescale. Therefore consideration of the *Callowhill Court* development, including its viability, is addressed in the section on the impact on planned investment in paragraphs 397-440 below.
376. Most of the evidence on whether the *Callowhill Court* scheme is suitable and available for the broad type of development proposed in the application has been given by consultants expressing professional opinions. It is only BALP's witness whose role is to take investment decisions not only generally but specifically in relation to *Callowhill Court*<sup>62</sup>. The combination of this evidence and the actions that BALP has taken could not make it clearer that the site is both available and suitable.
377. The onus is on the Applicants to demonstrate compliance with the sequential test and it is important that they adopt the correct approach. The closely similar test in their assessment is not based upon the correct interpretation of the policy. The analysis is therefore based upon the wrong test.

### *Particular Market and Locational Requirements*

378. As was found in *Aldergate Properties*, the fact that the application is for an extension to an existing facility does not, of itself, justify the conclusion that there is no need for a sequential assessment. The PG does contemplate that there may be market and locational requirements to justify an argument that a proposal can only be accommodated in a specific place. However, it requires robust justification to be provided. Land ownership does not provide such

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<sup>62</sup> Mr R Dobson, Director for Retail Development at Hammerson.

justification (**Documents CD N6, paragraph 43; INQ 13, paragraph 2b-011**).

379. In the present case it is argued that the area of search should not extend to Bristol city centre as the application proposals have particular market and locational requirements, which mean that they can only be located at The Mall. This is not a position that is supported by SGC and there is not robust evidence to justify such an approach (**Document POE 18, paragraph 5.9**):

379.1 Market evidence:

379.1.1 The Applicants' evidence is limited. It comprises two letters from retailers saying that they wish to be represented in the city centre and at The Mall and a list of existing retailers at The Mall that also have outlets in the city centre (**Document POE 3, appendix 3, pages 92-94, 100-102**).

379.1.2 In contrast Jones Lang LaSalle Ltd has produced evidence of discussions with retailers who have already decided that they wish to have outlets at either The Mall or the city centre but not both (**Document POE 51, appendix 5**).

379.1.3 There is no robust market evidence to justify concluding that The Mall's market is different from that of the city centre. As a result, market factors do not justify excluding the city centre from the area of search.

379.2 Locational evidence:

379.2.1 The Applicants have sought to exclude the city centre from the area of search even though it lies within zone 1, which is part of the core catchment for The Mall (**Document POE 2, paragraph 4.48**).

379.2.2 The Applicants' retail assessment shows comparison goods trade draw from zones 1,2,3,4, and 9 are very similar for The Mall and Bristol city centre. There is no basis to support their argument that the proposed development at The Mall would be location specific.

### *Availability*

380. The issue is not whether the Callowhill Court site is available but when the site will be cleared of existing development. After all most of it has been allocated in a development plan for the period to 2026 for the very type of development under consideration.

381. There is little disagreement with the Applicants on the issue of timescale. It is agreed that the alternative site should be available on approximately the same timescale as The Mall application. The Mall development is anticipated to start on site in June 2020. The question to be considered is therefore, whether the Callowhill Court site is likely to be available for re-development around that time. However, in considering that matter it is important not to be too prescriptive. If too strict an approach to the timetable were to be taken the whole purpose of the policy would be defeated. This is to plan for development to go to commercially realistic allocated sites and to discourage to the point of refusal development on sites such as The Mall as reasoned in *Aldergate* (**Document N6, paragraph 36**).

382. Complex city centre redevelopment proposals take time to bring forward and a programme cannot be set out with any degree of certainty. However, to rule a site out merely because there has been or may be slippage in the programme would defeat the object of the policy. It is expected that the Callowhill Court development will start on site in the summer of 2020 (**Document POE 46, paragraph 6.9**).
- 382.1 Following the decision to defer the planning application in September 2017, discussions have taken place with BCC, which has resulted in some amendments to the Callowhill Court proposals (**Document INQ 80A, paragraph 3.1**):
- A reduction in car parking from 580 to 380 spaces;
  - A revised access into the development from Bond Street;
  - Reduction in height of blocks on Bond Street and Merchant Street;
  - The provision of a new pedestrian link to Bond Street.
- 382.2 On 10 January 2018 BCC resolved to grant outline planning permission, subject to a S106 Agreement. A draft is being negotiated with BCC and is expected to be concluded by 16 February<sup>63</sup> (**Document INQ 80A, paragraphs 3.3-3.6**).
- 382.3 It is correct that the revised parameter plans are based on Ordnance Datum. However, this does not mean that the dimensions of the building masses have also significantly changed. This is because the original parameter plans showed the height of the buildings from a lower reference point. There is not a general reduction in height as suggested by SGC. The reductions that have taken place are at the upper levels and sufficient mass remains to provide a broadly similar floorspace to The Mall proposals (**Document INQ 80B**).
- 382.4 The development agreement is being discussed with BCC. Its provisions will follow the principles that were contained in the renegotiated head lease granted by BCC on 30 June 2017. This contains the principles for the redevelopment of the site, including the mechanism for calculating the new rent following redevelopment. Final heads of terms are to be agreed shortly and the draft agreement is due to be agreed in final form by summer 2018. The compulsory purchase indemnity agreement is in draft form and being discussed with BCC (**Document INQ 80A, paragraphs 4.1-4.3**).
- 382.5 BCC has already agreed, in principle, to exercise CPO powers. It is expected to obtain vacant possession by summer 2020. A two year period from making the CPO to possession is reasonable given the experience with other CPOs (**Document POE 56, paragraphs 1.53-1.55**).
383. This programme is realistic and achievable. When considering availability in terms of applying the sequential test it is important to remember that it is the availability of the site and not progress with the planning application that is the determining factor. Design details both to discharge reserved matters and to meet retailer requirements, can be progressed at the same time as the CPO

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<sup>63</sup> Inspector's Note: It is not known at the time of writing whether the S106 Agreement has been completed or not.

process, as can obtaining other consents.

384. SGC has been advised that the programme is likely to slip and vacant possession will not be until 2022. That is not accepted but, even if it were, the Secretary of State would still have to consider whether the site was available for the purposes of paragraph 24 of the Framework, having regard to the particular circumstances. The timescale for the application of the sequential test is a matter of judgement for the decision maker. That judgement must take into account all the relevant circumstances. In this case they include that the site is allocated in a plan for the period to 2026 and also the complexity of the development. Callowhill Court is likely to be available in the summer of 2020. However, to decide that the site for such a major scheme was not available because it might take six months or even up to two years longer than the application scheme before work could start on site would defeat the object of the policy.

### *Suitability*

385. The issue is whether the Callowhill Court site is suitable for the broad type of development that is proposed in The Mall application by approximate size, type, and range of goods. There is no dispute that the site is suitable in relation to type and range of goods. The main disputes relate to approximate size and deliverability. The latter matter is dealt with when considering impact on planned investment. It is concluded there that the Callowhill Court scheme is deliverable.
386. In considering whether the Callowhill Court site is of the approximate size needed to accommodate the broad type of development proposed in The Mall application it is necessary to decide whether account should be taken of existing floorspace. In order for the Callowhill Court site to come forward for development there is no dispute that the existing uses will have to be displaced. Once vacant possession has been achieved, the site will have no floorspace in active use for any purpose, apart from the TK Maxx and Metrobank premises. There is no site specific development plan policy or other requirement to replace the existing floorspace or to accommodate the existing occupants. At that stage there will be a cleared site. The question to be asked at that stage is whether the cleared site is suitable to accommodate the approximate size of the development proposed at The Mall. It is not whether it is suitable to accommodate what is proposed and what was previously located on the site.
387. If that is accepted the issue of the extent of any net increase becomes irrelevant as it is clear that the Callowhill Court site has sufficient capacity to accommodate 56,550 m<sup>2</sup> of main town centre use floorspace. The minimum size required to accommodate proposed blocks D, E and H (omitting the car parking) would be 2.2 ha. The allocated site is 2.3 ha and the Callowhill Court application site is 3.48 ha (***Documents POE 2, paragraph 4.46; CD G4, page 89; CD K2/C, paragraph 2.1***).
388. The upper floors of the existing retail units are not usable for trading purposes and the total usable retail floorspace is about 27,000 m<sup>2</sup>. The upper areas may be let and used for some form of storage associated with retail use. They may therefore be classed as having an A1 use but they are not in active retail use. The Applicants accepted that the upper floor space was not used efficiently but argued that if it was used for storage or staff facilities it freed up ground floor

areas for trading activities. It was suggested that 34,500 m<sup>2</sup> would be more realistic as the figure to adopt for existing floorspace. However, this figure is not based upon any measured survey or analysis of the current use of the floorspace and should not therefore be preferred. The net additional floorspace at Callowhill Court would, if the current application is approved, be 54,513 m<sup>2</sup> compared with 56,550 m<sup>2</sup> proposed at The Mall (**Document INQ 32**).

389. The question to be considered is whether the site is suitable, not whether a particular planning application will bring forward precisely the same, or even approximately the same quantum of floorspace as that proposed in the planning application under consideration. A planning application on a sequentially preferable site is, at its highest, an indication of what might be achieved on that site. It is not determinative of whether the site is suitable.
390. The Callowhill Court planning application was supported by parameter plans which show potential floor space (excluding car parking, residential and hotel uses) of 98,400 m<sup>2</sup>. The exclusion of the car parking, residential and hotel uses omits those elements of the parameter plans at higher levels, being those parts which are likely to fall for consideration when the further studies, including heritage and tall buildings are undertaken. The 98,400 m<sup>2</sup> can be compared with the 74,000 m<sup>2</sup> assumed when undertaking the floorspace calculations (**Documents POE 46, paragraph 6.6; INQ 32**).
391. It is clear that on any of the following alternative bases, the Callowhill Court site is suitable in terms of approximate size:
- 391.1 Its site area of 3.48 ha exceeds the 2.2 ha figure required in the Applicants' sequential search.
  - 391.2 If it is not appropriate to take existing floorspace into account, the site is suitable based on all of the Applicants' assumptions.
  - 391.3 If it is necessary to replace existing floorspace:
    - 391.3.1 If the floorspace calculation is based on usable floorspace of just under 27,000 m<sup>2</sup>, the Callowhill Court planning application would provide a 54,513 m<sup>2</sup> net increase. This gives a strong indication that the site is suitable (**Document INQ 32**).
    - 391.3.2 Even if the Applicants' calculation for existing floorspace of 34,500 m<sup>2</sup> is accepted a net addition of 47,000 m<sup>2</sup> could be provided. Given the nature of the scheme, in particular that the range and type of goods can be accommodated, this should be considered approximately the same size as the 56,550 m<sup>2</sup> proposed at The Mall.
    - 391.3.3 Further and alternatively the parameter plans show how a larger extent of floorspace can be accommodated. If the full extent of the floorspace allowed for, which amounts to 98,400 m<sup>2</sup> gross excluding car parking, hotel and residential uses were to be utilised, the net change would exceed the 56,550 m<sup>2</sup> proposed at The Mall.
392. It is clear that whether the existing floorspace is taken into account or not, the Callowhill Court site is suitable. The Applicants have failed to demonstrate that the sequential test has been satisfied and in accordance with the policy set out in paragraph 27 of the Framework, planning permission should be refused.

## THE RETAIL IMPACT TESTS

### Impact on vitality and viability

393. The evidence of BCC is being relied on in respect of this issue. The principal areas of dispute are the extent of the adverse impact and whether any such impact would be significant. In order to resolve those matters of dispute it is necessary to consider existing conditions in terms of the health of the city centre and the quantitative assessment of likely impact. In relation to the extent of likely impact, one of the main issues in dispute is whether account should be taken of internal impact on The Mall. If the Applicants' view is rejected the £36.53m assumed to be drawn from existing shops at The Mall would have to be drawn from elsewhere and the impact on existing centres would be exacerbated (**Documents POE 32, appendix 2, table 19; INQ 13, paragraph 2b-017; INQ 30, paragraph 1.2**).
394. In resolving this point, account should be taken of the commercial and real world perspective offered by the proposed Callowhill Court development. That scheme is expected to enhance the long term performance and sustainability of the combined asset with Cabot Circus. The two would be linked by the Glass Walk. The current trend is for extensions to shopping centres rather than new centres. Owners would not promote such development if the existing centre was expected to decline. The Applicants' commercial view is that whilst there would be some losses and some gains to the turnovers of existing occupiers of The Mall as a result of the proposed extension, on average turnovers would be likely to stay about the same<sup>64</sup>. This confirms that net internal impact would be unlikely to occur (**Documents POE 46, paragraph 7.7; POE 48, paragraph 3.5; POE 51, page 9**).
395. Whichever trade diversion figures are considered, there is no doubt that there would be an adverse impact on Bristol city centre. The issue is whether this would be significant. The Applicants argue that an important indicator is whether the predicted overall turnover of a centre in future years exceeds the overall figure in the baseline year. Although such a comparison has been taken into account in previous appeal decisions, it is heavily dependent on predicted growth assumptions, and fails to take into account relative performance of a centre, which is a factor capable of being reflected in its vitality and viability (**Document CD N1, paragraphs 24 DL, 8.86 IR**).
396. A dual representation condition has been suggested but there is no assessment to demonstrate that this would reduce the assessed impact. Such a condition would not overcome the adverse impacts identified. In particular it would have no effect on retailer demand over the longer term as it would only be operable for a period of 5 years. Once the adjustments have been made to remove the internal impact effect, on either assessment there would be likely to be a significant adverse impact on Bristol city centre (**Document INQ 39**).

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<sup>64</sup> In cross examination by Mr Ground, Mr Acton said that most existing tenants in The Mall would not lose more than 7.2% turnover as a result of the proposed extension. He named Essential, F Hinds and H Samuel as value orientated outlets that may be bigger losers. He said that on average throughout the site he thought that turnovers would stay about the same.

## Impact on planned investment

397. There is no dispute that the Callowhill Court site lies within the catchment area of the proposals. There is also agreement that for an investment to fall into the category of planned investment, it does not have to be of the same or similar size, scale or type as the proposal. Further it is agreed that for an investment to fall into the category of planned investment it does not have to be anticipated that it will proceed at the same or at a similar time to the proposals<sup>65</sup>. The issues in dispute in this case are whether sufficient progress has been made on the scheme for it to be considered a planned investment and whether it is likely to be deliverable.

### *The Approach*

398. The issues in dispute turn on the application of planning policy to the facts. As a result it is first necessary to understand the policy, which is set out in paragraphs 26 and 27 of the Framework. Paragraph 26 refers to existing, committed and planned investment. These are three separate and distinct categories. Once the point of no return is reached the investment becomes committed. Planned investment is not committed and is a description of the stage of investment which precedes commitment. Paragraph 26 provides no further description of planned investment. The PG sets out three key considerations in the assessment of impact on town centre developments or investments that are in progress. The PG does not though set out a particular approach that is to be followed in every case (**Document INQ 13, paragraph 2b-016**).

399. There is nothing in the Framework or PG to indicate that in order for an investment to be a planned investment for the purposes of the application of the policy it has to be at a "very advanced stage". To add such a test would be an unwarranted addition to the words of the policy. That is not to say, that in a particular case, it might be right to decide that the investment had not reached a very advanced stage and for that to be a relevant factor to be taken into account. The Applicants seek to rely on the Scotch Corner and Tollgate Village decisions to advance the argument that, despite the absence of such words in the policy documents themselves, a proposal has to be at a very advanced stage in order to be considered to be planned investment.

400. However, these decisions both concerned investments that were at a far less advanced stage than the Callowhill Court proposals. In the Scotch Corner case no existing, committed or planned investment had been identified in Darlington town centre and no development partner had been identified for the site in Northallerton. In the Tollgate Village case the council's development partner had withdrawn so there was no developer and no confirmed scheme. The Secretary of State may well have been justified on those facts but that does not establish a principle of general application (**Documents CD N2, paragraphs 13 DL, 11.16, 11.17, 11.19 IR; INQ 45, paragraphs 18 DL, 12.4.35, 12.4.36 IR**).

401. Progress on an investment is plainly relevant to the exercise of judgement as to whether that investment can be considered to be planned, and the weight to be given to it. The PG refers to the progress made towards securing the investment as a key consideration. However, that cannot justify the application

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<sup>65</sup> These points were agreed by Mr Clarke and Mr Wilks in cross-examination by Mr Cameron.

of a universal test that, in order to be considered to be planned, investment must always be at a very advanced stage. Even if the Secretary of State considered that in order to be planned the investment must be at a very advanced stage that could only be in relation to the planning and not the project itself as the Applicants contend. This approach is inconsistent with the wording of the policy, which distinguishes between existing, committed and planned investment.

402. The viability of the planned investment is not referred to in the Framework or the PG. The Tollgate Village decision did not refer to viability but rather made the point that if the planned investment in question was unlikely to come forward it was immaterial whether the Tollgate Village scheme went ahead or not. Essentially it was being said that there is no point preventing out-of-centre development on the basis of impact on planned development in the centre if that latter development is never going to happen. That is very different from saying that the city centre site must be subject to detailed financial appraisal. Applying this approach does not require consideration of detailed viability assessments. It requires the decision maker to ask whether impact on the town centre investment can be disregarded as it is unlikely to go ahead. It is of note that in the Rushden Lakes decision, the Secretary of State considered, but did not adopt or endorse, the Inspector's reasoning where he referred to viability when considering planned investment (**Documents CD N1, paragraphs 20 DL, 8.64(v) IR; INQ 45, paragraphs 18 DL, 12.4.33 IR**).
403. Paragraph 27 of the Framework provides clear advice. If an application is likely to have a significant adverse impact on planned investment it should be refused. There is no issue that the word "likely" in this context means "more probable than not" as the Applicants contend. Impact on planned investment is not limited to a consideration of impact on current and forecast turnovers. The PG also includes operator demand and investor confidence as relevant factors (**Document INQ 13, paragraph 2b-010**).

*Whether sufficient progress has been made for Callowhill Court to be considered as a planned investment*

404. In terms of the policy status of the investment, the redevelopment of Callowhill Court for mixed use retail-led development has clear support in the development plan. The Bristol Core Strategy supports such development and a 2.3 ha site described as Horsefair/Callowhill Court is allocated in the BCAP under policy BCAP 36. It is a text book example of positive planning. The fact that the site of the Callowhill Court planning application is larger than the allocated site does not detract from that strong policy support (**Documents CD L2, page 36; CD G4, pages 57, 89; INQ 13, paragraph 2b-010**).
405. In considering the progress made towards securing the investment it is important to bear in mind the purpose of the policy. This is to restrict out-of-centre developments which will prevent, or are likely to prevent, desirable and beneficial city centre schemes coming forward. It would frustrate the objective of the policy if an out-of-centre scheme were to be granted planning permission merely because the city centre scheme had not reached some particular stage in its progress. No doubt that is why the PG does not refer to any particular stage in the progress of the planned or committed investment. In this case the progress under consideration is towards securing the investment and necessarily the investment will not therefore have yet been secured.

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406. The Secretary of State is specifically requested to consider whether granting planning permission for application proposals at The Mall would be likely to frustrate a desirable city centre investment. The Secretary of State is asked to form a view on that issue applying the policy in the Framework and the advice in the PG and not determining it in a legalistic manner solely by the application of some "very advanced stage" test, which does not appear in the policy. The reference in the PG to contracts being established is only an example. In any event it is more relevant to committed than to planned investment. The essence of planned investment is that contracts have not been entered into although in this case a contract that contemplates redevelopment has been completed, namely the re-gearing of the head lease.
407. The Applicants argue that progress is to be considered based upon tasks not time. Analysis of tasks yet to be performed is plainly relevant, but so equally is the time taken to perform past and future tasks as it allows progress to be assessed. It is relevant to consider whether they have to be undertaken consecutively or whether they can be undertaken concurrently. Substantial progress has already been made, and there is a clear forward plan. The combination of past progress and intended actions is a powerful demonstration that the plan is both underway and likely to be brought to fruition.
408. The tasks which have already been undertaken demonstrate that very significant progress has been made. Substantial funds have been expended since redevelopment of the site was first considered when preparing the BCAP. The process, of planning the investment, began with the household surveys in 2012 followed by the BCCRS in 2013. The preparation and adoption of the BCAP in 2015 shows substantial progress in a plan-led investment (**Documents CD G4; CD G6**).
409. BALP have also demonstrated financial commitment to the investment. In July 2016 they acquired the long leasehold interest in 53-55, The Horsefair. They also undertook negotiations with BCC to rationalise the long leasehold interests on the existing estate. The substantial financial expenditure, demonstrates their commitment to progressing the scheme. Although re-gearing the headlease would have been beneficial in terms of asset management there was no need to do so merely in order to maintain the status quo. A commercial organisation would not pay £4m to re-gear the headlease for no purpose. The terms of the headlease were negotiated and settled in contemplation of redevelopment. The terms relating to ground rent relate to the pre-redevelopment, redevelopment and post redevelopment periods (**Documents POE 7, appendix 8, paragraph 2; POE 46, paragraphs 7.2, 7.3; INQ 21**).
410. The planning application was submitted in December 2016. There was a resolution to grant outline planning permission in January 2018. That resolution demonstrates progress with the planning application.
411. The very nature of a planned investment is that further actions need to be taken. A "to do" list is therefore an essential part of any planned investment. The Applicants suggested that a number of steps had yet to be taken in order to progress the Callowhill Court scheme before the "moment of no return" is reached (see paragraphs 61 and 72 above). At one stage the Applicants suggested that the public procurement process would have to be followed in relation to the development agreement. They have subsequently indicated that they do not dispute that if the development agreement takes the form contemplated, then an Official Journal of the European Union procurement

process would not be necessary and there would be no delay as a result of the need for a public tender process. The development agreement would not include works required or specified by a contracting authority with an enforceable obligation to carry out such works. There would be certain milestones specified subject to financial viability tests but a particular work or works would not be specified and a procurement process would not be required (see paragraphs 61.5-61.6 above) (**Document INQ 31**).

412. In any event it is not being said that the investment would necessarily move from being planned to being committed when the development agreement is entered into. The "moment of no return" arrives when, amongst other things, a satisfactory tender for the building contract is returned. The development agreement is a very late step on the way to commitment but not necessarily the point of no return.
413. It is not the length of the "to do" list that is determinative but the substance of the tasks to be completed and the likelihood of any perceived difficulties being overcome, which is important. The judgement on those issues has to be made in the light of the nature of the scheme. The steps set out in the list are not unusual for a city centre project of the type planned for Callowhill Court.
414. Obtaining the necessary permissions, approvals and consents:
- 414.1 Although all applications will have to be considered on their merits, the fact that the city centre proposal is supported by strategic and site specific policies means that, in a plan-led system, there is every reason to suppose that after appropriate negotiations and resolution of issues all necessary approvals will be obtained. SGC said that it was not making points about the merits of the Callowhill Court scheme but that is what it proceeded to do. The matters raised require the exercise of judgements and these are to be made by BCC as local planning authority.
- 414.2 Some issues, such as impact on heritage assets and the application of the tall buildings policies are to be considered later in the decision making process. That is an entirely proper approach and does not cause any insuperable issues. A further environmental statement or an addendum could be submitted with any reserved matters application, or if not submitted could be requested by BCC. SGC provided extensive evidence relating to impacts on amenity arising from the loss of sunlight and daylight. This again is a matter to be considered by BCC. Even a short examination of the analysis demonstrates that the likely effects, even based upon an assessment of the full extent of the parameter plans are no more than one would expect in a city centre. SGC's evidence suggested that three of the ten neighbouring properties assessed would be likely to be significantly adversely impacted. However, the methodology and judgements are not fully explained or transparent and the analysis should be treated with extreme caution (**Documents POE 19, appendix 9, paragraphs 6.9, 6.10; INQ 26, paragraph 6.10; INQ 66B, paragraph 160**).
- 414.3 It is clear that substantial progress has been made towards gaining outline planning permission, and there is no reason to conclude that this and the other approvals and consents will not be obtained.

415. Securing vacant possession:

- 415.1 Steps have already been taken to facilitate the securing of vacant possession by acquiring leases and re-gearing the headlease. 68% of the units have leases with break clauses that expire before 2020, or are vacant or vacating. This demonstrates the progress already made but also shows that the focus of future action will be on the 32% of units which do not fall in those categories. BALP's existing relationship with those tenants will assist in those negotiations (**Document INQ 25A**).
- 415.2 The suggestion that the recent grant of leases to new occupiers at Callowhill Court indicates that it is not intended to proceed with the scheme appears to have been based on partial information and lack of knowledge of the terms of the leases. The leases to Itsu and HMV include break clauses and the agreement reached with Metrobank and TK Maxx allow work to be carried out around those premises and for them to be integrated into the new scheme.
- 415.3 SGC has concluded that if vacant possession is required within the required timescales a CPO is likely to be necessary. It takes a pessimistic view on the prospects of success but in any event considers that 2022 would be the earliest this could happen. This is based on limited and incorrect information relating to viability and intent to proceed with the scheme. Attempts to negotiate can proceed at the same time as a CPO and the Secretary of State will not wish to prejudge the outcome at this stage. The commitment of the developer to the project and the assurance of funding will be highly persuasive when the prospect of the scheme proceeding is considered (**Documents POE 19, appendix 5, paragraph 2.5.3; POE 19 appendix 7, paragraphs 5.8, 5.24, 5.26-5.29, 5.35; INQ 23, paragraphs 2, 14**).
- 415.4 The willingness of BCC to exercise its compulsory purchase powers is a very significant step. It demonstrates that interests are likely to be able to be acquired so that occupiers or leaseholders could not frustrate development. Based on the experience on other sites such as Brent Cross, the use of compulsory purchase powers brings people to the table. It is acknowledged that the resolution passed by BCC is subject to the satisfaction of various conditions, which is to be expected when a responsible authority passes such a resolution. The making of a general vesting declaration (or service of notices to treat) is not some unusual or additional step but rather a necessary part of the process. Once the CPO has been confirmed it is the step that gives effect to the order. (**Document POE 40, appendix R1**).
- 415.5 Any rights to light are, in appropriate circumstances, capable of enforcement by injunction. In this case any threat of an injunction can be overcome with relative ease. If BCC acquire the Callowhill Court site for the planning purpose of facilitating the development, whether compulsorily or by agreement, and if they appropriate interests they already hold for planning purposes, any rights to light will be overridden. Compensation will be payable for any diminution in value suffered by the owners of those rights. SGC's evidence on the matter is based upon a cursory review and does not even include analysis of whether rights to light have been reserved by superior landlords, such as BCC. It assumes that the override powers conferred by section 203

of the Housing and Planning Act 2016 are not engaged. Two of the major factors which determine whether an injunction would be sought or granted have not been considered (**Documents INQ 66A, pages 56-62; POE 19, appendix 9, paragraphs 3.6, 3.13**).

416. Achieving the required level of pre-lets:
- 416.1 One would not expect the details of retailer requirements or the level of pre-lets to be established at this stage. These matters will be addressed in due course as the scheme develops.
- 416.2 If the proposed extension to The Mall does not proceed, there is no reason to suppose that the target level of pre-lets will not be met<sup>66</sup>.
417. Many of the steps identified, such as submission of the details pursuant to reserved matters conditions, evolution of the design, and the CPO process can be carried out concurrently. It is relatively easy to draw up a list of steps that still need to be taken, particularly when a complex city centre scheme is under consideration. However, the real issue to consider is the degree of progress that has already been made and not to seek to identify as many difficulties as possible. Substantial progress has been made and the Callowhill Court scheme is well on its way to realisation. It is at a very advanced stage of planning.

*Whether the Callowhill Court development is likely to go ahead*

418. The RICS Guidance indicates that in undertaking scheme-specific viability assessments, the nature of the applicant should normally be disregarded. However whether the Callowhill Court development is likely to go ahead does not turn on a conventional viability exercise. In any event the RICS guidance itself, through its use of the word "normally" does not rule out taking into account the characteristics of a developer. If such characteristics are of relevance to the question of whether development is likely to proceed it would be wrong not to have regard to them (**Document INQ 22, page 5**).
419. In this case the intended developer is known and also owns Cabot Circus. The optimum size for a regional shopping centre with a food and beverage offer of about 20-30% of the total would be about 139,000-162,500 m<sup>2</sup>. If the proposed scheme at Callowhill Court and the existing developments at Cabot Circus and Quakers Friars were combined that level of floorspace would be roughly achieved. Taking account of the current market in retail investments, it is highly likely that the estate will be retained as a single entity. That is reinforced by the fact that redevelopment of the Callowhill Court site offers the opportunity to increase the overall food and beverage offer overall to a level that will enhance shopper experience and meet modern requirements.
420. BALP's position is not that of a trader developer seeking to acquire and develop a city centre site for disposal. The partners are both long term investors who do not judge the potential investment in the short term in the way that a trader-developer would. They also take account of the fact that their existing investment is outmoded and in need of redevelopment (**Document POE 50, paragraphs 4.8-4.10**).

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<sup>66</sup> Mr Ground asked Mr Acton in cross-examination whether he would foresee a problem letting units in the new Callowhill Court scheme if the application proposals did not go ahead. Mr Acton did not think that there would be an issue with obtaining lettings but thought that the scheme would be designed to accommodate occupier demand.

421. Hammerson is a 50% partner and the asset is held by them in a Real Estate Investment Trust (REIT). A REIT has to carry out a property rental business with at least 75% of the group's profits being derived from a property rental business. A REIT is obliged to distribute 90% of its tax-exempt profits to shareholders. A REIT will not make decisions on the same basis or in the same way as a trader-developer would. It is not necessary to seek bank funding as there are corporate funds available. There is not therefore the constraint of hurdle rates or other conditions imposed by lenders. As a REIT Hammerson has to look at opportunities and consider where it can grow its business. There are few other opportunities available and Callowhill Court represents a fantastic opportunity (**Documents POE 48, paragraph 3.3; INQ 37**).
422. It is thus clear that BALP's characteristics are relevant to the question of whether the development is likely to proceed. Of particular relevance is their objectives and legal status and the fact that they own the adjoining Cabot Circus development. As a result, it would be wrong not to have regard to those characteristics. Recently it has been reported in the press that Hammerson is proposing to acquire INTU who are one of the owners of The Mall. The businesses are independent and will continue to be managed separately until any deal is concluded. There are a number of milestones that must be achieved before then and until that time the two remain separate legal entities and will progress matters in their own best interests. As such BALP will continue with its proposals for Callowhill Court and work with BCC (**Document INQ 80A, paragraphs 6.1-6.2**).
423. It was made plain that the investment decisions relating to Callowhill Court will not be made on the basis of the submitted conventional viability assessment<sup>67</sup>. Rather, they will be made on the basis of BALP's own internal model, which shows that the scheme will be financially viable and that the value of the new development will be well in excess of that of the land holding as it presently exists. This internal model has not been disclosed. However, it is to be expected that the internal workings, which would include assessment of individual leases to occupiers, and anticipated rental levels, will not be revealed. Were such matters made public, competitors would have access to valuable information, as would existing and prospective tenants. It is not information that any commercial organisation could make available without suffering adverse consequences. The Secretary of State should afford significant weight to this evidence, even though the financial assessments that underpin it have not been provided. This evidence was given by the Director of Retail Development at Hammerson who was the only witness at the inquiry whose job it is to make investment decisions. It is given on behalf of an alliance of two major companies, Hammerson and AXA and it is highly unlikely that they would advance a position that they could not support (**Documents POE 46, paragraph 7.6; POE 48, paragraph 3.2**).
424. The Applicants have suggested that the existing buildings at Callowhill Court could be refurbished. However, that suggestion was not supported by any

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<sup>67</sup> Inspector's Note: The viability appraisal on behalf of BALP was undertaken by Mr Prentice. However, Mr Dobson, Director of Retail Development at Hammerson made clear in his evidence-in-chief that his investment decisions would not be based on Mr Prentice's viability appraisal. He went as far as to say that Mr Prentice's work had no present or future role in the development process at Callowhill Court.

appraisals<sup>68</sup>. Refurbishment and a small extension had been considered but would not work. The upper floors are unsuitable for modern retailing as a result of floor to ceiling heights, depths and widths. The existing grid is less than 7m at Callowhill Court, which is an essential factor for assessing whether the site is suitable for modern retailing. It therefore cannot be concluded that the planned redevelopment scheme is likely to be rejected in favour of refurbishment.

### *The viability appraisals*

425. The Applicants have carried out three appraisals. The first was based on a scheme drawn by Chapman Taylor. The second was based upon the Chapman Taylor scheme with inflated floorspace figures. This sought to arrive at floorspace figures comparable to those put forward in the Callowhill Court planning application. The third was based on the Callowhill Court application scheme. Although the latter might be thought to be the most relevant and reliance has been placed on it, it was not available for scrutiny. For that reason alone the Applicants' viability work cannot be relied upon (**Documents POE 6, paragraphs 3.1-3.15; POE 7, appendices 3, 4, 5**).
426. One of the most significant parts of any viability appraisal is to assess the value of the scheme. In essence this is based upon projected rental income. Having taken a view on yield, the predicted rental stream is used to arrive at a capital sum. Initially the rental value of the Chapman Taylor scheme was assessed. This was then applied to the Chapman Taylor scheme with the additional floorspace. The estimated rental values had regard to comparable rental evidence. However, despite the fact that it was accepted that Cabot Circus provides more appropriate rental comparables than the existing Callowhill Court area, only one of the comparables listed was for a unit in Cabot Circus. Lower rents were therefore applied to the assessments (**Documents POE 6, paragraphs 3.18, 3.19; POE 7, appendices 6, 7**).
427. The Applicants subsequently accepted the Zone A rents for retail units as assessed by Jones Lang LaSalle Ltd<sup>69</sup>. It appears that the rental values were not based upon a systematic assessment of headline Zone A rents as undertaken by Jones Lang LaSalle Ltd but rather upon a judgement of the rent achievable on each unit. That judgement is not transparent, and is dependent upon an assessment of units in the precise configuration set out in the current planning application drawings. However, the planning application is only outline and it is highly likely that the configuration will change as the scheme progresses. Given the lack of transparency and lack of assessment very little if any weight should be given to rental values assumed in the Applicants' viability assessment (**Documents POE 8, paragraph 2.11; POE 51, appendix 4; INQ 33**).
428. The Applicants have assumed that there would be 80% occupancy on opening, thereby reducing the anticipated revenue. However, the objective is to achieve

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<sup>68</sup> In cross-examination by Mr Cameron, Mr Acton agreed that he had not undertaken any viability appraisal on the refurbishment. He was also unaware that the existing grid was less than 7m.

<sup>69</sup> This was revealed during cross-examination of Mr Acton by Mr Cameron. He then provided his assessment of the rental value of each unit in the new scheme but it was not explained how these figures were arrived at (**Document INQ 33**).

95% occupancy on opening. Based upon previous experience this is reasonable, for example when Victoria Gate in Leeds was opened 92.5% occupancy was achieved. At the extension to West Quay in Southampton the figure was 96%. The target is therefore reasonable and the assumption of 80% is unjustified. Furthermore, the value of the scheme was assessed by the Applicants as at the date of opening. It did not take account of the value to a longer term investor. That is not the approach of BALP who will look at the development over a five and ten year period. The clear conclusion to reach is that the analysis of value in the Applicants' viability appraisal cannot be relied upon (**Document POE 7, appendix 6, page 4**).

429. One of the main differences in the construction cost assessments of the two viability appraisals is that the Applicants rely on an analysis by Currie and Brown that makes an allowance for pre-construction cost inflation. Conversely the Gleeds figures in BALP's assessment do not and the viability analysis is based on current costs and current values as advised in the PG. The Applicants indicated that they had considered likely increases in rents and had come to the conclusion, based on their research, that there would be none. However, that research was not made available. The Gleeds figures are also more reliable because they are based on knowledge of the planning application scheme whereas the Currie and Brown figures are not (**Document POE 52, paragraphs 2.12-2.13**).
430. There is a considerable difference in the allowance for vacant possession costs. However, the Applicants' figure was reduced in acknowledgement that the sums that were allowed for two units that were not included in the scheme should be deducted. Also, for the TK Maxx and Metrobank units because they are to be incorporated into the new development. The sums allowed for compensation in the Applicants' analysis do not take into account that a number of leases expire before 2020. Compensation for those lessees would only equate to rateable value and this would further reduce the sum allowed for vacant possession (**Documents POE 7, appendix 10; POE 51, appendix 1; INQ 12**).
431. The Applicants have applied a 5% developer's contingency on all costs, including land value. Contingencies are designed to provide an allowance for uncertainty but there is no uncertainty on land value. The application of the contingency to land value is an example of the overly pessimistic approach taken by them when assessing costs.
432. For all of these reasons, but particularly those relating to value, reliance cannot be placed on the Applicants' viability appraisals.
433. The Applicants contend that a residual valuation that is not compared with the benchmark existing land value is meaningless. However, that is based upon the assumption that the developer is intending to acquire and/or dispose of land in order to carry out development or after carrying it out in the nature of a trader/developer. BALP do not fall into that category. They are not considering whether to acquire the land, and are not making a decision as to whether to develop in order to sell. BALP is a long term investor that wishes to enhance an existing asset to provide a long term income stream. For BALP the position is different. For them it is a residual valuation of the type carried out in both viability appraisals that may be meaningless or of little value.
434. The viability appraisals therefore provide the Secretary of State with very little

assistance on the question of whether the planned investment is likely to go ahead and whether the sequentially preferable site is suitable. In answering that question very great reliance should be placed on the views expressed by the person who is planning the investment, namely BALP. Their Director of Retail Development came to the inquiry and his evidence was subject to cross-examination. His evidence was clear that on the basis of his own internal appraisals he intends to proceed, subject of course to relevant approvals when milestones are reached. It would therefore be perverse to conclude that the Callowhill Court scheme should be disregarded on the basis that it is not likely to go ahead. In fact, on the evidence, the only conclusion that can be reached is that, unless The Mall proposal is granted planning permission, the Callowhill Court investment will proceed.

*Whether there is likely to be a significant adverse impact on planned investment*

435. The PG makes clear that this issue is not to be limited to the consideration of current or forecast turnovers. Operator demand and investor confidence are also of relevance. It may be thought that impact on actual investor decisions should be given much greater weight than the outcome of retail capacity exercises.
436. There has been a general trend in retailing towards fewer branches to serve customer needs, especially in higher order sectors such as fashion and footwear. This has led to a polarisation of the market so that retailers want fewer but larger well located shops in major centres. Empirical data was provided showing the changes over a period of in excess of 10 years, which demonstrates that retailers selling apparel and footwear have reduced the number of outlets to a greater extent than the reduction in floorspace. The data relating to leisure and personal goods specialist retailers demonstrates a similar trend. The trend is not universal, for example it does not apply to variety stores, department stores or luxury retailers. However much of the proposed floorspace, whether at The Mall or at Callowhill Court is likely to be devoted to apparel and footwear and leisure and personal goods (**Documents POE 50, paragraph 4.2, 4.3; POE 52, paragraph 3.3 & appendix 2**).
437. Although there are many retailers who are represented in both The Mall and the city centre, there is clear evidence that a number of retailers will decide to be represented at either one location or the other. Those whose strategy is to prefer The Mall to the city centre include Hobbs, Fat Face and Crew Clothing. Those who have already left the city centre include Build a Bear and Gap. Those who have chosen the city centre in preference to The Mall include Victoria's Secret, Monki, and COS. The fact that Next and Primark wish to be represented in both locations does not detract from the fact that the trend is for fewer larger stores, and for representation in one major regional centre (**Documents POE 3, pages 100-102; POE 51, appendix 5, pages 24-25**).
438. The fact that some operators will chose to be represented in either The Mall or the city centre reduces the pool of potential tenants for both locations. As a result the grant of planning permission for the proposed extension to The Mall would reduce operator demand for the Callowhill Court development and thereby adversely affect investor confidence in the planned investment.
439. As the Applicants observed, the impact on planned investment is not an easy matter to quantify as it involves "second guessing" investors' and lenders' decisions. In this case it is not necessary to second guess decisions likely to be

made by the investor as the BALP Board has made a clear decision as to the action to be taken were planning permission to be granted. Work on Callowhill Court would cease and no further funding would be committed to the project. On the basis of this decision it is plain that there would be an adverse impact on the city centre project. There can be little more significant impact on a planned investment than for work on it to come to a halt. That conclusion is also confirmed by looking back to the impact that arose when The Mall first opened. Between 1995 and 2007 Bristol city centre declined from 9th to 27th in the retail rankings and it took 10 years to recover (**Documents POE 2, paragraph 5.40; POE 55, appendix 3; INQ 11**).

440. The Applicants sought to question the decision of the Board of BALP on the basis that it is not further explained. Such questioning is unjustified as the evidence gave a full explanation of the BALP position. In particular, if the proposals went ahead there would be insufficient tenants to occupy Callowhill Court. The Board's approach is confirmed by the BALP viability exercise. Whilst this is highly theoretical, a 15% reduction in rental value and an increased incentive package would reduce the land value very significantly (**Document POE 50, paragraph 5.4**).

## **OTHER MATTERS**

441. The recent appeal decision relating to retail development at Kingswood, Hull is material as it involved similar considerations. Similar disputes regarding the meaning of paragraphs 24 and 26 of the Framework were addressed. In applying the sequential test the Inspector did not consider that a requirement that a scheme had to be "closely similar" provided sufficient flexibility. He also considered viability and that a "reasonable prospect of delivery" was the appropriate test to apply. In considering the suitability of alternative sites the Inspector found that one site was suitable and available to accommodate a quantity and type of floorspace that was adequately similar to the appeal proposal after accounting for flexibility in scale and format as part of a mixed use development. He also concluded that sub-division of the scheme would be appropriate in certain circumstances between two or more sites. If this degree of flexibility is to be shown then flexibility is appropriate in considering a city centre site for the proposals at The Mall (**Document INQ 80, paragraphs 5.3-5.10 and appendix 2, paragraphs 24, 26, 65, 76, 78**).
442. In terms of impact on planned investment the Hull Inspector pointed out that planned investment is not defined in the Framework or the PG. The "very advanced stage" words were used in the Tollgate and Scotch Corner decisions. However, he pointed out that the Secretary of State did not actually use or define that phrase. The Inspector considered that much depended on local facts and circumstances and his interpretation of paragraph 26 cannot be faulted and should be followed (**Document INQ 80, paragraphs 5.115.15 and appendix 2, paragraphs 125, 126, 128**).
443. The dual representation condition being proposed here was also considered by the Hull Inspector. He believed that it may not be effective in addressing the harm because there was no clarity as to which retailers would be affected and would need to enter into such agreements. Also, such a condition would only apply for a limited period and could be insufficient to encourage long term investment in the city centre (**Document INQ 80, paragraph 5.16 and appendix 2, paragraphs 151, 152**).

## WHETHER THE PROPOSALS WOULD BE SUSTAINABLE DEVELOPMENT

444. When the Minister introduced the Framework in Parliament he made plain that it is not sustainable to have a shopping development outside the town centre. The application proposals are such a development (*Document INQ 44, page 6*).
445. There is no dispute that the application proposals would result in trade diversion from Bristol city centre. The dispute turns on the extent of that impact and whether it would be significant. Whichever retail assessment is accepted, there is no doubt that there would be a negative impact as a result of trade being drawn away from the city centre. This is an accessible location by all modes of transport. Such impacts would undermine the social and economic sustainability of the centre. In addition, the adverse impact on planned investment would cause very considerable detriment to the economic well-being of the city centre (*Document POE 54, paragraphs 10.28, 10.38-10.39*).
446. The application would provide 150 residential units. However, that benefit is unlikely to be realised within the next five years and therefore the weight to be attributed to it is reduced. Any such benefit does not outweigh the negative impacts on the city centre (*Document POE 30, paragraph 5.14*).
447. The planned investment proposed at Callowhill Court would bring about significant environmental improvements to the city centre. None of those improvements would be realised were planning permission to be granted for the application proposals.

## OTHER ORAL REPRESENTATIONS TO THE INQUIRY

*The main points are:*

448. **Mrs K Cannell** is a local resident and representative of Grandparents for a Safe Earth. This group is based in the Bristol and South Gloucestershire area but has links with other national and international grandparent groups with similar aims. They are an active member of the Climate Coalition and the main aim is to ensure that the earth's ecosystems remain as intact as possible for future generations to inherit. There is an increasing threat of climate change to global prosperity, security and well-being. Meeting more ambitious goals will be challenging and will require policies to accelerate low carbon technologies and promote greater energy efficiency. The South Gloucestershire Climate Change Strategy (2013) and the Low Carbon Plan Progress Report (2015) includes targets to reduce carbon emissions and increase the generation of renewable energy. Priorities to deliver these targets includes the reduction of transport energy and carbon emissions from transport; the growth of low carbon and local businesses in the district; the promotion of neighbourhood energy planning and community action for low carbon living.
449. The application proposals would be contrary to all three of the above priorities. They would inevitably generate more transport energy use and carbon emissions. Transport is responsible for rising greenhouse gas emissions. The new buildings would lock in carbon emissions for the life of the development. The proposals would be dependent on increased levels of consumption, which is a primary driver of economic growth. Growth is destroying much of the renewable aspects of the earth and using more that is non-renewable. This will result in injustice to future generations. The proposals would not conform to the Paris climate change agreement, which aims to keep temperature

increases to less than 2°C.

450. There have already been harmful effects on local businesses. Existing businesses in Thornbury have struggled to survive the competition from large retailers at Cribbs Causeway. This means that people have to travel further to shop with the consequent harm in terms of carbon emissions. Most of the proposed new jobs would be low wage that would need to be subsidised by the tax payer so there would be little community gain (*Documents INQ 10; CD M55*)
451. **Mrs B Day** is a local resident and member of Sustainable Thornbury. Local shops in centres such as Thornbury, Filton and Patchway cannot compete and have ended up with empty units, cafes and charity shops. Cribbs Causeway does not need to get any bigger and this would not be a sustainable scheme. It would generate low paid jobs and is not what the local community wants.
452. **Mr B Cash** is a long standing local resident, a member of Bristol Liberal Democrats and a member of Grandparents for a Safe Earth. He supports the comments above and also mentions the demise of shopping areas in Gloucester Road and Kingswood. Brexit will cause the construction industry to shrink and the building of a new development at The Mall would draw construction workers away from locally and nationally important projects. These include the building of new homes and expansion of schools. People want a home or school place or hospital bed but no-one wants more shops at a place such as The Mall.
453. **Dr C Biggs** is the Secretary of the Friends of Suburban Bristol Railways. The group seeks investment in railways and buses. There is a great deal of congestion on the roads around Cribbs Causeway, including this stretch of the M5 and A4018. There have been issues with the financing and delivery of MetroBus, which will run on the existing road system. This means that there are pinch points and a circuitous route from Temple Meads station. Growth in Broadmead is supported as there are well used bus links to Temple Meads station. The nearest station to Cribbs Causeway is Patchway and this has an hourly service.
454. Pilning station is to the north of the M5 and currently there are very infrequent services. Network Rail is being encouraged to build a footbridge and provide daily services. A bus link should be provided for the 8 minute journey between the station and The Mall. This would provide a more sustainable option by reducing car travel for the many people who do not own a car. Dr Biggs was one of the people who strongly objected to the inquiry venue on the grounds that it was remote and inaccessible to those without a car.
455. **Mr G Smith** represents Transport for Greater Bristol and used to work for BCC as a transport planner so has experience of transport issues. Despite there being a joint transport plan that puts sustainable travel modes first, there has been no integrated approach between SGC, BCC, Bath and North East Somerset Council and North Somerset Council. Both SGC and North Somerset Council remained car focused. Projects such as the Henbury loop railway or the Bristol Mayor's plan for an underground railway were unlikely to come forward. There was no joint philosophy and that was one reason why Government funding has not been forthcoming. The Mall is an American style shopping centre based on the car and this major regional planning application is being determined by a car focused local authority.
456. **Mr D Redgewell** spoke on behalf of South West Transport Network. He is a

member of Transport for Greater Bristol and Director of Bus Users (UK). He also submitted further written representations in response to the further public consultation to the traffic modelling.

457. The Framework and local planning policies make clear that retail development should go to the city, town and district centres first. The application proposals would divert investment from Bristol city centre and also other centres within the region. There should be a proper retail plan for the Bath/ Bristol sub-region. To permit such as huge expansion of town centre uses in an out-of-centre location would be contrary to national and local policy unless Cribbs Causeway is designated as a town centre in the new local plan. The sequential test has not been flexibly applied and sites in the various centres within the western region have not been properly considered
458. There has been a huge change in the last 10 years and investment should be directed to Broadmead, which is fully accessible by public transport. 37% of trips are by public transport and there is a 10 minute bus shuttle to Temple Meads station until midnight. There are cultural facilities and a vibrant night time economy. Housing is also being proposed in the centre, including affordable dwellings and student accommodation. The city centre is also an important attraction for the £1.3bn tourist industry. People therefore go there to shop but for many other things as well. The loss of one of the city centre's department stores to the proposed new development would harm its vitality. When John Lewis went to The Mall it left a big void.
459. The proposals would adversely affect other centres and their investment and urban regeneration projects. An example is Weston-super-Mare where a cinema complex and new shops are due to be open soon<sup>70</sup> and a new university campus is being pursued. In Gloucester the Kings Quarter is being developed and this includes a new bus station.
460. In South Gloucestershire district about 80% of the population live in Greater Bristol and the remainder in rural areas. More investment is needed in local communities so that people do not need to use their cars. There are a number of retail centres in need of regeneration, including Kingswood, Staple Hill and Fishponds. Kingswood and Staple Hill have high levels of social deprivation and in the latter centre there is a Government programme to help it. Investment should be directed to these centres and not to The Mall. Thornbury used to be home to the council but there are now many charity shops and cafes. Yate is another example of a centre where there would be a deleterious impact. In Filton and Patchway local services needed improving as both are on the A38 and well served by public transport.
461. The Mall has a reasonably good bus service although it takes over an hour for those living in south Bristol. The management at The Mall do encourage bus travel and the bus station is managed well. It is the level of service that is the problem and the proposed development intends to make little contribution towards improvements. A properly designed coach park should be included with the improved bus station. There are limited services to Weston-super-Mare and South Wales, for example. MetroBus will not be fast because it will be going all round Bradley Stoke. The X7P service from The Mall to the city

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<sup>70</sup> Inspector's Note: I observed at one of my site visits that the cinema and leisure complex has now opened.

centre is a fast route taking 15-19 minutes. The MetroBus extension is being re-appraised and has not yet been signed off or received funding. It would be a second phase as part of the CPNN new residential area. There should be a continuous bus lane on the A4018 from The Mall to Westbury-on-Trym and Bristol city centre and a 10 minute bus service from the Portway Park and Ride site to The Mall.

462. Phase 1 of the MetroWest proposal is intended to re-open the Portishead branch line. Phase 2 could have more potential for The Mall and city centre. South West Transport Network believes that there should be at least 2 passenger trains per hour on a full Henbury Loop rail service. It will involve re-opening the Henbury line to passenger services, including new stations at Henbury and North Filton. A new light rail line from Henbury station to The Mall should be constructed, which would also serve the new residential development of 8,000 homes to the south and the new arena if it is built. The Mall has not contributed to this or any of the other public transport schemes with which it needs to be fully integrated.
463. Although the CPNN proposes many new homes there is no plan showing how these would link to The Mall. It does not have the wider facilities of the city centre and there are also no plans for a bank, post office or similar facilities. There is little evening economy and apart from the cinema, the restaurants close early and everything is finished by about 2130 hours. Although the public realm at The Mall has been well done, there is no plan to improve the tin sheds in the wider Cribbs Causeway or any connections to them. If the application proposals are to go ahead they should be part of a new town centre for the CPNN with high density housing above the shops and car parks and the full operation of MetroWest phases 1 and 2 with connections by MetroBus to the various stations (*Documents INQ 55; INQ 56; INQ 62; INQ 74*).
464. Mr Redgewell was also very concerned about the lack of public transport accessibility of the inquiry venue at Falfield. He considered that many people were excluded from giving their views because they could not get there. He also felt that the inquiry room itself was not accessible to wheelchair users and those with disabilities.
465. **Mr Burton** is a member of the South Gloucestershire Green Party and a representative of Cycling UK. There has been no new out-of-centre development like this for the last 20 years. The road system would not be able to cope with the additional traffic and there would be additional congestion, pollution and damage to climate change. The North Fringe of Bristol is car-based. £450m has been promised for improved cycle facilities but all that has been delivered is a half mile of segregated cycle path. There is no confidence in either the SGC or the Applicants to improve the situation. If the sustainable transport measures proposed in the planning application are going to work it is unclear why a large multi-storey car park would be needed. No new jobs would be created and they would merely be taken from the city centre. The Mall has no character or sense of place unlike the city centre. The proposals would not meet the statutory objectives of the local plan and would not contribute to sustainable communities.
466. **Councillor J Thomas** is deputy leader of Bristol City Council's Green Party and spoke on behalf of those Green Party councillors who object to the application proposals. A development of this scale would be inappropriate in an out-of-centre setting that is poorly served by public transport. The proposals

would damage the viability of more sustainable alternatives. Additionally the traffic movements associated with the scheme would have a severe impact on the volumes of traffic on local roads, damaging local and national businesses and threatening the sustainable development of the regional economy. The evidence submitted with the application indicated that private car traffic in the area was forecast to rise by 49% between 2013 and 2031 with the development in place. The abolition of tolls on the Severn crossings will be likely to further increase local congestion significantly. Because of the high dependence on private cars by those using The Mall, the proposals would worsen air pollution, which already exceeds legal limits in the locality.

467. There is a significant planned investment at Callowhill Court in Bristol city centre. This has a good level of local support albeit with concern about increased congestion and poor air quality. BCC has now resolved to grant outline planning permission and it is hoped that this means that retail development for the region will take place in the city centre rather than at Cribbs Causeway. It would be served by a good public transport network and the percentage of people travelling to the city centre by public transport is significantly higher than to The Mall. If the application proposals go ahead it is much less likely that the Callowhill Court development will proceed.
468. It is important to evaluate the damage that the Mall expansion could cause in the current retail context. UK retail jobs have been falling by 25,000 a year for the last six years, with a relatively flat economy and fast rising online sales. As examples, Austin Reed and Toys R Us have recently ceased trading. Expert forecasters anticipate that retailers will continue to close in substantial numbers and that employment in retail will continue to fall. The expansion at The Mall is therefore unlikely to be supported by a growing economy and growing retail sales. It is much more likely to be supported by diverting sales from other shopping centres in its catchment area. The places affected would include Bristol, Gloucester, Stroud, Weston-super-Mare, Newport and smaller retail centres like Thornbury and Kingswood, whose viability and vitality would be seriously compromised.
469. Because of the poor public transport provision at The Mall, its proposed expansion would lead to a significant increase in private vehicle movements. These would have a severe impact on local congestion, especially taking into account the number of new homes planned in the vicinity and the end of tolls on the Severn Bridge. Whilst recognising that the proposed development would not significantly worsen traffic in 2031 on the A4018 corridor, overall there would be a severe impact on local congestion and the transport network arising from the development.
470. The Green Party is keen to see a diverse, flourishing retail sector developing in the right locations across and beyond the West of England region. However, The Mall is in the wrong location, unless it achieves significantly improved public transport access. Looking to the future, the West of England councils should be shaping the vision for the retail sector, recognising town centres as the heart of their communities and pursuing policies to support their viability and vitality (*Documents INQ 59; INQ 74; INQ 76*).
471. Councillor Thomas thought that the inquiry should have had some sessions in Bristol. He was not happy with the inaccessible venue at Falfield and considered that it did not meet the Planning Inspectorate's requirements.

## WRITTEN REPRESENTATIONS

### TO THE PLANNING APPLICATION FOLLOWING THE CALL-IN

*These are at Document CD M70. The main points are:*

472. **Mr J Penrose** is Member of Parliament for Weston-super-Mare. Along with other stakeholders he is very concerned about the consequences of such a large extension to The Mall. BALP indicated that the scheme would divert 8.3% or £39m from Weston<sup>71</sup>. This would have a harmful effect at a time when the regeneration of the town is just being completed. The retail and leisure development at Dolphin Square is open and an extension to the Sovereign Centre is planned. High streets are already under a great deal of pressure due to competition from online shopping and out-of-town retail developments. Recent progress in Weston is impressive and is the result of many years hard work to regenerate the town and attract new visitors. The bigger picture needs to be considered, including the harm that the proposed expansion would do to established centres nearby.
473. **Councillor C Champion-Smith** represents the Westbury-on-Trym and Henleaze ward. The proposals would place a heavy reliance on car travel and add to existing congestion, especially with all the new homes planned in the CPNN. The A4018 transport corridor would bear the brunt of this and development such as that proposed at The Mall would make it unworkable. The proposals would also accelerate the decline of established high streets in the city and so people would not be able to shop locally without having to use a car. The development would contravene local aspirations of becoming carbon neutral by 2050 and would run counter to the principles of sustainability.
474. **Bath and North East Somerset Council**<sup>72</sup> considers that the application raises significant regional issues. It would result in a substantial amount of retail, service and leisure floorspace in an out-of-centre location. This is contrary to national and local planning policy. It is a key planning principle in the Framework that planning should be genuinely plan-led. Policy CS14 defines the network and hierarchy of centres and Cribbs Causeway is specifically identified as being out-of-centre. The proposal for further retail development at The Mall was specifically rejected by the CS examining Inspector. The PSP Plan is consistent and continues to treat the area as out-of-centre. The CS notes that over the past 20 years retail expenditure has been polarised towards out-of-town retail parks and that further development of this nature will need to be carefully controlled so as to support the strategy of increasing the competitiveness of the defined centres.
475. The proposals would result in trade diversion from a number of designated

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<sup>71</sup> Inspector's Note: SGC in a letter of response pointed out that BALP had not given evidence on the vitality and viability of Weston-super-Mare. The only evidence is in the JRA and this indicates a loss of £8.01m (2.3%) in comparison goods turnover and £1.05m (0.8%) in food and beverage turnover (**Document POE 32, appendix 2, table 19, appendix 3 & appendix 3, table 18**).

<sup>72</sup> Bath and North East Somerset Council also submitted representations on the application before it was called-in, which make similar points to those reported here (**Documents CD G1, CD G2**).

centres in the sub-region. Whilst the highest impact would be on Bristol city centre it would also draw expenditure from Bath and Keynsham. It would present a risk to the strategy of investing in additional shops, cafes and restaurants in these centres. The Applicants' retail assessment shows that Bath city centre would suffer a cumulative impact of 3% for comparison goods and 8.2% for food and beverage. The equivalent figures for Keynsham town centre would be 1.9% and 10.3%<sup>73</sup>. This level of cumulative impact would be significant and would probably be greater in view of the concerns about the validity of the retail assessment undertaken by the Applicants.

476. **IRERE Kingdom 1 Ltd and IREER Kingdom 2 Ltd** are the owners of The Galleries Shopping Centre in Bristol city centre. This opened in 1991 and comprises 29,000 m<sup>2</sup> of retail floorspace and a shoppers' car park of 932 spaces. Key retailers include Argos, Boots, TK Maxx<sup>74</sup>, Waterstones, Laura Ashley and WH Smith. The Galleries forms a key part of the city centre and fronts both Broadmead and the Quakers Friars part of Cabot Circus, which opened in 2008. IREER have made a key investment in the city centre on the basis that it provides the focus for the sub-regional shopping needs of the catchment area in line with the Government's town centres first policy. As with many other shopping centres in the UK, The Galleries has suffered in recent years due to the economic downturn, rise in internet shopping and challenges from out-of-centre stores. Also, there has been a key shift of retail focus in the city centre with the opening of Cabot Circus. Performance at The Galleries is improving but that is slow, hard fought and not always continuous. In such circumstances it is important to keep the city centre as strong as possible and free from external threats.
477. The application proposals are contrary to the town centre first policies in the Framework and CS. IREER objected to the proposed allocation of a further 34,000 m<sup>2</sup> comparison goods floorspace at The Mall in the emerging CS. This was rejected by the examining Inspector who considered that such a decision was premature and required the involvement of other organisations and local authorities. Any such expansion should therefore be considered through the plan making process. Policy CS26 and the CPNN SPD do not provide for additional retail expansion at The Mall. The Applicants have suggested that its future in policy terms has been put on hold for far too long. They consider that the benefits outweigh potential impacts, including to the city centre. They contend that The Mall operates in a different catchment and that in any event the proposed extension is location specific. None of these factors provide the basis for granting planning permission. The proposals are contrary to policy CS14 in the CS and should be refused.
478. There is no justification for permitting a development that would have a significant impact on the vitality and viability of Bristol city centre and planned investment therein. The matter is premature pending a thorough review of the

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<sup>73</sup> Inspector's Note: These figures are taken from the Second Retail Addendum where the design year is 2021. This has now been superseded by the JRA, which has a design year of 2024 (**Documents CD A15, appendix 1, table 17 & appendix 2, table 16; POE 32, appendix 2, table 19 and appendix 3, table 18**).

<sup>74</sup> Inspector's Note: TK Maxx is relocating to the former British Home Stores building in Broadmead.

need for additional retail floorspace in the sub-region. BCC, SGC, Bath and North East Somerset Council and North Somerset Council have recently started work on a joint planning strategy, which seeks to plan for residential and employment needs in the sub-region. This will establish the numbers of houses and their broad distribution and inform subsequent work on retailing and retail hierarchies in the local plan reviews of each council. Any major development at The Mall needs to be set in this policy making context of co-operation between the local authorities and review of their plans.

479. The sequential test has not been properly applied. The conclusion that there are no suitable sites in Bristol city centre relies on them being available now. However, the Rushden Lakes decision does not support such a requirement. It is often more complex and takes longer to develop town centre sites than ones in an out-of-centre location. This is specifically recognised in the PG. Also, flexibility in terms of format and scale, as required by paragraph 24 of the Framework, has not been demonstrated. The Callowhill Court site is allocated for retail-led mixed use development in the BCAP. A planning application has now been submitted. It is a sequentially preferable site and its regeneration is supported. However, IRERE has concerns about this particular proposal and whether it represents the most appropriate scheme for this city centre site. In particular it considers that the mix of uses and the quantum of car parking would not be complementary or beneficial to the existing shopping quarter.
480. **J Bird** is concerned about the huge amount of congestion and pollution that would be caused by the application development. Out-of-centre shopping malls were devised in the 1950's and 1960's to take advantage of cheap oil. This shopping model is no longer relevant and the principle of unlimited growth can no longer be sustained by current or future generations. **Mr R J Egan** has lived on the A4018 for 40 years. Over this time there has been a large increase in development in the area resulting in a huge increase in traffic, noise and pollution. Further development should not be allowed until significant improvements have been made to the road system to address the issues that residents have had to suffer and which SGC has made no effort to mitigate.
481. **Mr P Kingston** is a founder member of Grandparents for a Safe Earth. There is already heavy traffic along Coniston Road and the proximity of the M5 motorway is a source of considerable pollution. Any increase above current traffic levels would add to these concerns. More traffic generates more carbon dioxide and will contribute to climate breakdown and ecosystems at a global level. Profit should never be placed before the health, well-being and security of future generations (**Document INQ 74**).
482. **South West Transport Network, TSSA, Railfuture Severnside, TFGBA, Bus Users UK (Severnside) FOSBR and the Bristol Civic Society** share the view that the application proposals need a full public transport plan. This should include dedicated bus lanes for MetroBus from The Mall towards Henbury and Southmead; new rail stations at Henbury, North Filton and near Charlton Hayes; a fully operational Henbury loop passenger rail service operating every 30 minutes during the day and night and cycling and walking facilities. The development should include high quality public realm and a sense of place with a well-designed bus station and interchange. There should be more high density housing above the car parks, similar to the development at Bath Southgate. Also the development should provide a local library, a post

office and food shop. A masterplan is required for the Cribbs area that includes demolition of the retail sheds so that The Mall becomes part of a North Bristol city centre linked to the new housing development. **Bristol Civic Society** wrote separately indicating that they support the representations by BCC (*Document INQ 61*).

483. **Ms C Marwood** considers that the proposed development would provide additional retail choice, which is especially important with all the new houses being proposed in the area. As a person caring for a disabled adult with significant mobility issues, she points out that The Mall provides an environment that both can enjoy together. This is not the case with many city centre shopping areas. **Mr J Gardner** lives in Filton and points out that the shopping facilities at Cribbs Causeway not only attract customers from far afield but also provide an important facility for people living locally. Large numbers of new homes are to be built within this vicinity and these people will need new facilities. The proposed expansion would not only attract visiting shoppers but also cater for local needs.
484. **Wallace & Gromit's Grand Appeal** is the Bristol Children's Hospital charity. The Mall has been very supportive and has enabled its store and exhibition space to be opened there. The application proposals would be very beneficial to the area, bringing in more visitors and helping to generate vital income for the charity and raise awareness of the cause. A new city-wide sculpture trail event is being planned for the summer of 2018 and it is hoped it will bring in many visitors to Bristol and to the retail store. £2.9m in net profit has been generated over the last 3 years and examples of what the money has funded include pioneering lifesaving medical equipment, family accommodation and therapy. This would not have been possible without the flagship store at the Mall where the lease is granted free from rent and rates.
485. **Bristol Zoological Society** supports proposed developments in the region particularly where they have regard to wider organisations and public amenities such as the Wild Place Project on Blackhorse Hill. Also where they endeavour to improve sustainable travel links to the wider community.
486. Bristol Zoological Society also put in written comments before the call-in on behalf of the **National Wildlife Conservation Park Ltd**, which is implementing its planning permission for a wildlife park visitor attraction on the northern side of the M5 adjacent to junction 17. The strategy in the CS seeks to create a stronger and more cohesive Cribbs Causeway/ Patchway community. The new wildlife park is referred to as an additional attraction on the edge of this area and is therefore an important part of its spatial context. The CPNN aims to deliver good physical connections with the surrounding area. It is important that effective pedestrian, cycle and public transport links are supported. Many visitors to the wildlife park will use the public transport connections available at The Mall. The proposals would contribute positively to the important objectives of creating a strong and cohesive community (*Document CD M26*).
487. **Highgrove Enterprises** currently trade as a business at The Mall. It supports the application proposals as they appear economically beneficial in terms of investment and the provision of employment opportunities.
488. **Next Holdings Ltd** considers that the application would boost the local

economy and create jobs both in the construction industry and in the development itself in the longer term. It would send out a clear message that the Bristol conurbation is open to business and investment at a time when customers have been lost to online shopping. Cribbs Causeway is a long established retail location. It has not held back investment in other retail locations in the past and the proposed extension to The Mall would not do so in the future. This can be seen with Cabot Circus and the growth of districts such as Emersons Green, Bradley Stoke and Longwell Green, which have all been developed since Cribbs Causeway became established in 1988.

489. There are 8 Next stores within 13 miles of Cribbs Causeway, which satisfy the needs of customers in different locations. Recently a new store has opened in Yate and this was in the full knowledge of the proposals at The Mall. Over the last 10 years Next has tended to develop bigger stores more than increase the number of locations and it will continue to do so in profitable places like The Mall and Bristol city centre. However, the size and layout of the existing units in The Mall do not offer Next the opportunity for expansion. The proposed development would provide further opportunities for business growth and should be seen as an opportunity rather than a threat to the region.
490. There was an **unattributed letter** handed in to the inquiry. This referred to the chronic congestion problems facing the Bristol area and the time and expense of travelling from South Gloucestershire to the city centre whether by car or public transport. The communities in South Gloucestershire are predominantly young families who want local jobs and career opportunities and they should not be forced to travel into the city centre for that purpose. Developing The Mall and reducing the amount of retail use in the Bristol shopping quarter would ease the current chronic congestion in and around the city centre.
491. The letter goes on to say that BCC has an arrogant attitude to South Gloucestershire and thinks that its towns and communities should be subsumed into a Greater Bristol. It fought hard to stop Cribbs Causeway going ahead in the first place and refused to allow the regional light rail proposal to run there. It likes to portray the Cribbs Causeway area as a soulless out-of-town development and the communities of Filton, Bradley Stoke and the like as a series of housing estates. Most residents avoid travelling to the city centre as much as possible. Over the years The Mall has developed into a cultural and social destination for young families and retired people to meet up in a safe space. There are proposals for large scale housing developments on the doorstep of The Mall and this will enable many people to walk and cycle to its shops (**Document INQ 28**).
492. **Somerset County Council** do not consider that the proposals would be sufficiently close to have a significant effect on its town and retail centres or the commitments and proposals in its development plans. **Malvern Hills District Council** did not wish to make any comments on the proposals.

## TO THE PLANNING APPLICATION BEFORE THE CALL-IN

493. **Forest of Dean District Council**<sup>75</sup> objects to the proposals on the grounds that they would result in a significant expansion of an out-of-centre regional development where many of the district's residents already do comparison goods shopping. There would be further leakage of retail expenditure that would not be available to support local economies in the market towns. Only 21% of locally generated comparison goods expenditure remains within this area and the rest leaks out to Gloucester, Cheltenham and Bristol. Cribbs Causeway is identified as a key attraction outside the district in the council's retail studies. The increase in traffic would also affect the council's area (**Document CD M34**).
494. **Newport City Council**<sup>76</sup> objects to the proposals. It points out that in 2018 the Severn Bridge will be returned to the UK Government, which will result in the potential for tolls to be changed or removed after 2020. If tolls are reduced or removed the adverse impact on Newport is likely to increase. This must be taken into account. Newport, Cardiff and Bristol are to form an alliance in the Great Western Cities Scheme. The aim is to cut tolls, enhance transport links between the centres and facilitate economic development and collaborative working across the region. The details of this scheme are not yet known but an out-of-centre development that would divert retail expenditure from, and diminish investor confidence in, the three centres cannot be supported and is contrary to the Government's town centres first policy.
495. Newport is an important retail centre in south-east Wales. Although Wales overall retains a high proportion of comparison goods expenditure, most of the leakage that does occur goes to just 5 centres, including Cribbs Causeway and Bristol city centre. The Mall affects shopping patterns and diverts comparison goods expenditure from Newport and other centres in the council's area, albeit to a lesser degree than Cardiff and Cwmbran. The Applicants' retail analysis identifies a 0.6% cumulative impact and 0.3% solus impact on comparison goods expenditure in the design year of 2021<sup>77</sup>. This seems low but the health of Newport is poor and vacancy rates exceed 25%.
496. The Mall is already functioning as a main shopping destination. Any further diversion of trade has the potential to prejudice the retail environment in Newport, especially bearing in mind its ongoing development at Friars Walk and its ongoing efforts to attract retail investors. Newport City Council also raises similar objections to others in terms of the conflict with national and

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<sup>75</sup> Inspector's Note: This representation was made in January 2015 and so is based on the Planning and Retail Statement dated December 2014 (**Document CD A5**).

<sup>76</sup> Inspector's Note: This representation was made in February 2015 and so is based on the Planning and Retail Statement dated December 2014 (**Document CD A5**).

<sup>77</sup> Inspector's Note: These impact figures were derived from the 2014 Planning and Retail Statement (**Document CD A5, appendix 2, table 13**). They do not include the commitments of the Asda development, the Site 20 development and the retail development at Harry Stoke. These were added in to the assessment in the Second Retail Addendum (**Document CD A15, appendix 1, table 17**). However, these documents have now been superseded by the JRA where the design year is 2024 and the comparison goods expenditure impact for Newport is 7.8% (cumulative) and 0.6% (solus) (**Document POE32, appendix 2, table 19**).

local planning policy in respect of the sequential and impact tests (**Document CD M57**).

497. **North Somerset Council**<sup>78</sup> objects to the proposals on the grounds that there is no analysis of the impact on the vitality and viability of the hierarchy of centres in the council's area. This includes Weston-super-Mare, which is identified in the North Somerset Core Strategy as a sub-regional centre. Objections were made to the proposal in the CS to increase the floorspace at The Mall. This was on the grounds of significant adverse impact on the health of retail centres in the sub-region and especially Weston-super-Mare where a regeneration-led recovery of this vulnerable centre was being planned. Cross-boundary strategic planning for retail provision considers the regeneration of Weston-super-Mare to be a priority objective for the West of England sub-region.
498. The catchment for the expanded Mall would be extensive in accordance with its regional shopping role. However, the retail assessment only addresses the significance of impact on Bristol city centre and South Gloucestershire centres, despite the fact that 18% of the trade draw would come from North Somerset in zones 4 and 5. The proximity of the M5 motorway means that the Cribbs Causeway area is easily accessible to many of North Somerset's residents. The proposed improvements to the bus station may encourage some to choose to travel by bus but most would continue to use the car. Whilst the new development may compete mainly with the higher order comparison goods destinations, it is still important to understand the impact on the smaller centres, such as those in North Somerset.
499. Weston-super-Mare and other towns in North Somerset have suffered various degrees of adverse impact as a result of the presence of the retail area at Cribbs Causeway as evidenced in the *North Somerset Retail Study* (2011). Weston-super-Mare is an under-performing and vulnerable centre with a generally poor retail offer. However, the council and other stakeholders have significant aspirations to regenerate the town centre and improve its retail and leisure offer. The town has benefited from significant environmental improvements, including a remodelled promenade, rebuilt pier and a new town square. The Retail Study shows a shortfall of over 25,000 m<sup>2</sup> comparison goods floorspace up to 2026 and population growth is expected to be significant, largely due to in-migration. This will lead to a growth in local needs that should be provided for in Weston-super-Mare and the other town centres.
500. The redevelopment at Dolphin Square will result in a net increase in about 4,500 m<sup>2</sup> retail floorspace. However, the proposed extension to The Mall leads to concerns that the delivery of this and other retail schemes in the town centre may be threatened as investor confidence is undermined and occupiers become more difficult to secure. There is also concern about North Somerset's retail parks, which have a different role to the centre and have a high representation of value retailers. They add to the diversity and quality of the retail offer overall. The council has some concerns about the population inputs

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<sup>78</sup> Inspector's Note: This representation was made in February 2015 and so is based on the Planning and Retail Statement dated December 2014 (**Document CD A5**).

to the Applicants' retail assessment. The growth in population may have been over-estimated and if this is the case the available expenditure would also be reduced and the impacts on existing centres would be under-estimated (**Document CD M58**).

501. **Taunton Deane Borough Council** does not consider the proposals comply with government policy<sup>79</sup>. The council has planned to meet all its assessed retail and leisure needs to the end of the plan period in 2028. Assuming other councils in the catchment have done likewise it is essential, from a policy perspective, to consider the justification for the additional floorspace in this unsustainable location. The Mall is not identified as a town centre in the development plan and therefore there is no requirement to protect it for the enhancements that the Applicants provide as justification. Cribbs Causeway operates as a regional focus and the Framework refers to planning strategically for retail and leisure needs in paragraphs 156 and 178. There is no evidence that a need for this scale of floorspace has been identified through cross-boundary working. Conversely, Cribbs Causeway is within the Bristol urban area and so any unmet need in South Gloucestershire district should be met within the hierarchy of centres there (**Document CD M64**).
502. **Almondsbury Parish Council** objects to the proposals on the grounds of the traffic impact on the motorway and surrounding roads. A co-ordinated traffic study is required for peak periods, including Christmas. The current assessment is flawed and does not provide an acceptable base for future projections. The parking assessments are based on incomplete and counterintuitive information (**Document CD M22**).
503. **Forward Swindon Ltd**<sup>80</sup> is concerned about the potential impact on the much needed regeneration of central Swindon with significant new leisure and retail floorspace. This is similar in nature to the proposed development at The Mall. At present the regeneration is gathering pace but it is in danger of being knocked off course if the proposals were to go ahead. The Mall is just over a 40 minute drive from Swindon and provides a convenient option for those travelling by car. There is already a significant leakage of expenditure to Cribbs Causeway and this would inevitably increase if the substantial extension goes ahead. Swindon is not shown as within the catchment area and this is a significant flaw in the retail assessment. In addition, no analysis has been done of the impact on the regeneration plans for central Swindon. This is contrary to paragraph 26 of the Framework and based on the available evidence the application proposals should be refused (**Document CD M35**).
504. **CBRE Global Investors**<sup>81</sup> object to the proposals on both retail and transport grounds. The proposal to expand The Mall in the submission version of the CS was rejected by the CS examining Inspector. The 2013 BCCRS highlights that any future growth in floorspace at The Mall could potentially have significant

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<sup>81</sup> Inspector's Note: This representation was made in January 2015 and so is based on the Planning and Retail Statement dated December 2014 (**Document CD A5**). It also refers to earlier transport modelling, which has now been largely superseded.

adverse impacts on the vitality and viability of the city centre unless it was balanced by new retail development there. The expansion of The Mall would put at risk or substantially defer the achievement of the council's strategy for the regeneration of the shopping quarter. If anchor stores locate at The Mall there is a significant risk that they will not locate in the city centre later on.

505. Due to the regional extent of the catchment, the sequential test should have considered sites in Cheltenham, Gloucester, Bath, Weston-super-Mare, Taunton and Bridgwater. Significant regeneration proposals in some of these centres have the space to accommodate the types of tenants targeted by The Mall. Existing shopping patterns have been used to assess the trade draw to the proposed development. However, the loss of a major anchor tenant from the city centre would have a significant effect on shopping patterns and so trade draws cannot be assessed until the new anchor tenant at The Mall is identified. In addition, the household survey had a disproportionate number of older respondents, which could also influence shopping patterns. The cumulative comparison goods impact of the proposed extension and commitments would be 12.3%. This would undermine the ongoing vitality and viability of Bristol city centre, especially as vacancy rates are at 20%. The loss of turnover would lead to lower pedestrian flows and existing retailers moving elsewhere. This would be likely to undermine the viability of regeneration schemes in the city centre. Similar issues would arise in Yate and further afield in Swindon, Weston-super-Mare and Cheltenham.
506. CBRE Global Investors also objected to the proposals on transport grounds and their representation included consideration of the supplementary Transport Assessment submitted in October 2015. There is still insufficient information on the current demand or future supply of parking. For example, there is no information on the length of stay and so the parking accumulation exercise cannot accurately calculate whether the existing provision would remain fit for purpose following development. Basing length of stay on footfall surveys is inaccurate because some visitors will be travelling by modes other than the car. Dwell time will also vary over different trading periods, including Christmas. There is no justification for the assumed 20% increase in the length of stay following the development. If the existing parking capacity is increased by 35% to reflect the increase in retail expenditure, it is clear that there would be a very high demand for parking spaces between 1200-1500 hours. This is likely to result in excessive levels of congestion within the car parks and queuing, which may extend onto the local and strategic highway network.
507. Staff would park in the Jupiter Road car park during busy periods. No survey has confirmed that this contains 400 spaces or whether it is already being used on a daily basis. The proposals would result in more jobs and therefore a greater demand for staff parking. However, no additional staff parking would be provided. The car park management plan does not address how a potential shortfall in parking provision would be addressed at peak periods to prevent congestion and driver frustration. There does not appear to be any contingency plans in place if additional parking should ultimately be required.
508. CBRE Global Investors expressed several concerns about the traffic modelling. There is a lack of information about the base year model, including the adjustments made to the 2014 ATC car park flows to compare with the 2011 base. Also there is insufficient detail about how the modelling of the Saturday

arrivals in the am peak was developed and so its robustness cannot be judged. No specific junction modelling has been undertaken to assess the peak periods at Christmas or other bank holidays. The Applicants counter this by saying that the development traffic generation reflects the 85<sup>th</sup> percentile trading week, which equates to that generated during the busiest 8-10 weeks in the year. However, it is the July 2014 traffic counts that have been factored up using the 85<sup>th</sup> percentile weekly footfall to forecast future traffic generation. The December surveys were not used and so the Christmas peak demand for travel at the site was not considered or assessed<sup>82</sup>.

509. There is no information about the capacity constraints at the Cone roundabout or the impact of the trips that are being dispersed as a consequence. If dispersal is happening because of long queues these would be likely to get worse with the proposed development and there would be consequent implications for other junctions and links. The impacts and whether mitigation would be necessary have not been considered. The modelling of the motorway junctions has not fully assessed the impact of the development. This is because as the area becomes congested vehicles cannot enter the network during the modelled period. It is not known how many of these trips are connected to the development and are not being picked up by the model. The anticipated impacts may therefore be underestimated. It is also unclear what committed schemes have been included in the modelling scenarios. On the basis of the deficiencies in the transport work, the application should be refused (**Document CD M59**).
510. **Vixcroft** is the owner of the Sovereign Centre in Weston-super-Mare. This comprises 11,000 m<sup>2</sup> of enclosed, predominantly comparison goods floorspace at the heart of the town centre. It includes Marks & Spencer and Wilkinsons who operate as important town centre anchor stores. Since Vixcroft acquired the asset in 2015 there has been active management to minimise vacancies and improve footfall. Vixcroft is looking at ways to extend the centre and enhance its restaurant offer. This would benefit the town's visitor economy. Vixcroft is also supportive of the retail and leisure development at Dolphin Square. This will target the fashion sector and broaden the town's retail offer. The scheme also includes a cinema, entertainment uses and several restaurants. The car parks for the Sovereign Centre and Dolphin Square are subject to a charge.
511. The retail assessment<sup>83</sup> did not include a consideration of the commitments of the ASDA and Site 20 proposals, which would amount to at least 28,500 m<sup>2</sup> of additional retail floorspace. The Applicants' retail assessment estimates that just over 10% of Weston-super-Mare's growth in turnover between 2014 and 2021 would be diverted to the proposed new development. Overall the cumulative impact would be 6.9% in 2021. However, this does not include the aforementioned commitments. Also if growth does not occur at the levels predicted, the impact would be higher. Retailers will begin to question the viability of the location if they do not experience annual growth. The prospect

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<sup>82</sup> Inspector's Note: Additional automatic traffic count surveys were commissioned by the Applicants for the period 18-24 December 2016 (**Document POE 10, paragraphs 8.9, 8.17**).

<sup>83</sup> Inspector's Note: This representation was made in May 2016 and was based on the Retail Statement Addendum dated October 2015 (**Document CD A12**).

of lower returns and copious free car parking at The Mall may also make potential investors think twice about locating in Weston-super-Mare.

512. Existing vacancies in the town centre will not necessarily decrease even if expenditure grows in accordance with the Applicants' predictions. Many retail units are in Victorian buildings that do not meet modern retailing needs. Significant new investment is needed to address this and it will not happen if returns are being eroded by out-of-town competition. Vacant units are not only unsightly, they also dent business confidence. The Melrose/ Grove Park Conservation Area, which includes Victorian commercial premises, is now deteriorating and on Historic England's "at risk" register. For all of these reasons the increased dominance of an expanded Mall would upset the delicate hierarchical balance to the significant detriment of centres within its extensive catchment, including Bristol and Weston-super-Mare. The proposals contravene local and national town centres first policy and should be refused (**Document CD M65**).
513. **Mr P Hazeldine** objects to the proposals and points out that most weekends there are queues of traffic from the M5 motorway into the Cribbs Causeway area. These would get worse if the development proposals go ahead and a new junction should be built between junctions 16 and 17 to ease the traffic congestion. **Ms A Essex** pointed out that there is no provision for rail travellers. A lump sum should be provided by the developers to the local authorities to redevelop and re-open the Henbury, Patchway and Filton railway stations and the Avonmouth park and ride. This would reduce car use on the local roads, which are gridlocked. A park and ride at Cribbs Causeway would ease traffic congestion. **Mrs H Windsor** is also very concerned about the traffic implications and suggests that a railway station should be provided at Cribbs Causeway that links to Bristol Parkway and Temple Meads (**Documents CD M48; CD M52; CD M53**).
514. **Mrs A Devonshire** does not consider that the transport effects have been properly assessed or addressed. There is the potential for a significant adverse impact, especially along the A4018 corridor, into and out of Bristol. The additional traffic from the application proposals would be on top of that arising from the CPNN, the new Southmead Hospital and the new wildlife park. The implications on Bristol's road network have not been adequately considered by SGC. The comments of Highways England about the potential overload of junction 17 are alarming and would result in implications for the local highway network. This would be harmful to the economic wellbeing of Bristol city and detrimental to residents and businesses over a wide area. Buses are not a solution as they get caught up in the congestion and the opening of the Henbury Loop passenger railway should take priority. The Mall proposals do not accord with the town centre first approach and there is no support for them in national or local planning policy. They would harm the vitality of the city centre and cause a detrimental effect on the environment. Similar points have been made by **The Transport Working Group**. This operates under BCC's Neighbourhood Partnership initiative and serves the wards of Henleaze, Stoke Bishop and Westbury-on-Trym (**Documents CD M51, CD M56**).
515. **John Lewis Plc** supports the proposed development. It has anchored The Mall since it opened in 1998 and has continued to invest in order to maintain a strong retail offer. The retail industry is experiencing unprecedented change

and it is vital for the ongoing success of major retail destinations like The Mall that continued investment is encouraged where planning policy supports it. This will maintain appeal to visitors as well as encourage employment growth and contribute to the economic strength of the local area and wider region (*Document CD M40*).

516. **Mr M Waines** supports the application proposals. **Mr S Gale** does not object in principle. However he contends that for many years there have been too many empty units at The Mall. He can see no benefits to an extension until capacity is properly managed. **Mr T Edwards** considers that the option for a rail link from the Avonmouth line to The Mall would be a great benefit. This has been rejected on the grounds of cost but there is the opportunity to obtain funding in connection with the proposed extension to The Mall. It is in the owners' interests to improve public transport infrastructure around this popular shopping centre. This rail link would require a line of less than one mile and could be used by passengers and freight. It would greatly relieve traffic congestion around junction 17 of the motorway and the heavy freight traffic using this junction. This would be a great legacy to pass to future generations but the opportunity would be lost once the new housing developments are built (*Documents CD M47; CD M49; CD M50*).
517. **Mrs S Packham** supports the proposals, which would be within walking distance of her home. She considers it encourages people to the area through its excellent public transport links and proximity to the motorway network. **Mr D Goodwin** asks for the installation of electric vehicle charging points so that customers can top up whilst using The Mall facilities (*Documents CD 45; CD 54*).

## CONSULTEE RESPONSES

518. **Avon Fire & Rescue Service** indicates that there would be fire hydrant requirements. Appropriately sized water mains should be provided for fire-fighting purposes. These facilities are needed as a direct result of the proposals and the cost should be borne by the Applicants (*Document CD M25*).
519. **The Avon and Somerset Crime Prevention Design Advisor** point out that the Framework requires crime and fear of crime to be considered at the design stage of a development. This is an outline application so it is difficult to offer detailed observations. The parameters as submitted pose a major challenge to delivering a high standard of public safety to the area. The inclusion of residential use, additional retail uses, a multi-storey car park and more licensed premises may have implications for service delivery and anti-social behaviour. Account should be taken of the changing risks relating to crowded places and upgraded security measures may need to be put in place. Depending on the detailed plans, the police may require additional contributions for further accommodation space, CCTV, Automatic Number Plate Recognition and the like. All public areas, including footpath and cycle links should be lit to appropriate levels. The retail and leisure facilities should aim for BREEAM "very good" to "excellent" (*Document CD M27*).
520. **The Police and Crime Commissioner for Avon and Somerset** does not object in principle but expresses concerns about the ability of the police to provide an effective community service. There is no funding from existing sources for any requirements to service new developments and therefore developer funding would be sought. In this case to help provide a suitable level

of protection to visitors and users, provision should be made for CCTV and Automatic Number Plate Recognition. These would help police deal with criminal activity and antisocial behaviour as well as acting as a deterrent to potential offenders. These measures are reasonable, proportionate and directly related to the development proposed (**Document CD M61**).

521. **Highways England** is the strategic highway authority and is required to ensure that the strategic road network, which is a critical national asset, operates and is managed in the public interest. There has been ongoing discussion with the Applicants and SGC and further modelling work has been undertaken, including a full cumulative scenario, so that the impact on junctions 16 and 17 of the M5 motorway during peak periods can be assessed. The conclusion is that robust and effective mitigation measures will be needed to manage the traffic generated by the proposed development to a level that would not be detrimental to the safety and efficient operation of the strategic road network. Without mitigation the increase in traffic would exacerbate an already congested road network resulting in queues backing up along the slip roads and onto the motorway carriageway. Mitigation measures should include a Framework and Full Travel Plan, a Framework and Full Car Park Management Plan and a Construction Traffic Management Plan. These can be secured through planning conditions (**Document CD M68**).
522. **The Environment Agency** has no objection subject to conditions concerning sustainable drainage, contamination and the prevention of pollution during construction (**Document CD M32**).

## PLANNING CONDITIONS

523. SGC and the Applicants produced a list of agreed conditions, which were discussed at the inquiry (**Document INQ 29, appendix 1**). During the discussion other conditions were suggested and changes of wording proposed (**Documents INQ 39; INQ 47; INQ 48; INQ 57**). In some cases I have found conditions overly complex and prescriptive and I have recommended shorter and more focused alternatives. In others I have changed the wording in the interests of precision, enforceability and otherwise to accord with the provisions of the Framework and PG. The conditions that I commend to the Secretary of State if he is minded to grant planning permission are set out in Annex Three. The numbering does not accord with that within **Document INQ 29** as I have placed the conditions in what I consider to be a more logical order. Also, some conditions have not been recommended as I explain below. For the avoidance of doubt the condition numbers used hereinafter concur with those in Annex Three.
524. **Conditions 1-3** are the standard conditions relating to outline applications and submission of reserved matters. There is no reason why a 7 year implementation period should be necessary, especially as it is the Applicants' case that work would commence on site in 2020/21. **Condition 4** requires general compliance with the DAS, its Addendum and the various parameter plans. This is necessary because, although the proposals are in outline form they are Environmental Impact Assessment development. It is therefore important to be satisfied that the development that has been assessed would be the development that would be built.
525. The ES indicates that the development would be phased and **condition 5** sets

out the phasing requirements. Phasing is not recognised in the statutory instrument as a reserved matter and the wording has been changed to reflect this. The condition requires a phasing plan to be submitted and, amongst other things, the timing of various critical infrastructure works, including the bus station, multi storey car park, landscaped links, new public realm and drainage. This is necessary to provide a comprehensive development with the various elements properly integrated (**Document CD A16/A, chapter C, paragraphs 4.6-4.24**).

526. **Condition 6** relates to the new bus station. It is appreciated that the council wish to ensure that a quality facility is provided. The parameter plans provide little detail but the DAS and its Addendum do show what is intended and further guidance is provided by the *Bus & Coach Station Design & Operation: Guidance for the safe design and operation of Bus Stations and Interchanges*, which is a document jointly commissioned by the Department for Transport, the Confederation of Passenger Transport and the Association of Transport Coordinating Officers (**Document INQ 58**). This is an outline application and it would be unreasonable to be overly prescriptive at this stage. It is considered that a more succinct condition is required and that the detailed design and layout is more appropriately left to reserved matters stage.
527. **Conditions 7-9** deal with potential contamination on a phased basis. The ES indicates that investigation for contamination, including ground gas monitoring, has not been undertaken. However, in view of the previous use of the site as agricultural land and the current use as a retail area, the potential risks are considered to be low. Nevertheless, the ES indicates that intrusive ground investigations are necessary. **Condition 8** makes provision for verification and **condition 9** deals with unexpected contamination if it were to arise during the development process (**Document A16, chapter G, paragraphs 4.72, 6.2, 6.16-6.18**).
528. A proposal of this scale, which would take place within an existing retail environment, adjacent to a busy road system and relatively close to residential properties, would clearly result in a considerable amount of disturbance and inconvenience. The ES envisages a construction period of around 3 years with the residential development taking place thereafter. **Condition 10** sets out the main requirements for the Construction Environmental Management Plan, which is necessary to minimise and mitigate construction impacts in accordance with the ES. This also records amphibians, including Great Crested Newts in the pond on the southern side of Merlin Road. Protection measures will be required during the construction of the new pedestrian bridge (**Document CD A16/A, chapter C, paragraphs 4.4-4.6, 4.40-4.46; chapter I6.13-16.18**).
529. In accordance with both local and national policy objectives it is important to ensure that construction waste is properly dealt with, waste is re-used and recycled as far as possible and that the volume sent to landfill is minimised. The ES envisages dealing with this through a Site Waste Management Audit and **condition 11** puts this into effect (**Document A16, chapter C, paragraphs 4.35-4.37**).
530. There are existing trees on the site that are shown to be retained on the parameter plans. These are mainly the trees on the edges of the development site and they will provide a green framework for the built environment and a

buffer with the road system. **Condition 12** seeks to ensure that they are properly protected during the construction period. I have reworded the suggested condition to refer to compliance with British Standard BS 5837: *Trees in relation to design, demolition and construction*, which to my mind is more precise. **Condition 13** seeks to encourage the use of local labour during the construction period through apprenticeships, work placements and the like. Although local unemployment in South Gloucestershire is below the national average, the provision of local employment opportunities would enhance local economic output and boost the local economy. These advantages are referred to in the ES (**Document A16, chapter H, paragraphs 4.25, 5.5, 5.8, 5.13**).

531. The ES considers that the construction of the existing Mall development would have removed any buried archaeological remains present on the site. However, I note that the council's Archaeology and Historic Environment Record Officer considers that there may be remains below the existing development platform, especially bearing in mind that the proposed new buildings would be on existing hardstanding and parking areas and would be likely to have deeper foundations. Attention is drawn in the consultation to a former Mesolithic enclosure within this location. The ES does also refer to the proposed new bridge over Merlin Road that may impact on previously undeveloped land with archaeological potential. The SGC's consultation response indicated that any archaeological remains could be preserved by record. **Condition 14** addresses the matter on a phased basis rather than the outset, bearing in mind the length of the development programme (**Documents CD M24; CD A16/B, chapter L, paragraph 5.8**).
532. The Flood Risk Assessment indicates that a sustainable drainage strategy would be carried out such that surface water run-off would be reduced by 30%, plus an allowance for climate change, in line with the council's Level 2 *Strategic Flood Risk Assessment*. This accords with the consultation responses from Wessex Water and the council's Drainage Team. **Condition 15** provides the necessary requirement, on a phased basis, for the drainage details to be approved (**Documents CD A18/C, appendix K1; CD M29; CD M67**).
533. An outline energy strategy was submitted with the planning application, which aims to minimise energy requirements and incorporate low or zero carbon technologies. This would be in line with policy CS3 in the CS and also the strategy in the CPNN SPD (**Document CD E1, section 9**). **Condition 16** requires each phase of the development to show how the principles in the outline energy strategy would be carried forward in detail. The inclusion of references to the Building Regulations and the emerging CPNN in the condition were agreed to be unnecessary. The outline energy strategy indicates that a combined heat power system would most likely provide for hot water and heating in the residential development. The implications in terms of CO<sub>2</sub> emissions would need to be monitored along with other emissions such as from road traffic to ensure air quality impacts are controlled. It was agreed that the wording of **condition 17** could be simplified and that it is unnecessary to refer to specific guidance.
534. **Condition 18** requires a strategy for public art on a phased basis. This is in accordance with the *Public Art Plan*, which has been created for the whole of the CPNN and is referred to in the CPNN SPD as well as the DAS relating to the application site. The parties agreed that the documentation references were

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generally unnecessary and the condition has been reworded to make it more concise and focused (**Documents CD A6, page 73; CD E1, section 6**).

535. **Conditions 19 and 20** restrict the quantum of retail floorspace to ensure that the amount provided is what has been applied for and assessed. Alternative conditions were suggested by the Applicants and BCC. The main difference is that the BCC condition defines what would be included as comparison goods. In my experience such a condition is sometimes favoured in retail warehouse proposals but it seems to me unnecessary in the type of retail development being proposed at The Mall. Indeed I can also foresee that it could lead to disputes as to what is and is not included in the definition. The Applicants have proposed two conditions and these are similar to those used in the Secretary of State's Tollgate Village decision. I consider these conditions more appropriate, although they have been adjusted for relevance to the circumstances of the application scheme (**Documents INQ 45; INQ 47; INQ 48; INQ 57**).
536. Under the provisions of the *Town and Country Planning (Development Management Procedure) (England) Order 2015*, the addition of more than 200 m<sup>2</sup> internal retail floorspace is now classed as development in order to control the addition of large mezzanine floorspace. What could be added without planning permission is a relatively small quantum in itself but it would be much more substantial if each of the proposed retail units were to add 200 m<sup>2</sup> once the scheme had been built and occupied. This would be floorspace that had not been assessed in terms of impact and the restriction is therefore considered justified in such circumstances. Condition 19 specifically requires provision of an anchor store and this is justified as in the Applicants' retail assessment such a store has been assessed with a lower sales density. Anchor stores do not always have separate departments and I have removed this reference from the condition.
537. **Condition 21** concerns dual representation and seeks to prevent retailers established within Bristol city centre from leaving and relocating in the new development at The Mall. The wording of the condition is similar to that used by the Secretary of State in the Tollgate Village planning permission although it has been worded to relate to each unit in the proposed development. In the *Skelmersdale* Court of Appeal judgement<sup>84</sup> such a condition was found to be legal and enforceable. The use of the word "commits" means that retailer would be required to enter into a legally binding obligation to retain their presence as a retailer in the city centre if they wished to occupy one of the new units in the proposed development. The judgement made clear that retaining a token presence would not satisfy the condition and that it was legal and enforceable. The PG does not generally favour such negatively worded conditions but this is a case where a strategically important development would not be acceptable if it would have a significant adverse impact on the city centre. I consider the justification and effectiveness of such a condition in my conclusions at paragraph 653 below (**Documents INQ 38; INQ 45; INQ 57**).
538. **Conditions 22 and 23** relate to the phased provision and retention of cycle

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<sup>84</sup> *Skelmersdale Limited Partnership v West Lancashire Borough Council and St Modwen Developments (Skelmersdale) Ltd* [2016] EWCA Civ 1260

and car parking respectively. Although it would seem unlikely that the parking areas would be used for temporary uses due to the provision of the events plaza, it could happen. As there is no increase in parking space proposed it seems to me that this would be an undesirable outcome and that condition 23 is therefore necessary. It will be noted that condition 5 requires that the surface parking shall be operational before the multi storey car park commences and that the latter shall be operational before the main retail floorspace is occupied.

539. **Conditions 24 and 25** relate to car park management. Although the surface car parks are underused for most of the year, at busy periods this is not the case. The Framework Car Park Management Plan will include arrangements for parking during the construction phases and also seek to collect traffic and parking data from the existing operation of The Mall. This will inform the Full Car Park Management Plan for the site. As mentioned above it is not proposed to increase the parking provision and therefore it will be important to ensure that an effective management strategy is implemented, including signing to ensure that drivers are directed to available spaces within the site.
540. Effective Travel Plans are essential in order to ensure that the most sustainable travel solutions are achieved and that car travel is reduced in favour of alternative modes. I consider that the suggested conditions relating to Travel Plans are not clearly expressed or focussed. I therefore recommend **conditions 26 and 27**, which follow the thrust of the amended conditions that were put forward by the Applicants at the inquiry (**Documents CD A19, appendix D; INQ 49**).
541. Monitoring the effectiveness of the Travel Plan measures is clearly necessary to ensure the relevant targets are being achieved. **Condition 28** also makes provision for the Transport Review Group to use the Travel Plan Deposit to fund remedial measures as necessary. The hotel and residential elements are likely to be separately developed and will require their own Travel Plans accordingly. **Condition 29** addresses this and also includes an implementation clause and a requirement for monitoring and review.
542. As this would be a mixed use development, there is the potential for disturbance from the plant and equipment required in connection with the food and beverage uses, for example. It is unnecessary to restrict noise emissions if there is a requirement that noise levels within the flats are controlled. I have worded **condition 30** to refer to the World Health Organisation guidelines as well as the British Standard on sound insulation and noise reduction for buildings.
543. **Condition 32** relates to floodlighting and external illumination of the site and details are required on a phased basis. This is not only necessary for visual reasons but also in order to ensure there is no adverse effect on bat populations as indicated in the Environmental Statement (**Document CD A16/B, chapter I, paragraphs 6.22-6.23**).
544. Landscaping is a reserved matter and so a requirement for details at this stage is unnecessary. However, **condition 31** concerns landscape maintenance and this is appropriate for all but the residential phase, which is covered in the Section 106 Agreement. I have not used the suggested wording, which also includes an ecological management plan. This is because such matters are

adequately covered by other conditions, including those relating to construction (condition 10 viii), tree protection during construction (condition 12) and lighting (condition 32).

545. The Police and Crime Commissioner has asked for a financial contribution towards CCTV coverage and Automatic Number Plate Recognition in order to respond to additional pressures on police resources as a result of the development proposals. It is understood that there are already such systems in place and that the police have an existing base at The Mall. It would seem reasonable that the existing systems should be extended to cover the proposed development in order to ensure the safety and security of the site for all users, including those visiting the extended floorspace, staff and new residents living on the site. **Condition 33** covers this matter. The Avon Fire & Rescue Service puts forward requirements for fire hydrants to serve the new development. Again this is a matter of public safety and **condition 34** is necessary accordingly (*Documents CD M25; CD M27; CD M61*).

## **PLANNING OBLIGATION BY AGREEMENT** (S106 Agreement)

546. The fully executed Deed is dated 9 October 2017 and is *Document INQ 51*. The parties to it are SGC, the applicants (Baylis Estates Limited, John Baylis Limited, Cribbs Mall Nominee (1) Limited and Cribbs Mall Nominee (2) Limited) and the mortgagee (National Westminster Bank PLC).

547. There is a "blue pencil" clause in the Deed whereby a planning obligation will cease to have effect if the Secretary of State concludes that it does not comply with the CIL Regulations. SGC prepared statements relating to the compliance of the planning obligations with Regulation 122 of the CIL Regulations. It also confirmed that none of the obligations engage Regulation 123 regarding pooling restrictions (*Documents INQ54A; INQ 54B*).

548. Four schedules contain the various covenants and there is a useful summary of the provisions at *Document INQ 50*.

### 549. **SCHEDULE 1: TRANSPORT**

549.1 The provision of £200,000 towards the **Cone Roundabout works**. This roundabout is at the junction of Merlin Road and Lysander Road and the contribution would fund new traffic signals and associated works. It would only be paid if the contribution had not already been paid in connection with the development of Site 20, which is to the south of The Venue.

549.2 The provision of £300,000 towards the **VMS works**. These involve wayfinding signs to direct visitors to parking spaces as they enter the site. Also variable message signs for departing traffic, possibly including routeing via the most appropriate motorway junctions.

549.3 There are various financial commitments towards the setting up and operation of the **TRAVEL PLAN**. There is a covenant to establish a **Transport Review Group** before the new development is first occupied. The financial contributions include:

549.3.1 The provision of a **TRG Fund Sum** of £100,000, which would go towards establishing, monitoring and administering the Travel Plan and Transport Review Group.

549.3.2 The provision of a **Travel Plan Deposit** of £250,000, which would fund the sustainable transport measures that would be agreed by the Transport Review Group to encourage non-car travel in association with the new development. If the monitoring indicates that the mode share targets have not been met then further measures can be implemented and funded by up to a further £200,000. If any of the Travel Plan Deposit has not been spent within 10 years of occupation it will be refunded.

## 550. **SCHEDULE 2: AFFORDABLE AND MARKET HOUSING**

550.1 There is a covenant to secure 35% of the dwellings as affordable units. They are not to be visually distinguishable from the market dwellings or be grouped in clusters of more than 6 units with shared access in order to create a mixed and integrated community.

550.2 The tenure mix shall be 80% social rented units and 20% intermediate housing. The units will be one and two bedroom flats with 5% provided as wheelchair units.

550.3 A delivery mechanism is included whereby no more than 50% of the market dwellings shall be occupied until 50% of the affordable units have been completed and transferred to a Registered Provider. The remainder must be delivered before more than 75% of the market dwellings are occupied.

## 551. **SCHEDULE 3: OPEN SPACE**

551.1 This relates to the open spaces on the residential part of the application site. It includes those areas to be used as public open space as well as the land that is to be used for surface water infrastructure such as SuDS provisions, for example. Schemes for the provision and implementation of these areas are required to be approved and implemented.

551.2 A management and maintenance scheme is to be approved and implemented before the residential development is occupied.

## 552. **SCHEDULE 4: OFF SITE PUBLIC OPEN SPACE**

552.1 This relates to the provision or improvement of various types of open space and its maintenance. The sum that would eventually be paid will depend on the details of the residential part of the application proposals. There are formulae set out in the Deed for each type of open space.

## **INSPECTOR'S CONCLUSIONS**

*The numbers in square brackets refer back to earlier paragraph numbers of relevance to my conclusions.*

553. Taking account of the matters on which the Secretary of State wishes to be informed, the oral and written evidence and my site observations, the main considerations in this application are as follows:

- **Consideration one:** Planning policy context and approach to decision making
- **Consideration two:** Whether there are sequentially preferable sites on

which the main town centre uses could be accommodated, bearing in mind the need to demonstrate flexibility.

- **Consideration three:** The impact of the proposals on the vitality, viability and investment in town and city centres.
- **Consideration four:** Housing land supply and the contribution that the proposals would make to the market and affordable housing needs of the area.
- **Consideration five:** Whether the proposals would give rise to unacceptable highway impacts.
- **Consideration six:** Whether the proposals would be in a sustainable location that would be accessible by means of travel other than the car.
- **Consideration seven:** Whether any conditions and planning obligations are necessary to make the development acceptable.
- **Consideration eight:** Other matter – Air quality and climate change.
- **Consideration nine:** Overall conclusions and planning balance to determine whether the proposals would be a sustainable form of development.

## **CONSIDERATION ONE: PLANNING POLICY CONTEXT AND APPROACH TO DECISION MAKING**

554. The statutory development plan includes the CS adopted in 2013 and the PSP Plan adopted in 2017. BCC's development plan does not have statutory status in the determination of this application but its policies are an important material consideration. [17; 19].

### **RETAIL POLICY CONTEXT**

555. There is no dispute that the whole of the Cribbs Causeway area, including The Mall, is out-of-centre for planning policy purposes. The matter was specifically considered during the examination of the CS as the submission version proposed to allocate 35,000 m<sup>2</sup> of additional comparison goods floorspace at The Mall by 2026. Draft policy CS14 designated it as an emergent centre in recognition of its regional shopping role and also to meet the future local needs of the new population in the planned CPNN. However, the examining Inspector did not support this aspect of policy CS14. Amongst other things he was concerned about the wider implications of such a large scale development on centres in the region bearing in mind its extensive regional catchment. He concluded that the expansion of The Mall should not be considered in isolation but that other organisations and local authorities should be involved in the decision about its longer term role. My colleague recommended modifications to the CS to address these points and suggested that the matter should be considered as part of a review of the CS or a replacement local plan [216; 223].

556. The new local plan for South Gloucestershire district is presently at a very early stage and can be given little weight. The West of England Joint Spatial Plan is being produced by SGC, BCC, North Somerset Council and Bath and North East Somerset Council. This will provide a sub-regional approach to housing, employment and infrastructure issues. However, this can be given little weight at the moment as it is also in the early stages of the plan making

process. Furthermore, whilst retail issues will no doubt be influenced by its policies, the terms of reference do not include the establishment of retail hierarchies in the sub-region. In respect of the policy position of The Mall, things have not moved very far forward since the examining Inspector issued his report in 2013. Due to the early stages of these emerging plans there is no support for an argument that the application is premature [20; 478].

557. In terms of the retail and leisure uses, Policy CS14 of the CS establishes the hierarchy of centres within the district. Cribbs Causeway and The Mall are specifically identified as being out-of-centre. The overall objective of the policy is to protect and enhance the vitality and viability of the existing centres in the district in accordance with the town centre first approach in national policy. It identifies a need for 34,000 m<sup>2</sup> of new comparison goods floorspace by 2026, which is to be distributed through the PSP Plan or a replacement local plan. As indicated above the work on the latter is underway, albeit it is still in the early stages. The PSP Plan is newly adopted and policy PSP31 allocates sites in the primary shopping areas of the town and district centres to provide comparison goods floorspace to 2021 [222; 224].
558. Amongst other things paragraph 23 of the Framework requires that local plans should allocate a range of suitable sites to meet the scale and types of retail and leisure uses in town centres to meet needs in full. The Applicants consider that the development plan is silent on where the remaining 16,000 m<sup>2</sup> of comparison goods floorspace would be distributed. However, paragraph 9.26 of the CS indicates that until the new local plan is completed any provision not delivered through the PSP Plan will be considered against national policy, having regard to the sequential approach and retail impact tests. Paragraph 7.58 of the PSP Plan makes clear that the retail floorspace need beyond 2021 is more uncertain and that this will be reviewed through the new local plan. Until this is completed proposals to meet such need will be considered against the strategy in policy PSP31 and the sequential and impact test requirements in national policy. It is therefore not unreasonable to conclude that the plan is not silent on the issue of the distribution of retail floorspace in South Gloucestershire after 2021 [43; 225; 365; 366].
559. The strategy in the PSP Plan is to accommodate the identified need to 2021 on the allocated sites within the identified town and district centres. It does not prevent proposals for main town centre uses on edge and out-of-centre sites, subject to considerations of accessibility and the application of the sequential test and, in the case of out-of-centre proposals, the application of the impact test. However, in terms of the strategy policy PSP31 and indeed policy CS14 operate within the context of an identified need of 34,000 m<sup>2</sup> of comparison goods floorspace. Although "need" is no longer a consideration in development management decisions it is relevant in the plan making context. It is difficult to understand how the application proposals, which would result in 35,250 m<sup>2</sup> of mainly comparison goods floorspace within an out-of-centre location, would accord with the development plan strategy. The scale of the proposals would exceed the whole policy requirement that the strategy seeks to distribute. Furthermore, there would be conflict with the general criterion in policy PSP31 requiring all proposals for main town centre uses to be in proportion to the role and function of the location. Although The Mall is a regional shopping destination such a large addition of main town centre uses could not reasonably be considered as proportionate to a location outside of any

designated centre. As the proposals would be contrary to the strategy in policy PSP31, paragraph 7.58 makes clear that until there is a new local plan, proposals to meet retail need post 2021 will be considered against the sequential and impact test requirements in national policy [**28; 43; 215; 227; 228; 201; 361; 362; 363**].

## **POLICY CONTEXT FOR THE RESIDENTIAL AND HOTEL USES**

560. The proposals also include a hotel and residential uses. Hotels are considered to be main town centre uses in the Framework and paragraph 24 indicates that a sequential test should be applied if they are not in an existing centre or in accordance with an up-to-date local plan. Policy CS26 in the CS relates specifically to the CPNN, which includes The Mall and Cribbs Causeway. This outlines a wide-ranging package of uses, facilities, services and infrastructure, including scope for hotels [**25**].
561. The CPNN SPD provides little information as to where hotels would be located and the only reference is on the community infrastructure diagram where hotel and conferencing facilities are mentioned in the planned local centre at the eastern end of the former Filton airfield site. This though is diagrammatic and, whilst The Mall is not designated as a centre, the policy is not specific about where hotels should go in the CPNN. In principle present policy does not preclude such a use at The Mall. Bearing in mind paragraph 24 of the Framework, the hotel would not need to be included in the sequential test [**64; 360**].
562. Policy CS26 includes provision for about 5,700 new dwellings within the CPNN. The proposed 150 dwellings would accord with this policy. Although the most recent Annual Monitoring Report shows that the council can only demonstrate a 4.54 year supply of deliverable housing land, it is improbable that the application proposals would contribute to reducing this deficit. This is because it is anticipated that the residential element of the project would be delivered towards the end and most likely well beyond the 5 year timeline. The proposals would include 35% affordable housing, which complies with the requirement in policy CS18 [**25; 123; 368**].

## **APPROACH TO DECISION MAKING**

563. Paragraph 14 of the Framework establishes the presumption in favour of sustainable development and the second part of that section explains what it means in relation to decision making. For the reasons given above it is considered that the application proposals would conflict with policy CS14 in the CS and policy PSP31 in the PSP Plan because they would not comply with the development plan strategy. Under section 38(6) of the Planning and Compulsory Purchase Act 2004, the application must be determined in accordance with the development plan unless material considerations indicate otherwise. An important consideration is the Framework and its policies with regard to ensuring the vitality of town centres, sustainable travel and the safety of the highway network.
564. With regards to housing, the council does not have a five-year housing land supply and paragraph 49 of the Framework indicates that relevant policies for the supply of housing should not be considered up-to-date. However, in this case, the 150 residential units would be within the CPNN area and would not

be contributing to the council's short term housing land supply. This would be primarily a retail-led development and overall there was no suggestion from any party that relevant policies relating to the proposed development overall are out-of-date. Furthermore, for the reasons given above, the development plan is not silent on retail matters and there was no contention that it is silent on any other relevant matter. In any event, in this case there are specific Framework policies that indicate development should be restricted. These policies relate to the sequential, retail impact and transport impact tests as established in paragraphs 27 and 32. If any of these are failed, there is no dispute that planning permission should be refused. If they are passed, then the application should be determined in accordance with the development plan unless material considerations indicate otherwise. These considerations will include the benefits of the scheme [42; 219; 222; 367; 368]

## **CONSIDERATION TWO: WHETHER THERE ARE SEQUENTIALLY PREFERABLE SITES ON WHICH THE MAIN TOWN CENTRE USES COULD BE ACCOMMODATED, BEARING IN MIND THE NEED TO DEMONSTRATE FLEXIBILITY**

### **INTRODUCTION**

565. The sequential test is an important part of the town centre first policy in both the development plan and the Framework. It is important to note at the outset though that it does not translate to a town centre only policy. If there are not suitable or available sites in the town centres or on their edge, then out-of-centre sites can be considered. For the reasons already given in the preceding section, even if the test is passed it does not mean that the proposals would necessarily accord with the development plan strategy. In this case they would not [45].
566. The meaning of the sequential test is a matter of law whereas how it is applied is a matter of judgement. The Framework and the PG indicate that when looking at the suitability of potential sequential sites, flexibility should be demonstrated on issues such as format and scale. However, in *Aldergate Properties* it was held that what this means is that the alternative site should be suitable for the broad type of development proposed in respect of the approximate size, type and range of goods. This seems to me to be subtly different from a consideration of whether the site would be closely similar, which was what was referred to by the Inspector in the Tollgate Village appeal decision. I note that the Inspector in the Kingswood, Hull appeal did not think that closely similar provided sufficient flexibility [49; 50; 126-128; 240; 369; 377; 441].
567. There was debate at the inquiry about whether proposals should be split into different parts so that they can be accommodated on several town centre sites. Whereas past retail policy and guidance has adopted a disaggregation approach this is not embodied in either the Framework or the PG as was confirmed by the Court of Appeal in *Warners Retail*. The Secretary of State reached a similar conclusion in his decisions on Rushden Lakes, Scotch Corner and Honiton Road. Whilst the Inspector in the Kingswood, Hull appeal decision did endorse a disaggregated approach this seems to have been influenced by a wording of the relevant policy and the availability of two allocated sites [90; 129-131; 137; 182; 240; 441].

568. In the Tollgate Village case the Inspector did consider that there was scope for disaggregating the proposals and spreading them onto different sites, even though ultimately such sites were found not to be available. However, the findings here were case specific and it is noted that they were not specifically endorsed by the Secretary of State in his decision. As a general principle an approach that involves disaggregation does not seem to me to fit well with the *Aldergate Properties* or *Warners Retail* judgements referred to above. The town centre uses in the application proposals would comprise the retail and leisure uses and to divide them up would change the broad nature of the development in this case [**131; 242; 243**].
569. Paragraph 24 of the Framework refers to availability in the present tense. In the Rushden Lakes decision the Inspector did not consider that this encompassed the likelihood of sites becoming available during the remainder of the plan period or over a period of some years. The Secretary of State agreed with this finding. *Lionbrook* is of limited assistance because it was drawing from the advice in the cancelled PPS 4 Practice Guidance, where longer time periods were endorsed. There is nothing in the development plan, the Framework or the PG to support the conclusion reached in *Lionbrook* that availability should stretch 3-5 years ahead or an even longer period [**56-58; 132; 133; 258; 372**].
570. The Framework makes clear that sites are to be allocated to meet the need for town centre uses in the plan making process. Whilst need was also once relevant to decision making this has now specifically been removed from national policy. There is nothing in current planning policy to indicate that whether or not an alternative site is available should be linked to the issue of retail need. The sites in policy PSP31 seek to meet identified comparison goods need up to 2021 but paragraph 7.58 makes clear that after that date future needs will be reviewed in the new local plan, which is currently at draft stage. What should happen in the interim is clearly set out in paragraph 7.58 and there is no indication that out-of-centre proposals should be put on hold until that review has been completed or that need should be a consideration when applying the sequential test [**57-59; 261**].
571. However, it is important not to lose sight of what the sequential test is seeking to achieve. It is a key part of the town centre first approach and its purpose is to ensure that town centre uses are directed to central locations if at all possible. It should not be a particularly controversial proposition that a location such as The Mall is likely to be more straightforward to develop than many in-centre sites. It seems to me reasonable to bear this in mind when timescales are being considered. What would be reasonable and appropriate will depend on the particular circumstances of the sequential site and the proposals that it is being expected to accommodate. This is a matter of judgement to which I will return later. I do not though consider that additional time should be allowed for the prospect of a legal challenge as was suggested by BCC. It is only reasonable to assume that the Secretary of State will not make an error of law when determining this planning application [**56; 60; 134; 234; 262; 263; 373**].

## **PARTICULAR LOCATIONAL REQUIREMENTS**

572. The PG indicates that some main town centre uses have particular market and

locational requirements, which mean that they can only be accommodated at specific places. The PG requires robust justification if such an argument is being advanced and makes clear that this does not include land ownership. Although the Applicants did undertake a sequential assessment they contended that one was not needed because there were particular market and locational requirements in this case. The commercial rationale put forward in support of this related mainly to enhancing the existing investment, improving the existing offer and mix of uses, responding to consumer and operator demands and enhancing the integration with surrounding development [46; 236; 239].

573. The Applicants also argued that the application proposals would serve a different catchment area to Bristol city centre, where the alternative sequential site is located. This does not seem to me to be supported by the evidence, in that the core catchments of The Mall and the city centre overlap to a very significant degree [237; 379.2].

574. There is no doubt that the application scheme would result in benefits. However, similar arguments to many of those being put forward by the Applicants could be used to justify extensions to many out-of-centre shopping developments, especially those built in the 1980's and 1990's. Often these shopping malls do not meet the demands of modern retailing or address the expectations of customers in terms of the shopping experience. Extensions to existing retail developments are not immune from the sequential test and in my judgement there is insufficient justification for the application proposals being excluded from undertaking it. I note that no other party, including SGC who otherwise supports the proposals, agreed with the Applicants on this point [236; 238; 378; 379.1].

## THE SEQUENTIAL SITE SEARCH

575. In this case the search should be relatively extensive in order to reflect the sub-regional extent of the catchment. The only assessment that has been undertaken has been by the Applicants. There is no evidence from any other party that suggests other sequentially preferable sites. Indeed there is no dispute that the only site for consideration under the sequential test is Callowhill Court in Bristol city centre. I have considered the written evidence on the other sites but have come to the same conclusion for the reasons given below [47; 136; 505].

576. The sequential search considered sites of a minimum 2.2 ha, which would accommodate the new anchor store and the retail expansion (Blocks D and E). If 1,250 car parking spaces were added (Block H), the minimum site area would be 3.2 hectares. The assessment assumed 100% site coverage and a three storey development. In larger centres where there is good accessibility by public transport, it seems unreasonable to plan for the same level of car parking as for an out-of-centre location. The space put aside for this purpose seems overly generous. A site of somewhere between 2.2 and 3.2 ha would therefore seem appropriate. In the site search the minimum 2.2 ha site area was used and I am therefore satisfied that the search criteria were robust [47; 246].

577. The area of search itself initially concentrated on the core catchment area for The Mall, which comprises zones 1-4 and part of zone 9. However, at my request, other centres in the wider catchment were also considered. For the

purposes of undertaking the sequential test there is nothing in paragraph 24 of the Framework or the PG to indicate that the suitability of an alternative site depends on the scale of the nearest centre or its position in the retail hierarchy. On the other hand, such matters may be relevant when considering whether the proposals accord with the up-to-date retail policies in the development plan.

578. The sequential assessment did not identify any suitable sites that were available within the catchment area of The Mall. The analysis concentrated on the town and district centres, which seems a reasonable and proportionate approach. There was a rigorous search of these centres and I consider that this was a well conducted piece of work that thoroughly investigated the various options. The only potential sequential contender is Callowhill Court in Bristol city centre.

### **SUITABILITY OF CALLOWHILL COURT AS A SEQUENTIAL SITE**

579. It is important to state at the outset that it is the city centre **site** that is to be considered in applying the sequential test. However, the Callowhill Court planning application scheme has relevance in this case because it proposes a very similar type of development and range of uses. Bearing in mind the site's allocation in the BCAP, there is no dispute that Callowhill Court would be suitable for the uses proposed [385].
580. Site KS02 in the BCAP is some 2.3 ha whereas the Callowhill Court application site is 3.48 ha as it also includes land on the southern side of Broadmead, to the rear of Quakers Friars. Due to site constraints the build zone in the application is 3.15 ha. On the basis of a 3 storey development and 100% site coverage, the allocated site seems unlikely to be of sufficient size to accommodate the main town centre uses and car park in The Mall proposals. However, the planning committee made clear that the car parking requirement would need to be substantially lower than the 1,250 spaces originally proposed, bearing in mind the existing parking availability in the city centre and the good accessibility to public transport. The scheme was subsequently amended and the parking had been reduced to 380 spaces by the time the resolution was made to grant outline planning permission. Overall, in terms of size, the Callowhill Court application site would seem to me of sufficient size to accommodate the relevant parts of a broadly similar development proposal [51; 245; 246; 382.1; 387].

### **Existing floorspace at Callowhill Court**

581. One of the main disputes was whether account should be taken of some or all of the retail floorspace currently on the Callowhill Court site. The retail uses generally extend to two storeys and in most cases the upper floors are either unused or provide ancillary floorspace for storage or staff facilities. There was considerable debate at the inquiry as to how much of this should be classed as retail floorspace. However, the critical point here is that before redevelopment could take place the existing uses would have to be displaced and the site cleared. The exception is the old BHS building, which is shown to be retained in the Callowhill Court scheme and is soon to have new tenants in place. Nevertheless, in terms of suitability there is no requirement to consider the site net of existing floorspace in terms of either the CS or BCAP or indeed the Framework. For those tenants with unexpired leases arrangements would have

to be made to relocate them or else to pay them compensation. This would clearly have a cost implication. However, it is difficult to understand why the sequential site would need to be of sufficient size to accommodate not only the town centre uses proposed at The Mall but also the existing uses as well [52; 248; 249; 386].

582. The Applicants contend that if existing uses are not taken into account, then any area within a town or city centre where there are operating uses could be considered as a potential sequential site. Apart from the fact that such sites would generally not be available, what distinguishes the sequential site at Callowhill Court from most other parts of the city centre is that the majority of the land is allocated for major retail-led redevelopment and there is a resolution to grant outline planning permission [138; 248].

### **Viability**

583. Paragraph 24 of the Framework does not include viability as a consideration when applying the sequential test in decision making. This contrasts with policy EC15 in the cancelled PPS 4 where viability was specifically mentioned as a factor to be taken into account. The reason for this change is that the Government envisages that such considerations should be undertaken at the plan making stage as is established in paragraph 23 of the Framework. It is thus unsurprising that the PG also makes no mention of viability testing within the decision making context. The BCAP was adopted in 2015 and at this time the Framework had been published and the PG was in place. In order for the plan to have been found sound the examining Inspector would have had to be satisfied that this was a viable town centre site in accordance with paragraph 23 of the Framework. Nevertheless, policy BCAP36 does not specify any particular mix of uses or quantum of floorspace. Its focus is on a major retail-led mixed use development. There is no reason to believe that this policy imperative could not be achieved but the policy itself is insufficient to be satisfied that the site would be able to deliver the broad quantum of town centre uses proposed at The Mall [251; 252].
584. The viability of BALP's planning application proposals for Callowhill Court thus provides a useful yardstick as to whether The Mall proposals could be successfully delivered on the sequential site. Detailed viability appraisals were put forward by the Applicants and BALP. These were based on residual valuations and reached very different conclusions about the viability of the assessed developments. However, evidence was also given by Hammerson who would be one of the development partners undertaking the Callowhill Court redevelopment. That evidence was clear that the viability of the scheme would not be judged on a residual exercise. Rather there had been an internal assessment and this had satisfied Hammerson that BALP's scheme would be financially viable. BALP was unwilling to reveal details of the internal assessment to a competitor on the grounds that it contained commercially sensitive and confidential information [54; 423].
585. Hammerson and AXA are equal partners in BALP. Hammerson is a UK REIT and this means that a large part of its profit derives from property investment and rental income. The capital gains that are derived from this are exempt from tax but 90% has to be distributed to its shareholders who are then liable to pay tax on the income. This type of arrangement means that the portfolio

comprises long term investments that seek to achieve sustained and secure income growth. This is very different from a trader developer who will capitalise on income in the short term by selling the asset [420; 421; 433].

586. As the existing site is in active use it clearly has a value to BALP as it generates significant rental income. It seems to me inconceivable that a developer with Hammerson's experience of constructing large city centre projects would not have factored this in to its consideration of viability. The conventional viability assessments do not consider the situation where a sustainable income stream is being derived from rents. It is appreciated that the UK REIT only applies to Hammerson and not its partner company AXA. However, Hammerson has been a UK REIT since 2007 and so AXA would have been well aware of its position when it bought into the limited liability partnership in 2014. There is no evidence that BALP will not be developing Callowhill Court and retaining the whole estate, including Cabot Circus as a long term investment generating rental income. Indeed one of their objectives is to increase the overall food and beverage offer, which is considered unsatisfactory in the existing shopping centre [419; 421].
587. The main disputes in the residual viability assessments related to rental value, build costs and the value of the existing asset. It seems to me that the latter factor is of particular significance in determining whether the BALP application proposals would result in a profit or loss in terms of a residual analysis. Although Hammerson undoubtedly know the value of its own estate, this was not revealed either to the inquiry or BALP's witness who carried out the residual viability assessment on their behalf. Although this concluded a profit of about £67m there was no benchmark land value to compare it with. The only figure before the inquiry was that of the Applicants, who valued the existing Callowhill Court demise at £115.85m, assuming a blended yield of 6.32%. Even if all of the inputs and assumptions in BALP's residual assessment are accepted it is difficult to see how on this basis the proposed redevelopment would be viable [55; 147].
588. For the purpose of the sequential test, a trader developer would therefore be unlikely to buy the existing asset, clear the site of the existing income generating uses and then build out the broad type of development of town centre uses proposed at The Mall. However, if Hammerson's evidence is to be accepted the site could be made available for development and a scheme accommodating a similar range of town centre uses could be built out as an investment generating long term rental growth. The evidence to support this scenario could not be tested because the internal appraisal was not revealed. Nonetheless I consider that it should be given substantial weight for various reasons. Hammerson is a very experienced, well-resourced and reputable developer who has been responsible for delivering many city centre developments, including Cabot Circus. It would therefore be difficult to understand why it would have participated in a public inquiry and given the evidence that it did other than to make clear its intentions with regard to the Callowhill Court site. Evidence was given by the Retail Director of Hammerson and I found this to be well considered and credible. His explanation as to why the internal assessment was commercially sensitive and unable to be released in the public arena was understandable [255; 309; 423].

589. It is appreciated that the RICS guidance: *Financial viability in planning* indicates that in undertaking scheme-specific viability assessments the nature of the applicant should normally be disregarded. However, this is on the basis of the residual appraisal methodology, which is clearly the most objective and transparent way of testing whether a project is financially viable or not. In this case the evidence indicates that this is not how the viability of the Callowhill Court scheme will be assessed and clearly this evidence cannot be ignored. The weight to be given to it is a matter for the Secretary of State but for the reasons I have given I consider that it is compelling. It has also been raised that Hammerson is proposing to acquire INTU, who is one of the owners of The Mall. No evidence has been given that this would affect the Callowhill Court scheme or, for that matter, the proposals at The Mall [159; 418; 422].

### **Site constraints**

590. There was a great deal of evidence to the inquiry about the constraints of the site and whether or not a development with the quantum of floorspace proposed in the Callowhill Court planning application could satisfactorily be accommodated. Issues such as the proximity of heritage assets and the position of residential properties with regards to daylight and sunlight were raised. BALP have made various amendments to the planning application proposals, including a significant reduction in the car parking provision. In addition the parameter plans show that the buildings have been reduced in height in some places and a new pedestrian route from Bond Street has been inserted. The revised plans include an Ordnance Datum base and SGC indicated that this meant that some of the proposed buildings would be even lower. Even if this were to be the case and the build zone was reduced as asserted by SGC, I consider that a broadly similar quantum of retail and leisure uses could still be accommodated on the site [142; 249; 250].

591. There is no evidence that the Callowhill Court planning application was made as an artificial construct that was intended as a spoiler to the proposed extension to The Mall. There is also no evidence that the site is intended to be sold or that the application was just submitted to assist in the negotiations with BCC to consolidate the head lease. Whether or not the Callowhill Court proposals can be considered as a planned investment will be considered later in the report. However, for all of the above reasons I consider that substantial weight should be given to Hammerson's evidence that the site would be suitable in terms of the sequential test.

### **AVAILABILITY OF CALLOWHILL COURT AS A SEQUENTIAL SITE**

592. Paragraph 24 refers to availability in the present tense. That does not of course mean that the contender site has to be available at the present date but rather that it should be available to accommodate the application proposals. The Applicants anticipate that development would commence on site in June 2020 and that therefore Callowhill Court should be available by that time or there and thereabouts. They conceded that the timescale should not be precise and that the summer of that year would be acceptable. The Callowhill Court site is clearly not available at the moment because it is in active use. So the question must be whether it is likely that it would be cleared and ready to accommodate the broad type of development proposed at The Mall within an appropriate timescale [56].

593. What an appropriate timescale would be is a matter of planning judgement as is made plain in *Lionbrook*. In exercising that judgement it is important not to lose sight of the purpose of the sequential test in promoting a town centre first approach. It is appreciated that *Lionbrook* related to the period when the PPS 4 Practice Guidance was extant and was addressing the need to stem the leakage of retail spending outside of Rugby Borough. Nevertheless, the Framework was also in place and it included the same words in paragraph 24 that exist today. The Rushden Lakes appeal decision pointed out that paragraph 24 does not ask whether potential sites are likely to become available during the remainder of the plan period or over a period of some years. I agree that it does not endorse those parts of the former Practice Guidance. However, that does not mean that there is no scope for flexibility or that the circumstances of the case may not be taken into account. Here what is being proposed at The Mall is a very substantial scale of development. Furthermore, the out-of-centre site would be much more straightforward to develop due to the fact that there are few constraints on the surrounding land and there is no issue with land ownership or site assembly [**258; 259; 260; 372; 373; 381; 382; 479**].
594. It should also be noted that on account of the additional transport modelling that was required to be undertaken, the inquiry was not closed until 14 February 2018. This has effectively pushed the Applicants' anticipated timeline forwards by at least 4 months. There was no dispute about the anticipated timeline itself. However, it is not unreasonable to point out that a start within just over 2 years from the receipt of outline planning permission would be a challenging timescale for a proposal of this scale, in my opinion. Even if that is not accepted, it seems unreasonable to discount the city centre site as an available sequential alternative if it is not available by the summer of 2020 [**9; 262; 524**].
595. BALP indicated in their evidence that they expect the Callowhill Court site to be cleared and ready for development by the summer of 2020. However, the Applicants pointed out that there are many things remaining to be done before that stage is reached. In terms of the sequential test it should be remembered that the progress with the planning application is only relevant insofar as it is necessary to achieve a cleared site. Outline planning permission has in any event now been achieved, subject to the completion of a legal agreement with a 6 month guideline to cover matters such as affordable housing and contributions to various highways works and sustainability improvements. [**61.1; 263; 382; 383**].
596. BCC has resolved to use compulsory purchase powers in principle in order to assemble the site, if it is necessary to do so. However, it was pointed out that this would be subject to a number of pre-conditions, including a development agreement and back-to-back indemnity. At the time of writing it is not known whether there is yet a draft of these documents, although BALP indicated that they would not enter into such agreements until outline planning permission had been granted. Nevertheless, BALP did not envisage that either agreement would be particularly complex especially as the commercial interests had already been sorted out through consolidating the head lease [**61.4; 382.4**].
597. Most of the freehold of the Callowhill Court site is owned by BCC. The land is currently in active use and about one third of the properties have long leases

held by BALP that extend beyond 2020. These have now been consolidated into a single 250 year lease along with 10 others that are within the site but have long leases not currently held by BALP. Whilst the consolidation of the headlease is clearly beneficial in terms of good estate management it also came at the considerable cost of £4m, which would not have been necessary if BALP was not intent on site assembly [**55; 409**].

598. There are 36 land interests out of a total of 90 where BALP will need to instigate negotiations. The evidence to the inquiry suggested that tenants have not yet been approached in order to start this process. However, it was also said that there was frequent dialogue with tenants through the management of the estate and that negotiations would not necessarily be dependent on the planning process. The first step in the process must be to try and reach agreement with as many of the leaseholders as possible. On the assumption that a CPO will then be necessary, negotiations will continue. In my experience they will continue right up to the last minute as tenants seek to conclude the very best deal that they can [**61.7-61.9**].
599. Whilst BCC has as yet only agreed to the principle it seems unlikely to me that it would decide not to go ahead with a CPO if it is needed to assemble a site where a large proportion is allocated in BCAP for redevelopment with town centre uses. The evidence shows that it took a period of 2 years and 3 months between the council's resolution to make a CPO and its confirmation in the case of Cabot Circus. Once the CPO has been confirmed it then has to be implemented and the interests acquired. Whilst the acquiring authority can take up to 3 years to execute a general vesting declaration there is no reason why it could not undertake the necessary process within a much shorter time period than that. In the Tollgate Village appeal a number of sequential alternatives were considered and rejected as not being available. In the case of Vineyard Gate the council's development partner had withdrawn. In the case of Priory Walk there was no evidence of any attempt at land assembly or that it would be viable to do so. These circumstances do not apply to the present case [**63; 382.5**].
600. The Applicants also questioned whether BCC would have to carry out a lengthy public procurement process before entering into a development agreement with BALP. However, the intention appears to be that the development agreement would be structured as a land transaction rather than a public works contract. Alternatively, the fact that BALP now own a long lease across most of the site means that they would have an exclusive position so that BCC would be entitled to enter into a development agreement with them without carrying out a procurement process. The Applicants point out that on this basis the wording of the development agreement would not oblige BALP to build out the scheme. However, such a commitment would not be a pre-requisite to achieving a cleared site. In any event it seems unlikely that BALP would not build out the scheme bearing in mind Hammerson's status as a UK REIT and their interest in the long term investment of not only the Callowhill Court site but also the adjacent Cabot Circus [**61.5; 61.6; 411**].
601. As the Applicants have pointed out, many of the tasks that remain to be completed are outside of the control of BALP. On the other hand many of them are within the control of BCC and there is no reason to doubt its commitment to driving forward this policy compliant city centre redevelopment project. It is

possible that the site could be made available for redevelopment by the summer of 2020 as BALP anticipate but, in my opinion, this may be too optimistic. Having considered the matter carefully and also drawing on my own experience of CPO's and large appeals casework, it seems a more likely scenario that a further year to 18 months would be needed. A more realistic expectation is that the cleared site would be available by mid to late 2021 [**61; 63; 384**].

602. This would clearly be later than the Applicants anticipate a start on their site although it would be much earlier than the expiry of their planning permission. However, in this case there are various factors that seem to me to justify an extended timescale when considering availability. The first is the policy support for the redevelopment of the site and its allocation in BCAP for similar uses to those being proposed at The Mall. The second is the relative complexity of clearing the city centre site in readiness for development, which will very likely require a CPO in order to complete assembly. The third is that sight should not be lost of the purpose of the sequential test, which is to look to town centres as the first port of call for town centre uses. This does not prevent out-of-centre development but it does mean that reasonable flexibility should be applied when considering the availability of sequential alternatives.

## **CONCLUSION**

603. The PG makes it clear that it is for the Applicants to show that the sequential test has been complied with. Both national and local planning policy requires that town centre uses should be located in town centres as the first priority. Whilst out-of-centre retail development is not prevented, a sequential approach is to be applied whereby suitable sites that are available in town centres are the first port of call. Although there may be market or locational requirements that mean a proposal can only be located on the out-of-centre site, this does not apply in this case.
604. There is no dispute that the only potential sequential alternative site is Callowhill Court in Bristol city centre. For the reasons given it is considered that the site would be suitable for the broad type of town centre development proposed at The Mall in terms of approximate size, type and range of goods. In considering the suitability of the site it is relevant to consider if it is deliverable. An indication of this is provided by the allocation in the BCAP. There is no requirement in the Framework to consider detailed viability but, for the reasons given, it is considered that there is sufficient evidence to be satisfied that the site would be deliverable for the town centre uses in question.
605. The Applicants have commented that the proposed planning conditions for the Callowhill Court scheme indicate a seven year period for submission of reserved matters and that this does not indicate any urgency for commencement of development. However, it is clear that the scheme would proceed on a phased basis and there is no reason to believe that the first phase, which would require the clearance of the site, would not be much sooner than that. There is also no requirement that development cannot be underway sooner and it is noted that the Applicants also envisage commencing development considerably earlier than the 5 year timescale agreed as a reasonable planning condition [**56; 524**].

606. The Framework requires the sequential site to be available and for the reasons given I consider that in this case a degree of flexibility is justified when considering timescales. This is a matter of judgement that must have regard to the purpose of the sequential test and the complexity of making ready the city centre site. The Callowhill Court site would be available on any reasonable assessment. For all of these reasons it is concluded that the application proposals would fail the sequential test. This would be contrary to the provisions of policy CS14 in the CS, policy PSP31 in the PSP Plan and paragraphs 24 and 27 of the Framework.

### **CONSIDERATION THREE: THE IMPACT OF THE APPLICATION PROPOSALS ON THE VITALITY, VIABILITY AND INVESTMENT IN TOWN AND CITY CENTRES**

#### **INTRODUCTION**

607. The planning application was accompanied by a Planning and Retail Statement and subsequently two addenda were prepared. However, all of this work has been superseded by the Joint Retail Assessment (JRA) produced by the Applicants and SGC for the purposes of the inquiry. BCC also prepared a retail assessment for the inquiry. The two assessments rely on different base data and this will be considered further below. In summary, the JRA was derived from a bespoke household survey undertaken by NEMS in 2014. The BCC retail assessment relied on the 2013 DTZ household survey. This was undertaken as part of the *Bristol City Centre Retail Study* (BCCRS), which was used to inform the emerging BCAP about retail needs to 2026. The catchment area of both retail assessments included the same zones 1-12, but the JRA added zone 13 to the north, which covered the Gloucester area and zone 14 to the south, which covered the Bridgwater area.

608. It was agreed that the base year would be 2016 and that the design year would be 2024. The latter is normally taken as the second full year after the store has opened when a mature pattern of trading would be expected to have become established. The Applicants anticipate that the proposed extension to The Mall would open in 2023 so a design year of 2024 is considered to be robust. The JRA also includes an assessment in 2027, which is referred to as the "horizon year". The Framework indicates that where the full impact will not be realised in five years from when the application is made a longer time horizon of 10 years should be assessed. In this case 2024 would be 10 years from when the application was made. There is no suggestion that the main impacts would not be felt at this time and it would be inappropriate to take into account a further 3 years of expenditure growth when considering this matter (**174; 284**).

609. Paragraph 26 of the Framework requires an assessment of the impact of the proposals on town centre vitality and viability and investment in the centres. The Applicants anticipate that the comparison goods turnover of the new development in 2024 would be £168.99m and that the equivalent food and beverage turnover would be £44.9m<sup>85</sup>. These turnover forecasts have not been challenged. The JRA assesses where the expenditure would be drawn from to

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<sup>85</sup> See *Document POE 32, appendix 2, table 19, column G; appendix 2, table 18, column G*.

support the new development. This is based on the results of the household survey, which asked questions to householders about their shopping preferences. However, it is important to bear in mind that this is not a definitive exercise. It depends on the questions that are asked and the interpretation of the collected data, which will be based on the judgements of the professionals concerned.

610. The PG advises that when addressing the impact test, the cumulative effect of committed developments is also relevant. This derives from developments that have been permitted but were unimplemented in the base year of 2016 and are expected to be completed by 2021. They include the new developments at ASDA and Site 20 as well as various developments within Bristol City and other towns and cities in the study area<sup>86</sup>. Although the impacts arising from these commitments are often relatively high, it should be recognised that they would have come on-stream by 2021, which is 3 years before the design year of the application proposals. There would therefore be the benefit of further expenditure growth and this would more than counteract their impact by 2024. In this case the cumulative impacts are therefore of less importance [**76; 284; 285; 511**].
611. The JRA also considers the cumulative impact with the Callowhill Court proposals coming on-stream in 2024. However, I have not considered this scenario further because regardless of whether there would be sufficient expenditure to support both developments, the definitive evidence from BALP is that the Callowhill Court scheme would not be going ahead if the application proposals are permitted [**440**].

## **RETAIL IMPACT ON CENTRES IN THE CATCHMENT**

612. A number of objections have been raised by local planning authorities and other third parties about the effect that the proposed development would have on particular centres. However, the only numerical assessment that has been undertaken is in the JRA. BCC's retail assessment only considers the impacts on Bristol city centre. Furthermore, many of the objections were based on the now superseded retail assessment that was submitted in 2014 with the planning application. A retail assessment is not definitive. As mentioned above it is based on the assumptions and judgements of those who created it. BCC had a lot of criticisms of the JRA and I consider these later. These mainly seek to show that the expenditure draw and impacts on Bristol city centre have been underestimated. If that is the case then, all other things being equal, it would be expected that the application scheme would rely less on expenditure from elsewhere. In other words, in such circumstances, the JRA would be a worse-case scenario for the other centres in the study area. In any event as far as impacts on all centres apart from Bristol, the JRA is the best, indeed only, available evidence on which the Secretary of State can rely [**65; 168**].
613. The impact test in the Framework is whether the proposals would be likely to have a **significant** adverse impact on the centre in question. Whether an impact is significant or not will be a matter of judgement but much will depend on the health of the centre. The same level of impact may be significant and

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<sup>86</sup> The commitments are listed in the JRA at **Document POE 32, appendix 2, table 11** (comparison goods) and **appendix 3, table 11** (food and beverage).

adverse in the case of a centre that is struggling and weak and yet benign if the centre is thriving and vibrant. [66].

614. The PG includes the well-established principle that retail uses tend to compete with their most comparable competitors in the shopping hierarchy. The proposed development is intended to enhance the existing high order comparison goods offer that already exists at The Mall whilst also increasing the overall food and beverage offer to provide complementary facilities to enhance its customers' shopping experience. The proposals would not therefore be expected to be directly competing with the smaller local and district centres, which are places where people traditionally go for their day to day shopping and convenience food purchases. The household survey does not provide sufficient information to assess the impact on each small centre or shopping parade. The JRA has though provided figures for the combined impact on all local centres in each zone. The assessment shows that the amount of expenditure that the proposals would draw from local centres would generally be very low [65].
615. The application site is in zone 2. The highest solus retail impact would be 3.5% from the zone 2 centres, excluding Emmerson's Green. These include **Bradley Stoke, Filton, Downend, and Staple Hill**. The evidence shows these as vital and viable town centres with a good diversity of uses, strong rental growth, lower than average vacancies and good levels of accessibility. **Kingswood** is more vulnerable and the health check in the JRA records a relatively high level of vacancy and a generally poor retail environment that is in need of investment. The profile of Kingswood produced by SGC in 2015 recorded that it suffered from competition not only from out-of-centre retail facilities but also from the new town centre at Emmerson's Green. On the other hand, the town centre appears to have a reasonable mix of comparison, convenience, service and food and beverage outlets with a mix of multiple and independent retailers. Whilst the proposals may result in a small level of retail impact on Kingswood this is unlikely to be of a level that would have a significant effect on its vitality and viability. **Patchway** is immediately to the north of the proposed new development site and at present it comprises a small parade of shops. The intention is that it would expand in the future to serve the new Charlton Hayes neighbourhood, which is currently under construction as part of the CPNN. This would provide for the local needs of the new community and serve a different function to The Mall and its proposed extension [65; 451; 452; 460; 459].
616. The JRA also considers the impact on committed or planned investments. In many cases it is clear that investment is going ahead regardless of the application proposals. The most likely reason for a development to stall as a direct response would be if it was seeking to provide the same type of scheme and target the same retailers. In the case of the smaller centres this would be unlikely as they have a different role and function from The Mall, which specialises in high order comparison goods that focuses particularly on the top end fashion market. An example is the allocation in the PSP Plan for further comparison goods floorspace in Kingswood and the proposal for an extension to the Kings Chase Shopping Centre [65; 460].
617. **Weston-super-Mare** is about 24 miles from the application site and has good road connections via the M5 motorway. The JRA indicates that about 2.3% of

its comparison goods expenditure and 0.8% of its food and beverage expenditure would be lost to the proposed development. This would result in a combined impact of 1.9%. The town centre health check in the JRA indicates that the town centre is strong in terms of choice and retailer representation. It does record an above average vacancy rate although it is clear that this is being addressed by the new owners of the Sovereign Centre. They also point to some issues with the historic buildings in the town centre, which do not necessarily meet modern retailers' needs [65; 510-512].

618. However, there is clear evidence that investment is taking place with the new retail and leisure development at Dolphin Square. There will be internal trade diversion to this new town centre development from existing shops, which accounts for the relatively high cumulative impact at 2021. There is also an extension to the Sovereign Centre being planned. North Somerset Council objects on the grounds that Weston is an under-performing and vulnerable centre. However, the JRA retail assessment indicates that whereas a large proportion of its trade is drawn from its home zone, The Mall draws very little trade from zone 5. I do not consider that the relatively small loss of expenditure arising from the application proposals would be likely to result in a significant adverse impact on the town's vitality or viability. In terms of planned investment, I observed that the regeneration of Dolphin Square is underway and that the cinema and leisure development is open. Investment does not appear to be suffering adverse consequences as a result of the future proposals at The Mall [65; 459; 472; 497- 500; 505; 510-512].
619. **Bath city centre** lies on the eastern side of the study area. The JRA indicates that it would lose about 1% of its expenditure to the proposed new development in the design year of 2024. The centre is recorded as being vital and viable in terms of all relevant indicators and it is not considered that this small degree of impact would be significant. Whilst Bath and North East Somerset Council refer to a cumulative impact of 3% for comparison goods and 8.2% for food and beverage, this was taken from the superseded Second Retail Addendum where the design year was 2021. In the JRA the cumulative impact is shown as 2.5% and 4.5% for comparison goods and food and beverage respectively in the agreed design year of 2024. This would give an overall cumulative impact of 3.1% but most of this would be due to the expenditure loss to commitments. As has already been mentioned in paragraph 610 above, these would have come on-stream by 2021 and by 2024 would have been more than compensated by expenditure growth. The council has alleged an effect on investment but no example is given of where or how this may happen. No particular investment is highlighted in the JRA as being under threat as a result of the application proposals [65; 475].
620. **Keynsham** is also in Bath and North East Somerset and the JRA shows that the proposals would have a comparison goods impact of 1.4% in 2024 and a food and beverage impact of 0.9%. I observed that regeneration has already been undertaken in Keynsham and when I visited I found a thriving centre with a strong footfall. My comments regarding the cumulative impact are similar to those made in the preceding paragraph [65; 475].
621. **Newport city centre** primarily serves zones 11 and 12 as well as south Wales. The JRA shows that the impact arising as a result of expenditure draw to the application development would be well below 1%. Although there would

be a larger cumulative impact, this would mainly be as a result of trade diversion from existing shops to vacant units in Friar's Walk and the commitment at the Station Quarter. Newport City Council point out that the health of the centre is poor and vacancies are well above the national average. The town centre health check in the JRA indicates that the centre has recently suffered from competition from Newport Retail Park but that the council is taking measures to address the town centre's issues, including working on a masterplan. Whilst the city centre is clearly not in the best of health it seems unlikely that the very small amount of additional expenditure that would be drawn to the new proposals would result in a significant impact on vitality and viability. It is difficult to foresee the effect of future changes to the Severn Bridge tolls at this stage. There are proposals to improve the Market Arcade. However, the JRA indicates that the funding will go ahead regardless of the application proposals and there is no evidence to the contrary [65; 494; 495].

622. **Yate** has a broad retail offer, including multiple retailers and independent shops. Its vacancy rate is around the national average, it has a good level of accessibility and the JRA town centre health check records it as a vital and viable centre. There has been recent investment in the form of a leisure-led scheme with a cinema along with small restaurants and retail units. The JRA records an impact of around 2.7% in 2024 as a result of The Mall. This would rise to about 4.5% if commitments are included, although these would come on-stream by 2021 and so well before the application proposals. No investment schemes have been identified that would be adversely affected by the development proposals [65; 505].
623. **Thornbury** is a small market town with a mix of mainly independent shops and service outlets. The evidence indicates that the town centre's higher order comparison shopping has suffered from competition from places like Bristol city centre and The Mall. On the other hand Thornbury appears to have developed niche markets as well as cafes, restaurants and takeaways. The town centre health check in the JRA records a centre with a diversity of uses, good accessibility and about average vacancy rates. It concludes that the centre is viable and vital and from my site visit I would agree. The JRA indicates that centres other than Yate in zone 9, which would include Thornbury, would lose about 2.4% of combined comparison goods and food and beverage expenditure to the application proposals in 2024. There would be a further 2.2% loss to commitments in 2021. It should be remembered however that this includes all centres in zone 9 other than Yate and that by 2024 expenditure is forecast to grow considerably hence negating the impact of expenditure loss to commitments. In the circumstances, I do not consider that there would be a significant adverse impact on the vitality and viability of Thornbury [65; 450; 451].
624. **Swindon** is outside the study area from where it attracts less than 5% of its comparison goods expenditure. The solus impact in terms of comparison goods expenditure would be about 0.2%. There would be a larger cumulative impact of some 2.6% but this would be mainly internal trade diversion to existing commitments in Swindon and would have taken place by 2021. Forward Swindon is concerned about the impact of the proposals on the regeneration plans for central Swindon but has given no details of what investments would be likely to be affected. However, taking account of the very small proportion of Swindon's comparison goods expenditure that is forecast to be lost to the

proposed development it seems very unlikely that an adverse impact on vitality, viability or investment would ensue. Although Forward Swindon has criticised the Applicants' retail assessment there is no better information available on which to make an alternative judgement [65; 503; 505].

## **RETAIL IMPACT ON THE VITALITY AND VIABILITY OF BRISTOL CITY CENTRE**

### **The health of Bristol city centre**

625. The PG provides a number of indicators that are relevant to assessing how well the city centre is performing. It also advises that these should be viewed in terms of changes over time. The Applicants have undertaken a Health Check as part of the JRA. The Applicants and BCC have different opinions about the vitality and viability of the centre. However, it is important to remember that Bristol is a regional city centre and that as well as retailing it provides a focus for civic, cultural and recreational activity and is a popular tourist destination and a place of employment. It supports a diverse population, including a substantial number of students on account of its two universities [75.1; 75.4; 166; 458].

#### *Retailer representation and footfall*

626. The city centre has a wide representation of national and international retailers but it also includes many smaller outlets and independent stores and a diverse food and beverage offer. Cabot Circus provides a modern shopping environment since opening in 2008. This development is anchored by Harvey Nichols and House of Fraser and includes a strong fashion and footwear offer, including shops that appeal to younger customers. Stores such as Pull & Bear and Monki, for example, chose Bristol as a preferred location when entering the UK market. Other premium brands include COS and Victoria's Secret and it is unlikely that these would have risked locating in the centre unless it was considered to be a prime retail environment [75.5; 167].

627. Other anchor stores, including Primark, Debenhams and Marks & Spencer, are located in The Horsefair and Broadmead. These streets, which are part of the post-war regeneration of a centre that had been badly bombed in World War 2, provide a variety of outlets. Nevertheless, the construction of the buildings in the 1950's means that their specification and format do not always meet the demands of modern retailers. The Galleries Shopping Centre at the western end of the shopping area opened in 1991 and tends towards the more affordable brands. It has though suffered in recent years, especially since Cabot Circus opened. Nevertheless, the owners are now investing in its future and comment that it is slowly improving its retail offer [75.2; 75.3; 476].

628. The Mall opened in 1998 and John Lewis left its existing site for the new development at this time. The parties disagree as to the effects this had on the retail health of the city centre. In 2001 vacancies seem to have been relatively low. However, this tells little about the quality of the retailers in the units that were occupied. This was a period of strong economic growth but by 2007 the Venuescore ranking of Bristol city centre was only 27. What is clear is that the opening of Cabot Circus in 2008 had a positive effect that enhanced the attraction of the city centre as a retail destination. By 2010 the Venuescore ranking had increased to 12, which is a very substantial improvement and indicates the value of investment to a centre's prosperity. The evidence from

Hammerson is that it took 10 years of hard work to get this development off the ground and this contention was not challenged [**87; 167; 458**].

629. The evidence indicates that pedestrian flows around the main shopping circuit are strong, although as with most centres they tail off towards the edges of the shopping area. However, overall there is a concern that whilst Bristol is clearly doing well it has not continued to improve. Although there has been some fall in Bristol's position in the retail hierarchy since 2008 the current ranking is back at 12<sup>87</sup>. This indicates to me that the city centre is having to work hard to hold its own in the hierarchy of retail centres and that continual improvement is key in order to stave off competition, including from The Mall. Its present retail strength appears mainly to rely on the draw of Cabot Circus, which itself is now almost 10 years old [**75.1; 167; 280; 458**].

#### *Vacancies*

630. Any assessment of vacancy is a snapshot in time. However, in the Applicants' Health Check for Broadmead and Cabot Circus, 16% of units were recorded as being empty against a national average of 9.4%. The BCCRS recorded some 20% of Class A1-A5 units in Broadmead and Cabot Circus as vacant in 2012. These were mainly smaller units and one third of them were in The Galleries. The evidence indicates that the higher than average vacancy level has been an issue for a number of years although things seem to be improving and it is noted that BCC has a project that seeks to bring units not fit for retail use back into active use. Some parts of the city centre suffer from vacancies more than others. In Cabot Circus, for example, vacancies generally appear to be quite low. The vacancy level in Callowhill Court is likely to substantially improve when TKMaxx and Metrobank move in to the former BHS building. However, TKMaxx will be relocating from The Galleries and so will leave a unit there to be filled. In many of the older parts of the city centre there are a relatively high proportion of empty shops and this detracts from its vitality overall [**75.6; 166; 269-271**].

#### *Commercial yields and rents*

631. Rental yields provide a good indicator of investors' expectations of future prosperity. The higher the yield the lower the expected rental growth. In line with other sub-regional centres, Zone A rents in Bristol city centre have improved between 2013 and 2017. Nevertheless it appears that it is not performing as strongly as other cities such as Cardiff and Nottingham, for example. Although these cities have higher Venuescore rankings of 6 and 8 respectively, there is no evidence that there is a direct correlation between rankings and rental yields. Newcastle, for example, which is ranked 11 is performing much more strongly in terms of rental growth. The evidence also indicates that rental yields in Bristol are performing more poorly than the other regional cities referred to in the Applicants' evidence. Nevertheless, it should be borne in mind that these figures are generic and will vary across the centre. For example, BALP indicated that the rental yield for Cabot Circus is 5.15% but that if Callowhill Court is also included the blended yield is 6.32% [**75.7; 272; 275; 277**].

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<sup>87</sup> See *Document CD L10, page 11*.

632. There is evidence of actual transactions in Bristol city centre, including the acquisition of the interest in BALP by AXA in 2014. This showed a relatively high yield of 6.25%. However it should be borne in mind that this reflected the fact that at the time part of the landholding included the separate leasehold interests at Callowhill Court. Furthermore, the asset was purchased as a 50% passive share and the evidence at the inquiry indicated that the price paid was relatively cheap. In such circumstances this transaction does not seem to be a particularly good example of retail yields in the city centre generally [75.9; 274].

#### *Environmental quality*

633. The Health Check confirms my own observations that the city centre generally provides an attractive and well maintained retail environment, especially in the Cabot Circus and Broadmead circuit. However, The Horsefair is open to traffic and some of the older units and vacant shops along this street are less well maintained and in need of improvement. CCTV cameras are in existence and provide a secure and relatively safe shopping environment [281].

#### *Accessibility*

634. The city centre is well served by public transport. There are a large number of bus routes and Temple Meads station is about 2km away with regular shuttle bus connections. Whilst on-street parking is restricted, there are several multi-storey car parks, including in The Galleries and at Cabot Circus. Broadmead and Merchant Street are pedestrianised and the city centre is easy to navigate on foot. There is also a large residential population in close proximity with some flatted developments within the centre itself [458; 467].

#### *Conclusion*

635. In my judgement Bristol city centre overall is a vital and viable shopping centre as recorded by all main parties at the inquiry and noted in the BCCRS. The variety of its offer gives it an added dimension in that it has strengths in addition to retailing. However, in relation to its shopping function it does have some underlying weaknesses and this is particularly evident in the older parts of the centre. It seems to me that a great deal of reliance for its retail prosperity is placed on Cabot Circus, which itself is now about 10 years old. There appears to have been a lack of improvement in its fortunes over the past few years as is shown by several of the indicators referred to above. So although I would not classify the city centre as weak or failing, I do consider that it is likely to be vulnerable if there were to be a significant loss of turnover or investment potential as a result of the application proposals [167].

### **The retail assessments**

#### *Introduction*

636. The two retail assessments arrived at different conclusions on comparison goods impact. The JRA shows a solus comparison goods impact of 4.4% and a cumulative comparison goods impact of 6.9%. The equivalent figures in the BCC assessment are 11.3% and 14.2%. The JRA also assessed the impact on food and beverage expenditure. Despite criticising its reliability no similar assessment has been undertaken by BCC and so the JRA provides the best available evidence. This indicates a solus impact of 2.6%. As already

mentioned in paragraph 610 above, the commitments will have come on-stream by 2021 and so have less importance when considering impact in 2024. The food and beverage impact is relatively low and seems unlikely to me to make a material difference to the impact assessment overall. I now turn to consider the three main factors, which primarily result in the main differences between the comparison goods impact assessments [84; 179].

### *Internal impact*

637. This accounts for the largest difference between the two assessments. The turnover of the proposed new floorspace would be supported by expenditure from existing customers spending more, wholly new customers and existing customers spending in the new shops rather than the existing shops. The JRA indicates that in the design year of 2024 the turnover of the extended Mall would increase by £132.46m. This growth is shown as less than the £168.99m turnover of the proposed extension. The difference of £36.53m is the amount that is attributed to internal impact and would effectively be a redistribution of expenditure across the existing and extended development [77; 173; 174].

638. It seems credible that some redistribution of existing expenditure would occur when the new development first opens. It is easy to envisage that existing customers may be tempted by the newness of the extension and wish to try out what it has to offer as an alternative to their previous preferences in the existing Mall. However, it is the intention that the existing and proposed development at The Mall should be fully integrated and that there would be a seamless transition with the extended shopping centre functioning as a whole. The evidence suggests that whilst the turnovers of some existing retailers would fall others would rise but that on average they would stay much the same. The Applicants acknowledge that internal impact would not persist indefinitely and their contention is that it would have disappeared by 2027 because it would be offset by increased growth. However, it seems to me very likely that this offsetting would happen far sooner and that by the time a mature trading pattern had been established, the net effect of internal impact would have largely dissipated [78; 173; 174; 286; 287; 394].

### *Trade draw from other retail outlets at Cribbs Causeway*

639. Many of the outlets in the wider Cribbs Causeway are retail warehouses where the focus is on the sale of bulky goods or discount items. There are also large convenience stores, including Asda and Morrisons. The retail offer at The Mall focuses on the higher end of the market with a focus on fashion and footwear. There is clearly some overlap and retail park outlets such as TK Maxx, Mothercare, Asda, B&Q and Sports Direct do sell similar products. However, these tend to be more at the budget end of the market or else of a more specialised nature. The same can be said for furniture and furnishings with John Lewis and Marks and Spencer at The Mall generally selling a different product range and priceline to retail park stores like Argos, Carpetright and Magnet [79; 175; 292].

640. From my own observations and reviewing the evidence, there would be some trade draw from these retail outlets. However, for the reasons given, I prefer BCC's lower assessment of £8.08m rather than the much higher £16.16m in the JRA [79; 175; 293].

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*Turnover of Bristol city centre*

641. The household surveys provide the evidence base on which the professional retail judgements and adjustments are based. In particular they provide information about where people do their shopping and this is used as a guide to likely market shares. Both DTZ and NEMS are experienced in carrying out surveys of this kind and I have no doubt that both were properly undertaken in a robust and professional manner. Nevertheless, there were some material differences in the two surveys and it is necessary to consider which is to be preferred because the two retail assessments reach different conclusions on the likely turnover of Bristol city centre. Clearly this has a direct correlation to impact as the larger the turnover the lower the impact [**81; 170**].
642. The DTZ survey was conducted in June 2013 whereas the NEMS survey was undertaken in September 2014. The survey size was slightly larger in the case of the NEMS work. There is little evidence that the retail scene had materially changed between the two dates. I do not therefore consider that the fact that the DTZ survey was done a bit earlier and that the number of interviews was a bit smaller, counts against it. The NEMS survey used random sampling and the younger age group was underrepresented whilst the older age group was overrepresented. The DTZ survey set age related quotas in each zone. For the older and younger age cohorts the NEMS survey had to apply greater weighting but both surveys were weighted so that the age structure and profile reflected the catchment area. There was no evidence that the weighting was incorrectly applied in either case and on the whole I am not convinced that the larger adjustments that were necessary in the NEMS survey renders the overall results any less reliable. Indeed BCC also made corrections to the market share of both the city centre and The Mall [**82.5; 82.6; 83; 170; 298.2; 299.1; 299.3**].
643. One of the most important questions for present purposes concerns where people shop. The DTZ survey asked the respondent where the household does most of its shopping for various categories of comparison goods. The NEMS survey asked this question and also a secondary question as to where else the household shops for the various categories of comparison goods. I consider that this allowed a better understanding of shopping patterns and expenditure flows across the catchment. Furthermore, the NEMS survey included 2 additional zones and the evidence suggests that significant expenditure is drawn from these areas. Of course there would also be outflow but this would apply to either of the surveys. Whilst 2.5% inflow was agreed, I consider that the DTZ survey underestimated expenditure flows from beyond zones 1-12. For all of the above reasons I consider the NEMS survey to be the most reliable [**82.1-82.3; 299.2; 299.4**].
644. There are no published figures for the turnover of Bristol city centre. In 2016 the JRA estimates that the turnover of Bristol city centre was about £850m whilst BCC's assessment considered it to be around £669m. The sales densities were £7,650 per m<sup>2</sup> and £6,051 per m<sup>2</sup> respectively. On the basis of company average turnovers, the JRA shows a national average of £4,205 per m<sup>2</sup> (£5,000 per m<sup>2</sup> with VAT). However, this is a generic figure and is likely to be higher in a regional centre such as Bristol. There is insufficient evidence to confirm that the independent shops have lower sales densities. Conversely most of the multiples that are present in the city centre have much higher than average

sales densities. Taking all this into account I consider that the turnovers in the JRA are not unreasonable and are to be preferred [**81; 166; 169; 171; 294; 295**].

### Conclusions

645. Drawing together the above points, I consider that no allowance should be made for internal impact and that the trade draw from other retail outlets at Cribbs Causeway should be reduced to £8.08m. However, I do not consider that all of this expenditure would be drawn from Bristol city centre as claimed by BCC. One of the weaknesses in its assessment is that it has not taken account of the shopping patterns across the catchment and the trade draw on a zonal basis. Whilst the Applicants' sensitivity analysis<sup>88</sup> shows that a large proportion of the expenditure would be drawn from Bristol as the nearest and most comparable centre, a proportion would also come from other centres in the catchment. On this basis the Applicants' further analysis shows a solus impact of 6.4% [**80; 168; 176; 291**].
646. For all the reasons given, I consider that the JRA, with the above adjustments, provides the most credible assessment of the impact that would be experienced by Bristol city centre in 2024. BCC contended that The Mall, once it had been extended, would become more attractive to shoppers and so in effect the whole would be more successful than the parts. However, there is little evidence to support this hypothesis or the extent to which further expenditure would be drawn away from Bristol city centre. The JRA already takes account of additional expenditure from new customers to The Mall and its extension and existing shoppers deciding to spend more. There is no justification for an additional 5% trade diversion from the city centre as suggested by BCC [**177; 302**].

### The significance of the impacts

647. From the above it can be concluded that some £66.36m of comparison goods expenditure would be diverted from Bristol city centre to The Mall in 2024 resulting in a solus impact of 6.4%. The test in Paragraph 27 of the Framework is clear. If this would be likely to result in a significant adverse impact on the vitality and viability of the city centre, planning permission should be refused [**180**].
648. BCC consider that it is obvious that a development of the scale proposed would have a significant adverse impact on the city centre, which is the nearest comparable competitor. Reference is made to previous policy decisions, including the rejection of such an expansion in the Regional Strategy by the Secretary of State and in the PSP Plan by the examining Inspector. Reference is also made to the old PPG 6, which indicated that regional shopping destinations can have a substantial impact on centres. Whilst these decisions are noted they are of historic interest and the proposals should be determined in accordance with present planning policy having regard to the up-to-date evidence that is given in association with this called-in planning application [**264; 265; 305**].
649. In the Rushden Lakes decision the significance of impact was assessed by

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<sup>88</sup> This can be found at **Document POE 4, appendix 1**. The impacts are shown in column I.

considering the growth in turnover before and after the development had taken place. In this case expenditure is forecast to grow by £115.08m (13.5%) between 2016 and 2024 on the basis of the JRA figures, adjusted to take account of my conclusions on internal impact and reduced trade draw from the existing Cribbs Causeway warehouses<sup>89</sup>. However, it is also important to consider the health of the centre, underlying vulnerabilities and the type and amount of expenditure diversion that would take place. This is how the Secretary of State addressed the issue in later decisions such as Scotch Corner and Tollgate Village. In this case I have concluded that Bristol is vital and viable as a regional city centre with a diverse offer. However I have also identified vulnerabilities in terms of its shopping function and its reliance on Cabot Circus in the face of competition from other centres and out-of-centre locations such as The Mall [66; 88; 178; 181; 304; 305; 395].

650. It is acknowledged that no retailer has indicated that the proposed development would lead to specific shop closures. However, this is not unexpected and to my mind it would be unlikely that retailers would announce at this stage that they intend to leave the centre and relocate to The Mall. This would not be good for customer or investor confidence or staff relations. It is rather a different proposition for a retailer such as Next who has confirmed that it wishes to operate in both locations or Primark who indicates that it would retain its flagship store in the city centre [85].
651. The evidence indicates that about 71% of the existing shops and food and beverage outlets in The Mall are also trading in the city centre. These are not only smaller shops but also larger stores such as Zara, H&M and River Island. Some outlets will undoubtedly favour the city centre perhaps due to its more youthful customer profile or its greater variety of unit type and affordable rents. In terms of the anchors the information indicates that Debenhams and House of Fraser are on long leases and so would be unlikely to move. Fenwick is a candidate for the proposed new anchor store at The Mall but has made it clear that it would not consider the city centre as a viable alternative. There is clearly a significant degree of dual representation whereby retailers are present in both locations and there is no reason why this should not continue, provided the city centre remains an attractive and viable place from which to trade. However, it is relevant to note that a large proportion of the trade draw would come from Bristol as the nearest comparable centre. Of the £168.99m turnover of the proposed new development, the JRA, adjusted in relation to internal impact and draw from other Cribbs Causeway outlets, shows £66.36m deriving from the city centre. This is about 39% of the total turnover of the proposed development.
652. The proposed development would have 60-70 units to fill and of those on its target list about 31 are in BCC. On the reasonable assumption that the redevelopment of Callowhill Court would not be going ahead, it seems likely that at least some tenants currently occupying units in the city centre would want to move to the new floorspace at The Mall. This would accord with the evidence that shows that in some sectors of the retail market, most notably

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<sup>89</sup> These figures have been taken from **Document POE 4, page 33 (columns A and G)**. It is the growth once expenditure to the proposed extension to The Mall and commitments have been taken into account.

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specialist retailers in apparel and footwear, there has been a trend since 2007 towards fewer, larger outlets [86; 163-165].

653. In the circumstances a dual representation condition would be justified. BCC does not favour such a condition as it contends that it would be attempting to force retailers to stay in the city centre when they wanted to go elsewhere. I have some sympathy with this view. Even though such a condition was considered to be lawful by the Court of Appeal in *Skemersdale* it does not necessarily mean that it would be fully effective in protecting the centre. The Tollgate Village and Kingswood, Hull Inspectors clearly had some reservations in this regard and so do I. The condition would help to prevent the loss of existing traders for an initial period of five years but beyond this it would be difficult to justify. Furthermore, it is not ideal that SGC would be responsible for administering a legal agreement that relates to the city centre of a different local planning authority. I have no doubt that SGC as a responsible authority would do its best to carry out any necessary enforcement diligently. However the legal agreement and its management would be far from straightforward for these reasons [86.6; 91; 165; 306-308; 396; 443].
654. It is reasonable to assume that if the redevelopment of Callowhill Court does not go ahead, BALP would seek to manage its existing asset in order to maximise its potential. There is no scheme to show the likely extent of refurbishment or the degree to which the older units in Callowhill Court could be made attractive for modern retailing. TK Maxx and Metrobank are seeking to move to the former BHS building but this appears to be rather different in terms of its size and configuration from many of the other units. The evidence of BALP is that due to the restricted floorplates and ceiling heights the opportunities for improvement would be limited. Whilst the Applicants contended that Callowhill Court could be refurbished to provide a good retail investment this was not supported by any appraisal or analysis. If retailers leave for the new floorspace at The Mall the evidence from Hammerson is that they would be replaced but that the likelihood is that this would be with lower quality tenants. In such circumstances income growth would decline and the retail environment would deteriorate.
655. The PG advises that a judgement as to whether the likely adverse impacts would be significant can only be reached in the light of local circumstances. The city centre has a broader appeal than its attraction as a shopping destination. Nevertheless, In order to hold its own it is necessary for it to continually invest in its future and improve. Notwithstanding that the JRA shows significant expenditure growth between 2016 and 2024, the vulnerabilities underlying the health of the city centre would be exposed by the loss of the important investment opportunity that Callowhill Court would have provided. Bristol's fortunes as a regional shopping destination and its longer term standing in the south-west region would therefore be likely to be put at serious risk. Whilst the dual representation planning condition could help alleviate the loss of existing retailers to the new development, it would only be effective for a limited period and it would not apply to new entrants who choose the proposed new floorspace rather than a unit in the city centre. Drawing all these points together, I consider that a 6.4% solus comparison goods impact would be likely to result in a significant adverse impact on the vitality and viability of Bristol city centre [74; 396; 424].

## **RETAIL IMPACT ON PLANNED INVESTMENT IN BRISTOL CITY CENTRE**

656. There is no dispute that the investment in question is BALP's development proposals at Callowhill Court. There is no requirement that the investment must be similar to the application proposals or that it should proceed along the same timeline. Nevertheless, no other existing, committed or planned investments of a private or public nature in the city centre were put forward by any party. [154; 397].

### **Whether the proposed development at Callowhill Court would be viable**

657. If a scheme is not viable it is reasonable to assume that it would not be delivered. If that were to be the case then there would not be an investment to impact upon and the whole issue would need no further consideration. Viability has been considered in paragraphs 584-589 above in relation to the sequential test. The evidence demonstrates to me that this site would be unlikely to come forward in the hands of a conventional trader developer due to the value of the existing asset. However, it is also clear that this is not the only way that the development could progress. I found the evidence given by Hammerson to be compelling for the reasons I have given. This is envisaged as a long term investment by BALP to complement and enhance Cabot Circus in Bristol city centre. Amongst other things I was told that Cabot Circus is underprovided with food and beverage outlets and that the Callowhill Court scheme would redress the balance in this respect [68; 402; 419; 420; 433; 434].

658. The Applicants made the point that the Board's view on viability would be revisited as each stage is reached and that the final decision would not be made until "the point of no return" has been reached. However, that does not seem to me to be unusual or unexpected. Until an investment moves from being planned to being committed any prudent investor would keep the matter of viability under review. However, it seems inconceivable that a developer such as Hammerson, who is experienced in city centre regeneration projects and one of the very few developers building big retail schemes at the moment, would not have considered different contingencies and taken them into account. At present BALP is satisfied that the scheme would be viable and there no evidence that the recent amendments made to the planning application will result in withdrawal from the scheme on viability grounds [54; 359; 423; 434].

659. The Board of BALP has nonetheless made it quite clear that if the application proposals are granted planning permission the redevelopment of Callowhill Court would not go ahead. Whatever the reason for that decision it seems to me unequivocal. However, it does not change the position that BALP considers its scheme to be viable and deliverable as matters stand [69; 309; 439; 440].

### **Whether the proposed development at Callowhill Court can be considered to be a planned investment**

660. Paragraph 26 of the Framework requires a consideration of the impact on existing, committed and planned investment. These are clearly three different stages in the lifetime of a project, which are in effect sequential. The PG gives advice on the key considerations in the assessment of impact on town centre developments or investments that are in progress. However, it does not give any definition or stage that must be reached before an investment can be

considered to be “planned” [398; 405].

661. The Applicants have pointed out that in both the Tollgate Village and Scotch Corner decisions, the Inspectors considered that a planned investment had to be one at a “very advanced stage”. Whilst the Secretary of State agreed with the overall conclusion that there would not be a significant impact on the investments in question he did not specifically endorse a “very advanced stage” test. This seems to me understandable because neither the Framework nor the PG suggests that this is what is meant by a planned investment. In any event the stage that the investments had reached in the case of both these cases was not comparable to Callowhill Court. In the case of Scotch Corner no investments, planned or otherwise, were identified in Darlington town centre. The site in Northallerton town centre had been purchased by the council but no development partner had been identified. In the case of Tollgate Village, the Vineyard Gate site had no identified developer or confirmed scheme. So regardless of the principles, the facts of both cases were very different. I note that in the Kingswood, Hull appeal decision, my colleague pointed out that whether an investment was planned would depend on local facts and circumstances [70; 91; 155; 399; 400; 442].
662. Returning to the PG, the first key consideration is the policy status of the investment. The majority of the application site is allocated for major retail-led mixed use development and the allocation is identified as KS02 in the BCAP. This was supported by an evidence base provided by the BCCRS. To my mind the identification of a site for a major city centre investment to meet retail needs is fully in line with paragraph 23 of the Framework and the Government’s town centre policy. This is therefore a significant stage when considering the planning of the investment. [31; 404; 406; 408].
663. The second key consideration is the progress made towards securing the investment, in other words the progress in terms of the planning of the investment up to the point of commitment. It seems to me that the example in the PG of contracts being established is more pertinent to a committed investment than to one that is being planned. The development would be delivered through a partnership between BCC and BALP. So far BCC has resolved in principle to make a CPO if it is needed. BALP for their part have submitted an outline planning application and the Planning Committee has now resolved to grant permission subject to the completion of a legal agreement. BALP have also acquired the long leasehold interest on two of the properties needed for the redevelopment that were outside their control and negotiated with BCC to consolidate the headlease on the existing estate at a cost of £4m. The latter two actions may well be beneficial in terms of asset management. However, they also involved a significant financial commitment and were a necessary pre-requisite for the redevelopment project [71; 408; 409].
664. There is no doubt that there are a number of tasks that have to be completed before the investment passes from the planned to the committed stage or the “point of no return”. SGC spent considerable time at the inquiry pointing to difficulties with the development of this city centre site and the issues that would need to be resolved before a detailed planning permission was likely to be forthcoming. However, things have now moved on and the Planning Committee was sufficiently satisfied with the proposed development to resolve that outline planning permission should be granted. BCC clearly supports the

scheme and wants it to succeed and there is no evidence that the reserved matters and other necessary details will not be resolved [61; 72; 142-145; 413].

665. I would agree that the investment is not yet at a “very advanced stage” although it is more advanced than the investments in the Scotch Corner and Tollgate Village decisions. However, many of the outstanding tasks can be undertaken consecutively and I have concluded in paragraph 601 that although the site may not be cleared by the summer of 2020 it is likely to be ready for redevelopment by a year or so later. I see no reason why the list of outstanding tasks should not be completed by that date. It seems to me important not to lose sight of what the Framework is seeking to achieve in its requirement for the impact on town centre planned investments to be assessed. In my judgement the Callowhill Court scheme is clearly an investment and it is clearly planned and it is therefore necessary to consider whether the application proposals would have a significant adverse impact on it [407; 408].

### **Whether there is likely to be a significant adverse impact on the planned investment**

666. The third key consideration in the PG relates to the extent to which the planned investment is likely to be undermined by the application proposals based on turnovers, operator demand and investor confidence. In terms of the turnover of the city centre. I have concluded that after commitments and the application proposals have been taken into account there would be a growth in comparison goods expenditure of some £115.08m between 2016 and 2024. This growth in turnover would be unlikely to be sufficient to support the Callowhill Court scheme<sup>90</sup> [435].
667. In terms of operator demand there will be retailers who wish to be represented in both the city centre and at The Mall and others who favour one over the other. However, the target list of retailers sought to fill the proposed Mall extension appears to be very similar to that at the Callowhill Court redevelopment. Some may choose to occupy both but there is a considerable likelihood that others would not. Even if a dual representation condition was totally effective there would be competition for new entrants. Both of the new developments would be particularly focused on a similar type of comparison goods retailer and food and beverage operator. Two developments with many similar features would undoubtedly compete for potential tenants. Hammerson indicated that it would seek 40% of the units to be pre-let and have a target of 95% units to be let on opening in order to drive rental growth. It seems to me to have good reason for doubting that this would be achievable if the proposed development at The Mall were to go ahead [438].
668. In any event, the BALP Board has made a clear decision about what would happen if the application proposals proceed. This makes clear that there would be insufficient investor confidence to carry on with the Callowhill Court development. For all of these reasons, it is concluded that there would be a significant adverse impact on the planned investment. Granting planning permission for the application proposals would therefore be likely to frustrate a

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<sup>90</sup> The JRA estimates that the turnover of the Callowhill Court development in 2024 would be £160.54m (**Document POE 32, appendix 2, table 22, column E**).

city centre investment that is supported by the development plan [406].

#### **CONSIDERATION FOUR: HOUSING LAND SUPPLY AND THE CONTRIBUTION THAT THE PROPOSALS WOULD MAKE TO THE MARKET AND AFFORDABLE HOUSING NEEDS OF THE AREA**

669. The proposals would include 150 dwellings on the south-western part of the site. There is no objection to the principle of this element of the scheme. Although the site is not shown specifically as being within one of the new neighbourhoods of the CPNN it is within the boundary of that designation. In such circumstances it seems to me that there would be no conflict with the provisions of policy CS26 in the CS [25; 29].
670. SGC cannot demonstrate a five-year housing land supply at the present time but this is of limited relevance because there is no dispute that this part of the project would be likely to come forward in a later phase of the development. It would therefore be unlikely to make any contribution towards the council's housing deficit. Nevertheless, the provision of homes is a benefit that would ensue from the application proposals [123; 368].
671. It is proposed that 35% of the new units would be affordable, which would be in accordance with policy CS18 of the CS. The delivery of the affordable units would be through schedule 2 of the S106 Agreement. The tenure mix is 80% social rented units and 20% intermediate housing. Neither the policy nor the supplementary planning document *Affordable Housing and Extra Care Housing* appears to favour a particular split. However, there is no evidence that the proposals would be other than in accordance with SGC's housing needs. The delivery mechanism in the S106 Agreement would ensure that all affordable units would be provided before more than 75% of market houses are occupied. The affordable housing provision would be a significant benefit of the application proposals [123; 550].

#### **CONSIDERATION FIVE: WHETHER THE PROPOSALS WOULD GIVE RISE TO UNACCEPTABLE HIGHWAY IMPACTS**

##### **INTRODUCTION**

672. Policy PSP11 in the PSP Plan relates to transport impact management. There is no dispute that the application proposals would generate a demand for travel and that the policy would therefore be engaged. The sixth provision requires that traffic should not be generated that creates or contributes to severe congestion. Whilst "creates" and "contributes" mean different things it seems to me that the policy is seeking to address the impact arising from the development itself. This may be a solus or cumulative impact but either way it reflects paragraph 32 of the Framework. This is to be expected in view of the fact that the PSP Plan was adopted very recently [26; 106; 191; 315].
673. Highways England is satisfied that there would be no unacceptable impact on the strategic road network, including at junctions 16 and 17 of the M5 motorway. This is subject to there being robust and effective mitigation measures, including travel planning, car park management and management of construction traffic. This mitigation would be secured through the use of planning conditions and the S106 Agreement and is considered further under consideration seven [96; 521; 528; 539-541; 549.3].

674. SGC as Highway Authority has not objected to the application proposals. However, traffic from the scheme would also penetrate BCC's local highway network. BCC is particularly concerned about the traffic impact on the southbound carriageway of the A4018 in the evening peak. This road enters the BCC area relatively close to the appeal site at the point that it crosses the Henbury branch railway line. There were also many local objectors who were very concerned about the traffic implications of the proposed development [**96; 97; 311; 448-450; 453; 465; 466; 473; 480; 508; 509; 513; 514**].
675. I have no doubt that the roads within this part of North Bristol are very busy and that queues build up, especially in peak periods. On my visits to the vicinity of The Mall I have experienced this for myself, especially southbound along the A4018 and particularly along the section of dual carriageway between the Station Road and Crow Lane junctions. The issue of congestion was also reiterated time and again in the evidence from local people. However, this in itself is not unusual along busy arterial routes that are carrying high volumes of traffic through the urban area towards a city centre. This is also a major employment area as well as being well provided with leisure and retail destinations. The M5 motorway at this point can be slow moving as it carries traffic through a number of closely spaced junctions serving the Bristol conurbation. If there are carriageway restrictions or lane closures there are significant ramifications for the roads adjacent to the motorway, including the A4018 corridor, as drivers attempt to find alternative routes. It is not known at the present time what, if any, effect the lowering and then abolition of Severn Bridge tolls will have on traffic flows within the North Bristol area [**98; 100; 186.2; 186.5; 312; 317; 466; 469; 494**].
676. In this case it is relevant to consider that there is planned to be a large amount of new development within the North Bristol area, including the proposals relating to the CPNN. This means that there will be substantial increases in traffic movements, including along the A4018 corridor. This needs to be taken into account when considering the impact of the application development [**319**].

### **Transport modelling**

677. At the inquiry it was agreed that, for various reasons, the transport modelling undertaken by BCC and the Applicants prior to the inquiry had shortcomings. There was no dispute that the traffic flows associated with the proposed development need to be separated out from other forecast flows, including commitments. The Applicants had based their initial conclusions about traffic impact on the use of the GBATS3 model, which is a Saturn model developed for strategic forecasting within the Greater Bristol area. This concluded that there would be no material impact arising from the additional traffic generated by the appeal proposals. However, it was agreed that the use of a high level strategic model was unable to give an accurate picture of traffic conditions on individual routes, most specifically the A4018 [**186; 187; 314**].
678. It was therefore agreed that the VISSIM microsimulation model should be used. This has been developed by CH2M on behalf of BCC and SGC specifically to study traffic operations on the A4018 corridor between junction 17 of the M5 motorway and the junction with the B4054. The model is able to replicate complex traffic interactions on individual links, including in congested

conditions. The model was validated using survey material with 2016 as the base year. Apart from the 2016 VISSIM baseline, which is accepted by all parties to be a good fit with existing conditions, all earlier modelling can be disregarded [97; 101; 312].

679. The objective was to adopt a collaborative approach on the scope and general methodology to be used in the modelling exercise. It was agreed that the weekday afternoon peak hour was the most relevant and that the modelling work would look forward to 2031. The parties appointed independent modelling experts to undertake the work, Arcadis on behalf of the Applicants and CH2M on behalf of BCC and SGC. In order to ensure consistency with the work undertaken at planning application stage the VISSIM modelling was based on the outputs of the GBATS3 model. Traffic flows were extracted from the strategic model by cordoning off the A4018 corridor. BCC has raised concerns about this approach on the basis that wider displacement of traffic effects would not be addressed. However, the VISSIM model is not designed for this purpose and BCC agreed that the effects of the proposals elsewhere on the BCC network would not result in impacts sufficient to warrant refusing permission [102; 187-189; 312; 314; 325].
680. Unfortunately when the forecast traffic flows from GBATS3 were input into VISSIM, the microsimulation model quickly reached gridlock. This was explained not to be an uncommon issue due to the differences in the two modelling platforms and their purposes. The calibration and validation of VISSIM uses survey data collected in 2016 whereas GBATS3 adopts a base year of 2011. Furthermore, VISSIM provides much more accurate information on the operation of individual links and how they interact with each other. Clearly a model that has locked up is no use for forecasting and so the modellers had to remove sufficient traffic to allow it to flow freely. This amounted to a 25% reduction in the 2031 forecast traffic flows and would allow the development traffic to be input to see what effects it would have. On the face of it this seems surprising bearing in mind that GBATS3 is a capacity constraint model. However, a comparison with the 2036 forecast traffic flows of VISSIM, which are agreed to closely reflect actual operating conditions, shows that the strategic model is overestimating the capacity of the A4018 corridor [111; 112; 189; 319; 320; 327; 328].
681. It is appreciated that BCC has strong reservations about the suppression of traffic flows in order to make the model work, although it has been accepted as necessary by its expert advisers CH2M. However, the evidence indicates that GBATS3 is overestimating the amount of traffic that the A4018 can accommodate in 2031. This reflects its different purpose and scope and it does not have the same refinement in terms of judging capacity as a microsimulation model focused on a specific road corridor. It was pointed out by Atkins, the owner of the GBATS3 model that attempting to refine capacity constraint in one part of the GBATS3 model would have implications for other parts and would not be a reasonable response for present purposes<sup>91</sup>. It is perhaps relevant to note that CH2M has adopted the same methodology in work for Highways England and in this case has applied an even greater reduction factor of 30%. I am satisfied that the 25% adjustment is justified in

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<sup>91</sup> See **Document INQ 77, sections 2.2, 2.3.**

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order to reflect capacity constraint along the A4018 corridor [**111; 112; 189.2; 319; 320; 327; 328**].

682. In answer to BCC's concerns about where the removed traffic flows would go, Atkins suggested that if the capacity of the A4018 was insufficient, the GBATS3 demand model would redistribute it. This could involve finding quicker alternative routes, undertaking peak-spreading or changing modal choice, for example. This is particularly relevant to retail and leisure trips where people can be more flexible than for journeys to work. The evidence suggests that it is unlikely that the level of flow forecast by GBATS3 would come about in reality in view of the fact that the model is based on the principle of capacity constraint. BCC is concerned that if flows are reduced in order to make the model work then any amount of additional traffic could be accommodated. However, this is not the case because the amount of traffic removed from the 2031 baseline flows was only that required to free the model from gridlock. It did not include the traffic from the proposed development. If it had not been done it would have been impossible to assess the effects of the development flows [**194; 195; 326**].
683. At the inquiry BCC showed video evidence of queuing and slow moving traffic in the evening peak along the southbound section of the A4018 between Station Road and Crow Lane. This was collected in May 2017 and demonstrated a generally slow moving queue. This became static in some places, especially when pedestrians were using the crossings. SGC commented that on one of the days only one lane of the westbound M5 was open and that another day was close to the summer half term. As previously commented I experienced the queue on this link myself and the time taken to travel from one end to the other was about 4 minutes longer than the equivalent trip northbound in free moving traffic<sup>92</sup>. In order to avoid slow moving traffic some drivers will inevitably seek alternative routes through side roads. However, these do not always offer a short cut due to speed restrictions, parked cars and speed bumps. The accident statistics provided by BCC did not seem to me to demonstrate a correlation with peak hours and the queue analysis [**98; 186; 313**].
684. It should be borne in mind that the Applicants are not required to remedy existing shortcomings or impacts arising from the 2031 reference case. The important point is whether this situation would be significantly changed as a result of the additional trips generated by the application proposals. The main purpose of the modelling exercise is therefore to isolate the traffic movements associated with the application proposals to see what difference the increased flows would make to the operation of the A4018 corridor [**195; 316**].

### **Modelling results**

685. In the weekday period between 1600 and 1900 hours, the model forecasts an increase of 4,990 journeys from 2016 to 2031. With the development in place it forecasts a further net increase of 126 vehicles during the 1700-1800 weekday peak hour. BCC comment that the GBATS3 model forecasted 343 additional trips onto the A4018. CH2M has explained in its note on the modelling that any wider diversion of trips would already be accounted for in

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<sup>92</sup> This was on 21 March 2018 at about 1730 hours.

the GBATS3 modelling before the net impact was inserted into the VISSIM model<sup>93</sup>. In terms of overall network performance there is not shown to be any material deterioration as a result of the development proposals. That does not though mean to say that journey times in individual segments would not change. In some parts of the corridor there would be an increase and in others a decrease. The highest changes southbound would be an increase of 36 seconds between junction 17 or the M5 and the Lysander Road roundabout and 40 seconds between the Crow Lane roundabout and Henbury Road junction. On the other hand quicker journey times are shown on a number of other links. Overall these relatively small changes are not considered to be significant [**104; 105; 111; 192; 320; 326**].

686. Generally the increase in either average or maximum queue lengths would be insignificant apart from in four places along the route. Even here it should be borne in mind that the difference between the maximum and average queue lengths is such that the former are only likely to occur during a limited part of the peak hour. Approaching the Lysander Road roundabout southbound the average queue length would be increased by 9 vehicles with a maximum queue length increase of 27 vehicles. On the Greystoke Avenue arm or the priority junction the average queue length would be increased by 3 vehicles with a maximum queue length increase of 17 vehicles. On the northbound arm of the A4018 and Stoke Lane southbound the average queue length would be increased by 9 vehicles with a maximum queue length increase of 17 vehicles. In each case the queues could be accommodated within the length of the link or in the case of Lysander Road, on the M5 slip road or Merlin Road [**105; 192.2**].
687. On the A4018 southbound at the Henbury Road junction the southbound average queue length would be increased by 4 vehicles with a maximum queue length increase of 26 vehicles. However, on the Henbury Road northbound arm of this junction the average queue length would be increased by 11 vehicles with a maximum queue length increase of 24 vehicles. This is likely to persist for a fair proportion of the peak hour. The link is insufficient to accommodate the additional number of vehicles and BCC was concerned about the effect on Westbury-on-Trym and its conservation area. It is noted that this situation is already shown to exist in the 2031 reference case. Atkins was specifically asked to address the issue, which was considered to be anomalous. One explanation could be that the traffic lights allowed a shorter green time in the VISSIM model than the GBATS3 model and therefore the former would struggle with the demand put on it. Another explanation could be that the cordoning had restricted route choice so that alternative routes were not available. In such circumstances it seems likely that in reality an alternative route would be chosen<sup>94</sup> [**105; 192.2**].

## Conclusions

688. Returning to paragraph 32 of the Framework, the test is whether residual cumulative impacts are severe. This was agreed by the Secretary of State to be a very high bar in the Tollgate Village decision. It is important when

<sup>93</sup> See **Document INQ 72, appendix C, paragraph 2.2.2**.

<sup>94</sup> See **Document INQ 77, appendix A, section 4**.

considering this to adopt a balanced approach and all parties agreed that the various factors should be considered “in the round” and that the final determination was one of professional judgement. As outlined above the modelling demonstrates that in terms of queue lengths, journey times and overall network performance the application proposals would not result in a significant change. Generally junctions would interact satisfactorily apart from Henbury Road northbound. Here, in the reference case the link would be insufficient but this would be made significantly worse by the development traffic [99; 106-108].

689. There is no evidence that the proposals would have implications for road safety. Most impacts would be relatively short lived and localised and therefore not of significance in terms of their duration or numbers of road users affected. With regards to the frequency of impacts it is relevant to note that the traffic flows that were tested in the VISSIM modelling were those of the 85th percentile trading week. This relates to the flows likely to be reached or exceeded for 8-10 weeks of the year. This seems to me to add robustness to the analysis. The modelling has also not taken account of mitigation, particularly reductions in car journeys as a result of the Travel Plan measures [108; 109; 185; 193; 197].
690. It is appreciated that BCC has concerns about congestion along the A4018 corridor and its consequent effect on issues such as air quality and delays to public transport. Its argument is that the road corridor cannot accommodate the flows from growth forecast in the GBATS3 strategic model. However, this model works on the basis of capacity constraint. This means that when a road reaches capacity drivers will alter their behaviour by choosing other routes, modes or times for their journeys. GBATS3 has overestimated the capacity of the A4018 corridor and so is forecasting a gridlock situation, which in reality would be unlikely to happen [111; 194; 195; 317-319; 329].
691. Traffic modelling based on capacity constraint reflects driver behaviour in reality. This has been accepted by BCC in other development proposals, including the Callowhill Court planning application. The modelling results have also been agreed as robust by BCC’s own experts CH2M, who developed the VISSIM model on its behalf. No alternative methodology has been suggested as more appropriate and the modelling undertaken therefore provides the best available evidence. This does not indicate that the proposed development would either create or contribute to severe congestion. There would therefore be no conflict with policy PSP11 or the Framework in this respect. I have noted an adverse impact on the queuing along the northbound section of Henbury Road, which would get worse as a result of development. Nevertheless, overall and in respect of other links, the A4018 corridor would not be significantly affected by the traffic generated by the proposed development. In the circumstances it is my judgement that the residual cumulative effects would not be severe [102; 103; 110; 111; 113; 189.4; 190; 193; 196; 197; 331].

## **CONSIDERATION SIX: WHETHER THE PROPOSALS WOULD BE IN A SUSTAINABLE LOCATION THAT WOULD BE ACCESSIBLE BY MEANS OF TRAVEL OTHER THAN THE CAR**

### **INTRODUCTION**

692. Policy CS8 in the CS states that proposals that are car dependent or promote

unsustainable travel behaviour will not be supported. At present the Cribbs Causeway area is very car focused, in my opinion. Whilst there are public transport options available, this retail area was sited to take advantage of the road network and in particular the proximity to strategic routes. From my observations the environment is not particularly conducive to those wishing to walk or cycle and the large areas of open parking bear witness to the fact that the majority of customers arrive at this location by car [13-15; 336].

693. Paragraph 34 of the Framework indicates that plans and decisions should ensure that development generating significant movement is located where the need to travel will be minimised and the use of sustainable modes can be maximised. Clearly the most suitable location in these terms would be Bristol city centre where people have the opportunity to undertake a number of tasks through linked trips but also have a wide modal choice. The Framework does though recognise that not all places can benefit from high levels of accessibility. Paragraph 32 indicates that opportunities for sustainable transport modes should be considered bearing in mind the nature and location of the site. A key question therefore is whether the opportunities for sustainable modes have been taken up [92; 93; 114; 198; 206; 335].
694. The Framework does not prohibit out-of-centre retail development if, amongst other things, there is no sequentially preferable site on which it could go. However, in this case there is a sequentially preferable site and so it is not unreasonable to consider the accessibility credentials of The Mall with this in mind. In the case of the Rushden Lakes, Scotch Corner and Tollgate Village decisions there were not sequentially preferable sites and so the situation in those cases was different. In such circumstances it seems to me that car dominated proposals are not encouraged by either the Framework or policy CS8. This should be borne in mind when considering whether the application proposals accord with paragraphs 32 and 34 of the Framework [23; 94; 95; 198-200].
695. Policy CS7 in the CS includes the delivery of the Cribbs/ Patchway New Neighbourhoods Package, which includes improvements to bus and rail services and pedestrian and cycle routes. It is acknowledged that the surrounding environment is likely to undergo a considerable change as the CPNN development comes on-stream. The new residential and employment areas will no doubt be provided with high quality links to encourage people to travel by sustainable modes. Overall the application proposals would not contribute to these changes although it is appreciated that the new bus station and the bridge over Merlin Road could have wider advantages. The Mall would inevitably benefit from the opportunities provided by the CPNN developments, especially in terms of the potential to achieve connections and linkages with the wider area [23; 205; 206].

## **PROPOSED IMPROVEMENTS TO ACCESSIBILITY**

### **Bus and rail travel**

696. The application proposals would not provide any improvements to existing bus services or routes. There are a number of existing bus routes that serve The Mall from various places in the catchment. These provide a better service than might be expected at an out-of-town location such as this. However, there is no dispute that the journey times and the reliability and frequency of the

services result in a relatively low proportion of customers to The Mall using this travel mode [**117; 201; 202; 341; 461; 466**].

697. The attractiveness of the bus as a travel option is likely to be improved with the introduction of Metrobus and particularly its extension. The latter will add an additional five services per hour to and from The Mall. The Metrobus services should commence in early 2018 whilst the extension is programmed to open in 2021. It is to be hoped that both will be operational when the proposed new development is due to open in 2023. The objective is to provide a high quality bus service, which will benefit from priority measures that will improve journey times and reliability. It is proposed to have a dedicated link to the wider CPNN, including across the old Filton airfield to provide connections to existing residential areas to the south [**119; 202; 342; 453**].
698. The nearest railway station is Patchway, which has an hourly service. Bristol Parkway is further afield and is linked by a bus service to The Mall, which takes about 30 minutes. This would be improved with the introduction of the Metrobus extension as part of the CPNN. Metrowest includes proposals to bring the "Henbury Loop" into use for hourly passenger journeys with a new station at North Filton within the new development on the airfield. It is anticipated that this will be operational by 2021. The station would be about 1km from The Mall and would therefore be within walking distance and also served by the MetroBus. The Henbury Loop would link to Temple Meads station [**119; 204; 453; 461; 462**].
699. The existing bus station comprises a number of open bays each with a small bus shelter. Whilst it may be well managed it does not provide an attractive environment in which to wait for a bus, especially if it is cold, wet or windy. Customers to The Mall are unlikely to want to dwell there for any length of time. The application proposals include a new bus station. It would be a state of the art facility that would fully integrate with the existing shopping concourse. It would have a high quality enclosed waiting space where passengers could buy refreshments, newspapers and the like and would be designed to accommodate the new buses on the MetroBus routes. There was some dispute as to the degree to which the new bus station would increase bus patronage. In my opinion it is likely that, along with the improved services described above, bus travel would become a more attractive travel option. There is no reason why it should not provide a realistic alternative to car travel for some customers and staff as well as those visiting the wider Cribbs Causeway area. The extent of the modal shift is difficult to envisage but the evidence suggests that a 5% increase in patronage would not be improbable [**117; 203; 343-345; 461**].
700. It is appreciated that a number of local objectors have wider concerns about bus and rail services and consider that the application proposals should contribute towards their improvement. However, the lack of an integrated regional approach to transport planning, for example, is not something that the application proposals could resolve. Whilst a bus link from Pilning Station to The Mall may be an added benefit it is difficult to see how planning permission could be refused on the basis that it is not being proposed, especially bearing in mind the infrequency of services that currently exist from this station. It was also suggested that a financial contribution towards the re-opening of various stations would be appropriate. However, the MetoWest

project already includes a station to the south of The Mall. This would be the most likely to be used by visitors to the proposed new development. SGC has not suggested that a contribution towards the implementation of Metrowest would be necessary in order for the application scheme to go ahead [454; 455; 462; 513].

### **Cyclists and pedestrians**

701. As commented above, The Mall and the other retail and leisure destinations in the Cribbs Causeway area are dominated by the private car. From my observations I consider that the road system, which is heavily used at peak periods, provides a relatively inhospitable environment for those wishing to walk or cycle. Whilst there is a shared cycle and footway along the A4018, Highwood Road and Hayes Way there is no provision for cyclists along most of Lysander Road or Merlin Road, which are two of the main routes serving The Mall site and the wider Cribbs Causeway area. Although there are signalised pedestrian crossings within the vicinity, the sections of Merlin Road and Highwood Road adjoining the site only have one subway linking to The Venue [205; 340].
702. A new pedestrian and cycle bridge is being proposed across Merlin Road. This would link directly to the CPNN development at the former Filton airfield and hence improve connectivity for that community and those living further to the south. In addition, the proposals include several other walking and cycling links that would radiate out from The Mall site. These are referred in the Design and Access Statement as providing a network of landscape links and spaces, each with a theme, which would be attractive destinations in their own right. There would be the potential for the whole of The Mall site to be a more outward-facing and better integrated development. The delivery of these links would be controlled by planning conditions and there is no reason why they should not result in a considerable environmental enhancement. However, their effectiveness in terms of improving connectivity would depend on what happens once they reach the boundaries of the site and the links that would materialise through the CPNN developments [39; 115; 116; 207; 525].
703. The Mall is presently not well provided with cycle parking facilities. 300 additional cycle spaces would be provided, which would be an increase of 260 spaces. I note that such provision would be well below the council's standards, but more provision could be made if necessary through funding in the Travel Plan. Delivery of the cycle parking would be by means of a planning condition [208; 538].

### **Travel Plan**

704. Paragraph 36 of the Framework seeks to protect and exploit opportunities for the use of sustainable transport modes. It goes on to say that a key tool to facilitate this will be a Travel Plan. The Mall currently operates a voluntary Travel Plan, which was established in 2012. A staff travel survey revealed that 66% of respondents were solo car drivers whilst 7% were shared drivers and 9% were passengers. In terms of non car modes it showed that 12% used the bus, 3% cycled and 3% walked. The main incentive offered seems to be discounted staff travel and I was told that about 600 staff make use of it. As the Travel Plan is voluntary there is no enforcement of its mode shift targets, which aimed to achieve a 5% increase in bus travel by 2017. There was also a

shopper survey in 2014, which confirmed that 91% of customers arrived by car with a single occupancy modal share of about 54% [**120; 209; 336; 346**].

705. A Framework Travel Plan has been produced to support the application proposals. The latest iteration was part of the Second Transport Assessment Addendum dated December 2015. The overriding objective is to reduce single occupancy private car use and the target was to achieve a 1% reduction by staff and by shoppers over each of the 5 years following completion of the development. However, a target of single occupancy car use would not necessarily result in less car use or a shift to alternative modes. The targets were thus changed by the Applicants to relate to car driver trips. This measure seems to me more appropriate bearing in mind that the Framework includes car sharing as a sustainable transport mode. The overall 5% reduction would relate to existing Mall traffic as well as that arising from the proposed extension [**120; 209; 347**].
706. It was agreed at the inquiry that there could also be interim targets set for other modes such as bus travel, walking and cycling. Whilst these may introduce an element of uncertainty they do seem to me to be necessary in order to encourage modal shift. Before the main retail uses commence trading an updated analysis of travel patterns of staff and visitors to The Mall would be undertaken and this would then inform the Full Travel Plan. These measures would be controlled through planning conditions, along with the arrangements for monitoring and review. Although these conditions are quite complex, I consider that they are comprehensive and would deliver the required targets necessary to make the Travel Plan effective [**118; 121; 209; 347; 541**].
707. A Transport Review Group would be set up to identify and agree measures to encourage non-car travel. The arrangements are included in the S106 Agreement and would include representatives from the development as well as from SGC, BCC and Highways England. An overall maximum sum of £450,000, divided into two tranches, would be available to fund the measures. The S106 Agreement allows a 10 year period from first occupation for this money to be spent and this has been increased from an earlier proposed 5 year period. Possible measures that were referred to at the inquiry included funding a shuttle bus from the new station at North Filton during the Christmas period. There is no provision for any more money if the targets are not met. On the other hand this would be a substantial sum and there is no reason to believe that it would not be used judiciously. Furthermore, there are measures outside the fund that would also encourage modal shift. These would include the extension to the existing bus travel subsidies to new staff as well as existing staff as well as the new bus station, enhanced connectivity links and the new pedestrian and cycle bridge across Merlin Road. In the circumstances I am satisfied overall that the Travel Plan measures should be sufficient to achieve the relevant targets [**119; 122; 210; 348-350**].
708. The availability of large areas of free car parking is a factor that attracts shoppers to The Mall. It is not proposed to increase the level of car parking for the proposed extension and spaces lost to the new built development would be replaced by a new multi-storey car park. However, the existing development is greatly over-provided with parking for much of the year. The abundance of available free car parking would continue for all but the busiest periods and would not act as a disincentive to car travel [**337-339**].

## **CONCLUSIONS ON ACCESSIBILITY**

709. The Mall is by its nature and location a development where the vast majority of customers and staff travel by car. I would expect this to continue if the application proposals were to be granted permission. Although there would be no net increase in car parking, there would still be ample space to provide parking for those visiting the new floorspace at all but the busiest periods. There are alternative modal choices but for the reasons given above these currently attract relatively low patronage.
710. Nevertheless, the proposals would include measures that seek to encourage a reduction in car travel. There is no reason why the Travel Plan should not be effective in achieving its targets. These are to be finalised following surveys of existing travel patterns prior to occupation of the new development. This creates an element of uncertainty but is necessary in this case because circumstances are likely to change considerably by 2023 as the CPNN comes on-stream and the various infrastructure initiatives are implemented. The funding provided in the S106 Agreement along with the other measures associated with the scheme that I have referred to above, would be likely to achieve some modal shift. From the evidence I am satisfied that the Applicants have taken up the opportunities available for sustainable transport modes, taking account of the nature and out-of-centre location of the site. Considered as a stand-alone issue it seems to me that the first part of paragraph 32 of the Framework would therefore be complied with.
711. However, paragraph 34 of the Framework indicates that developments that generate significant movement should be located where the need for travel can be minimised and the use of sustainable transport modes can be maximised. The Mall is an out-of-centre location and there is no proposal to change this policy position. Accessibility is also an important element of the sequential test and, for the reasons given in Consideration Two, I have concluded that the Callowhill Court site in Bristol city centre would be a preferable alternative. There is no dispute that in terms of accessibility it offers much greater opportunities for people to exercise modal choice and to make their journeys by means other than the car.
712. It seems to me that policy CS8 in the CS and Paragraph 34 of the Framework adopt a relative rather than absolute position with regards to accessibility. Unlike in the Rushden Lakes, Scotch Corner and Tollgate Village decisions, I cannot conclude that the proposals would minimise the need to travel and maximise the use of sustainable modes because there would be a more accessible alternative. In this case the application proposals would therefore be contrary to national and local planning policy in this respect.

## **CONSIDERATION SEVEN: WHETHER ANY CONDITIONS AND PLANNING OBLIGATIONS ARE NECESSARY TO MAKE THE DEVELOPMENT ACCEPTABLE**

### **PLANNING CONDITIONS**

713. The planning conditions are at Annex Three and the justification is provided in paragraphs 524-544 of the report and also in various parts of my conclusions.
714. It is considered that the conditions are reasonable, necessary and otherwise

comply with Paragraph 206 of the Framework and the provisions of the PG.

### **THE S106 AGREEMENT**

715. A fully executed S106 Agreement has been submitted, which creates planning obligations for the purposes of Section 106 of the 1990 Act. I am satisfied that it is legally correct and fit for purpose [546].
716. The policy justification for contributions towards infrastructure, facilities and amenities is provided by Policy CS6 in the CS. The Council has also adopted a CIL charging regime. The Regulation 123 list includes various infrastructure projects including MetroBus and its extension, MetroWest, strategic walking and cycling networks and bus services. It also includes exclusions, including works and measures directly required to serve the CPNN and the new neighbourhoods<sup>95</sup> [22].
717. It is necessary to consider whether the obligations that have been made meet the statutory requirements in Paragraph 122 of the CIL Regulations and the policy tests in Paragraph 204 of the Framework in order to determine whether or not they can be taken into account in any grant of planning permission. The requirements are that the obligations must be necessary, directly related and fairly and reasonably related in scale and kind to the development in question. It is noted that the S106 Agreement contains a "blue pencil" clause that the obligations are conditional on the Secretary of State finding that they comply with the CIL Regulations [547].
718. Furthermore, under the pooling restrictions in Regulation 123, a planning obligation cannot constitute a reason for granting planning permission if it provides for the funding or provision of an infrastructure project or type of infrastructure for which five or more separate planning obligations have been entered into. SGC has confirmed that this provision is not engaged with any of the obligations in the S106 Agreement [547].

### **Transport**

719. The Cone Roundabout is at the intersection of Lysander Road and Merlin Road. There is a financial contribution of £200,000 to provide new traffic signals and associated works. These are necessary because the transport work revealed that the proposed development traffic, when added to flows from the CPNN would result in capacity problems during the evening peak. The works would therefore mitigate the effect of the application proposals. A similar sum has been included in the Site 20 S106 Agreement for similar reasons. Both developments would cover the full cost of the works. The wording in the covenant therefore requires payment on commencement of development only if the money has not been contributed first by the Site 20 developer [509; 549.1].
720. Conditions 24 and 25 relate to the provision of a Framework and Full Car Park Management Plan. The VMS contribution of £300,000 would relate to these by providing for variable message signs and wayfinding signs at the main roundabout access points to the site. These would provide parking information during busy periods and also traffic information for those leaving the site. This

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<sup>95</sup> SGC's Regulation 123 List is attached to **Document INQ 54**.

is necessary in order to ensure that queuing and congestion would not build up on the highway network during the busiest periods when parking is operating close to capacity [539; 549.2].

721. The use of Travel Plans to encourage more sustainable travel behaviour is a well known tool that is supported in national and local planning policy. The revised Framework and Full Travel Plans would be provided by means of planning conditions. The covenants include financial contributions to establish the Travel Review Group and to fund the Travel Plan measures in order to meet the various mode share targets. Justification for the provisions and financial contributions has been explained in paragraphs 704-707 above [549.3].
722. All of the transport obligations relating to transport are reasonable, necessary and otherwise in compliance with Regulation 122. They can therefore be taken into account in any grant of planning permission.

### **Affordable housing**

723. The justification for the affordable housing provision has been provided under consideration four. The obligations comply with Regulation 122 and can thus be taken into account in any grant of planning permission.

### **Open space**

724. The open space provision relates to the residential part of the proposed development and is required by policy CS24 of the CS in accordance with the standards set out in Appendix 5 to the plan. These include informal recreational open space and provision for children and young people. The covenants require a scheme to be submitted for approval along with management and maintenance arrangements to be approved. As the proposals are in outline form it is not known at this stage how much of the required provision would be able to be provided on-site. Natural and semi-natural open space, outdoor sports facilities and allotments are not proposed to be provided on-site. There is therefore a covenant for a financial contribution towards off-site provision of these facilities. The Deed includes formulae whereby the payments for each type of open space requirement would be worked out, net of what would be provided on-site.
725. On the assumption that there would be 1.5 persons per residential unit, the new population would comprise about 225 residents. They would require sufficient open space of various kinds to ensure a good living environment and for wellbeing and health. As this could not all be provided on the site, a contribution for provision elsewhere is therefore reasonable and necessary in accordance with SGC's open space standards. The obligations comply with Regulation 122 and can thus be taken into account in any grant of planning permission.

## **CONSIDERATION EIGHT: OTHER MATTER**

### **AIR QUALITY AND CLIMATE CHANGE**

726. There are a number of local objections in relation to this matter. Policy CS9 in the CS includes a provision for the protection of air environments, buildings and people from pollution. Policy PSP21 in the PSP Plan seeks to avoid

unacceptable levels of pollution on environmental amenity and the health, safety and amenity of users of the site and surrounding area. In terms of air quality specifically the policy states that where a development on its own or cumulatively has the potential for significant emissions, particularly in or adjacent to air quality management areas, it will be acceptable where potential adverse effects are mitigated to an acceptable level. The policy seeks to ensure that development outside such areas should not cause new air quality management areas to be designated [448; 449; 466; 473; 481].

727. The issue of air quality was considered in the Environmental Statement. During the construction phases the risk from dust is considered to be low. In any event a condition is proposed for a Construction Environmental Management Plan, which includes requirements relating to dust management. Once the proposed development is operational the main source of potential air pollution would be from additional vehicular activity. The air quality modelling considered the effects of the proposed development and also the cumulative scenario with other committed developments in place. The results were that there would be no significant increase in pollutant concentrations and no significant effect on the Cribbs Causeway Air Quality Management Area, which is on the northern side of junction 17 of the M5 motorway [528].
728. A combined heat and power system is proposed for hot water and heating. A planning condition is proposed to monitor CO<sub>2</sub> emissions and implications for air quality. In the circumstances there is insufficient evidence to support an objection on the grounds that the application proposals would be unacceptably harmful to air quality or have a harmful impact on climate change. The proposals would not conflict with policies CS9 or PSP21 [533].

### **CONSIDERATION NINE: OVERALL CONCLUSIONS AND PLANNING BALANCE TO DETERMINE WHETHER THE PROPOSALS WOULD BE A SUSTAINABLE FORM OF DEVELOPMENT**

729. The application proposals would result in an extension to The Mall shopping centre, which is a regional shopping destination in an out-of-centre location. The scheme would be contrary to the strategy for retail development and investment for centres in policy CS14 of the CS and policy PSP31 of the PSP Plan due to the scale of town centre uses being proposed and their location outside of a designated centre. The Applicants anticipate that the development would open in 2023. Paragraph 7.58 of the PSP Plan indicates that about 16,000 m<sup>2</sup> comparison goods floorspace may be required between 2021 and 2026 but this is uncertain and will be considered further in the new Local Plan for South Gloucestershire. This emerging document is currently at draft stage and has little weight as a material consideration. In the interim the PSP Plan states that such retail proposals will be considered against the aforementioned strategy and national policy related to sequential and impact test requirements.
730. Even if the Secretary of State does not agree with my conclusion that the proposals would be contrary to the retail strategy, I have concluded that they would fail to satisfy the sequential test and are likely to have a significant adverse impact on planned private investment and the vitality and viability of Bristol city centre. Paragraph 27 is unequivocal that in either situation, planning permission should be refused.

731. Furthermore, in terms of accessibility the existence of a sequentially preferable site in Bristol city centre means that the proposals would not be in a location that minimises the need to travel or maximises the use of sustainable modes. It would therefore conflict with paragraph 34 of the Framework.
732. There would be benefits arising from the application proposals. These include the provision of market and affordable housing; employment opportunities both during the construction of the project and thereafter in the retail, leisure and hotel floorspace that would be created. As previously commented the new bus station and the pedestrian and cycle bridge would, in my opinion, have wider benefits for those living and working in the area, especially once the new communities associated with the CPNN have been built. The Travel Plan would also apply to the existing Mall and would have the potential to encourage customers and staff to travel by modes other than the car. These advantages should be given considerable weight and importance.
733. Although there would be no conflict with a number of development plan policies, the application proposals would not be in accordance with policies CS8 or CS14 of the CS or policy PSP31 of the PSP Plan. I do not therefore consider that it would accord with the development plan taken as a whole. The Framework is an important material consideration and is specifically relied on in the development plan in terms of retail proposals during the latter part of the plan period. In this case the benefits would not be sufficient to indicate that the decision should be other than in accordance with the development plan and the Framework.

## **INSPECTOR'S RECOMMENDATION**

734. For the above reasons I recommend that planning permission for the application proposals should be refused.
735. However, if the Secretary of State does not agree and wishes to grant planning permission I commend to him the conditions in Annex Three.

*Christina Downes*

INSPECTOR

## **ANNEX ONE: APPEARANCES**

### **APPEARANCES**

#### **FOR THE APPLICANTS:**

Mr Christopher Katkowski	Of Queen's Counsel
Mr Richard Moules	Of Counsel, both instructed by Hogan Lovells International LLP
<i>They called:</i>	
Mr P Wilks BSc(Hons) DipTP MRTPI	Senior Director of Lichfields
Mr M Acton MRICS	International Partner of Cushman & Wakefield
Mr K Hardman BSc(Hons) FRICS	Partner of Cushman & Wakefield
Mr S McCartney BSc MCIHT	Director of Caneparo Associates
Mr J Fennell BSc(Hons) MRICS MRTPI FRSA	Chief Executive and Senior Director of Lichfields

#### **FOR SOUTH GLOUCESTERSHIRE COUNCIL:**

Ms Suzanne Ornsby	Of Queen's Counsel
Mr Alexander Greaves	Of Counsel, both instructed by the Head of Governance, Legal and Democratic Services at South Gloucestershire Council
<i>They called:</i>	
Mr B Read BA(Hons) BSc MRTPI	Partner of Rapleys LLP
Mr I Clarke BA(Hons) DipTP MSc MRTPI	Senior Partner at Rapleys LLP
Mr I McNeill BSc(Hons) MICE CEng	Technical Director of WSP Group Ltd
Mr T Roberts BA(Hons) MRTPI	Consultant of DLP (Planning) Ltd

#### **FOR THE RULE 6 PARTY: BRISTOL CITY COUNCIL:**

Mr Richard Ground	Of Queen's Counsel
Mr Ben Du Feu	Of Counsel, instructed by the Service Director of Legal Services at Bristol City Council
<i>They called:</i>	
Mr J Baldock BSc(EstMan) MSc FRICS MRTPI	Independent Town Centres and Retail Planning Consultant
Mr C Chapman BA(Hons) MA MRTPI	Local Plan Team Manager at Bristol City Council
Mr L Fallon BA(Hons) BTP MRTPI	Transport Development Team Manager at Bristol City Council

#### **FOR THE RULE 6 PARTY: BRISTOL ALLIANCE LTD PARTNERSHIP:**

Mr Neil Cameron	Of Queen's Counsel, instructed by Eversheds Sutherland (International) LLP
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*He called:*

Mr R Dobson BSc(Hons)  
FRICS  
Mr M Prentice  
Mr R Peters BSc(Hons)  
DipTP MRTPI

Director for Retail Development at Hammerson  
Proprietor of Mike Prentice Consulting Limited  
Senior Director of Turley

**INTERESTED PERSONS:**

Mrs K Cannell	Representative of Grandparents for a Safe Earth
Mrs B Day	Representative of Sustainable Thornbury resident
Mr B Cash	Representative of Bristol Liberal Democrats and Grandparents for a Safe Earth
Mr G Smith	Representative of Transport for Greater Bristol
Dr C Biggs	Representative of Friends of Suburban Bristol Railways
Mr D Redgewell	Representative of South West Transport Network and TSSA. Director of Bus Users (UK)
Councillor J Thomas	Bristol City Councillor representing the Bristol Green Party
Mr R Burton	Green Party at Bristol City Council

## **ANNEX TWO: DOCUMENTS AND PLANS**

### **CORE DOCUMENTS**

#### **Application documents**

##### ***December 2014 submission (excluding environmental statement)***

CD A1	Covering letter (22 December 2014)
CD A2	Planning application form
CD A3	Planning application drawings
CD A4	Planning summary
CD A5	Planning and retail statement
CD A6	Design and access statement (including landscape strategy)
CD A7	Statement of community engagement
CD A8	Outline energy strategy
CD A9	Outline sustainability strategy

##### ***October 2015 further information (excluding environmental statement)***

CD A10	Covering letter (23 October 2015)
CD A11	Design and access statement addendum
CD A12	Retail statement addendum

##### ***December 2015 further information***

CD A13	Second transport assessment addendum
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##### ***September 2016 further information (excluding environmental statement)***

CD A14	Covering letter (13 September 2016)
CD A15	Retail statement addendum

##### ***Consolidated environmental statement***

CD A16/A- CD A16/C	Consolidated Environmental Statement (consolidating the December 2014, October 2015, December 2015 and September 2016 submissions)
CD A17	Consolidated Environmental Statement non-technical summary
CD A18/A- CD A18/C	Environmental Statement Technical Appendices (December 2014)
CD A19	Supplementary Environmental Statement Appendices (October 2015)
CD A20	Supplementary Environmental Statement Appendices (September 2016)

##### **Procedural/ administrative documents and statements of common ground**

CD B1	Report to site inspection sub-committee (15 January 2016)
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CD B2	Report to planning committee (25 February 2016)
CD B3	Minute of planning committee (25 February 2016)
CD B4	Letter from South Gloucestershire Council to Lichfields with request for further information (25 May 2016)
CD B5	Report to planning committee (3 November 2016)
CD B6	Minute of planning committee (3 November 2016)
CD B7	Referral to the Secretary of State (5 December 2016)
CD B8	Secretary of State's call-in letter (1 March 2017)
CD B9	Planning Inspectorate's letter (2 March 2017)
CD B10	Inspector's note of pre-inquiry meeting (7 June 2017)
CD B11	Bespoke timetable
CD B12	Statement of common ground in relation to planning matters (Superseded by Document INQ 29)
CD B13	Statement of common ground in relation to retail matters dated (Superseded by Document INQ 30)
CD B14	Statement of common ground in relation to transport matters (Superseded by Document INQ 40)

### **National policy guidance**

CD C1	National Planning Policy Framework
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### **Planning policy and related documents**

CD D1	South Gloucestershire Local Plan 2006 (saved policies)
CD D2	Explanatory note relating to the saved South Gloucestershire Local Plan Policies
CD D3	South Gloucestershire Local Plan Core Strategy (adopted December 2013)
CD D4	South Gloucestershire Local Plan Core Strategy Inspector's Report (15 November 2013)
CD D5	South Gloucestershire Local Plan Policies, Sites and Places Plan (adopted November 2017)
CD D6	South Gloucestershire Local Plan Policies, Sites and Places Plan Adoption Statement

### **Local planning guidance (South Gloucestershire)**

CD E1	Cribbs Patchway New Neighbourhood Development Framework SPD (adopted March 2014)
CD E2	South Gloucestershire Design Checklist (adopted August 2007)
CD E3	South Gloucestershire Residential Parking Standards SPD (adopted December 2013)
CD E4	South Gloucestershire Revised Landscape Character Assessment SPD (adopted November 2014)
CD E5	South Gloucestershire CIL and Section 106 Planning Obligations Guide SPD (adopted March 2015)
CD E6	South Gloucestershire Renewables SPD (adopted November 2014)
CD E7	South Gloucestershire Statement of Community Involvement (adopted January 2015)
CD E8	South Gloucestershire Affordable Housing and Extra Care SPD (adopted May 2014)

## **Emerging development plan and related documents**

- CD F1 South Gloucestershire Policies, Sites and Places DPD (submission version dated June 2016)
- CD F2 South Gloucestershire Policies, Sites and Places DPD Main Modifications and Additional Modifications dated June 2017 (including to Policies Map)
- CD F3 New South Gloucestershire Local Plan 2018 – 2036 Prospectus dated January 2017
- CD F4 South Gloucestershire Policies, Sites and Places DPD Suggested Modifications (November 2016) to the Proposed Submission (June 2016)
- CD F5 West of England Joint Spatial Plan – Towards the Emerging Spatial Strategy Document consultation document (November 2016)

## **Documents relating to retail planning and centres**

- CD G1 South Gloucestershire Town Centres and Retail Study dated 2010 prepared by Roger Tym & Partners
- CD G2 South Gloucestershire Retail Study Update and Impact Assessment prepared by Roger Tym & Partners (December 2011)
- CD G3 South Gloucestershire Retail Capacity Study 2014 prepared by DPDS Consulting
- CD G4 Bristol Central Area Plan and Policies Map (adopted March 2015)
- CD G5 Experian's Retail Planner Briefing Note 14 (November 2016)
- CD G6 Bristol City Centre Retail Study dated June 2013 (and Appendices) prepared by DTZ
- CD G7 West of England LEP – West of England Strategic Economic Plan 2015 – 2030
- CD G8 West of England LEP – West of England Strategic Economic Plan Sector Prospectus
- CD G9 West of England One Front Door Programme Schemes (January 2017)
- CD G10 South Gloucestershire 2036 – Sustainable Community Strategy dated 2016
- CD G11 South Gloucestershire Economic Development Strategy 2012-16
- CD G12 DPDS Consulting report to South Gloucestershire Council (January 2016)
- CD G13 DPDS Consulting report to South Gloucestershire Council (July 2016)
- CD G14 DPDS Consulting report to South Gloucestershire Council (October 2016)
- CD G15 South Gloucestershire Council Town Centres and Retailing (August 2016)
- CD G16 South Gloucestershire Council June 2016 Centres Update Note – Changes in Approach to Centres
- CD G17 Cribbs Patchway New Neighbourhood Framework Plan (Revision P) (September 2014)
- CD G18 Cribbs Patchway New Neighbourhood Public Art Plan (April

	2014)
CD G19	Intu – Contributing – Economic impact report 2015
CD G20	Filton Enterprise Area Ordnance Survey Map
CD G21	South Gloucestershire Council Strategy 2012/2016 (May 2012)
CD G22	Bristol Site Allocations and Development Management Policies Document (2014)
CD G23	Spatial Framework for Bristol Temple Quarter (October 2016)
CD G24	The Lawrence Weston Neighbourhood Development Plan (2017)
CD G25	Bath and North East Somerset Core Strategy (July 2014)
CD G26	Bath and North East Somerset Placemaking Plan (adopted 13 July 2017)
CD G27	Gloucester City Council Draft Gloucester City Plan and Site Allocations Map (January 2017)
CD G28	Newport City Council Local Development Plan (January 2015)
CD G29	Taunton Deane Borough Council Site Allocations and Development Management Plan (December 2016)
CD G30	North Somerset Council Publication Version Site Allocations Plan Part 2 (October 2016)
CD G31	Draft Town Centre Profile – Bradley Stoke Town Centre (May 2015)
CD G32	Draft Town Centre Profile – Chipping Sodbury Town Centre (May 2015)
CD G33	Draft Town Centre Profile – Downend Town Centre (May 2015)
CD G34	Draft Town Centre Profile – Emersons Green Town Centre (May 2015)
CD G35	Draft Town Centre Profile – Filton Town Centre (May 2015)
CD G36	Draft Town Centre Profile – Hanham Town Centre (May 2015)
CD G37	Draft Town Centre Profile – Kingswood Town Centre (May 2015)
CD G38	Draft Town Centre Profile – Patchway Town Centre (May 2015)
CD G39	Draft Town Centre Profile – Staple Hill Town Centre (May 2015)
CD G40	Draft Town Centre Profile – Stoke Gifford Town Centre (May 2015)
CD G41	Draft Town Centre Profile – Thornbury Town Centre (May 2015)
CD G42	Draft Town Centre Profile – Yate Town Centre (May 2015)
CD G43	South Gloucestershire Council Monitoring Report (December 2016) (extract)

### **Documents relating to transport**

CD H1	Cycling Friendly Infrastructure prepared by CIHT (April 1996)
CD H2	The Mall – Framework Travel Plan (2012)
CD H3	A4018 Corridor VISSIM Micro-Simulation Traffic Model prepared by CH2M (26 October 2016)

### **Applicants' documents**

CD I1	Applicant's statement of case dated May 2017
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### **South Gloucestershire Council's Documents**

CD J1 SGC's statement of case dated May 2017

### **Bristol Alliance's documents**

CD K1 Bristol Alliance's statement of case dated May 2017

CD K2/A- Callowhill Court planning application documents

CD K2/G

### **Bristol City Council's documents**

CD L1 BCC's statement of case dated May 2017

CD L2 Bristol Development Framework Core Strategy (adopted June 2011)

CD L3 Bristol Central Area Plan Inspector's Report (13 February 2015)

CD L4 PPG6 – Town Centres and Retail Developments (June 1996)

CD L5 PPS6 – Planning for Town Centres (2005)

CD L6 RPG10 – Regional Planning Guidance for the South West (September 2001)

CD L7 Joint Replacement Structure Plan (adopted September 2002)

CD L8 Draft Revised RSS for the South West (incorporating the Secretary of State's proposed changes) – consultation version (July 2008)

CD L9 Department of Communities and Local Government Chief Planner's Planning Update Newsletter dated January 2015

CD L10 Venuescore 2017 UK Shopping Centre Rankings Executive Summary

### **Correspondence and documents relating to the application**

CD M1 Bath & North East Somerset Council letter (13 February 2015)

CD M2 Bath & North East Somerset Council letter (3 November 2016)

CD M3 Bristol City Council letter (26 January 2015)

CD M4 Bristol City Council representations (3 March 2015)

CD M5 Bristol City Council email (7 May 2015)

CD M6 Bristol City Council representations (18 December 2015)

CD M7 Bristol City Council letter (17 March 2016)

CD M8 Bristol City Council representations (12 October 2016)

CD M9 Bristol City Council letter (1 December 2016)

CD M10 Turley (for Bristol Alliance) letter (26 January 2015)

CD M11 Turley (for Bristol Alliance) letter (10 March 2015)

CD M12 Turley (for Bristol Alliance) email (24 March 2015)

CD M13 Turley (for Bristol Alliance) letter (6 July 2015)

CD M14 Key Transport Consultants (for Bristol Alliance) representations (23 November 2015)

- CD M15 Turley (for Bristol Alliance) letter (23 November 2015)
- CD M16 Turley (for Bristol Alliance) letter (22 February 2016)
- CD M17 Eversheds (for Bristol Alliance) letter (23 February 2016)
- CD M18 Turley (for Bristol Alliance) letter (7 March 2016)
- CD M19 Turley (for Bristol Alliance) letter (14 October 2016)
- CD M20 Turley (for Bristol Alliance) letter (31 October 2016)
- CD M21 Turley (for Bristol Alliance) letter (2 December 2016)
- CD M22 Almondsbury Parish Council comments (25 January 2016)
- CD M23 Arboricultural Officer comments (16 November 2015 and 23 December 2015)
- CD M24 Archaeology and Historic Environment Record Officer comments (12 February 2015)
- CD M25 Avon Fire and Rescue letter (21 January 2015)
- CD M26 Bristol Zoological Society letter (19 January 2016)
- CD M27 Crime Prevention Design Advisor comments (26 January 2015)
- CD M28 DCLG email (9 January 2015)
- CD M29 Drainage Team/Flood Management comments (28 January 2015)
- CD M30 Early Years and Schools Planning Officer comments (26 January 2015)
- CD M31 English Heritage/Historic England letters (19 January 2015, 28 September 2015 and 27 October 2015)
- CD M32 Environment Agency letters (21 January 2015, 16 November 2015 and 27 September 2016)
- CD M33 Environmental Protection comments (14 October 2015 and 26 November 2015)
- CD M34 Forest of Dean District Council representations (30 January 2015, 3 November 2015, 12 January 2016 and 13 October 2016)
- CD M35 Forward Swindon representations (26 January 2015)
- CD M36 GL Hearn (for the owners of The Galleries) letters (22 January 2015, 27 February 2015, 31 October 2016 and 13 October 2016)
- CD M37 Highway Structures comments (7 January 2015, 27 February 2015, 31 October 2016 and 1 December 2016)
- CD M38 Housing Enabling Officer comments (9 July 2015)
- CD M39 J R Howe letter (20 January 2015)
- CD M40 John Lewis Plc comments (24 February 2016)
- CD M41 Landscape Officer comments (11 August 2015 and 5 January 2016)
- CD M42 Lead Local Flood Authority comments (3 November 2015, 7 January 2016 and 4 October 2016)
- CD M43 Listed Building and Conservation Officer comments (10 November 2015, 22 December 2015 and 23 September 2016)
- CD M44 Malvern Hills District Council letter (9 January 2015)
- CD M45 Mr D Goodwin comments (14 October 2016)
- CD M46 South West Transport Network representations (28 January 2015, 29 May 2015, 9 November 2015 and 22 February 2016)
- CD M47 Mr M Waines comments (3 March 2015)

CD M48	Mr P Hazeldine comments (14 January 2015)
CD M49	Ms S Gale comments (3 March 2015)
CD M50	Mr T Edwards comments (10 July 2015)
CD M51	Mrs A Devonshire comments (9 March 2015)
CD M52	Mrs A Essex comments (22 January 2015, 20 December 2015 and 24 September 2016)
CD M53	Mrs H Windsor comments (1 November 2015)
CD M54	Mrs S Packham comments (3 March 2015)
CD M55	Ms K Cannell comments (29 July 2016)
CD M56	Neighbourhood Partnership for Henleaze, Stoke Bishop and Westbury-on-Trym representations (8 March 2015)
CD M57	Newport City Council representations (22 January 2015, 12 February 2015 and 15 January 2016)
CD M58	North Somerset Council representations (5 January 2015, 15 January 2015, 20 January 2015, 28 January 2015 and 26 February 2015)
CD M59	Peter Brett Associates/Transport Planning Associates (for CBRE Global Investors) representations (26 January 2015, 19 March 2015 and 10 December 2015)
CD M60	Public Rights of Way Officer comments (9 January 2015)
CD M61	RPS (for Police and Crime Commissioner for Avon and Somerset) letter (15 January 2016)
CD M62	Economic Development Team comments (23 September 2016)
CD M63	Sport England comments (3 November 2015, 22 December 2015 and 21 September 2016)
CD M64	Taunton Deane Borough Council letter (15 January 2015)
CD M65	Vixcroft letter (5 May 2015)
CD M66	Wales and West Utilities letter (21 January 2015)
CD M67	Wessex Water letters (15 January 2015, 13 January 2016 and 28 September 2016)
CD M68	Highways Agency/Highways England comments (23 January 2015, 22 July 2015, 30 October 2015, 11 January 2016 and 5 October 2016)
CD M69	South Gloucestershire Council Transport comments (January 2015, March 2015 and November 2015)
CD M70	Interested parties' comments to PINS following the call in

### **Appeal decisions and court judgements**

CD N1	Called-in decision: Rushden Lakes Retail Park (ref: 2190175 – 11 June 2014)
CD N2	Called-in decision: land west of the A618 Barracks Bank, Scotch Corner, North Yorkshire (ref: 3132873 & 3143678 – 1 December 2016)
CD N3	<i>Tesco Stores Limited v Dundee City Council</i> [2012] UKSC 13
CD N4	Called-in decision: land north of Honiton Road and west of Fitzroy Road, Exeter (ref: 3005333 – 30 June 2016)
CD N5	<i>Warners Retail (Moreton) Limited v Cotswold District Council</i> [2014] EWHC 2504 (Admin) and [2016] EWCA Civ 606

- CD N6 *Aldergate Properties Ltd v Mansfield District Council* [2016] EWHC 1670 (Admin)
- CD N7 *R (CBRE Lionbrook (General Partners) Limited) v Rugby Borough Council v Hammerson (Rugby) Limited* [2014] EWHC 646 (Admin)
- CD N8 Appeal decision: Land adjoining to the East Jones (GC) Way, Pasteur Road, Yarmouth (ref: 3136604 – 22 September 2016)

### **Miscellaneous**

- CD O1 Officer's report to committee in relation to the Asda application (PT15/4386/O) (11 August 2016)
- CD O2 Officer's report to committee in relation to the Merlin Road application (PT15/5319/O) (6 April 2017)

### **PROOFS OF EVIDENCE**

#### **Applicants**

- POE 1 Mr Wilks's summary proof of evidence
- POE 2 Mr Wilks's proof of evidence
- POE 3 Mr Wilks's appendices 1-4
- POE 4 Mr Wilks's rebuttal proof and appendices 1-2
- POE 5 Mr Acton's rebuttal proof
- POE 6 Mr Hardman's proof of evidence
- POE 7 Mr Hardman's appendices 1-13
- POE 8 Mr Hardman's rebuttal proof
- POE 9 Mr McCartney's summary proof of evidence
- POE 10 Mr McCartney's proof of evidence
- POE 11 Mr McCartney's figures and appendices A-R
- POE 12 Mr McCartney's appendix S
- POE 13 Mr McCartney's rebuttal proof and appendices A-C
- POE 14 Mr Fennell's summary proof of evidence
- POE 15 Mr Fennell's proof of evidence
- POE 16 Mr Fennell's appendix 1
- POE 17 Mr Fennell's rebuttal proof

#### **South Gloucestershire Council**

- POE 18 Mr Read's proof of evidence
- POE 19 Mr Read's appendices 1-11
- POE 20 Mr Read's rebuttal proof
- POE 21 Mr Clarke's summary proof of evidence
- POE 22 Mr Clarke's proof of evidence
- POE 23 Mr Clarke's appendices
- POE 24 Mr Clarke's rebuttal proof
- POE 25 Mr McNeill's summary proof of evidence
- POE 26 Mr McNeill's proof of evidence
- POE 27 Mr McNeill's appendices A-E
- POE 28 Mr McNeill's rebuttal proof
- POE 29 Mr Roberts's summary proof of evidence

POE 30 Mr Roberts's proof of evidence

### **Applicants and South Gloucestershire Council**

POE 31 Joint Retail Assessment (JRA)  
POE 32 JRA appendices 1-5  
POE 33 JRA appendix 6 (NEMS household survey)

### **Bristol City Council**

POE 34 Mr Baldock's summary proof of evidence  
POE 35 Mr Baldock's proof of evidence  
POE 36 Mr Baldock's appendices A-F  
POE 37 Mr Baldock's rebuttal proof  
POE 38 Mr Chapman's proof of evidence  
POE 39 Mr Chapman's appendices 1-5  
POE 40 Mr Chapman's rebuttal proof and appendices 1-2  
POE 41 Mr Fallon's proof of evidence  
POE 42 Mr Fallon's appendices 2-9  
POE 43 Mr Fallon's rebuttal proof  
POE 44 Mr Fallon's rebuttal appendices 2-3

### **Bristol Alliance Ltd Partnership**

POE 45 Mr Dobson's summary proof of evidence  
POE 46 Mr Dobson's proof of evidence  
POE 47 Mr Dobson's appendices 1-5  
POE 48 Mr Dobson's rebuttal proof  
POE 49 Mr Prentice's summary proof of evidence  
POE 50 Mr Prentice's proof of evidence  
POE 51 Mr Prentice's appendices 1-7  
POE 52 Mr Prentice's rebuttal proof and appendices 1-2  
POE 53 Mr Peters's summary proof of evidence  
POE 54 Mr Peters's proof of evidence  
POE 55 Mr Peters's appendices 1-9  
POE 56 Mr Peters's rebuttal proof

### **DOCUMENTS SUBMITTED AT THE INQUIRY**

INQ 1 Applicant's note on VISSIM modelling, submitted by Mr Katkowski  
INQ 2 Comparison of inputs and outputs in the viability appraisals of the Callowhill Court development proposal by Mr Prentice and Mr Hardman, submitted by Mr Katkowski  
INQ 3 Comparison of goods sold in the Cribbs retail parks and The Mall, submitted by Ms Ornsby  
INQ 4 Bristol City Council Tall Buildings SPD, submitted by Ms Ornsby  
INQ 5 Callowhill Court planning application: planning officer's report, submitted by Ms Ornsby  
INQ 6 Agreed table of comparison goods market shares in the Joint Retail Assessment and Mr Baldock's retail

- assessment, submitted by Ms Ornsby
- INQ 7 Extract from PPS 4, submitted by Ms Ornsby
- INQ 8 Extract from  
Practice Guidance on need, impact and the sequential approach, submitted by Ms Ornsby
- INQ 9 Summary of Mr Tapscott's evidence on daylight impacts of the Callowhill Court application proposal (Mr Read's appendix 9), submitted by Ms Ornsby
- INQ 10 Ms K Cannell's statement on behalf of Grandparents for a Safe Earth
- INQ 11 Extract from Bristol Alliance Ltd Partnership directors' minutes, submitted by Mr Cameron
- INQ 12 Mr Prentice's comments on Mr Hardman's appendix 10, submitted by Mr Cameron
- INQ 13 Extract from the Planning Practice Guidance – *Ensuring the vitality of town centres*
- INQ 14 Bristol City Council's note on VISSIM modelling, submitted by Mr du Feu
- INQ 15 Callowhill Court planning application: Bristol City Council's Planning Committee amendment sheet (6 September 2017)
- INQ 16 Callowhill Court planning application: GL Hearn letter of objection on behalf of IRERE (owners of The Galleries) (4 September 2017)
- INQ 17 Callowhill Court planning application: WSP objection in relation to transport issues (4 September 2017)
- INQ 18 Callowhill Court planning application: comments of the Urban Design Team Manager, Bristol City Council
- INQ 19 Callowhill Court planning application: Historic England letter (5 September 2017)
- INQ 20 Callowhill Court planning application: extract from addendum heritage assessment to the ES
- INQ 21 Bristol Alliance Ltd Partnership note on certain terms of the headlease relating to the capital payment and ground rent, submitted by Mr Cameron
- INQ 22 Extract from RICS professional guidance on financial viability and planning, submitted by Mr Cameron
- INQ 23 Extract from DCLG guidance on compulsory purchase, submitted by Mr Cameron
- INQ 24A Callowhill Court planning application: pre-application advice request by Bristol Alliance Ltd Partnership, submitted by Ms Ornsby
- INQ 24B Callowhill Court planning application: pre-application advice response from Bristol City Council, submitted by Ms Ornsby
- INQ 25A Bristol Alliance Ltd Partnership update to Mr Dobson's appendix 3, submitted by Mr Cameron
- INQ 25B Bristol Alliance Ltd Partnership update to Mr Hardman's appendix 10, submitted by Mr Cameron
- INQ 26 Extracts from BRE Guide on *Site Layout Planning for Daylight and Sunlight*
- INQ 27 Applicants' note on the parties to the Section 106 Agreement, submitted by Mr Katkowski

- INQ 28 Unattributed letter to the Inspector handed in on 14 September 2017
- INQ 29 Signed statement of common ground on planning matters
- INQ 30 Signed statement of common ground on retail matters
- INQ 31 Bristol Alliance Ltd Partnership note on procurement, submitted by Mr Cameron
- INQ 32 Bristol Alliance Ltd Partnership note on existing floorspace at Callowhill Court, submitted by Mr Cameron
- INQ 33 Comparison of Jones Lang LaSalle Ltd rents, Mr Hardman's rents and Mr Acton's rents, submitted by Mr Cameron
- INQ 34 Gleeds schedule of project assumptions and exclusions referred to in Mr Prentice's appendix 3, submitted by Mr Cameron
- INQ 35 Revised information on the comparison goods retail context at Cribbs Causeway and Bristol City Centre provided by Bristol City Council (see Document POE 36, Appendix A, Table 3)
- INQ 36 Note on the derivation of the Callowhill Court comparison turnover in Table 22 of the Joint Retail Assessment (Document POE 32, Appendix 2), submitted by Ms Ornsby
- INQ 37 Note on Real Estate Investment Trust (REIT) status, submitted by Mr Cameron
- INQ 38 *Skelmersdale Limited Partnership v West Lancashire Borough Council and St Modwen Developments (Skelmersdale) Ltd* [2016] EWCA Civ 1260, submitted by Mr Katkowski
- INQ 39 Draft dual representation condition, submitted by Mr Katkowski
- INQ 40 Signed statement of common ground on transport matters
- INQ 41 Note on approach to VISSIM modelling agreed by the Applicants, South Gloucestershire Council and Bristol City Council
- INQ 42 Highway network reference plan, submitted by Mr du Feu
- INQ 43 Applicants' transport response to representation by Dr Biggs, submitted by Mr Moules
- INQ 44 Extract from Hansard – 27 March 2012, Vol. 542, paras 1317 – 1343, submitted by Mr Ground
- INQ 45 Land at Tollgate Village, Stanway: Secretary of State's decision letter and Inspector's report
- INQ 46 Bristol City Council's supplementary note on internal impact, submitted by Mr Ground
- INQ 47 Bristol City Council's proposed additional condition in relation to net retail sales area, submitted by Mr Ground
- INQ 48 Applicants' proposed condition in relation to net retail sales area, submitted by Mr Katkowski
- INQ 49 Applicants' amended travel plan conditions, submitted by Mr Katkowski
- INQ 50 Summary of draft Section 106 agreement, submitted by Mr Katkowski
- INQ 51 Section 106 Agreement dated 9 October 2016
- INQ 52 Existing cycle network plan prepared by Mr McCartney, submitted by Mr Moules

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- INQ 53 "Embedded" infrastructure costs and potential CIL liability, submitted by Mr Katkowski
- INQ 54A South Gloucestershire Council's statement and  
IND 54B supplementary statement of compliance with the CIL Regulations, submitted by Ms Ornsby
- INQ 55 Extract from "*The Week In*", 20 September 2017 – "Ripples from proposed Mall extension travel far", submitted by Mr Redgewell
- INQ 56 Bristol – 2017 official visitor guide, submitted by Mr Redgewell
- INQ 57 Applicants' suggested amendments to conditions, submitted by Mr Katkowski
- INQ 58 *Design & Operation: Guidance for the safe design and operation of Bus Stations and Interchanges*, jointly commissioned by the Department for Transport, the Confederation of Passenger Transport and the Association of Transport, submitted by Ms Ornsby
- INQ 59 Representations delivered to the inquiry by Cllr Thomas  
INQ 60 South Gloucestershire Core Strategy post-submission changes (December 2011), submitted by Ms Ornsby
- INQ 61 Email from Mr J Frenkel on behalf of Bristol Civic Society supporting Bristol City Council's response to the application proposal (13 September 2017), submitted by Ms Ornsby
- INQ 62 Representations made by Mr Redgewell
- INQ 63A Opening submissions of Mr Katkowski and Mr Moules  
INQ 63B Closing submissions of Mr Katkowski and Mr Moules  
INQ 64A Opening submissions of Ms Ornsby and Mr Greaves  
INQ 64B Closing submissions of Ms Ornsby and Mr Greaves  
INQ 65 Closing submission of Mr Ground and Mr du Feu  
INQ 66A Opening submissions of Mr Cameron  
INQ 66B Closing submissions of Mr Cameron  
INQ 67 Timetable for further written representations on the VISSIM modelling and the resolution of BCC regarding the Callowhill Court planning application
- INQ 68A Letter from Mr J Penrose MP objecting to the planning application (10 October 2017)
- INQ 68B Response to Mr Penrose's letter from SGC (30 October 2017)
- INQ 69A Transport written statement on A4018 microsimulation traffic modelling exercise by Caneparo Associates on behalf of the applicants (3 November 2017)
- INQ 69B Transport written statement on A4018 microsimulation traffic modelling exercise by Caneparo Associates on behalf of the applicants (24 November 2017)
- INQ 70 Requests from interested parties for the inquiry to sit for a further day and Inspector's response (6 and 8 December 2017)
- INQ 71 Responses to the Inspector's request for further comments about fire hydrants and financial contributions towards CCTV coverage and Automatic Number Plate Recognition
- INQ 72 BCC response to the further traffic modelling  
INQ 73 SGC response to the further traffic modelling

- INQ 74 Responses from third parties to the further traffic modelling
- INQ 75 Information update and Committee report on the Callowhill Court planning application
- INQ 76 Public statement submissions regarding car parking in connection with the Callowhill Court application proposal submitted by Cllr J Thomas (22 January 2018)
- INQ 77 Final written transport response on the A4018 microsimulation modelling exercise submitted by Caneparo Associates on behalf of the applicants (26 January 2018)
- INQ 78 Supplementary closing submissions on transport by BCC (30 January 2018)
- INQ 79A Note on the Callowhill Court redevelopment proposals submitted by BCC (30 January 2018)
- INQ 79B Appeal decision concerning land north of Ashcombe Road and Barnes Way, Kingswood, Hull (APP/V2004/W/17/3171115 (20 December 2017)
- INQ 80A Note on the Callowhill Court redevelopment proposals submitted by BALP (31 January 2018)
- INQ 80B Explanatory e-mail about building heights submitted by BALP (6 February 2018)
- INQ 81 Supplementary closing submissions on transport by SGC (1 February 2018)
- INQ 82A Note on the Callowhill Court redevelopment proposals submitted by SGC (1 February 2018)
- INQ 82B Further note on the Callowhill Court redevelopment proposals submitted by SGC (13 February 2018)
- INQ 83 Supplementary closing submissions on transport by the applicants (5 February 2018)
- INQ 84 Note on the Callowhill Court redevelopment proposals submitted by the applicants (5 February 2018)
- INQ 85 Letter from the Inspector closing the inquiry (14 February 2018)

## **PLANS**

- A Application plans
- B Plans booklet

## **ANNEX THREE: PLANNING CONDITIONS**

### **Phasing, reserved matters and implementation**

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Applications for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) Applications for the approval of the reserved matters shall be in general accordance with the following approved parameter plans and the principles and parameters described and illustrated in the *Cribbs Quarter Design and Access Statement* (December 2014), and its *Addendum* (July 2015): CTL-GA-00-(07)-001 Rev 12; CTL-GA-00-(07)-002 Rev 08; CTL-GA-00-(07)-003 Rev 08; CTL-P1-00-(07)-006 Rev 06; CTL-P1-00-(07)-007 Rev 06; CTL-P1-00-(07)-008 Rev 06; CTL-P1-00-(07)-009 Rev 06; CTL-P1-00-(07)-010 Rev 05; CTL-P1-00-(07)-011 Rev 05; CTL-P1-00-(07)-012 Rev 05; CTL-P1-00-(07)-013 Rev 05; CTL-P1-00-(07)-014 Rev 07; M5202 100 P01.
- 5) No later than the submission of the first reserved matters application, a detailed Phasing Plan shall be submitted to the local planning authority for approval. This shall be in general accordance with phases set out in paragraphs C4.8-C4.24 of the Consolidated Environmental Statement (July 2017). The Phasing Plan shall be approved in writing by the local planning authority and the development shall be undertaken in accordance with the approved programme therein. The Phasing Plan shall include:
  - a) a plan defining the extent of the works comprised within each phase;
  - b) details of the quantum of floorspace to be created within each phase;
  - c) a timetable for the completion of the infrastructure works in each phase, unless specified in d) below;
  - d) the infrastructure works to be included and undertaken within each phase shall include:
    - i) provision of a temporary bus station, which shall be operational upon closure of the existing bus station and shall remain operational until the new bus station is operational;
    - ii) provision of a new bus station, which shall be completed and operational prior to the occupation for sales of Blocks D and E;
    - iii) provision of a multi storey car park, which shall be completed and operational prior to the commencement of development of Blocks D and E;
    - iv) works to the existing surface car parking (including the existing overflow car park at Jupiter Road), which shall be operational prior to the commencement of development of the multi-storey car park;
    - v) temporary and contractor car parking compounds, which shall be operational prior to the commencement of development of the multi storey car park;

- vi) vehicle access works and the alteration to the vehicle accesses to and within the site;
  - vii) provision of a new pedestrian and cycle bridge over Merlin Road. The link shall be capable of being operational prior to the occupation for sales of blocks D and E, subject to progress with development south of Merlin Road;
  - viii) provision of new pedestrian and cycle links and cycle parking, which shall be operational prior to occupation for sales of blocks D and E;
  - ix) provision of new public realm, including public events space, which shall be operational prior to occupation for sales of blocks D and E;
  - x) provision of new public open space, which shall be available for use prior to occupation of Block C;
  - xi) provision of green infrastructure;
  - xii) works to surface and foul water drainage;
  - xiii) provision of on-site wayfinding signage, which shall be operational prior to the commencement of development of the multi storey car park.
- 6) As part of the submission of reserved matters for Block A, details of the replacement bus station shall be in general accordance with the *Cribbs Quarter Design and Access Statement* (December 2015) and its *Addendum* (July 2015) and the *Bus & Coach Station Design & Operation: Guidance for the safe design and operation of Bus Stations and Interchanges*, jointly commissioned by the Department for Transport, the Confederation of Passenger Transport and the Association of Transport Co-ordinating Officers (June 2011).

### **Contamination**

- 7) Before development of any phase commences, including any groundworks, exempt infrastructure works, clearance or remediation works, an intrusive ground investigation for that phase, including an assessment of the ground gas regime, shall be carried out by a suitably competent person to ascertain the extent, nature and risks the contamination may pose to the development in terms of human health, ground water and plant growth. A report of the findings shall be submitted to and approved in writing by the local planning authority before any development on that phase is commenced. The report shall set out the findings, presented in terms of a conceptual model and identify what mitigation measures are required to address unacceptable risks. Thereafter the development shall be carried out in accordance with any agreed mitigation measures.
- 8) Where mitigation measures have been required under condition 7 and before any use in the relevant phase of development is commenced, a report verifying that all necessary works have been completed satisfactorily shall be submitted to and approved in writing by the local planning authority.
- 9) If unexpected contamination is found after the development has begun the local planning authority shall be informed in writing and work shall immediately cease upon the part of the site affected. A further investigation and risk assessment shall be undertaken and where necessary an additional remediation scheme shall be prepared. The findings and report shall be submitted to and agreed in writing by the local planning authority. A

verification process shall be undertaken thereafter as set out in condition 8 before the works recommence.

### **Construction**

- 10) Before development of any phase commences, including any groundworks, exempt infrastructure works, clearance or remediation works a Construction Environmental Management Plan for that phase shall be submitted to and approved in writing by the local planning authority. The approved Construction Environmental Management Plan shall be adhered to throughout the construction period of that phase of the development. The Construction Environmental Management Plan shall provide for:
  - i) Measures to control the deposition of mud on the public highway;
  - ii) Measures to control dust, including a Dust Management Plan, as identified in the Consolidated Environmental Statement (July 2017) paragraph E6.2;
  - iii) Measures to control noise from construction works through compliance with British Standard 5228-1: 2009 *Code of practice for noise and vibration control on construction and open sites*;
  - iv) Provision of fuel oil storage, landing, delivery and use, and how any spillage will be dealt with and contained;
  - v) Provision for the delivery and storage of materials;
  - vi) Provision for contractor parking;
  - vii) A lorry routing schedule;
  - viii) Measures to mitigate the effects on ecology as set out in paragraphs I6.1-I6.24 in the Consolidated Environmental Statement (July 2017);
  - ix) Provision for site security;
  - x) Measures to contain silt and soil runoff;
  - xi) Measures to dispose of contaminated drainage, including water pumped from excavations;
  - xii) Provision for the site induction for construction workers that highlights pollution prevention and awareness.
  
- 11) Before development of any phase commences, including any groundworks, exempt infrastructure works, clearance or remediation works, a Construction Waste Management Audit and cut and fill details for that phase shall be submitted to and approved in writing by the local planning authority. The Construction Waste Management Audit for that phase shall be carried out in accordance with the approved details. The Construction Waste Management Audit shall include the following:
  - i) The volume and nature of the waste that will be generated through the demolition and/or excavation process;
  - ii) The volume of waste that will be utilised within the site and the schemes that it will be utilised for;
  - iii) Provisions for recycling/recovering materials of value from the waste that is not to be utilised in schemes identified in (ii) including proposals for the production of secondary aggregates on the site using mobile screen plant;
  - iv) The volume of additional fill material that may be required to achieve permitted ground contours or the surcharging of land prior to construction;

- v) The probable destination of the waste that needs to be removed from the site and the steps to be taken to identify a productive use for it in order to reduce the amount of waste sent to landfill;
  - vi) The provision of detailed plans and sections at 1:500 of existing and proposed finished ground levels.
- 12) Before the development of any phase commences, including any groundworks, exempt infrastructure works, clearance or remediation works, a scheme for the protection of the retained trees, as shown on the approved drawing no: M5202 100 P01, and the appropriate working methods, in accordance with British Standard BS 5837: *Trees in relation to design, demolition and construction - Recommendations* (or in an equivalent British Standard if replaced) shall be submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees on that phase shall be carried out as approved and retained for the duration of the construction period.
- 13) No development shall take place until a scheme for an employment and skills programme has been submitted to and approved in writing by the local planning authority. The scheme shall seek to increase the availability of work placements, apprenticeships and training during the construction of development and enhance opportunities for local people to access employment and skills training as a direct result of the development. The scheme shall be implemented in accordance with the approved details.

### **Archaeology**

- 14) Before the development of any phase commences, including any groundworks, exempt infrastructure works, clearance or remediation works, a programme of archaeological work for that phase leading to the production of a detailed mitigation strategy, including a timetable for its implementation, shall be submitted to and approved in writing by the local planning authority. Development of that phase shall be carried out in accordance with the approved programme and mitigation measures.

### **Drainage**

- 15) Before development of any phase commences, including any groundworks, exempt infrastructure works, clearance or remediation works, a surface water drainage scheme for that phase, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, shall be submitted to and approved in writing by the local planning authority. The scheme shall include arrangements for management and maintenance following completion. Development of that phase shall be carried out in accordance with its approved surface water drainage scheme.

### **Energy and air quality**

- 16) Before development of any phase commences, including any groundworks, exempt infrastructure works, clearance or remediation works, an Energy Statement for that phase shall be submitted to and approved in writing by the local planning authority. This shall be in general accordance with the *Cribbs Quarter Outline Energy Strategy* (December 2014). Development of that phase shall be carried out in accordance with its approved Energy Statement.
- 17) Prior to the installation of the Combined Heat and Power engine proposed in Section 5.7 of the *Cribbs Quarter Outline Energy Strategy* (Dec 2014) for the supply of hot water and heating to the residential apartments, or any other

proposed centralised energy system, an assessment of the potential impacts on air quality shall be undertaken and submitted to and approved in writing by the local planning authority. The contribution from the energy system shall be considered in conjunction with the predicted road traffic impacts of the development and overall be assessed against the national air quality objectives. If the assessment identifies any significant adverse impacts, then appropriate mitigation measures shall be specified in the assessment and thereafter be fully complied with.

### **Public art**

- 18) Before development of any phase commences, including any groundworks, exempt infrastructure works, clearance or remediation works, a public arts strategy for that phase, as referred to in the *Cribbs Quarter Design and Access Statement* (December 2015), shall be submitted to and approved in writing by the local planning authority and shall include a timetable for delivery. Development of that phase shall be carried out in accordance with its approved public arts strategy.

### **Retail and A Class uses**

- 19) The Class A1, A2, A3, A4 and A5 floorspace hereby permitted shall not exceed 41,850 m<sup>2</sup> gross internal area (GIA) of which no more than 35,250 m<sup>2</sup> GIA including mezzanine floors, shall comprise Class A1 retail use. Notwithstanding this the maximum floorspace within individual Use Classes shall not exceed:
- i) Class A1 comparison goods: 33,150 m<sup>2</sup> GIA, of which no more than 24,863 m<sup>2</sup> net shall be sales area.
  - ii) Class A1 convenience goods: 2,100 m<sup>2</sup> GIA, of which no more than 1,575 m<sup>2</sup> net shall be sales area.
  - iii) Class A3, A4 and A5 floorspace shall not exceed 8,980 m<sup>2</sup> GIA.

The A1 retail floorspace shall include an anchor store (a large retail store offering a variety of merchandise and services) of at least 11,700 m<sup>2</sup> GIA and no unit selling primarily food shall exceed 750 m<sup>2</sup> GIA.

These floorspace figures exclude internal service corridors, circulation space, plant rooms, stairwells, demises, partition walls, ancillary accommodation such as WCs and any ancillary Class A floorspace within the new bus station.

- 20) The net retail sales area in the development hereby permitted shall not exceed the net floorspace levels permitted and identified in condition 19.

The net sales area is defined as the area within the walls of the shop or store to which the public has access or from which sales are made. It shall include display areas; fitting rooms; checkouts and the area in front of checkouts; serving counters and the area behind used by serving staff; areas occupied by retail concessionaires; customer service areas; and internal lobbies in which goods are displayed. It shall not include cafés and customer toilets.

- 21) No unit in the retail floorspace of the development hereby permitted shall be first let to any retailer who, at the date of occupation, or within a period of 12 months immediately prior to that occupation, occupies retail floorspace which exceeds 250 m<sup>2</sup> (gross external area) in the Bristol Shopping Quarter (as defined in the *Bristol Central Area Plan*) unless a scheme, which commits the occupier to retaining their presence as a retailer within the Bristol Shopping Quarter for a minimum period of five years following the date of their

occupation of retail floorspace within the development, or until such time as they cease to occupy retail floorspace within the development, whichever is the sooner, has been submitted to and approved in writing by the local planning authority.

### **Parking**

- 22) Before development of any phase commences, including any groundworks, exempt infrastructure works, clearance or remediation works, details of the provision and design of cycle parking for that phase and a timetable for its delivery in that phase shall be submitted to and approved in writing by the local planning authority. Development of that phase shall be carried out in accordance with its approved details and the spaces shall be kept available for the parking of cycles thereafter. The approved provision shall include:
  - i) A minimum of 300 cycle parking spaces for the retail/ leisure floorspace.
  - ii) Additional cycle parking facilities for the hotel and residential uses in accordance with current cycle parking standards in the development plan.
- 23) Before development of any phase commences, including any groundworks, exempt infrastructure works, clearance or remediation works, details of the provision and design of car parking for that phase (including the overflow car park accessed from Jupiter Road and parking for disabled visitors) and a timetable for its delivery in that phase shall be submitted to and approved in writing by the local planning authority. Development of that phase shall be carried out in accordance with its approved details and the spaces shall be kept available for the parking of cars thereafter.
- 24) No development shall take place until a Framework Car Park Management Plan has been submitted to and approved in writing by the local planning authority. This shall cover the construction phases as well as the operational period. It shall include a signing and traffic management strategy, measures and a methodology for collecting traffic and parking data and a timetable for delivery. The development shall be carried out in accordance with the Framework Car Park Management Plan and the timescales it defines.
- 25) No sales shall take place in the development hereby permitted until the Framework Car Park Management Plan has been upgraded to a Full Car Park Management Plan and has been submitted to and approved in writing by the local planning authority. The Full Car Park Management Plan shall include details of a full on-site Wayfinding/Sign Strategy. The development shall be carried out in accordance with the Full Car Park Management Plan and the timescales therein. Any signs erected on-site in accordance with its provisions shall be retained thereafter.

### **Travel plans**

- 26) Interim Travel Plan targets for all modes of staff and visitor travel shall be identified and submitted within a summary note alongside the reserved matters applications for Block D or E. These interim targets will be based on car driver reduction targets and will revise the targets within the Framework Travel Plan (December 2015). They will also identify the respective mode shares for car passenger, bus, rail, walking and cycling trips. Following the approval of reserved matters for Blocks D or E, but prior to the occupation of trading of Block D or E, an updated analysis of travel patterns associated with The Mall shall be undertaken and shall include examination of the origin,

destination and mode of travel of both staff and visitors. These surveys will inform updated targets for all modes of transport. The revised Framework Travel Plan, which shall also include arrangements for monitoring and review, shall be submitted to and approved in writing by the local planning authority.

- 27) The approved revised Framework Travel Plan shall be upgraded to a Full Travel Plan and shall be submitted to and approved in writing by the local planning authority prior to the occupation for sales of any part of the development hereby permitted. This shall include the updated targets referred to in condition 26. Thereafter the approved Travel Plan shall be implemented in full and its measures shall be delivered and implemented in accordance with the timescales it defines.
- 28) A baseline monitoring exercise shall be carried out during the monitoring period established in the approved revised Framework Travel Plan and its results shall be submitted to and approved in writing by the local planning authority no later than six months after the occupation of Blocks D or E.

Each year during the monitoring period a Travel Plan Monitoring Report shall be submitted for approval to the Cribbs Quarter Transport Review Group no later than one month after the end of each monitoring period. The structure of these annual Reports shall be in a form that has been agreed in the approved revised Framework Travel Plan.

Before the first Travel Plan Monitoring Report is produced, the appropriate data and methodology for collection shall be agreed with the Cribbs Quarter Transport Review Group. The methodology shall be used for each subsequent Report unless variations are agreed in advance by the Cribbs Quarter Transport Review Group.

If any Travel Plan Monitoring Report shows that the modal split targets have not been achieved, the Cribbs Quarter Transport Review Group shall use the Travel Plan Deposit to design and implement measures aimed at seeking to achieve the modal split targets.

- 29) Full Travel Plans for the residential (Block C) and Hotel (Block G) elements of the development hereby permitted shall be submitted to and approved in writing by the local planning authority prior to the occupation of those elements of the development. These shall include arrangements for monitoring and review. Thereafter the approved Travel Plans shall be implemented in full and their measures shall be delivered and implemented in accordance with the timescales they define.

### **Noise levels for the residential development**

- 30) The internal noise levels within the residential flats in Block C shall not exceed 35 dB  $L_{Aeq,16hour}$  during the daytime (0700 – 2300) and 30 dB  $L_{Aeq,8hour}$  at night (2300 – 0700) in accordance with BS 8233: 2014 *Guidance on sound insulation and noise reduction for buildings*. In addition 45 dB  $L_{Amax}$  shall apply in all bedrooms during the night in accordance with the World Health Organisation *Guidelines for Community Noise (1999)*.

### **Landscape maintenance**

- 31) Before development of any phase (apart from the residential phase) is first occupied a schedule of landscape maintenance for a period of five years for that phase shall be submitted to and approved in writing by the local planning

authority. The schedule shall include details of the arrangements for its implementation. The maintenance of the landscaping for that phase shall be carried out in accordance with its approved schedule.

### **Lighting**

- 32) Before development of any phase commences, including any groundworks, exempt infrastructure works, clearance or remediation works, details of any floodlighting and external illuminations for that phase, including measures to control light spillage and a timetable for implementation, shall be submitted to and approved in writing by the local planning authority. Development of that phase shall be carried out in accordance with its approved lighting details.

### **Crime prevention**

- 33) Before development of any phase commences, including any groundworks, exempt infrastructure works, clearance or remediation works, a scheme for the upgrade of the existing CCTV and ANPR systems for that phase, shall be submitted to and approved in writing by the local planning authority. The scheme shall include details of the scope, coverage and on-going maintenance of the extended systems and provision for Avon and Somerset Police to access them. Development of that phase shall be carried out in accordance with its approved scheme before the first occupation of that phase of the development.

### **Fire hydrants**

- 34) Before development of any phase commences, including any groundworks, exempt infrastructure works, clearance or remediation works, a scheme for the provision and future maintenance of fire hydrants for that phase shall be submitted to and approved in writing by the local planning authority. Development of that phase shall be carried out in accordance with its approved scheme before the first occupation of that phase of the development.

*End of conditions 1-34*



# Ministry of Housing, Communities & Local Government

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## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.